



Republic of Austria

Data
protection

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GZ: D155.085
2023-0.883.894

Clerk: [REDACTED]

Data protection complaint

[REDACTED] (A56ID 425901, Case Register 392556)

via RSb/letter/e-mail "email address"

FINAL DECISION

VERDICT

The Data Protection Authority decides on the data protection complaint of [REDACTED] (complainant) of 30 October 2021, submitted to the Bavarian Lander Office for Data Protection Supervision, against [REDACTED] (respondent) for breach of the right to access as follows:

1. The complaint is granted and it is established that the respondent has infringed the complainant in the right of access.
2. The respondent is ordered to provide the complainant with information on the personal data concerning him within a period of two (2) weeks in the case of other execution within the scope of Art. 15 GDPR.

Legal bases: Articles 4(7), 15, 51(1), 57(1)(f), 58(2)(c) and 77(1) of Regulation (EU) 2016/679 (General Data Protection Regulation; 'the General Data Protection Regulation': GDPR), OJ L 119, 4.5.2016, p. 1; Sections 18(1) and 24(1) and (5) of the Data Protection Act (DSG), Federal Law Gazette I No 165/1999 as amended.

REASONING

A. Arguments of the parties and the proceeding of the proceedings

1. By letter of 30 October 2021, the complainant lodged a complaint to the Bavarian Lander Office for Data Protection Supervision and stated, in summary, that the respondent did not respond to his request for access dated 28 November 2020 and 5 November 2020.

2. The Bavarian Lander Office for Data Protection Supervision submitted the complaint with entry dated 27. April 2022 under the IMI number 392556 to the Internal Market Information System of the European Union and suggested the lead responsibility of the Data Protection Authority. The complaint was re-submitted to the European Union's Internal Market Information System with the entry of 5 August 2022 under the IMI number 425901. By entry of 19 October 2022, the Data Protection Authority declared its lead responsibility and requested additional documents from the Bavarian Lander Office for Data Protection Supervision.

3. By letters dated 10 November 2022 and with further urgency letters of 7 November 2022, December 2022 and 5 January 2023 the Data Protection Authority requested the respondent to provide a statement.

4. By submission of 16 January 2023, the respondent replied and requested that more information on the complainant, as he is not the only person with that name.

5. The Data Protection Authority sent the respondent's reply with entry dated 19. January 2023 under the IMI number 477883 on the Internal Market Information System of the European Union to the Bavarian Lander Office for Data Protection Supervision.

6. The Bavarian Lander Office for Data Protection Supervision transmitted via the European Union Internal Market Information System with entry dated 16 February 2023 under IMI number 477883, a supplementary statement of the complainant to the data protection authority. An e-mail correspondence between the complainant and the respondent of 19 November 2020, in which the respondent referred to a person named [REDACTED] was enclosed.

7. By letter of 21 February 2023, the data protection authority transmitted the supplementary information obtained from the respondent and requested the respondent to submit a statement. The fact that the respondent referred to a person named [REDACTED] was pointed out by the Data Protection Authority in its correspondence with the respondent.

8. The respondent submitted by submission of 23 February 2023 that the the case at issue had

already been handled in December 2022 and the file was closed. In response to an additional request for clarification by the Data Protection Authority, the respondent informed, by submission of 27 February 2023, that [REDACTED] file had been closed. The respondent alleged to have received from its contract partner on 14. December 2020 a list of cases to be closed, but could not transmit it for data protection reasons, since other debtors were also mentioned there. Upon another request and notice from the Data Protection Authority that the complainant was not [REDACTED], the respondent informed, by submission of 1 March 2023, that the file had been closed and that an e-mail had been sent to the complainant.

9. The data protection authority transmitted the results of the investigation procedure with entry on 2 March 2023, under the IMI number 491932 on the European Union Internal Market Information System, to the Bavarian Lander Office for Data Protection Supervision and granted the complainant the right to be heard.

10. By letter dated 25 April 2023, the complainant informed the Bavarian Lander Office for Data Protection Supervision that he had received a message from the respondent that [REDACTED] file had been closed.

11. The Data Protection Authority informed the respondent by letter of 25 April 2023 that the complainant had not received the requested data information so far and again pointed out a possible confusion with [REDACTED]

12. By submission of 25 April 2023, the respondent replied that it had informed the respondent on 27 February 2023 that the file of [REDACTED] had been. In addition, on 1 March 2023, the complainant had been informed that everything had been completed.

