

The Criteria to Be Taken into Account When Assessing Requests to Delist the Results Displayed Following a Search Made Based on Person's Name and Surname from a Search Engine's Index

The criteria listed below are determined by the Personal Data Protection Board as the criteria to be taken into account primarily when assessing the complaints submitted in this regard and may be updated when needed. Taking these criteria into consideration in the assessment of the requests to be made to the data controller will be beneficial.

1. Does the individual play a role in public life?

It is true that there is a stronger public interest in people accessing to information about citizens that have a role in public life than information about ordinary citizens. In this respect, it is important to evaluate whether the person has a discernable role in public life when assessing the delisting of the archive records relating to the data subject from the search engines on the internet.

It can be challenging to define comprehensively the type of role that an individual must have to be able to say that the public interest is stronger in having access to the results displayed following a search when it is compared to an individual's fundamental rights and freedoms. However, politicians, senior public officials, business people, famous artists and athletes, religious leaders, and members of some professions are considered to have a role in public life. This also includes the persons who, due to their roles or activities, frequently appear in the media.

Requests to be made in this context by the individuals having a role in public life are less likely to be accepted in that granting access to results, which are obtained through a search made on the basis of person's name who plays a role in public life, may include some information that needs to be presented to the public for these people's professional lives or that it would protect the public against the practices of the people performing certain professions.

It should also be noted that information about individuals' private life is more likely to be removed from the list of search results. Data of this nature may be removed from the search results, even if they are about people who have a role in public life.

2. Is the subject of the search result a child?

If an individual is not of legal age at the time of the publication of the data relating to him or her, requests to be made for delisting the link of such search results concerning the data in question are more likely to be accepted. In fact, the principle of "best (high) interests of the child" should be taken into consideration in the assessment of the requests of minors, in other words, children.

3. Is the data accurate?

Accuracy of the information means to be accurate as to a matter of fact. At this point, attention should be paid to the difference between the interpretation of a fact and publishing a fact. Inaccurate or misleading information raises the probability of acceptance of the delisting requests, while accurate information based on the facts decreases the possibility of acceptance of the requests. If the information does not reflect the truth and if this presents an inaccurate and misleading impression of an individual, it is more likely that the requests for delisting the link of the information in question will be accepted.

It is important to note here that if a data subject objects to a search result on the grounds that the information is inaccurate, the complainant is expected to prove his or her claim.

On the other hand, in cases where a dispute about the accuracy of information is still on-going, (for example an on-going court case or police investigation), no action may be taken on this matter until the process is complete.

4. Does the data relate to individual's working life?

Another criterion that should be taken into account while assessing the requests for the removal of links from the search results is whether the information is related to the professional life or private life of the data subject. Although all data relating to a person is personal data, not all data about a person is private. As a general rule, information relating to the professional life of a data subject makes it difficult to accept the delisting requests, while information relating to the private life is considered as an important factor in the acceptance of the request.

Normally, information relating to the private life of an individual who does not play a role in public life should be considered irrelevant. From this point of view, considering that access to such information has no benefit for the public, it can be evaluated that it is not necessary to include this information in the search results. Additionally, as stated above, in certain circumstances public figures also have a right to request that information relating to them not be spread.

However, two issues should be noted here to be taken into account in the assessment of this criterion: Firstly, is the data subject still engaged in the same professional activity? Secondly, is data about a person's work-related activity excessive, containing more information than necessary?

5. Is the information in the search results insulting, degrading, and slander about the data subject?

In cases of refusal of the request made to the data controller about the removal of the links containing insulting, degrading, derogatory statements or hate speech about the data subject, which constitutes a crime, from the listed results in the search engine, it would be a more appropriate approach to contact a court rather than lodging a complaint about refusals with the Personal Data Protection Board.

6. Does the information in the search results fall within the scope of special categories of personal data?

Special categories of personal data (sensitive data) are the data that may open the individual to discrimination or make him or her suffer. Within this framework, it is more likely to accept the requests for delisting the links of sensitive data (sexual life, religious beliefs, health, etc.) from the search engine than ordinary personal data.

