

Submission by „Facebook Ireland Ltd“ to the Office of the Irish Data Protection Commissioner

Response to Complaint(s) Number: 3 & 11

The following submission by “Facebook Ireland Ltd” is a response to complaints filed by “europe-v-facebook.org” before the Irish Data Protection Commissioner as amended by our “request for a formal decision”. It was received by “europe-v-facebook.org” on September 30th 2013.

The submission starting on page 2 of this PDC does only reflect the view of “Facebook Ireland Ltd” and was not changed or amended. The submissions were likely drafted by Facebook Ireland’s law firm “Mason, Hayes & Curran”. We did not receive any addition documents from “Facebook Ireland Ltd”. All other documents of this procedure can be downloaded on “europe-v-facebook.org”.

After we took a first look at the submissions by “Facebook Ireland Ltd” we want to mention the following points, to ensure that any reader will get the full picture of the procedure:

1. In the submissions Facebook Ireland Ltd does in many cases **not responded to our complaints**, but produced arguments and submissions that are irrelevant to the complaints filed. It seems that Facebook Ireland Ltd is trying to “bypass” the arguments we entertained.
 2. In the submissions Facebook Ireland Ltd does in many cases **summarize our complaints** in a way that does not reflect the content of our complaints. We do not know why Facebook Ireland Ltd has chosen this approach other then again “bypassing” the core of the complaints.
 3. In the submission Facebook Ireland Ltd does not respond to the **legal arguments** that were submitted by us, but only focus on facts. The law is not cited in any of the submissions.
 4. In the past 2 years Facebook Ireland Ltd has changed many functions. In the submissions Facebook Ireland Ltd does in many cases **mix the factual situation** throughout this time period. Our complains are usually separating facts and consequences before and after such changes.
 5. In the submission Facebook Ireland Ltd does in many cases refer to the “**audit reports**”. The basis for these reports is not public or independently verifiable. In many cases the DPC has only relied on unverified arguments by Facebook Ireland Ltd when making its assessment. Facebook Ireland Ltd is now relying on these findings, as if they were independently verifiable facts.
- **Therefore we recommend to consult our original complains, as amended by the “request for a formal decision” [\[DOWNLOAD\]](#) when analyzing the submissions from “Facebook Ireland Ltd”.**

COMPLAINTS 3 AND 11 – TAGGING AND REMOVAL OF TAGS

1. BACKGROUND

1.1. What are tags?

A tag is a special type of link. When a user tags someone, they create a link to that other user's timeline. The post a user tags the person in may also be added to that person's timeline. For example, a user can tag a photo to show who's in the photo or post a status update and say whom they're with. If a user tags a friend in a status update, anyone who sees that update can click on that friend's name and go to their timeline. The user's status update may also show up on that friend's timeline.

1.2. Timeline review and tag review

Posts a user is tagged in can appear in news feed, search and other places on Facebook. Timeline review, which is part of activity log, is a tool that lets users approve or reject posts that they've been tagged in before these posts go on their timeline.

Tags by non-friends automatically go to timeline review; however, users can choose to review all tags before they appear on their timeline by turning on timeline review. This control is easily accessible in the user's settings.

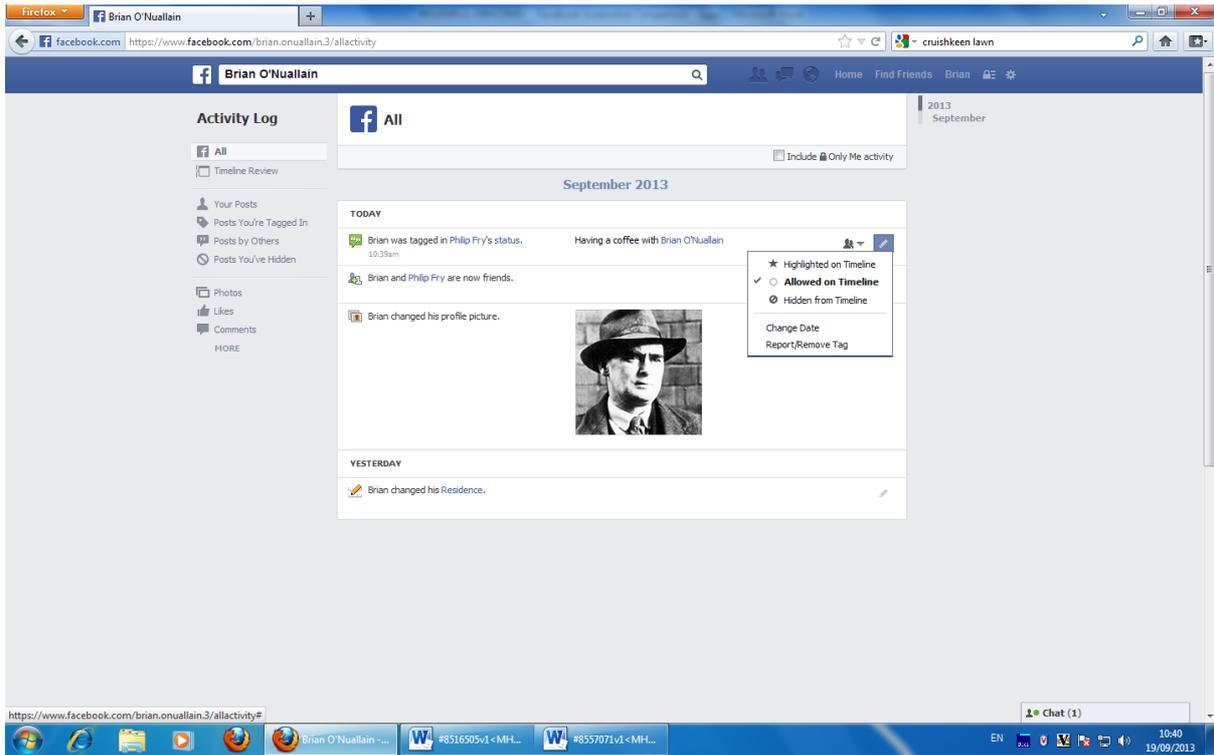
When timeline review is on, the user will get a notification when they have a post to review.

Tag review is an option that lets users approve or dismiss tags that people add to their posts. When the setting is turned on, anytime someone tags a photo or post the user made, that tag won't appear until the user approves it.

