

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Number: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Bavarian Lander Office for Data Protection Supervision (BayLDA) pursuant to Article 77 of the General Data Protection Regulation, concerning [REDACTED]

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 Internal EDPB Document 06/2021 on the practical implementation of amicable settlements (adopted on 18 November 2021)

**RECORD OF AMICABLE RESOLUTION FOR THE
PURPOSE OF INTERNAL EDPB DOCUMENT 06/2021 ON
THE PRACTICAL IMPLEMENTATION OF AMICABLE
SETTLEMENTS, ADOPTED 18 NOVEMBER 2021**

Dated the 9th day of September 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 9 December 2019, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Bavarian Lander Office for Data Protection Supervision (BayLDA) (“the **Recipient SA**”) concerning [REDACTED] (“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 4 June 2020.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent on 10 November 2019 to raise concerns regarding:
 - i. the Respondent’s collection of, use of, and access to, recordings of phone calls made by him to the Respondent’s customer care team on 28 October 2019, and the legal basis relied upon for such recordings;
 - ii. the information provided by the Respondent in relation to its recording of phone calls pursuant to its transparency obligations under GDPR;
 - iii. the personal information requested by the Respondent (namely, the Data Subject’s name, email address and contact number), upon the Data Subject’s objection to his call being recorded, in order to arrange a call back to the Data Subject on an unrecorded line; and
 - iv. the legal basis for requesting that personal information.
 - b. The Data Subject also requested that his call recording containing personal data held by the Respondent be erased, and requested the contact details of the Respondent’s Data Protection Officer.
 - c. As the Data Subject was not satisfied with the response received from the Respondent regarding the concerns raised, the Data Subject lodged a complaint with their supervisory authority.

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 service user and a service provider); and
 - b. The nature of the complaint (in this case, an unsuccessful attempt by the Data Subject to exercise his/her 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 Internal EDPB Document 06/2021 on the practical implementation of amicable settlements, adopted on 18 November 2021 ("**Document 06/2021**"), 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

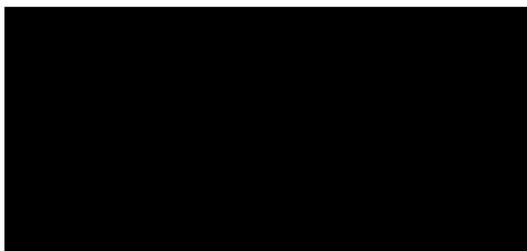
7. The DPC engaged with both the Data Subject (via the Recipient SA) and the Respondent in relation to the subject matter of the complaint. Further to that engagement, the Respondent:
- a. Explained that it was the controller for the personal data of all users within the EEA and Switzerland and its regional organisations, including those located in Germany;
 - b. Provided the Data Subject with contact details of its Data Protection Officer, with information as to where and how they could get in contact with its Data Protection Officer;
 - c. Notified the Data Subject of the reasons for the collection of certain information required in order to facilitate a call back on an unrecorded line;
 - d. Explained to the Data Subject its reliance on Article 6(1)(f) GDPR as the legal basis for the recording of phone calls with users, specifically with regards to the use of these phone recordings for training and evaluation purposes; and
 - e. Confirmed that all call recordings related to the Data Subject had been permanently erased.

8. The DPC wrote to the Data Subject, via the Recipient SA, and invited him to comment on the information and the actions taken by the Respondent as set out above. That letter was issued to the Data Subject by the Recipient SA on 24 August 2021. In the circumstances, the DPC asked the Data Subject to notify it, within two months, if he was not satisfied with the outcome, so that the DPC could take further action. The DPC also requested that the Data Subject provide it with further details in the event that he had any outstanding concerns in respect of the issues raised in his complaint which he did not believe had been addressed by the Respondent.
9. The DPC did not receive any further communication from the Data Subject and, accordingly, the complaint has been deemed to have been amicably resolved.
10. 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

11. For the purpose of Document 06/2021, 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 06/2021 the DPC has now closed off its file in this matter.
12. 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