Nonetheless, when it comes to the special categories of personal data of public figures, reassessment may be needed to see if the interest of the public overrides the rights of the data subject.

In addition, although they are not special categories of personal data, delisting requests for the data about the privacy of the individual such as information identifying the person (address, phone number, password, etc.) and financial information are more likely to be accepted.

7. Is the information displayed in search results up to date?

Another criterion to be taken into account in the assessment of the delisting requests is to determine whether the data is up-to-date, in other words, the period of time after publishing the data. Over the course of time, data may become out-of-date or the relevance of the information to the subject may decrease, which can break the link to the data with the purpose of processing. For this reason, the course of time is a factor that increases the probability of accepting delisting requests from the index.

However, this is not an absolute rule, as in any other criterion. For example, the impact of time on data relating politicians or public figures or historical and scientific data will be limited.

8. Is the information displayed in search results causing prejudice to the individual?

When the individual claims that the information in the search results causes prejudice about him or her, request for removing the link in question from the search results must be evaluated. Nonetheless, the provable nature of the claim will increase the probability of acceptance of the request.

9. Does the information in the search result put the individual at risk?

Delisting of the search results is likely to be required where the information in the search result leaves the individual open to risks such as identity theft or stalking.

10. Was the information published by the data subject?

Since the information published by the data subject or with his or her explicit consent can be removed by the data subject from where it is located, requests for removal from search results are less likely to be accepted.

If the data subject consented to the original publication, but has not been given the opportunity to withdraw his or her consent, or his or her request for not processing the data has been refused, then this issue should be also considered in requests for removal of the information in question from search results.

11. Does the original content include the data processed in a journalistic context?

Source of the information and publishing purposes are two other important factors to be taken into account when assessing the requests for removal of the links from the search results.

After all, freedom of expression is the keystone of pluralist and constitutional democracy. Freedom of expression is defined as the opportunity and freedom to have access to thoughts and information, not to be condemned because of the ideas and thoughts, and to express them with legitimate methods.

Similarly, freedom of the press is a fundamental right and freedom that manifests itself in the form of the right to express and spread opinions and thoughts to all domestic and foreign interlocutors in written and visual form. The concept of freedom of the press should be evaluated as a whole with the concept of freedom of expression in terms of public's access to the information and the opportunity to express their own thoughts after filtering such information with their interpretation.

In this context, the important role of the internet in social life, which facilitates the spread of news and ideas and their access to the public, cannot be denied. Archiving on the Internet serves substantially the storage and accessibility of the current events and the news. Archives of this nature provide resources for history, education and research activities, especially because they are directly accessible to the public and generally free. On the other hand, a result of the "observer" role, which is the first function of the press in a democratic society, is to make the archives available to the public.

For this reason, within the framework of certain criteria, it is necessary to establish a balance between the right to request the protection of honour and dignity, which is under protection in the Constitution, and freedom of the press and freedom of expression in connection with this freedom. Examples of these criteria are: that the news or ideas in question contribute to a discussion of the public interest, or the role or function of the person in society, and the nature of the activity subject to an interview or photograph.

Within this context, it is important to ensure that the public has access to search results, but the limits for the protection of private and family lives of others should not be exceeded. In such cases, search result relating to journalistic content may be delisted. Therefore, it will be necessary to make an evaluation among the competing interests in each complaint.

12. Is there any legal obligation to publish the data relating to the data subject?

If certain information must be published by a governmental institution or other bodies authorized due to a legal obligation and if this legal obligation is still on-going, delisting of

search results relating to the data subject is less likely to be required. However, it should be noted that each issue must be assessed on a case-by-case basis.

13. Does the information relate to a criminal offence?

Requests for delisting of search results relating to relatively minor offences that happened a long time ago have higher chances to be accepted than that of relating to more serious ones that happened more recently. However, this criterion should not be considered as an absolute rule and should be handled carefully in each specific event on a case-by-case basis.