

DPC Reference: [REDACTED]

Date of Decision: 06 May 2025

Complainant: [REDACTED]

Data Controller: Yahoo EMEA Limited

Re: [REDACTED] V Yahoo EMEA Limited

DECISION

This is a Decision of the Data Protection Commission of Ireland (**DPC**) in relation to DPC complaint reference [REDACTED] (**Complaint**) submitted directly to the DPC by [REDACTED] (**Complainant**) against Yahoo EMEA Limited (**Yahoo**).

Upon receipt, the DPC assessed the Complaint to confirm (i) the Complaint concerned cross-border processing within the meaning of Article 4(23) of the General Data Protection Regulation (**GDPR**); and (ii) that the DPC was competent to handle the Complaint as the lead supervisory authority for Yahoo within the meaning of Article 56(1) GDPR in respect of the processing at issue in the Complaint. Once satisfied this was the case, the DPC proceeded to examine the complaint.

This Decision is made pursuant to the powers conferred on the DPC by section 113 of the Data Protection Act 2018 (**Act**) and Article 60 of the GDPR. In accordance with section 113 of the Act, the purpose of this Decision is to determine, having had regard to the information obtained by the DPC in its examination of the Complaint (i) whether or not an infringement by Yahoo has occurred or is occurring and (ii) if so, the envisaged action to be taken.

Background to the Complaint

1. On an unknown date, the Complainant attempted to log into their Yahoo account and noted that they were prompted to change password. Subsequently, when the Complainant accessed their account, they discovered that their personal data, which they allege included emails containing sensitive medical and legal data, appeared to have been deleted. The Complainant engaged with Yahoo seeking access to their personal data, sought details regarding when their personal data had been deleted from their account and queried why they were not informed prior to the deletion.
2. Yahoo engaged with the Complainant and explained to the Complainant that as they did not sign into their Yahoo account for a period longer than 12 months, their mailbox was considered

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inactive. Mailboxes marked as inactive will stop receiving emails and the contents contained within are then permanently deleted. Yahoo further advised that data deleted from an inactive mailbox cannot be restored.

3. The Complainant was unsatisfied with the responses provided by Yahoo and sought details regarding the erasure of their data, in particular the date when their data were erased. Yahoo advised that it was unable to provide the Complainant with an exact timeframe for when the data were deleted, but reiterated that the data were deleted when the mailbox *“was considered inactive after a prolonged period of [the Complainant] not signing into [their account].”*
4. The Complainant disputed Yahoo’s position that they had not signed into their account for such a period of time, asked why it had not been notified that the account would be deleted and remained dissatisfied with Yahoo’s responses. Accordingly, on the 13 December 2020 the Complainant submitted a complaint to the DPC.

Preliminary Matters

5. Upon receipt of the complaint, the DPC assessed the Complaint in order to determine: (i) the scope of the Complaint; (ii) that Yahoo was the controller for the processing at issue within the meaning of the GDPR; and (iii) that the DPC was the competent supervisory authority to handle the Complaint.

Scope of the Complaint

6. In light of the facts set out above, the DPC determined that the scope of the Complaint consisted of the following matters:
 - a. the Complainant’s request for information pertaining to the processing of their personal data; If Yahoo has complied with its transparency obligations in the specific circumstances of how the contents of the Complainant’s mailbox account came to be deleted.

Yahoo as Controller

7. Pursuant to Article 4(7) GDPR, a controller is *“the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the*

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processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law”.

8. The DPC was satisfied that Yahoo was the controller, within the meaning of Article 4(7) GDPR, in respect of the processing activities to which the Complaint related.

Competence of the DPC

9. Pursuant to Article 56(1) GDPR, *“the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing carried out by that controller or processor”*. It follows that the DPC is only competent to act as the lead supervisory authority in relation to the Complaint if (i) Yahoo’s main or single establishment in the Union was located in Ireland at the relevant time (i.e. in the context of this Complaint, at the time the Complainant submitted their requests to Yahoo), and (ii) the Complaint concerns cross-border processing as defined in the GDPR.
10. Pursuant to Article 4(16) GDPR, a controller’s “main establishment” is *“...the place of its central administration in the Union”* where *“decisions on the purposes and means of the processing of personal data are taken”*.
11. The DPC was satisfied that Yahoo’s main establishment, as defined in Article 4(16) GDPR, in the Union was located in Ireland at the relevant time.
12. Pursuant to Article 4(23) GDPR, cross-border processing is defined as either *“(a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or (b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State.”*
13. The DPC was satisfied that the Complaint concerned cross-border processing as defined in Article 4(23) GDPR.

14. Accordingly, the DPC was satisfied that it was competent to act as lead supervisory authority in respect of the Complaint in accordance with Article 56 GDPR.

