

Billy Hawkes
Data Protection Commissioner
Canal House, Station Road
Portarlinton, Co. Laois
IRELAND

Maximilian Schrems

[REDACTED]

[REDACTED]

AUSTRIA

Vienna, July 15th 2012

Complaints against Facebook Ireland Ltd

Dear Mr Billy Hawkes,

I am writing to you on behalf of “europe-v-facebook.org” concerning the complaints we have filed with your office against “Facebook Ireland Ltd”. We unfortunately have to inform you that we are deeply concerned about the fairness of the ongoing procedure and the possible outcomes. In your function as the DPC, we understand that the final decision on these issues will be made in your name and under your personal responsibility. This is why we send you this letter, which we hope, will enable us to overcome these concerns.

Unfortunately we had to experience the lack of a formal procedural law which would outline the basic rights and moves during this process. We understand that this puts the ODPC in the unpleasant position where deadlines, the legal moves and some of the procedural rights have to be decided by the responsible officer, since there are no explicit provisions on the Irish Data Protection Act. We understand that this is not desirable for the ODPC and we think that we have demonstrated a lot of understanding for this situation by trying to raise the issues in a constructive and direct way.

We know that many issues might have come up in this procedure for the first time, since it might be one of the first instances in the history of the ODPC that there are two rather active parties involved in a proceeding which results in triangle of interests. This is of course much harder to balance than a “normal” investigation into a cooperation that is done only by the ODPC.

As you know, we have been in very intense contact with your office over the past year. This has not always been very easy for us, since the ODPC's responses were sometimes incomplete, unclear or changing over time. We tried our best to agree on a roadmap that would allow us to have an effective and fair proceeding before the ODPC. We even went to Ireland in order to meet with the responsible officer and his colleague and talk about the issues directly.

We have been trying to bring this lengthy proceeding to an end and file the requests for a formal decision as outlined in the roadmap we agreed on with your office. But after intense discussions within our group, as well as with our Austrian and Irish lawyers, we have decided that **we will not further engage in the proceeding under the current circumstances.** We hope that you take this letter very seriously and that you understand our concerns. We also hope that we can find a good and fair solution to our concerns, which will allow us to go on with a constructive and proper proceeding.

We feel that we are currently **not taken as a serious party with equal rights in the proceeding before the ODPC.** Our procedural chances to make meaningful and relevant claims do currently not exist. At the same time the ODPC is surely giving the other party (Facebook) all possible procedural options. **We therefore reasonably feel that we are treated unfair and unequal compared with Facebook.** We believe that the ODPC privileges Facebook to an extent that we cannot, and will not, accept. To summarize the reasons why we believe so, I want to highlight some of the moves by the ODPC during the last year:

1. First Report

The first “report” which was published in December 2011 was sent to us about one hour before the public presentation, which was undertaken jointly by Facebook and the ODPC, while we were not part of this presentation. In addition, the final text was agreed with Facebook, while we were not even asked about our opinion or comments.

We think the report is, as we told you before, partly inconsistent, missing a sound legal reasoning and does not address all claims we brought before the ODPC. Missing transparency is always weakening the validity of any outcomes of a process, unfortunately this is also true for this report: Facebook’s arguments and the presented evidence is only partly referred to but not part of the report, which means that the findings cannot be independently evaluated. We can only blindly trust the findings of the ODPC, which seems to be at least a questionable situation.

We accepted this, since **the “report” was initially understood as a parallel procedure.** In fact the report is **mainly focusing on our claims and is in fact a first decision on our complaints.** Later the ODPC has also **let us know that the report was in some ways part of our procedure,** claiming that we can only file a “request for a formal decision” after Facebook has had time to implement the report.

We therefore think that this first report cannot be seen as a balanced and fair outcome of the initial investigations into our complaints and we urge the ODPC to take a different approach with the “review” of the report (see below).

