

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 Österreichische
Datenschutzbehörde 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 July 2023



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 15 February 2021, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Österreichische Datenschutzbehörde (“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 3 May 2021.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent requesting the delisting of a number of URLs from returning on the search engine Bing. The URLs related to alleged crimes committed by the Data Subject and a subsequent criminal investigation which was terminated without conviction in 2016.
 - b. The Respondent initially indicated it would delist the URLs in question. However, two of the URLs were ultimately refused, and the Data Subject noted that certain URLs continued to return despite having been accepted by the Respondent for delisting.
 - c. The Data Subject was not satisfied with the Respondent’s response and, on 15 February 2021, subsequently lodged a complaint with the Recipient SA.

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 identified in search results and the service provider responsible for providing those search results); 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. On 22 December 2022, the DPC wrote to the Respondent formally commencing its investigation and requesting the Respondent to explain its position in relation to the eleven URLs identified in the complaint. The DPC also noted that the Data Subject had legally changed their last name but that searches against their old last name were still returning in the Respondent’s search engine.
- 8. The Respondent explained that several of the URLs had not been submitted to it for delisting before, and that four of the URLs had already been accepted for delisting. The Respondent further explained that the majority of search terms identified by the Data Subject (several variations of the Data Subject’s names) had also not been submitted before.
- 9. The Respondent also explained that, at the time of the Data Subject’s request, it had rejected two URLs for delisting. However, the Respondent accepted these URLs for delisting following the commencement of the DPC’s investigation. The Respondent also agreed to delist all of the URLs which had not been submitted previously.
- 10. In light of the above, the DPC noted that all of the URLs identified in the complaint had now been delisted, including the additional URLs that had not been submitted to the Respondent previously. The DPC carried out its own independent search in order to verify this. On 10 April 2023, the DPC wrote to the Data Subject via the Recipient SA, outlining the actions taken by the Respondent and proposing an amicable resolution to the complaint on the basis that all of the URLs identified had now been delisted. In the circumstances, the DPC asked the Data Subject to notify it, within a specified timeframe, if they were not satisfied with the outcome, so that the DPC could take further action. On 16 May 2023, the Recipient SA confirmed to the DPC that no response had been received from the Data Subject. Accordingly, the complaint has been deemed to have been amicably resolved.

11. On 14 June 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