Complaint Handling and Examination by the DPC

15. Having determined its competence in respect of the Complaint pursuant to Article 56(1) GDPR, the DPC proceeded to examine the Complaint pursuant to section 109(1) of the Act. Over the course of its examination, the DPC engaged with both Yahoo and the Complainant in relation to the subject matter of the Complaint.
16. **Date Mailbox Was Deleted:** Over the course of the DPC's examination, Yahoo advised the Complainant of the exact date on which their data were deleted, 27 April 2019 and apologised for not providing this information to the Complainant when requested.
17. **Details of Account Activity:** Yahoo provided the DPC with an extract from its account management system, which detailed the Complainant's account activity. This indicated that the Complainant last logged into their account on 19 April 2018 and that no further action was recorded in respect of the account until 27 April 2019 when the contents of the mailbox were automatically deleted due to inactivity. The DPC noted that this deletion therefore appeared to have occurred after 12 months of inactivity on the Complainant's account, as was consistent with Yahoo's position above.
18. **Deletion of Mailbox:** Yahoo confirmed that the contents of the Complainant's mailbox were automatically deleted on 27 April 2019 as a result of inactivity on the account over a period of 12 months. Yahoo explained that users of Yahoo mailboxes are informed that the contents of their mailboxes are subject to deletion as a result of inactivity via notifications sent in advance of the deletion, to their account recovery email address. This notification informs users of the imminent deletion of their mailbox and contents.
19. Due to the length of time that had passed since the deletion of the contents of the Complainant's mailbox, Yahoo explained that it was unable to provide the actual copies of the notifications that it advised would have been sent to the Complainants email and recovery email address prior to the deletion itself. Yahoo provided the DPC an example of how this notification would appear:

"If you do not log back in, this account will stop receiving email messages and the entire contents of your mailbox will be subject to deletion, including all email messages, settings and folders."

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This notification also provides the user with an explicit date, which they must login, in order for their account to remain active.

20. Yahoo explained *"In accordance with our terms of service, if a Yahoo account becomes inactive, the mailbox associated with that Yahoo account will be automatically deleted and cannot be restored. Our systems are designed to automatically notify users in advance by email before any deletion due to inactivity takes place. As this data subject has two back-up email addresses on their account, the system notification emails would have been sent to those communication channels between three months to thirty days prior to the mailbox deletion."*
21. Yahoo Terms of Service set out that each user *"...agree that Yahoo! may, under certain circumstances and without prior notice, immediately terminate your Yahoo! account, any associated email address, and access to the Service. Cause for such termination shall include ... (f) extended periods of inactivity". Furthermore, Yahoo's help pages also inform users "...If you rarely use your account, it will go into an inactive state and then be deleted. You can prevent this by signing in to your account using any device at least once every 12 months."*
22. Yahoo explained that in order for a user to avail of Yahoo's services and enter into a contract with Yahoo for the provision of Yahoo mail, they must accept the relevant policies and Terms of Service. Any updates to these policies are brought to the attention of the users. Along with accepting Yahoo's Terms of Service, Yahoo explained that all users are notified in advance of mailbox deletion via email. These notifications are automatically triggered prior to the mailbox deletion and are pre-configured to send between 3 months to 30 days prior to the deletion. To ensure users have an opportunity to prevent the deletion of their account in this manner (i.e. by signing back in before the 12 months have elapsed), these notification emails are sent to both their Yahoo email address and any backup/recovery email address that may have been added to that user's account. In the Complainant's case, Yahoo confirmed that two account recovery email addresses were configured on the Complainant's account: an alternative Yahoo email address and a Gmail email address.
23. By contrast, the Complainant asserted that they never received the aforementioned notification prior to the deletion of the contents of their mailbox. The Complainant further asserted that Yahoo's policy regarding inactive mailboxes was not made clear to them.

