



Our reference: LDA-1085.1-10725/21-F
IMI Art. 56: 372705
IMI draft decision: 665453

INOFFICIAL TRANSLATION

Controller: [REDACTED]

On the basis of the draft decision of the Austrian data protection authority (AT DPA) No. 665453, the Data Protection Authority of Bavaria for the Private Sector (BayLDA) pursuant to Article 60(8) of the GDPR issues the following

Final Decision:

The complaint is rejected.

Justification:

The complaint was received by the BayLDA on 14 October 2021 and was forwarded via IMI to the AT DPA as the lead data protection supervisory authority for the controller.

On 12 July 2024 the AT DPA submitted the draft decision no. 665453 to the concerned supervisory authorities with the following contents:

The data protection authority decides on the data protection complaint of [...] (complainant) dated 23 September 2021 against [REDACTED] (opponent) regarding an infringement of the right of access, right to erasure, notification obligation regarding rectification or erasure of personal data or restriction of processing and right to object as follows:

- The complaint is dismissed.

Legal bases: Articles 15, 17, 19, 21, 51(1), 57(1) lit. f and 77(1) of Regulation (EU) 2016/679 (General Data Protection Regulation, GDPR), ABL. Nr. L 119, 4.5.2016; §§ 18(1) and 24(1) and (5) of the Data Protection Act (DSG), Federal Law Gazette I No 165/1999; § 147 of the Tax Code in the version published on 1 October 2002 (Federal Law Gazette I, p. 3866; 61), which was last amended by Article 24 of the Law of December 22, 2023 (Federal Law Gazette 2023 I No 411) (dAO); Section 257 of the Commercial Code, in the amended version published in the Federal Law Gazette, Part III, No. 4100-1, which was last amended by Article 34(1) of the Law of December 22, 2023 (Federal Law Gazette 2023 I No 411) (dHGB).

JUSTIFICATION

A. Arguments of the parties and procedure

1. The Austrian Data Protection Authority was informed on 25 February 2022 via the Internal Market

Information System (IMI) of the complainant's complaint lodged with the Bavarian Supervisory Authority on 23 September 2021, completed on 14 October 2021.

By letter of 23 September 2021, originally submitted to the Bavarian Supervisory Authority, the complainant submitted in summary that on 3 September 2021 she had received an unauthorised request for payment from [REDACTED], [REDACTED].

Therefore, at 11:21 a.m. on 6 September 2021, she called the telephone number indicated on the letter and tried to clarify the matter. It was only with considerable effort that it was possible to locate the person who allegedly drew up an invoice and ultimately sent it to the complainant, even though he was not entitled to do so, as she had objected to any disclosure to third parties. Since she had already had great problems in the past due to similar false statements by third parties, she had objected to this treatment by the management and asked them to give a written answer. To date, she has received neither a written answer nor a telephone call.

The address given to the veterinary practice [REDACTED] in [REDACTED] [REDACTED] and no other. The address used by the opponent was incorrect. The amount stated is not owed.

She wanted the complete erasure of her data from the opponent, the complete erasure of the data from the data source and the data recipients, and access to data recipients. She also raises an objection to the processing of the data by the opponent and the company Idexx.

2. By letter of 14 October 2021, the complainant also stated that it was not understood at all why this data had to be stored if this was based on an unjustified processing of data.

3. By letter of 30 September 2022, the opponent submitted that, on 23 March 2021, it had been commissioned by its client [REDACTED] to enforce the following claim concerning the complainant: Invoice number 401119140 of 29 August 2019- EUR 35, 65 with the address [REDACTED] [REDACTED]. In this case, the complainant is mentioned personally in the specifications. There is no reference to the dental practice and [REDACTED] with the address [REDACTED] [REDACTED].

By letter of formal notice relating to the above-mentioned file number of 24 March 2021, the opponent requested the complainant to pay the outstanding claim. However, the letter of formal notice sent to [REDACTED] could not be served.

After several unsuccessful address determinations, the correct address of the complainant could have been determined by the [REDACTED]. The first letter of formal notice was sent again to the newly registered address [REDACTED] on 3 September 2021.

