

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Reference Number: [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]

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 15 November 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 deleted their [REDACTED] account and that of their child. Subsequently, the Data Subject submitted access and erasure requests in relation to these accounts.
 - 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 Respondent could not locate the Data Subject's request, as it appeared the Data Subject had submitted their requests through a channel intended to support business customers, rather than the dedicated support channels for non-business users. The Respondent also could not locate any active accounts associated with the contact information provided by the Data Subject. In the circumstances, the Respondent agreed to take the following action:
 - a. Once the Data Subject had provided both (i) proof of ownership of the telephone number associated with the [REDACTED] account and (ii) proof of their identity, the Respondent would attempt to identify the relevant account; and
 - b. Following identification of the relevant account, the Respondent would facilitate the Data Subject gaining access to same.
8. The DPC outlined the Respondent's proposed course of action to the Data Subject via the Recipient SA. However, the DPC noted that the Respondent's response had not addressed all of the issues raised by the Data Subject in their complaint. Subsequently, the DPC had further engagement with the Respondent on 4 October 2021, informing the Respondent that there were two outstanding concerns outlined in the Data Subject's complaint that had yet to be addressed by it. The Respondent had not confirmed whether it had fully erased all of the personal data it held in relation to the Data Subject and their son, nor had it addressed the issue of the continued visibility of the Data Subject's [REDACTED] profile to their former contacts following the deletion of their account. The DPC requested that the Respondent provide responses to these outstanding queries, so that they could be shared with the Data Subject via the Recipient SA.
9. On 13 October 2021, the Respondent provided responses to the Data Subject's outstanding concerns. The DPC forwarded the Respondent's responses to the Data Subject on 5 November 2021 via the Recipient SA. The correspondence noted that the provision of responses by the Respondent to the Data Subject's outstanding concerns appeared to facilitate the resolution of the Data Subject's complaint. The Data Subject was invited to provide any outstanding concerns that they may have within two months of the date of the letter, so that additional

action could be taken if required. On 21 December 2021, the DPC received the Data Subject's response, consenting to the amicable resolution of their complaint.

10. 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.

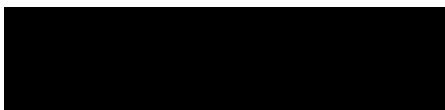
Confirmation of Outcome

11. 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.

12. 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:



Sandra Skehan
Deputy Commissioner