Procedural Matters

The Act

24. Under section 109(2) of the Act, the DPC may, where it considers that there is a reasonable likelihood of the parties reaching, within a reasonable time, an amicable resolution of the subject matter of a complaint, take such steps as it considers appropriate to arrange or facilitate such a resolution. The DPC took appropriate steps in an attempt to achieve an amicable resolution of the subject matter of the Complaint. However, this was ultimately unsuccessful.
25. Under section 109(4)(a) of the Act, where the DPC considers that an amicable resolution cannot be reached by the parties within a reasonable time, and where the DPC is the lead supervisory authority in respect of the complaint, the DPC is required to comply with section 113(2) and make a draft decision in order to determine the complaint. Section 113(2) of the Act provides as follows:
- “Where section 109(4)(a) applies, the Commission shall–*
- (a) in accordance with subsection (3), make a draft decision in respect of the complaint (or, as the case may be, part of the complaint) and, where applicable, as to the envisaged action to be taken in relation to the controller or processor concerned, and*
- (b) in accordance with Article 60 and, where appropriate, Article 65, adopt its decision in respect of the complaint or, as the case may be, part of the complaint.”*
26. Accordingly, in circumstances where an amicable resolution of the Complaint could not be achieved, the DPC is now required to comply with section 113(2) of the Act.
27. The DPC notified Yahoo via correspondence dated 24 May 2024 that it had been unable to facilitate the amicable resolution of the Complaint and that it was now required to comply with section 113(2) of the Act.
28. The DPC also notified the Complainant via correspondence dated 09 December 2024 that it had been unable to facilitate the amicable resolution of the Complaint and that it was now required to comply with section 113(2) of the Act.
29. Under section 110 of the Act, the DPC is empowered to conduct an inquiry into a suspected infringement of a relevant enactment. In the context of a complaint involving cross-border processing, section 110(1) provides that such an inquiry may be carried out for the purposes of making a draft decision pursuant to s.113(2) of the Act, or of the DPC’s own-volition.

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30. Having had regard to all of the circumstances of this Complaint including, in particular, the nature, scope and gravity of any suspected infringement(s) as established by the information provided, the DPC was satisfied that it was neither necessary or proportionate for it to exercise its power of inquiry under section 110 of the Act. However, the DPC remains empowered to conduct such an inquiry into the issues presented in the Complaint in future, if it considers it appropriate to do so.

GDPR

31. In accordance with Article 60(3) of the GDPR, the DPC is obliged to communicate the relevant information and submit a draft decision, in relation to a complaint regarding cross border processing, to the supervisory authorities concerned for their opinion and to take due account of their views.
32. **In accordance with its obligation, the DPC submitted its draft decision in relation to the matter to the “supervisory authorities concerned” on 07 April 2025.** The DPC will prepare its draft decision, having given detailed consideration to any submissions that the Complainant and/or Yahoo may wish to make. The processing activities in question in this Complaint were considered likely to substantially affect data subjects in every EU member state. As such, the DPC, in its role as lead supervisory authority identified that each supervisory authority is a supervisory authority concerned as defined in Article 4(22) of the GDPR. On this basis, the draft decision of the DPC in relation to this Complaint will be submitted to each supervisory authority of the EU and EEA for their opinion. **The DPC did not receive any relevant and reasoned objections from the supervisory authorities concerned under Article 60(4) DPR and, as such, the DPC did not revise the draft decision.**

Preliminary Draft Decision

33. Prior to its preparations of this decision, the DPC prepared a preliminary draft decision for the purposes of facilitating the parties in exercising their respective rights to be heard in relation to the decision.

Notification of the Preliminary Draft Decision to Yahoo

34. The DPC provided Yahoo with a copy of its preliminary draft decision on 03 March 2025 and invited submissions from Yahoo.

35. Yahoo did not provide any submissions in respect of the preliminary draft decision.

Notification of the Preliminary Draft Decision to the Complainant

36. The DPC provided the Complainant with a copy of its preliminary draft decision on 19 March 2025 and invited submissions from Yahoo.

37. The Complainant did not provide any submissions in respect of the preliminary draft decision.

Material Scope of the Decision

Preliminary Observations

38. As stated at paragraph 18, Yahoo explained that in the event of inactivity on a mailbox over a period of 12 months, the contents of said mailbox will be automatically deleted. The storage limitation principle states that a data controller has an obligation to ensure that it retains personal data no longer than is necessary for the purposes for which it is processed. The DPC's Guidance on the Principles of Data Protection¹ states that data controllers should "*delete personal data as soon as it ceases to be necessary for the purposes for which it was originally collected. To this end, the GDPR recommends that time limits should be established by the controller for erasure or for a periodic review.*" Therefore, in the circumstances of this Complaint, the DPC considers Yahoo's retention period of 12 months and automatic deletion of inactive mailboxes to be consistent with the data protection principle of storage limitation.

39. As described in paragraph 17, Yahoo demonstrated that the Complainant last logged into their account on 19 April 2018, and that the contents of the mailbox were automatically deleted after 12 months of inactivity on 27 April 2019. In circumstances where there is no evidence available to the DPC to demonstrate that the Complainant had logged into their account within this 12 month time period, the DPC concludes that the contents of the Complainant's mailbox were deleted in line with Yahoo's retention policy of 12 months, which the DPC considers consistent with Yahoo's obligation pursuant to the data protection principle of storage limitation. Yahoo's compliance with the storage limitation principle therefore does not fall for consideration in the context of this decision.