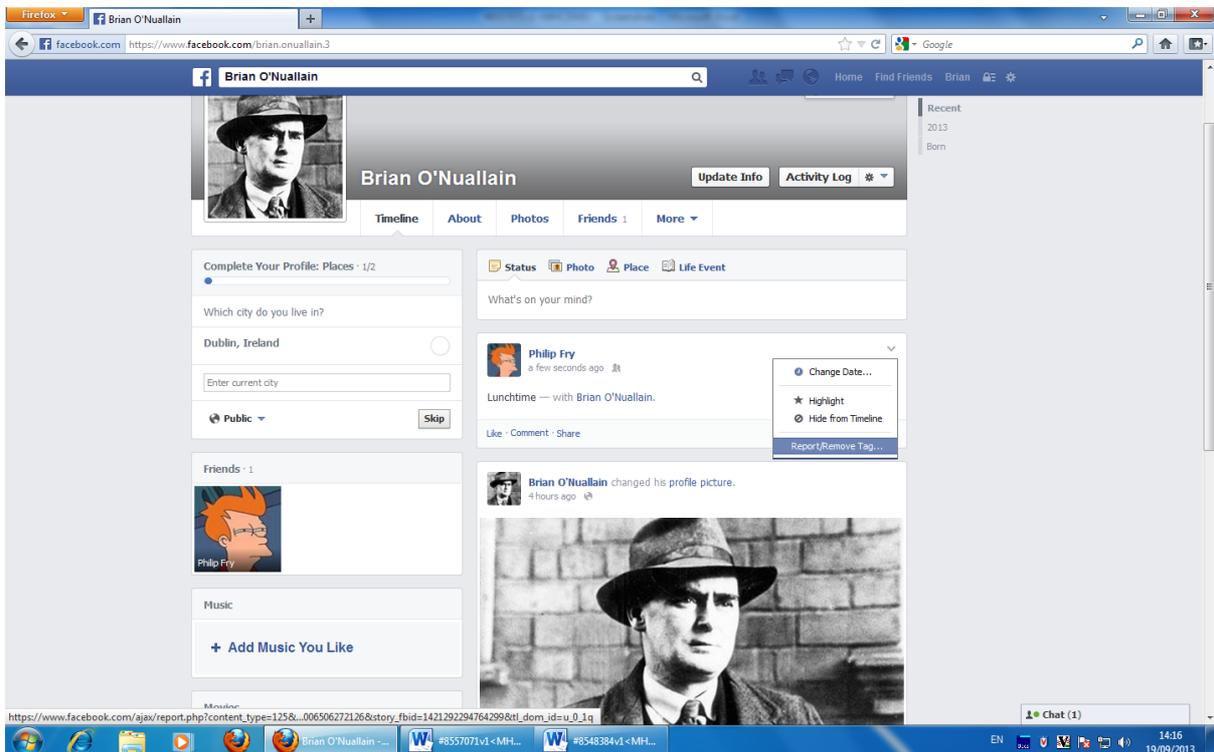
When tag review is enabled, the user will get a notification when he or she has a tag to review. The user can approve or ignore the tag request by going to the content itself.

1.3. Can tags be deleted?

Users can easily delete tags by hovering over a story in the activity log and selecting the Report/Remove Tag option from the dropdown menu. Users can choose to filter the various categories of content on the left hand side of their activity log and select, for example, Photos or Posts You're Tagged In.



Users may also remove tags by selecting the Report/Remove Tags option from the dropdown menu on the post itself.



1.4. Data Use Policy

The Facebook Data Use Policy comprehensively sets out information concerning tagging, removal of tags, the activity log and timeline review:

Information others share about you

We receive information about you from your friends and others, such as when they upload your contact information, post a photo of you, tag you in a photo or status update, or at a location, or add you to a group.

Control each time you post

If you tag someone, that person and their friends can see your story no matter what audience you selected. The same is true when you approve a tag someone else adds to your story.

Control over your timeline

When someone tags you in a story (such as a photo, status update or check-in), you can choose whether you want that story to appear on your timeline. You can either approve each story individually or approve all stories by your friends. If you approve a story and later change your mind, you can remove it from your timeline.

Finding you on Facebook

But remember that people can still find you or a link to your timeline on Facebook through other people and the things they share about you or through other posts, like if you are tagged in a friend's photo or post something to a public page.

Your settings do not control whether people can find you or a link to your timeline when they search for content they have permission to see, like a photo or other story you've been tagged in.

Activity log

Your activity log is a place where you can go to view most of your information on Facebook, including things you've hidden from your timeline. You can use this log to manage your content. For example, you can do things like delete stories, change the audience of your stories or stop an application from publishing to your timeline on your behalf.

When you hide something from your timeline, you are not deleting it. This means that the story may be visible elsewhere, like in your friends' News Feed. If you want to delete a story you posted, choose the delete option.

What your friends and others share about you

Links and Tags

Anyone can add a link to a story. Links are references to something on the Internet; anything from a website to a Page or timeline on Facebook. For example, if you are writing a story, you might include a link to a blog you are referencing or a link to the blogger's Facebook timeline. If someone clicks on a link to another person's timeline, they'll only see the things that they are allowed to see.

A tag is a special type of link to someone's timeline that suggests that the tagged person add your story to their timeline. In cases where the tagged person isn't included in the audience of the story, it will add them so they can see it. Anyone can tag you in anything. Once you are tagged, you and your friends will be able to see it (such as in News Feed or in search).

You can choose whether a story you've been tagged in appears on your timeline. You can either approve each story individually or approve all stories by your friends. If you approve a story and later change your mind, you can always remove it from your timeline.

If you do not want someone to tag you, we encourage you to reach out to them and give them that feedback. If that does not work, you can block them. This will prevent them from tagging you going forward.

If you are linked to or tagged in a private space (such as a message or a group) only the people who can see the private space can see the link or tag. Similarly, if you are linked to or tagged in a comment, only the people who can see the comment can see the link or tag.

Other information

As described in the [what your friends and others share about you](#) section of this policy, your friends and others may share information about you. They may share photos or other information about you and tag you in their posts. If you do not like a particular post, tell them or [report the post](#).

1.5. Help Center

The [Help Center](#) contains a detailed account of how tags work and also provides users with information about [tagging photos](#). Users are provided with information on topics such as ‘tag review’, how to deal with unwanted tags and who can see tags.

2. FACTUAL ASSERTIONS MADE BY COMPLAINANT

The Complainant objects to FB-I’s approval and retention policies with respect to tags. In the Original Complaints, the Complainant alleges the following:

- (a) *Users can not prevent other friends from tagging them in pictures, they have not provided specific consent to the tagging and FB-I seems to only “deactivate” the tags but does not delete them.*

In the Request for Formal Decision¹, the Complainant further alleges that:

- (b) *There is still no way for a user to really delete ‘tags’; FB-I still retains “removed” tags and uses them for targeting ads, ‘friend suggestions’ or other data processing; and there is no justification for the retention of such deleted tags.*

FB-I rejects both these allegations as factually groundless.

3. AUDIT PROCESS

3.1. 2011 Audit Report

In the 2011 Audit Report, the DPC set out the Complainant’s allegations in the following terms:

3.4.2 Complaint 3 – Tagging

Complaint 11 – Removal of Tags

The complaint stated that Friends on Facebook have the facility to ‘tag’ photos of another user (friend) and display them on their Facebook page and within the ‘news feed’ section. The complainant contends that if the user decides to remove a ‘tag’ it is not deleted and is retained in the background by Facebook. The broader data protection compliance of tagging is considered elsewhere in the report.

Both the ‘tagged’ user and the ‘tagging’ user have the option to subsequently remove the ‘tag’ if they wish. However, the complainant contended that removing the tag is not deleting the tag data and that Facebook is not being transparent in terms of informing users on the retention of this information following the use of the ‘remove tag’ option.²

...

