



Berliner Beauftragte  
für Datenschutz  
und Informationsfreiheit

632.257.1  
521.12260  
Austrian DPA D130.354  
CR 52519  
DD 174148  
FD 191920

OUTFITTERY GmbH  
Management Board  
Ms. [redacted]  
Leuschnerdamm 31  
10999 Berlin

16 March 2021

### Reprimand

Complainant: Mr. [redacted]  
Your letters of 16. March 2020, 22. June 2020 and 9. October 2020 (your ref. IS-0472-10)

Dear Ms. [redacted],

**The Berlin Commissioner for Data Protection and Freedom of Information (Berlin DPA) hereby issues a reprimand to your company for a violation of the General Data Protection Regulation (GDPR).**

The Berlin DPA bases the reprimand on the following considerations:

I.  
The Berlin DPA has established the following facts:

The complainant had received a confirmation via email regarding the erasure of his personal data by the controller Outfittery GmbH on 12 April 2019.

According to the commercial register (Charlottenburg Court, HRB 140519 B), the Curated Shopping GmbH, with its registered office in Berlin (Charlottenburg Court, HRB 138459 B), is merged with the Outfittery GmbH as a whole on the basis of the merger agreement of 17 June 2019 and the consent resolutions of the same date by transferring its assets with dissolution without liquidation as of the merger date of 27 June 2019 (date of entry in the commercial register). Pursuant to § 2(1) of the aforementioned merger agreement, Curated Shopping GmbH has transferred its assets as a whole with all rights and obligations to Outfittery GmbH under dissolution without liquidation pursuant to § 2(1) of the Transformation Act (merger by absorption).

On 24 July 2019, the complainant had also requested erasure of his personal data to the controller Curated Shopping GmbH, which is the provider

### Berlin Commissioner for Data Protection and Freedom of Information

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of the service MODOMOTO, by contacting the address team@modomoto.at, and had received a confirmation of his request from this address via email.

On 19 October 2019, the controller informed the complainant by email about the transfer of his data into the Outfittery GmbH system and the creation of his new account with Outfittery GmbH and requested him to activate his account. The complainant again requested the controller to erase his personal data by email on 21 October 2019.

By credible comments dated 16 March 2020, the controller admitted that he had not implemented the complainant's erasure request of 24 July 2019 due to an error on the part of an employee and had only erased the complainant's personal data on 24 January 2020. In further comments of 22 June 2020, the controller also admitted that he had not sent a deletion confirmation to the complainant.

II.

In legal terms, the Berlin DPA assesses the facts of the case as follows. The controller has violated the General Data Protection Regulation.

According to Article 5(1)(a) GDPR, personal data must be processed in a lawful manner. In order for the processing to be lawful, personal data must be processed either with the effective consent of the data subject or on the basis of a legal authorisation, according to the first sentence of Article 6(1) GDPR.

Through his erasure request of 24 July 2019 pursuant to Article 17(1) GDPR, the complainant expressed that he was not interested in continuing the customer relationship with Curated Shopping GmbH, which at that time had already merged with Outfittery GmbH. Further processing of his data for the business purposes of Outfittery GmbH was thus no longer necessary.

However, the complainant's request for erasure was not implemented due to an internal employee error at Outfittery GmbH. Instead, the complainant's data was reused on 21 October 2019 by creating an account in Outfittery GmbH's systems and informing the complainant accordingly, although the complainant's data should have been erased based on his previous request for erasure.

The fact that the implementation of the complainant's deletion request of 24 July 2019 was not implemented by Outfittery GmbH due to an internal employee error is irrelevant in this respect, since pursuant to Article 24(1) GDPR, Outfittery GmbH must ensure compliance with its obligations under data protection law by taking appropriate technical and organisational measures. In any case, Outfittery GmbH could also be expected to ensure that the content of the complainant's request for erasure was processed correctly by taking internal organisational measures.

The use of the complainant's data and its continued storage until erasure on 24 January 2020 thus took place without legal basis.

In addition, according to the first sentence of Article 12(3) GDPR, the controller must provide the data subject with information on the measures taken upon request pursuant to Articles 15 to 22 GDPR without undue delay, and in any case within one month of receipt of the request. This means

that the controller confirms the erasure or at least informs why this is not possible within the time limit. This deadline may exceptionally be extended by a further two months if this is necessary, taking into account the complexity and number of requests. However, a routine and blanket extension of the deadline without examining the individual case is not provided for by the GDPR. The controller also did not inform the complainant about an extension of the deadline and the reasons for it.

Consequently, the implementation of the complainant's erasure request of 24 July 2019 on 24 January 2020 was late. Moreover, the complainant was not informed about the erasure of his data by Outfittery GmbH, as the aforementioned acknowledgement of receipt of 29 July 2010 does not contain such information.

Consequently, Outfittery GmbH also committed a violation of Article 12(3) GDPR.

Outfittery GmbH has thus violated Article 5(1)(a), Article 6(1), Article 12(3), Article 17(1) and Article 24(1) GDPR.

III.

As a result, the Berlin DPA does not take any further supervisory measures as a result of the infringement, but to leave it at a reprimand.

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

Taking into account the specific circumstances of the case under investigation, the Berlin DPA considers a reprimand to be appropriate after completion of the investigation. The Berlin DPA has therefore established another violation on the controller's part.

In the safe expectation that the controller will comply with the data protection regulations in the future, the Berlin DPA closes this case after issuing the reprimand.