¹ 'Quick Guide to the Principles of Data Protection', Data Protection Commission, October 2019, pg. 5
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Issues to be Determined & Applicable Law

Issue(s) to be Determined

40. Upon the conclusion of the DPC's examination and in light of the factual circumstances of the Complaint set out above, the issue now falling to be determined in this decision is whether Yahoo has complied with its transparency obligations in the specific circumstances of how the Complainant's account came to be deleted.

Applicable Law and Relevant Guidance

41. For the purposes of its analysis, the DPC has considered the following Articles of GDPR and relevant guidance:

- a. Article 12(1) GDPR, which states that “[t]he controller shall take appropriate measures to provide any information referred to in Articles 13 and 14...in a concise, transparent, intelligible and easily accessible form, using clear and plain language...”;
- b. Article 13 GDPR, in particular Article 13(2) which states that a “...the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:
 - (a) the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period;
- c. Guidelines of the Article 29 Working Party on Transparency under Regulation 2016/679² (**WP29 Guidelines**).

Analysis and Findings

Elements of Transparency under the WP29 Guidelines

42. As noted above, pursuant to Article 13(2)(a) GDPR, a data controller is obliged, where necessary to ensure fair and transparent processing, to provide a data subject with information pertaining

² Article 29 Working Party Guidelines on transparency under Regulation 2016/679, WP260 rev.01, adopted on 29 November 2017, as last revised and adopted on 11 April 2018.

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to the period for which the personal data will be retained (or, if that is not possible, the criteria used to determine this retention period). Article 12(1) GDPR requires that this information is provided to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language.

43. In relation to the requirement that this information be provided in a “concise and transparent” form, the WP29 Guidelines explain that this means that:

“data controllers should present the information/ communication efficiently and succinctly in order to avoid information fatigue. This information should be clearly differentiated from other non-privacy related information such as contractual provisions or general terms of use. In an online context, the use of a layered privacy statement/ notice will enable a data subject to navigate to the particular section of the privacy statement/ notice which they want to immediately access rather than having to scroll through large amounts of text searching for particular issues.”³

44. Furthermore, the W29 Guidelines state that, in order for information to be “easily accessible”, “the data subject should not have to seek out the information; it should be immediately apparent to them where this information can be accessed, for example by providing it directly to them, by linking them to it, by clearly signposting it or as an answer to a natural language question.”⁴

45. Regarding “intelligibility”, the WP29 Guidelines state that this means that the information “should be understood by an average member of the intended audience” and note that “intelligibility is closely linked to the requirement to use clear and plain language.”⁵

46. Regarding the requirement that information be provided using “clear and plain language”, the WP29 Guidelines note that this “means that information should be provided in as simple a manner as possible, avoiding complex sentence and language structures. The information should be concrete and definitive; it should not be phrased in abstract or ambivalent terms or leave room for different interpretations.”⁶

Relevant Factual Considerations

³ WP29 Guidelines, para 7.

⁴ WP29 Guidelines, para 10.

⁵ WP29 Guidelines, para 9.

⁶ WP29 Guidelines, para 12.

47. As noted at paragraph 17 above, Yahoo provided the DPC with records from its account management system which indicated that the Complainant had accepted Yahoo's Terms of Service at the time of signing up to Yahoo mail on 26 April 2004. Yahoo also demonstrated that various updates to the Terms of Service in question were notified to the Complainant via email. It clarified that the *"...section of Yahoo EMEA's terms of service relevant to the deletion of mailboxes due to inactivity, has not changed during the lifetime of the data subject's account."* These terms remained as stated in paragraph 21 above.

48. The DPC noted that those terms referred to Yahoo's right to terminate the Complainant's account for *"extended periods of inactivity"* without explaining what constituted an "extended period of inactivity". Yahoo did not refer to its privacy policy in its responses to the DPC's examination. However, the DPC consulted Yahoo's privacy policy which appeared to have been in place at the time the Complainant's account was deleted⁷ which explained Yahoo's data retention practices in the following manner:

"Verizon Media will retain your information only for as long as is necessary for the purposes set out in this Privacy Policy, for as long as your Verizon Media account is active or as needed to provide you with the Services. If you no longer want Verizon Media to use your information to provide you with the Services, you can close your account and Verizon Media will delete the information it holds about you unless Verizon Media needs to retain and use your information to comply with our legal obligations, to resolve disputes or to enforce our agreements."

49. Although the privacy policy made clear that Yahoo would retain the Complainant's personal data only *"for as long as [their Yahoo] account is active"*, no further information was contained in the privacy policy to explain what was considered an "active" or "inactive" account.

