

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 Italian Data Protection Authority (Garante per la Protezione dei Dati Personali) pursuant to Article 77 of the General Data Protection Regulation, concerning WhatsApp 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 ON 12 MAY
2022)**

Dated the 21st day of October 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 24 July 2021, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Italian Data Protection Authority (“the **Recipient SA**”) concerning WhatsApp 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 6 October 2021.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject emailed the Respondent on 14 May 2021, 25 May 2021, 31 May 2021, 7 June 2021, 21 June 2021, 1 July 2021, 6 July 2021 and 8 July 2021 to request the erasure of their personal data and citing Articles 12, 17 and 19 GDPR.
 - b. The Data Subject was dissatisfied with the responses received from the Respondent and believed that their request for erasure had not been fulfilled by the Respondent.
 - c. As the Data Subject was not satisfied with the response received from the Respondent regarding the concerns raised, 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 that engagement, it was established that the Respondent had already deleted all of the complainant’s personal data.
8. On 10 December 2021, the Respondent provided a response to the DPC, and confirmed that it had previously complied with the Data Subject’s erasure request, and had deleted the Data Subject’s personal data. The Respondent provided a timeline of its interactions with the Data Subject, commencing with the complainant’s request for erasure on 14 May 2021. The Respondent also noted that when they originally wrote to the Data Subject on 6 July 2021, that they had already informed them that their data would be erased within a set timeframe. The expected deletion date was prior to the DPC receiving the complaint.
9. On 28 January 2022, the DPC wrote to the Data Subject, via the Recipient SA. In its correspondence to the Data Subject, the DPC requested that the Data Subject 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 confirmed that they issued this update to the Data Subject on 1 March 2022 and on 20 May 2022 the Recipient SA confirmed to the DPC that no response had been received from the Data Subject.
10. On 18 August 2022, 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.
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 06/2022, 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.

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, 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