¹ Pages 49 to 53 and 114 to 116 of the Request for Formal Decision

² Page 69 of the 2011 Audit Report

3.12.1 *Complaint 3 – Tagging the complainant stated that friends on Facebook have the facility to ‘tag’ photos of another user (friend) and display them on their Facebook page and within the ‘news feed’ section. The complainant contended that Facebook does not provide an option to users to prevent them from being ‘tagged’ and that the ‘tagged’ item is on their Facebook page before they are aware of it. The complainant stated that the only option available to the ‘tagged’ user is to subsequently remove the ‘tagged’ item after it has appeared and, as the photo is automatically available to the user’s friends, the content may be of embarrassment to the user.*

The complainant also contended that if the user decides to remove the ‘tag’ it is not deleted and is retained in the background by Facebook. This aspect is dealt with elsewhere in this report.

The complainant considered Facebook to be in breach of data protection legislation as the data subject has not provided consent to have their photo ‘tagged’.

In response to the specific issue of ‘tagging’, Facebook indicated that it has recently introduced a feature which allows users to approve or remove ‘tags’ before they are posted on their profile. Facebook stated that it has always had and continues to provide the option for users to remove previously ‘tagged’ items³.

The DPC reviewed the transparency and control of data retention by FB-I, noting the following:

From the control perspective, at present there is no facility for a user to delete friend requests, pokes and tags.⁴

The response of FB-I concerning the saving of removed tags for bullying and harassment purposes was reiterated by the DPC in the 2011 Audit Report:

FB-I’s response on these complaints highlighted that it retained such information for what it termed various important purposes to provide the best possible experience to users. For example, it stated it needs to save removed pokes in order to assist in identifying instances of bullying and harassment FB-I saves rejected friend requests so that the same user cannot continue to send friend requests; FB-I uses removed friends data to ensure that the removed friend isn’t surfaced as a friend suggestion to the user; and FB-I uses removed tags to prevent the user from being re-tagged in the photo. FB-I has pointed out that this has been developed based on the comments and requests from their users. FB-I points to its Data Use Policy to demonstrate that it is transparent about the purposes for which it uses the data it receives.⁵

The DPC also recognised the novel activity log feature which FB-I was introducing alongside the move to Facebook’s new profile, “timeline”. FB-I was in the process of phasing in this functionality at the time of the 2011 audit to provide greater transparency and control to users:

FB-I noted that it has already made changes to its service to improve visibility to users of data that previously was not visible. Facebook’s new profile, called “Timeline”, has a feature called “Activity Log,” on which many of the user’s actions around Facebook can now be viewed privately by the user. Since “Activity log” is only visible to the user, FB-I has proposed to use this feature as a means for users to access, review and delete their own data. Building the Activity Log was, according to FB-I, an involved and lengthy engineering task, but FB-I is committed to add further data to the log and to give users the ability, where appropriate, to delete, if not all, then most of the data. However, as stated in the Section on Access, “transparency is a core value of FB-I. FB-I believes that our users are entitled to have easy and effective access to their personal information. To achieve this goal, we shall endeavour not to unnecessarily use or retain the personal data of users where such data cannot be made easily available to the user.” FB-I has also in this respect undertaken a policy of allowing users maximum control over their data and to the maximum extent possible will be extending an ability to delete on a per item basis individual data items. Given the size of the engineering task, FB-I has agreed to begin working on the project during Quarter 1 of 2012. FB-I has committed to showing demonstrable progress by our July 2012 review.⁶

³ Page 127 of the 2011 Audit Report

⁴ Page 71 of the 2011 Audit Report

⁵ Page 71 of the 2011 Audit Report

⁶ Page 71 of the 2011 Audit Report

The DPC made best practice recommendations based on its review of Facebook tags. The DPC recommended that users be given an enhanced ability to delete, among other things, tags.⁷ In response to this recommendation FB-I agreed to implement:

[A] policy of allowing users maximum control over their data and to the maximum extent possible will be extending an ability to delete on a per item basis individual data items.⁸

This is a reference to the activity log which, as noted above, provides users with an enhanced ability to delete tags.

For the sake of completeness, FB-I notes that the DPC also separately recommended that FB-I provides additional information to users in relation to what happens to deleted or removed content, such as tags.⁹ This recommendation was subsequently implemented to the satisfaction of the DPC.¹⁰

In the 2011 Audit Report, the DPC further considered the issue of tagging at pages 127 to 128.

First, the DPC set out the operation of tagging on the Facebook platform:

If however a member tags a picture or a comment, post etc with a tag identifying a friend, an association with the friend is made and they are sent a notification of the tag with an ability to remove it. In fact as tags generate an automatic notification to a friend they are used by many members as an automated means to notify a friend of something via the tag even if the content is completely unrelated to that person. In the Retention section of this report we have outlined the measures that will be introduced to allow a user to delete such tags subsequently if they wish to do so.¹¹

Further to the examination of retention set out above, the DPC reviewed the method by which users can prevent themselves being tagged in pictures and made a best practice recommendation:

For those members who do not wish to be tagged at all, it is the case that at present there is no ability for them to express their preferences. However, a user can stop another individual user from tagging him or her by blocking that individual user. While preventing the tagging of yourself would mean that you would be less likely to become aware of a picture, post or comment in which you are referenced, there does not appear to be a compelling case as to why a member cannot decide to prevent tagging of them once they fully understand the potential loss of control and prior notification that comes with it.¹²

3.2. Update Report

In advance of the 2012 Audit Report, FB-I provided its Update Report which contained an in-depth review of the activity log and changes to data retention practices, particularly with regard to the enhanced control provided to users by the activity log:¹³

2.5 Transparency and Control

The transparency and control offered by Facebook's Activity Log feature is a major accomplishment. This is one of the most innovative and unparalleled offerings in the social media industry and clearly demonstrates FB-I's commitment to integrating transparency and control over data into the Facebook experience. This feature was introduced prior to the audit, but has been further developed and elaborated over the past six months in response to the audit, including adding the feature to the profiles of users who still have not transitioned to timeline. Activity Log, which is visible only to the user herself, presents users with a detailed and comprehensive look at all of their activity on Facebook since the beginning of their accounts. Users can sort by activity type, e.g.,