13. By letter of 25 April 2023, the Data Protection Authority reiterated that [REDACTED] and the complainant were two different persons. The respondent then requested the complainant's e-mail to resend him the message. The Data Protection Authority provided the respondent with the complainant's e-mail address. The respondent then informed that it would contact the complainant.

14. By letter dated 19 June 2023, the Data Protection Authority asked the respondent whether it had contacted the complainant.

15. By letter of 20 August 2023, the respondent informed that [REDACTED] file had been closed and reiterated its claim that it had been closed on 14 August 2023. In December 2020, the respondent's contract partner had issued a list of cases to be closed, but the list could not be transmitted for data protection reasons, since other debtors were also mentioned there.

16. By letter dated 26 June 2023, the Data Protection Authority again requested the respondent to inform whether it had contacted the complainant under the notified e-mail address.

17. By letter of 26 June 2023, the respondent indicated that it had informed the complainant that Mr [REDACTED] file had been closed and, moreover, reiterated its previous arguments. By further letter of 26 June 2023, the complainant informed, contrary to its previous statement, that according to its records, only the correspondence with the data protection authority had been documented and that no letter had been sent to the complainant.

18. The data protection authority transmitted the results of the further investigations to the Bavarian Lander Office for Data Protection Supervision with entry dated 27 June 2023 under the IMI number 531693 on the Internal Market Information System of the European Union. The Bavarian Lander Office for Data Protection Supervision replied by entry dated 28 June 2023 and informed the data protection authority that the respondent's replies do not show any progress and that still no information had been provided to the complainant in accordance with Article 15 GDPR.

19. With entries dated 24 October 2023 and 7. December 2023 under the IMI number 570230 and with entries dated 8 December 2023 and 13 December 2023 under IMI number 585709, the Data Protection Authority and the Bavarian Lander Office for Data Protection Supervision exchanged information on the state of play of the present proceedings on the Internal Market Information System of the European Union.

B. Subject matter of appeal

The subject-matter of the proceedings is whether the respondent infringed the complainant in the right of access.

C. Findings

C.1. The data protection authority shall base its findings on the arguments of the parties set out in point A. and the course of the proceedings.