2. Right to Access to Files

We have repeatedly let you know that we believe that **the ODPC deprives us of one of the most basic rights in any proceeding, which is the right to access to files.** We have so far not received any more **information than the general public.** The ODPC is in fact treating us like we would not be part of this proceeding:

- We were not allowed to access *any* of the evidence that was presented by Facebook.
- We were not allowed to even get the legal arguments that Facebook has presented.
- We were therefore unable to reply to any of the claims that Facebook made during the last year.
- We were unable to bring in any counterevidence, because of this lack of information.

This means that we are more or less engaged in a “secret” proceeding. While one party was presented with all our complaints, evidence and argumentation, we were made “blind” by the ODPC. This is to us totally unacceptable, which we repeatedly expressed. It leaves us in position where we have to blindly trust the ODPC and its findings. We are also unable to add any constructive input to the proceeding, which cannot be in the interest of the ODPC or a constructive proceeding.

As we told the ODPC repeatedly we also believe that this is a clear breach of Article 6 of the ECHR. We still urge the ODPC to finally give us full access to all files in the current case, since it is obvious that the ODPC is a “tribunal” under the convention. All elements that constitute a tribunal are clearly fulfilled. In an e-mail from the 6th of June Gary T. Davis has told me that “*our Office had never had to consider whether we were a Tribunal*”. We have therefore asked you, as the head of the ODPC, to consider this issue right now and let us know about your findings. So far we have not gotten a clear answer on this issue and we urge the ODPC to finally decide if it is a “tribunal” or not.

I am hereby again formally demanding full access to all files in this case, unless there is a legitimate, legal interest of Facebook that would prevent this. If the ODPC does not grant me access for this or any other reason I am hereby asking for a full, clear and legally argued explanation why the ODPC believes it does not fall under Article 6 ECHR, as well as a clear, full and final explanation about the possible remedies we have against such a decision.

3. Right to Access to my Data on Facebook

I filed an access quest with Facebook more than a year (!) ago. Despite the legal deadline of 40 days the ODPC has not taken any action that has resulted in giving me full access to all raw data that Facebook holds about me. I am also still waiting for a clear and full explanation about the source, purpose and recipients as well as the logics that were involved in any decision process that might affect me.

By not getting this information it is almost impossible to make meaningful complaints. It is often impossible to e.g. analyze if it is legitimate to keep certain data for a long period of time if the purpose of keeping or collecting it is not disclosed. The only purpose Facebook is currently disclosing is that they “*use the information [they] receive about [the users] in connection with the services and features we provide to you and other users*”. A purpose that is that general, that it leaves Facebook with endless leeway to do whatever they want with any information. This totally undermining the law’s idea of “purpose based” processing of personal data.

The expanded “download tool” does by far not grant access to all data. It does also not deliver the information in a raw format, which is crucial to analyses Facebook’s handling of data. Not to mention the deadline of 40 days that way breached in my case as well as many others, without any consequences.

The right to access is one of the most powerful tools that any complainant has in such a proceeding. Not enforcing the right to access is again depriving us of one of the most crucial basis for making any meaningful and evidence based complaint against Facebook.

At the same time Facebook is now claiming that the limited data we got is not up to date anymore, that they have made changes to the system and it can therefore not be seen as legitimate evidence, while they at the same time do not disclose such changes. This leaves us with less than what we had before we filed the complaints with the ODPC.

I am hereby (again) asking you to take the necessary steps to make Facebook send me all my personal data in a raw format, including a detailed and credible description of the sources and the recipients of such data, as well as a detailed and credible explanation on the exact purposes for each and every category of data. We will be unable to make a meaningful request for a formal decision if this right is not fully enforced by the ODPC.