On 6 September 2021, the opponent was contacted by telephone by a third person, presumably [REDACTED] [REDACTED], on the debt collection act at issue. Due to the lack of power of attorney, the caller was not given any telephone information on the debt collection act for data protection reasons.

On 8 September 2021, the opponent received the complainants' fax.

Due to the denial, the client [REDACTED] was contacted. The latter had informed the opponent that the present claim had been wrongly handed over to the complainant due to a recording error and that the present order had to be cancelled on the basis of this. The recording error was in the hands of the

treating veterinarian, who had already transmitted incorrect data. As a result, the invoice was incorrectly drawn up by the client with regard to the address given.

On 4 October 2021, the reply was sent by registered post within the statutory period relating to the data protection request. According to ██████'s consignment details, the letter was duly served on 7 October 2021. This letter had been addressed to the complainant, since, firstly, only the complainant had been personally mentioned in the specifications, secondly, there was no corresponding power of attorney for ██████ and, thirdly, the letter of formal notice of 3 September 2021 had been sent to the complainant. A confusion of persons had been ruled out, since the complainant had not disputed the provision of services by the veterinarian in its letter of 8 September 2021. Apparently, according to the complainant, the address of the dental practice was given to the veterinarian. The opponent was not able to verify this statement, since the contracting entity did not have a laboratory order at the time of the inspection. Therefore, the letter of 4 October 2021 was sent by registered mail to ██████. Since there was only one address, which was obviously an incorrect address, it was not only admissible, but also necessary to determine a serviceable address of the complainant.

By letter of 4 October 2021, the complainant was refused the erasure of her data, stating its reasons. The personal data stored about the complainant relating to file number 50302-/55388-* had been processed in connection with the provision of debt collection services and thus the business purpose. The opponent's branch in ██████ provides debt collection services in Germany as a registered legal service provider and must therefore comply with the German provisions to which it is subject. Since the opponent is subject to the statutory provisions of tax and commercial law with regard to the personal data of the complainant stored with it and this circumstance therefore precludes erasure, the complainant was refused erasure on the basis of further data processing for archiving and proof purposes. The restriction of the processing of personal data pursuant to Article 18 GDPR was confirmed.

By letter of 4 October 2021, the complainant was also provided with information about the data recipients and was informed that the aforementioned companies were the responsible bodies for the data stored there within the meaning of the data protection regulations and therefore also have to independently examine the claims for deletion and provide corresponding information in accordance with the GDPR. The data was passed on to the listed companies for the purpose of address determination. A negative credit rating entry to a credit reference agency had not been carried out. Since the personal data of the complainant had not been deleted, no communication under Article 19 GDPR to the data recipients had taken place.

4. By letters of 28 October 2022 and 31 October 2022 respectively, the complainant summarised and essentially argued that it still could not understand the claim 'after several unsuccessful address determinations'. In the past, she had received invoices from both the veterinary practice ██████ and the company ██████ itself, with the postal address ██████.

She received the ██████ laboratory invoice sent to her. However, the date of 20 August 2019 set out therein is in line with the treatments included in the veterinary invoice of 23 August 2022 (Note: it was 2019). The veterinary practice ██████ indicated ██████ as the billing address.

After the veterinary treatment of her dog on 16 August 2019, her husband and she went to the company

was withdrawn from processing shortly after the client's cancellation notification in September 2021 and the complainant's personal data were restricted in processing. By letter of 4 October 2021, the appellant had already been informed of the address determinations carried out at several companies. Only after negative multiple address determinations did the company [REDACTED] provide information on the address [REDACTED]. With regard to the assignment of payment to the [REDACTED] laboratory mentioned by the appellant or the objection to the transfer of data, reference is made to a reference on the invoice. The fact of the assignment of claims is brought to the attention of the invoice recipient and thus also the passing on of the data by the treating veterinarian to the client. The fact that the data must be passed on by the veterinarian to the client is absolutely necessary for the submission of the laboratory service and invoicing by the client.

