

Obligation of data secrecy and confidentiality

..... Mrs/Mr,

was informed today that he/she is prohibited from processing protected social data and personal data without authorisation and that he/she is only permitted to process them to the extent and in the manner necessary for the performance of the tasks assigned to him/her.

He/she was informed about the relevant provisions of the General Data Protection Regulation (GDPR), the Federal Data Protection Act (BDSG), the Social Code (SGB I and X) and the Criminal Code (StGB). In particular, the employee was obliged to observe social secrecy in accordance with §§ 35 SGB I, 78 SGB X as well as the principles of the DSGVO from Articles 5 and 29 DSGVO and informed about the obligation to maintain secrecy in accordance with § 203 StGB.

Violations of this obligation may be punished by a fine and/or imprisonment. A violation may at the same time constitute a breach of employment contract obligations or special confidentiality obligations. Claims for damages may also arise from culpable breaches of this obligation. The confidentiality obligation resulting from the employment contract is not affected by this declaration.

This obligation shall remain in force even after termination of the employment relationship.

I have been informed about the obligation to data secrecy and confidentiality and the resulting behaviour. I have received the "Information Sheet on the Obligation of Data Secrecy and Confidentiality" with a printout of the essential legal provisions.

Groß Helle, the:

.....
Employee

Leaflet on the obligation of data secrecy and confidentiality

This selection of legal provisions is intended to provide you with an overview of the data protection regulations. It does not claim to be complete and is only intended to present the most important principles of data protection law.

Article 5 GDPR - Principles for the processing of personal data

(1) Personal data must be

- a) processed lawfully, fairly and in a manner comprehensible to the data subject ("**lawfulness, fairness, transparency**");
- b) collected for specified, explicit and legitimate purposes and shall not be further processed in a way incompatible with those purposes; further processing for archiving purposes in the public interest, for scientific or historical research purposes or for statistical purposes shall not be considered incompatible with the original purposes in accordance with Article 89(1) ("**purpose limitation**");
- c) adequate and relevant to the purpose and limited to what is necessary for the purposes of the processing ("**data minimisation**");
- d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data which are inaccurate in relation to the purposes of their processing are erased or rectified without delay ("**accuracy**");
- e) be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data are processed; personal data may be kept for longer periods insofar as the personal data are processed solely for archiving purposes in the public interest or for scientific and historical research purposes or for statistical purposes in accordance with Article 89(1), subject to the implementation of appropriate technical and organisational measures required by this Regulation to protect the rights and freedoms of the data subject ("**storage limitation**");
- f) processed in a manner that ensures appropriate security of personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage by appropriate technical and organisational measures ("**integrity and confidentiality**");

Art. 29 GDPR - Processing under the supervision of the controller or processor

The processor and any person subordinate to the controller or processor who has access to personal data shall process those data only on instructions from the controller, unless they are obliged to process under Union or Member State law.

§ Section 42 BDSG - Criminal provisions

(1) A custodial sentence not exceeding three years or a monetary penalty shall be imposed on anyone who knowingly discloses personal data which is not generally accessible to a large number of persons without being authorised to do so,

1. transmitted to a third party or
2. in any other way and in so doing acts

commercially.

(2) A custodial sentence not exceeding two years or a monetary penalty shall be imposed on anyone who discloses personal data that is not generally accessible,

1. processed without being authorised to do so, or
2. obtains by false pretences

and in so doing acts for remuneration or with the intention of enriching himself or herself or another or of causing harm to another.

§ Section 202a StGB - Spying on data

(1) Any person who gains unauthorised access for himself or herself or for another person to data which is not intended for him or her and which is specially secured against unauthorised access by overcoming the access security shall be liable to a custodial sentence not exceeding three years or to a monetary penalty.

(2) Data within the meaning of paragraph 1 are only those which are stored or transmitted electronically, magnetically or otherwise not directly perceptible.

§ 203 StGB - Violation of private secrets

(1) Any person who unauthorisedly discloses a secret belonging to another person, namely a secret belonging to the personal sphere of life or a trade or business secret, which he or she considers to be a

1. a doctor, dentist, veterinary surgeon, pharmacist or member of another health profession which requires state-regulated training for the exercise of the profession or the use of the professional title,

(...)

has been entrusted or otherwise become known, shall be punished by imprisonment for not more than one year or by a fine.

