

DPC Ref: [REDACTED]

DPC Complaint Ref: [REDACTED]

Cypriot DPA Ref: [REDACTED]

Date: 14 September 2023

Complainant: [REDACTED]

Data Controller: Airbnb Ireland UC

RE: [REDACTED] v Airbnb Ireland UC

This document is a Decision of the Data Protection Commission of Ireland (“DPC”) in relation to DPC complaint reference, [REDACTED] (“Complaint”), submitted by [REDACTED] (“Complainant”), against Airbnb Ireland UC (“Airbnb”), to the Commissioner for Personal Data Protection (“Cypriot DPA”) in its capacity as the concerned supervisory authority and thereafter referred to the DPC in its capacity as lead supervisory authority.

This Decision is made pursuant to the powers conferred on the DPC by section 113(2)(a) of the Data Protection Act 2018 (“the Act”) and Article 60 of the General Data Protection Regulation (“GDPR”).

Communication of Draft Decision to “supervisory authorities concerned”

In accordance with Article 60(3) of the GDPR, the DPC is obliged to communicate the relevant information and submit a Draft Decision, in relation to a complaint regarding cross border processing, to the supervisory authorities concerned for their opinion and to take due account of their views.

In accordance with its obligation, the DPC transmitted a Draft Decision in relation to the matter to the “supervisory authorities concerned”. As Airbnb offers services across the EU, and therefore the processing is likely to substantially affect data subjects in every EU member state, the DPC in its role as lead supervisory authority identified that each supervisory authority is a supervisory authority concerned as defined in Article 4(22) of the GDPR. On this basis, the Draft Decision of the DPC in relation to this complaint was transmitted to each supervisory authority in the EU and EEA for their opinion.

Complaint Handling by the DPC – Timeline and Summary

1. The complaint was lodged with the Cypriot DPA on 22 December 2018 and thereafter was transferred to the DPC, on 04 March 2019, to be handled by the DPC in its role as lead supervisory authority. The Cypriot DPA advised that a complaint was made to it by the data subject stating that Airbnb failed to properly comply with an erasure request he had submitted to it on 18 December 2018. The Cypriot DPA set out to the DPC that, in correspondence to Airbnb the Complainant informed Airbnb that he wished to withdraw his consent for the *“storing, using and sharing”* of any information relating to him. Further, the Cypriot DPA advised that the Complainant stated in his correspondence to Airbnb that he would like any information relating to him or his properties, *“including ID information, contact information, personal details, company information, address or locations, IP addresses, photographs etc., to be permanently removed from any of the databases related to [Airbnb’s] service, or third parties or partners of [Airbnb]”*. The Complainant, through the Cypriot CSA, provided the DPC with a copy of correspondence he received from Airbnb dated 28 December 2018 in which Airbnb notified the Complainant that it had started to carry out his deletion request and that it would delete his personal data, except to the extent the GDPR permitted or required Airbnb to retain it. The Cypriot DPA informed the DPC that the Complainant did not receive any further notice from Airbnb in relation to his erasure request. The Complainant attempted to create another account, on 14 February 2019, using the personal data which he had assumed were deleted (name, phone number, email address). He received a message in response from Airbnb which stated *“A while back you verified your phone number xxxxxxxx. In a recent system update, this phone number was deactivated, so we’re emailing you to make sure you have up-to-date contact information on your Airbnb account. To update and verify your information, please log in to Airbnb and edit your phone number here.”* The Cypriot DPA also provided the DPC with a copy of the correspondence the Complainant had exchanged with Airbnb.
2. The DPC notified Airbnb of receipt of the complaint by email on 17 April 2019 and provided it with the correspondence received from the Cypriot DPA.
3. Airbnb responded by email on 07 May 2019. In its response, Airbnb informed

the DPC that the Complainant had operated eight accounts on Airbnb, which were used to host a number of properties on the platform. Airbnb stated that on 20 November 2018, the Complainant became involved in an argument with a guest in one of his properties which led to the guest walking out. Airbnb stated that the Complainant pursued and assaulted the guest, punching and beating the guest in the face with a metal pole. Airbnb stated that it understood that the police were called and that the guest was hospitalised. Further, Airbnb stated that the guest has provided it with the police report and medical evidence detailing the serious injuries that he sustained as a result of the Complainant's assault on him. Airbnb stated that the Complainant was suspended from Airbnb as a result of this assault. Airbnb stated that the Complainant submitted an erasure request in December 2018 but, due to the fact that the Complainant's account comprises material evidence for the purpose of a potential criminal prosecution against him, and potential civil litigation against him and/or Airbnb by the guest who was assaulted, it was required to retain such material for the time being. In this regard, Airbnb referred to Article 17(3)(b) (retaining data "for compliance with a legal obligation") and Article 17(3)(e) (retaining data for the "establishment, exercise or defence of legal claims"). Airbnb stated that the continued retention of the Complainant's personal data complies with Article 5 of the GDPR and that it is transparent about the fact that it retains data where required for legal reasons. Airbnb asserted that, given that the data comprises evidence in a criminal matter and potential civil litigation, the retention is permitted under Article 6(1)(c) ("processing which is necessary for compliance with a legal obligation to which the controller is subject"). Further, Airbnb stated that its Privacy Policy notes: *"We may retain and use your personal information to the extent necessary to comply with our legal obligations"*.

4. Airbnb stated that, aside from its obligation to not destroy evidence, such retention would be in the legitimate interests of Airbnb, the guest who was assaulted, the police and the public at large. Airbnb stated that on 18 December 2018, the Complainant wrote to Airbnb requesting the deletion of his data, and in line with its policy, Airbnb responded requesting a copy of his ID which the Complainant provided later that day. Airbnb submitted that it responded to the Complainant on 28 December 2018 stating that *"Airbnb will delete your personal data, except to the extent GDPR permits or requires us to retain that data. For example, we retain data that is necessary for complying with laws to which we are subject, for exercising the right of freedom of expression and information (such as the content of reviews), and for the establishment, exercise or defence of legal claims (such as information relating to user disputes)"*. Airbnb stated that, as it had provided information on the action taken on the request within one month, it complied with its obligations

under Article 12 and that as the data was retained for legal reasons (per Article 17(3)), it also complied with its obligations under Article 17.

5. The DPC raised additional queries with Airbnb in correspondence dated 28 May 2019. Airbnb responded by email on 05 June 2019.
6. In response to the DPC's query as to whether any of the Complainant's personal data was deleted in response to his erasure request, Airbnb stated that, while it is on notice of an alleged serious assault, it is not yet in a position to determine what information is relevant to the criminal or civil cases which may ensue. Airbnb stated that the Complainant's public profile no longer appears on the platform and that the Complainant was informed that Airbnb would retain data for the establishment, defence or exercise of legal claims such as information relating to a dispute. Airbnb stated that given the serious legal issues that arose with the Complainant and his Airbnb account, it was retaining his ID as relevant material and that the retention of this relevant material is founded on a number of legal bases. Airbnb stated that, as the Complainant, an Airbnb host, has allegedly perpetrated a serious assault on an Airbnb guest, any data relating to his account may comprise evidence in a criminal matter and it may give rise to potential civil litigation. Airbnb stated that, in this context, the retention is based upon Article 6(1)(c), "*processing which is necessary for compliance with a legal obligation to which the controller is subject*". Further, Airbnb asserted that such retention is in the legitimate interests of Airbnb, the guest who was assaulted, the police and the public at large. Airbnb submitted that its Privacy Policy states that personal information may be retained and disclosed "*for the purposes of our or a third party's legitimate interest in keeping the Airbnb Platform secure, preventing harm or crime, enforcing or defending legal rights ... or preventing damage*". Finally, Airbnb asserted that such retention is necessary for the "*purposes of providing or obtaining legal advice or for the purposes of, or in connection with, legal claims, prospective legal claims, legal proceedings or prospective legal proceedings*" or "*is otherwise necessary for the purposes of establishing, exercising or defending legal rights*" based upon section 41(c) of the Data Protection Act 2018. Airbnb stated that if it is the case that the injured party is not going to take legal action and the statute of limitations in the relevant jurisdiction has expired it would then be in a position to delete the account in accordance with its legal obligations
7. The DPC reverted to Airbnb by email on 10 June 2019 requesting a copy of all Airbnb privacy policies along with information/policies regarding ID retention that had been in place since 25 May 2018. Airbnb responded by email on 13

June 2019 providing copies of the requested policies.

