

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 Spanish 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 18th day of November 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 21 August 2020, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Spanish 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 16 December 2020.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent requesting the delisting of several URLs. The Data Subject asserted that public access to these URLs was detrimentally affecting their reputation. Furthermore, the Data Subject contested the accuracy of the URLs, which they stated were outdated and no longer of public interest or relevance. The content of the URLs related to their activity as the owner of a real estate company.
 - b. The Respondent refused to delist the requested URLs having determined the information was of public interest. The Data Subject was not satisfied with the Respondent’s response.

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 their 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 that several of the URLs submitted by the Data Subject as part of their complaint had not been previously submitted to the Respondent for delisting. In the circumstances, the Respondent took the following action:
 - a. The Respondent removed four URLs that were classed as junk URLs.
 - b. The Respondent refused to delist two further URLs on the grounds that they were related to the Data Subject’s role in the local community and were of public interest.
 - c. After being informed that a number of the URLs contained typographical errors, the Respondent reviewed the URLs again. On 3 September 2021, the Respondent subsequently confirmed that, following another review, its determination that the URLs were publicly relevant remained unchanged.
8. On 5 March 2021, the DPC wrote to the Respondent outlining the Data Subject’s complaint. The Data Subject contested the accuracy of the URLs requested for delisting, claiming that the information was outdated and no longer of public interest or relevance. On 20 March 2021, the Respondent responded to the DPC. The Respondent outlined that it had refused to delist the requested URLs on public interest grounds, as it considered the Data Subject to be a public figure. In addition, the Respondent stated that several of the URLs submitted by the Data Subject as part of their complaint had not been previously submitted to it for delisting. Irrespective of this, the Respondent determined that four of the submitted URLs were classed as junk and as such were to be removed from its search engine. The Respondent rejected two URLs on the grounds they were related to the Data Subject’s role in the local community and were of public interest.

9. On 28 July 2021, the DPC informed the Respondent of the Recipient SA's observation that three out of eight URLs reviewed by it were incorrect, as they were missing hyphens, and requested that the Respondent review the corrected URLs. On 3 September 2021, the Respondent outlined that, following another review, its determination was that the URLs contained information of public relevance and, as such, its position remained unchanged.
10. On 1 October 2021, the DPC requested the Recipient SA's view on the Respondent's position, as the DPC considered that the Recipient SA could be better placed to advise on the public awareness surrounding the information contained in the URLs; as such, the Recipient SA would be in a position to advise on their public relevancy.
11. The Recipient SA responded to the DPC on 29 October 2021, outlining that the information contained in the URLs related to recent events (from 2013 to 2020) and, in its view, was not obsolete. The Recipient SA further outlined that the URLs referred to the Data Subject's professional life and not their private life, and that it considered that the activities spark public interest in this capacity. The Recipient SA concluded that, based on these criteria, the Respondent's rejection of the Data Subject's delisting request may be justified. In light of this appraisal, the DPC wrote to the Data Subject on 29 December 2021 via the Recipient SA, informing them of the determination of the Respondent, and the Recipient SA's consideration of same. In the circumstances, the DPC asked the Data Subject to notify it, within two months, if they were 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.
12. On 16 September 2022, and in light of the foregoing, the DPC wrote to the Recipient SA noting that the DPC considered the complaint to have been amicably resolved and withdrawn in accordance with section 109(3) of the Act and that it would conclude the case and inform the Respondent.
13. 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 Act, is deemed to have been withdrawn by the Data Subject.

Confirmation of Outcome

14. 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.

15. 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:

A handwritten signature in black ink that reads "Tom Delaney". The signature is written in a cursive style with a long, sweeping tail on the letter 'y'.

Deputy Commissioner

Data Protection Commission