



## Country or jurisdiction report

### **IRELAND**

Website: [www.dataprotection.ie](http://www.dataprotection.ie)

#### 1. **Media**

Breaches of the data protection rights of individuals through the publication of material in the media remained an issue over the past year, particularly in regard to the publication of the personal information of children. In one case a newspaper obtained and published a photograph of a celebrity with their child without consent. The newspaper defended its actions on the basis of the “public interest” exemption in the Data Protection Acts in respect of the processing of personal data for journalistic purposes (Section 22A). In considering the applicability of the public interest exemption to the publication of the photograph, consideration was given to the guidance provided by the European Court of Human Rights in similar cases that examined the balance between the rights to privacy and to freedom of expression. The National Newspapers of Ireland Code of Practice, which provides that children should not be identified unless there is a clear public interest in doing so, was also considered. A decision was issued under the Data Protection Acts that found that the public interest claimed by the newspaper was not such as to justify setting aside the right to respect for a person’s private and family life. The newspaper’s actions breached the entitlements of a child to interact with its parent in a normal manner without their relationship being made the subject of public comment. Accordingly, it was concluded that the personal data relating to the data subject and their child was not obtained or processed fairly as required under section 2 (1) (a) and 2 A of the Acts.

#### 2. **Failure to comply with an access request and appeal of an enforcement notice**

An interesting case that arose during the year concerned the persistent failure of a medical facility to comply with an access request under Section 4 of the Data Protection Acts for access to a child’s personal data. The medical facility had informed the legal representative of the child’s family that the access request had raised matters of serious importance and that they wished to be absolutely certain of their legal position before making a formal response. In the course of a long correspondence between the Office of the Data Protection Commissioner and solicitors for the medical facility, certain key questions were put to the medical facility’s solicitors to which they

failed to respond in a satisfactory manner. Throughout the correspondence and the investigation the medical facility was repeatedly reminded of its obligation to comply with the access request. In view of the likelihood that the medical facility was in possession of sensitive personal information of the child making the access request, their failure to comply with the request and their continued failure to engage substantively with the Office of the Data Protection Commissioner, an enforcement notice was issued pursuant to Section 10 of the Data Protection Acts. The enforcement notice required the medical facility to provide the information, the subject of the access request, to the child's family within twenty-one days. In line with their legal entitlements, the medical facility appealed to the Circuit Court against the requirement specified in the Enforcement Notice. However, the appeal was withdrawn at the hearing and the facility agreed to supply the personal data sought. The outcome was particularly satisfactory in that it ensured that the patient, who was a minor, received access to their medical records after the Office of the Data Protection Commissioner used its full legislative powers to compel the provision of the records in question.

### 3. **Codes of Practice**

The development of Codes of Practice with particular sectors with a view towards a standards-based approach to data protection is provided for in Section 13 of the Data Protection Acts. Such codes, whether statutorily-prescribed or not, tailor data protection principles to the particular conditions applying in individual sectors, clarifying for the participants in a given sector what data protection means for them and increasing awareness of data protection rights and obligations in that sector. The past year saw the approval of the statutorily-prescribed "Health Repayment Scheme Code of Practice" under the terms of the Health (Repayment) Scheme Act 2006. The Office of the Data Protection Commissioner also engaged with the National Recruitment Federation and the Irish Insurance Federation with regard to codes of practice for the recruitment and insurance sectors respectively. Meetings were held over the course of the year with Garda (police) management on the development of a code of practice with An Garda Síochána (the national police service).