50. Similarly, the relevant section of Yahoo's terms of service as set out at paragraph [21] above referred to Yahoo's right to terminate the Complainant's account for *"extended periods of inactivity"* without explaining what constituted an "extended period of inactivity".

⁷ That same policy clarified that for users who *"have not yet agreed and consented to this Privacy Policy, the legacy Yahoo Privacy Policy...still appl[ies] to your account"*. The DPC also consulted this policy, which appeared to have been the most recent privacy policy in place prior to the introduction of the GDPR, and noted that although it contained information about a data subject's *"ability to edit and delete your account information & preferences"*, it did not appear to make any reference to Yahoo's own data retention or deletion practices in relation to "inactive" user accounts.

51. It is only made clear to data subjects in Yahoo's help pages article, set out at paragraph 22 above that an account becomes "inactive" in circumstances where a data subject fails to sign in to that account for a period of 12 months. As links to this information between the Terms of Service document and Help document, have not been included in either document, it appeared there was no way for a data subject to navigate through from the privacy policy or the terms of service document to access the information contained in the help pages without having to actively seek out that information for themselves, and the manner in which they could presumably do so was not clear or obvious. This approach is not in line with the WP29 Guidelines.

"Concise and Transparent"

52. The Guidelines note that in order for information to be provided in a "concise and transparent" manner as required by Article 12(1) *"data controllers should present the information/ communication efficiently and succinctly in order to avoid information fatigue. This information should be clearly differentiated from other non-privacy related information such as contractual provisions or general terms of use. In an online context, the use of a layered privacy statement/ notice will enable a data subject to navigate to the particular section of the privacy statement/ notice which they want to immediately access rather than having to scroll through large amounts of text searching for particular issues."*

53. In this matter, Yahoo relied primarily on its terms of service in order to provide information about the deletion of the Complainant's account. It was therefore not sufficiently differentiated from non-privacy information in the manner described by the Guidelines. Similarly, there did not appear to be any reasonably accessible means for the Complainant to navigate through to the help pages article in order to access the information setting out the precise timeframe before an account would be considered "inactive". As a result of the foregoing, the DPC considers that the information was not provided to the Complainant in a concise and transparent manner as required by Article 12(1) GDPR.

54. Secondly, the Guidelines note how *"[a] central consideration of the principle of transparency outlined in these provisions is that the data subject should be able to determine in advance what the scope and consequences of the processing entails and that they should not be taken by surprise at a later point about the ways in which their personal data has been used"*. The Guidance places particular emphasis on "unexpected data processing", stating also follows:

"In particular, for complex, technical or unexpected data processing, WP29's position is that, as well as providing the prescribed information under Articles 13 and 14...controllers should also

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separately spell out in unambiguous language what the most important consequences of the processing will be: in other words, what kind of effect will the specific processing described in a privacy statement/ notice actually have on a data subject? In accordance with the principle of accountability and in line with Recital 39, data controllers should assess whether there are particular risks for natural persons involved in this type of processing which should be brought to the attention of data subjects”.

55. The DPC considers that the automatic deletion of the Complainant’s account as a result of a 12 month period of inactivity could reasonably be considered to be an unexpected consequence for the Complainant, particularly in circumstances where that specific time frame was not provided to the Complainant in a concise and transparent manner as described at paragraph 52 above.
56. In the circumstances and in light of the Guidance cited above, the DPC considers that Yahoo’s failure to concisely and transparently bring the specific 12 month time frame to the Complainant’s attention meant that the Complainant was not made reasonably aware *“in unambiguous language what the most important consequences of the processing will be”* which, in this case, amounted to the permanent deletion of their account. As a result of the foregoing, the DPC considers that the information was not provided to the Complainant in a transparent manner as required by Article 12(1) GDPR.

“Easily Accessible”

57. Thirdly, the Guidelines note that in order for information to be provided in an *“easily accessible”* manner as required by Article 12(1) *“the data subject should not have to seek out the information; it should be immediately apparent to them where and how this information can be accessed, for example by providing it directly to them, by linking them to it, by clearly signposting it or as an answer to a natural language question (for example in an online layered privacy statement/ notice, in FAQs, by way of contextual pop-ups which activate when a data subject fills in an online form, or in an interactive digital context through a chatbot interface, etc....”*
58. As noted at paragraph 52 above, there did not appear to be any reasonably accessible means for the Complainant to navigate through to the help pages article in order to access the information setting out the precise timeframe before an account would be considered *“inactive”*. As no relevant links appeared to have been included in either the privacy policy or the terms of service, it appeared that there was no way for a data subject to navigate through from either document to access that information without having to actively seek out that information for themselves, and the manner in which they could presumably do so was not clear or obvious. As a result of the

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foregoing, the DPC considers that the information was not provided to the Complainant in an easily accessible manner as required by Article 12(1) GDPR.