4. Review of the Report

During the constructive meeting we had with the responsible officer at your office we agreed on a road map to bring the complaints to a formal decision. This included the following steps:

1. The ODPC will work on the “review” of the first report from December 2011 and publish it.
2. We may file “requests” for a formal decision, which would include our legal opinion and all evidence that we have at this point.
3. The responsible officer presents us and Facebook with a “draft decision”. This draft would for the first time allow us to see the argumentation by Facebook Ireland Ltd. that the responsible officer perceives as relevant for the case. Other arguments and evidence that Facebook presented during the preceding will not be accessible for us.
4. After a timespan that we would agree with the officer, we would send you our feedback on the “draft decision”. Facebook would as well have the chance to send such a feedback.
5. The ODPC would issue a formal decision on all complaints. If we happen to be unhappy with the outcome we would have 21 days to appeal such a decision at an Irish court.

The responsible officer, Gary T. Davis has now informed us that he was planning to publish the review after our requests for a final decision will be files with your office. This would have again cut us off from the last bit of information we could have gotten about possible changes that Facebook undertook in the past year. We have now agreed with Mr Davis, that he will deliver this report before we will file the final request for a formal decision.

I hereby demand to get the report in advance of the public presentation as well as being able to give our comments before the final version will be written. We are sure that our feedback and engagement will be very beneficial for the outcome of this review.

Since the review of the report will be soon publicly presented, we hereby demand to be invited to this public presentation, in contrast to the presentation of the first report. We believe that we are, just like Facebook, a party of this process and that we have an equally legitimate interest in being heard.

Further Engagement

As we said above, we are aware of the trouble the ODPC is facing concerning all the above issues but overall we are now seeing ourselves in a position that cannot be seen as a fair and balanced procedure. All lawyers and experts we talked to as well as all members of our group agreed that we should not go on with the proceeding under these conditions.

We know that this letter might be perceived by the ODPC as a confrontation, but we think that these claims are reasonable, legitimate and have to be addressed. We decided that it is our duty to inform you about these concerns before a final decision is made and we very much hope that you will reach out to us to find a solution that allows us to go on with the proceeding as planned. If the above issues are sufficiently resolved we would like to go on with the proceeding as outlined above.

We hope that you see this as an attempt for constructive criticism and hope that we can soon find a solution that addresses the concerns. We are sure that you understand and honor our concerns and that we can find a proper solution. We are, as always, available to talk over the issues at stake and are more than willing to do everything we can to find a good solution.

At the same time we are seriously considering if and how we further engage in the process before the ODPC, if we cannot find such a solution. We are afraid that any further engagement under the current circumstances could be perceived as legitimization of this situation and further worsen our position.

We are currently considering all possible options, if we cannot find a solution with the ODCP. I want to inform you about our thoughts, which would allow us an alternative exit strategy:


1. We might take back all 22 complaints and publicly state that we do not believe that the process before the ODPC will lead to a fair decision for all the reasons above as well as other reasons. This would bring the benefit of not having an undesirable binding decision, not having a lengthy court proceeding and making our point which is that the current way of enforcement does not work properly. This would allow us to uncover the situation that normal citizens are confronted with when they ask the responsible authority to enforce the most basic privacy rights against a multinational.
2. We might take back or "put on hold" all complaints but the complaint concerning "access request". This would allow us to clarify all the procedural issues at stake before the Irish courts, the ECJ and possibly the ECtHR. The results from such a procedure could then be of benefit for a decision on all other complaints. This would also mean that the legal proceeding would be elongated for another couple of years, but that there would be a more focused intermediate decision by the courts.

3. We might go on with this procedure under public protest and bring all 22 complaints before the relevant courts. This will mean that we will publicly state our concerns soon and will have to mingle the procedural issues with the material issues before the courts. Unfortunately this would lead to a gigantic and undesirable mess of issues and a long and excessive trail, but seems to be the most straight forward approach at this time, if we cannot find another solution.

To enable us to take the necessary further steps I would ask you to reply to this letter no later than Friday the 20th of July 2012. We kindly ask you to give a clear, written and personally signed response to all issues we addressed in this letter. Please note that we would like to publish this letter as well as your response. I am, as always, available at +43 [REDACTED] for any questions and to talk about possible solutions. We hope that the issues listed above can be resolved in a cooperative way and we are looking forward to your response.

