

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Number: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Polish Office for the Protection of Personal Data pursuant to Article 77 of the General Data Protection Regulation, concerning [REDACTED]

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 Internal EDPB Document 06/2021 on the practical implementation of amicable settlements (adopted on 18 November 2021)

**RECORD OF AMICABLE RESOLUTION FOR THE
PURPOSE OF INTERNAL EDPB DOCUMENT 06/2021 ON
THE PRACTICAL IMPLEMENTATION OF AMICABLE
SETTLEMENTS, ADOPTED 18 NOVEMBER 2021**

Dated the 23rd day of September 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 5 June 2019, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Polish Office for the Protection of Personal Data (“the **Recipient SA**”) concerning [REDACTED] (“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 18 March 2020.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject emailed the Respondent on 1 June 2019 to request, pursuant to Article 17 GDPR, erasure of his personal data in the form of photographs of the Data Subject which had been uploaded to the Respondent’s platform by a third party.
 - b. The Respondent reviewed the request and determined that the information provided by the Data Subject in relation to the images did not satisfy any of the criteria for erasure under Article 17 GDPR. Accordingly, the Respondent refused to comply with the Data Subject’s request.
 - c. 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 service user and a service provider); and

- b. The nature of the complaint (in this case, an unsuccessful attempt by the Data Subject to exercise his/her 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 Internal EDPB Document 06/2021 on the practical implementation of amicable settlements, adopted on 18 November 2021 (“**Document 06/2021**”), 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 stated that it had reviewed the request and determined that the Data Subject failed to establish that the personal data in question had been processed unlawfully, as alleged, and further that the personal data in question did not violate its Terms of Service or Community Standards. Accordingly, the Respondent again refused to comply with the Data Subject’s request.
8. The DPC continued to engage with both the Data Subject and the Respondent in order to bring about an amicable resolution to the complaint. In January 2022, the Data Subject advised the DPC that the personal data in question appeared to have been rendered inaccessible some time subsequent to the date of the Data Subject’s complaint. On 3 March 2022, the DPC advised the Respondent of the foregoing and requested the Respondent to confirm whether or not the personal data in question had been removed.
9. On 22 March 2022, the Respondent replied stating that the personal data in question had been rendered inaccessible pending verification of the owner of the account from which the personal data was posted to the [REDACTED] platform. The DPC wrote to the Data Subject on 7 April 2022 to advise him as to the foregoing.
10. On 15 April 2022, the Data Subject confirmed to the Recipient SA that the actions were sufficient to resolve the matter and he formally withdrew his complaint. Accordingly, the complaint was deemed to have been amicably resolved.
11. On 26 June 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, is deemed to have been withdrawn by the Data Subject.

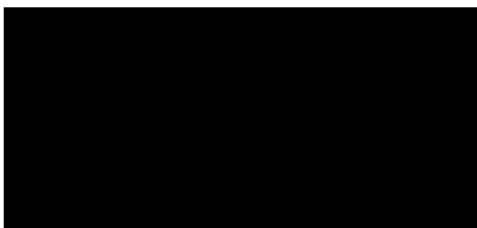
Confirmation of Outcome

13. For the purpose of Document 06/2021, 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 06/2021 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:



Deputy Commissioner
Data Protection Commission.