

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 Austrian 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 24th day of November 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 27 August 2020, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Austrian 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 6 April 2021.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent on 18 March 2020, requesting the delisting of 2 URLs, which were present on the Respondent’s Bing search engine.
 - b. The Respondent subsequently confirmed to the Data Subject that the URLs had been delisted. However, a search for the Data Subject’s name carried out by the Data Subject’s legal representatives showed that the URLs were still being returned. The DPC reviewed the URLs when receiving the complaint from the Recipient SA and confirmed that the URLs were still being returned.

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 the 2 URLs originally submitted for delisting had now been removed, but that there was now a new URL – not previously submitted to the Respondent – which was redirecting to the same content. In the circumstances, the Respondent took the following actions:
 - a. The Respondent confirmed that the original URLs requested for delisting had been delisted; and
 - b. In the interests of resolving the Data Subject’s complaint, the Respondent agreed to delist a new URL which had subsequently appeared, which was redirecting to the same content as the previously delisted URLs.
8. On 7 October 2021, the DPC outlined the Data Subject’s complaint to the Respondent. The DPC noted that the URLs, which the Respondent had previously confirmed were delisted, were still appearing following a Bing search of the Data Subject’s name. On 25 October 2021, the Respondent confirmed to the DPC that it had investigated and that the requested URLs were now delisted. Following further examination by the DPC, the DPC determined that while the original URLs requested for delisting no longer appeared, a different URL was now appearing – distinct from the ones originally requested for delisting by the Data Subject – redirecting to the same content. The DPC requested that the Respondent review this new URL, and consider it for delisting. Following further engagement with the Respondent, it confirmed to the DPC on 2 March 2022 that all URLs – including the URL not previously submitted to the Respondent by the Data Subject - had now been delisted.
9. On 27 April 2022, the DPC wrote to the Data Subject via the Recipient SA, outlining the information provided by the Respondent. In the circumstances, the DPC asked the Data Subject to notify it, within 2 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.

10. On 30 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.
11. 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

12. 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.
13. 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:



Deputy Commissioner

Data Protection Commission