

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

DPC Complaint Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Data Protection Commission 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 14<sup>th</sup> day of April 2023



Data Protection Commission  
21 Fitzwilliam Square South  
Dublin 2, Ireland

## Background

1. [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Data Protection Commission (“the **DPC**”) concerning Microsoft Ireland Operations Limited (“the **Respondent**”).
2. The DPC was deemed to be the competent authority for the purpose of Article 56(1) GDPR.

## The Complaint

3. The details of the complaint were as follows:
  - a. The Data Subject contacted the Respondent and submitted a delisting request for the removal of several URLs pursuant to Article 17 GDPR.
  - b. The Data Subject was not satisfied with the Respondent’s response to their delisting request, as the Respondent had refused to delist a number of requested URLs. The URLs which were the subject matter of the Data Subject’s complaint related to a criminal conviction the Data Subject had received, but which was now spent.

## 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 Data Subject, 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 their legal representative, and Respondent in relation to the subject-matter of the complaint. On 1 April 2021, the DPC outlined the Data Subject’s complaint to the Respondent. On 3 May 2021, the Respondent responded to the DPC. The Respondent informed the DPC that it had blocked six of the thirteen submitted URLs under its junk URL policy. With respect to the remaining URLs, the Respondent stated that it believed it had actioned the Data Subject’s delisting request appropriately.
8. On 24 August 2021, the DPC wrote to the Respondent, advising it to ensure that it takes into consideration the fact that the Data Subject’s conviction was spent when applying the balancing test, as the DPC considered this an important factor with respect to ensuring the Respondent has applied the balancing test in this case appropriately.
9. On 8 September 2021, the Respondent responded to the DPC, confirming that, following another assessment, it would delist the requested URLs. However, on 8 October 2021, the DPC informed the Respondent that a search conducted by the DPC of the complained of URLs had shown that one of the URLs previously confirmed for delisting was still being returned. The DPC requested that the Respondent action the Data Subject’s delisting request in full.
10. On 21 December 2021, the Data Subject’s legal representative informed the DPC that a number of URLs were still appearing following a search of the Data Subject’s name on the Respondent’s search engine. Upon investigation of the URLs which the Data Subject’s legal representative had stated were returning, the DPC noted that the search terms being used were not based on the Data Subject’s name. The DPC noted to the Data Subject’s legal representative that delisting requests for search terms not based on an individual’s name are not within the scope of the right to be forgotten.
11. On 4 February 2022, the Respondent responded to the DPC. The Respondent explained that most of the requested URLs for delisting consisted of Search Engine Results Page (**SERP**) URLs, which it could not delist, and that it had requested the Data Subject provide it with the specific URL of the image itself. Notwithstanding this, the Respondent stated that it had attempted to locate the specific URL of the image itself, and provided the DPC with two possible URLs. The Respondent requested confirmation from the DPC whether these were the URLs that the Data

Subject wished to have delisted. The Respondent stated that, upon receipt of this confirmation, it would proceed with delisting the URLs.

12. The DPC wrote to the Data Subject's legal representative on 11 February 2022, and requested confirmation that the URLs identified by the Respondent were indeed the URLs the Data Subject wished to have delisted. On 14 February 2022, the Data Subject's legal representative confirmed same. The DPC subsequently wrote to the Respondent on 24 February 2022, confirming that the URLs it had identified were indeed the correct URLs to be delisted.
13. On 10 March 2022, the Respondent responded to the DPC, confirming that it had taken the appropriate actions to delist the image URLs, and that the URLs no longer return against searches of the Data Subject's name.
14. On 11 May 2022, the Data Subject's legal representative requested that the URLs which were the subject matter of the Data Subject's complaint should be delisted against a number of different search terms other than those based on the Data Subject's name. On 13 June 2022, the DPC directed the Data Subject's legal representative to the relevant European Court of Justice case law and European Data Protection Board guidelines in relation to the application of the right to be forgotten. The DPC also highlighted that their correspondence of 11 May 2022 did not indicate any disagreement with the Respondent's assertion that all eligible complained-of URLs had now been delisted. The DPC outlined that, absent the Data Subject raising any further concerns in relation to the originally complained-of URLs, the DPC considered that the Data Subject's original complaint against the Respondent had been successfully resolved.
15. On 29 September 2022, the Data Subject's legal representative confirmed to the DPC that they had been instructed to pursue any unresolved issues with their complaint outside of the remit of the DPC, but that the Data Subject reserved their right to re-engage with the DPC in relation to the issues which were the subject matter of the complaint, if required in the future.
16. On 18 October 2022, the DPC wrote to the Data Subject's legal representative, noting that, with all of the eligible complained-of URLs which were the subject matter of the complaint now being delisted, the dispute between the Data Subject and Respondent appeared to have been resolved, and that there were no outstanding data protection issues to be considered. The DPC noted that absent any further data protection issues being raised by the Data Subject, the DPC would move to conclude the Data Subject's complaint. The DPC explained to the Data Subject's legal representatives that this would not prevent the Data Subject from raising further data protection issues with the DPC in the future in the form of a new complaint. In the circumstances, the DPC asked the Data Subject to notify it, within one month, 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 or their legal representative and, accordingly, the complaint has been deemed to have been amicably resolved.

17. 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**

18. 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.

19. 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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Deputy Commissioner

Data Protection Commission