

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Data Protection Commission 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 24th day of November 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 23 August 2018, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Data Protection Commission (“the **DPC**”) concerning WhatsApp Ireland Limited (“the **Respondent**”).
2. The DPC was deemed to be the competent authority for the purpose of Article 56(1) GDPR.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent on 28 May 2018 requesting access to their personal data. The Data Subject also raised concerns regarding the storage of certain data by the Respondent, including battery status and device IDs, and objected to the sharing of their personal data with third parties.
 - b. The Data Subject was dissatisfied 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 Data Subject, 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 and Respondent in relation to the subject-matter of the complaint. In the circumstances, the Respondent took the following actions:
 - a. the Respondent provided information on how the Data Subject could access their personal data using its in app tools; and
 - b. the Respondent provided specific information relating to the processing of device battery level and location information.
8. On 12 August 2019, the DPC outlined the Data Subject's complaint to the Respondent. On 26 August 2019, the Respondent responded to the DPC, providing a summary of the engagement it had already had with the Data Subject in relation to the subject matter of their complaint. The Respondent provided information on the tools it provides to assist data subjects in accessing their personal data, and how it shares information with third parties.
9. With regards to the Data Subject's right to object, the Respondent outlined that it had previously provided the Data Subject with information on how they could object to the processing of their personal data, in accordance with Article 21 GDPR, but that it would nonetheless progress the Data Subject's objection, if provided with proof of identity and ownership of the mobile number associated with their WhatsApp account, along with information on the specifics of their objection. Following further engagement with the Data Subject, the DPC wrote to the Respondent again on 22 April 2020 in order to progress the Data Subject's complaint, following the receipt of further information from the Data Subject.
10. Following further engagement with both the Data Subject and the Respondent, the DPC wrote to the Respondent again, seeking answers to specific queries that the Data Subject had raised in relation to how the Respondent uses location information obtained from devices, and why information on the battery status of a device is also collected by the Respondent. On 4 November 2021, the DPC wrote to the Data Subject providing them with a summary of its investigation and the responses received from the Respondent. The DPC noted that the Respondent stated it collects and uses precise location information from a user's device with their permission when they choose to use location-related features, such as deciding to share their location with their contacts, or viewing locations nearby. Concerning battery level information, the Respondent noted that it processes this information to notify users that a

call might end due to the device battery level being low, and to improve the video and call quality.

11. The DPC's own volition 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.
12. 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. 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 "Tom Delaney". The signature is written in a cursive style with a large, prominent 'T' and 'D'.

Deputy Commissioner

Data Protection Commission