Yours sincerely,

Maximilian Schrems

Signaturwert	Q4kGrP3bnEIpa3qWfp3TXfmiDjAIINyFn62hrfT3ol83pH3tUDuzR+Njszum5aVl/HoUiZ+7k/lm/s7/bv1VJPA==	
	Unterzeichner	Maximilian Schrems
	Aussteller-Zertifikat	CN=a-sign-Premium-Sig-02,OU=a-sign-Premium-Sig-02,O=A-Trust Ges. f. Sicherheitssysteme im elektr. Datenverkehr GmbH,C=AT
	Serien-Nr.	723732
	Methode	urn:pdfsigfilter:bka.gv.at:binaer:v1.1.0
	Parameter	etsi-moc-1.1@735060d0
Prüfinformation	Signaturprüfung unter: http://www.signaturpruefung.gv.at	
Hinweis	Dieses mit einer qualifizierten elektronischen Signatur versehene Dokument ist gemäß § 4 Abs. 1 Signaturgesetz einem handschriftlich unterschriebenen Dokument grundsätzlich rechtlich gleichgestellt.	
Datum/Zeit-UTC	2012-07-15T21:09:02Z	



23 July 2012

Mr. Maximilian Schrems



AUSTRIA

Dear Mr. Schrems,

I refer to your letter to our Office of 15 July 2012. I apologise for the delay in replying which arose as a result of my absence from the Office on leave last week which I had advised you of during the course of one of our ongoing contacts.

From an examination of your letter, I consider that there may remain a lack of clarity as to the purpose of our audit of Facebook Ireland (FB-I). Again this is an issue which I know we have discussed and corresponded on previously but perhaps some matters remain unclear. Our audit of FB-I as with all such audits conducted by this Office, was to examine FB-I's general compliance with the Data Protection Acts 1988 & 2003 and in so far as it arose the ePrivacy Regulations SI 336 of 2011 and make recommendations based on a "best practice" approach. We prioritised FB-I because of its large user base - we will similarly prioritise other such companies which locate or are located in Ireland. The purpose of our audit was therefore not to deal with the complaints submitted by europe-v-facebook.org but, as the complaints in a number of areas overlapped with the issues that needed to be addressed in the audit, we addressed them as part of it. In response to your queries, it is not our intention to have an organised media launch of the audit review as we did the last time, albeit we do expect that it will be published as on the last occasion. This latest clarification of the purpose of the audit report, I assume will also clarify matters in relation to the procedures for the publication of the audit report last December.

We expect FB-I - as we would expect any other data controller established in Ireland - to take such steps as may be necessary to, as a minimum, ensure compliance with the Data Protection Acts 1988 & 2003 and the applicable provisions of the ePrivacy Regulations SI 336 of 2011. If they fail to do so, we can take enforcement action.

I am pleased to note that you found our meeting in Portarlinton during your recent visit to be constructive. I also found it to be useful. I also agree that the five steps that you have outlined at section 4 of your letter correspond with my recollection of our discussion. However, as I have advised you a number of times, the timing of how you wish to receive the drafts of the decisions in so far as you remain of the view that such decisions remain necessary for any of your 22 complaints is entirely a matter for you and europe-v-facebook.org. This Office is happy to provide such decisions as you consider remain necessary at whatever juncture you consider appropriate. In this respect, we would expect the explanations in our audit report and to be outlined in the audit review, together with the actual actions taken by FB-I to resolve at least some of the complaints. You are free to seek decisions on any complaints that you do not

Cuirfear fáilte roimh chomhfhreagras i nGaeilge

consider to have been "amicably resolved". As previously explained, you will be provided, in respect of each such unresolved complaint, with a draft of the decision which will set out in detail FB-I's response to the complaint and our preliminary analysis. Any response you wish to provide to the draft decision (as well as any such response provided by FB-I) will be included in the final decision which is made by the Commissioner.

