

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 Bavarian Data Protection Authority 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 6th day of December 2022



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 15 May 2021, [REDACTED] (“the **Data Subject**”) lodged a complaint pursuant to Article 77 GDPR with the Bavarian Data Protection Authority (“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 13 January 2022.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject submitted a delisting request to the Respondent. On 5 October 2018, Microsoft confirmed to the Data Subject that it would delist a number of eligible URLs.
 - b. However, an image linked to one of these URLs continued to be returned in a Bing search against the Data Subject’s name. The Data Subject contacted the Respondent regarding this image being returned, but was not satisfied with the Respondent’s response.

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. Further to that engagement, it was established that the Respondent’s escalation process for URLs requiring global removal was not engaged correctly in this instance. As a result, the URL which was the subject matter of the Data Subject’s complaint had not been removed as expected. In the circumstances, the Respondent took the following actions:
 - a. The Respondent escalated the image URL which was the subject matter of the Data Subject’s complaint for global removal;
 - b. The Respondent confirmed that it would delist the image URL; and
 - c. The Respondent confirmed that it would improve its processes to ensure that a similar situation to that of the Data Subject’s complaint would not occur again.
8. Following receipt of the Data Subject’s delisting request, on 5 October 2018 the Respondent confirmed to the Data Subject that it would delist a number of eligible URLs. However, an image linked to one of these URLs continued to be returned in a Bing search against the Data Subject’s name. In addition, it was noted that the Data Subject had made several attempts to contact the Respondent in relation to this image. On 22 May 2021, the Respondent confirmed to the Data Subject that it would delist this image URL. However, the image URL continued to be returned.
9. On 12 May 2022, the DPC outlined the Data Subject’s complaint to the Respondent. The DPC informed the Respondent that the image URL continued to be returned following a search of the Data Subject’s name. On 17 June 2022, the Respondent responded to the DPC, explaining that when it receives a delisting request, its Dublin-based moderation operations team actions the request for the whole European Union. However, the Respondent clarified that this team is not responsible for actioning requests where a URL is broken (i.e. where the URL is returning a 404 error message or it is a defunct link) or it has a sign in requirement. In these instances, a URL will require global removal from the Bing search engine. The Respondent explained that when a URL is flagged as requiring global removal, it is escalated to another team within the

organisation. However, the Respondent acknowledged that, in this instance, the escalation process was not engaged correctly, and the URL was not removed as expected. The Respondent confirmed to the DPC that the URL had now been escalated correctly, and would be removed. The Respondent also outlined that, having being made aware of this issue, it would now take the opportunity to improve its processes to ensure that a similar situation to that of the Data Subject's complaint would not occur again.

10. On 19 July 2022, the DPC wrote to the Data Subject via the Recipient SA, outlining the Respondent's response in relation to their complaint. The DPC outlined that it had conducted a Bing search against the Data Subject's name on 4 July 2022, and confirmed that this specific image URL was not returned. 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 19 October 2022, 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:

A handwritten signature in black ink that reads "Tom Delaney". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

Deputy Commissioner

Data Protection Commission