

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Data Protection Commission pursuant to Article 77 of the General Data Protection Regulation, concerning Google 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 15th day of December 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 16 January 2021, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Data Protection Commission (“the **DPC**”) concerning Google Ireland Limited (“the **Respondent**”).
2. The DPC was deemed to be the competent authority for the purpose of Article 56(1) GDPR.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent on 16 January 2021 requesting access to their personal data following an account disablement.
 - b. The Data Subject did not receive any response 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 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 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 and Respondent in relation to the subject-matter of the complaint. Further to that engagement, it was established that the Respondent was unaware of the Data Subject's relocation from Vietnam to Réunion Island, a territory of France, and therefore their request could be handled as a European access request. In the circumstances, the Respondent took the following action:
 - a. The Respondent agreed to re-enable the Data Subject's account; and
 - b. The Respondent provided the Data Subject with the necessary information on how to access and download their data.
8. On 27 August 2021, following engagement with the DPC, the Respondent outlined that the Data Subject's account had been disabled due to suspicion of fraud of which the Data Subject was aware, but disputed.
9. On 15 December 2021, the DPC outlined the Data Subject's complaint to the Respondent. The DPC raised a number of queries with the Respondent in relation to the Data Subject's account disablement. On 13 January 2022, the Respondent responded to the DPC and outlined that on 21 September 2021, it had informed the Data Subject that following further review and the verification of their account ownership, it had decided to re-enable the account linked to their email address. The Respondent informed the DPC that it had provided the Data Subject with information on how to access the account and directed them to its 'Takeout tool' to download, backup or export a copy of their personal data.
10. The DPC queried why the Data Subject's original access request and subsequent correspondence went unanswered. On 13 January 2022, the Respondent explained that, due to the disablement of the Data Subject's account and consequently, the lack of account activity, the Respondent did not receive the necessary signals to indicate that the Data Subject had moved from Vietnam to the Réunion Island. As such, the Respondent had considered the account that the access request was made in respect of to be associated with a non-EEA user, based on the information on its systems. Furthermore, as the Data Subject had contacted the Respondent with an email address other than the one associated with their account, it was not in a position to confirm the Data Subject's identity, which is a prerequisite to fulfilling an access request. The Respondent further explained that in June 2020, there was a sign-in attempt from a suspicious IP address on the account, resulting in its decision to disable the

account. The Respondent described how, as this was an account disablement that related to suspicion of fraud or hijacking, on 3 December 2020 it had directed the Data Subject to the account recovery process. However, the Data Subject's attempts at recovery of their account were unsuccessful due to the account not having recovery options (such as a recovery phone number or recovery email address) which would have enabled the Respondent to authenticate them as the owner of the account, according to its account recovery process.

11. On 4 February 2022, the DPC outlined its examination of the complaint to the Data Subject. When doing so, the DPC noted that the Respondent had re-enabled the account linked to their email address, and provided the Data Subject with information on how to access the account and directed them to the Respondent's 'Takeout tool' to download, backup or export a copy of their personal data. In the circumstances, the DPC asked the Data Subject to notify it, within two months, if they were 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.
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 06/2022, 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.
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:

A handwritten signature in black ink that reads "Tom Delaney". The signature is written in a cursive style with a large, prominent 'D'.

Deputy Commissioner

Data Protection Commission