In relation to section 2 of your letter, I would refer you to our previous replies on these issues which have indicated that full explanations will be provided in the draft decisions and that as far as this Office is concerned we meet the procedural requirements of Irish law.

In relation to your access request complaint, I do actually consider that this Office and FB-I have made significant progress in providing access to all personal data held by FB-I to users. Over the last year we have progressively seen more such data become available via the user activity log or the download tool. There is no requirement for personal data to be provided in raw form. However, it is intended that the audit review will deal extensively with the issue of access including by reference to all the data elements europe-v-facebook.org has highlighted on its website. We spent significant time on this issue again while on-site in FB-I from 11-14 July last. In advance of the publication of the audit review, I would be happy with your permission to return on-site to FB-I and specifically examine all personal data held in relation to you and identify any data which you have not received including by reference to data which you believe exists but which you have not received.

I hope the above is helpful.

Yours sincerely



Gary Davis
Deputy Commissioner

Gary T. Davis
Office of the Data Protection Commissioner
Canal House, Station Road
Portarlinton, Co. Laois
IRELAND

Maximilian Schrems
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AUSTRIA

Vienna, July 24th 2012

Complaints against Facebook Ireland Ltd

Dear Gary,

Thank you for your letter from July 23rd, but it seems like your response does **not give legally precise answers to all of our concerns.** I am sorry to let you know that this response does not enable us to overcome the problems we see in the ongoing proceeding. We are also disappointed that Billy Hawkes does not answer my letter from July 15th personally, despite the fact that he is ultimately responsible under the Irish law.

As another attempt to overcome our confusion we have rephrased the pressing issues into specific, short questions that we hope you will fully answer. We know that this is a very straightforward approach, but we believe that it is in the very interest of the ODPC to give clear answers to these questions. We think that clarifying these issues will ensure more trust in the proceeding and your office, which is why we hope that it will not be left unanswered.

A. "Fair Trail / Article 6 ECHR"

The reason why I have sent you the past letter was that I did not get a response to my e-mail from Jun 10th in which I asked your office to take a *final, clear* and *written* standpoint on whether you are a tribunal or not. If you are now referencing the "previous replies" I have to stress again, that there was *no* reply by the ODPC on this issue. Therefore I would like you to answer the following questions:

Question 1: *Does the ODPC currently think it is a "tribunal" under Article 6 ECHR?*

Question 2: *If not: Why does the ODPC think Article 6 ECHR does not apply to it?*

In your letter you say that the ODPC does follow the “Irish Law”. I want to add, that section 10 DPA does not even remotely cover any of the basic questions of any proceeding (moves by the parties, informational rights, etc). As I said in my previous letter we understand that this does put the ODPC in a rather unpleasant situation. At the same time the ODPC does sometimes assume that “What’s not in the law is prohibited to do” (e.g. when it comes to my right to access the files) but sometimes “invents” procedural steps (e.g. the “draft decision” or the “request for a formal decision”) that cannot be found anywhere in the law. This seems to be very questionable and does not seem to be legitimate in respect to the rule of law that should govern any fair proceed.

Question 3: *How does the ODPC come up with such procedural rules?*

Under a fairness aspect it is crucial that both parties in a proceeding can independently assess the decision by an authority. It is surely upon the authority to decide what is deemed “relevant” for making a decision, but the parties of a proceeding may feel different, which makes it necessary to give the parties full access to all files, arguments or evidence. If the authority has the sole power to withhold evidence, arguments or findings it deprives the parties of any basis for scrutiny on a factual basis. The parties would then only be able to appeal on a question of the law. This is a practice that was common before modern procedural law, but is in no way justified in a modern European procedure.

