



noyb – European Center for Digital Rights  
Goldschlagstraße 172/4/3/2  
1140 Vienna  
AUSTRIA

To:  
Data Protection Commission  
21 Fitzwilliam Square  
Dublin 2  
Ireland

Vienna, 11.12.2021

**Subject: Your letter of 10.12.2021**

Dear [REDACTED]

Thank you for your letter. To ensure that the following points are on the record, we would like to highlight the following:

- (1) As you are aware, we have filed the relevant case before the Austrian Data Protection Authority (DSB) and we have received these documents under § 17 of the Austrian Administrative Procedures Act (AVG) via the Austrian DSB (by [REDACTED] on 21.8.2021 under the Austrian Case Number DSB-[REDACTED] 9. § 17 AVG clearly allows further use of these documents outside of the procedure, as repeatedly confirmed by the Austrian DSB towards the DPC and Facebook. Irish law is irrelevant in this relation.
- (2) We like to repeat (as in countless earlier exchanges), that we have at all times highlighted that we are under no legal obligation to limit the use of documents and that we would (for the sake of a smooth procedure) voluntarily refrain from further use of these documents at the time. As you are fully aware that our “Advent Readings” are a form of protests, as the DPC has removed us from the procedure without a legal basis, which we have brought to the attention of the Austrian Public Prosecutor for Corruption Matters. Given the unlawful removal of *noyb* from the procedure we have no reason to believe that any voluntary non-disclosure on our side would further the purpose of ensuring a smooth procedure.
- (3) Furthermore, even Section 26 of the Irish Data Protection Act 2018 does not allow the DPC to “declare” documents confidential in a one-sided way, if they are in fact not confidential. The law does not contain the word “declare”. In fact, Section 26 does only apply to “relevant persons” not to parties before the DPC. The three bullet points under which the DPC argues it may “declare” documents confidential in your letter are not in any way supported by the statute. In fact, they were first mentioned by the DPC in the exchanges of the last month.
- (4) Our entire reasoning why the ROPA of Facebook is of public interest is that it is so thin (four pages instead of hundreds of pages, as it would be normal for such a document), that it does not contain

any relevant information. Given the lack of substance, this document could not legitimately be deemed “confidential” under Section 26 of the 2018 Act. The DPC has repeatedly highlighted in letters towards Facebook that these documents are not commercially sensitive.

- (5) If the document of Facebook Ireland Limited would be in any way protected, we would expect Facebook Ireland Limited to take legal action, but do not see a legal basis for the DPC to take action over the use of a controller’s document. After all, it would be Facebook Ireland Limited’s rights that would theoretically be violated, not the DPC’s rights.
- (6) Finally, given that these documents were served by the Austrian DSB to an Austrian complainant, represented by an Austrian non-governmental organization, the Irish Courts do not seem to be the appropriate jurisdiction. In fact, Irish Courts do not have jurisdiction to decide over the interpretation of § 17 AVG by an Austrian authority. To our knowledge, there is also no international agreement between Austria and Ireland that would allow an Irish Court decision over questions of administrative procedures to be enforced in Austria. We would like to highlight that the proper course of procedure under EU law, if the DPC is of the view that these documents may not be shared, is to cooperate with the Austrian DSB under Article 60 to 66 GDPR.

We understand that the DPC is under intense public pressure as *noyb*’s last Advent Reading has uncovered the cosy relationship between the DPC and Facebook, leading to numerous requests to reform the DPC and replace senior management by players all the way from Members of the European Parliament to the Irish Times. Against this backdrop, your continuous threats to sue *noyb* in Ireland is clearly nothing but the attempt to start a so-called “SLAPP” suit to silence lawful and protected speech. To ensure that there is absolutely no jurisdiction by Irish Courts, we have therefore blocked Irish internet users from accessing the relevant elements on *noyb.eu*.

Nevertheless, we are looking forward to any legal action the DPC may want to take at the appropriate Courts in Austria, as this would allow us to clarify that *noyb* has obeyed by the law at all times.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Schrems', written in a cursive, slightly slanted style.

Max Schrems  
Honorary Chairman of *noyb.eu*