

Employment & Labour - Austria

Supreme Court rules on 'mystery flyers'

Contributed by [Graf & Pitkowitz Rechtsanwälte GmbH](#)

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In a recent decision the Supreme Court clarified the scope of a works council's right to freedom of information under the Labour Relations Act.

The employer, an airline, intended to evaluate its quality of service using so-called 'mystery flyers'. Mystery flyers are unidentified in-flight inspectors who observe whether the quality of service is acceptable in 10 different areas - including check-in, onboard service and luggage handling - and fill out a questionnaire based on their findings. The specific flights and crews tested should not have been apparent to the airline's departments; only general problems and positive passenger experiences were to be documented. This information was passed on to the airline's works council, which made several inquiries, requesting further information on:

- the specific data that had been collected;
- the questions in the questionnaire;
- the questionnaires' evaluators;
- the recipients of the questionnaires; and
- the subsequent use of the collected data.

Furthermore, the employer was asked about:

- the individuals who had assumed the role of mystery flyer;
- the criteria for their selection;
- the flights that they would check; and
- the underlying pattern in selecting those flights.

When the employer refused to respond to these questions, the works council sued, invoking the freedom of information provisions of Section 91 of the Labour Relations Act.

The Supreme Court for the first time not only confirmed that freedom of information under the act is a right enforceable by law, but also clarified the scope of the information to be provided to the works council. The court ruled that any employment-related situation may be the subject matter of a general freedom of information application, provided that it is related to and likely to affect the economic, social, health or cultural interests of an employee. Therefore, the works council's inquiry must show that an employee's interests are affected. In addition, the specificity of the inquiry determines the employer's obligation to inform - the more specific the request, the more specific the information must be.

On the basis of these holdings, the court concluded that the employer must inform the works council about:

- the data that is collected;
- the questions in the questionnaire;
- the questionnaires' evaluators and their methods;
- the recipients of the questionnaires; and
- the subsequent use of the collected data.

In contrast, the court found the information request relating to the identities of the mystery flyers, the flights that would be tested and the selection process for those flights to be overly broad and unwarranted because such information did not relate to the specific interests of the employees.

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