Question 4: *Will the ODPC ever grant direct access to any of the evidence, files and arguments that were presented by Facebook or will we only get second hand, indirect access?*

Question 5: *What is the legal basis for this? Billy Hawkes cited Article 28 (7) of the Directive 95/46/EG that would prevent the ODPC to give us any arguments, evidence and findings. How does this go together with the indirect and partial information we get in the “draft decision” and how does this go together with (e.g. the Austrian) practice of exchanging all this information under Article 6 ECHR and the very same European directive?*

Question 6: *How can we factually ensure the ODPC does not withhold evidence, information, arguments or findings in the “draft decision” that might be crucial for an appeal, other than blind trust in your office?*

So far we have often times encountered very different views on the letter of the law. These different views will often times make certain files, evidence and arguments “irrelevant” while they might be highly relevant if the appellant courts follow our view of the law, or take another approach. It is also part of a proceeding to show that the other party is flip-flopping or changing arguments. This means that basically any information may be “relevant”, depending on the legal view and future tactics in the proceeding. If the ODPC is now only including the information it deems “relevant” into a “draft decision” it does effectively cut off the basis for any such move before the courts.

Question 7: *How will the ODPC ensure that all “relevant” information is included in the “draft decision” if there might be very different understandings of the law and of what is “relevant”?*

In previous letters your office has informed us that our complaints were forwarded to Facebook, while we did not get the responses by Facebook. Your office argued that this was because we made our complaints public on “europe-v-facebook.org”. You might have seen that not all of our complaints were made fully public on our webpage.

Question 8: *Did you forward all our complaints and the additional attachments to Facebook, or did you refer Facebook to our webpage to get the information?*

B. Timetable, further moves

The past half year we have been told that we are not entitled to request a formal decision before the “review” of the report was done by your office. After waiting for half a year this has suddenly changed and we were informed that we should make such requests before the ODPC publishes the final report. We now understand from our most recent exchange of e-mails that the ODPC has now come back to the view that it is fully under our discretion when to make a request for a formal decision and that we have all powers to go or wait for the next steps. We are happy with this situation, since this reflects the letters of the law. Please let us know if there is any other understanding of the situation by the ODPC. We are still discussing which move we will take and will inform you as soon as we have come to a conclusion.

C. Complaints vs. Audit

Your letter from July 23rd is now again going towards the idea of two separate proceedings, which would be the “audit” and the “complaints”. We have shared this view until the first report was published, which was for maybe 80% dealing with our complaints and makes assumptions on our claims that the ODPC will very likely not overturn in a formal decision. The report and the review is in fact becoming a lead decision. In addition your office has repeatedly told us that we cannot request a formal decision before the “review” is published. This makes us believe that the report and the review are tremendously influencing our complaints and our legal position in the complaints procedure. We should therefore be heard and involved. We should also be invited to the presentation if Facebook takes part in such a presentation. The ODPC has repeatedly flip-flopped on the relation between the audit and our complaints, which is why we would like you to answer the following questions:

Question 9: *Will the finding of the “review” and the “report” in any way influence the decision on our complaints or will the ODPC take a totally independent view on them?*

Question 10: *If they influence our complaints: How will the ODPC ensure that our opinion is heard and that we are equally involved as Facebook?*

Question 11: *If they do not influence our complaints: Why did we have to wait until now to request a final decision? Why were repeatedly referred to the report and the review? Would the ODPC be able to make use of a short summary of problems we still see as unsolved to address in the review?*

Question 12: Will Facebook be allowed to “review” the “review” before it is published (as with the first report) or will this review only be done by the ODPC?

Can you tell us anything more about the modes of presentation? Will it be announced?

Will there be media information? Will we be invited and get the review before the general public?

D. Right to Access

We see the great improvement for transparency through the “download tool” that was accomplished during the last year. At the same time, we are still of the opinion that the “download tool” does not fulfill Facebook’s obligation to grant full access to the data of any user or non-user. The current “download tool” can only be an optional tool that grants additional, low-threshold transparency.

We are still sure that only access to the raw data gives the user full access under the law, while processed data is not. Much of what we believe is a breach of European law could have never been proven without access to the raw data. A “download tool” gives Facebook endless leeway to simply not include “problematic” data.

