

**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 Berliner Beauftragte für Datenschutz und Informationsfreiheit (Berlin DPA) pursuant to Article 77 of the General Data Protection Regulation, concerning Wayfair Stores 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 19<sup>th</sup> day of June 2023



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## **Background**

1. On 23 June 2021, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with Berliner Beauftragte für Datenschutz und Informationsfreiheit (“the **Recipient SA**”) concerning Wayfair Stores 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 August 2021.

## **The Complaint**

3. The details of the complaint were as follows:
  - a. Following a dispute with the Respondent in relation to a furniture order, the Data Subject submitted an access request pursuant to Article 15 GDPR and also sought the deletion of their data (the Data Subject submitted their requests via webform and did not have a copy of the request; however, the Data subject stated that the request was made on 16 May 2021).
  - b. The Respondent responded to the requests on 18 June 2021. The Data Subject was dissatisfied with the data provided to them as certain data, related to their interactions with the Respondent’s customer services teams, as well as a letter from the Data Subject’s lawyer, was not included. The Data Subject also stated that they had not been provided with information relating to profiling measures or transfers of their data to third parties. The Data Subject further stated that they received no confirmation regarding their deletion request.

## **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 26 November 2021, the DPC wrote to the Respondent to address the Data Subject’s concerns and requested that it provide a substantive response to their requests.
- 8. In its response of 24 December 2021, the Respondent explained that it had already provided the Data Subject with their full access file, and that information relating to chat and email records, as well as the lawyer’s letter, was not provided because the Data Subject had this information already and (in respect of their chat and email records) could also access same via their account. The Respondent stated that it had confirmed this to the Data Subject on 22 June 2021. For completeness, the Respondent stated that it had since provided a copy of these records, as well as the lawyer’s letter, to the Data Subject directly, and a copy of same was also provided to the DPC.
- 9. The Respondent explained that it had responded to the Data Subject’s other concerns regarding their access request on 17 June 2021. The Respondent stated to the DPC that it does not process personal data for solely automated decision-making or profiling (and so had nothing to provide to the Data Subject in this respect) and that it had provided the Data Subject with information regarding transfers of personal data, including with reference to its privacy policy. Regarding the deletion request, the Respondent explained that, due to the threat of legal action in the context of its sale of goods dispute with the Data Subject, it was relying on Article 17(3)(e) GDPR in refusing to action the deletion until such time as the claim becomes statute-barred.
- 10. The DPC provided the Data Subject (via the Recipient SA) with the Respondent’s explanations above and requested their views. In their response of 22 July 2022, the Data Subject indicated

that their complaint was not resolved and provided their reasoning. The Data Subject stated that their access request was made on 16 May 2021 but was not actioned until 17 June 2021 and was therefore late. The Data Subject stated that information about the processing of their data and about their rights was insufficient, and reiterated their dissatisfaction with the responses provided by the Respondent regarding third party transfers. The Data Subject also queried how details such as their email and telephone number could be retained in the context of the Respondent's reliance on Article 17(3)(e) GDPR.

11. On 7 September 2022, the DPC raised the Data Subject's above concerns with the Respondent and requested they be addressed in full. As directed by the DPC, the Respondent wrote to the Data Subject directly on 21 September 2022, responding in detail to each of the points raised. A copy of this correspondence was also provided to the DPC. The Respondent stated that its records identified the date of the requests to be 17 May 2021 and that it had responded in full on 17 June 2021. The Respondent explained that it had provided all required information about its processing of personal data within that time and that its privacy policy (which it had directed the Data Subject to) contained all requisite information (e.g. purposes and duration of processing, retention periods and information about data subjects' rights) pursuant to Article 15 and Recital 63 GDPR.
12. Regarding the deletion request and the information retained, the Respondent explained that the data points it uses to validate any requests made by a customer are the name and billing address, phone number, email address, order number, and last four digits of the card used (if applicable). Although no card details applied in this case as the Data Subject's order was made by a different means, the Respondent explained that *"any future communications with [its] Customer Service would require this information to be retained until the account has been closed and no further liabilities remain"*. The Respondent further explained that the Data Subject's ongoing sale of goods dispute presented *"a real and imminent prospect of resulting in litigation such that [the Respondent] would not be in a position to delete the relevant data"*. The Respondent agreed to delete the data on the expiry of the statutory limitation period.
13. The Respondent also provided a detailed overview of its technical and organisational measures employed in dealing with data subject rights requests and explained their appropriateness pursuant to Articles 24 and 25 GDPR.
14. In light of the detailed responses and explanations provided above, the DPC wrote to the Data Subject (via the Recipient SA) on 11 November 2022 proposing an amicable resolution to their complaint. The DPC asked the Data Subject to notify it, within a specified timeframe, 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.
15. On 16 May 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.

16. 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**

17. 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.

18. 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