(3) No disclosure within the meaning of this provision shall be deemed to have occurred if the persons referred to in paragraphs 1 and 2 disclose secrets to assistants working for them on a professional basis or to persons working for them in preparation for their profession. The persons referred to in paragraphs 1 and 2 may disclose third party secrets to other persons involved in their professional or official activities insofar as this is necessary for the use of the activities of the other persons involved; the same shall apply to other persons involved if they make use of other persons involved in the professional or official activities of the persons referred to in paragraphs 1 and 2.

(4) A custodial sentence not exceeding one year or a monetary penalty shall be imposed on any person who without authorisation discloses a third party secret which has become known to him or her in the course of or on the occasion of the performance of his or her duties as a participating person or as a data protection officer working for the persons referred to in paragraphs 1 and 2. Any person shall also be punished who

1. as a person referred to in subsections (1) and (2), has failed to ensure that any other contributory person who unauthorisedly discloses a third party secret which has come to his knowledge in the course of or on the occasion of his employment has been bound to secrecy; this shall not apply to any other contributory person who is himself a person referred to in subsections (1) or (2),
2. as a contributory person referred to in paragraph 3, has made use of another contributory person who unauthorisedly discloses a third party secret which has become known to him/her in the course of or on the occasion of his/her activity and has not ensured that the latter has been bound to secrecy; this shall not apply to other contributory persons who are themselves a person referred to in paragraphs 1 or 2, or
3. after the death of the person obliged under sentence 1 or under subsections (1) or (2), unauthorisedly discloses a third party secret that he or she learned from the deceased or obtained from the deceased's estate.

(5) Paragraphs 1 to 4 shall also apply if the perpetrator discloses the third party secret without authorisation after the death of the person concerned.

(6) If the offender acts for remuneration or with the intention of enriching himself or another or of harming another, the penalty is imprisonment for up to two years or a fine.

§ 35 SGB I - Social secrecy

(1) Everyone has the right to ensure that the social data concerning him or her (section 67(1) of the Tenth Book) is not collected, processed or used by the service providers without authorisation (social secrecy). Maintaining social secrecy includes the obligation to ensure, also within the service provider, that social data is only accessible to authorised persons or is only passed on to them. (...) Employees must maintain social secrecy even after they have ceased working for the aforementioned agencies.

(2) The collection, processing and use of social data is only permissible under the conditions of Chapter Two of Book Ten.

(4) Business and trade secrets are equal to social data.

§ 78 SGB X - Purpose limitation and duty of confidentiality of a third party to whom data are transmitted

(1) Persons or bodies not named in section 35 of Book I to whom social data have been transmitted may process or use them only for the purpose for which they were transmitted to them with authorisation. The third parties shall keep the data secret to the same extent as the bodies named in section 35 of Book One. (...)

(2) If data are transmitted to a non-public body, the persons employed there who process or use these data shall be informed by this body of the compliance with the obligations pursuant to paragraph 1 before or at the latest at the time of transmission.

§ Section 85 SGB X - Rules on fines

(2) A regulatory offence is committed by anyone who intentionally or negligently

1. unauthorisedly collects or processes social data that is not generally accessible,
2. unauthorised access to social data which is not generally accessible by means of an automated procedure,
3. unauthorised access to social data that is not generally accessible or obtains such data for himself or herself or for another person from automated processing or non-automated files,
4. obtains by fraud the transmission of social data which are not generally accessible, by providing incorrect information, or
5. uses social data for other purposes in contravention of section 67c(5), first sentence, or section 78(1), first sentence, by passing it on to third parties.

§ 85a SGB X - Penal provisions

(1) Any person who commits an intentional act referred to in section 85(2) for remuneration or with the intent to enrich himself or herself or to harm another shall be liable to a custodial sentence not exceeding two years or to a monetary penalty.

(2) The offence will only be prosecuted upon application. The data subject, the responsible body, the Federal Commissioner for Data Protection or the competent Land Commissioner for Data Protection are entitled to file an application.