⁷ Page 78 of the 2011 Audit Report

⁸ Page 71 of the 2011 Audit Report

⁹ Page 78 of the 2011 Audit Report

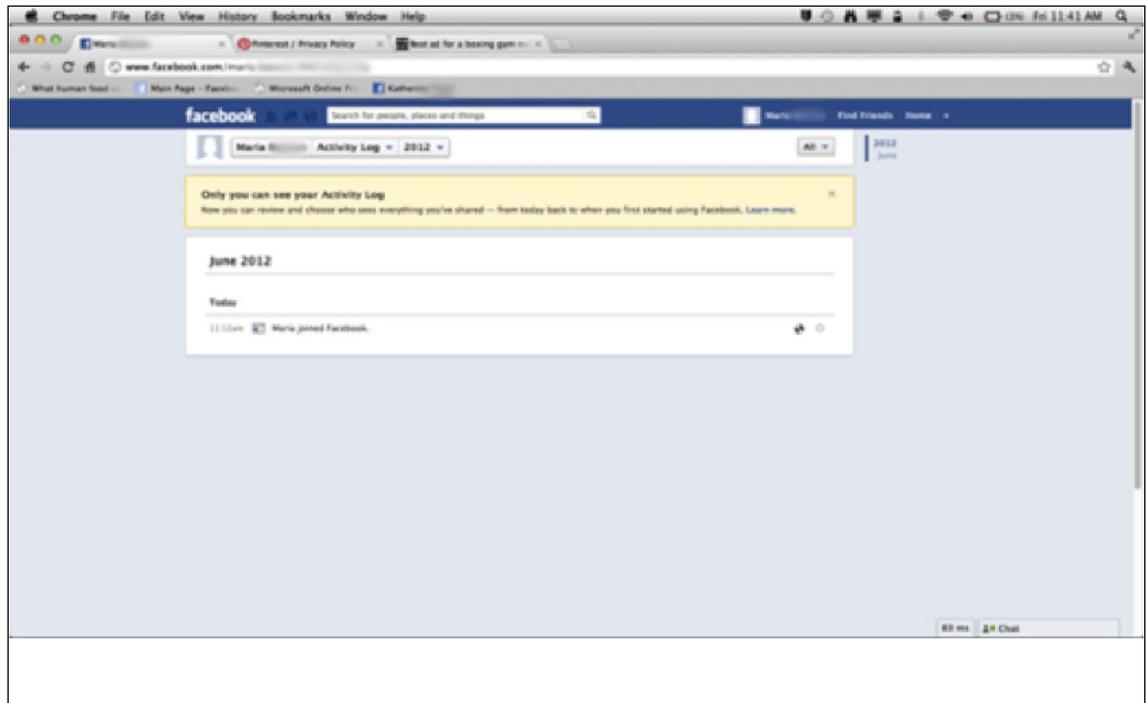
¹⁰ Page 27 of the 2012 Audit Report

¹¹ Page 127 of the 2011 Audit Report

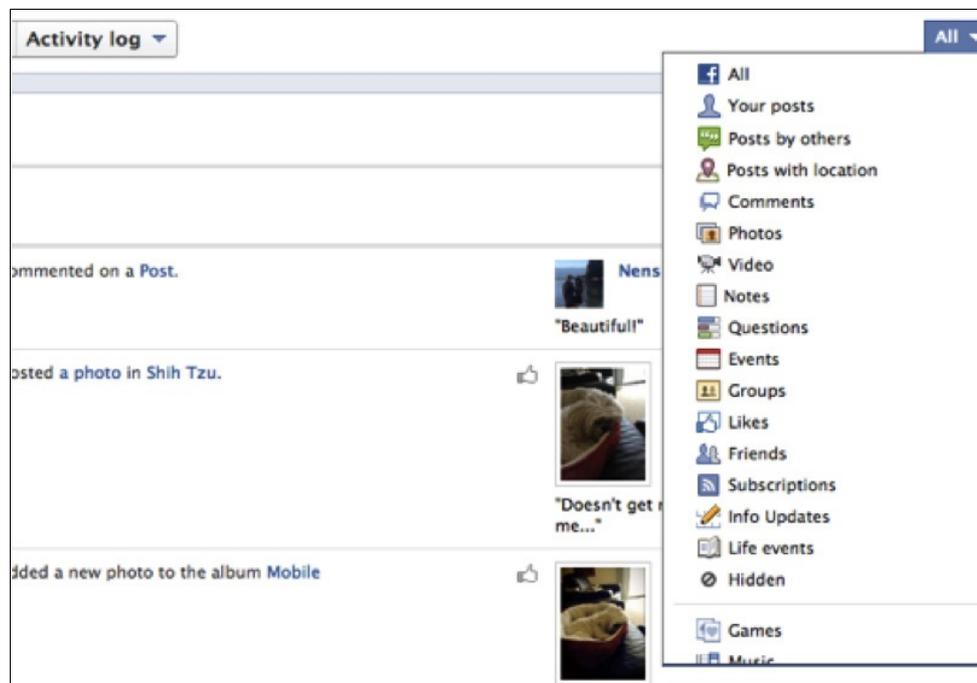
¹² Page 127 of the 2011 Audit Report

¹³ Pages 17 to 21 of the Update Report

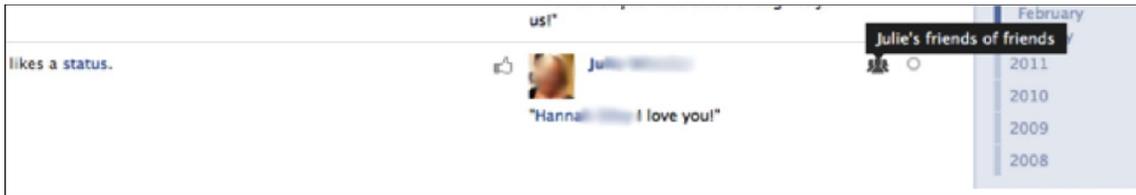
"comments", "status updates", "likes", or can search the Activity Log using keywords. Users can also jump to any month and year to view the activity during that time period. Further, the Activity Log provides users the ability to see in one place the visibility setting of their activity and the objects they interacted with, as well as the ability to change the visibility, remove from timeline, or delete the activity. The Activity Log shows whether a user added location to a post and whether the post received comments. The Activity Log is extremely easy and intuitive to navigate—a user need only hover with his cursor over any part of the log to learn what it means. See screenshots below:



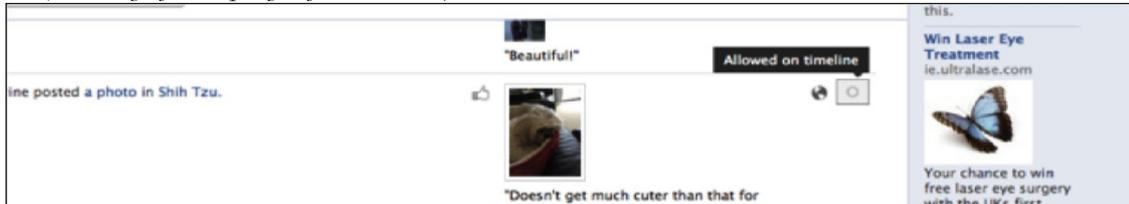
(new user's first time in Activity Log)



(Sort by activity)



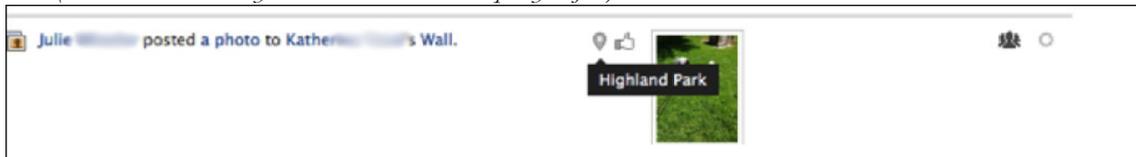
(Visibility of third-party object user liked)