8. The DPC provided an update to the Complainant which issued via the Cypriot DPA on 02 September 2019 and a further update which issued to the Cypriot DPA on 18 November 2019.
9. The Complainant responded to the Cypriot DPA by email dated 27 November 2019. In his response, the Complainant re-asserted his complaint that Airbnb had not properly complied with his erasure request and that it had no lawful basis to retain his personal information. The Complainant stated that the incident Airbnb was referring to did not concern a guest who had booked through his personal account or with whom he had any relationship whatsoever. The Complainant stated that in September 2018 a visitor booked an apartment owned by a third party, in an apartment complex. The Complainant stated that he was the manager of the said apartment and that he was physically assaulted by the guest. He stated that both a written complaint and criminal prosecution was filed for this incident. The Complainant stated that Airbnb blocked access to his personal account which he asserted had nothing to do with the incident or with the property booked by the guest who physically assaulted him. The Complainant stated that he requested that Airbnb erase all data related to him but that he did not receive any reply from it. The Complainant stated that he subsequently tried to create a new account but that he received a message stating that he was not allowed to use the services of the website on the basis of data retained by Airbnb. The Complainant submitted that his personal account was not associated in any way with the booking completed by this guest, the guest in question or the property in which this guest stayed.
10. The DPC outlined the Complainant's response to Airbnb via email on 28 January 2020.
11. Airbnb responded to the DPC by email on 11 February 2020 clarifying its position. Airbnb stated that the Complainant created six different Airbnb accounts under several aliases and email addresses. Airbnb stated that "*certain of these Airbnb accounts*" were created under the name of the apartment complex [REDACTED], of which the Complainant was the supervisor. Airbnb stated that the Complainant was also an Airbnb host of certain apartments in that complex. Airbnb stated that the guest had booked a listing in this apartment complex, which was advertised on an Airbnb account belonging to the Complainant's father. Airbnb stated that, while it had received two different versions of the incident, the guest had provided supporting evidence of his claim, including a police report and medical evidence detailing



the serious injuries that he sustained. Airbnb stated that the guest claimed that, during an altercation, the Complainant assaulted him with a metal pole. The guest in question called the police and, after the police arrived, the guest was taken to hospital. Airbnb stated that the Complainant (i) was a host of other listings at the same apartment complex; (ii) was the supervisor of the entire complex; (iii) was closely connected to the host of the listing in which the guest was staying (i.e. his father); (iv) appeared to be responsible for responding to guest complaints at the complex when they were escalated by the front desk manager (regardless of whether or not he is a host of those listings); and (v) was involved in an alleged assault which is subject to an on-going criminal investigation. On this basis, Airbnb maintained that the right of erasure does not apply because the retention is both necessary “*for compliance with a legal obligation*” in accordance with Article 17(3)(b) and for the “*establishment, exercise or defence of legal claims*” in accordance with Article 17(3)(e). Airbnb asserted that the Complainant’s accounts contained material evidence for the purpose of a potential criminal prosecution against him, and potential civil litigation against him and/or Airbnb by the guest in question. Airbnb stated that, further to its interaction with the DPC, it had carried out an additional review of the Complainant’s accounts. Airbnb stated that, based on this review, it found that five of the Complainant’s accounts contained limited information and low activity. Airbnb stated that, subject to obtaining specialist legal advice, it may be in a position to delete these five accounts but that it was acutely aware of the need to exercise caution in deleting any information, as it did not wish to impede, or be viewed as impeding, any potential criminal and/or civil investigation. Airbnb stated that once it is satisfied that any criminal case and/or any civil claim(s) have been fully concluded, subject to the relevant applicable statutes of limitations, and that the information is no longer necessary in light of the above purposes, it would then process the Complainant’s deletion request pursuant to applicable laws.

12. The DPC outlined Airbnb’s position to the Complainant in correspondence sent via the Cypriot DPA on 10 March 2020.
13. The Complainant responded via correspondence which was provided to the DPC by the Cypriot DPA on 15 April 2020. In his response, the Complainant confirmed that the guest in question had made their reservation through his father’s Airbnb account. The Complainant stated that until September 2018, he only had one account with Airbnb and that after the incident and his account was locked, he submitted an erasure request to Airbnb. The Complainant stated that he then attempted to create a new account and realised that Airbnb had retained his personal data. The Complainant stated that he attempted to create new accounts to see whether Airbnb continued to retain his personal

information, despite his repeated requests for erasure. The Complainant confirmed that there was an assault case registered against him in the courts in Cyprus. The Complainant stated that it was for the Courts to make a determination in relation to the case, not Airbnb. The Complainant reiterated his earlier points, that he had nothing to do with the reservation made by the guest through the Airbnb platform, that the guest did not book any property owned by him and that the apartment the guest rented was through a third party account, which happened to belong to his father. The Complainant asserted that he did not manage the property the guest booked. He stated that his father manages his own properties in the complex, and that his father has a management contract with another company.

14. The DPC raised further queries with Airbnb by email on 05 May 2021 and it also outlined the Complainant's response to Airbnb's submissions.
15. Airbnb responded by email on 19 May 2021. In its response, Airbnb set out to the DPC that it continued to retain the Complainant's suspended accounts because of the fact that he had been implicated in a serious incident at a listing, to which he had very close personal and business ties. Airbnb stated that it was of the understanding that criminal and civil proceedings involving the Complainant and the guest in question were ongoing, but that discussions around a potential settlement had taken place. Airbnb suggested that if the Complainant was in a position to provide it with appropriate documentation, such as official court documentation and/or sworn affidavits, which could allow Airbnb to verify that these legal proceedings, including any appeal processes, had concluded or that these legal proceedings had otherwise been conclusively resolved, it would review its position and determine whether the deletion of the Complainant's accounts was possible, in the circumstances. Airbnb also suggested that the Complainant provide it with official court record numbers and any other relevant references or material relating to these legal proceedings, which would enable Airbnb to satisfy itself of the status of such proceedings. Airbnb confirmed that it had not received any requests for information from law enforcement agencies or from the legal representatives of the parties in relation to the incident in question. Airbnb asked the DPC whether its procedure could be paused to allow for a possible resolution of the matter between the parties, pending further engagement.
16. The DPC reverted to Airbnb by email on 01 June 2021 and confirmed that it would put Airbnb's response to the Complainant in an attempt to amicably resolve the complaint.
17. The DPC outlined Airbnb's response to the Complainant in correspondence

which issued to the Cypriot DPA on 16 June 2021. The DPC issued further correspondence to the Complainant on 29 December 2021, as it had not received any response to its letter of 16 June 2021.

18. The DPC received the Complainant's response to its letters of 16 June 2021 and 29 December 2021 via correspondence that was provided by the Cypriot DPA on 18 March 2022. In his response, the Complainant stated that his private dispute with a third party in a local civil court had nothing to do with Airbnb and stated that he would not be providing any further personal data, especially as Airbnb was currently withholding his personal data and refusing to delete it despite his several requests. The Complainant asserted that by refusing to delete his personal data as requested, Airbnb was acting in contravention of the GDPR.
19. Despite its efforts during the complaint handling phase, the DPC was unable to facilitate the amicable resolution of this complaint. Therefore, the unresolved issues in relation to this complaint at the end of the DPC's complaint handling process were as follows:
 - a) Whether Airbnb properly complied with the Complainant's erasure request pursuant to Article 17;
 - b) Whether Airbnb has a lawful basis for the retention of the Complainant's personal data in circumstances where he has exercised his right to erasure;
 - c) Whether Airbnb has complied with the principle of data minimisation where it has retained the Complainant's personal data following the processing of his erasure request;
 - d) Whether Airbnb complied with principles of transparency and provision of information in respect of the Complainant's erasure request and in circumstances where it retained the Complainant's personal data following the processing of his erasure request.