“Clear and Plain Language”

59. Fourthly, regarding the requirement that information be provided using “clear and plain language”, the Guidelines note that this “means that information should be provided in as simple a manner as possible, avoiding complex sentence and language structures. The information should be concrete and definitive; it should not be phrased in abstract or ambivalent terms or leave room for different interpretations.” A number of “poor practice examples” are then set out as follows:

“The following phrases are not sufficiently clear as to the purposes of processing:

- *“We may use your personal data to develop new services” (as it is unclear what the “services” are or how the data will help develop them);*
- *“We may use your personal data for research purposes (as it is unclear what kind of “research” this refers to); and*
- *“We may use your personal data to offer personalised services” (as it is unclear what the “personalisation” entails).”*

60. The DPC notes a certain similarity between the wording used in the examples above and the wording used in the relevant section of the terms of service as referred to by Yahoo as set out at paragraph 21 above:

“You agree that Yahoo! may, under certain circumstances and without prior notice, immediately terminate your Yahoo! account, any associated email address, and access to the Service. Cause for such termination shall include ... (f) extended periods of inactivity, Further, you agree that all terminations for cause shall be made in Yahoo!’s sole discretion and that Yahoo! shall not be liable to you or any third-party for any termination of your account, any associated email address, or access to the Service.”

61. The use of the word “may” above suggests that the termination does not occur in all cases without specifying in what circumstances it might not occur. In particular, and as should already be clear from the DPC’s earlier consideration of the conciseness, transparency and ease of accessibility of the information, the wording “extended periods of inactivity” does not clarify what period of inactivity this means in practice. As a result of the foregoing, the DPC considers that the

information was not provided to the Complainant using clear and plain language as required by Article 12(1) GDPR.

Article 13(2) and the Obligation to “Provide” Information

62. Article 13(2) GDPR read in light of Recital 60 makes clear that data controllers are required to provide data subjects with certain information additional to that set out under Article 13(1) in circumstances where that information is *“necessary to ensure fair and transparent processing taking into account the specific circumstances and context in which the personal data are processed”*. That information includes *“the period for which personal data will be stored, or if that is not possible, the criteria used to determine that period”* as provided for by Article 13(2)(a). Given the broad types of personal data which may be stored on a Yahoo account (which are likely reflective of the services offered) and the consequences of losing access to such personal data in the event of a unilateral deletion by Yahoo in the event of prolonged inactivity, the DPC considers that the provision of this information to the Complainant was necessary to ensure fair and transparent processing and that the obligation under Article 13(2)(a) was therefore engaged.

63. The Guidelines note how the requirement under Article 13(2)(a) GDPR *“is linked to the data minimisation requirement in Article 5.1(c) and storage limitation requirement in Article 5.1(e). The storage period (or criteria to determine it) may be dictated by factors such as statutory requirements or industry guidelines but should be phrased in a way that allows the data subject to assess, on the basis of his or her own situation, what the retention period will be for specific data/ purposes. It is not sufficient for the data controller to generically state that personal data will be kept as long as necessary for the legitimate purposes of the processing. Where relevant, the different storage periods should be stipulated for different categories of personal data and/or different processing purposes, including where appropriate, archiving periods.”*

64. The DPC’s WhatsApp decision of 20 August 2021⁸ (**“WhatsApp Decision”**) endorsed this view, and held that what is required by Article 13(2)(a) is “meaningful” information⁹. The WhatsApp Decision elaborated on this concept of “meaningful” more generally in the following manner:

“It is further noteworthy that the right to receive information is incorporated into other of the data subject rights, such as the right of access to personal data. In such a case, Articles 15(1) and (2) require the data controller to provide certain information to the data subject, as part of its response to the data subject concerned. It is therefore clear that the right to be informed is not only one of the core data

⁸ ‘Decision concerning WhatsApp Ireland Limited’, Data Protection Commission, 20 August 2021.

⁹ WhatsApp Decision, para 469.

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subject rights, it is the bedrock upon which the other rights sit. It is only when the data subject has been provided with the information that he/she is entitled to receive, pursuant to Article 13/14, that he/she can understand (i) which of his/her personal data are being processed, (ii) for what processing operation(s), (iii) for what purpose(s), and (iv) in reliance on which legal basis. When the data subject has been provided with all of this information, he/she is afforded a sufficient state of knowledge such that he/she can meaningfully:

a. exercise choice as to whether or not he/she might wish to exercise any of his/her data subject rights and, if so, which one(s);

b. assess whether or not he/she satisfies any conditionality associated with the entitlement to exercise a particular right;

c. assess whether or not he/she is entitled to have a particular right enforced by the data controller concerned; and

d. assess whether or not he/she has a ground of complaint such as to be able to meaningfully assess whether or not he/she wishes to exercise his/her right to lodge a complaint with a supervisory authority”.¹⁰

