

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 Bavarian Lander Office for Data Protection Supervision (BayLDA) 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 2nd day of September 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 26 October 2019, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Bavarian Lander Office for Data Protection Supervision (BayLDA) (“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 19 December 2019.

The Complaint

3. The details of the complaint to the Recipient SA were as follows:
 - a. The Data Subject claimed that the Respondent processed data relating to point-in-time and duration of his usage of the Respondent’s [REDACTED] products without a lawful basis and without specifying a purpose for the processing. The Data Subject noted that he did not consent to the processing and objected to the collection of this usage data by the Respondent. The Data Subject further claimed that it was not possible for him to disable settings to prevent the Respondent’s processing of his personal usage data.
 - b. The Data Subject communicated initially with the Respondent on the above concerns but was not satisfied with the response received.

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 the 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 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 Respondent, 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 the Respondent in relation to the subject-matter of the complaint. Further to that engagement, the Respondent provided the DPC with detailed information on its collection of usage data for the purpose of carrying out diagnostics relating to the use of its suite of [REDACTED] products. In particular, the Respondent explained that only certain diagnostic data was necessary to keep [REDACTED] applications secure, up-to-date and performing as expected. [REDACTED] provided further details as to the data concerned and the legal basis for its processing.
8. On 24 June 2020, the DPC sent a letter to the Recipient SA for onward transmission to the Data Subject. The letter informed the Data Subject of the outcome of the DPC’s engagement with the Respondent. It invited the Data Subject to submit his comments in relation to the information provided to the DPC by the Respondent with regard to his complaint. It stated that if he had any outstanding concerns in respect of the issues raised in his complaint to set those out in order to assist the DPC in progressing the matter further on his behalf. In the circumstances, the DPC asked the Data Subject to notify it, within two months, if he was not satisfied with the outcome so that the DPC could take further action.
9. As the DPC did not receive any further communication from the Data Subject, nor was it advised by the Recipient SA of any further communication having been received, the complaint has been deemed to have been amicably resolved.
10. By letter dated 24 November 2021, the DPC informed the Recipient SA that it considered the complaint to have been amicably resolved and withdrawn in accordance with section 109(3) of the Act, and that it intended to conclude the matter.
11. 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.

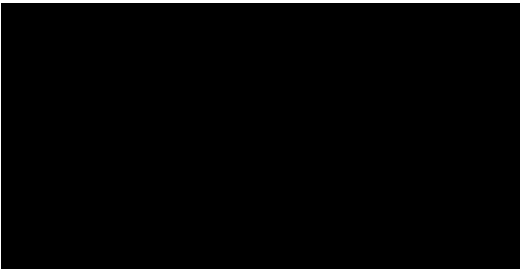
Confirmation of Outcome

12. 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.

13. If dissatisfied with the outcome recorded herein, the parties have the right to an effective remedy by way of an application for judicial review, before 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