Conduct of Inquiry

20. Acting in its capacity as lead supervisory authority, the DPC commenced an Inquiry in relation to this matter by issuing a Notice of Commencement of Inquiry to Airbnb on 07 October 2022.

21. The DPC advised Airbnb that the Inquiry would seek to examine and assess whether or not Airbnb had complied with its obligations under the GDPR and the Act, in particular under Articles 5, 6, 12 and 17 of the GDPR in respect of the relevant processing operations which are the subject matter of the complaint.
22. The DPC issued a letter to the Complainant informing him that an Inquiry had commenced in relation to his complaint. This letter was sent to the Cypriot DPA on 07 October 2022 for onward transmission to the Complainant. No submissions were received from the Complainant in respect of that notification.
23. Airbnb responded, by letter dated 11 November 2022, to the queries raised by the DPC in its Notice of Commencement of Inquiry dated 07 October 2022.
24. Before addressing the DPC's queries, Airbnb set out a number of preliminary overarching comments. Airbnb stated that the Complainant's accounts are being retained on foot of Cypriot legal advice, following a serious incident at an Airbnb listing that was/is the subject matter of a police investigation and legal proceedings. Airbnb further stated that, on 19 May 2021, it requested, through the DPC, that the Complainant produce evidence that would assist Airbnb in determining whether the underlying legal issues warranted ongoing retention of these accounts. Airbnb stated, however, that the Complainant refused to engage with these attempts to resolve the complaint.
25. Airbnb submitted that, in the absence of engagement by the Complainant and in light of the Notice, it re-engaged with Cypriot legal counsel to review its legal position based on the information available to it. Airbnb stated that following receipt of further advice and given the lapse of time since the incident in question, Airbnb assessed that it could carry out targeted deletion of personal data relating to the Complainant, subject to the DPC's agreement with this course of action. Airbnb stated that it is in the process of reviewing the Complainant's personal data to identify the information that can be deleted in the circumstances. Airbnb stated that notwithstanding the proposed deletion of such data, it will continue to retain material connected with or relevant to the incident in question, both for the purpose of this statutory inquiry and any related legal processes, as well as in relation to any current or prospective legal claims, including to defend claims against Airbnb. Airbnb further stated that it was advised by Cypriot legal counsel to retain such information until the end of the Cypriot statutory limitation period, which will run until 22 November 2024.

26. Airbnb submitted, however, that if it receives satisfactory evidence that the underlying legal issues have been conclusively resolved, it will review this with Cypriot counsel with a view to deleting the retained information based on that evidence, subject to retaining such information as is necessary until the end of this statutory inquiry and any related legal processes. Airbnb further submitted that it will continue to retain certain residual data for safety, security and legal compliance purposes.
27. In order to progress matters, the DPC sought further clarification from Airbnb in relation to the status of the Complainant, the guest and the property owner on the platform. The DPC queried whether, at the time of the alleged assault, the guest who was allegedly assaulted was a registered user of Airbnb staying in a property advertised by the Complainant on the Airbnb platform. The DPC further queried what the Complainant's relationship was to the property and, if the Complainant was not the registered host of the property rented by the guest who was allegedly assaulted, why the Complainant's Airbnb account and personal information held on his Airbnb account has been associated with the alleged assault incident. The DPC also asked how Airbnb can justify retaining the Complainant's personal data on his Airbnb account in connection with an alleged assault that took place in a property that was not associated with the Complainant's Airbnb account.
28. In response to these queries, Airbnb submitted that, by way of summary of the details provided in its previous responses to the DPC, the guest in question was an Airbnb user staying in an Airbnb listing hosted by the Complainant's father. Airbnb stated that this accommodation listing forms part of a group of Airbnb properties that the Complainant is connected to by close business and personal ties, including the fact that he worked at the complex where the guest was staying and hosts Airbnb listings at this complex.
29. Airbnb stated that information relating to the incident in question, including lengthy communications from the Complainant regarding the incident, are "*contained in certain of the complainant's accounts*". Airbnb submitted that it had been advised by Cypriot legal counsel to retain the Complainant's suspended Airbnb accounts in light of the incident in question and resulting civil and criminal legal proceedings. Airbnb reiterated that it is in the process of reviewing the Complainant's personal data to identify what/if any information that can now be deleted.
30. Airbnb submitted that many of the facts described by it, including the existence of civil and criminal legal proceedings, were acknowledged by the Complainant in his communications with Airbnb and in information and materials provided to

the DPC by the Complainant, with the Notice itself at paragraph 15 referring to an acknowledgment from the Complainant to the DPC that there is “*an assault case registered against him in the courts in Cyprus, but that it was for the Courts to decide on this and not Airbnb*”. Airbnb stated that the Complainant’s communications with Airbnb include messages from the Complainant on behalf of his and his father’s property companies in relation to the incident in question and the related legal proceedings.

31. Airbnb submitted that the Complainant is attempting to rely on arbitrary lines of demarcation between a number of separate Airbnb accounts that are linked by common commercial and personal connections and which relate to properties in the same commercial property complex, making them a network of associated accounts, while also failing to acknowledge the “*crucial*” fact that substantive material relating to this incident is “*contained in certain of his accounts*”.
32. In response to the DPC’s query as to when Airbnb received the Complainant’s erasure request, Airbnb stated that the Complainant submitted a number of deletion requests across a number of accounts but that his first deletion request was made on 18 December 2018. Airbnb provided the DPC with a copy of this deletion request.
33. When asked by the DPC when it had first responded to the Complainant’s request, Airbnb stated that it responded to the request on 18 December 2018, asking that he verify his identity for the purpose of authenticating his deletion request. Airbnb stated that, once authenticated on 28 December 2018, it informed the Complainant that his personal data would be deleted unless Airbnb was permitted or required to retain data. Airbnb provided a copy of this correspondence. Airbnb stated that it ultimately retained the Complainant’s accounts for the reasons explained in its previous responses to the complaint.
34. In response to the DPC’s request for a schedule of the categories of data retained by Airbnb following the processing of the Complainant’s erasure request pursuant to Article 17, Airbnb submitted that it has retained each of the Complainant’s accounts, a number of which were created following the incident, in their entirety. Airbnb advised that the personal data retained comprises various account information provided by the Complainant or generated in connection with his use of the Airbnb platform, for example “*account information including profile details, preferences and contact information; listing and reservation data; reviews data; identity verification information, in particular a copy of the Complainant’s Cypriot identity card; financial information such as bank account and credit card details used for transactions on the platform, and tax information relating to applicable tax requirements; communications on and*

relating to the Airbnb platform for example messages with other users and emails to Airbnb; and technical logs relating to activities on the platform, for example account login records, IP addresses, device details, etc.”

35. Airbnb submitted that, to date, it has not deleted any personal data in the Complainant’s accounts based on the advice of Cypriot legal counsel that all accounts should be retained in their entirety, for reasons that include the potential need to preserve a broader set of evidence that may be used in civil and criminal legal proceedings. Airbnb stated that it is currently in the process of reviewing the Complainant’s personal data to identify information that can now be deleted in the circumstances. Airbnb stated that it will however continue to retain any information it considers to be relevant to the incident in question or necessary in the context of Airbnb’s engagement with this statutory inquiry and any related legal processes. Airbnb stated that it will also retain certain residual personal data for safety, security and legal compliance reasons, for example limited account information which it retains for security reasons associated with identifying connections between Airbnb accounts, activity logs that are used to enhance its security processes, and information that it is required to retain to comply with laws, such as under record-keeping and anti-money laundering obligations.
36. In response to the DPC’s query as to the legal basis for retaining each category of personal data following the processing of the Complainant’s erasure request and why the retention of this data was necessary and proportionate, Airbnb submitted that it has retained the Complainant’s accounts on the basis of sections 41(b) and (c) and sections 60(3)(a)(ii) and (iv) of the Data Protection Act 2018, relating respectively to the investigation of criminal offences and the contemplation or existence of legal proceedings (with sections 41(c) and 60(3)(a)(iv) to be read in conjunction with Article 17(3)(e) of the GDPR). Airbnb posited that where it is required to retain information for legal compliance purposes, for example transactional information required for compliance with record-keeping obligations, it relies on Article 17(3)(b) of the GDPR.
37. Airbnb stated that it also retains this personal data on the basis of the legitimate interests of those involved in or otherwise connected with the underlying police investigation and legal proceedings, including the wider public interest in preserving the integrity of police investigations and judicial processes, and the legitimate interests of Airbnb, its users, partners and those otherwise associated with the platform in keeping the Airbnb platform safe, in accordance with Article 6(1)(f) of the GDPR.