6. By submission of 26 May 2023, the appellant stated, in summary, that before the start of treatment, it had had its former and no longer valid address in [REDACTED] changed to the correct address obtained at the veterinary practice [REDACTED]. It had also been entered correctly into the computer by the employee at the registration. She was assured by the veterinary practice that her address had been entered correctly in the computer software and that it had been correctly passed on to [REDACTED]. She never received the invoice 401110140.

B. Subject matter of the complaint

Based on the complainant's submissions, the subject matter of the appeal is whether the opponent infringed the complainant's right to data access (limited to data recipients), the right to erasure and the obligation to notify, and the right to object.

C. Findings of fact

The facts of the case are as follows: The opponent is a debt collection company with its head office in Austria and a branch office in Germany.

On 23 March 2021, the opponent was commissioned by [REDACTED] to enforce the following claim concerning the complainant: Invoice number 401119140 of 29 August 2019, EUR 35.65 with the address [REDACTED].

By letter of formal notice of 24 March 2021, the opponent requested the complainant to pay the outstanding claim. The letter of formal notice sent to the address [REDACTED] could not be served.

After several unsuccessful address determinations, the letter was sent again to the address [REDACTED] [REDACTED] on 3 September 2021. The letter is as follows:

P 01 3008 F081 DG 4000100
DV 09.21 0.30 Deutsche Post
PREMIERADRESS

[Redacted]

Falsch!

[Redacted]

München, 03.09.2021

ANDR

Unser Auftraggeber:
Forderung betrifft: [Redacted]

Aktenzeichen:
50302-/55388-*

Zahlungsaufforderung

Sehr geehrte [Redacted]

unser erstes an Sie gerichtetes Schreiben konnte durch die Post nicht zugestellt werden. Ihre aktuelle Adresse konnte nur durch eine Adressermittlung erfahren werden. Wir gehen davon aus, dass die ermittelte Anschrift korrekt ist. Sollte dies nicht der Fall sein, melden Sie sich bitte bei uns.

Sie haben bei [Redacted] eine offene Forderung(en). Leider sind Sie Ihren Zahlungsverpflichtungen hieraus nicht nachgekommen. Unser Auftraggeber [Redacted] hat deshalb uns, die [Redacted] mit dem Einzug der Forderung beauftragt.

Wir bitten Sie daher den Gesamtbetrag in Höhe von EUR 91,34 bis zum 10.09.2021 auf das folgende Konto zu überweisen:

[Redacted]

Dieser Betrag setzt sich aus den Kosten für die Dienstleistungen plus den Kosten zusammen, die bis jetzt durch die verzögerte Zahlung entstanden sind. Eine genaue Auflistung aller Details zu der ausstehenden Forderung finden Sie auf den folgenden Seiten dieses Schreibens.

Haben Sie Rückfragen zu Ihrer Forderung, dann rufen Sie uns gerne an oder schicken Sie uns eine E-Mail an [Redacted]

Mit freundlichen Grüßen

[Redacted]

[Redacted]

Aktenzeichen: 50302-/55388-*

ALLE WICHTIGEN DATEN IM ÜBERBLICK:

Offener Gesamtforderungsbetrag inkl. Zinsen und Kosten:

Offene Forderung	EUR	35,85
Mahnkosten	EUR	0,00
5 Prozentpunkte über Basis (% Zinsen) hieraus ab 29.09.2019	EUR	3,85
abzgl. bisher geleisteter Zahlungen	EUR	0,00 [-]
Kosten f. Adressrecherche	EUR	5,00
0,6 Geschäftsböhr. analog H. 3300 VV PVZ i. V. M. S. 14 BVZ	EUR	39,20
Post- u. Telekommunikationsgrundgebühren analog H. 7600 VV BVZ	EUR	7,84

Offener Gesamtbetrag EUR 91,34

Der Gläubiger ist zum Vorstreikverzug berechtigt.

