

From : Data Protection <info@dataprotection.ie>
To : [REDACTED] cc :
bcc:

Brief Description : ODPC response - 6/12/12 Comments :

Dear Mr Schrems

Thank you for your e-mail which was received in our Office on the 4th December 2012.

We do not wish to offer any comment on the enclosure.

If you wish this Office to progress your complaints, you need to indicate clearly if and when you wish us to proceed with our standard complaint procedure which has already been explained to you (draft decision giving FB-I response etc) and, if so, on the basis of your original complaints or some fresh (or reformulated) complaints.

Yours Sincerely

Stewart Fennell
Information Officer

Von: DPC Info [<mailto:info@dataprotection.ie>]
Gesendet: Freitag, 07. Dezember 2012 18:00
An: [REDACTED]
Betreff: Data Protection Queries

Dear Mr. Schrems,

Further to your call to this Office earlier today, I am to inform you that if you have any queries you should specify them in a reply to the attached email.

Kind regards,
Ciara

Ciara O'Sullivan
Office of the Data Protection Commissioner Canal House, Station Rd, Portarlington, Co Laois
Locall: 1890 25 22 31
Tel: +353 57 8684800

<[REDACTED]> on 10/12/2012 12:17:23

To: "'DPC Info'" <info@dataprotection.ie>

cc:

Subject: AW: Data Protection Queries

To whom it may concern.

I am sorry to see that you are not answering the very specific questions, requests and submissions we have made. We again want to stress that we are very interested in direct communication with your office and we are sure that many issues could possibly be solved if you would only talk to us.

After calling your office twice and not getting any response I am hereby, as you wished in the last e-mail, sending you some of my questions via e-mail. I hope that this time you will respond with a material answer instead of further denying communication. If you do not respond within two days, we have made predictions, that we base the further proceeding on.

This is necessary to have some basis for bringing these complaints to a final decision.

1. Our response to the audit is an amendment and further clarification to our initial complaints. We have sent them to you since we were asked to do so in September. We do not understand why you are now not commenting on a document that you wished to receive. Can you clarify this further? On which basis are you ignoring this document?

If you are not answering this question in a material way, we conclude that you are ignoring this submission without any legal basis.

2. In your e-mail you have said that we clearly indicate if we want to proceed with our complaints. We have done so in our submission. Is there anything in particular you are referring to?

If you do not answer this question in a material way, we conclude that you have understood our position and that there are no further questions.

3. We have indicated in our response that we see our complaints to be the basis of this proceeding, but the submitted document should have allowed to further specify them. What do you therefore mean by saying that we need to specify if we want to submit the original complaints or some fresh (or reformulated) complaints? Our submission is very clear on this.

If you do not answer this question in a material way, we conclude that you have understood our position and that there are no further questions.

4. If you say that you do not wish to comment on our submission, we understand that you are rejecting this submission. Therefore we would like to ask you that the status of this submission and on which basis you are rejecting it, if you did?

If you do not answer this question in a material way, we conclude that you have rejected the whole submission and that that this has not become part of our complaints procedure.

5. The submission holds many requests. We understand the ODPC is also rejecting these requests. We would like to ask you to indicate if you are not rejecting them and if you do reject them tell us about the legal basis for rejecting them.

If you do not answer this question in a material way, we conclude that you have rejected all these requests without any legal basis.

6. We are wondering on which legal basis you are denying us any form of meaningful communication with your office and if this is usual in relation to complainants.

We hereby ask you to answer these questions by giving us a call at +43 664 4602350. We would also be more than happy to meet with you in person, as we are in Dublin by the end of this week. We would also be happy to come to Portarlington.

We are looking forward to an answer that will lead us back on track in this procedure and hope for you to take us up on our offer to call us or meet in person.

Thank you,
Max Schrems

-----Ursprüngliche Nachricht-----

Von: DPC Info [<mailto:info@dataprotection.ie>]

Gesendet: Mittwoch, 12. Dezember 2012 17:53

An: [REDACTED]

Betreff: ODPC response - 12/12/12

Dear Mr. Schrems

Thank you for your e-mail of 10th December 2012.

The position, as we have explained previously, is that we are awaiting confirmation from you that you wish this Office to now proceed to progress your complaints. You are free to reformulate your original complaints if you wish, including updating them with any material which you consider relevant from the document you recently communicated to us.

It is important that you clearly identify the issues on which you consider that Facebook-Ireland is not in compliance with the Data Protection Acts.

Once we receive confirmation from you that you wish us to proceed with your complaints, we will follow our standard procedure, as previously explained to you, by referring your complaints to Facebook-Ireland for their consideration. If Facebook-Ireland agrees to change the practice referred to in a complaint, this may lead to an amicable resolution of that complaint. If Facebook-Ireland does not

agree to change the practice which you consider to be in breach of the Acts, we will prepare a draft decision under section 10 of the Acts, which will include a summary of the arguments of both sides and which we will send to you and to Facebook-Ireland for comment. Following receipt of these comments, the Commissioner will make a formal decision, which will be communicated to you and to Facebook-Ireland.

We wish to see this process completed as soon as possible.

A right of appeal to the Circuit Court lies from a decision of the Commissioner on a complaint.

Since, at your insistence, we are now entering into a more formal phase of the investigative process, and taking account of your stated attention to appeal our decisions to the courts, we consider it appropriate that all communication henceforth be in writing.

Yours Sincerely

Stewart Fennell
Information Officer
Office of the Data Protection Commissioner Canal House Station Road Portarlinton Co. Laois

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<[REDACTED] on 12/12/2012 17:08:23

To: "DPC Info" <info@dataprotection.ie>

cc: "Gary T. Davis" <[REDACTED]>, "Billy F. Hawkes"

<[REDACTED]>

Subject: AW: ODPC response - 12/12/12

Dear Mr Fennell,

I am sorry to see that you have not clearly answered the questions I have submitted to your office.