38. In response to the DPC's query in respect of the data minimisation efforts carried out by Airbnb in relation to this retained data, Airbnb submitted that it had been advised by Cypriot legal counsel to retain the Complainant's deactivated accounts in their entirety, for reasons that include the potential need to preserve a broader set of evidence that may be used in civil and criminal legal proceedings. Airbnb stated that in light of the legal advice it received, it believes the retention of the Complainant's accounts was adequate, relevant and necessary for the underlying processing purposes. Airbnb stated that it is now in the process of reviewing the Complainant's personal data to identify the information that can be deleted in the circumstances, save for data more particularly described above, which is being retained for specific purposes and is limited to data necessary for those specific purposes.
39. Airbnb submitted that material relating to the incident in question will be retained until 22 November 2024, being the end of the Cypriot statutory limitation period. Airbnb stated that if it receives satisfactory evidence that the underlying legal issues have been conclusively resolved, it will review this with Cypriot counsel with a view to deleting this material based on that evidence. Airbnb stated that notwithstanding this, it will retain such information as is necessary for the purpose of Airbnb's engagement with this statutory inquiry and any related legal processes, until the expiration of such processes. Airbnb further stated that it will retain certain information for (i) safety and security purposes, for a period of five years from the deletion of the relevant account and (ii) legal compliance purposes, for the associated periods prescribed by law.
40. In response to the DPC's query as to the processing this data undergoes following the processing of the Complainant's erasure request, Airbnb submitted that material relating to the incident in question is not being actively processed but rather retained, save for use in its investigation of the incident and its responses to this complaint and inquiry. It stated that material retained for safety and security purposes is used for a variety of security related processes, including preventative measures such as identifying suspended users resurfacing on the platform, and security-enhancement processes such as security product and procedure improvement. Airbnb stated that material retained for legal compliance reasons is processed in accordance with underlying legal obligations; for example, identify verification information retained to comply with anti-money laundering legislation will be verified for authenticity and then retained for evidentiary reasons which include auditing purposes.
41. Airbnb stated that the data is being retained and used for specific purposes and that it is not processed for reasons that are unconnected to these purposes.

42. In response to the DPC's query as to the legitimate interest for retaining each category of personal data, Airbnb reiterated that it retains all the accounts on the basis of the legitimate interests of those involved in or otherwise connected with the underlying police investigation and legal proceedings, including the broader public's interest in preserving the integrity of police investigations and judicial processes; the legitimate interests of Airbnb to be able to exercise its legal rights and to defend itself against legal claims; and the legitimate interests of Airbnb, its users, partners and those otherwise associated with the platform in keeping the Airbnb platform safe, in accordance with Article 6(1)(f) of the GDPR.
43. In response to the DPC's queries regarding the legal obligation Airbnb was referring to and the legislation that places this obligation on Airbnb, Airbnb submitted that at the time in question it was concerned that the police investigation and any related legal processes in Cyprus meant that Airbnb was potentially legally obliged to retain the Complainant's accounts for reasons such as evidentiary purposes. Airbnb stated that, having reviewed this matter again with Cypriot counsel, its position is that it has been unable to determine if a legal requirement exists, but that retention remains necessary for litigation and attendant liability reasons.
44. In response to the DPC's query in respect of why it considered it both necessary and proportionate to retain each category of personal data for the purposes of pursuing the identified legitimate interest and the data minimisation efforts carried out by Airbnb in relation to this data, Airbnb submitted that it had been advised by Cypriot legal counsel to retain the Complainant's accounts in their entirety, for reasons that include the potential need to preserve a broader set of evidence that may be used in civil and criminal legal proceedings. Airbnb stated that it believed that this rendered the retention of the Complainant's account adequate, relevant and necessary, and by extension proportionate, within the meaning of the data minimisation principle under Article 5(1)(c) of the GDPR. Airbnb once again stated that it was in the process of reviewing the Complainant's personal data to identify the information that can be deleted in the circumstances, save for data relating to the incident in question and certain residual data being retained for safety, security and legal compliance purposes.
45. In response to the DPC's query as to the balancing test conducted by Airbnb when considering what categories of personal data were necessary to retain for achieving the purpose of pursuing the identified legitimate interests, Airbnb submitted that the Complainant's accounts are being retained following a serious incident at an Airbnb listing that was/is the subject matter of a police

investigation and legal proceedings. Airbnb submitted that the rights of the parties to those proceedings and those otherwise associated with those proceedings (including Airbnb's right to avoid liability for the premature destruction of evidence), the wider public interest in preserving the integrity of police investigations and judicial processes and Airbnb's need to act prudently in such circumstances, collectively outweigh the Complainant's right to delete these accounts under Article 17 of the GDPR. Airbnb stated that similarly, the retention of certain limited data for security reasons has no significant impact on the Complainant, but serves to help Airbnb protect its platform and those connected with it, including to identify and restrict the Complainant's attempts to create further accounts on the platform. Airbnb submitted that it carried out a balancing test and reached the conclusion that the identified legitimate interests are not overridden by the Complainant's interests or fundamental rights and freedoms in circumstances where a number of important issues and prerogatives, including issues of platform safety and broader societal importance, override his right to erase personal data from the Airbnb platform, under Article 17 of the GDPR.

46. Airbnb stated that section 41(c) of the Data Protection Act 2018 permits ongoing processing of personal data for purposes which are different to the original processing purposes, for the following reasons: where the processing is necessary for the purposes of providing or obtaining legal advice or for the purposes of, or in connection with, legal claims, prospective legal claims, legal proceedings or prospective legal proceedings; where the processing is otherwise necessary for the purposes of establishing, exercising or defending legal rights. Airbnb stated that it is retaining these accounts on foot of Cypriot legal advice relating to legal proceedings, including the aforementioned civil and criminal proceedings, and the attendant legal rights connected with these proceedings, which include Airbnb's right to protect itself from any liability flowing from the destruction of important evidence and otherwise to defend itself from claims related to the incident itself.
47. The DPC asked Airbnb to provide it with any notifications/requests it received from either party or law enforcement that the Complainant's personal data would be required for the purpose of a legal claim/prospective claim. In response, Airbnb stated that it is on notice of the existence of police investigations and legal proceedings but it has not received any formal requests for information in relation to the incident. Airbnb stated that it wished to clarify its previous statements to the DPC wherein it advised that it had received a copy of a police report, when in fact the guest had informed Airbnb that he had reported the incident to the police. Airbnb stated that, in light of advice of Cypriot counsel,

and in order to take steps to resolve the complaint, it asked the Complainant to produce evidence that would assist it in determining whether the underlying legal issues warranted ongoing retention of these accounts. Airbnb stated that the Complainant has refused to engage with these attempts to resolve the complaint.

48. The DPC asked Airbnb to provide it with a copy of the notice that was provided to Airbnb of the alleged assault which it had referred to in its correspondence of 05 June 2019. In response, Airbnb stated that on 22 November 2018, the Complainant's father and a representative of the family business called Airbnb to report the incident, which resulted in an investigation that involved calls and emails between Airbnb, the host and his representative, the guest and the Complainant. Airbnb stated that, as such, Airbnb's initial notification of the incident came in the form of a phone call from the Complainant's father, which was logged. Airbnb stated that the guest provided Airbnb with hospital documentation and photographic evidence of his injuries, and the guest also referred to making a report to the police. Airbnb stated that ultimately, Airbnb's investigations resulted in the Complainant's accounts and his father's accounts being suspended.
49. The DPC posed specific queries in relation to the current status of the Complainant's erasure request and asked Airbnb whether it had received a request from law enforcement/police or any legal representatives for information or a request to retain information in relation to the alleged assault. Airbnb responded that it has not received any formal requests, however it stated that it has been advised by Cypriot legal counsel to retain the Complainant's accounts which it is doing on the basis of sections 41(b) and (c) and sections 60(3)(a)(ii) and (iv) of the Data Protection Act 2018, and the legal obligations and legitimate interests detailed in its responses to the DPC.
50. The DPC, by correspondence dated 22 March 2023, issued additional queries to Airbnb. Airbnb responded to these queries by letter dated 05 April 2023.
51. Airbnb submitted that, to date, it has not been a party to legal proceedings concerning the incident. Airbnb stated that, as set out in its previous response of 11 November 2022, the Complainant himself acknowledged the existence of legal proceedings relating to the incident at the Airbnb listing, with the effect that Airbnb's potential involvement in legal proceedings relating to the relevant incident was, and is, a real risk. Airbnb stated that it is important to bear in mind that the risk of legal proceedings involving Airbnb extends to the guest in question initiating legal proceedings against Airbnb or otherwise attaching Airbnb to legal proceedings within the permissible statutory limitation periods.