[Redacted]

Erläuterung:

Die Mahnkosten des Auftraggebers sind von Ihnen gemäß den vertraglichen Vereinbarungen und § 280, 286 BGB als Verzugschaden zu ersetzen. Die in der Zahlungsaufforderung aufgeführte Inkassovergütung haben Sie gemäß der vertraglichen Vereinbarung mit dem Auftraggeber nach § 280, 286 BGB aus dem Gesichtspunkt des Verzuges zu ersetzen, unter Beachtung der Regenzung nach § 4 Abs. 5 RDGEG.

Wir weisen Sie darauf hin, dass wir gemäß Art. 6 Abs. 1 Buchstabe f) DSGVO die Daten über etwa fällige/nicht fällige/n Forderungen an Wirtschaftskanzlei [Redacted] Kaiserstr. 317, 76153 Karlsruhe übermitteln, wobei diese Daten dort Berücksichtigung bei der Ermittlung von Wahrscheinlichkeitswerten (Scoring) finden können. Das geschieht, soweit Sie nach Eintritt der Fälligkeit der Forderung mindestens zweimal schriftlich gemahnt worden sind, die erste Mahnung mindestens vier Wochen zurückliegt und Sie die Forderung nicht bezahlen haben. Weitere Informationen über die Wirtschaftskanzlei, an die wir Daten übermitteln, erhalten Sie unter: www.orfburegel.de

Befolgen: Zahlschein
Infoblatt Art. 14 DSGVO

[Redacted]

On 8 September 2021, the complainant sent the following letter to the opponent:

[Redacted]

[Redacted]

[Redacted]

Betreff: Unberechtigte Datenweitergabe, Behinderung der Vorgangsaufklärung.

08.09.2021

Sehr geehrte [Redacted], sehr geehrter Herr Affenzeller,

wir erhielten mit Datum vom 03.09.2021 eine unberechtigte Zahlungsaufforderung von Ihnen.

Am 06.09.2021 um 11.21 Uhr riefen wir daher bei der auf dem Schreiben angegebenen Telefonnummer an und bemühten uns die Angelegenheit aufzuklären. Wir gelangten an einen sehr unfreundlichen Mitarbeiter namens Herrn Altman. Wir baten ihn den Fehler zu beheben. Dieser verweigerte die Mitarbeit voll und ganz. Erst mit einem erheblichen Aufwand ist es uns gelungen denjenigen ausfindig zu machen, der angeblich eine Rechnung erstellt und letztlich an Sie geschickt haben soll, obwohl er dazu nicht berechtigt war. Da wir bereits durch ähnliche Falschaussagen in der Vergangenheit große Probleme bekommen haben widersprechen wir dieser Behandlung durch Ihrem Mitarbeiter.

Wir glauben nicht, daß es in Ihrem Sinne ist, daß unberechtigte Forderungen in fremden Briefkästen landen und dann womöglich falsche Aussagen, was unsere Reputation anbetrifft über uns verbreitet werden.

Die Anschrift, die wir dem Leistungserbringer gegeben hatten war:

[Redacted] und keine andere

Die von Ihnen verwendete Anschrift ist eine falsche.

Der angegebene Betrag wird nachweislich nicht von uns geschuldet.

Weder eine Firma [Redacted] noch Ihre Firma ist berechtigt unsere Daten zu verwenden.

Wir fordern Sie auf, alle Daten von und über uns bei Ihnen und jedem Dritten an den Sie diese weitergegeben haben und wo Sie diese erhalten haben vollständig zu löschen.