Please give me a clear indication of the status of my submission and the requests I have submitted on December 4th 2012. As said in my previous e-mail I am understanding that you rejected them, since you did not answer my questions precisely. If I was unable to derive your opinion from your e-mail I would like to ask you to give me a clear answer to this questions:

Is our document from December 4th accepted or rejected by the ODPC?

Another question has arisen from your last e-mail: What will the exact time for which the DPC will decide? Will he decide about Facebook's compliance at the time we have filed the complaints, or at the time of his decision?

We expect that the decision will be based on the situation when the complaints were filed, which means our possible amendments to the complaints will only not include changes during the past 1.5 years, but only evidence that was delivered later. From your e-mail this seems to be unclear, but we expect that the DPC will find a company in breach of the law even when it stops or limits misconduct later. Please let us know if you have any different opinion and if you do where you derive this from.
What is the relevant time for the DPC's decision according to your understanding?

We hope that you can at least answer these two binary questions clearly and as soon as possible.

Regards,
Max Schrems

-----Ursprüngliche Nachricht-----

Von: DPC Info [<mailto:info@dataprotection.ie>]

Gesendet: Freitag, 14. Dezember 2012 17:01

An: [REDACTED]

Betreff: ODPC response - 14/12/12

Dear Mr Schrem

I refer to the attached.

We have nothing of substance to add to my e-mail of 12th December 2012. As we have explained repeatedly, we will not take any further action until you clearly indicate what complaints you wish us to investigate.

Yours Sincerely

Stewart Fennell

Information Officer

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<[REDACTED]> on 14/12/2012 17:02:10

To: ""DPC Info" <info@dataprotection.ie>
cc: "Billy F. Hawkes" <[REDACTED]>, "Gary T. Davis"
<[REDACTED]>

Subject:AW: ODPC response - 14/12/12

Dear Mr Fennell,

We are not really getting anywhere if the ODPC is not even responding to specific binary questions.

My phone call from about one hour ago was again rejected by you and I was again told to send you an e-mail. We are very much wondering what you are afraid of when simply clarifying basic questions which then allow us to make a request for a final decision. No judge would think that your last reactions to my constructive, clear and repeated questions are in any way reasonable, so I doubt that you are bringing yourself in any better position by not answering these questions. You have also not given me any reason why you are not communicating with me in a reasonable way.

As you are unwilling to talk to me on the phone I am unwilling to accept further unsigned e-mails from changing people working at the ODPC since such communication is hardly enabling us to assess the responsibility for the content. I am therefore kindly asking you to forward this e-mail to Billy Hawkes and have a response from him - since the DPC is in the end responsible for the actions (or inactions) of the ODPC.

As to why I am unable to accept your last e-mail:

1. I am unable to make a request for a final decision without knowing if my last submission was accepted or rejected. If it was not rejected I can spare myself and you to submit these things another time.

2. I have to know, when making my request for a final decision, for what time in history I have to make a submission. There is no point in talking about the hundreds of changes by FB-I if the DPC will decide on the facts at the time of our initial complaints.

Again you would make the life of us all a whole lot easier if you would clarify this specific question. I have enough time to make a final request that includes all alternatives, but I am not sure if the ODPC has the resources to overlook and decide on such a submission.

Therefore I am again asking you to give me a clear answer on the previous questions so that I can submit my request for a final decision. By denying any material response you are in fact disallowing a request for a final decision, which by itself seems to be not only unreasonable but questionable from a procedural standpoint.

Given the explanation above I am sure you understand the need to get a clear answer on the following two questions:

a) Have you rejected my submission from December 4th, or what is the status of it?

b) On what point in time should my request for a final decision be based on?

I am looking forward to a response that includes some material answer to these questions. I am sure this is not too much to ask for.

Regards,
Max Schrems

-----Ursprüngliche Nachricht-----

Von: DPC Info [<mailto:info@dataprotection.ie>]

Gesendet: Montag, 17. Dezember 2012 12:23

An: [REDACTED]

Betreff: ODPC response - 17/12/12

Dear Mr Schrems,

Thank you for the attached. All replies issued by this Office regardless of the sender can be considered to reflect the position of the Office.

In relation to your specific queries that you have listed at the end of your latest email we have inserted replies:

a) Have you rejected my submission from December 4th, or what is the status of it?

Ans: We have not considered your submission and have made clear that you can choose to highlight any aspects of it that you consider are relevant for the Office to consider if/when you submit your requests for decisions.

b) On what point in time should my request for a final decision be based on?

Ans: Requests for decisions to this Office in the past were always based on the end position in an engagement and not the starting point other than in relation to security breach or access issues where the start point is obviously most relevant. However, the legislation is non-prescriptive on this point so it would appear to be a matter entirely for you.

Yours Sincerely

Stewart Fennell
Information Officer

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<[REDACTED]> on 17/12/2012

To: ""DPC Info"" <info@dataprotection.ie>

Subject:AW: ODPC response - 14/12/12

Dear Mr Fernell,

Thank you very much for your reply and for finally answering my questions.

We will go forward with a request for a final decision. Drafting this document will take considerable time and resources, which is why we do not expect to be ready before the beginning of January.

Partly this lengthy timing is because we have to consider any possible argument and submission by FB-I since the ODPC is not giving out the actual files, arguments and evidence and did not which would allow focusing on only the relevant issues. We also have to take further steps to investigate certain issues, since the ODPC has not considered out last submission, which has suggested such investigation by the ODPC.

We will get back to you as soon as we are ready to file our request for a final decision, which will cover all 22 complaints.

Thank you and a merry Christmas to all of you, Max Schrems