

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 Austrian Data Protection Authority pursuant to Article 77 of the General Data Protection Regulation, concerning Meta Platforms 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 21st day of October 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 26 August 2019, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Austrian Data Protection Authority (“the **Recipient SA**”) concerning Meta Platforms 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 18 November 2019.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject submitted an access request via their legal representative to the Respondent on 18 April 2019. The Data Subject was concerned that an Instagram account had been set up with their name and photo without their consent.
 - 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 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 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 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 Respondent had not originally been able to locate the complained-of Instagram account, but that following further investigation it had located the account and it had now been disabled. In the circumstances, the Respondent took the following action:
 - a. The Respondent confirmed to the DPC that it had responded to the Data Subject's access request on 18 April 2019; and
 - b. The Respondent confirmed that the complained-of Instagram account was now disabled.
8. On 17 January 2020, the DPC outlined the Data Subject's complaint to the Respondent. The DPC noted that the Data Subject had made an access request to the Respondent after noticing that an Instagram account had been set up using their name and photo without their consent. The DPC noted that the Data Subject was concerned that this account had been sending messages which they believed to be damaging to their reputation, and that they sought information on whether any of their personal data was being processed in relation to this account.
9. On 31 January 2020, the Respondent informed the DPC that it had originally responded to the Data Subject's access request on 18 April 2019, informing them that they were unable to locate the Instagram account in question, and providing them with links to its dedicated channels for reporting impersonation and image privacy violations. The Respondent noted to the DPC that, during their initial investigation, it had been unable to locate an Instagram account under the username provided by the Data Subject. However, a renewed investigation had located an account under this username, which was created on 13 June 2019. The Respondent confirmed that this account had now been disabled for violating its Terms of Use. On 15 June 2021, the DPC wrote to the Data Subject via the Recipient SA, outlining the information provided by the Respondent. In the circumstances, the DPC asked the Data Subject to notify it, within two months if he/she was 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.

10. 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.

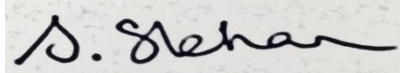
Confirmation of Outcome

11. 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.

12. 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, appearing to read 'S. Skehan', on a light-colored rectangular background.

Sandra Skehan
Deputy Commissioner