We would also like to take this opportunity to tell you that separating the download into a “main” and an “extended” download, which can only be accessed through a very small link is surely not “best practice” and in our experience even advanced users do not find the “extended download”.

On my personal right to access I first of all want to stress that the list of 19 data categories was just an exemplary list of data categories that Facebook did not send to me. We only wanted to show that the data was not all personal data Facebook holds. It was never intended to be an exhaustive list of the missing data and I very much hope that the ODPC was searching for any bit of personal data.

It is to our understanding upon the ODPC to find all data categories that Facebook holds and ensure that they are disclosed. Much of the data we got as PDFs and that is now already in the “download tool” was very surprising, so it is surely impossible for us to guide the ODPC to all data Facebook is generating in the background.

Question 13: How did the ODPC go about to find out about all data categories and its content that Facebook is generating? Was Facebook e.g. asked to deliver a full list of all data on its systems? Did the ODPC then decide what is “personal data” or did you trust Facebook on this?

From the first request on, Facebook has repeatedly lied about the personal data it is holding about us. This included the first reactions to our complaints all the way to our negotiations in Vienna, which is why we do not think that any claims of Facebook can still be seen as credible.

Question 14: How did the ODPC ensure the credibility of whatever Facebook argued? How did the ODPC ensure that I got all personal data by now?

We want to inform you that we do have an internal list of other data that we know Facebook has, not included in the download tool and that is for sure “personal data”. This list has grown through comparing the PDFs, different Versions of the “Download Tool” many experiments and credible information we got within the past year. We cannot send you or Facebook this list, since it is our way of cross-checking if

Facebook is likely to comply with the law and if the ODPC has effectively ensured full access to the data. We would only present such a list to prove non-compliance in the public or before the courts, which I am sure you understand.

PERMISSION: In reference to your letter I hereby give you full permission to go through my personal data on facebook.com to examine further which data is missing.

I hope this permission helps you, even though you should be able to do so under the DPA.


I can, as I said, not give you reference to the data we are still missing, but I would like to let you know that it took me 30 minutes to simply compare my PDFs, facebook.com and the download tool and make a list of more than 20 data fields that are still missing and are undoubtedly "personal data". I also want to let you know that I have already contacted Richard Allan, since the download tool has still many bugs (e.g. not all messages are included in the download, a fact that we already got multiple e-mails about from users), which again means that the right to access can currently not be fully exercised, even a year after my first access request.

To enable us to take further steps within a reasonable time I would ask you to reply to this letter no later than Friday July 27th 2012 around noon.

I am, as always, available at +43 [REDACTED] for any questions and to talk about possible solutions. Maybe you want to give me a quick call on Tuesday late afternoon, after you have read this letter.

Yours sincerely,

Maximilian Schrems

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	Unterzeichner	Maximilian Schrems
	Aussteller-Zertifikat	CN=a-sign-Premium-Sig-02,OU=a-sign-Premium-Sig-02,O=A-Trust Ges. f. Sicherheitssysteme im elektr. Datenverkehr GmbH,C=AT
	Serien-Nr.	723732
	Methode	urn:pdfsigfilter:bka.gv.at:binaer:v1.1.0
	Parameter	etsi-moc-1.1@67687dd0
Prüfinformation	Signaturprüfung unter: http://www.signaturpruefung.gv.at	
Hinweis	Dieses mit einer qualifizierten elektronischen Signatur versehene Dokument ist gemäß § 4 Abs. 1 Signaturgesetz einem handschriftlich unterschriebenen Dokument grundsätzlich rechtlich gleichgestellt.	
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After we have not recived a response until Friday noon, we have repeatedly tried to call Gary Davis at the ODPC and on his private phone. This was the repsonse...

