

In the matter of the General Data Protection Regulation

DPC Complaint Reference: [REDACTED]

In the matter of a complaint, lodged by [REDACTED] with the Data Protection Commission pursuant to Article 77 of the General Data Protection Regulation, concerning Yahoo EMEA 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 April 2023



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 18 December 2020, [REDACTED] ("the **Data Subject**") lodged a complaint pursuant to Article 77 GDPR with the Data Protection Commission ("the **DPC**") concerning Yahoo EMEA Limited ("the **Respondent**").
2. The DPC was deemed to be the competent authority for the purpose of Article 56(1) GDPR.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject contacted the Respondent requesting the delisting of eighteen URLs.
 - b. The Data Subject was not satisfied with the Respondent's response to their delisting request, as they asserted that a number of URLs which had previously been approved for delisting were still being returned.

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 Data Subject, 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 their legal representatives) and Respondent in relation to the subject-matter of the complaint. On 31 March 2021 the DPC outlined the Data Subject's complaint to the Respondent. The DPC explained to the Respondent that the Data Subject was concerned that some of the URLs that the Respondent indicated had been previously delisted continued to be returned in a search against their name. The DPC noted that the Data Subject was also concerned that when an image search was conducted for their name, a photograph including a reference to one of the delisted URLs was returning.
8. On 8 April 2021, the Respondent outlined to the DPC that the URLs that were the subject matter of the Data Subject's complaint were not being returned in the Respondent's search engine in Europe. In response to the DPC's queries relating to the image of the Data Subject being returned, the Respondent explained that this image was no longer directly linked to the URLs submitted for delisting. The Respondent outlined that once the underlying content of the image was removed, they would automatically be removed from the search index powering the Respondent's search engine in Europe.
9. On 16 December 2021, the DPC provided the Respondent with a screenshot showing that an image of the Data Subject was still being returned under the 'Images Tab' of its search engine, and which was linked to a URL previously submitted for delisting. The DPC also highlighted that a URL which the Respondent had previously confirmed would be delisted was still being returned in a search conducted by the DPC.
10. In response, the Respondent explained that the screenshot provided showed that the Respondent's US-based search domain had been used to conduct the image search. The Respondent noted that search services in the US are provided by a separate entity domiciled and operating within that territory. With respect to the URL that was still being returned, the Respondent confirmed that it had taken action to delist this, explaining that this particular URL might not have been present in the Respondent's search index at the time of the initial delisting request.
11. On 8 February 2022, the DPC wrote to the Data Subject's legal representative outlining the Respondent's response, and its position that all eligible complained-of URLs had now been delisted, and enquiring whether they consider their complaint to be resolved.

12. On 11 May 2022, the Data Subject's legal representative requested that the URLs which were the subject matter of the Data Subject's complaint should be delisted against a number of different search terms other than those based on the Data Subject's name. On 13 June 2022, the DPC directed the Data Subject's legal representative to the relevant European Court of Justice case law and European Data Protection Board guidelines in relation to the application of the right to be forgotten. The DPC also highlighted that their correspondence of 11 May 2022 did not indicate any disagreement with the Respondent's assertion that all eligible complained-of URLs had now been delisted. The DPC outlined that, absent the Data Subject raising any further concerns in relation to the originally complained-of URLs, the DPC considered that the Data Subject's original complaint against the Respondent had been successfully resolved.
13. On 29 September 2022, the Data Subject's legal representative confirmed to the DPC that they had been instructed to pursue any unresolved issues with their complaint outside of the remit of the DPC, but that the Data Subject reserved their right to re-engage with the DPC in relation to the issues which were the subject matter of the complaint, if required in the future.
14. On 18 October 2022, the DPC wrote to the Data Subject's legal representative, noting that, with all of the eligible complained-of URLs which were the subject matter of the complaint now being delisted, the dispute between the Data Subject and Respondent appeared to have been resolved, and that there were no outstanding data protection issues to be considered. The DPC noted that absent any further data protection issues being raised by the Data Subject, the DPC would move to conclude the Data Subject's complaint. The DPC explained to the Data Subject's legal representatives that this would not prevent the Data Subject from raising further data protection issues with the DPC in the future in the form of a new complaint. In the circumstances, the DPC asked the Data Subject to notify it, within one month, 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 or their legal representative and, accordingly, the complaint has been deemed to have been amicably resolved.
15. 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

16. 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.

17. 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, appearing to read 'Tony Delaney', written in a cursive style.

Deputy Commissioner

Data Protection Commission