

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 Agencia Española de Protección de Datos the Data Protection Authority for Spain, 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 26<sup>th</sup> day of August 2022



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## Background

1. On 9 December 2020, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Agencia Española de Protección de Datos (“**AEPD**”) the Data Protection Authority for Spain (“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 4 February 2021.

## The Complaint

3. The details of the complaint were as follows:
  - a. The Data Subject emailed the Respondent on 12 November 2020, 15 November 2020 and 06 December 2020 in relation to an alleged fake account on the [REDACTED] platform which was using the Data Subject’s photographs and name.
  - b. The Data Subject subsequently made an access and erasure request to the Respondent.
  - c. 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 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, prior to the DPC’s engagement with the Respondent, the Respondent had contacted the Data Subject on, 26 January 2021. In that correspondence to the Data Subject, the Respondent advised that an extensive investigation had been conducted by it. The outcome of this investigation concluded that the profile in question could not be located based on the information provided by the Data Subject. The Respondent also apologised to the Data Subject in its delay in replying to them.
8. On foot of the contact by the DPC, the Respondent conducted a fresh investigation of the issue. Following this investigation, the Respondent confirmed to the DPC that the alleged fake account could not be located on its platform. The Respondent explained that impersonation reports are constantly monitored by it, and that the profile might have already been removed.

In the circumstances, the Respondent agreed to take the following action:

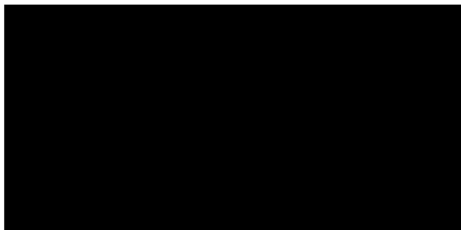
- a. The Respondent undertook to investigate further, in the event of the complainant notifying it in relation to another instance of a fake account being created.
  - b. The respondent apologised to the Data Subject for not responding sooner.
  - c. The Respondent offered to provide the Data Subject’s with a copy of their personal data, which was limited to her correspondence with customer care, as the complainant never held a [REDACTED] account.
9. The DPC forwarded a letter to the Data Subject on 13 September 2021 outlining the Respondent’s response and requesting the Data Subject’s comments in relation to the information provided by the Respondent.

10. On 24 November 2021 the Spanish SA confirmed, that while it had issued the DPC's letter to the Data Subject, there had been no response from the Data Subject. The DPC did not receive any further communication from the Data Subject and, accordingly, the complaint has been deemed to have 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 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