

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

IMI Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Bayerisches Landesamt für Datenschutzaufsicht (Bavarian DPA) 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 ON 12 MAY 2022)**

Dated the 12th day of January 2024



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 09 June 2022, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 of the GDPR with the Bayerisches Landesamt für Datenschutzaufsicht (“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) of the GDPR, the Recipient SA transferred the complaint to the DPC on 15 September 2022.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject first raised their issue with the Respondent in June 2022, in relation to the “Microsoft Family” feature within their Microsoft account – specifically the family location feature. In this regard, the Data Subject noted that additional data related to their travel behaviour was recorded under their recent activities on the profile, to which the Data Subject remarked that they had not activated within their Microsoft account. As such, the Data Subject lodged a request for the erasure of the collected data, along with a request for the Respondent to cease the processing of this data.
 - b. On 6 July 2022, the Respondent replied to the Data Subject, noting that any data related to road safety and travel behaviour was only stored for a period of 14 days, and then deleted. In this same correspondence, the Respondent also provided information in respect of how the Data Subject could change their preferences on the account going forward.
 - c. As the Data Subject was not satisfied with the response received from the Respondent, they 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 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. The DPC first engaged with the Respondent on 16 December 2022. In its initial response of 5 January 2023, the Respondent confirmed:
- a. That driving data is only retained for 14 days and is then automatically removed from its systems. Further, the Respondent noted that it had no data pertaining to the Data Subject on its systems.
 - b. That it would attempt to reproduce the specific scenario as experienced by the Data Subject, to understand if there was a bug in the system, so that it could confirm whether certain filters were set to ‘on’ by default, without requiring the Data Subject to enable them.
 - i. In later correspondence of 25 February and 1 December 2023 respectively, the Respondent noted to the DPC that its test of the scenario described above confirmed that certain user filters were pre-set to ‘on’, and that internal updates to the app were being introduced, to improve the privacy user experiences within the app. The Respondent also confirmed that the updates to the app, that were rolled out to production on 23 March 2023, consisted of a new collection of consent for users who had the Drive Safety feature enabled by default, and this was to prevent the feature from being

automatically enabled. The Respondent also noted that it could not confirm whether the Data Subject had previously enabled these filters.

- c. In the circumstances, the Respondent also offered an apology to the Data Subject, as well as a gesture of goodwill.
8. On foot of this correspondence from the Respondent, the DPC wrote to the Data Subject, via the Recipient SA, to see if this would lead to the amicable resolution of their complaint. The DPC's letter issued to the Recipient SA on 23 March 2023, and this in turn was provided to the Data Subject on 27 March 2023. When doing so, the DPC asked the Data Subject to notify it, within a stated timeframe, if they were not satisfied, so that the DPC could take further action.
9. On 3 April 2023, the DPC received confirmation via the Recipient SA that the Data Subject was agreeable to the amicable resolution proposal in question. The DPC thereafter engaged with the Respondent to ensure that the gesture of goodwill as offered was completed.
10. On 5 September 2023, the DPC wrote to the Data Subject via the Recipient SA, confirming that the agreed amicable resolution proposal had been carried out, attaching evidence of same to the correspondence. This thereafter issued to the Data Subject on 6 September 2023.
11. On 18 October 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. On 24 October 2023, the Recipient SA confirmed receipt of the DPC correspondence, which had advised that the complaint was deemed withdrawn.
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:

A handwritten signature in black ink that reads "Tony Delaney". The signature is written in a cursive style with a large initial 'T' and 'D'.

Deputy Commissioner
Data Protection Commission