

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 6th day of December 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. [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 13 May 2019.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent requesting access to their personal data. The Data Subject did not wish to use the Respondent’s self-service tools to access their personal data, as they had stopped using the Respondent’s app and did not want to accept their Terms of Service to continue using their accounts, or to access their personal data.
 - b. The Data Subject was not satisfied with the response received 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 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 relating to the Data Subject, other than the correspondence related to their complaint. In the circumstances, the Respondent took the following actions:
 - a. the Respondent engaged with the DPC regarding how the Data Subject could verify their ownership of the accounts at issue, in order to be provided with their personal data; and
 - b. after conducting a search, the Respondent confirmed to the DPC it could not locate any information in relation to the Data Subject, other than the correspondence related to their complaint. The Respondent noted that this was likely the result of the Data Subject deleting their accounts, or their accounts becoming inactive and subsequently being deleted as a result of the Respondent’s retention policy.
8. On 22 April 2020, the DPC outlined the Data Subject’s complaint to the Respondent. On 7 May 2020, the Respondent informed the DPC that it had been unable to fulfil the Data Subject’s access request, as they had not provided the necessary proof of ownership of the phone numbers associated with the accounts at issue. The DPC subsequently engaged in a series of correspondence with both the Data Subject and the Respondent, in order to facilitate the Data Subject’s verification of ownership of the mobile numbers associated with the accounts at issue.
9. On 22 October 2021, the DPC wrote to the Data Subject again via the Recipient SA, providing them with a summary of their complaint to date. The DPC noted it had provided the Respondent with the proof of ownership of the mobile phone numbers at issue, which had been provided by the Data Subject, and requested it to conduct a new search for any personal data relating to the Data Subject. The DPC noted that it had informed the Respondent that the Data Subject considered the provided verification information to be sufficient. The DPC explained to the Data Subject that the Respondent had stated that the additional verification documents provided by the Data Subject did not prove the current ownership of the mobile

numbers at issue. However, in the interests of amicably resolving the Data Subject's complaint, the Respondent had decided to forgo the information verification requirement, and confirmed to the DPC that it could not locate any information relating to the Data Subject, other than the correspondence related to their complaint. The Respondent noted that this was likely the result of the Data Subject deleting their accounts, or their accounts becoming inactive and subsequently being deleted as a result of the Respondent's retention policy. 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.

10. 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.
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 06/2022, 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.
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:

A handwritten signature in black ink that reads "Tom Delaney". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Deputy Commissioner

Data Protection Commission