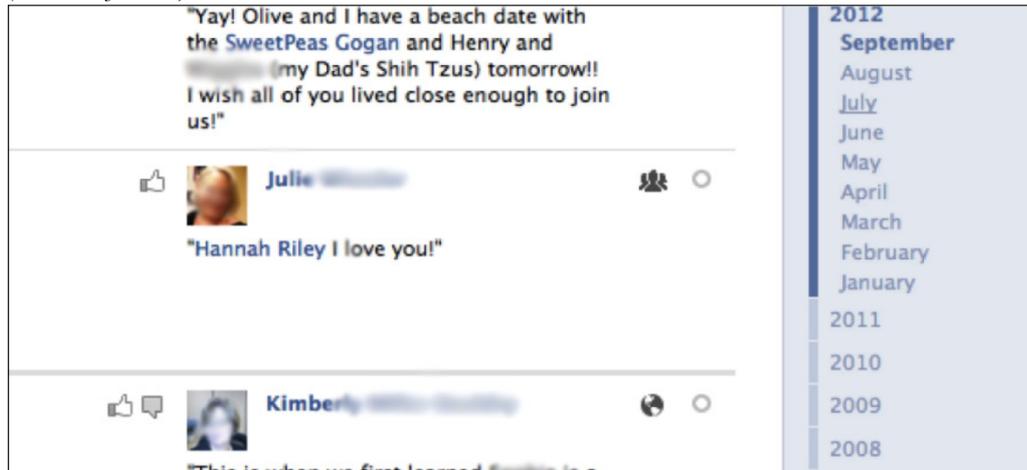
(whether action appears on user's timeline)



(whether there are any comments on the third-party object)



(location, if added)



(can easily jump to a period earlier in time)

Additionally, users who first visit the Activity Log are provided an Activity Log educational tour. See screenshots below.

Chrome File Edit View History Bookmarks Window Help

Home - Google Docs Information - Google Docs Inbox (2) - Katherine... Rancho La Puerta >> Your... Katherine...

https://www.facebook.com/katherine.../activity

facebook Search for people, photos and things Katherine... Home

Activity log 2012 Activity Search Posts and Apps

Sponsored by Las Vegas Condos For Sale

Only you can see your Activity Log
Now you can review and choose who sees everything you've shared — from today back to when you first started using Facebook. You can see comments you've made, photos and posts you've liked and more. Learn more.

Skip Year Start Year

July 2012

4 July

10:23 Katherine shared a link.
Read more... "What to the Slave is the Fourth of July?" 5 July 1812 - JPM.com
"The best speech ever. I read it every year on July 4th."
http://jpm.com/colleges/colleges.html

12:49 Katherine wrote on @tag's timeline.
"Happy Birthday Julia! I hope you have a great day!"

11:30 Katherine listened to Grey Room - Live At Fingerprints by Damian Rice on Spotify.
Grey Room - Live At Fingerprints Damian Rice

11:29 Katherine listened to Grey Room Intro - Live At Fingerprints by Damian Rice on Spotify.
Grey Room Intro - Live At Fingerprints Damian Rice

11:25 Katherine listened to Coconut Skins - Live At Fingerprints by Damian Rice on Spotify.
Coconut Skins - Live At Fingerprints Damian Rice

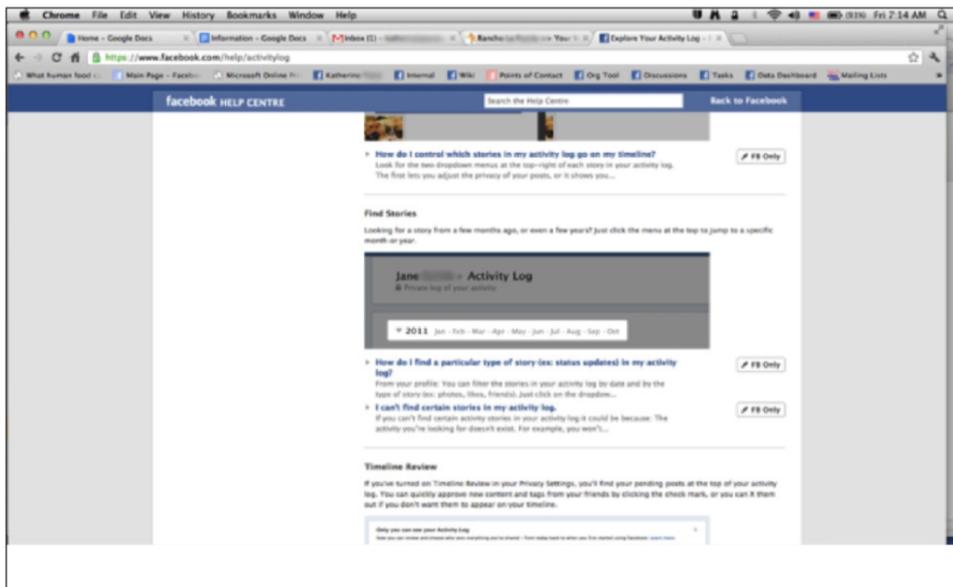
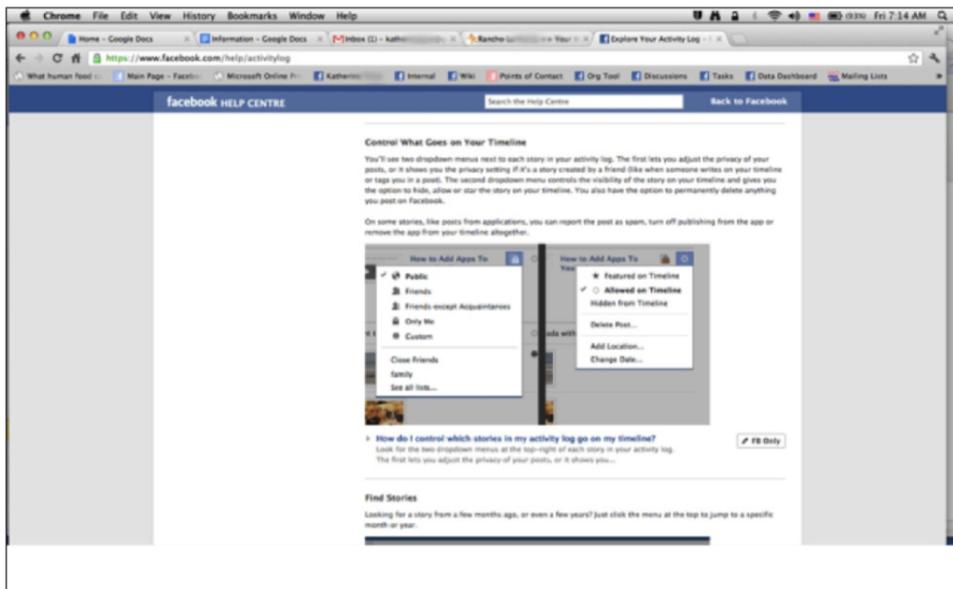
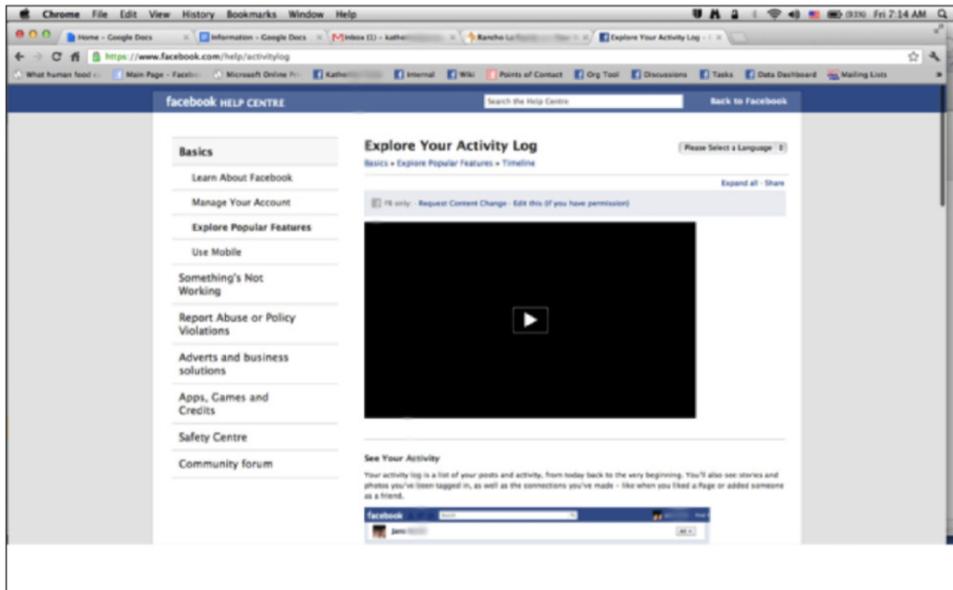
3 July