65. Applying the foregoing to the facts of this Complaint, the DPC does not consider that the information set out in the privacy policy or the terms of service regarding the possible deletion of the Complainant’s account on the grounds of inactivity can be reasonably described as “meaningful” because neither of those documents specified the precise timeframe of inactivity required. Upon the deletion of the Complainant’s account after that 12-month timeframe, they are of course no longer in a position to exercise, for example, their right of access to information stored in the account. Being aware of this consequence and the precise timeframe at which it might occur is therefore integral to the Complainant being able to “*exercise choice*” as to whether or not (and, indeed, when) to exercise their right of access. It is therefore only at the time the Complainant is provided with the specific timeframe of inactivity that the information can be described as “meaningful”.

66. In relation to the obligation to provide information under Article 13, the Guidelines emphasise the use and meaning of the word “*provide*”, stating as follows:

¹⁰ WhatsApp Decision, para 174.

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“The operative word here is “provide”. This means that the data controller must take active steps to furnish the information in question to the data subject or to actively direct the data subject to the location of it (e.g. by way of a direct link, use of a QR code, etc.). The data subject must not have to actively search for information covered by these articles amongst other information, such as terms and conditions of use of a website or app.”

The Guidelines then go on to recommend *“that the entirety of the information addressed to data subjects should also be available to them in one single place or one complete document (e.g. whether in a digital form on a website or in paper format) which can be easily accessed should they wish to consult the entirety of the information.”*

67. In light of the analysis set out at paragraphs 47 – 61 above, the DPC does not consider that Yahoo took *“active steps to furnish the information in question”* or *“direct[ed] the data subject to the location of it”* in the manner described in the Guidelines. Importantly, the information in question about the specific timeframe following which the Complainant’s account would be considered inactive and subject to automated deletion was not incorporated into the privacy policy. As noted already at paragraph 46 above, there were no links within the privacy policy (or, indeed, the terms of service) to the help pages article where this information was set out and there was no way for a data subject to navigate through from the privacy policy to access that information without having to actively seek out that information for themselves, and the manner in which they could presumably do so was not clear or obvious. Rather, in order to find this information, the Complainant would have needed to *“actively search for [that information] amongst other information such as terms and conditions of use...”*.

68. In the circumstances and in light of all of the analysis above, the DPC considers that Yahoo failed to *“provide”* this information within the meaning of Article 13 GDPR and that, as a result, this failure amounts to an infringement of Article 13(2)(a) GDPR.

Automated Notification Emails

69. As noted at paragraphs 18, 120 and 22 above, Yahoo stated that, at various points prior to the expiration of the 12 month time period, the Complainant would have received automated notification emails to their recovery email addresses warning them that the deletion of their account was imminent should they fail to sign back in prior to the expiry of that time period. The Complainant disputed having ever received such emails.

70. Yahoo confirmed to the DPC that these emails are automatically configured to send to any backup email address associated with an account whose deletion is imminent on the grounds of Yahoo's 12-month inactivity policy, and sample notifications of such emails were provided which Yahoo asserted would have been received to the Complainant's recovery email addresses.
71. The DPC does not consider it reasonable or appropriate to expect that Yahoo would retain copies of the actual emails sent to the Complainant in this matter in light of the significant time that has elapsed since.
72. In the circumstances, the DPC is of the view it was reasonably likely the automated system would have sent notification emails to the recovery email address the Complainant had configured. This is considered as a mitigating factor at paragraphs 77 - 78 below. However, in the context of Yahoo's transparency obligations under GDPR, it is clear from Article 13(2) GDPR that the information in question was required to be provided to the Complainant *"at the time when personal data are obtained"* and so this information ought to have been provided to the Complainant at the time they signed up for their account with Yahoo. In circumstances where the notification emails would not have been sent to the Complainant until such time as the 12 month inactivity time frame began to draw imminent, these notifications cannot remedy Yahoo's failure to provide this information at the time the Complainant's personal data were obtained in accordance with Article 13(2) GDPR.
73. ***Accordingly, in light of the analysis above, the DPC finds that Yahoo failed to comply with its transparency obligations in the specific circumstances of how the Complainant's account came to be deleted.***

Decision on Infringement of GDPR

74. Following the examination of the Complaint against Yahoo and in light of all the foregoing considerations, the DPC finds that information setting out the specific timeframe following which the Complainant's account would be considered inactive and subject to automated deletion was not provided to the Complainant in a concise, transparent and easily accessible form using clear and plain language as required by Article 12(1) GDPR.
75. However, and as explained at paragraph 67 above, in light of the fact that this information was not incorporated into the privacy policy and that, instead, the Complainant was required to *"actively search for [that information] amongst other information"*, the DPC finds that Yahoo did not "provide" this information to the Complainant within the meaning of Article 13 GDPR. In other

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words, the DPC is of the view that this information cannot be said to have been “provide[d]” to the Complainant at all insofar as that term is to be understood within the meaning of Article 13 GDPR (read in light of the relevant passages of the Guidelines and the WhatsApp Decision referred to above).

