

**In the matter of the General Data Protection Regulation**

DPC Complaint Reference: [REDACTED]

IMI Complaint Reference Number: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Bavarian Data Protection Authority pursuant to Article 77 of the General Data Protection Regulation, concerning Microsoft Ireland Operations Limited

Record of Amicable Resolution of the complaint and its consequent withdrawal pursuant to Section 109(3) of the Data Protection Act, 2018

Further to the requirements of EDPB Guidelines 06/2022 on the practical implementation of amicable settlements Version 2.0 (adopted on 12 May 2022)

**RECORD OF AMICABLE RESOLUTION FOR THE  
PURPOSE OF EDPB GUIDELINES 06/2022 ON THE  
PRACTICAL IMPLEMENTATION OF AMICABLE  
SETTLEMENTS VERSION 2.0, ADOPTED 12 MAY 2022**

Dated the 21st day of October 2022



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## **Background**

1. On 20 June 2018, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Bavarian Data Protection Authority (“the **Recipient SA**”) concerning Microsoft Ireland Operations Limited (“the **Respondent**”).
2. In circumstances where the Data Protection Commission (“the **DPC**”) was deemed to be the competent authority for the purpose of Article 56(1) GDPR, the Recipient SA transferred the complaint to the DPC on 17 June 2020.

## **The Complaint**

3. The details of the complaint were as follows:
  - a. The Data Subject submitted an access request pursuant to Article 15 GDPR to the Respondent on 15 June 2018. On 19 June 2018, the Respondent responded to the Data Subject explaining how they could access their requested data by logging into their Microsoft account.
  - b. The Data Subject was not satisfied with the Respondent’s response, as they wished to access all data held in relation to them, not limited to the data connected to their Microsoft account.

## **Action taken by the DPC**

4. The DPC, pursuant to Section 109(4) of the Data Protection Act, 2018 (“the **2018 Act**”), is required, as a preliminary matter, to assess the likelihood of the parties to the complaint reaching, within a reasonable time, an amicable resolution of the subject-matter of the complaint. Where the DPC considers that there is a reasonable likelihood of such an amicable resolution being concluded between the parties, it is empowered, by Section 109(2) of the 2018 Act, to take such steps as it considers appropriate to arrange or facilitate such an amicable resolution.
5. Following a preliminary examination of the material referred to it by the Recipient SA, the DPC considered that there was a reasonable likelihood of the parties concerned reaching, within a reasonable time, an amicable resolution of the subject matter of the complaint. The DPC’s experience is that complaints of this nature are particularly suitable for amicable resolution in circumstances where there is an obvious solution to the dispute, if the respondent is willing to engage in the process. In this regard, the DPC had regard to:
  - a. The relationship between the Data Subject and Respondent (being, in this case, an individual consumer and a service provider); and
  - b. The nature of the complaint (in this case, an unsuccessful attempt by the Data Subject to exercise his/her data subject rights).

6. While not relevant to the assessment that the DPC is required to carry out pursuant to Section 109(4) of the 2018 Act, the DPC also had regard to EDPB Guidelines 06/2022 on the practical implementation of amicable settlements Version 2.0, adopted on 12 May 2022 (“**Document 06/2022**”), and considered that:
  - a. the possible conclusion of the complaint by way of amicable resolution would not hamper the ability of the supervisory authorities to maintain the high level of protection that the GDPR seeks to create; and that
  - b. such a conclusion, in this case, would likely carry advantages for the Data Subject, whose rights under the GDPR would be vindicated swiftly, as well as for the controller, who would be provided the opportunity to bring its behaviour into compliance with the GDPR.

### **Amicable Resolution**

7. The DPC engaged with both the Data Subject (via the Recipient SA) and Respondent in relation to the subject-matter of the complaint. Further to that engagement, it was established that the Respondent was willing to conduct a search for any personal data relating to the Data Subject outside of their Microsoft account, but it required the Data Subject to initiate the request themselves for security and privacy reasons. In the circumstances, the Respondent agreed to take the following action:
  - a. The Respondent outlined that in order to facilitate the Data Subject’s access to data processed about them outside of their Microsoft account, the Data Subject was first required to initiate such a request themselves for security and privacy reasons.
  - b. Subsequently, the Data Subject would be required to authenticate their request by providing and validating ownership of ‘alternate identifiers’ such as email address, phone number and/or postal address before the Respondent could perform an internal search for the data requested.
8. On 18 November 2020, the DPC outlined to the Data Subject the prerequisites to be met in order for the Respondent to facilitate access to the personal data processed outside of their Microsoft account. On 22 November 2020, the Data Subject responded to the DPC stating that they were not satisfied with the Respondent’s response. The Data Subject asserted that Microsoft’s procedures, in particularly its authentication procedure, were too complicated. The Data Subject also objected to having to potentially disclose further personal information to the Respondent.
9. Following further engagement by the DPC, the Respondent subsequently outlined in more detail the security reasons behind its requirement for additional authentication before facilitating access to data not directly associated with a Microsoft account. The Respondent noted that for data which is associated with a Microsoft account it has remote secure systems, including in-app tools, which enable data subjects to access and control their personal data.

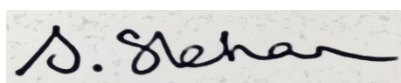
However, for personal data not directly associated with a Microsoft account, the Respondent stated that requests for this data can be made via its online request form. The Respondent noted that, for these types of requests being made, which are not directly linked to a Microsoft account, it requires the data subject to authenticate their request by providing and validating ownership of a number of identifiers, including their email address and phone number. The Respondent noted that these measures are in place to protect the privacy and security of all of its users against social and technical manipulations that attempt to phish or otherwise compromise users, and to prevent the unintentional exposure of personal data to unauthorised third parties. Separately, the Respondent provided the DPC with a copy of correspondence it had issued to the Data Subject directly, explaining how they could authenticate their request, and explaining why it required this additional authentication. On 10 August 2021, the DPC wrote to the Data Subject outlining the Respondent's response, including why the Respondent required the Data Subject to authenticate their request before providing them with the requested data. In the circumstances, the DPC asked the Data Subject to notify it, within two months, if they not satisfied with the outcome, so that the DPC could take further action. The DPC did not receive any further communication from the Data Subject and, accordingly, the complaint has been deemed to have been amicably resolved.

10. In circumstances where the subject-matter of the complaint has been amicably resolved, in full, the complaint, by virtue of Section 109(3) of the 2018, is deemed to have been withdrawn by the Data Subject.

#### **Confirmation of Outcome**

11. For the purpose of Document 06/2022, the DPC confirms that:
  - a. The complaint, in its entirety, has been amicably resolved between the parties concerned;
  - b. The agreed resolution is such that the object of the complaint no longer exists; and
  - c. Having consulted with the supervisory authorities concerned on the information set out above, as required by Document 06/2022, the DPC has now closed off its file in this matter.
12. If dissatisfied with the outcome recorded herein, the parties have the right to an effective remedy by way of an application for judicial review, by the Irish High Court, of the process applied by the DPC in the context of the within complaint.

Signed for and on behalf of the DPC:



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**Sandra Skehan**  
**Deputy Commissioner**