

THE CIRCUIT COURT

RECORD NO: 2014/003716

DUBLIN CIRCUIT COUNTY OF THE CITY OF DUBLIN

**IN THE MATTER OF THE DATA PROTECTION ACTS 1988 &
2003 AND IN THE MATTER OF AN APPEAL UNDER SECTION
26 OF THE DATA PROTECTION ACTS, 1988 & 2003**

BETWEEN

ALAN SHATTER

APPELLANT

AND

THE DATA PROTECTION COMMISSIONER

RESPONDENT

AND

MICHAEL WALLACE, TD

NOTICE PARTY

**JUDGMENT delivered this the 21st day of January 2015, by Her
Honour Judge Jacqueline Linnane**

This matter comes before the court by way of an appeal by Mr. Shatter under Section 26(1) of the Data Protection Acts against a decision made on 6th May, 2014 by the Data Protection Commissioner as a result of an investigation of a complaint dated 20th May, 2013 by Mr. Michael Wallace under Section 10(1)(a) of the Data Protection Acts 1988 & 2003. Basically Mr. Wallace's complaint related to the alleged disclosure of his

personal data by Mr. Shatter when he was Minister for Justice & Equality on RTE's Prime Time programme on 16th May, 2013 during a debate on the penalty points controversy. It was alleged by Mr. Shatter that Mr. Wallace was stopped and cautioned for use of a mobile phone while driving the previous May and Mr. Wallace claimed that improperly obtained personal data concerning him was disclosed by Mr. Shatter and he asked the Data Protection Commissioner to investigate any possible breaches of the data protection legislation. Mr. Shatter was informed of the complaint and in the first instance the Data Protection Commissioner explored the option of an amicable solution being arrived at but Mr. Wallace sought an investigation and formal decision on his complaint by the Data Protection Commissioner.

The Data Protection Commissioner then proceeded to investigate the complaint and wrote to Mr. Shatter for information so that his decision would take into account all relevant factors. It was not disputed that Mr. Shatter said what he did on the programme. It seems that the Gardaí had a note in writing regarding the incident involving Mr. Wallace, the Data Protection Commissioner saw the note during the course of his investigation, and the information was conveyed verbally by the then Garda Commissioner to Mr. Shatter in his capacity as Minister. The Data Protection Commissioner formed the view that the information in question was personal data passed to Mr. Shatter as Minister but it was covered by Section 41(d) of the Garda Síochána Act, 2005 (which requires the Garda Commissioner to keep the Minister fully informed of matters that he feels should be brought to the Minister's attention) and Section 8 of the Data Protection Acts so there was no issue from a data protection perspective with the passing of that personal data from the Garda Commissioner to Mr. Shatter as Minister but the Minister was bound by the Data Protection Acts to comply with its requirements in his

use of the personal data which he had obtained from the Garda Commissioner.

Section 2(A)(1)(d) of the Act provides that data may be processed where the processing is necessary for the purposes of legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject.

The Data Protection Commissioner's decision records that Minister Shatter was invited to make submissions and observations on various points raised by the Data Protection Commissioner during the course of the investigation which he did in writing and at length and indicated what matters he felt the Data Protection Commissioner should have regard to. He was also asked to indicate to the Data Protection Commissioner which of the specific conditions in Section 2(A)(1) of the Act he relied upon. All of the interaction between the office of the Data Protection Commissioner and Mr. Shatter was conducted by Mr. Shatter in his ministerial capacity and on his official notepaper and the Data Protection Commissioner wrote to him in his capacity as Minister at his ministerial address. The complaint made by Mr. Wallace was against Minister Alan Shatter and Mr. Shatter appeared on the Prime Time programme in his capacity as Minister for Justice & Equality. There was no dispute that Mr. Shatter had received the information from the Garda Commissioner in his capacity as Minister at the time. The decision of the Data Protection Commissioner was sent to and addressed to Mr. Alan Shatter, TD Minister for Justice & Equality at his then official address. The following day Mr. Shatter resigned as Minister for Justice. The Notice of Appeal is dated 22nd May, 2014 and has been brought by Mr. Shatter in his personal capacity.

During the course of the investigation Minister Shatter, as he then was and throughout the period of this investigation and at the time of the decision, disputed that his use of the information given to him by the Garda Commissioner was the processing of personal data subject to the Data Protection Acts, but even if it was it would be justifiable under the provisions of Section 2A(1)(d) in that disclosing the information was in the public interest in pursuit of his legitimate interest and in fulfilment of his function as Minister and as a public representative. He also disputed that the disclosure of this information qualified as the processing of personal data under the terms of the Data Protection Acts in that the information on Mr. Wallace was not in his possession or that of his Department in any documentary form- it had been conveyed to him verbally as Minister by the Garda Commissioner and no written record was made of it by him or his Department- it resided or was held in his mind.

