

GZ: D155.017
2023-0.279.664

Sachbearbeiterin: [REDACTED]

Complaint (Art. 77 GDPR)

[REDACTED] (IMI Nr. A56 ID 92101, Case Register "134353")

FINAL DECISION

Subject: Closing of proceeding

1. Procedure/ Facts of the case

The complainant [REDACTED] filed a complaint against [REDACTED] (opponent) concerning the right to data portability, with the State Commissioner for Data Protection of Lower Saxony (LfD). The complaint was submitted to the Austrian Data Protection Authority (DSB) on November 21, 2019.

In her complaint, the complainant stated that she requested data portability according to Article 20 GDPR on September 16, 2019. She sent another reminder via email on October 2, 2019. The opponent answered on October 3, 2019 that her request will be answered soon. Up to the date of the complaint (October 23, 2019), the complainant didn't receive an answer. The controller didn't comply with the time limit laid down in Article 12 (3) GDPR.

The opponent, [REDACTED], has its establishment in [REDACTED], [REDACTED], Austria. The DSB took up the complaint as Lead Supervisory Authority according to Article 56 (1) GDPR.

By letter dated June 29, 2020, the DSB requested the opponent to submit its comments to the complaint. At the same time, it was pointed out that - until the closure of the proceedings before the DSB - there would be the possibility to remedy the alleged infringement by complying with the data subjects request pursuant to Article 20 GDPR ("right to data portability"). The information on the subsequent compliance with the request should be provided directly to the complainant, a copy should be attached to the statement to the DSB.

With statement from September 23, 2020, the opponent commented that they have contacted the complainant in order to grant her the right to data portability. As attachment, the opponent submitted the email issued to the complainant on September 23, 2020. In this email, the opponent asked the

complaint to, if applicable, provide a corresponding functional link for the transmission of her personal data to another controller. Attached to the email was the complainant's personal data in a structured, machine-readable format (CSV/excel file).

The statement of the controller was shared with the LfD in order for them to grant the complainant the right to be heard. The complainant did not issue any further statements.

On June 14, 2021, the DSB requested the opponent to submit further comments. As the opponent has expressed in its statement of September 23, 2020, that they have contacted the complainant, they were requested to inform the DSB whether the complainant's requests have now been complied with. Further it was recalled, that – in view of remedying the alleged infringement by complying with the requests of the complainant pursuant to Article 20 GDPR - a copy of the provided data should be attached to the statement to the DSB.

With statement of June 22, 2021, the opponent emphasized again that the complainant was contacted on September 23, 2020. Since then, the complainant has not contacted the opponent again, or reacted to the email or shared data. As attachment, the opponent submitted the complainant's personal data as CSV/excel file.

The DSB shared the opponent's statement of June 22, 2021, including the provided personal data in the format of a CSV/excel file, as well as a letter of the DSB dated July 6, 2021 to the complainant with the LfD on August 6, 2021. In this letter, the DSB stated that it is of the opinion that an amicable settlement could be reached as a result of the opponent's response and that the complaint could be considered closed. The complainant was given a period of two weeks from receipt of this letter, to justify - if necessary - why she still considers the originally alleged infringement (data portability) to be at least partially unresolved. Otherwise, the DSB will assume that an amicable settlement has been reached.

On June 9, 2022, the DSB asked the LfD, whether the DSB's letter and the documents have been shared with the complainant.

On June 15, 2022, the LfD stated, that the letter and documents have been shared with the complainant. The LfD commented that they assume that the complaint has been settled as to date, they have not received a reaction of the complainant.

2. Amicable settlement

According to paragraph 24 (6) DSG (Austrian Data Protection Act), an opponent may subsequently remedy the alleged infringement by complying with the requests of the complainant until the conclusion of the proceedings before the data protection authority. If the data protection authority deems the complaint to be without merit in this respect, it shall hear the complainant on the matter. At the same time, the complainant's attention shall be drawn to the fact that the data protection authority will informally discontinue the proceedings if the complainant fails to substantiate within a reasonable period

of time why he or she still does not consider the originally alleged infringement to have been remedied, at least in part. Late statements shall not be taken into account.

As explained above, the statements of the controller, including the CSV/excel file, have been shared with the LfD. In accompanying letter of the DSB, the complainant was informed that the DSB considers the issue as amicable settled. The complainant was further informed on the legal consequences in case she will not issue any further statements.

Despite being given the opportunity to do so, the complainant did not submit any further comments.

Due to the reaction of the opponent, especially due to the fact that the opponent shared the requested data with the complainant on September 23, 2020 and again via the DSB/LfD, in a structured, commonly used and machine-readable format (CSV/excel file), the complaint is considered to be amicably settled in accordance with paragraph 24 (6) DSG (Austrian Data Protection Act).

Accordingly, the proceeding is to be discontinued.

12. April 2023

Für die Leiterin der Datenschutzbehörde:

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