Von: Gary T. Davis [REDACTED]
Gesendet: Freitag, 27. Juli 2012 13:53
An: max [REDACTED]
Betreff: Re: AW: Letter to Mr Billy Hawkes

Dear Max,

I refer to the attached and I understand you were looking to speak with me this morning. This Office has nothing further to add at this time to our previously replies.

Yours sincerely

Gary

After receiving the E-Mail on the previous page, we again tried to get a hold of Gary Davis or Billy Hawkes via phone to inquire how we should move on with the proceeding and why we do not get a response to our letter of Tuesday, July 28th. The response was a text message (!) by the ODPC:



All further attempts to get Gary Davis or Billy Hawkes to the phone were turned down by the ODPC. We were told that both representatives are not willing to talk to us now or in the future.

Von: max [REDACTED]
Gesendet: Freitag, 27. Juli 2012 16:21
An: 'Gary T. Davis'
Cc: Billy F. Hawkes [REDACTED]
Betreff: AW: AW: Letter to Mr Billy Hawkes

Dear Gary,
(CC: Billy Hawkes, The ODPC)

We are stunned and shocked about your behavior on a personal as well as on a professional level. We cannot and will not accept that you as well as the DPC is not responding to legitimate questions we raised during this proceeding, but instead send us a text message (!) saying that "Neither the commissioner nor the myself are available to talk to you".

From what I understand from the efforts to call your office, you are intending to keep it this way.

I hope you understand that you are right now ruining the credibility of the ODPC, as well as for the entered ongoing procedure against Facebook with your actions.

We can in no way trust or believe in an unbiased, fair approach by you or the DPC, if this is how you interact with one of the two parties in the proceeding.

As I told your colleagues on the phone we will keep on trying to get a hold of you through the number of the office, even though we feel very bad for the colleagues that have to respond to our calls. The reason for that is that we can still not believe what is going on and still hope that we can get back to a civilized form of communication.

Greetings from Vienna,
Max Schrems

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[REDACTED]

Von:
Gesendet:
An:
Betreff:

Gary T. Davis [REDACTED]
Freitag, 27. Juli 2012 17:55
max [REDACTED]
Re: AW: AW: Letter to Mr Billy Hawkes

Dear Max,

I am disappointed that you are unhappy with the level of service you have received. I have at all times made myself available to you during our audit of Facebook Ireland.

The position of this Office is that we have nothing to add to the answers (which we consider are complete) to the questions which you have repeatedly posed notwithstanding the answers provided.

I regret also that in your most recent communications and on the phone with staff that you have chosen to question the qualifications of staff in the Office and the methodologies used by this Office to perform our statutory functions.

We are continuing to progress the investigation of your complaints and I will be in touch with you further in due course.

Regards

Gary

[REDACTED]

Von: max [REDACTED]
Gesendet: Freitag, 27. Juli 2012 18:19
An: 'Gary T. Davis'
Cc: Billy F. Hawkes [REDACTED]
Betreff: AW: AW: Letter to Mr Billy Hawkes

Dear Gary,

This not about the "level of service" this is about basic respect for another person, for a party in a proceeding and a fair procedure.

The ODPC hast not answered any of my questions precisely in a way that we could possibly work with, which is why we rewrote the questions in a way that would require you to give precise answers. The fact of the matter is though, that you have for the past year always ignored any letter that would have required you to give a clear answer (see e.g. the letter of April 16th 2012).

I am clarifying that I have not questioned the qualification of your staff or the mythology that is used by your office, but I was seriously wondering about your personal behavior and way of dealing with reasonable questions that are crucial for the ongoing proceeding. We are, again, deeply disappointed by the way of communication you have chosen and I am more than ever questioning the fairness of the ongoing proceeding. We are (again) inviting you to call us and clarify the issues we raised in a civilized way, but we are for sure not accepting that the ODPC simply stops communicating with us.

I am herby requesting you to put the proceeding on "hold" due to the current situation and request that no further steps will be taken for now concerning the 22 complaints I have filed with your office. We will discuss the situation within our group and let you know about further moves.

Max Schrems

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