

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 French Data Protection Authority pursuant to Article 77 of the General Data Protection Regulation, concerning Airbnb Ireland UC.

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 2nd day of December 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 26 September 2020, ██████████ (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the French Data Protection Authority (“the **Recipient SA**”) concerning Airbnb Ireland UC (“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 23 December 2020.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent requesting access to their personal data, particularly a statement of rental activity for their property, which they owned, and which their wife had been subletting out. This statement of rental activity was being sought by the Data Subject in the context of ongoing divorce proceedings.
 - b. The Data Subject was not satisfied with the Respondent’s response to their access request.

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 the information from the account in question, which the Data Subject sought access to, was that of a third party user. In the circumstances, the Respondent took the following actions:
 - a. The Respondent outlined to the DPC that, as the account in question was that of a third party user, the information contained therein is generated because of their activities as the account holder. As such, the Respondent asserted that this data, including financial data, constitutes the personal data of the third party user, and as such the Respondent could not disclose personal data which relates to a third party.
 - b. The Respondent informed the DPC that it had previously offered to facilitate a pass-through notification process for the Data Subject, in which the Data Subject would send the Respondent their request and it would pass it on to the account holder, but that the Data Subject had not taken it up on this offer.
8. On 5 March 2021, the DPC outlined the Data Subject’s complaint to the Respondent. The DPC explained that the Data Subject was seeking a statement of rental activity for 2018, for a property that they claimed they solely own, but which their wife was subletting out. The DPC noted that the Data Subject was requesting this information in the context of ongoing divorce proceedings. On 19 March 2021, the Respondent responded to the DPC. The Respondent informed the DPC that the information sought by the Data Subject relates to a third party account, and a listing that is not co-hosted by the Data Subject. The Respondent continued, noting that, since the account in question is that of a third party user, the information contained therein is generated as a result of the activities of the account holder and therefore constitutes their personal data (including financial data) as the data subject.
9. The Respondent noted that the Data Subject had provided information to it, which they alleged evidences their ownership of the property at issue, along with various allegations about the account holder’s tax and financial affairs. Despite this, the Respondent stated that it could not unilaterally rely on information provided by the Data Subject to disclose personal data relating to a third party. The Respondent noted that, insofar as the information on the

account constituted the personal data of the Data Subject, their right of access to that information is restricted by Article 15(4) GDPR, as the disclosure of this information could adversely affect the rights and freedoms of the third party who is the account holder. The Respondent concluded by asserting that, in cases such as these where a dispute or ambiguity exists, it is not appropriate for it to act as an arbiter of fact.

10. The Respondent stated that it had previously offered to facilitate a pass-through notification process for the Data Subject, in which the Data Subject would send the Respondent their request and it would pass it on to the account holder, but that the Data Subject had not taken it up on this offer. With regards to the information sought by the Data Subject, the Respondent stated that it would require a formal, independent intervention in the form of a court order instructing it to disclose this information before it would do so. The Respondent stated that it believed this to be a reasonable balancing of the present potentially competing rights.
11. On 9 July 2021, the DPC wrote to the Data Subject via the Recipient SA, outlining the response of the Respondent, and providing the Data Subject with its examination of their complaint. In the circumstances, the DPC asked the Data Subject to notify it, within two months, 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.
12. On 14 October 2021, 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.
13. 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

14. 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.
15. 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 that reads "Tom Delaney". The signature is written in a cursive style with a large, prominent 'T' and 'D'.

Deputy Commissioner

Data Protection Commission