

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Garante per la protezione dei dati personali (Italy DPA) pursuant to Article 77 of the General Data Protection Regulation, concerning Aut O'Mattic A8C Ireland Limited

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 EDPB Guidelines 06/2022 on the practical implementation of amicable settlements Version 2.0 (adopted on 12 May 2022)

**RECORD OF AMICABLE RESOLUTION FOR THE
PURPOSE OF EDPB GUIDELINES 06/2022 ON THE
PRACTICAL IMPLEMENTATION OF AMICABLE
SETTLEMENTS VERSION 2.0
(ADOPTED ON 12 MAY 2022)**

Dated the 5th day of September 2023



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 19 November 2020, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 of the GDPR with the Garante per la protezione dei dati personali (“the **Recipient SA**”) concerning Aut O'Mattic A8C Ireland Limited (“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) of the GDPR, the Recipient SA transferred the complaint to the DPC on 5 March 2021.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject initially contacted the Respondent on 17 December 2018, requesting the erasure of personal data concerning them contained in two blog posts, that had been uploaded to the Respondent’s blog platform by a third party user.
 - b. On 18 December 2018, the Respondent replied to the Data Subject requesting that they specify the exact content, and elaborate on why they believed the content in question was in violation of the Respondent’s Terms of Service. In addition, the Respondent also advised the Data Subject to contact the site owner directly and request they remove the content.
 - c. The Data Subject contacted the Respondent again on 21 February 2020, and repeated their request for the removal of the content, noting that there had been two court judgements in relation to these posts. The Data Subject also noted that they had tried to contact the author of the posts directly but were unsuccessful in that regard, as the posts appeared to be anonymous.
 - d. In their response of 27 February 2020, the Respondent requested sight of the court judgements that they had mentioned in their previous correspondence in order to consider the erasure request.
 - e. As the Data Subject was not satisfied with the response received from the Respondent, they lodged a complaint with the Recipient SA.

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 their 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 EDPB Guidelines 06/2022 on the practical implementation of amicable settlements Version 2.0, adopted on 12 May 2022 ("**Document 06/2022**"), 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, on 14 October 2021, the Respondent provided a reply to the DPC's commencement letter. In this correspondence, the Respondent noted that:
 - a. According to its records, while it received and responded to prior correspondence from the Data Subject, it was not evident that such correspondence contained a request for erasure, pursuant to Article 17 of the GDPR;
 - b. It advised the Data Subject to contact the author of the posts directly and that it would have offered to do that on their behalf if they had been aware that the Data Subject was unable to make contact with the author of the post themselves;
 - c. It would be happy to make direct contact with the Data Subject, and offered to forward their correspondence to the author of the post on behalf of the Data Subject;
 - d. It was not aware of any court or judicial orders regarding the content of the posts in question, but should the Data Subject provide a copy of same, the Respondent would be willing to review the posts to ascertain if they are in line with its Terms of Service.

8. On 23 November 2021, the DPC wrote to the Data Subject, via the Recipient SA, seeking their views on the action taken by the Respondent and requesting that the Data Subject notify it, within a specified timeframe, if they were not satisfied with the action taken by the Respondent, so that the DPC could take further action. On 22 March 2022, the Data Subject responded to the DPC's letter and remained dissatisfied with the actions of the Respondent, highlighting the passage of time since the posting of the content and asserting, with reference to the relevant court judgements, that the allegations contained in the posts are false.
9. The DPC continued to engage with both the Data Subject and the Respondent in order to bring about an amicable resolution to the complaint. Over the course of the handling of the complaint, the DPC maintained regular contact with the Data Subject to keep them informed of the progression and status of their complaint and with the Respondent in order to bring about an amicable resolution to the complaint.
10. On 10 January 2023, the Respondent provided a further reply and noted that they instructed a lawyer to obtain, from the Italian Courts, copies of the three Italian court judgments relating to the material contained in the two posts, which the Data Subject wished to have removed. The Respondent noted that they were also engaging the services of an additional Italian counsel competent in criminal law matters pursuant to Article 116 of the Italian Criminal Proceedings Code. Following this, on 14 March 2023, the Respondent provided further correspondence and confirmed to the DPC that it was successful in obtaining the copies of the relevant court judgements from the Italian Courts. Having reviewed the documentation, the Respondent confirmed that it had restricted access to the posts in question. The Respondent also advised the DPC that it also informed the Data Subject of this action.
11. On 31 March 2023, the DPC wrote to the Data Subject, via the Recipient SA, seeking their views on the action taken by the Respondent and stating that the DPC understands that restricted access meant that the content was no longer visible on the Respondent's platform for users within the European Union. The DPC also requested the Data Subject to notify it, within a stated timeframe, if they were not satisfied with the action taken. This letter from the DPC issued by the Recipient SA to the Data Subject on 3 April 2023. Following this, on 6 June 2023, the Recipient SA confirmed to the DPC that the Data Subject provided no further response.
12. 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.
13. 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

14. For the purpose of Document 06/2022, 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 06/2022 the DPC has now closed off its file in this matter.

15. 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