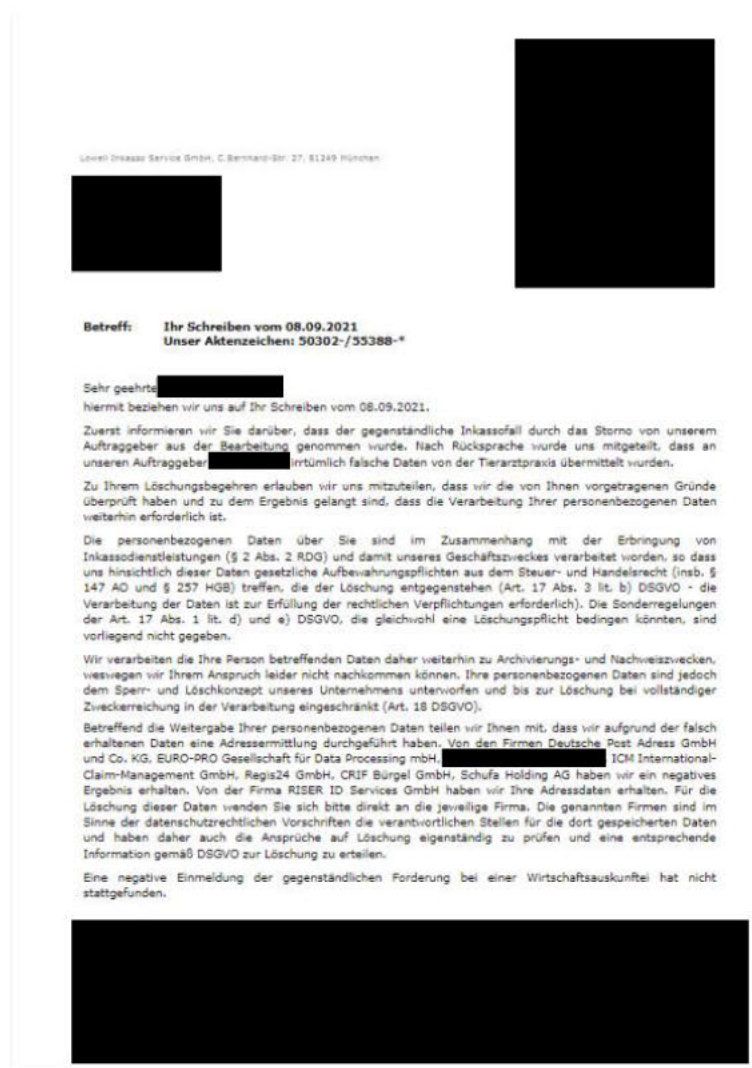
Bitte teilen Sie uns mit an wen Sie diese Daten weitergegeben haben und bestätigen Sie uns bitte schriftlich die vollständige Löschung bei Ihnen und diesen Dritten.

Wir widersprechen hiermit der Nutzung und Vorhaltung unserer Daten.

Bereits im Vorhinein vielen Dank für Ihre Mühe, mit freundlichen Grüßen,

[Redacted]

By letter of 4 October 2021, the opponent replied as follows:



Proof of delivery is in the file.

[REDACTED] informed the opponent after consultation that the present claim was wrongly handed over due to a recording error and that the present order must be cancelled due to this. The collection case was withdrawn from processing shortly after the cancellation notification in September 2021 and the complainant's personal data was restricted in processing.

Evidence assessment: These findings are apparent from the case file.

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

It is noted at the outset that in the present proceedings only [REDACTED] is listed as the complainant.

Re Art. 15 GDPR

By letter of 8 September 2021, the complainant specifically stated the following to the opponent: "Please let us know to whom you shared this data [...]."

Pursuant to Article 15 (1) (c) of the GDPR, a data subject has the right, as laid down by the EU legislature, that the controller must provide information on which specific recipients or categories of recipients have been disclosed their personal data.

In Case C-154/21, the European Court of Justice ruled that, even when exercising a right of access pursuant to Article 15 of the GDPR, the data subject has a real right to choose, unlike Articles 13 and 14 of the GDPR, so that the data subject must be able to choose whether the controller provides the data subject with either – if possible – information on the specific recipients to whom that data has been disclosed or information on categories of recipients. Furthermore, the data subject must be able to verify not only that the data concerning him or her are correct, but also that they are processed lawfully, in particular that they have been disclosed to recipients authorised to process them (see, by analogy, judgment of 7 May 2009, Rijkeboer, C-553/07, EU:C:2009:293, paragraph 49). In order for the data subject to exercise further data subject rights (Articles 16, 17, 18 and 21 GDPR) in an effective manner, it is necessary to know the identity of the specific recipients.

