

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 Integritetsskyddsmyndigheten (Swedish SA) 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 13th day of March 2023



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 Integritetsskyddsmyndigheten (“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 10 March 2021.

The Complaint

3. The details of the complaint were as follows:
 - a. the Data Subject contacted the Respondent on 17 December 2020, following receipt of an email advising them of a change of the Terms of Use for the Instagram platform. The Data Subject stated that they not recall registering an Instagram account, and requested the Respondent to confirm whether it processes any data relating to them.
 - b. the Data Subject asserted that they did not receive 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 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. On 28 June 2021, the Respondent informed the DPC that it had in fact located an Instagram account associated with the Data Subject’s e-mail address, which had been disabled almost immediately after it was created due to a violation of Instagram’s Community Standards. The Respondent noted that a third party may have used the Data Subject’s email address without their knowledge to attempt to register an Instagram account. However, the Respondent confirmed that it had now removed the Data Subject’s email address from the Instagram platform, and they would no longer receive any associated communications.
8. Following an examination of the Respondent’s response, the DPC subsequently engaged further, requesting clarification on how an Instagram account could be created using the Data Subject’s email address without their knowledge, and whether the Respondent is processing the emails of non-users whose emails have been added by other Instagram users. In response, the Respondent noted that it ensures that users verify ownership of an email address through a link, and that the Data Subject may have received such a verification email, but also may not have, as the registration of the account and its disablement occurred simultaneously.
9. With respect to the processing the email addresses of non-users, the Respondent noted that Instagram does not create profiles of people who don’t have accounts with one of its services, but does process email addresses when they are associated with an Instagram account. The Respondent highlighted that it takes actions against accounts suspected of being inauthentic (i.e. where an Instagram user may have added an email address other than their own to an Instagram account). The Respondent stated that certain key notification emails, such as Terms of Use updates, have historically been sent to both active and disabled accounts, and also to accounts where the user has not yet completed the steps to verify their email address, which is why the Data Subject may have received the email from Instagram which prompted his access request.
10. On 29 December 2021, the DPC wrote to the Data Subject via the Respondent SA outlining the information received from the Respondent. When doing so, the DPC noted that, with the Data Subject’s email address now having been deleted from the Instagram platform, the dispute

between the Data Subject and Respondent appeared to have been resolved. 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.

11. On 25 January 2023, and in light of the foregoing, the DPC wrote to the Recipient SA noting that the DPC considered the complaint to have been amicably resolved and withdrawn in accordance with section 109(3) of the Act and that it would conclude the case and inform the Respondent.

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:



Deputy Commissioner

Data Protection Commission