52. Airbnb submitted that it reasonably anticipated that proceedings were likely on the basis that a serious incident occurred at an Airbnb listing, which subsequently resulted in legal proceedings involving the Complainant and the guest in question.
53. Airbnb submitted that given the serious nature of this incident and the contentious nature of this complaint, coupled with the fact that the relevant statutory limitation periods in Cyprus have not expired, Airbnb has a reasonable basis upon which to take the position that legal proceedings concerning its role in this incident remain a possibility.
54. Airbnb submitted that its Cypriot lawyers advised that it was prudent to retain the Complainant's accounts in light of the incident in question, in particular in case the information in the accounts was important evidence in legal proceedings.
55. Airbnb submitted that the retention period corresponds with the relevant statutory limitation periods for legal proceedings in Cyprus. Airbnb stated that, in other words, it has been advised by Cypriot legal counsel to retain information relating to the incident in question until the statutory time limits for related legal proceedings have elapsed.
56. Airbnb submitted that in December 2018, it was not in a position to decide what data points were or were not relevant for potential legal proceedings relating to this incident and so it was prudent to retain the accounts in their entirety. Airbnb stated that it has gathered and documented its analysis in a legitimate interests assessment ('LIA') document (a copy of which was provided to and considered by this Inquiry) which captures its assessment of retention from the time of the incident up until the present day. Airbnb stated that this LIA relates to Cypriot legal advice and litigation-related matters and has, accordingly, been marked as legally privileged and confidential. Airbnb submitted that, in short, it retains this data for the valid and important purpose of preserving information that does /may constitute material evidence in relation to a serious incident, in circumstances where this retention is necessary to preserve the information and where the balancing of competing rights clearly favours Airbnb and all those connected with the platform and this incident, including the broader community, for the reasons already outlined in its previous response and in the legitimate interests assessment document provided. Airbnb submitted that in terms of the data retained by it going forward, it is prepared to delete certain of the Complainant's personal data save for data relating to the incident in question, which it says it will retain until the expiration of the relevant statutory limitation

periods (unless there is satisfactory evidence that the underlying issues relating to the parties involved have been conclusively resolved in a manner that allows Airbnb to delete the data) and the conclusion of this inquiry and any related legal processes. Airbnb stated that, in addition, certain limited residual data will continue to be retained for the security and legal compliance purposes already outlined.

Notification of the Preliminary Draft Decision to the Data Controller

57. The DPC provided Airbnb with a copy of its preliminary Draft Decision and invited submissions by 27 July 2023.
58. By email dated 27 July 2023, Airbnb stated that it noted the DPC's findings in the Preliminary Draft Decision and that it had no substantive submissions to make on it at that juncture.

Notification of the Preliminary Draft Decision to the Complainant

59. The DPC provided the Complainant with a copy of its Preliminary Draft Decision via the Cypriot DPA, on 28 July 2023, and invited any submissions by 25 August 2023.
60. The Cypriot DPA communicated to the DPC, on 09 August 2023, that the Complainant had responded that he agreed with the Preliminary Draft Decision and did not have anything else to add or comment.

Relevant and Reasoned Objections from “supervisory authorities concerned”

61. Having transmitted the Draft Decision, on 16 August 2023, to the “supervisory authorities concerned” in accordance with Article 60(3) of the GDPR, the DPC did not receive any relevant and reasoned objections under Article 60(4) of the GDPR.
62. Given that no relevant and reasoned objections were received from any of the supervisory authorities, within a period of four weeks, after having been consulted, the DPC did not revise the Draft Decision.

Applicable Law

63. For the purposes of its examination and assessment of this complaint, the DPC has considered the following Articles of the GDPR:
- Article 5
 - Article 6
 - Article 12
 - Article 17

Analysis and Findings of Inquiry

Issue A – Whether Airbnb has a lawful basis for the retention of the Complainant’s personal data in circumstances where he has exercised his right to erasure

64. The Complainant contends that Airbnb retained his personal data unlawfully after he had requested that Airbnb delete his personal data and after he had withdrawn consent for processing his personal data.
65. The Complainant submitted, by correspondence dated 27 November 2019, that “*irrespective of any personal court proceedings pending against any person who also maintains an account with Airbnb*”, it has no right to retain his personal information. The Complainant submitted that the incident which occurred did not concern a guest who had booked through the Complainant’s Airbnb account or with whom he has any relationship whatsoever. He submitted that in September 2018 a visitor booked an apartment which was privately owned by a third party. The Complainant stated that the apartment in question is located in an apartment complex and that certain apartments within the complex are managed by him, but not the apartment which the visitor concerned booked in this instance. The Complainant submitted that “*there is a cases against me which is under police investigation, accusing and personally prosecuting me of a case that is registered for trial in an official district court...[...]...for which I was the victim...*”.
66. The Complainant submitted, by correspondence dated 3 April 2020, that “*the assault case is in court... [...]... this case has been registered in court and we have been offered by the guest to withdraw the charges for mutual benefit and resolution of any disputes out of court*”. The Complainant submitted that “*the guest filed a complaint against me for assault, but we also lodged a*

complaint...". The Complainant submitted that "Airbnb were never asked to provide the relevant information...". The Complainant further submitted that "we filed a civil action against him for several thousands of [euro], in relation to false allegations (which were proven in court), defamation caused and assault" and that "[Airbnb] also have the obligation to be informed on the case, both by the District Court and by [his] lawyers, which they have not done so far".

67. Airbnb, by correspondence dated 5 June 2019, submitted:-

"First, given that [the Complainant], as an Airbnb host, has allegedly perpetuated a serious assault on an Airbnb guest, any data relating to his account may comprise evidence in a criminal matter and potential civil litigation. In this context, the retention is based upon Article 6(1)(c), 'processing which is necessary for compliance with a legal obligation to which the controller is subject' ... [...]...Further, even leaving aside our obligation to not destroy evidence, such retention is in the legitimate interests of Airbnb, the guest who was assaulted, the police and the public at large, based upon Article 6(1)(f) GDPR... [...]... Finally, such retention is necessary for the 'purposes of providing or obtaining legal advice or for the purposes of, or in connection with, legal claims, prospective legal proceedings' or 'is otherwise necessary for the purposes of establishing, exercising or defending legal rights'[...]

If it is the case that the injured party is not going to take legal action and the statute of limitations in the relevant jurisdiction has expired we will then be in a position to delete the account in accordance with our legal obligations."

68. Airbnb, by correspondence dated 11 November 2022, submitted:-

"...the complainant's accounts are being retained on foot of Cypriot legal advice following a serious incident at an Airbnb listing that was / is the subject matter of a police investigation and legal proceedings. On 19 May 2021, we requested, through the DPC, that the complainant produce evidence that would assist Airbnb in determining whether the underlying legal issues warranted ongoing retention of these accounts. However, the complainant has refused to engage with these attempts to resolve the complaint.

