

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Commission Nationale de l'Informatique et des Libertés pursuant to Article 77 of the General Data Protection Regulation, concerning Apple Distribution International

Record of Amicable Resolution of the complaint and its consequent withdrawal pursuant to Section 109(3) of the Data Protection Act, 2018

Further to the requirements of EDPB Guidelines 06/2022 on the practical implementation of amicable settlements Version 2.0 (adopted on 12 May 2022)

**RECORD OF AMICABLE RESOLUTION FOR THE
PURPOSE OF EDPB GUIDELINES 06/2022 ON THE
PRACTICAL IMPLEMENTATION OF AMICABLE
SETTLEMENTS VERSION 2.0
(ADOPTED ON 12 MAY 2022)**

Dated the 11th day of November 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 16 February 2021, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Commission Nationale de l'Informatique et des Libertés (“the **Recipient SA**”) concerning Apple Distribution International (“the **Respondent**”).
2. In circumstances where the Data Protection Commission (“the **DPC**”) was deemed to be the competent authority for the purpose of Article 56(1) GDPR, the Recipient SA transferred the complaint to the DPC on 27 August 2021.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject first emailed the Respondent on 27 March 2020 to note that they had received an email from the Respondent that used an incorrect male title. The Data Subject thus requested that their personal data be rectified, pursuant to their rights under Article 16 GDPR, to reflect the Data Subject’s correct gender. The Data Subject’s request was directed to the Respondent’s billings, content and accounts team, who advised the Data Subject to contact the Respondent’s support team, and provided the relevant contact details, on 30 March 2020.
 - b. The Data Subject thereafter lodged a further rectification request with the Respondent by registered post on 14 April 2020. Due to a site closure caused by the Covid-19 pandemic, the Respondent’s support team did not receive this correspondence until 26 May 2020. The Respondent’s support team thereafter engaged with the Data Subject to address their concerns, on 26 and 27 May 2020. The Respondent further informed the Data Subject on 2 June 2020 that it would escalate their concerns to rectify their personal data.
 - c. The Data Subject was dissatisfied with the response received from the Respondent, and believed that the Respondent had not fulfilled their request to have their personal data rectified.
 - d. As the Data Subject was not satisfied with the response received from the Respondent regarding the concerns raised, the Data Subject lodged a complaint with their supervisory authority.

Action taken by the DPC

4. The DPC, pursuant to Section 109(4) of the Data Protection Act, 2018 (“the **2018 Act**”), is required, as a preliminary matter, to assess the likelihood of the parties to the complaint reaching, within a reasonable time, an amicable resolution of the subject-matter of the complaint. Where the DPC considers that there is a reasonable likelihood of such an amicable resolution being concluded between the parties, it is empowered, by Section 109(2) of the 2018 Act, to take such steps as it considers appropriate to arrange or facilitate such an amicable resolution.

5. Following a preliminary examination of the material referred to it by the Recipient SA, the DPC considered that there was a reasonable likelihood of the parties concerned reaching, within a reasonable time, an amicable resolution of the subject matter of the complaint. The DPC's experience is that complaints of this nature are particularly suitable for amicable resolution in circumstances where there is an obvious solution to the dispute, if the respondent is willing to engage in the process. In this regard, the DPC had regard to:
 - a. The relationship between the Data Subject and Respondent (being, in this case, an individual consumer and a service provider); and
 - b. The nature of the complaint (in this case, an unsuccessful attempt by the Data Subject to exercise their data subject rights).

6. While not relevant to the assessment that the DPC is required to carry out pursuant to Section 109(4) of the 2018 Act, the DPC also had regard to EDPB Guidelines 06/2022 on the practical implementation of amicable settlements Version 2.0, adopted on 12 May 2022 ("**Document 06/2022**"), and considered that:
 - a. the possible conclusion of the complaint by way of amicable resolution would not hamper the ability of the supervisory authorities to maintain the high level of protection that the GDPR seeks to create; and that
 - b. such a conclusion, in this case, would likely carry advantages for the Data Subject, whose rights under the GDPR would be vindicated swiftly, as well as for the controller, who would be provided the opportunity to bring its behaviour into compliance with the GDPR.

Amicable Resolution

7. The DPC engaged with both the Data Subject (via the Recipient SA) and Respondent in relation to the subject matter of the complaint. Further to that engagement, the Respondent informed the DPC that it considered that the request to rectify the Complainant's personal data had been complied with, and that Article 12(3) GDPR had also been complied with, in responding to the Data Subject within a timely manner and rectifying any inaccurate personal data. In the circumstances, the Respondent agreed to take the following action:
 - a. The Respondent expressed a willingness to engage in direct contact with the Data Subject in order to resolve any remaining concerns that the Data Subject may have.

8. On 14 March 2022, the DPC issued a letter to the Recipient SA, for transmission to the Data Subject. This letter issued to the Data Subject on 05 May 2022. In this letter, the DPC requested that the Data Subject indicate if they wished to proceed as suggested by the Respondent. If so, the DPC requested that the Data Subject provide an email address that could be provided to the Respondent, so that they could then in turn contact the Data Subject as proposed. On 11 May 2022, the DPC received confirmation from the Data Subject that they

were agreeable to being contacted by the Respondent in order to have their remaining concerns addressed. The DPC thereafter communicated this to the Respondent, and provided them with the Data Subject's email address.

9. On 13 June 2022, the Respondent provided further correspondence to the DPC. In this correspondence, they informed the DPC that their executive relations team had contacted the Data Subject, and following this outreach, the Data Subject confirmed to the Respondent that they considered the complaint to be fully settled.
10. The DPC thereafter contacted the Data Subject, by way of correspondence issued to the Recipient SA on 6 July 2022, and requested that the Data Subject notify it, within a specified timeframe, if they were not satisfied with the actions taken by the Respondent. On 26 July 2022, the Recipient SA informed the DPC that the Data Subject had informed the Recipient SA that they had resolved the matter with the Respondent and accepted the amicable resolution of their complaint.
11. On 08 September 2022 and in light of the foregoing, the DPC wrote to the Recipient SA noting that the DPC considered the complaint to have been amicably resolved and withdrawn in accordance with section 109(3) of the Act and that it would conclude the case and inform the Respondent.
12. In circumstances where the subject matter of the complaint has been amicably resolved, in full, the complaint, by virtue of Section 109(3) of the 2018 Act, is deemed to have been withdrawn by the Data Subject.

Confirmation of Outcome

13. For the purpose of Document 06/2022, the DPC confirms that:
 - a. The complaint, in its entirety, has been amicably resolved between the parties concerned;
 - b. The agreed resolution is such that the object of the complaint no longer exists; and
 - c. Having consulted with the supervisory authorities concerned on the information set out above, as required by Document 06/2022 the DPC has now closed off its file in this matter.
14. If dissatisfied with the outcome recorded herein, the parties have the right to an effective remedy by way of an application for judicial review, by the Irish High Court, of the process applied by the DPC in the context of the within complaint.

Signed for and on behalf of the DPC:

A handwritten signature in black ink that reads "Tony Delaney". The signature is written in a cursive style with a large initial 'T' and 'D'.

Deputy Commissioner
Data Protection Commission