



Berliner Beauftragte
für Datenschutz
und Informationsfreiheit

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FINAL DECISION

Berlin, 21 June 2021

OUTFITTERY GmbH
Management Board
[redacted]
Leuschnerdamm 31
10999 Berlin

For information:
ISiCO Datenschutz GmbH
[redacted]
Am Hamburger Bahnhof 4
10557 Berlin

Reprimand

Complainant: [redacted]
Your letters of 15 January 2020, 30 June 2020, and 30 September 2020
(your reference IS-0472-10)

Dear [redacted],

We hereby issue a reprimand to your company for a violation of the General Data Protection Regulation (GDPR).

Reasoning:

This decision is based on the following considerations

I.
The Berlin DPA has established the following facts:

The above-mentioned complainant requested Outfittery GmbH to erase his data by email from the email address [redacted-email address 1] on 23 August 2019. Outfittery GmbH confirmed the erasure of the complainant's data by email on the same day.

On 23 September 2019, you sent the complainant an email to [redacted-email address 1] from team@modomoto.de with information about the merger of Curated Shopping GmbH with Outfittery GmbH, which was entered in the commercial register on 27 June 2019, and the transfer of his data to

Berlin Commissioner for Data Protection and Freedom of Information

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The building is fully accessible to
disabled members of the public.

Contact us

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Use our encrypted contact form
for registering data protection
complaints:
www.datenschutz-berlin.de/beschwerde.html

For all other enquiries, please
send an e-mail to:
mailbox@privacy.de

Fingerprint of our
PGP-Key:

D3C9 AEEA B403 7F96 7EF6
C77F B607 1D0F B27C 29A7

Office hours

Daily from 10 am to 3 pm,
Thursdays from 10 am to 6 pm
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How to find us

The underground line U6 to
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the system of Outfittery GmbH, unless he objects within two weeks of receipt of the notification.

By email from [redacted-email address 1] of 23 September 2019, the complainant requested an explanation from you and Curated Shopping GmbH as to why the erasure of his data had not taken place, objected to the further use of his data and again requested its erasure. Furthermore, the complainant stated that he had not had a business relationship with Curated Shopping GmbH.

In the above-mentioned statements, you credibly stated that the complainant had two customer accounts with Curated Shopping GmbH under the email addresses [redacted-email address 1] and [redacted-email address 2], independently of his customer account with Outfittery GmbH. You informed the complainant of this after receiving his renewed erasure request and confirmed to him in an email dated 26 September 2019 that you would also erase this data for his email address [redacted-email address 2].

II.

Legally, we assess the facts as follows. Your company has violated the General Data Protection Regulation (GDPR).

Pursuant to Article 17(1)(a) GDPR, The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay. The controller also shall have the obligation to erase personal data without undue delay if it is no longer necessary in relation to the purposes for which they were collected or otherwise processed.

According to Article 5(1)(a) GDPR, personal data shall be processed lawfully. In order for the processing to be lawful, personal data must be processed either with the consent of the data subject or on grounds of a legal basis, in accordance with Article 6(1) sentence 1 GDPR.

By email addressed to [redacted-email address 1], Curated Shopping GmbH with the email address team@modomoto.de informed the complainant on 23 September 2019 about the merger with Outfittery GmbH and the transfer of his data into the system of Outfittery GmbH, unless he objected within two weeks after receipt of the notification. However, this aforementioned email of 23 September 2019 is also attributable to Outfittery GmbH as the controller, since the merger with Curated Shopping GmbH was already entered in the commercial register on 27 June 2019.

Through his erasure request of 23 August 2019, the complainant has expressed that he is no longer interested in being contacted by Outfittery GmbH. Further storage of his data for the business purposes of Outfittery GmbH was thus no longer necessary. The erasure request was also not denied for other reasons.

However, an erasure did not take place with regard to the complainant's personal data taken over by Curated Shopping GmbH with effect from 27 June 2019 by Outfittery GmbH. Rather, his data was used again by Outfittery GmbH on 23 September 2019, although it should have already been erased. The use of the data and the continued storage thus took place without legal grounds.

Outfittery GmbH has thus violated Article 17(1), Article 5(1)(a) and Article 6(1) GDPR.

III.

As a result, we have decided not to take any further supervisory measures due to the violation, but to leave it at a reprimand.

The reprimand is based on Article 58(2)(b) GDPR.

Taking into account the specific circumstances of the established facts, we consider a reprimand to be appropriate after completing our investigation. We have again identified a violation on your part.

In the certain expectation that you will comply with the data protection regulations in the future, we consider the matter closed.

Kind regards,

[redacted]