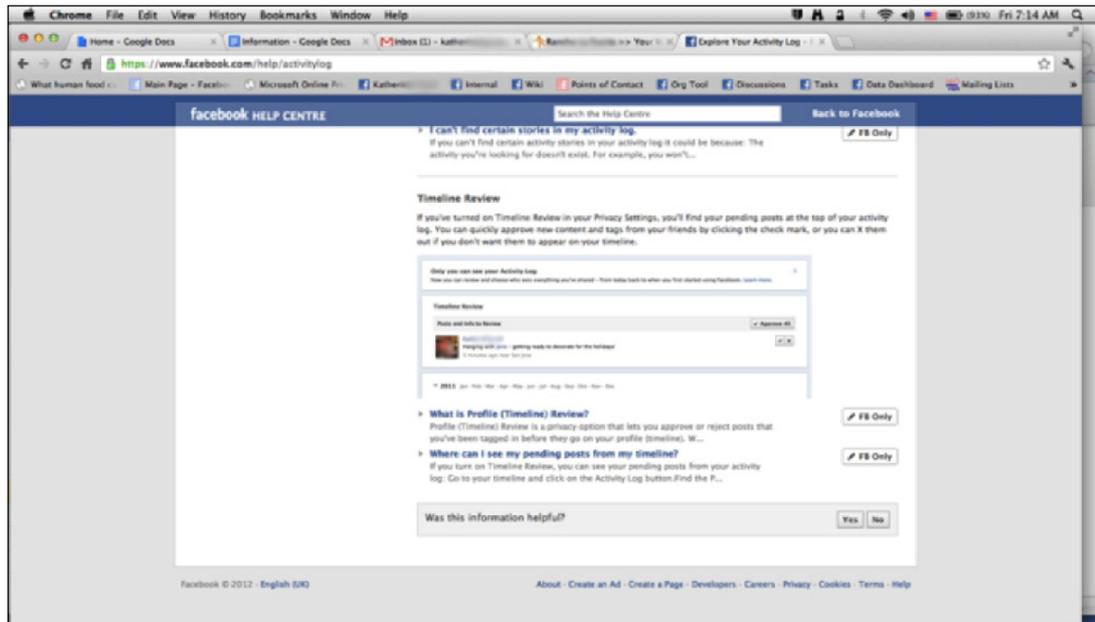
Ready for a healthy challenge? Get started here. 7,000 people used HealthShare with Friends.

2012
2011
2010
2009
2008

1968 ms

Go online to see who's online to chat.





The Update Report went on to note:¹⁴

Chapter 5 — Data Retention

The Report of Audit stated: "Data retention is a standard issue considered during the course of all audits conducted by this Office. Section 2(1)(c) of the Data Protection Acts 1988 & 2003 provides that a data controller shall not retain personal data longer than is necessary for the purpose or purposes it was obtained. In determining appropriate retention periods for personal information, data controllers can have due regard to any statutory obligations to retain data. However, if the purpose for which the information was obtained has ceased and the personal information is no longer required for that purpose, the data must be deleted or disposed of in a secure manner. Full and irrevocable anonymisation would achieve the same objective. Given the nature of the retention obligation which can be subjective in many respects, the identification of acceptable retention periods is one of the more discussed and debated issues in the conduct of audits and investigations by this Office."

The DPC further noted, "The complexity of an information society service such as FB-I makes it a continuing challenge for it to define and identify data which can be considered to be personal data and apply appropriate retention periods to each category of such data. FB-I has committed to do so on an ongoing basis."

"FB-I has noted that its success depends upon constantly innovating and constantly providing better and better experiences for users. At its most basic formulation, this includes showing users the information that they most are interested in, whether it be content from their friends or others or music or news shared by others or advertisements that are most relevant to them. It also includes shielding users from negative experiences like multiple unwanted friend requests, or harassment or bullying of any kind."

FB-I has highly complex systems to provide such positive experiences and block negative ones. Most of these systems require that FB-I retain user data. Such data is used for the purpose of providing the service users expect when they come to Facebook. FB-I expresses this explicitly in its Data Use Policy:

We use the information we receive about you in connection with the services and features we provide to you and other users like your friends, the advertisers that purchase ads on the site, and the developers that build the games, applications, and websites you use. For example, we may use the information we receive about you:

- *as part of our efforts to keep Facebook safe and secure;*

¹⁴ Pages 38 to 39 of the Update Report

- *to provide you with location features and services, like telling you and your friends when something is going on nearby;*
- *to measure or understand the effectiveness of ads you and others see;*
- *to make suggestions to you and other users on Facebook, such as: suggesting that your friend use our contact importer because you found friends using it, suggesting that another user add you as a friend because the user imported the same email address as you did, or suggesting that your friend tag you in a picture they have uploaded with you in it.*

Granting us this permission not only allows us to provide Facebook as it exists today, but it also allows us to provide you with innovative features and services we develop in the future that use the information we receive about you in new ways.

