

Our Ref: POD2/SMcG

Your Ref: 3/15/895

16<sup>th</sup> April 2016

Mr [REDACTED]  
Office of the Data Protection Commissioner  
Canal House  
Station Road  
Portarlinton  
Co. Laois

**Re: 2<sup>nd</sup> Complaint re Primary Online Database**

Dear [REDACTED],

I write further to my letter of 13<sup>th</sup> April 2016 and refer you to the attachments therein.

I would be grateful if you would clarify some additional concerns which have arisen from reading the history of contact between the Data Protection Commissioner and the Department of Education regarding the POD. I attach a paginated copy of the records I received from the Department of Education for ease of reference.

1. I made my second complaint regarding POD on the 24<sup>th</sup> November 2016 to the Data Protection Commissioner by email. I received an acknowledgement email of the same date from the DPC.

Despite this, it appears that the Data Protection Commissioner's office did not issue a notification of the commencement of an investigation of my complaint until the 2<sup>nd</sup> February 2016.<sup>1</sup>

Can you explain the Office of the Data Protection Commissioner's delay in notifying the Department of Education of same?

2. Between receiving my complaint, and the commencement of the investigation of same, the ODPC, led by Ms. Dixon herself, met with the Department of Education on the 29<sup>th</sup> January 2016<sup>2</sup>. The minutes of that meeting indicate that

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<sup>1</sup> Page 42 of the accompanying document

<sup>2</sup> Page 35 of the accompanying document

“The DPC indicated that the purpose of the meeting was to touch base and discuss future plans for POD and to also provide information on data sharing guidance.”

3. They further record

“In relation to POD, the DPC asked if there were any significant issues that had arisen in the academic year 2015/16. DES said no new issues had arisen in relation to the collection and processing of POD data”

Please provide an explanation for the failure to acknowledge my complaint at this meeting?

4. The minutes go on to record a number of instances of the DPC providing legal advice and guidance on the operation and setup of the POD, including the provision of a substantial briefing note on the application of the Bara Judgment.

The Department of Education’s letter of the 29<sup>th</sup> February 2016<sup>3</sup> acknowledges they acted on foot of this advice stating

“On foot of advice from the Data Protection Commissioner, amendments to SI 142/2007 were made in SI 317/2015 in order to constitute the data held on POD as “prescribed” information for the purposes of Section 266 of the Social Welfare Consolidation Act 2005.”

Please can you confirm if this is an accurate summation of the sequence of events leading to the issuing of SI 317/2015.

5. Minutes of a meeting between the Data Protection Commissioner’s Legal Advisor [REDACTED] and [REDACTED] of the DPC’s office and officials from the Department of Education who were promoting the POD scheme on the 11<sup>th</sup> December 2013<sup>4</sup> confirm, amongst other things, that the Data Protection Commissioner’s office

[REDACTED]

“acknowledged that it was imperative to collect PPSN for POD to function correctly”

-Predetermined the claimed legislative basis for POD

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<sup>3</sup> Page 135 of the accompanying document.

<sup>4</sup> Page 22 of the accompanying document

“Following discussion the DPC were happy legislative basis referred to in the document was adequate.”

[REDACTED]

[REDACTED] rocessing Notice indicated that data will be retained until a pupil is 25, statistics [the Department of Education section promoting the POD scheme] may wish to consider something similar for POD.”

-Was the source of the suggestion that the Department of Education could add the collection of religious data to their plans “In this regard they said that a pupils religion could also be collected if the DES so wished”

[REDACTED]

[REDACTED] ding of the ethnic or cultural background indicator, the DPC agreed that the collection of categories addition to membership of the traveller community was in order”

6. By email dated 11<sup>th</sup> February 2014, the Legal Advisor to the Data Protection Commissioner pre-approved the Fair Processing Notice setting out the basis of the initial POD scheme (including all those elements which have since been abandoned or acknowledged as in breach of the Data Protection Acts) stating unequivocally.  
“Your note appears okay”.
7. In the same email, the DPC’s Legal Advisor suggests to the Department a legislative basis they could attempt to use to justify the excessive and indefinite retention period they were seeking  
“One thought that has occurred to me since our meeting is that while the data controllers (the schools) have to have a set retention policy, it may be possible (or legally required ie National Archive Act 1986) to archive the data from the schools on the expiry of the retention policy. I have not had time to explore this further but it is something that you might want to consider.”  
As the officer of the National Archives confirmed at a minuted meeting of the 10<sup>th</sup> February 2015<sup>5</sup> there was no such legal basis..

It is clear that I have not had access to an independent data protection authority in either my complaints to the Data Protection Commissioner in respect of my son or my daughter, in circumstances where the DPC’s office have advised and

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<sup>5</sup> Page 35 of the accompanying document

even suggested the Department of Education introduce many of the policies and legislative provisions I have complained of.



“Asked why she had not taken action against the department in this case and why she had not ordered it to start again with a new database, Ms Dixon said that if her office had been satisfied the project didn’t have a substantial legal basis at the outset, she “wouldn’t have hesitated to call it”. ”<sup>6</sup>

Please forward to me the Data Protection Commissioner’s proposals to address these significant issues and/or the issues which are the subject of my two undecided complaints on behalf of my children.

If I do not receive a satisfactory response before close of business of the 26<sup>th</sup> May 2016 it is with regret that I confirm that I will be forwarding a copy of this letter and all previous correspondence to the European Commission as part of a complaint that Ireland and the Data Protection Commissioner has breached my rights as parent and next friend of my children under the Data Protection Directive and Article 8 of the Charter of Fundamental Rights, including Article 8.3

“Compliance with these rules shall be subject to control by an independent authority”

Yours faithfully,

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Simon McGarr

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<sup>6</sup> Irish Times Report “Data Protection Commissioner defends action on database”, 24<sup>th</sup> June 2015 <https://www.irishtimes.com/news/ireland/irish-news/data-protection-commissioner-defends-action-on-database-1.2260569>