

The supervision of personal data in the courts and certain statutory bodies exercising decision-making functions

Data protection and the courts when acting in their judicial capacity

Although the Data Protection Commission (DPC) is the supervisory authority for data protection laws in Ireland, special rules apply where the courts are engaging in personal data processing activities. These special rules come from Article 55(3) of the General Data Protection Regulation (GDPR), which prevents the DPC, like other EU data protection authorities, from supervising the data processing operations of the courts when they are acting in their judicial capacity. This is to ensure the independence of the judiciary in the performance of its judicial tasks, including decision-making.

Sections 157 to 160 of the Data Protection Act 2018 (2018 Act) along with the relevant Rules of Courts provide for how the Irish courts must process personal data and how certain data protection rules in the GDPR should be given effect. This includes a provision that a specific judge be assigned by the Chief Justice of Ireland to act as the data protection supervisor in relation to the processing of personal data, which occurs when the Irish courts are acting in their judicial capacity. More information on the supervision of data processing by the Irish courts when acting in their judicial capacity can be found on the Courts Service website at <https://www.courts.ie/courts-data-protection-notice>.

Court procedures involve the filing and exchange between the parties to proceedings of certain documents. These include pleadings, affidavits and various types of reports amongst others and they will ordinarily contain at least some personal data, the extent of which will vary depending on the nature of the proceedings. The personal data in these court documents is therefore processed for the purposes of the courts acting in their judicial capacity and the supervision of these processing operations falls within the remit of the judge assigned to act as the data protection supervisor for the courts.

More generally, it should also be noted that particular restrictions under the 2018 Act apply to the rights of data subjects under the GDPR where personal data is processed in the context of court proceedings and where it is necessary and proportionate to restrict these rights for the objective of safeguarding judicial independence and court proceedings.¹ If a data subject wishes to exercise any of his or her data protection rights under the GDPR (such as the right to access, rectification, or erasure) in relation

¹ Section 158 of the Data Protection Act 2018

to court documents or any other information which may be processed by the courts for the purposes of their judicial functions, these rights may be restricted where it is necessary and proportionate to do so in order to safeguard judicial independence and/or the court proceedings at issue. Furthermore, the 2018 Act allows for court rules to be made specifically restricting data subject rights in relation to personal data where it is being processed in the context of the courts acting in their judicial capacity. A number of different sets of court rules have been made in this regard. General information on these rules can be found on the Courts Service website (see the link above) while more detailed information on these rules is contained in the privacy statement for the Courts Service, under the heading “Your Rights”, available at: [Data Protection - What are my rights? | The Courts Service of Ireland](#)

In any case which relates to the exercise of data subject rights, or the processing of personal data, in the context of the courts acting in their judicial capacity the DPC has no remit to deal with complaints concerning such matters and the appropriate avenue to raise those data protection issues is with the data protection supervisor for the courts.

Examples of complaints where the DPC is not the competent authority for data protection issues:

- Complaints relating to access to, erasure or rectification of personal data contained in court records.
- Complaints seeking access to, rectification or erasure of personal data included in affidavits, pleadings or other documents put before the court.
- Complaints seeking access to, rectification or erasure of Court ordered reports (e.g. under Section 47 of the Family Law Act 1995 (as amended)).

Personal data processed in the context of the complaint handling, investigative and decision-making functions of statutory bodies

The DPC remains the supervisory authority for the data processing operations of statutory bodies which have complaint handling, investigative and/or decision-making functions such as the Workplace Relations Commission or the Residential Tenancies Board. However, when the DPC is handling any complaints received from individuals concerning processing of personal data which is carried out in the context of an ongoing procedure or proceedings before such a statutory body, the DPC will take

account of restrictions which may be applied to the exercise of data subject rights under Section 60(3)(a)(iv) of the 2018 Act. Such restrictions may apply where necessary and proportionate having regard to the existence of any prospective or actual legal claim or proceedings or administrative procedure which is ongoing before the statutory body. In considering whether the rights of an individual under the GDPR may be lawfully restricted by the relevant data controller in such a context, the DPC will have particular regard to the public interest objective underpinning Section 60(3)(a)(iv). This is the public interest in ensuring that the statutory process (i.e. the procedure or proceedings undertaken by the relevant statutory body) in question is not prejudiced or interfered with such as would undermine the integrity and/or the progression of that statutory process.

While the DPC will carefully consider the particular circumstances of any given case, the DPC's general policy approach to complaints concerning personal data which is processed in the context of the complaint handling, investigative and/or decision-making functions of statutory bodies is that it will not examine data protection issues relating to material that is before such a statutory body while there is any ongoing complaint handling, investigative and/or decision making process. This general policy approach will apply irrespective of whether the decision-making body is the controller or whether the controller is a third party, including a lawyer representing another party to the process, or otherwise. Where such a statutory process is ongoing, any concern or complaint relating to a dispute as to the admissibility, veracity, accuracy, or source, amongst other things, of the personal data that is contained in material put before the statutory body in question should be raised directly with that statutory body in the first instance.

Complaints relating to personal data which are processed in the context of the complaint handling, investigative and/or decision-making functions of a statutory body may be handled by the DPC once the statutory process in question has concluded and the time for any appeal against the outcome of that process, if applicable, has expired. It is important to note that while the DPC could ultimately find infringements of the GDPR by such a statutory body or any party to the complaint handling, investigative and/or decision-making process in question, in such an event, the DPC has no jurisdiction to interfere with the findings of such a body.

This policy approach is grounded in the DPC's Regulatory Strategy 2022 -2027 and reflects the DPC's assessment of the most appropriate way to handle complaints of this nature having regard to the risks posed to data subjects by processing of their personal data by such statutory bodies, weighed against the public interest in ensuring the independence and proper functioning of such statutory bodies and the integrity of their processes.

Examples of circumstances where section 60(3)(a)(iv) is likely to apply, subject to the restriction being necessary and proportionate:

- Complaints relating to access to, erasure or rectification of, personal data **contained in records**, held by a data controller or by a third party, that relate to a complaint handling, investigative and/or decision-making process underway before the relevant statutory body.
- Complaints relating to access to, rectification or erasure of, personal data **included in any submissions** made to the relevant statutory body for the purpose of a complaint handling, investigative and/or decision-making process.
- Complaints relating to access to personal data where the personal data is processed for seeking, receiving or giving legal advice or when a claim of privilege arises.