

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 Data Protection Authority of Bavaria for the Private Sector pursuant to Article 77 of the General Data Protection Regulation, concerning Yahoo EMEA 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 July 2023



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 Data Protection Authority of Bavaria for the Private Sector (“the **Recipient SA**”) concerning Yahoo EMEA 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 19 May 2020.

The Complaint

3. The details of the complaint were as follows:
 - a. On 27 May 2018, the Data Subject contacted the Respondent by fax seeking access to their email account. The Data Subject noted that they were unable to access their email account without consenting to the use of cookies and similar technologies. The Data Subject sought access to the account without the need for such consent and further made a formal access request pursuant to Article 15 GDPR. In addition, the Data Subject objected to the processing of their data for direct marketing purposes, and objected to the transfer of their data to any third parties.
 - b. On 1 June 2018, the Respondent replied stating that it could not support such requests by way of fax or post, and further noted that the Data Subject had provided no alternative email through which they could be reached. The Respondent instead directed the Data Subject to a link to a feedback form through which they could contact an expert directly.
 - c. The Data Subject noted that the link led to the same page requiring them to consent to the use of cookies and similar technologies. The Data Subject remained dissatisfied and, accordingly, contacted the Recipient SA about their complaint on 2 June 2018.

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. On 7 July 2020, the DPC wrote to the Respondent formally commencing its investigation and requesting the Respondent to address the concerns raised.
8. Over the course of the investigation, the Respondent explained that it had incorrectly rejected the access request and that such requests could be supported by fax and post (as well as by email and by phone), contrary to what was indicated at the time of the request. The Respondent explained how it had since greatly improved its procedures for handling data subject rights requests and provided a detailed description of the measures now in place. The Respondent emphasised that, as a result of the measures now in place, similar issues would not occur again.
9. The Respondent noted that the Data Subject did not appear to have ever logged back into their account (and provide the required consents) since the date of the complaint. As such, the Respondent explained that the Data Subject’s account would therefore have been deleted due to inactivity, in accordance with its standard retention policies (i.e. twelve months of inactivity from their last successful login). The Respondent provided a detailed explanation of its retention policies and advised that, since the complaint was made, it had implemented a new procedure to ensure that a hold would be placed on an account where a data subject rights request was made, in order to prevent such automated deletion occurring in future.

10. The Respondent also explained that the cookies and similar technologies that the Data Subject had been required to consent to were required only insofar as they were strictly necessary to provide the email service to them. The Respondent also explained how data subjects are able to control other aspects of how their personal data is used and who it is shared with via the Privacy Dashboard on their account.
11. In an attempt to amicably resolve the matter, the Respondent agreed to provide the Data Subject with a copy of their residual data on a DVD and offered the Data Subject an apology, explaining the measures it had put in place in order to prevent similar issues from happening again. The Respondent also sought to reach out to the Data Subject directly to resolve matters, as well as to further explain the consents they had been required to provide in order to access their email account at the time.
12. The Data Subject initially rejected the Respondent's offer to reach out directly as referred to above. However, on 13 September 2022, the Data Subject informed the DPC (via the Recipient SA) that they had come to an agreement with the Respondent in the meantime and formally withdrew their complaint.
13. In light of the detailed explanations provided by the Respondent, the improvements made to its procedures since the time of the complaint, and the efforts made by the Respondent to provide the Data Subject with their residual data and address their outstanding concerns, the DPC was satisfied with the Data Subject's decision to withdraw the complaint and decided that no further action was necessary in relation to the Respondent in this matter. In light of the foregoing, the DPC proposed to close the complaint on the basis of an amicable resolution.
14. On 27 February 2023, the Recipient SA formally confirmed to the DPC that it agreed with the DPC's proposal to close the complaint by way of amicable resolution. Accordingly, the DPC deems the complaint to have been amicably resolved.
15. On 30 May 2023, 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.
16. 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

17. 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.

18. 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