In the absence of engagement by the complainant and in light of the Notice, we have reengaged with Cypriot legal counsel to review our legal position based on the information that is available to Airbnb. Following receipt of further advice and given the elapse of time since the incident in question, Airbnb has assessed that it can carry out targeted deletion of personal data relating to the complainant, subject to the DPC's agreement with this course of action. In this regard, Airbnb is in the process of reviewing the complainant's personal data to identify the information that can be deleted in the circumstances. Notwithstanding the proposed deletion of such data, Airbnb will continue to

retain material connected with or relevant to the incident in question, both for the purpose of this statutory inquiry and any related legal processes, as well as in relation to any current or prospective legal claims, including to defend claims against Airbnb. We have been advised by Cypriot counsel to retain such information until the end of the Cypriot statutory limitation period, which will elapse six years from the date of the incident in question that is on 22 November 2024. If, however, we received satisfactory evidence that the underlying legal issues have been conclusively resolved, we will review this with Cypriot counsel with a view to deleting the retained information based on that evidence, subject to retaining such information as is necessary until the end of this statutory inquiry and any related legal processes. In addition, Airbnb will continue to retain certain residual data for safety, security and legal compliance purposes.”

69. Airbnb submitted:-

“Airbnb also retains this personal data on the basis of the legitimate interests of those involved in or otherwise connected with the underlying police investigation and legal proceedings, including the wider public interest in preserving the integrity of police investigations and judicial processes, and the legitimate interests of Airbnb, its users, partners and those otherwise associated with the platform in keeping the Airbnb platform safe, in accordance with Article 6(1)(f) of the GDPR.”

70. The DPC notes Airbnb’s submission that it was put on notice of the existence of police investigations and legal proceedings but it has not received any formal requests for information in relation to the relevant incident.
71. The DPC notes Airbnb’s submissions that it would like to clarify its previous statements to the DPC that it had received a copy of a police report, when in fact the guest had informed Airbnb that he had reported the incident to the police and that in light of advice from Cypriot legal counsel, it asked the Complainant to produce evidence that would assist it in determining whether the underlying legal issues warranted ongoing retention of these accounts. However, the Complainant has refused to engage with these attempts.
72. The DPC notes Airbnb’s submission that it has not received any formal requests from police/law enforcement for information or to retain information relating to the alleged assault. The DPC also notes Airbnb’s submission that it has not received any formal requests from legal representatives of the guest for information or to retain information relating to the alleged assault for the purposes of civil proceedings. The DPC further notes Airbnb’s submission that it had, however, been advised by legal counsel to retain the Complainant’s

accounts and that it was continuing to retain this personal data on the basis of sections 41(b) and (c) and sections 60(3)(a)(ii) and (iv) of the Data Protection Act 2018, and the legal obligations and legitimate interests it already outlined.

The Law

73. Article 6(1)(f) of the GDPR states that processing shall be lawful only if and to the extent that “*processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child*”.

Analysis

74. The DPC notes Airbnb’s submission that it retained each of the Complainant’s accounts, a number of which were created following the incident, in their entirety.
75. The DPC notes Airbnb’s submission that the personal data retained comprises various account information provided by the Complainant or generated by his use of the Airbnb platform, for example: account information including profile details, preferences and contact information; listing and reservation data; reviews data; identity verification information, in particular a copy of the Complainant’s Cypriot identity card; financial information such as bank account and credit card details used for transactions on the platform, and tax information relating to applicable tax requirements; communications on and relating to the Airbnb platform for example messages with other users and emails to Airbnb; and technical logs relating to activities on the platform, for example accounts login records, IP addresses, device details, etc.
76. The DPC notes that Airbnb claimed that it retained the Complainant’s personal data on the basis of the legitimate interests of those involved in or otherwise connected with the underlying police investigation and legal proceedings, including the wider public interest in preserving the integrity of police investigations and judicial processes, and the legitimate interests of Airbnb, its users, partners and those otherwise associated with the platform in keeping the Airbnb platform safe, in accordance with Article 6(1)(f) of the GDPR.
77. For a controller to rely on Article 6(1)(f) GDPR, three conditions must be met: (i) the controller or a third party must have a legitimate interest (legitimate interest); (ii) processing is necessary for the purposes of the legitimate interest (necessary); (iii) such interests are not overridden by the interests or fundamental rights and freedoms of the data subject which require protection of

personal data (balance of interests).

78. **First condition: Legitimate Interests.** In its LIA, Airbnb listed its legitimate interests as:
- *the interests of those involved in or otherwise connected with the underlying police investigation and legal proceedings relating to the incident, including the wider public interest in preserving the integrity of police investigations and judicial processes;*
 - *the interests of Airbnb in exercising its right to protect itself from any liability flowing from the destruction of important evidence and otherwise to defend itself from claims related to the incident itself; and*
 - *the interests of Airbnb, its users, partners and those associated with the platform in keeping the Airbnb platform safe.*
79. The DPC agrees that Airbnb fulfils the first condition regarding the existence of legitimate interests.
80. **Second condition: Necessity.** In its LIA, Airbnb stated the following with regard to this condition:
- *Airbnb has been advised by Cypriot legal counsel that retention of the Complainant's accounts in their entirety, until the end of the relevant Cypriot statutory limitation period (6 years), is necessary and proportionate. Airbnb is not in a position to determine which data should be retained. In light of Cypriot law advice, any aspects of the Complainant's accounts could constitute evidence for the purpose of these proceedings and this is not currently determinable by Airbnb without further information. Airbnb therefore retains the Complainant's accounts in order to preserve the integrity of any legal proceedings, which includes Airbnb's right to protect itself from any liability flowing from the destruction of important evidence and to defend itself from any claims relating to the incident.... Certain account information is being retained for broader security purposes, including preventative measures such as identifying suspended users such as the complainant resurfacing on the platform, and security-enhancement processes such as security product and procedure improvement, and is limited to material necessary for these specific purposes.*
81. The DPC agrees that Airbnb fulfils the second condition with regard to necessity.
82. **Third condition: balance of interests.** In its LIA, Airbnb stated the following with regard to this condition:



- *The Complainant's accounts are being retained following a serious Incident at an Airbnb listing that resulted in a police investigation and legal proceedings. Airbnb has an existing relationship with the Complainant and has informed him that it is retaining his accounts and why such retention is necessary. The retention of the Complainant's suspended accounts in this manner means that the Complainant's personal data is not generally being actively processed; rather, his account and personal data are being retained pending the completion of associated legal processes. As such, this serves as a mitigating measure with respect to the impact of the processing on the Complainant, save for the prevention of the Complainant re-joining the Airbnb platform which is addressed in and prohibited by the Terms. Moreover, with a view to reassessing its retention in light of any developments around these legal processes, Airbnb has sought to engage with the Complainant. However, these attempts have been unsuccessful due to the failure of the Complainant to respond.*
- *Similarly, the retention of certain limited data for security reasons serves to help Airbnb to protect its platform and those connected with it, including to identify and restrict the Complainant's attempts to create further accounts on the platform (instances of which Airbnb had identified in the aftermath of the incident).*
- *In the circumstances, the rights of the parties to those proceedings and those otherwise associated with those proceedings (including Airbnb's right to avoid liability for the premature destruction of evidence), the wider public interest in preserving the integrity of police investigations and judicial processes and Airbnb's need to act prudently in such circumstances collectively outweigh the Complainant's right to delete these accounts under Article 17 GDPR.*
- *In addition, Airbnb has also assessed its retention of the Complainant's accounts in light of a potential objection under Article 21(1) GDPR. In this regard, Airbnb has determined that, for the reasons outlined above: (i) there are compelling legitimate grounds for the processing which override the interests, rights and freedoms of the Complainant; and (ii) the retention is necessary for the establishment, exercise or defence of legal claims, including Airbnb's right to protect itself from any liability flowing from the destruction of important evidence and to defend itself from any claims relating to the incident.*
- *In conclusion, Airbnb has carried out a balancing test and concluded that the identified legitimate interests specified above are not overridden by the Complainant's interests or fundamental rights and freedoms in circumstances where a number of important issues and prerogatives,*

including issues of platform safety and broader societal importance, override his right to erase personal data from the Airbnb platform under Article 17 GDPR.

