

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Bavarian State Office for Data Protection Supervision 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 5th day of August 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 Bavarian State Office for Data Protection Supervision (“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 11 March 2021.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject unsuccessfully attempted to erase his account with the Respondent, and thereafter contacted the Respondent by email on 13 November 2020 and 17 November 2020, to request the erasure of his account with the Respondent.
 - b. The Data Subject could not use the online deletion tool of the Respondent without providing a phone number, which he did not wish to provide. The customer support agent of Respondent referred him to the online tool and did not assist further with his request, in response to his emails requesting erasure and objecting to providing any further personal data.

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 update an email address on his customer account with the Respondent).

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

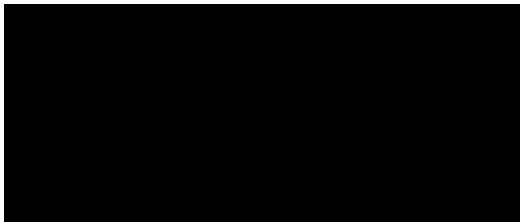
7. The DPC engaged with both the Data Subject (via the Recipient SA) and the Respondent in relation to the subject matter of the complaint. Further to that engagement, it was established that the account of the Data Subject had been restricted due to unusual account behaviour. The Respondent clarified, by way of correspondence to the DPC dated 23 June 2021, that a phone number was thus requested, not to verify the Data Subject's identity, but to verify that there was a genuine user operating the account, and that the account was not, for example, created by a bot. The Respondent further clarified that the provision of a phone number was to prevent abuse of its services and not to directly identify the individual data subject. In this regard, the Respondent noted that the phone number would not be linked to the Data Subject's account if obtained in such a manner.
8. Following the DPC's engagement with both the Data Subject and the Respondent on the matter, the Respondent confirmed that, in light of the particular factual background of this case, it worked to enable the Data Subject's ability to erase their account without them having to provide any further personal data to [REDACTED]. The Data Subject could login to their account and initiate the erasure process.
9. The DPC thereafter issued correspondence to the Recipient SA on 7 December 2021, for onward transmission to the Data Subject, to provide information received from the Respondent and attempt to facilitate an amicable resolution to the complaint on this basis. The DPC requested that the Data Subject confirm if the action taken by the Respondent resolved his individual concern. Otherwise, the DPC requested he confirm within two months if he was not satisfied with the outcome, so that the DPC could take further action.
10. The DPC later received notification from the Recipient SA, on 13 January 2022, that the Data Subject confirmed that he was able to access his account without providing any further personal data. In the account, he located the option to close the account and was informed that this would become effective after a thirty-day period. The Data Subject further confirmed that he considered his complaint as amicably resolved.

11. The DPC thereafter obtained confirmation from the Respondent that, from the receipt of the closure request, the [REDACTED] account can no longer be used to log in.
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