A draft of the Data Protection Commissioner's decision was sent to both the complainant and Minister Shatter to afford them inter alia an opportunity to make any further observations which they felt appropriate and to ensure the facts outlined were accurate and account taken of all relevant factors. Minister Shatter made extensive comments in writing on the draft decision which the Data Protection Commissioner considered and some changes were made to the draft decision. Having taken into account relevant definitions in the Data Protection Acts the decision of the Data Protection Commissioner found that the Minister was a data controller in relation to personal data processed by him (in his ministerial capacity) and by his department and the same applied to the Garda Commissioner regarding personal data processed by An Garda Síochána. The decision explains how the Data Protection Commissioner concluded the Minister became a joint controller with the Garda Commissioner of

the personal data of Deputy Wallace and therefore he could only disclose it in accordance with the Data Protection Acts and the Acts applied to the disclosure of the information by the Minister.

The Data Protection Commissioner rejected the argument by the Minister that Section 2(A)(1)(d) applied as he was not satisfied that the disclosure by the Minister was necessary in pursuit of his legitimate interests having regard to the rights of Deputy Wallace regarding his personal data and took the view that none of the other provisions in section 2(A) applied. The decision was that Mr. Alan Shatter T.D. Minister for Justice & Equality contravened the Data Protection Acts, 1988 & 2003 Section 2(1)(c)(ii) by further processing Deputy Michael Wallace's personal data in a manner incompatible with the purpose for which that personal data was obtained when he disclosed that personal data in the course of the debate when appearing on the RTE Prime Time television programme on 16th May, 2013 – namely that Deputy Wallace benefited from discretion exercised by a member of An Garda Siochana in relation to the use of a mobile phone while driving.

Counsel for the Data Protection Commissioner, the respondent, raised a preliminary objection to the standing of the appellant to bring this appeal by reason of the fact that the office of Minister for Justice & Equality is a separate legal personality from the appellant as an individual citizen and so the appellant cannot appeal against a decision that relates to the office of Minister. It is argued that the decision of the respondent made on 6th May, 2014 was made against Mr. Shatter in his capacity as Minister for Justice & Equality and not in his personal capacity as an individual citizen. Counsel makes the point that at all material times when the complaint was made, the investigation conducted and the decision made, the appellant held the post of Minister but he resigned as Minister on 7th May, 2014 and the Notice of Appeal is dated 22nd May,

2014 and is brought by the appellant as an individual. The complaint made to the Data Protection Commissioner by Deputy Wallace on 20th May, 2013 was made against Minister Alan Shatter in relation to the Prime Time debate in which the appellant had taken part in his capacity as Minister. It is not disputed either that the appellant received the information about Deputy Wallace as Minister and all correspondence during the investigation was sent to Mr. Shatter in his capacity as Minister and responded to from his ministerial address.

In my view this objection regarding the standing of the appellant to bring this appeal is well founded and on this ground alone I would dismiss this appeal. However, as I have also heard submissions and arguments from both the appellant and the respondent on the merits of the appeal and in case I am incorrect on the standing point, I have considered those arguments.

It is well recognised that the test to be applied in an appeal such as this is that set out in the case of *ULSTER BANK v. MCCARREN*, an unreported High Court decision of Finnegan P. on 1st November, 2006:

*“To succeed on this appeal the Plaintiff must establish as a matter of probability that, taking the adjudicative process as a whole, the decision reached was vitiated by a serious and significant error or a series of such errors. In applying the test the Court will have regard to the degree of expertise and specialist knowledge of the Defendant. The deferential standard is that applied by Keane C.J. in **ORANGE v. THE DIRECTOR OF TELECOMMUNICATIONS REGULATION & ANOR** and not that in *The State (Keegan) v. Stardust Compensation Tribunal*”.*

The onus rests with the appellant here. In my view the Data Protection Commissioner considered the matter fully and at length in the course of his investigation. He took into account the arguments put

forward by Mr. Shatter, fair procedures were followed and reasons given for the conclusion and decision reached. Applying the test referred to above, I do not consider that it has been shown that the decision made was vitiated by any serious or significant error or series of such errors. Accordingly even if the standing of the appellant to bring this appeal had not been raised, I would dismiss this appeal.

*Magdaline
Kerrane*
21. 1. 2015