83. With regard to the third condition, balance of interests, the DPC is satisfied that Airbnb's legitimate interests in retaining the Complainant's data until the expiration of the Cypriot statutory limitation period are not overridden by the Complainant's interests or fundamental rights and freedoms. The DPC notes and accepts Airbnb's position that a number of important issues and prerogatives, including issues of platform safety and broader societal importance, override the Complainant's right to erase personal data from the Airbnb platform under Article 17 of the GDPR. The DPC is of the view that Airbnb has demonstrated compliance with Article 6(1)(f) of the GDPR for this processing and retention of the entirety of the Complainant's personal data on all of his accounts.
84. On the basis of the foregoing, the DPC is satisfied that Airbnb validly relied on Article 6(1)(f) of the GDPR as the lawful basis for the retention of the Complainant's personal data.

Issue B – Whether Airbnb properly complied with the Complainant's erasure request pursuant to Article 17

85. The DPC notes the Complainant's contention that Airbnb failed to properly give effect to his erasure request, which he submitted to it on 18 December 2018. The Complainant informed Airbnb that he wished to withdraw his consent for the "storing, using and sharing" of any information relating to him. The Complainant informed Airbnb that he would like any information relating to him or his properties, "including ID information, contact information, personal details, company information, address or locations, IP addresses, photographs etc., to be permanently removed from any of the databases related to [Airbnb's] service, or third parties or partners of [Airbnb]".
86. The DPC notes that, during the course of the Inquiry, Airbnb stated that the Complainant had been suspended from Airbnb as a result of an incident that occurred on 20 November 2018 at an Airbnb listing. Airbnb stated that it responded to the Complainant's erasure request of 18 December 2018 on the same date requesting that he verify his identity for the purpose of authenticating his deletion request. Airbnb stated that, once authenticated on 28 December 2018, it informed the Complainant that his personal data would be deleted unless it was permitted or required to retain data.

87. Airbnb submitted to the DPC that ultimately Airbnb retained the Complainant's accounts on foot of legal advice following an incident that occurred on 20 November 2018 which Airbnb stated "*was/is the subject matter of a police investigation and legal proceedings*". Airbnb submitted that it had been advised by Cypriot legal counsel to retain the Complainant's suspended Airbnb accounts in light of the incident in question and resulting civil and criminal legal proceedings.
88. Airbnb submitted that it has:-
- "not deleted any personal data in the complainant's accounts based on the advice of Cypriot legal counsel that all accounts should be retained in their entirety, for reasons that include the potential need to preserve a broader set of evidence that may be used in civil and criminal legal proceedings. However, as stated earlier in this letter, Airbnb is currently in the process of reviewing the complainant's personal data to identify information that can now be deleted in the circumstances. Airbnb will, however, continue to retain any information that it considers to be relevant to the incident in question or necessary in the context of Airbnb's engagement with this statutory inquiry and any related legal processes. Airbnb will also retain certain residual personal data for safety, security and legal compliance reasons, for example limited account information which we retain for security reasons associated with identifying connections between Airbnb accounts, activity logs that are used to enhance our security processes, and information that we are required to retain to comply with laws, such as under record-keeping and anti-money laundering obligations."*
89. Airbnb stated that it will continue to retain material connected with or relevant to the incident in question, both for the purpose of the statutory inquiry and any related legal processes, as well as in relation to any current or prospective legal claims, including to defend claims against Airbnb and it stated that it was advised by Cypriot counsel to retain such information until the end of the Cypriot statutory limitation period, which will elapse six years from the date of the relevant incident, that is on 22 November 2024.
90. Airbnb submitted that many of the facts described by it, including the existence of civil and criminal legal proceedings, were acknowledged by the Complainant in his communications with Airbnb and in information and materials provided to the DPC by the Complainant.
91. Airbnb submitted that if, however, it receives satisfactory evidence that the underlying legal issues have been conclusively resolved, it will review the matter with Cypriot counsel, with a view to deleting the retained information based on

that evidence, subject to retaining such information as is necessary until the end of this statutory inquiry and any related legal processes.

92. The DPC notes Airbnb's submission that it has retained each of the Complainant's accounts, a number of which were created following the incident, in their entirety.
93. The DPC notes that Airbnb did not delete any personal data in the Complainant's accounts based on the advice of Cypriot legal counsel that all accounts should be retained in their entirety, it says, for reasons that include the potential need to preserve a broader set of evidence that may be used in civil and criminal legal proceedings. The DPC notes Airbnb's submission that in the circumstances, the rights of the parties to those proceedings and those otherwise associated with those proceedings (including Airbnb's right to avoid liability for the premature destruction of evidence), the wider public interest in processing the integrity of police investigations and judicial processes and Airbnb's need to act prudently in such circumstances collectively outweigh the Complainant's right to erasure of those accounts under Article 17 of the GDPR.
94. The DPC notes Airbnb's submission:-

"We have retained the complainant's accounts on the basis of sections 41(b) and (c) and sections 60(3)(a)(ii) and (iv) of the Data Protection Act 2018, relating respectively to the investigation of criminal offences and the contemplation or existence of legal proceedings (with sections 41(c)) and 60(3)(a)(iv) to be read in conjunction with Article 17(3)(e) of the GDPR).

Where we are required to retain information for legal compliance purposes, for example transactional information required for compliance with record-keeping obligations, we rely on Article 17(3)(b) of the GDPR.

Airbnb also retains this personal data on the basis of the legitimate interests of those involved in or otherwise connected with the underlying police investigation and legal proceedings, including the wider public interest in preserving the integrity of police investigations and judicial processes, and the legitimate interests of Airbnb, its users, partners and those otherwise associated with the platform in keeping the Airbnb platform safe, in accordance with Article 6(1)(f) of the GDPR."

The Law

95. Article 17(1) of the GDPR states:-

"The data subject shall have the right to obtain from the controller the erasure of

personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

- (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;*
- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing;*
- (c) the data subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2);*
- (d) the personal data have been unlawfully processed;*
- (e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;*
- (f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1)."*

96. Article 17(3)(e) of the GDPR states "*Paragraphs 1 and 2 shall not apply to the extent that processing is necessary... [...]...for the establishment, exercise or defence of legal claims*".

Analysis

97. The DPC notes Airbnb's claim that it retained the Complainant's accounts on the basis of sections 60(3)(a)(ii) and (iv) of the Data Protection Act 2018, relating respectively to the investigation of criminal offences and the contemplation or existence of legal proceedings with sections 41(c) and 60(3)(a)(iv) to be read in conjunction with Article 17(3)(e) of the GDPR.
98. The DPC also notes that Airbnb has claimed that Article 17(1) of the GDPR does not apply to the extent that Airbnb's processing of the Complainant's personal data is necessary for the establishment, exercise or defence of legal claims. With regard to Article 17(3)(e) of the GDPR, the DPC is of the view that Airbnb has demonstrated that Article 17(1) does not apply to the extent that processing was necessary in this case for the establishment, exercise or defence of legal claims. In light of the serious nature of the alleged incident that occurred involving the Complainant and another individual who, at the time of the incident was a guest at an Airbnb listing, the DPC is of the view that Airbnb has sufficiently demonstrated that it was necessary and proportionate to process the entirety of

the Complainant's personal data on his accounts for the establishment, exercise or defence of legal claims. Therefore, the DPC is of the opinion that Airbnb validly relied on Article 17(3)(e) of the GDPR for not giving effect to the Complainant's erasure request.

99. In the circumstances, therefore, the DPC finds that Airbnb validly relied on Article 17(3)(e) and that it did not infringe Article 17(1) of the GDPR, when it restricted the Complainant's right of erasure of his personal data held on his Airbnb accounts.

Issue C – Whether Airbnb has complied with the principle of data minimisation where it has retained the Complainant's personal data following the processing of his erasure request

100. The DPC notes, having regard to the data minimisation principle, Airbnb's submission that Airbnb had been advised by Cypriot legal counsel to retain the Complainant's deactivated accounts in their entirety, for reasons that include the potential need to preserve a broader set of evidence that may be used in civil and criminal legal proceedings and Airbnb's submission that in light of this, it believes the retention of the Complainant's accounts was adequate, relevant and necessary for the underlying processing purposes. The DPC notes in particular that in December 2018 Airbnb stated it was not in a position to decide what data points were or were not relevant for potential legal proceedings relating to the relevant incident and that it is prepared to delete certain of the Complainant's personal data save for data relating to the relevant incident, which it will retain until the expiration of the relevant statutory limitation period. The DPC also notes Airbnb's submission that it is in the process of reviewing the Complainant's personal data to identify the information that can be deleted.

