

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the German Federal Data Protection Authority pursuant to Article 77 of the General Data Protection Regulation, concerning [REDACTED]
[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 29th day of July 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 30 October 2018, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the German Federal Data Protection Authority (“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 26 April 2019.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject made two separate erasure requests to the Respondent. The first erasure request was submitted on 19 March 2018, following the Data Subject’s deletion of their own [REDACTED] account on 3 March 2018. Following the GDPR coming into force, the Data Subject submitted a second erasure request to the Respondent on 23 September 2018, and requested the deletion of their account and personal data, including data that may have been shared with third parties.
 - b. The Data Subject did not receive any response from the Respondent.

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, it was established that the email address to which the Data Subject’s 23 September 2018 erasure request email was sent was the Respondent’s business team email address and that the Respondent had no record of the request. In the circumstances, the Respondent agreed to take the following action:
 - a. The Respondent provided information on how a user can delete their personal data securely within the [REDACTED] application, so that this information could be shared with the Data Subject.
 - b. The Respondent agreed that, should the Data Subject have any difficulty with their use of the [REDACTED] application, it would be happy to delete the Data Subject’s information directly, upon verification of their identification and ownership of the mobile number associated with the account.
8. The DPC informed the Data Subject of the Respondent’s proposed actions to resolve this complaint. However, the Data Subject was not satisfied and stated that, as they had already submitted an erasure request to the Respondent, they should not have to resubmit their request. On 22 April 2020, the DPC engaged with the Respondent further in relation to this complaint. On 7 May 2020, the Respondent reiterated that it would be happy to delete the Data Subject’s information directly should they be unwilling or unable to use the self-service tools provided within the [REDACTED] application. However, in order to ensure that the account user was the one making the request, it was necessary for the Respondent to verify both the identity of the Data Subject and obtain proof of ownership of the number linked with the account.
9. The DPC engaged further with the Data Subject outlining its understanding that the purpose of the Data Subject’s second erasure request was to obtain confirmation from the Respondent that all personal data it previously held in relation to the Data Subject had been erased

following the Data Subject's deletion of their own [REDACTED] account on 3 March 2018. The DPC outlined that as the Respondent's response has not explicitly confirmed this, the DPC would seek further clarification of this issue.

10. The DPC engaged further with the Respondent on 7 July 2021 asking whether it retains any information in relation to the Data Subject, other than correspondence related to this complaint. On 16 July 2021, the Respondent confirmed that it did not retain any information in relation to the Data Subject other than the correspondence related to this complaint, and that this could be because either the Data Subject deleted their account, or that their account had become inactive and had been deleted pursuant to the Respondent's retention policy. The DPC noted that, as the Data Subject's data and account had been deleted, the dispute between the Data Subject and Respondent appeared to have been resolved. In the circumstances, the DPC asked the Data Subject to notify it, within two months, if they were not satisfied with the outcome, so that the DPC could take further action. On 26 October 2021, the Data Subject confirmed via the Recipient SA that they agreed that their complaint has been amicably resolved.
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, 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:

[REDACTED]

Sandra Skehan
Deputy Commissioner

