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Berlin Commissioner for Data
Privacy and Freedom of
Information
Law Division I

[Stamp: Received Jakob & Kollegen 31 December 2015]

Berlin Commissioner for Data Privacy and Freedom of
Information, Friedrichstr. 219, 10969 Berlin

Ref. please indicate)	Clerk	Tel: 030	Date
13889-0	-		
531.1795.2 Kamp	Ms.	31 4	23 December 2015

Re: BILD newspaper of 25 October 2015 "Pillory of Shame"
Your letter of 14 December 2015 - 00045-11-

Dear Dr. Humphrey,

In your letter of 14 December 2015, which we received on 17 December 2015, you express your objections to an article in BILD newspaper on 25 October 2015 ("Pillory of Shame").

Under current laws, we cannot take action in this case. The article you refer to in the BILD newspaper falls under media privilege as established in §41 Par. 1 of the Federal Data Privacy Act (BDSG) in conjunction with §22a of the Berlin Press Law (PresseG BE). Accordingly, the BDSG can only be applied to a limited extent to enterprises and auxiliary enterprises of the press who gather or use personal information exclusively for journalistic-editorial or literary purposes.

The instances provided for under the BDSG for oversight by data privacy authorities do not apply in such cases. Freedom of the press is constitutionally protected against government interference (Article 5 Par. 1, S. 2) and is of vital importance for the functioning of our democracy. Therefore, as a government agency, the Data Privacy Commission has no authority to verify compliance with data privacy regulations by press enterprises in sectors covered by freedom of the press. This includes the aforementioned journalistic-editorial sector.

However, the parties involved are not deprived of their rights. They may assert their general individual right to privacy in civil proceedings. Furthermore, they may appeal to the German Press Council. The latter responds to complaints about editorial publications and assesses them

under the Press Code. The Press Council has already addressed the present case based on similar complaints about the BILD editorial. According to daily newspaper reports at the beginning of the month, the "Pillory" article in BILD did not constitute a violation of the Press Code in the Press Council's view.

Yours faithfully

Signed: Kamp

German Press Council

Decision

of Grievance Committee 2

Pursuant to Complaint No. 0977/15/2-BA

Complainant:	Various	Object
of the complaint:	BILD / BILD Online	
Finding:	Complaint unfounded, Section 8*	
Date of the decision:	01/12/2015	
Participating members:	Katrin Saft, DJV (chairwoman) Sigrun Müller-Gerbes, dju Ulrich Eymann, BDZV Walter A. Fuchs, VDZ Max Hägler, dju Jan Lehmann, DJV Hermann Neusser, BDZV	

A. Summary of the Facts

I. In its print and online editions of 20/10/2015, BILD newspaper published an article under the headline "BILD Pillories Facebook Agitators!" The posts in question are almost identical. They call for violence against foreigners, politicians, journalists and artists. Many people freely stir up hatred online with no inhibitions, especially on Facebook and Twitter. "BILD has had enough: We are making a public example of them! Take it from here, Mr. Prosecutor!" Following this statement, the editors then publish a large number of Facebook posts on the subject of the refugee policy. The comments were shown with Facebook account names and profile pictures.

II. Complaints about the article were received from 16 readers, some of them personally affected by it. The main complaint was that the posts were shown with real names and without obscuring the profile pictures. The complainants allege that this violates Section 8 of the Press Code, and additionally cite Sections 1, 9 and 11. Their objection is that the express consent of the Facebook users was not obtained. The individuals shown in the article were not of public interest. They accuse the editors of making a public example of these individuals without any determination of whether any of the comments violated criminal laws. They note that many comments may be morally objectionable, but not punishable under the law. They point out that these comments are protected by the right to freedom of expression.

The complainants accuse the editors of engaging in vigilante justice. Some blame the editors, alleging that BILD itself is obviously inciting these types of comments on its own Facebook page with its controversial reporting on the refugee problem.

III. The Legal Department has indicated that an opinion on the matter is not necessary.

B. Considerations of the Grievance Committee

The Grievance Committee has concluded that the BILD and BILD Online report does not violate press ethics. The report was discussed in terms of Section 8 (protection of personal privacy) of the Press Code. In the Committee's view, the publication of the user posts with names and profile pictures is permissible. Their posting on social networks does not automatically justify their publication in the newspaper. However, this does not concern private but clearly political opinions of the users on publically visible forums such as the newspaper's Facebook page. Given the current and contentious debate about the treatment of refugees in Germany, these statements are of public interest. The same applies to the whole range of opinions among the public that are also reflected on social networks. In the opinion of the Committee members, the public interest in this case supersedes the legitimate privacy rights of individuals. Therefore, the individuals involved have to accept the appearance of their comments, names and profile pictures in the report.

The Press Council considers the headline over the comments, "BILD Pillories Facebook Agitators!", to be an exaggerated, harsh statement that is borderline but still falls under freedom of expression. It is an overall assessment of all of the posts without singling out any one in particular. The editors viewed the comments and deemed them to be "agitation" due to the negative statements against refugees, their acceptance into the country and the government's policy. Readers do not have to accept the newspaper's opinion and can draw their own conclusions about the comments.

C. Finding

Since there has been no violation of the journalistic principles of the German Press Council overall, the Grievance Committee declares the complaint to be unfounded. The decision was unanimous.

[signature]

Katrin Saft Chairwoman of
Grievance Committee 2
(EE)

* Section 8 – Protection of Personal Privacy

The Press shall respect the private life of a person and his/her right to self-determination about personal information. However, if a person's behaviour is of public interest, it may be a topic of discussion in the Press. In the event of personal identification in press reports, the public's interest in the information must outweigh the legitimate interests of the party involved. Mere sensationalism does not justify personal identification in reporting. If anonymity is required, it must be effective.

The Press shall guarantee editorial data protection.