



INFORMATION FOR CREDITREFORM MEMBERS

OPINION ON COMMIS- SIONED DATA PROCESSING

Opinion on the question as to whether Creditreform's standard services "Provision of information on creditworthiness" and "Provision of debt collection services" constitute commissioned processing within the meaning of the Swiss Data Protection Act (DSG)¹.



1. Provision of information about creditworthiness

In terms of data protection law, the normal provision of information for creditworthiness checks always involves the disclosure of data to a third party. The client supplies the information provider with the name and address of a person or company about whom or which he is seeking information. A transfer procedure takes place when the information is requested. When the information is provided, the relevant data is sent by the information provider to the client. A relationship therefore exists between the client as the responsible entity and the information provider as a third party, i.e. an entity external to the entity responsible (the client). By definition, commissioned processing therefore does not take place. That is because the disclosure of data by a principal to the supplier for the purpose of commissioned processing, does not constitute data transfer to an entity outside the person responsible, but only a transfer of data to a service provider who is dependent upon instructions so that, in terms of data protection law, this operation is to be treated as though the data had never left the responsible person's sphere of influence.

Genuine commissioned processing occurs for example

in the case of "Outsourcing models" if an external entity acts solely as the instruction-dependent provider of a service to the person who is responsible for data protection law purposes. The distinguishing feature is that the commission is performed solely in compliance with the instructions given by the principal on the basis of the contract. Examples of this include the destruction of documents by a document destruction business, the placing of an order with a call center or cooperation with an external postal courier service provider. In both cases, however, the supplier has no freedom of action or decision of his own, but acts solely on precise instructions given by the principal.

But this is certainly not the case when answering credit check enquiries and providing the relevant information. The information provider makes searches and answers the enquiries under his own responsibility. The information provider is therefore himself the entity responsible within the meaning of Art. 5 let. J DSG. He acts as a third party external to the enterprise that has requested the information. By definition, commissioned processing within the meaning of Art. 5 let. k DSG therefore does not occur.



2. Claims management

The situation is exactly the same when it comes to the provision of debt collection services. Here too in the standard case the debt collection service provider decides on his own responsibility which debt collection actions to take, how many reminder letters to send, whether the reminder is made in writing or by telephone, and whether or not he intends to take legal action. In this

instance, the debt collection business has professional responsibility and, for the purposes of data protection law, is an entity acting on its own responsibility. In other words, the data required to process the claim is transferred from the creditor to the debt collection company. Once again, no commissioned processing therefore takes place within the data protection law definition.

St. Gallen, July 2023

¹ This opinion likewise applies to the EU-GDPR.