In its letter of 4 October 2021, the opponent stated as follows:

"With regard to the disclosure of your personal data, we inform you that we have carried out an address determination on the basis of the incorrectly received data. We received a negative result from the companies [REDACTED] and [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]. We have received your address data from [REDACTED]."

It was found that the opponent informed the complainant not only about abstract categories of recipients, but also about the specific recipients, which is why no defectiveness of the information can be detected in this point.

Article 17 GDPR

By letter of 8 September 2021, the complainant specifically stated the following to the opponent: *"We ask you to completely delete all data from and about us from you, any third party to whom you have disclosed it and where you have received it."*

Under Article 17(1) of the GDPR, in principle, every data subject has the right to request the erasure of personal data from a controller. The controller must delete the data in accordance with Article 17(1) of the GDPR, provided that one of the aforementioned reasons pursuant to Article 17(1)(a) to (f) of the GDPR applies and that there are no exceptions pursuant to Article 17(3) of the GDPR.

Pursuant to Article 17(1) (a) GDPR, a data subject has the right to request the controller to erase his or her data without undue delay if the data are no longer necessary for the purposes for which they were collected or otherwise processed.

However, in accordance with paragraph 3 (b), the controller may refuse such a request for erasure to the extent that the processing of the data is necessary *'for compliance with a legal obligation which requires processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in*

the controller.!

The opponent processes the complainant's data in connection with the provision of debt collection services within the meaning of Section 2(2) of the RDG and relies on the (further) storage obligations that apply to it, in particular pursuant to Section 147 of the German Banking Code (BAO) and Section 257 of the German Commercial Code (HGB), which provide for a six or ten-year storage obligation. On the basis of the legal obligation in the BAO and HGB, the opponent must agree that the storage of the personal data in question is necessary for the fulfilment of the legal task assigned to the opponent or obligations imposed on it by law.

Even if it seems annoying to the complainant – comprehensible to the data protection authority – that her personal data will continue to be stored by the opponent despite cancellation of the claim, it currently appears necessary to leave a personal reference to the complainant in the sense of accounting verifiability and comprehensibility.

As a result, the opponent rightly did not comply with the complainant's request for erasure at this stage. The appeal was therefore also to be dismissed on this point.

Article 19 GDPR

According to Article 19 GDPR, the controller shall communicate any rectification or erasure of personal data or restriction of processing carried out in accordance with Article 16, Article 17(1) and Article 18 to each recipient to whom the personal data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests it

It follows from what has already been said about Article 17 GDPR that there is no unlawful data processing at issue and therefore no erasure of the data is to be carried out by the opponent. There is therefore already no obligation to inform the recipients of the deletion pursuant to the first sentence of Article 19 GDPR.

For the sake of completeness, it should be noted that an obligation to notify in connection with the deletion of personal data to the controllers cannot be inferred from the data origin/data sources of the GDPR.

Article 21 GDPR

By letter of 8 September 2021, the complainant specifically stated the following: *'We hereby object to the use and retention of our data.'*

Pursuant to Article 21 GDPR, a data subject has the right to object at any time, for reasons arising from his or her particular situation, to the processing of his or her personal data on the basis of Article 6 (1) (e) or (f) GDPR. The controller may then not further process these data, unless it can demonstrate compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject, or for the establishment, exercise or defence of legal claims.

According to Article 6 (1) (e) GDPR, processing is lawful if it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. In

accordance with Article 6 (1) (f) of the GDPR, processing is lawful if it is necessary to safeguard the legitimate interests of the controller or a third party, unless the interests or fundamental rights and freedoms of the data subject which require the protection of personal data prevail, in particular where the data subject is a child.

However, as already stated above, the complainant processes the appellant's data in question on the basis of a legal obligation within the meaning of Article 6 (1) (c) GDPR and an objection is denied success for this reason alone.

The appeal had to be dismissed in its entirety, es was therefore to be decided in accordance with the opposition.

As the concerned supervisory authorities (including BayLDA) did not object to this draft decision, the BayLDA hereby adopts this draft decision as final decision in accordance with Article 60(8) of the GDPR.

Ansbach, 26.08.2024