

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 Berlin Commissioner for Data Protection and Freedom of Information 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 12th day of August 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 2 April 2021, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the State Commissioner for Data Protection in Lower Saxony, which thereafter referred the case to the Berlin Commissioner for Data Protection and Freedom of Information (“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 16 June 2021.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject emailed the Respondent on 25 March, 28 March, 30 March and 1 April 2021, requesting the erasure of an inactive account that he held with the Respondent, and all associated personal data.
 - b. The Respondent was unable to authenticate the Data Subject’s ownership of the relevant account, as per its standard procedures, and thus did not proceed with the erasure request of the Data Subject.

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 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 the Respondent in relation to the subject-matter of the complaint. Further to that engagement, it was established that the Data Subject contacted the Respondent, requesting the erasure of an inactive account with the Respondent, from an email that was not associated with that account.
8. The Respondent clarified, by way of correspondence to the DPC dated 2 September 2021, that it responded to the request of the Data Subject (which was made on 25 March 2021) on 27 March 2021. As per its standard procedures, the Respondent requested that the Data Subject reply with the email associated with the account in question. The Data Subject had thereafter responded to note that the email address no longer existed, but voluntarily submitted a copy of an identity document for verification purposes.
9. The Respondent informed the DPC that, for the purposes of data minimisation, it had not sanctioned, nor did it request, alternative forms of verification, such as the provision of ID documents. However, the Respondent acknowledged that there had been a process breakdown as the agent of its user support vendor had not followed the requisite script and mistakenly cited “copyright reasons” as the justification for not using the Data Subject’s identity card to verify account ownership.
10. In light of the complaint, the Respondent agreed to take the following action:
 - a. The Respondent confirmed that it had updated its verification policy to permit alternative forms of verification, such as the voluntary provision of government identification, in limited circumstances, including when a user cannot access the email address associated with their account.
 - b. The Respondent noted that it was providing further refresher training to its internal agents and its user support vendor agents on its updated processes and the relevant scripts.

- c. In accordance with its updated policies, the Respondent confirmed that it had complied with the erasure request of the Data Subject and confirmed that his account had been deleted.

11. The DPC thereafter, by way of correspondence issued to the Recipient SA for transmission to the Data Subject on 10 September 2021, provided the Data Subject with the information obtained during the complaint handling process and informed him that his desired resolution to this complaint (i.e. the erasure of his inactive account and associated personal data) had now been achieved. In the circumstances, the DPC asked the Data Subject to notify it, within two months, if he was not satisfied with the outcome, so that the DPC could take further action. The DPC did not receive any further communication from the Data Subject and, accordingly, the complaint has been deemed to have been amicably resolved.

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.

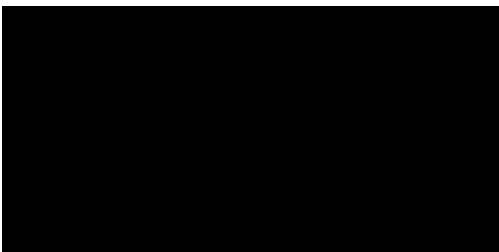
Confirmation of Outcome

13. For the purpose of Document 06/2021, 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