

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Complaint 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 WhatsApp 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 12 MAY 2022**

Dated the 24<sup>th</sup> day of November 2022



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## Background

1. On 13 August 2018, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the German Federal Data Protection Authority (“the **Recipient SA**”) concerning WhatsApp 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) 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 contacted the Respondent on 11 June 2018, requesting access to their personal data.
  - b. The Data Subject was not satisfied with the Respondent’s response to their access request.

## 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, it was established that the Respondent could not locate any personal data related to the Data Subject, other than in connection with their access request. In the circumstances, the Respondent took the following actions:
  - a. the Respondent outlined how the Data Subject could access their personal data using its in app tools; and
  - b. following the provision of identity verification and account ownership information, the Respondent confirmed to the DPC that it was unable to locate any personal data relating to the Data Subject, other than in connection with their access request.
8. The DPC outlined the Data Subject's complaint to the Respondent on 18 July 2019. On 2 August 2019, the Respondent explained that it had originally responded to the Data Subject's access request on 24 January 2019, providing information on how they could use its in app tools to access their personal data. However, the Respondent noted that it understood from the complaint documentation provided by the DPC that the Data Subject no longer had its application installed on their device, and as such could not use these tools. The Respondent confirmed it would be happy to provide the Data Subject with a copy of their personal data, to the extent that it held such information, upon receiving proof of identity and of ownership of the mobile number associated with the account at issue. However, the Respondent noted that, based on the information provided by the DPC, it was currently unable to locate any personal data associated with the Data Subject, other than in connection with their original access request. Following engagement by the DPC, the Data Subject subsequently provided the required documentation.
9. Following further engagement with the Data Subject and the Respondent, on 8 November 2021 the DPC wrote to the Data Subject via the Recipient SA. The DPC stated that it had provided the relevant identity documentation to the Respondent and requested it to conduct a new search for personal data relating to the Data Subject. The DPC subsequently provided the Data Subject with the Respondent's response, wherein the Respondent confirmed that it could still not locate any personal data processed about the Data Subject, other than in connection with their request. The Respondent provided the DPC with information regarding

its deletion policy of inactive accounts, which the DPC provided to the Data Subject. The Respondent noted that the Data Subject had suggested in previous correspondence that they did not agree to their updated Terms of Service in 2018 to continue using its application, and that, on that basis, it was likely the account data of the Data Subject was deleted sometime after May 2018, due to inactivity.

10. The DPC's own violation inquiry commenced on 10 December 2018 and it examined whether the Respondent had discharged its GDPR transparency obligations with regard to the provision of information and the transparency of that information to both users and non-users of its service. This included information provided to data subjects about the processing of information between the Respondent and other Facebook companies. Following a lengthy and comprehensive investigation, and consultation with all Concerned Supervisory Authorities (**CSAs**) under Article 60 and 65, the DPC imposed a fine of €225 million on the Respondent and a reprimand along with an order for the Respondent to bring its processing into compliance by taking a range of specified remedial actions. In its communication the DPC enquired whether the information provided by the DPC and the conclusion of the inquiry resolved their complaint.
11. 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. 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. On 12 April 2022, and 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:

A handwritten signature in black ink that reads "Tony Delaney". The signature is written in a cursive style with a long, sweeping tail on the final letter.

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Deputy Commissioner

Data Protection Commission