

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 Der Hamburgische Beauftragte für Datenschutz und Informationsfreiheit (Hamburg DPA) 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 29th day of May 2023



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 2 September 2018, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with Der Hamburgische Beauftragte für Datenschutz und Informationsfreiheit (“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 16 February 2021.

The Complaint

3. The details of the complaint were as follows:
 - a. On 28 May 2018, the Data Subject submitted an access and erasure request in respect of a Facebook account which appeared to be an impersonation account that had been set up using their email address.
 - b. The Respondent’s replies to the request directed the Data Subject to a report form in order to have the account removed. Alternatively, if the Facebook account in question did in fact belong to the Data Subject, they were informed that they could access and erase their data by logging into the account.
 - c. The Data Subject was not satisfied with the responses 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 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. The DPC outlined the complaint to the Respondent on 31 May 2021 and requested that it address the Data Subject’s concerns. The DPC highlighted the Data Subject’s assertion that they do not hold an account on the Respondent’s platform, but that one appeared to have been set up using the Data Subject’s e-mail address.
8. On 28 June 2021, the Respondent wrote to the DPC to explain that its specialist team had conducted an internal investigation and confirmed that there is currently an account on the platform associated with the e-mail address, and that this account appears to be legitimate and does not violate its community standards. The Respondent provided a number of options that the Data Subject could use in order to either disassociate their e-mail address from the account or, upon verification, log back in to the account and request access and/or deletion.
9. On 1 July 2021, the Respondent followed up to explain to the DPC that, due to its retention policies, it was not possible to establish whether the Data Subject had previously reported the account associated with their e-mail address as an impersonating account.
10. On 6 August 2021, the DPC wrote to the Data Subject via the Recipient SA, informing them of the responses received from the Respondent as above. The Data Subject replied directly to the DPC on 13 August 2021, raising a number of further concerns relating to how the Respondent obtained their email address and relating to spam emails they asserted had been sent to that email address.
11. The DPC again wrote to the Respondent asking it to address the concerns raised by the Data Subject. On 25 August 2021, the Respondent provided detailed responses to each of the further concerns raised by the Data Subject. In summary, the Respondent explained that it was *“possible that the account was created by a third party”* but only in circumstances where the Data Subject’s email address itself had been compromised, and that it was *“very likely that the email address was added to the Facebook account in question by the owner of the email*

address” (the Respondent noted in this regard that it had confirmed that the email address was verified and associated with the account back in July of 2008). The Respondent also addressed the alleged spam notifications the Data Subject was receiving, explaining that the account remained active and that activity-related notifications are routinely received via email in the normal course. The Respondent explained how these notifications can be controlled by users via their Account Settings. Noting that the Data Subject appeared unlikely to have access to the account in question, the Respondent pointed to the alternative options available to them as set out in its previous correspondence to the DPC of 28 June 2021.

12. On 16 September 2021, the DPC sent a letter for the attention of the Data Subject to the Recipient SA. When doing so, the DPC noted that, the requested clarifications now having been provided and further steps now having been taken by the Respondent, the issues that led to the dispute between the Data Subject and Respondent appeared to have been sufficiently clarified and the DPC proposed an amicable resolution to the Respondent on that basis. 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.
13. On 21 April 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.
14. 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

15. 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.
16. 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 fluid and cursive, with the first name "Tom" and last name "Delaney" clearly distinguishable.

Deputy Commissioner

Data Protection Commission