FB-I's policy is to make data retention decisions in conformity with Irish law based on its understanding of the expectations of the people who use Facebook as well as the length of the time that it needs the data to provide a quality experience on Facebook and to understand and improve the service it offers.

FB-I noted that its retention policies in any of these contexts may be over-ridden by a legal requirement, a regulatory obligation, or an ongoing investigation into abuse, but only for as long as that reason lasts."

Indeed, FB-I has spent the past six months evaluating all of the personal data of users that it receives precisely to determine whether a set retention period is appropriate or whether retention should be approached more flexibly—something to be evaluated on a regular basis to ensure that the purposes for which FB-I has the consent of users to use the data still exist.

5.1 Retention of Log of "Removed" Data

In the Report of Audit, the DPC noted the specific complaints by the "Europe v. Facebook" group to the retention of data that appeared to the group to have no purpose after a user "removed" the data from his or her profile. Such data included: removed tags, removed friends, former groups, and deleted posts. FB-I's response noted that it saved removed pokes, tags, groups and friends for user experience reasons, but agreed that it could provide greater transparency to users and greater control where possible over the deletion of data.

FB-I still regards it as a necessity to retain data related to actions users take, like removing tags and removing friends—this enables FB-I to prevent re-tagging after a user has expressed a desire not to be tagged and prevent the suggestion to a user to friend someone he or she has removed as a friend. However, FB-I now provides users with access to this stored data, as well as other actions, such as "unliking" a page the user previously liked. From the Activity Log, where this data is displayed, users can also delete the data if they so wish albeit in doing so they may be re-tagged in the content.

FB-I also specifically summarised the matter of tagging, setting out consent, the method of control and the importance of tagging on the Facebook in its Update Report:¹⁵

Chapter 13 — Tagging

The DPC examined the complaint by the group Europe v. Facebook, in which the complainant argued that FB-I was in breach of data protection law because users do not provide consent to be tagged. The DPC recommended, and FB-I agreed, that FB-I consider whether there were any additional controls that FB-I could offer and whether an "opt out" of tagging altogether would be feasible. FB-I did consider these questions. FB-I reviewed all of the current tagging controls that it offers. Tagging is an integral feature of the Facebook service — and one that FB-I has designed to be privacy protective by enabling a user to know when others are referring to him or her within the Facebook service and enabling him or her to take action if he or she prefers not to be mentioned.

¹⁵ Pages 68 to 70 of the Update Report

Tagging is a core functionality of the Facebook service. Users have numerous controls over the tool, including the ability to review tags before they appear on a user's timeline, to un-tag photos, to review tags other users have added to the user's posts, and to control who can see posts the user has been tagged in on their own timeline.

13.1 Consent

Facebook users agree to the Statement of Rights and Responsibilities and the Data Use Policy when they register for an account. The Data Use Policy contains a section about tagging. See below and <https://www.facebook.com/about/privacy/your-info-on-fb#friendsshare>.

Links and Tags

Anyone can add a link to a story. Links are references to something on the Internet; anything from a website to a Page or timeline on Facebook. For example, if you are writing a story, you might include a link to a blog you are referencing or a link to the blogger's Facebook timeline. If someone clicks on a link to another person's timeline, they'll only see the things that they are allowed to see.

A tag is a special type of link to someone's timeline that suggests that the tagged person add your story to their timeline. In cases where the tagged person isn't included in the audience of the story, it will add them so they can see it. Anyone can tag you in anything. Once you are tagged, you and your friends will be able to see it (such as in News Feed or in search).

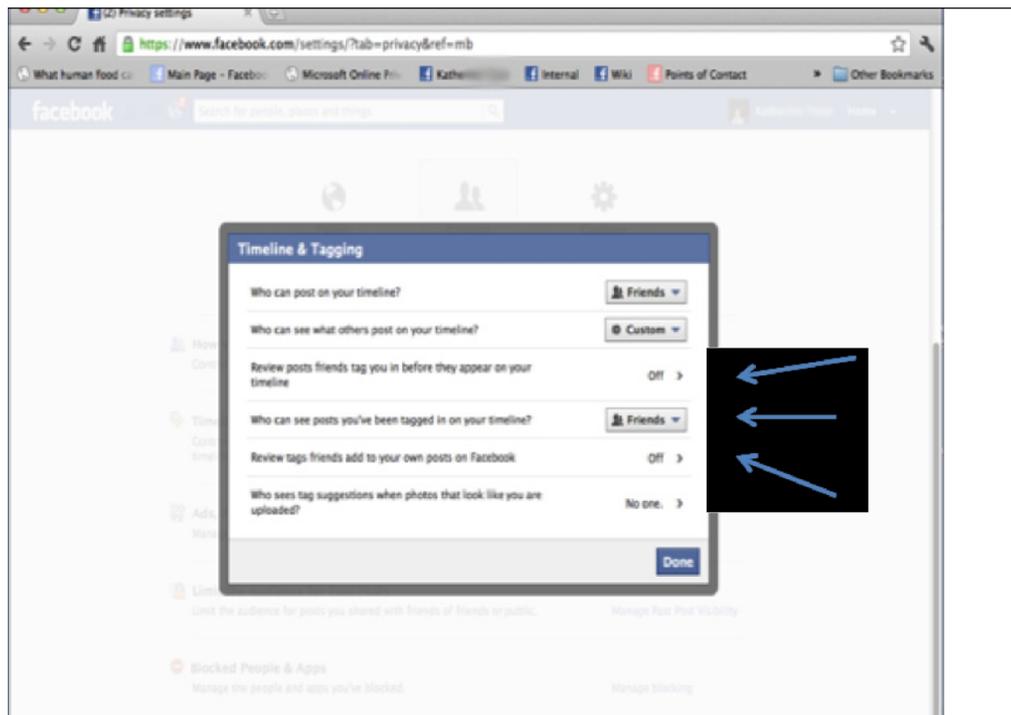
You can choose whether a story you've been tagged in appears on your timeline. You can either approve each story individually or approve all stories by your friends. If you approve a story and later change your mind, you can always remove it from your timeline.

If you do not want someone to tag you, we encourage you to reach out to them and give them that feedback. If that does not work, you can block them. This will prevent them from tagging you going forward.

If you are tagged in a private space (such as a message or a group) only the people who can see the private space can see the tag. Similarly, if you are tagged in a comment, only the people who can see the comment can see the tag.

13.2 Control

FB-I also offers users significant control over tagging. Tagging is to a significant degree pro-privacy — it is the main way users learn that photos in which they appear and content in which they are mentioned have been posted to Facebook and thereby made available for others to see. Users are notified each time they are tagged, at which time users can view the content and un-tag themselves if they want. Once un-tagged, the content is not hyperlinked to the user's profile/ timeline. Furthermore, users can choose to preview the tagged content and give approval before such content appears on their own timeline; they can choose who can see tags on their timelines; and they can review tags that others add to their posts on Facebook. See screenshots below.



