

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 Garante per la Protezione dei Dati Personali 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 6th day of September 2023



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 29 September 2021, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Garante per la protezione dei dati personali (Italian SA) (“the **Recipient SA**”) concerning Google 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 April 2022.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject submitted an access request to the Respondent pursuant to Article 15 GDPR, following the removal of their YouTube channel.
 - b. The Data Subject was directed to the Respondent’s Takeout service in order to access their personal data. However, the Data Subject noted that they were unable to retrieve any content associated with their YouTube channel via this means. Accordingly, on 29 September 2021, the Data Subject submitted a complaint to the Recipient SA.

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 3 November 2022, the DPC wrote to the Respondent formally commencing its investigation and requesting that it address the concerns raised.
8. In its response, the Respondent explained that the Data Subject’s YouTube channel was removed from YouTube for a serious violation of its terms of service. The Data Subject’s associated Google account remained unaffected by this removal. However, the Respondent further explained that, having availed of the Takeout tool, the Data Subject subsequently deleted their Google and YouTube accounts on 24 July 2022. As a result, the Respondent explained that the specific actions taken by the Data Subject which led to the removal of their account could not be provided. However, the Data Subject had been informed that their YouTube channel had been removed due to multiple or severe violations of its policies against spam, deceptive practices and misleading content. In its response to the DPC, the Respondent was able to infer that the Data Subject’s YouTube channel had been removed following a “*single case of severe abuse*”, and provided some examples of what sorts of infringements would warrant an immediate removal of content (e.g. predatory behaviour, spam or pornography, and channels or accounts dedicated to hate speech, harassment, or impersonation).
9. Although, due to the fact that the Data Subject had since deleted their YouTube and Google accounts, the Respondent was unable to provide a detailed description of the precise steps taken prior to the removal of the Data Subject’s YouTube channel in this matter, the Respondent did provide a detailed explanation as to the procedures followed in detecting, investigating and reviewing suspected infringements of its terms of services on its platforms, and the actions that may be taken in response.
10. In light of the explanations provided by the Respondent as set out above, as well as the fact that the Data Subject had since deleted their Google and YouTube accounts, the DPC considered it appropriate to conclude the complaint by way of amicable resolution. The DPC

also noted that the Respondent did not at any point purport to withhold any personal data requested by the Data Subject pursuant to Article 15(4) GDPR. Rather, the DPC understood that the only personal data which the Data Subject was unable to obtain access to was their YouTube channel which had been removed in accordance with the Respondent's terms of service. As such, on 19 January 2023, the DPC wrote to the Data Subject (via the Recipient SA) proposing an amicable resolution to the complaint and 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.

11. On 29 June 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. Following the upload of the draft version of this Record of Amicable Resolution, the Recipient SA subsequently wrote to the DPC advising that the Data Subject had in fact responded to the letter of 19 January 2023. The Recipient SA stated as follows: *"[f]or the seek of completeness and accuracy of the draft decision, we would like to underline that the complainant wrote to the Garante in response to the letter delivered on 19 January that he agrees with the amicable settlement proposal even if he is not fully satisfied with the controller's handling of his right."*
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, reading "Tony Delaney". The signature is fluid and cursive, with the first name "Tony" and last name "Delaney" clearly distinguishable.

Deputy Commissioner

Data Protection Commission