

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 der Landesbeauftragte für den Datenschutz und die Informationsfreiheit Baden-Württemberg (Baden-Württemberg DPA) pursuant to Article 77 of the General Data Protection Regulation, concerning TSG Interactive Services (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 11th day of April 2024



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 28 December 2022, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 of the GDPR with der Landesbeauftragte für den Datenschutz und die Informationsfreiheit Baden-Württemberg (“the **Recipient SA**”) concerning TSG Interactive Services (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) of the GDPR, the Recipient SA transferred the complaint to the DPC on 14 March 2023.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject emailed the Respondent on 27 December 2022, to request: access, rectification, erasure, and, restricted processing of their personal data, pursuant to Articles 15, 16, 17, and 18, of the GDPR, respectively. The Data Subject also raised further concerns with the processing of their personal data by the Respondent.
 - b. The Respondent replied on 27 December 2022, indicating the Data Subject’s account on the Respondent’s platform had been closed, but it was unable to proceed with the Data Subject’s erasure request pursuant to Article 17 of the GDPR. The Respondent clarified it was required to retain certain data for a period of six years in order to comply with its legal obligations, as per Article 17(3)(b) of the GDPR.
 - c. As the Data Subject was not satisfied with the response received from the Respondent, they 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. Further to that engagement, it was established that while the Respondent had addressed the Data Subject’s erasure request under Article 17 of the GDPR, it had failed to identify and respond to the Data Subject’s rights requests under Articles 15, 16, and, 18 respectively. In the circumstances, the Respondent agreed to take the following action:
- a. The Respondent wrote to the Data Subject on 15 August 2023, informing them that they had granted immediate access to the requested personal data; and
 - b. To apologise for the failure to identify the Data Subject’s rights requests, and address any outstanding requests; and
 - c. To clarify that as part of its retention policy, the Respondent had restricted processing and access to the Data Subject’s personal data when closing the account. The Respondent noted it would anonymise the personal data associated with the account two years from the closure of the account, and, it would complete the full erasure of any retained personal data on 28 December 2028, after a total retention period of six years. The Respondent also confirmed that it was obliged to retain this information in line with its obligations under financial regulations, as it had a recorded deposit on the account, but that the restrictions placed on the data would prevent access unless required to provide evidence of compliance with its legal obligations, pursuant to Article 18(2) of the GDPR.

8. On 8 September 2023, the Respondent confirmed that it had contacted the Data Subject in this regard, and provided the DPC with a copy of the letter that it had sent to the Data Subject.
9. On 27 September 2023, the DPC wrote to the Data Subject via the Recipient SA, seeking their views on the action taken by the Respondent. This letter issued to the Data Subject on 26 October 2023. In this correspondence, the DPC requested a reply, within a stated timeframe, if they were not satisfied with the information provided by the Respondent, so that the DPC could take further action.
10. On 6 December 2023, the Recipient SA confirmed to the DPC that no response had been received from the Data Subject.
11. On 15 February 2024, 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
 - 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:



Deputy Commissioner
Data Protection Commission