The Law

101. Article 5(1)(c) of the GDPR states "*personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they processed ("data minimisation")*".

Analysis

102. In the particular circumstances of this Complainant's case, and given the serious nature of the alleged incident that occurred involving the Complainant and another individual who, at the time of the incident was a guest at an Airbnb listing, the DPC is of the view that Airbnb's retention of the Complainant's personal data was adequate, relevant and limited to what was necessary in

relation to the purposes for which it retained the Complainant's personal data. In circumstances where legal proceedings have not yet concluded in relation to the incident concerned, the DPC considers that efforts to minimise the level of personal data retained without the prior agreement of all parties to the proceedings could prejudice the outcome of those proceedings.

103. In the circumstances of this particular case, therefore, the DPC finds that Airbnb's retention of the Complainant's personal data in its entirety across a number of his accounts did not infringe the principle of data minimisation that is set out in Article 5(1)(c) of the GDPR.

Issue D – Whether Airbnb complied with principles of transparency and provision of information in respect to the Complainant's erasure request and in circumstances where it has retained the Complainant's personal data following the processing of his erasure request

104. The DPC notes Airbnb's submission:-

"The complainant submitted a number of deletion requests across a number of accounts, but his first deletion request was made on 18 December 2018 (please see document entitled 'Attachment 1 - December 2018 deletion request' attached to the cover email accompanying this letter)."

105. In addition Airbnb stated:-

"Airbnb responded to the complainant on 18 December 2018, requesting that he verify his identity for the purpose of authenticating his deletion request. Once authenticated on 28 December 2018, we informed the Complainant that his personal data would be deleted unless we were permitted or required to retain data (please see document entitled 'Attachment 1 - 18 December 2018 deletion request' attached to the cover email accompanying this letter)."

106. The DPC notes that Airbnb received the Complainant's erasure request on 18 December 2018. Airbnb responded to the Complainant on 18 December 2018 requesting that the Complainant re-send his erasure request and attach a photocopy of his proof of identity. Airbnb received a copy of the Complainant's ID and erasure request/s by email on 18 December 2018. The Complainant sought an update from Airbnb on 20 December 2018 and 21 December 2018. Airbnb responded to the Complainant by email on 28 December 2018 stating that it understood that he would like it to close his account and/or delete all his account information pursuant to his rights under the GDPR.

107. Airbnb's correspondence to the Complainant of 28 December 2018 stated:-

"As you have provided us with sufficient documentation to prove your identity, we've started to carry out your deletion request. Airbnb will delete your personal data, except to the extent GDPR permits or requires us to retain that data. For example, we retain data that is necessary for complying with laws to which we are subject, for exercising the right of freedom of expression and information (such as the content of reviews), and for the establishment, exercise or defence of legal claims (such as information relating to user disputes).

Processing your request will take some time, but as a first step, we have deactivated your account...[...]. Unless we inform you that we require more time, it will take up to one month from the date of your initial request for us to finish processing your deletion request..."

108. The DPC also notes Airbnb's submissions that *"ultimately Airbnb retained the complainant's accounts"* and that the *"complainant's accounts have not been deleted"* for the reasons outlined in its responses to the DPC.

109. The DPC notes that the Complainant did not receive any further notice or information from Airbnb to inform him of the reasons for not taking action on his erasure request and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.

The Law

110. Article 12(4) of the GDPR states that *"[i]f the controller does not take action on the request of the data subject, the controller shall inform the data subject without undue delay and at the latest within one month of receipt of the reasons for not taking action and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy"*.

111. Recital 59 GDPR offers further clarity with regard to the controller's obligations: *"The controller should be obliged to respond to requests from the data subject without undue delay and at the latest within one month and to give reasons where the controller does not intend to comply with any such requests."*

Analysis

112. The Complainant submitted his erasure request to Airbnb on 18 December 2018. However, the DPC notes that Airbnb ultimately did not give effect to the Complainant's erasure request and the Complainant did not receive any further

update or notice in that respect from Airbnb. The Complainant found out for the first time that Airbnb had not erased his personal data on 14 February, 2019 when he attempted to create another Airbnb account. This attempt prompted Airbnb to send him a message to the effect that his phone number which had been verified was deactivated “...so we’re emailing you to ensure you have up-to-date contact information on your Airbnb account. To update and verify your information, please log in to Airbnb and edit your phone number here.” Therefore, prior to that date, and further to its communication with him on 28 December, 2018 Airbnb had not made contact with the Complainant to update him to the effect that it did not intend to take action on his erasure request by deleting his accounts and to set out the reasons for that decision. It is important to note that Airbnb’s previous communication to the Complainant on 28 December, 2018 stated, among other things, that “...Unless we inform you that we require more time, it will take up to one month from the date of your initial request for us to finish processing your deletion request...” Given that the Complainant did not receive any further communication from Airbnb in relation to his erasure request between 28 December, 2018 and 14 February, 2019 it was reasonable to conclude that Airbnb had fully processed his erasure request of 18 December, 2018 by that stage and that all his personal data had been erased.

113. In that regard, therefore, Airbnb failed to inform the Complainant without undue delay and, at the latest, within one month of receipt of the request, of the reasons for not taking action on his erasure request and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy, as is required by Article 12(4).
114. **The DPC finds that Airbnb infringed Article 12(4) of the GDPR with respect to its handling of the Complainant’s erasure request by failing to inform him without delay and at the latest within one month of receipt of the request of the reasons for not taking action on it and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.**

Decision on infringements of the GDPR

115. Following the investigation of the complaint against Airbnb Ireland UC, the DPC is of the opinion that, in the circumstances of this Complainant’s case, Airbnb Ireland UC:

- infringed Article 12(4) of the GDPR with respect to its handling of the Complainant’s erasure request by failing to inform him without delay and

at the latest within one month of receipt of the request of the reasons for not taking action on it and on the possibility of lodging a complaint with a supervisory authority and seeking a judicial remedy.

Exercise of Corrective Powers by the DPC

116. In deciding on the corrective powers that are to be exercised in respect of the infringement of the GDPR outlined above, I have had due regard to the Commission's power to impose administrative fines pursuant to Section 141 of the 2018 Act. In particular, I have considered the criteria set out in Article 83(2)(a) – (k) of the GDPR. When imposing corrective powers, I am obliged to select the measures that are effective, proportionate and dissuasive in response to the particular infringements. The assessment of what is effective, proportionate and dissuasive must be made in the context of the objective pursued by the corrective measures, for example re-establishing compliance with the GDPR or punishing unlawful behaviour (or both)¹. I find that an administrative fine would not be necessary, proportionate or dissuasive in the particular circumstances in relation to the infringement of one Article of the GDPR as set out above. Furthermore, I have had regard to the fact that the infringement of Article 12(4) regarding the handling of the Complainant's erasure request in this case does not appear to have arisen from a systemic set of issues but was particular in the circumstances of this case. For the reasons outlined, I find that no administrative fine should be imposed in respect of this infringement.
117. **In light of the extent of the infringement identified above, the DPC hereby issues a reprimand to Airbnb Ireland UC, pursuant to Article 58(2)(b) of the GDPR.**

Judicial remedies with respect to the Decision of the DPC

118. In accordance with Article 78 of the GDPR, each natural or legal person has the right to an effective judicial remedy against a legally binding decision of a supervisory authority concerning them. Pursuant to Section 150(5) of the Act, an appeal to the Irish Circuit Court or the Irish High Court may be taken by a data subject or any other person (this includes a data controller) affected by a legally binding decision of the DPC within 28 days of receipt of notification of such decision. An appeal may also be taken by a data controller within 28 days of notification; under Section 150(1) against the issuing of an enforcement notice

¹ See the Article 29 Data Protection Working Party 'Guidelines on the application and setting of administrative fines for the purposes of Regulation 2016/679, at page 11.

and/or information notice by the DPC against the data controller; and under Section 142, against any imposition upon it of an administrative fine by the DPC.

Signed: *Tony Delaney*

Tony Delaney

Deputy Commissioner

On behalf of the Data Protection Commission