

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Number: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Berlin Commissioner for Data Protection and Freedom of Information pursuant to Article 77 of the General Data Protection Regulation, concerning [REDACTED]

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 Internal EDPB Document 06/2021 on the practical implementation of amicable settlements (adopted on 18 November 2021)

**RECORD OF AMICABLE RESOLUTION FOR THE
PURPOSE OF INTERNAL EDPB DOCUMENT 06/2021 ON
THE PRACTICAL IMPLEMENTATION OF AMICABLE
SETTLEMENTS, ADOPTED 18 NOVEMBER 2021**

Dated the 16th day of September 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 4 June 2020, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Berlin Commissioner for Data Protection and Freedom of Information (“the **Recipient SA**”) concerning [REDACTED] (“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 23 June 2020.

The Complaint

3. The details of the complaint were as follows:
 - a. On 17 April 2020, the Data Subject contacted the Respondent to request erasure of his personal data.
 - b. The Respondent replied to request that the Data Subject explain his erasure request again and to verify his identity by providing a copy of an official identity card. The Data Subject complied with this request.
 - c. The Respondent informed the Data Subject that the erasure process would take time and that not all data could be erased.
 - d. The Data Subject again requested the erasure of all his data but did not receive any response from the Respondent.
 - e. The Data Subject complained to the Recipient SA stating that he wished to have all of his data erased without exception and that this erasure be confirmed to him by 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 service user and a service provider); and
 - b. The nature of the complaint (in this case, an unsuccessful attempt by the Data Subject to exercise his/her 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 Internal EDPB Document 06/2021 on the practical implementation of amicable settlements, adopted on 18 November 2021 ("**Document 06/2021**"), 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

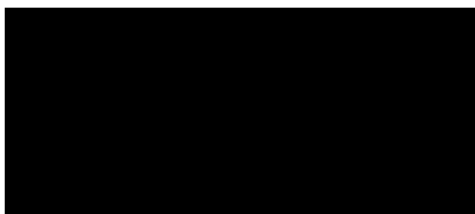
- 7. The DPC engaged with both the Data Subject (via the Recipient SA) and Respondent in relation to the subject matter of the complaint. Further to that engagement, the Respondent:
 - a. Confirmed that all personal data relating to the Data Subject had been permanently deleted save for certain limited information relating to payments on the [REDACTED] platform which it retains for legal reasons;
 - b. Explained why it was necessary, at the time the Data Subject requested the erasure of his data, for the Respondent to require ID documentation in order to authenticate users for the purposes of completing a request to delete personal data.
- 8. On 11 August 2021, the DPC wrote to the Data Subject, via the Recipient SA, to inform him of the Respondent's position as set out above. The letter requested the Data Subject to comment on the actions taken. The DPC further stated that if the Data Subject was satisfied that the above facilitated the resolution of the complaint then, pursuant to section 109(3) of the Data Protection Act 2018, the DPC shall deem the complaint withdrawn. In the event that the Data Subject remained dissatisfied, the DPC requested the Data Subject to set out the reasons for this in accordance with the GDPR, within two months of the date of the letter, so that the DPC could take further action.
- 9. This letter was transmitted by the Recipient SA to the Data Subject on 26 August 2021.

10. On 3 November 2021, the Recipient SA advised the DPC that the Data Subject had replied on 11 October 2011 to confirm that he no longer wished to pursue the complaint.
11. On 25 November 2021 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.
12. 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

13. For the purpose of Document 06/2021, 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 06/2021 the DPC has now closed off its file in this matter.
14. 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.