

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 Commission Nationale de l'Informatique et des Libertés 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 6<sup>th</sup> day of September 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 Commission Nationale de l'Informatique et des Libertés (“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 19 October 2021.

## **The Complaint**

3. The details of the complaint were as follows:
  - a. On 28 May 2020, the Data Subject made an access request to the Respondent pursuant to Article 15 GDPR following the suspension of their account.
  - b. In response, the Respondent stated that the Data Subject’s account had been suspended for violating its terms of service. Following subsequent correspondence from the Data Subject, the Respondent provided instructions to the Data Subject as to how they could attempt to download their data from a disabled account or to request a disabled account be restored.
  - c. The Data Subject remained unable to access their disabled account and was dissatisfied with the responses provided. Accordingly, the Data Subject lodged a complaint with 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 13 December 2021, the DPC wrote to the Respondent formally commencing its investigation and requesting the Respondent to address the concerns raised.
8. In response to the investigation, the Respondent explained that the Data Subject's account had been disabled due to *"harmful, potentially illegal content being detected"* on it, which amounted to a serious violation of the Respondent's terms of service. The Respondent explained how it was relying on section 60(3)(a)(ii) of the 2018 Act (which gives effect to Article 23(1)(d) GDPR under Irish law and provides for the restriction of data subject rights where necessary and proportionate for the purposes of *"the prevention, detection, investigation and prosecution of criminal offences"*) as well as Article 15(4) GDPR in refusing to provide the Data Subject with the personal data sought. The Respondent also provided a detailed explanation of each step in the process which led to the Data Subject's account suspension, including the appeal process engaged in and manual reviews carried out. In the circumstances, the DPC was satisfied that the Respondent's reliance on section 60(3)(a)(ii) of the 2018 Act and Article 15(4) GDPR was appropriate.
9. In an effort to amicably resolve the complaint, and noting the fact that the Data Subject's account had already been automatically deleted in accordance with the Respondent's standard retention periods for validly suspended accounts, the Respondent agreed to provide the Data Subject with the non-sensitive, residual personal data it retained following that process. The Respondent explained to the DPC that certain procedural data were withheld due to them being subject to legal privilege. On 22 February 2022, the Respondent provided

evidence to the DPC to confirm that the non-sensitive, residual data had been provided to the Data Subject.

10. On 19 April 2023, the DPC wrote to the Data Subject (via the Recipient SA) asking whether they were now satisfied that their outstanding concerns had been addressed and that their complaint could be concluded. In light of the explanations provided by the Respondent as to the process followed in the decision to suspend the Data Subject's account, the explanations provided by the Respondent as to its reliance on section 60(3)(a)(ii) of the 2018 Act and Article 15(4) GDPR, and the fact that the Respondent provided the Data Subject with a copy of their non-sensitive, residual data, the DPC considered it appropriate to conclude the complaint by way of amicable resolution. In the circumstances, 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 Recipient SA confirmed that the letter issued to the Data Subject on 2 June 2023. On 26 June 2023, the Recipient SA confirmed that the Data Subject did not respond. Accordingly, the complaint has been deemed to have been amicably resolved.
11. On 4 July 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
  - a. 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:



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Deputy Commissioner

Data Protection Commission