

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Ref: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Spanish Data Protection Authority (“AEPD”) 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 30<sup>th</sup> day of September 2022



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## **Background**

1. On 21 December 2019, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Spanish Data Protection Authority (“AEPD”) (“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 21 May 2020.

## **The Complaint**

3. The details of the complaint were as follows:
  - a. The Data Subject emailed the Respondent on 22 October 2019 requesting the erasure of her personal data which consisted of a partial image of her along with her name. This information had been posted on [REDACTED] by a third party in the context of a business review. The Data Subject was an employee of the business.
  - b. On 23 October 2019 the Respondent replied to the Data Subject refusing to comply with the erasure request.
  - c. As the Data Subject was not satisfied with the response received from the Respondent regarding the concern raised, the Data Subject made a complaint to the DPC.

## **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 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 agreed to further assess the Data Subject’s request. While initially the Respondent refused to remove the postings, following further engagements between the DPC and the Respondent, the Respondent agreed to remove the Data Subject’s image. Subsequent to this and upon a further review, the Respondent agreed to remove the entire posting. In summary, the Respondent agreed to take the following action:
  - a. The Respondent agreed to remove the business review from [REDACTED]
8. On 27 January 2022, the Respondent confirmed to the DPC that it had removed the business review in its entirety from [REDACTED].
9. On 01 February 2022, the DPC wrote to the Data Subject, via the AEPD, informing them that the Respondent had removed the review. In its correspondence to the Data Subject, the DPC requested that the Data Subject notify it, within a specified timeframe, if she was not satisfied with the actions taken by the Respondent, so that the DPC could take further action. This update issued to the Data Subject on 09 February 2022 and on 31 May 2022, the AEPD confirmed that there had been no response from the Data Subject.
10. On 8 August 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.

11. 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.

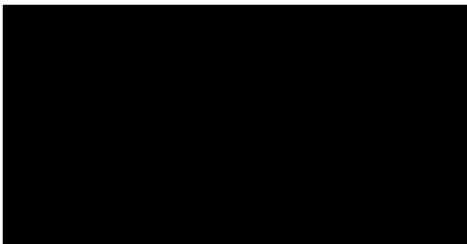
**Confirmation of Outcome**

12. 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.

13. 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:



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Deputy Commissioner  
Data Protection Commission.