

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Data Protection Commission 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 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 18th day of November 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 6 January 2020, ██████████ (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Data Protection Commission (“the **DPC**”) concerning Google Ireland Limited (“the **Respondent**”).
2. The DPC was deemed to be the competent authority for the purpose of Article 56(1) GDPR.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the DPC on 6 January 2020 dissatisfied with the Respondent’s response to their access request.
 - b. The Data Subject requested access to certain categories of metadata relating to photos uploaded on their Google Photos account, including metadata arising out of the Respondent’s processing of their photos for facial recognition purposes, location recognition purposes, searchability purposes and others.

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 Data Subject, 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 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 and Respondent in relation to the subject-matter of the complaint. Further to that engagement, it was established that the Respondent was of the view that its self-service tools provides data subjects with the data that they are entitled to under Article 15 GDPR. However, in the circumstances, the Respondent took the following action:
 - a. The Respondent wrote to the Data Subject directly, providing them with a copy of the requested metadata, to the extent it was available to the Respondent to provide.
 - b. The Respondent provided the DPC with an explanation of what metadata is generated by Google Photos.
8. On 13 May 2020, the DPC outlined the Data Subject’s complaint to the Respondent. The DPC noted that the Data Subject requested access to metadata relating to photos uploaded to their Google Photos account that was created by the Respondent’s processing of said photos, including for facial recognition purposes, location recognition purposes, search ability purposes and other related purposes. On 8 June 2020, the Respondent provided the DPC with a copy of the response it issued to the Data Subject on the same date. In this response, the Respondent outlined that, in its view, the functionality offered by Google Photos provides a data subject with the access required by Article 15 of the GDPR, as it enables direct access to copies of their photos and associated information related to them. Within its response, the Respondent outlined in detail the functionality offered by Google Photos. On 11 November 2020, the DPC outlined the Respondent’s response to the Data Subject. On 23 December 2020, the Data Subject responded to the DPC, outlining further concerns that they wished the DPC to raise with the Respondent.
9. Following further engagement with the Respondent, on 12 November 2021 it confirmed to the DPC that it was in the process of compiling the requested metadata, to the extent it was available for it to provide, and would forward this data to the Data Subject, once they confirmed their email address. Concerning data generated for facial recognition purposes requested by the Data Subject, the Respondent noted that that the processing involved in the face grouping feature of Google Photos is not facial recognition, but rather detects faces as a

'category' of objects, not specific faces. The Respondent stated that the metadata generated by this process is not available to the Respondent, as it is kept exclusively on the user's device. However, the Respondent noted that, to the extent a user assigns labels themselves to these face groupings, these labels are available via its self-service tool, and that the Respondent would provide this data to the Data Subject.

10. On 1 December 2021, the DPC received confirmation from the Respondent that it had contacted the Data Subject directly regarding their complaint and provided the DPC with a copy of the correspondence sent to the Data Subject. In the circumstances, the DPC asked the Data Subject to notify it, within 2 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.
11. 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

12. 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.
13. 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