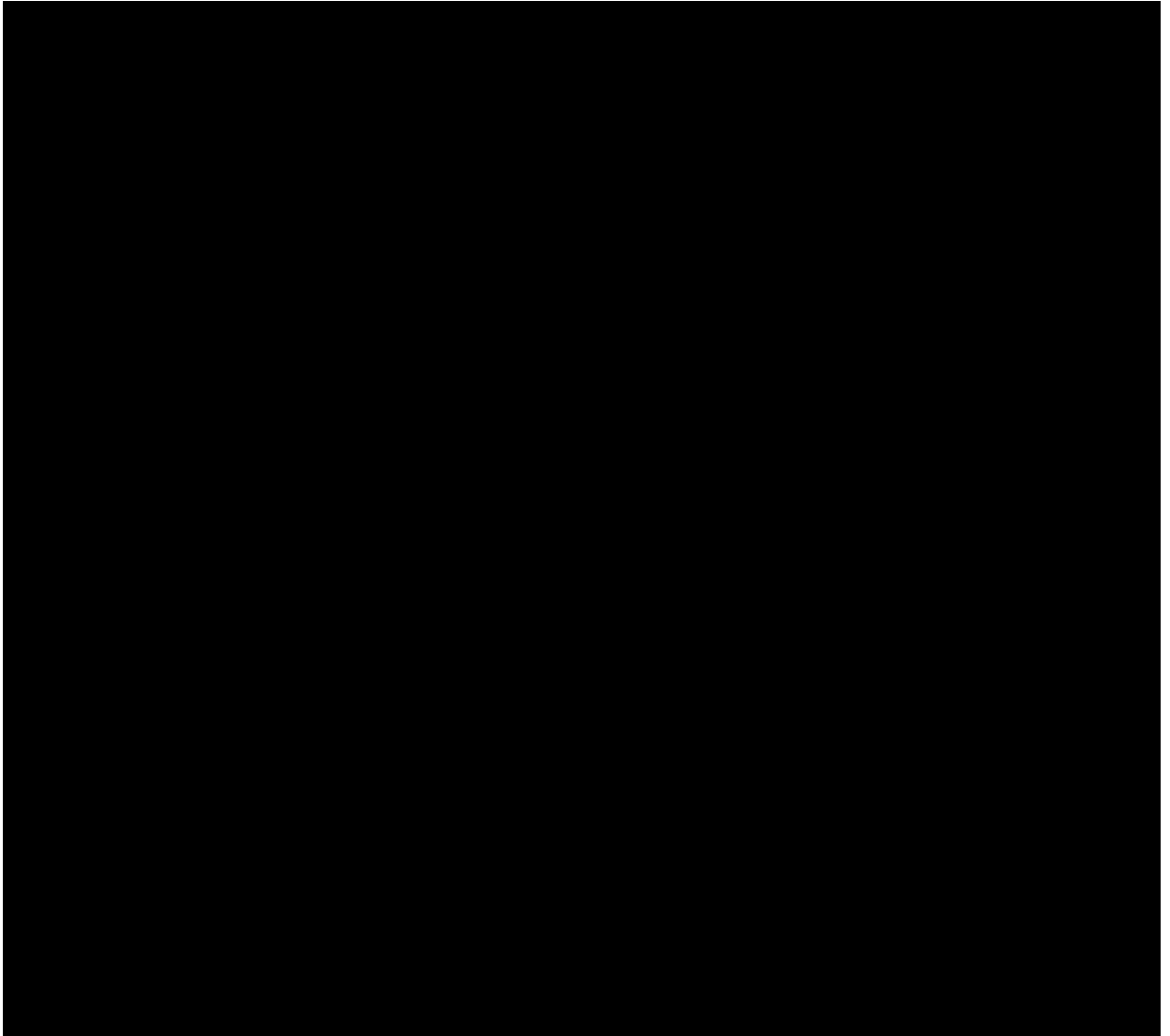
Assessment of evidence: The finding on C.1. is undisputed and stems from the present file and the submissions of the parties to the proceedings documented therein.

C.2. The Respondent is a limited liability company registered under [REDACTED] in the Commercial Register with its registered office in [REDACTED]. The complainant submitted on 28 November 2020 and on 5 December 2020 an application for access pursuant to Art. 15 GDPR to the respondent's non-standalone German branch.

Assessment of evidence: The findings on C.2. are based, on one hand, on the basis of an officially obtained and documented company register excerpt for [REDACTED] on the other hand on the complainant's application of 28 November 2020 and 5. December 2020, the letter from the Bavarian Lander Office for Data Protection Supervision to the respondent dated 30 August 2022 and 22 September 2022, as well as the letter from the respondent's legal representative of 24 January 2022,

indicating that the German postal address is a non-standalone branch of the respondent with main establishment in Austria.

C.3. Despite several requests from the data protection authority and the reference to a possible confusion of persons in relation to the complainant's request for information, the respondent replied as follows, inter alia:



D. From a legal point of view, it follows:

D.1. Ad) Controllershship

The data protection authority does not disregard that the respondent has its main establishment in Austria but the complainant has transmitted the request for access to a German postal address. The investigations carried out in advance by the Bavarian Lander Office for Data Protection Supervision have shown that the postal address is a non-standalone establishment of the respondent based in Austria. This was also confirmed in the letter of the respondent's legal representative of 24 January 2022 and the status of the respondent as a controller within the meaning of Article 4(7) of the GDPR was never disputed by the respondent in the course of the proceedings at issue.

From the point of view of the data protection authority, there are therefore no indications that the respondent is not the controller pursuant to Art. 4(7) GDPR.

D.2. Ad) Right of Access

In accordance with Article 15(1) of the GDPR, the data subject has the right to obtain confirmation from the controller as to whether personal data concerning him or her are being processed and, where this is the case, the data subject has the right to access such personal data and a right to the information referred to in points a to h leg. Cit.

The right of access pursuant to Art. 15 GDPR serves as an instrument which enables a data subject to become aware of the processing by a controller and to verify the lawfulness of the processing (see Recital 63 first sentence GDPR). In other words, the data subject's right of access allows an insight into the "whether and how" of the processing (see. *Paal* in *Paal/Pauly* [eds.], General Data Protection Regulation. Commentary, Art. 15, para. 3).

