

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 Agencia Española de Protección de Datos 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 25 October 2021, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Agencia Española de Protección de Datos (“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 14 February 2022.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent on 10 October 2022 and submitted a delisting request pursuant to Article 17 GDPR. The Data Subject requested the delisting of one URL from returning on the search engine Bing which linked to information contained within the Spanish State Official Bulletin.
 - b. On 19 October 2021, the Respondent agreed to delist the complained-of URL. However, the URL continued to be returned after a search of their name was conducted.

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 20 May 2022, the DPC wrote to the Respondent formally commencing its investigation and requesting the Respondent to address the concerns raised. The DPC provided the Respondent with the complained of URL and requested that it delist in accordance with the Data Subject’s request. The DPC further advised that the Respondent should ensure that the URL in question was delisted against searches conducted on the basis of the Data Subject’s name both with and without Spanish accent marks or upper/lower cases being used in the search terms.
8. On 1 July 2022, the Respondent stated that the URL originally submitted by the Data Subject had been accepted for delisting in line with its position on Spanish National ID numbers hosted on government websites, as communicated to the DPC in respect of previous matters. The Respondent noted that the URL identified in the DPC’s correspondence appeared to be slightly different from the URL submitted in the Data Subject’s original request and, as such, considered this to be a new request which should be submitted by the Data Subject using its webform.
9. Following further engagement from the DPC, on 21 July 2022 the Respondent confirmed to the DPC that it had accepted the new URL for delisting and the DPC informed the Data Subject of same. On 11 August 2022, the Recipient SA informed the DPC that it had conducted a Bing search against the Data Subject’s name and found that the complained-of URL was still returning with a Spanish accent mark in the Data Subject’s first name.
10. On 17 August 2022, the DPC informed the Respondent of the Recipient SA’s findings and requested that the complained of URL be delisted. In doing so, the DPC emphasised that the spelling of the Data Subject’s name, both with and without Spanish accent marks, should be included. On 1 September 2022, the Respondent confirmed to the DPC that it had accepted the URL for delisting using the spelling variations of the Data Subject’s name.

11. On 14 September 2022, the DPC conducted its own search for the Data Subject's name and noted that the URLs in question were no longer returning. As such, the subject matter of the Data Subject's complaint appeared to have been resolved. In the circumstances, the DPC wrote to the Data Subject (via the Recipient SA) on 5 October 2022 and asked them to notify it, within a specified timeframe, 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 30 May 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.
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:



Deputy Commissioner

Data Protection Commission