



Data Protection

Audiotranscript

Disclosure for an individual-specific purpose: process

[Danielle Kaufmann]: For a disclosure of personal data to take place, three things are needed: First, there must be a justification for the disclosure, either through legislation or through the consent of the data subject. Second, the disclosure of personal data must always also be proportionate. Third, the discloser needs to verify whether there are any reasons that the specific disclosure would need to be restricted. These reasons could be legal confidentiality obligations or overriding public or private confidentiality interests.

So how should you proceed if you need to check these things? Let's take as an example a tax authority looking to obtain personal data on a taxable person from the social welfare office. There are four steps to the review process.

In the first step, we need to ask ourselves: is the tax authority even permitted to "ask for" the personal data it is requesting from the social welfare office? In terms of data protection law: is it allowed to process these personal data?

To check this, we need to examine the basic prerequisites for processing personal data under § 9 of the Information and Data Protection Act. This provision requires there to be a legal basis for processing data and for processing to be proportionate. The corresponding legal basis can be found in the Tax Act, according to which the tax authority has a duty to assess income tax. To allow it to do so, it needs to know what income a taxable person has. In terms of tax law, welfare benefits constitute income. This means that the tax authority is permitted to process information on a taxable person's social welfare benefits because these do in fact constitute income. So, the answer to the question of whether the tax authority is permitted to process the data is "yes." Only if this is the case can we proceed to the second step.

In the second step, we need to ask ourselves: is the tax authority permitted to ask the social welfare office the question on the specific taxable person's personal data? With this question, something is actually also being disclosed: namely, that this specific person is subject to taxation. However, as this fact is true for all residents of the canton, it is not a secret. Thus, tax secrecy is not an obstacle to this data disclosure through the tax authority's question to the social welfare office.

With that, we come to the third step in the review process. We now need to ask ourselves if the social welfare office itself is justified in processing the requested personal data on the taxable person. If not, logically it will not be permitted to disclose the data to any third parties, in our example the tax authority, either. Under § 9 IDG the social welfare office needs a legal basis as well, and the data processing must be proportionate in this step too.

The social welfare office's tasks derive from the Social Welfare Act: it needs to precisely ascertain the need of individuals eligible for welfare benefits and pay out benefits as circumstances require. The legal basis for the social welfare office to process data is thus unquestionably present; it is permitted to process data relating to the financial need of its clients and to financial benefits paid to them. Thus, the third question can also be answered "yes."

With that, we come to the fourth step in the review, namely: is the social welfare office allowed to pass on the data relating to the benefit recipient and taxable person concerned to the tax authority? This is once again the question of whether it has a legal basis for disclosing the data, or whether there are confidentiality interests standing in the way of the disclosure.

To find out, let's look at the Social Welfare Act. There, in § 28 para. 2 we see the following: the duty of confidentiality vis-à-vis administrative and judicial authorities of the canton and its municipalities is



overridden if these authorities require the relevant personal data to perform their statutory tasks. This is the case, for example, if the tax authority needs to verify whether the taxable person may not have declared some or all of their social welfare benefits as income. In this example, we also find a legal basis on the side of the requesting authority, namely in the tax law: § 140 states that administrative and judicial authorities of the canton and its municipalities, thus for example the social welfare office, are required to hand over to the cantonal tax authorities all necessary information on request, irrespective of any confidentiality obligation.