In order to safeguard the right of access, it is sufficient for the applicant to obtain a complete overview of his personal data in an intelligible form, that is, in a form which enables him to gain knowledge of those data and to verify whether they are correct and lawfully processed, so that he may exercise, if necessary, the other rights of a data subject to which he is entitled (see with regard to the comparable legal situation under Article 12(a) of the Directive 95/46/EC the judgment of the CJEU of 17 July 2014, C-141/12 and C-372/12 (*YS and MS*) para 59).

The subject of data protection information to be provided is the data actually processed by the controller at the time of receipt of the request for information, whereby the benchmark for this is the formal truth.

D.3. In the subject matter

The complainant has sent a request for access to the respondent, but has not received any information on the personal data concerning him in the ongoing proceedings before the data protection authority. The respondent itself admitted, *mutatis mutandis*, that no response to the request for access had been provided to the complainant, which is why an infringement in the right to access had to be established and the complaint had to be granted.

Pursuant to Article 58(2) GDPR, the data protection authority has different remedial powers, which serve to establish a state corresponding to the GDPR. The exercise of a remedy with regard to ensuring compliance with the GDPR should be appropriate, necessary and proportionate and should take into account the circumstances of the respective individual case (see Recital 129 GDPR).

Since the respondent has failed to comply with the complainant's request for access, the exercise of the remedial power pursuant to Article 58(2)(c) GDPR is required, according to which a supervisory authority may instruct the controller to comply with the data subject's requests for the exercise of the rights

conferred on him under the GDPR.

The respondent was therefore to be instructed to provide the complainant with information within the scope of Art. 15 GDPR. The order is based on Article 58(2)(c) GDPR. A period of two weeks seems appropriate to comply with the order, as there are no indications that the provision of this information constitutes a particularly high burden for the respondent.

It is again pointed out that in the context of the information to be provided, only data processed by the respondent referring to the person of the complainant (██████████) must be provided. On the other hand, personal data processed on the person of ██████████ on third persons must not be provided.

As a result, it had to be decided according to the verdict.

In addition, the Data Protection Authority reserves the right to examine the initiation of administrative criminal proceedings against the respondent due to its repeated confusions of data subjects.

LEGAL REMEDY

A complaint against this decision may be lodged in writing to the Federal Administrative Court within **four weeks** of notification. The complaint must **be lodged with the data protection authority** and must:

- the name of the contested decision (GZ, subject)
- the name of the competent authority,
- the grounds on which the allegation of illegality is based,
- the desire and
- contain the information necessary to assess whether the complaint has been submitted in good time.

The data protection authority has the possibility to amend its decision within two months either by **pre-trial decision** or to **submit the complaint with the file of the proceedings to the Federal Administrative Court**.

The complaint against this decision is subject to **a fee**. The fixed fee for a corresponding input including inserts is **EUR 30**. The fee must be paid to the account of the Austrian Tax Office, stating the intended purpose.

In principle, the fee must be transferred electronically with the function "Tax Office payment". The tax office Austria – Department of Special Competences should be specified or selected as the beneficiary (IBAN: AT83 0100 0000 0550 4109, BIC: BUNDATWW). Furthermore, they are Tax number/delivery account number 10 999/9102, the tax type "EEE Complaint Fee", the date of the decision as the period and the amount.

If the e-banking system of your credit institution does not have the function "Tax Office payment", the

eps procedure can be used in FinanzOnline. An electronic transfer can only be excluded if no e-banking system has been used so far (even if the taxpayer has an internet connection). Then the payment must be made by means of a payment order, whereby attention must be paid to the correct assignment. Further information can be found at the tax office and in the manual “*Electronic payment and reporting on the payment of self-assessment duties*”.

The payment of **the fee** shall be **proved** upon submission of the complaint **to the data protection authority** by means of a payment document to be connected to the input or a printout of the issue of a payment order. If the fee is not paid or not paid in full, a **report shall be made to the competent tax office**.

A complaint lodged in good time and admissible to the Federal Administrative Court has **suspensive effect**. The suspensive effect may have been excluded in the sentence of the notice or may be excluded by a separate decision.