76. As a result, the DPC finds an infringement by Yahoo of Article 13(2)(a) GDPR.

Mitigating factors

77. As explained at paragraphs 70 – 72 above, the DPC is of the view it was reasonably likely that the Complainant would have received automated notification emails to any recovery email addresses they had configured, warning them that the deletion of their account was imminent should they fail to sign back in prior to the expiry of the 12-month time period. Although, for the reasons already set out at paragraph 72 above, the DPC does not consider this sufficient to remedy the infringement provisionally identified of Article 13(2)(a) GDPR, the DPC is satisfied that this constitutes a mitigating factor to be accounted for in determining the appropriate envisaged action to take in respect of this Complaint.

78. The DPC also notes that Yahoo’s updated privacy policy¹¹ now makes clear at section 10 (entitled “How long we keep your information”) *“that we keep the content of your email account for as long as your account is active. To keep your account active you must log in at least once every 12 months. If your account becomes inactive, your mailbox will be automatically deleted and cannot be restored. If your account continues to be inactive for a further six months, making it inactive for a total of 18 months, your account will be automatically scheduled for deactivation and deletion by our systems. We will tell you using your alternative communications channel (if you have set one up) before this happens.”* The DPC is satisfied that this also constitutes a mitigating factor to be accounted for in determining the appropriate envisaged action to be taken in respect of this Complaint.

Decision on Envisaged Action to be Taken

79. Section 113(4) of the Act provides as follows:

“Where the Commission adopts a decision under subsection (2)(b) to the effect that an infringement by the controller or processor concerned has occurred or is occurring, it shall, in addition, make a decision—

¹¹ < <https://legal.yahoo.com/ie/en/yahoo/privacy/index.html> >

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- (a) *where an inquiry has been conducted in respect of the complaint—*
 - (i) *as to whether a corrective power should be exercised in respect of the controller or processor concerned, and*
 - (ii) *where it decides to so exercise a corrective power, the corrective power that is to be exercised,*

or
- (b) *where an inquiry has not been conducted in respect of the complaint—*
 - (i) *as to whether an action specified in subsection (6) should be taken in respect of the controller or processor concerned, and*
 - (ii) *where it decides to take such an action, the action that is to be taken.*

80. Accordingly, as no inquiry has been conducted in respect of this Complaint, the possible action(s) which the DPC may decide to take in relation to the infringement(s) identified are those specified in section 113(6) of the Act which provides as follows:

"The actions referred to in subsection (4)(b) include any or all of the following:

- (a) *the serving on the controller or processor concerned of an enforcement notice, requiring it to do one or more than one of the following:*
 - (i) *comply with the data subject's request to exercise his or her rights pursuant to a relevant enactment;*
 - (ii) *where the enforcement notice is given to the controller, communicate a personal data breach to the data subject;*
 - (iii) *rectify or erase personal data or restrict processing pursuant to Article 16, 17 or 18, and, in respect of that action, to comply with Article 19 and, where applicable, Article 17(2);*
- (b) *the issuing of a reprimand to the controller or processor concerned;*
- (c) *the taking of such other action in respect of the complaint as the Commission considers appropriate."*

81. ***In light of the extent of the infringement identified, and having taken into account the mitigating factors set out at paragraphs 77 – 78 above, the DPC issues a reprimand to Yahoo, pursuant to section 113(6)(b) of the Act.***

Judicial Remedies With Respect to Decision of the DPC

82. In accordance with Article 78 of the GDPR, each natural or legal person has the right to an effective judicial remedy against a legally binding decision of a supervisory authority concerning them. Pursuant to Section 150(5) of the Act, an appeal to the Irish Circuit Court or the Irish High Court may be taken by a data subject or any other person (this includes a data controller) affected by a legally binding decision of the DPC within 28 days of receipt of notification of such decision. An appeal may also be taken by a data controller within 28 days of notification; under Section 150(1) against the issuing of an enforcement notice and/or information notice by the DPC against the data controller; and under Section 142, against any imposition upon it of an administrative fine by the DPC.

Signed,



Elizabeth Finn

Deputy Commissioner

On behalf of the Data Protection Commission