

**State Commissioner for Data
Protection in Lower Saxony**

State Commissioner for Data Protection
Postfach 2 21 • D-30002 Hannover

4.2 0544-025-034-108/19
A56 ID 66900
Case Register: 145079
Draft Decision: 145664

2 December 2020

Final Decision

As regards the complaint filed against [REDACTED] for an alleged breach of the obligation to erase personal data, the State Commissioner for Data Protection in Lower Saxony hereby makes the following decision:

The complaint filed against [REDACTED] for an alleged breach of the obligation to erase personal data is hereby rejected.

Legal grounds

Art. 17, point (f) of Art. 57 (1), Art. 60 (8) and Art. 77 of Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR).

Reasoning

I. State of affairs

The complainant had used the email address [REDACTED] to create an account on the website with the URL [REDACTED]. When the complainant decided to delete the account and could not find any way of doing this on the website itself, he asked the website operator, [REDACTED], to erase his personal data in accordance with Art. 17 GDPR by sending an email to [REDACTED] on 7 December 2018 with the reference "[REDACTED]". After failing to receive a response, the complainant sent a reminder to [REDACTED] on 13 January 2019. The complainant's account was not deleted. This is because an error report had not been generated when trying to access the website with the URL [REDACTED].

The lead data protection supervisory authority, Agencia Española de Protección de Datos (AEPD), examined the complaint and found that [REDACTED] had not received emails from the complainant dated 7 December 2018 or 13 January 2019. The AEPD established the following state of affairs:

Visitors
Prinzenstraße 5
D-30159 Hannover

Tel.:
+49 511 120-4500

Fax:
+49 511 120-4599

Website:
www.lfd.niedersachsen.de
Email:
poststelle@lfd.niedersachsen.de

██████████. set up the email address ██████████ to enable users to exercise their rights under data protection law. All enquiries are collected in the mailbox of the above email address and answered as soon as possible. Each response is kept as evidence. The email client system for ██████████ is provided by Google. There are no emails documented from 7 December 2018 or 13 January 2019 that might have come from the sender ██████████ or ██████████. The complainant's enquiry was not received by any other means (letter or other email).

██████████. submitted a request to Google to prove it had been unable to access the complainant's emails. ██████████. then provided the AEPD with screenshots of the mailbox for ██████████, showing a search for emails sent from the complainant's email address and the emails it had received on 7 December 2018 and 13 January 2019. No emails from the sender ██████████ or ██████████ could be seen in the screenshot.

After the AEPD had launched an examination of ██████████, the complainant's account was deleted on 8 June 2020. The account cannot be reactivated. When checking the website with the URL ██████████, an error report was generated upon access.

II. Legal evaluation

The complaint is unsubstantiated. ██████████ has not breached the obligation to erase personal data in accordance with Art. 17 (1) GDPR.

A controller can only be deemed to have breached the obligation to erase personal data if such an obligation has actually arisen. In accordance with Art. 17 (1) GDPR, a controller only becomes obliged to erase a data subject's personal data once the data subject has requested the deletion and one of the grounds for deletion applies, as listed in points (a) to (f) of Art. 17 (1) GDPR. In turn, a request for deletion is only valid if the controller actually receives it. ██████████. did not receive the complainant's request for deletion. ██████████. did not receive the complainant's emails dated 7 December 2018 and 13 January 2019.

In accordance with Art. 60 (8) GDPR, when a complaint is rejected, the supervisory authority with which the complaint was lodged adopts the decision and notifies the complainant and the controller.