

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 13th day of December 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 29 October 2019, [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 21 April 2020.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject asserted that they contacted the Respondent on 21 August 2017 in relation to obtaining a copy of their personal data. On 29 May 2018, the Data Subject asserted that they submitted another access request to the Respondent, pursuant to Article 15 GDPR. Each access request was submitted to a different e-mail address belonging to the Respondent. The Data Subject requested a copy of their personal data, along with information relating to how the Respondent processes their personal data.
 - b. The Data Subject stated that they did not receive any response from the Respondent to their access requests.

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 email address to which the Data Subject stated they submitted their May 2018 access request was no longer a valid channel, and that due to the Respondent’s retention policies it no longer had a record of the Data Subject’s access request. In the circumstances, the Respondent agreed to take the following actions:
 - a. The Respondent wrote directly to the Data Subject, providing them with information on how they could access their personal data; and
 - b. The Respondent confirmed to the DPC that it has reviewed and enhanced its operational processes to manage incoming GDPR queries.
8. On 29 October 2019, the Data Subject lodged a complaint with the Recipient SA, which was subsequently transferred to the DPC. In their complaint, the Data Subject stated that they had contacted the Respondent on 21 August 2017 and submitted an access request on 29 May 2018 pursuant to Article 15 GDPR. As part of their access request, the Data Subject requested a copy of their personal data, along with information relating to how the Respondent processes their personal data. The Data Subject stated that they received no response to their access request.
9. As part of the DPC’s assessment of the Data Subject’s complaint, the DPC wrote to the Respondent to investigate whether the e-mail address used by the Respondent for their access request in May 2018 was a valid contact address for the Respondent at the time of the Data Subject’s request. On 16 July 2020, the Respondent wrote to the DPC confirming that the e-mail address in question was active in May 2018, and was dedicated to users using a mobile device running the Windows Phone operating system. However, the Respondent noted that it no longer supports devices using that operating system, and that the e-mail address is no longer valid. On 4 December 2020, the DPC outlined the Data Subject’s complaint to the

Respondent. The DPC requested that the Respondent investigate the reason why the Data Subject did not receive a response to their access request, and to provide the Data Subject with access to their data. On 16 December 2020, the Respondent wrote to the DPC requesting an email address for the Data Subject at which they could be contacted directly. The DPC subsequently engaged with the Recipient SA to obtain an up-to-date e-mail address for the Data Subject.

10. On 5 March 2021, the DPC received correspondence from the Data Subject via the Recipient SA, providing their preferred e-mail address. However, after further engagement with the Data Subject and Respondent, it was determined that there had been a typographical error in the e-mail address provided by the Data Subject. On 29 July 2021, the DPC received correspondence from the Data Subject via the Recipient SA, providing their correct e-mail address. On 5 October 2021, the DPC wrote to the Respondent providing it with the correct e-mail address for the Data Subject. In its correspondence to the Respondent, the DPC requested again that the Respondent write directly to the Data Subject in relation to their access request, and address why their access request had not been responded to, even though the Respondent had previously confirmed that the e-mail address the Data Subject had submitted their request to was active at the time.
11. On 5 November 2021, the Respondent wrote to the DPC, confirming that it had contacted the Data Subject directly, providing them with information on how they can access their data. In relation to the Data Subject's May 2018 access request, the Respondent noted that it operates a data retention schedule pursuant to Article 5(1)(e) GDPR to ensure that personal data is not retained for an excessive period of time. The Respondent explained that this personal data includes data subject access requests, and that they are deleted over time. The Respondent explained that, in light of the passage of time since the date the Data Subject asserts they submitted their access request, it had no records of the access request being made, or any response that may have been sent. As such, the Respondent stated that it was unable to confirm whether or not it received or responded to the Data Subject's May 2018 access request which they state they submitted. The Respondent noted that during the implementation of the GDPR it received an unprecedented number of queries through its support channels, and has since reviewed and enhanced its operation processes to manage these queries more effectively, and that its enhancement efforts are continuing on an ongoing basis.
12. On 7 December 2021, the DPC wrote the Data Subject via the Recipient SA, outlining the Respondent's response. 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.
13. On 9 August 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.

14. 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

15. 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.

16. 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