

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 Berlin Commissioner for Data Protection and Freedom of Information pursuant to Article 77 of the General Data Protection Regulation, concerning Airbnb Ireland UC

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 ON 12 MAY 2022)**

Dated the 16th day of December 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 22 January 2021, [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 Airbnb Ireland UC (“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 09 April 2021.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject emailed the Respondent on 21 December 2020, requesting deletion of their personal data under Article 17 of the GDPR.
 - b. The Data Subject received a response from the Respondent on 28 December 2020, indicating that their personal data would not be deleted. The Respondent advised that it was relying on legitimate business interests for the retention of this data.
 - c. As the Data Subject was not satisfied with the response received from the Respondent regarding their request, the Data Subject lodged a complaint with their supervisory authority.

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. Further to the engagement with the Respondent, it was established that the account which the Data Subject requested deletion of, had been deactivated by the Respondent before the Data Subject made their Article 17 GDPR erasure request. Furthermore, the Respondent informed the DPC, that while it had subsequently erased the account in February 2021, it was retaining certain information that related to an incident of alleged damage to a property.
8. Following this engagement with the Respondent, on 25 November 2021, the DPC forwarded a letter to the Recipient SA, for onward submission to the Data Subject. In this letter, the DPC informed the Data Subject of the Respondent’s position in relation to this information. The DPC asked the Data Subject to notify it, within a specified timeframe, if they were not satisfied with the actions taken by the Respondent, so that the DPC could take further action. The Recipient SA issued this letter to the Data Subject on 18 December 2021.
9. The DPC received a response from the Data Subject on 27 January 2022. In this response, the Data Subject raised concerns about the data the Respondent continued to retain after the deletion of the account. The Data Subject also advised the DPC that although they no longer retained a copy of their original request to the Respondent, they alleged that they had made an Article 15 access request when they submitted their initial Article 17 deletion request. The Data Subject was of the view this Article 15 request had not been fulfilled.
10. The DPC contacted the Respondent on 06 April 2022, requesting confirmation that it had received an Article 15 access request. The DPC also sought clarity on the legal basis it was relying on for the personal data it was retaining.
11. The Respondent replied to the DPC on 22 April 2022. In its reply, the Respondent clarified that as the Data Subject’s account had been deleted, it was not in a position to verify if an access

request had been received. In relation to the retention of personal data, the Respondent directed the DPC to the Respondent's Privacy Policy.

12. On 23 May 2022, the DPC again sought clarity on the legal basis the Respondent was relying on for the personal data it was retaining. In correspondence received on 07 June 2022, the Respondent detailed the categories of personal information being retained, highlighting the alleged property damage incident, and citing that this data was being retained in accordance with Article 6(1)(f) and Article 17(3) of the GDPR.
13. On 30 June 2022, the DPC issued correspondence to the Recipient SA, for onward transmission to the Data Subject. In the circumstances, the DPC asked the Data Subject to notify it, within a specified timeframe, if they were not satisfied with the information provided by the Respondent, so that the DPC could consider the matter further. The Recipient SA confirmed this letter issued to the Data Subject on 02 August 2022.
14. On 24 August 2022, the DPC received confirmation via the Recipient SA that the Data Subject was agreeable to an amicable settlement of their complaint and thanked the Irish DPA for the work done.
15. 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

16. 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.
17. 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 that reads "Tom Delaney". The signature is written in a cursive style with a long, sweeping tail on the "y".

Deputy Commissioner
Data Protection Commission