13.3 Tagging as an Integral Product Feature

Tagging is core activity on Facebook and has been positively received by Facebook users. Tagging is an important tool for connecting, sharing, and communicating on Facebook. Tagging has emerged on Facebook as a short-hand way of sharing something with a specific person or people, along with the wider audience the user's content is visible to. With users having an average of over 100 friends, it is increasingly difficult to make sure that any one particular person is aware of content a user has posted. Because users receive notifications of tags, users are more likely to see content that others want them to see.

Furthermore, on the Internet in general, there is no easy way for people to learn when someone has commented about them, uploaded a photo that includes them, or created other content that includes descriptions of them. And even when people do become aware of such content, there is often no way for them to learn the identity of the author or request that content be modified, corrected, or deleted. Facebook users, on the other hand, have much greater awareness and control. They receive notifications when they have been tagged, and they have the ability to un-tag themselves. Tagging enables users to get informed immediately when someone mentions them in a post or a photo. It gives users more control, since they can react positively, express their discomfort and ask for the removal of the content if they wish, or simply respond to a post in which they are mentioned.

As tagging has expanded, FB-I has been sensitive to those users who may want more control over the process. Thus, FB-I offers users: 1) notice of tags; 2) the ability to pre-approve tags before they appear on their timelines; 3) the ability to un-tag; 4) the ability to simply block the tag from appearing on the user's own timeline; and, furthermore, the ability to completely delete the "un-tag". Furthermore, if a user feels in any way harassed by unwanted tags, the user can block the person, which will prevent that person from being able to tag him or her. FB-I believes that it has struck the right balance in terms of product development and user control.

3.3. 2012 Audit Report

In the 2012 Audit Report, the DPC confirmed that, contrary to the Complainant's allegations, it was satisfied that deleted items were not being retained by FB-I and are, in fact, deleted:

As noted earlier in this Report, a user's activity log provides them with a means to control individual items of content associated with their Facebook account. This control also allows for the deletion of individual items of content. As previous concern had arisen as to whether items marked for removal were in fact deleted, specific items

were selected from an Activity Log and the delete option was selected. We assessed whether such items were in fact deleted. This was done by way of functional testing using DYI to verify what had been deleted, and it was confirmed that the deletion framework applied to account information is also applied to such data items.¹⁶

The DPC noted that FB-I had provided enhanced control to users, allowing the deletion of specific items of data. The DPC accepted that should a user choose to delete tags, some of the protections given by the stored content, such as re-tagging, may be lost:

Individual deletion of specific items of data associated with a user perhaps go to the core of the need to identify an appropriate balance between data protection views as to what would be acceptable periods to hold personal data that would meet the requirement to only hold it for as long as is necessary and the desire on the part of FB-I to serve what it perceives to be its users' needs. FB-I retains friend requests and tags after a user has removed them for the reason that it is seeking to protect the user from re-tagging, re-poking, and re-friending. Following extensive engagement, this Office and FB-I agreed that user control in this area could be extended so as to enable users to delete such items on a per-item basis. Such deletion may remove some of the protections and functionality which retaining this information provided to an individual user. From the Activity Log, where this data is displayed, users can now delete the data if they so wish.¹⁷

On the specific matter of tagging, the DPC reviewed the consideration of tagging contained in the 2011 Audit Report:

2.12 Tagging

The use of Tags was considered in detail in our December Audit. We had sought to understand the use case for Tags and the potential privacy issues that arise from a Tag that is attributed by one friend to another. Tagging a friend notifies that friend that they are so tagged and then they can take various actions in relation to that Tag if they so wish. Placing the name of a person who is not a friend on a Tag does not cause any association to be made. As explained in the December Audit, "A tag can be placed on any object and a name attributed to it. For instance a picture of the Eiffel Tower can be tagged with "Eiffel Tower" or indeed any other tag a user wishes to put on it. The tags themselves as they have no separate logic attaching to them are not associated with a particular user. If however a member tags a picture or a comment, post etc with a tag identifying a friend, an association with the friend is made and they are sent a notification of the tag with an ability to remove it"¹⁸.

The DPC re-stated the best practice recommendation it made in the 2011 Audit Report, as set out above at Section 3.1. It noted its satisfaction with the various tools available to users to manage tags and control tagging:

We were aware from our discussions during the December Audit that FB-I had detailed reservations over introducing an ability for a user to prevent tagging of them by their friends due largely to the loss of control that would arise for the person. Equally it was FB-I's view that Facebook users fully understood how Tags worked and were interacting with them in a way that illustrated this. In this respect at the request of this Office it provided a breakdown of Tag usage for US based users on a single day in July 2012:

Users tagged = approx 14 million per day

Users rejecting tag = approx 44 thousand per day

Photo tag created = approx 3.7 million per day

Photo tag deleted = approx 830 thousand per day

In its Update Report FB-I stated "As tagging has expanded, FB-I has been sensitive to those users who may want more control over the process. Thus, FB-I offers users: 1) notice of tags; 2) the ability to pre-approve tags

¹⁶ Page 43 of the 2012 Audit Report

¹⁷ Page 23 of the 2012 Audit Report

¹⁸ Page 47 of the 2012 Audit Report

before they appear on their timelines; 3) the ability to untag; and 4) review tags others add to one's own posts. Furthermore, if a user feels in any way harassed by unwanted tags, the user can block the person, which will prevent that person from being able to tag him or her. And finally, Facebook introduced the ability to remove the record of a removed tag altogether in the user's Activity Log. FB-I believes that it has struck the right balance in terms of product development and user control. "

These figures would indicate that users are interacting in a fully informed way with how tags work in practice. We are also not aware of inappropriate uses of Tags that have not been resolved using the person-to-person tools provided by Facebook in the first instance or by recourse to user operations via a complaint. It will also be noted that we asked FB-I to include Tagging as one of the priority items in the new user/existing user education that is outlined in the Data Use Policy/Consent Section of this Report. Finally and importantly a user can at anytime now delete a Tag via their Activity Log and the record of the Tag will be irrevocably deleted. Taking account of the above therefore we are not requiring the introduction of an ability to prevent Tagging at this time.¹⁹

4. APPLICATION TO CURRENT COMPLAINT

In light of the above, FB-I responds to the Complainant's specific factual allegations as follows:

- (a) *Users can not prevent other friends from tagging them in pictures, they have not provided specific consent to the tagging and FB-I seems to only "deactivate" the tags but does not delete them.*

As set out in Section 3.3 of this Response, the DPC was satisfied that tags deleted in the activity log are not retained by FB-I. The DPC also noted the various tools available to users to manage tags and control tagging. Given the availability of these tools, the DPC did not recommend that FB-I introduce an ability to prevent tagging.

In the Request for Formal Decision²⁰, the Complainant further alleges that:

- (b) *There is still no way for a user to really delete 'tags'; FB-I still retains "removed" tags and uses them for targeting ads, 'friend suggestions' or other data processing and; there is no justification for the retention of such deleted tags.*

As noted above, a user can delete tags via their activity log.

¹⁹ Pages 47 to 48 of the 2012 Audit Report

²⁰ Pages 49 to 53 and 114 to 116 of the Request for Formal Decision