

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 31st day of May 2024



Data Protection Commission
21 Fitzwilliam Square South
Dublin 2, Ireland

Background

1. On 10 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 6 April 2023.

The Complaint

3. The details of the complaint were as follows:
 - a. The Data Subject lodged an erasure request in relation to an email account that was originally created in 2017, which the Data Subject claimed to have not used for a number of years. The Data Subject believed that the account should have been deleted in accordance with the Respondent’s policies after two years of inactivity, though subsequently discovered that they could still log into the account in question. Further, the Data Subject claimed that they experienced difficulties in deleting the account themselves, and as such, first contacted the Respondent via phone call in 2021 to obtain its deletion.
 - b. After lodging their complaint with the Recipient SA, the Data Subject thereafter contacted the Respondent again in this regard on 15 January 2023. In its response to the Data Subject of 18 January 2023, the Respondent referred the Data Subject to the use of its self-deletion tool to obtain the account’s deletion.
 - 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. Further to that engagement, the Respondent initially informed the DPC that it could not locate an account associated with the Data Subject's email address, suggesting that the account had been deleted. It also provided information in respect of why the Data Subject was initially referred to the self-deletion tool, as the means of obtaining the account's erasure.
- 8. Upon receipt of this correspondence from the Respondent, the DPC wrote to the Data Subject via the Recipient SA as part of the amicable resolution process, noting the Respondent's prior confirmation that the account in question appeared to have been deleted. This letter issued to the Recipient SA on 12 September 2023, and thereafter issued to the Data Subject on 14 September 2023. In the circumstances, the DPC asked the Data Subject to notify it, within a stated timeframe, if they were not satisfied with the outcome, so that the DPC could take further action.
- 9. The DPC received a response from the Data Subject, via the Recipient SA on 19 September 2023, wherein they provided evidence that the account appeared to still be active, as the account log-in remained accessible.
- 10. On foot of this response, the DPC corresponded further with the Respondent, in order to obtain clarity on the status of the account. In its response of 27 October 2023, the Respondent informed the DPC that:

- a. The reason that the Data Subject could still log-in to the account was because it was linked with two dormant Skype accounts, neither of which had been created successfully, hence why they did not initially appear when the Respondent attempted to locate same. As such, the Data Subject could not properly schedule the account for deletion via the self-deletion tool.
 - b. The Respondent also clarified the issue raised by the Data Subject regarding the periods of inactivity before an account is scheduled for deletion. To this end, the Respondent confirmed that when the account in question was created in 2017, it had a five-year retention period for inactive accounts in place. As the Data Subject later logged into the account in 2021, they inadvertently reset the period of inactivity for retention. The Respondent confirmed that this retention policy had since been updated to the current period of two-years.
11. The DPC continued to engage with both the Respondent and Data Subject, via the Recipient SA. In later correspondence of 5 January 2024, the Respondent confirmed that the account in question had been deleted, with deletion occurring on 19 December 2023.
12. The DPC again wrote to the Data Subject via the Recipient SA, seeking confirmation that this would lead to the amicable resolution of the complaint in question. This letter issued to the Recipient SA on 11 January 2024, and thereafter to the Data Subject on 22 January 2024. In the circumstances, the DPC asked the Data Subject to notify it, within a stated timeframe, if they were not satisfied with the outcome, so that the DPC could take further action.
13. On 30 January 2024, the DPC received the response of the Data Subject, via the Recipient SA. In their response, the Data Subject noted their satisfaction with the result of their complaint, and confirmed the withdrawal of their complaint. However, in this same response, the Data Subject also sought clarity that the email address in question was no longer associated with any related Skype accounts.
14. Having engaged further with the Respondent regarding this concern, it confirmed to the DPC on 9 February 2024, that the email address in question was not affiliated with any such Skype accounts. The DPC informed the Data Subject of this, via the Recipient SA, and on 20 February 2024, the DPC received confirmation from the Data Subject that their complaint had been withdrawn, and could be considered amicably resolved.
15. On 20 February 2024, 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 23 February 2024, the Recipient SA confirmed receipt of the DPC's correspondence, which had advised that the complaint was deemed withdrawn.
16. 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

17. 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.

18. 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