

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 French Data Protection Authority, the Commission Nationale de l'Informatique et des Libertés, 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 29th day of May 2023



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 18 March 2019, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the French Data Protection Authority, the (Commission Nationale de l'Informatique et des Libertés (“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 5 June 2020.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent on 25 January 2019 requesting, pursuant to Article 17 GDPR, the delisting of a number of URLs appearing in its search engine which related to a criminal conviction.
 - b. The Respondent refused the request on the grounds that it had determined that the public’s interest in having access to the relevant information outweighed the Data Subject’s private interest in this case.

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 the Respondent in relation to the subject-matter of the complaint. On 7 July 2022 (there having been some delay as the DPC awaited responses from the Data Subject to a number of preliminary queries it had raised), the DPC wrote to the Respondent and outlined the complaint.
8. The DPC noted that the Data Subject was seeking the delisting of five URLs linking to articles in two French newspapers and which related to the Data Subject’s criminal offence and conviction. The Data Subject was convicted in 1997 and had served a 6 month custodial sentence as well as an eighteen month suspended sentence. The articles in question were published in 1995 and 1999, respectively. The DPC further noted the Data Subject’s assertions as to the ongoing detrimental effects the availability of this information was having on their physical and mental health, as well as on their children.
9. On 21 July 2022, the Respondent confirmed to the DPC that it had previously agreed to block two URLs at the time of the initial request and that the new links in fact represented new search terms and URLs not submitted to the Respondent before. Nonetheless, the Respondent confirmed that it would now delist these new URLs as requested and also agreed to delist the previously-submitted URLs against the new search terms.
10. On 2 August 2022, the DPC sent a letter to the Recipient SA for the attention of the Data Subject. In its letter, the DPC set out the Respondent’s replies above and explained the actions the Respondent had agreed to take. The DPC further noted that, as the URLs which were the subject matter of the complaint had now been delisted, the dispute between the Data Subject and the Respondent appeared to have been resolved. 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.

11. On 21 April 2023, 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.
12. 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

13. 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.
14. 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