



BY E-MAIL ONLY

To: Mr. Simon McGarr

Date: 01 June 2016

Dear Mr. McGarr,

Re: Primary Online Database

We refer to your letter received in this Office on 23 May 2016. Your letter was actually dated 16 April 2016 but you have now confirmed that this was incorrect and it should have been dated 19 May 2016, the day of posting. This letter should also be taken as a response to your 3 separate e-mails to this Office of 19 May 2016.

On a general point, your letter raises what appears to be a mixture of three distinct issues, involving a previous complaint which is now closed, a complaint which is currently under investigation and a complaint about the alleged lack of independence of this Office which does not fall for investigation under the Data Protection Acts or Directive 95/46/EC at all. This conflation of issues in a single piece of correspondence is unhelpful and confusing and we would ask you to separate any issues you wish to raise into their appropriate categories in future correspondence with this Office. Furthermore, we also note that you sent 3 separate e-mails to this office on 19 May 2016 concerning various aspects of the Primary Online Database (POD), yet, on the same day, you wrote a detailed letter to this office raising further and more expansive issues, unreasonably allowing no opportunity for responses to issue on the original 3 e-mails. Furthermore, in your letter issued on 19 May 2016, which was confusingly and incorrectly dated as having issued over a month earlier, and which was only received on 23 May 2016, you provided an unrealistic deadline of 26 May 2016 for a detailed response to issue. Finally, and to compound matters further, on 24 May 2016 we raised the issue of the unrealistic deadline of 26 May 2016 with you but you refused to accede to our reasonable request for additional time in order to respond in full to the multitude of diverse queries raised, especially given the confusing circumstances under which they were raised.

On a further point of clarification, it is not the function of this Office to provide you with detailed information on our general interactions with the Department of Education and Skills concerning POD, especially by way of filling gaps in information following a Freedom of

Cuirfear fáilte roimh chomhfhreagras i nGaeilge

Information request to that Department. You have made general complaints about POD by reference to your children and you are entitled to receive factual material relative to those complaints to the extent that it impinges on or is likely to impinge on your son's or daughter's personal data, if at all; however, we believe that you are not entitled to receive information of a general nature, except what you are entitled to receive from the Department of Education and Skills under the Freedom of Information Acts. We would also remind you that information kept by the Commissioner for the purposes of her functions is exempted from disclosure to you under s.5(1)(gg) of the Data Protection Acts, so this Office is restricted in the information which it can provide to you in response to the queries raised in your letter, on the basis of the information currently available. You are also directed to s.10(1) and s.10(2) of the Second Schedule of the Acts concerning confidentiality of information received by this Office.

Turning now to the substantive issues, and taking into account the restrictions referred to above, we propose dealing with your queries under the appropriate categories, as follows:

Your First POD Complaint (3/15/116)

The issue raised at numbered paragraph 4 may be relevant to this complaint but the complaint is closed and the position of this Office was fully set out in our previous e-mail of 17 June 2015. In answer to your specific query, we would describe the quote from the Department's letter of 29 February 2016 as an incomplete and therefore inaccurate summation but it is not the function of this Office to comment on events leading to the issuing of SI 317/2015. Finally, and in relation to your e-mail of 19 May 2016 concerning this complaint, an e-mail to you of 07 July 2015 from [REDACTED] of this Office, attached as Appendix 1, made it perfectly clear that you would not be receiving a formal decision of the Commissioner under s.10 of the Acts because the complaint was of a general nature and did not relate to an identified individual. At the time, you made no response to this correspondence and you have now belatedly sought, 10 months later, to re-open the matter by questioning the decision not to issue a formal decision of the Commissioner when the matter has already been fully ventilated and explained to you.

Your Second POD Complaint (3/15/895)

The issues raised at numbered paragraphs 1, 2 and 3 of your letter are directly relevant to this complaint. We would comment as follows:

1. There was no undue delay in the initial handling of your complaint. Following the completion of necessary preparatory work, including a review of the previous file and interactions with the Department of Education and Skills, and once we were in a position to proceed, the matter was raised with the Department at the meeting of 29 January 2016 and subsequently in correspondence.

2. The Commissioner was not present at the meeting with the Department of Education and Skills on 29 January 2016 and your information on this is incorrect
3. Your complaint was briefly raised at the meeting of 29 January 2016, as the ODPC minute of the meeting confirms, and I attended as Head of Investigations for that specific purpose.

On a related matter, we asked you in our e-mail of 13 April 2016 to provide us with certain specific and relevant information in relation to your daughter's interaction with POD. This is essential in order for us to be able to gain a full understanding of your standing as a parent to pursue a specific complaint under the Acts. You have so far failed to clarify the position and, in the absence of this, we are restricted to conducting a general investigation in relation to POD which is not particular to you.

Other Matters

The issues raised at numbered paragraphs 5, 6 and 7 of your letter were generally dealt with as part of your first complaint. Our comments earlier are repeated and we do not consider that the matter needs to be re-visited again. You may well have gained further insight into the interactions between this Office and the Department which took place back in 2013 and 2014 through your FOI request but those discussions are not germane to the investigation of your current complaint and there is no obligation on this Office to provide you with additional information at this point, especially considering the exemption outlined under s.5(1)(gg) of the Acts and the restrictions under s.10(1) of the Second Schedule. This includes the legal analysis sought in your e-mail of 19 May 2016.

We are also concerned to note your general assertion that you have not had access to an independent data protection authority. That allegation is not accepted and no evidence has been adduced to support it. We note your letter to the Chief State Solicitor's Office dated 27 May 2016 in this regard.

In the circumstances, we now await your full response to the matters raised in the penultimate paragraph of our e-mail dated 13 April 2016, failing which we will have no alternative but to close the investigation of your complaint and to continue with our own compliance investigation into POD, which is partly informed by general matters which you brought to our attention.

Yours sincerely,



Assistant Commissioner &
Head of Investigations

APPENDIX 1

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Date: 07/07/2015 17:54
Subject: Data Protection Complaint - Primary Online Database

Dear Mr. McGarr

I refer to our telephone call of 06 July 2015, in which you pressed this Office to deliver a decision under Section 10 of the DP Acts in relation to the Primary Online Database.

As pointed out during our call, the complaint-resolution procedures provided for at Section 10 of the DP Acts envisage the issuing of decisions in response to complaints received by this office relating to identified individuals. This reflects the fact that, in the context of complaints from members of the public, the Commissioner's role under Section 10 is essentially that of an ombudsman. It is also relevant to note in this context that Section 10 expressly requires the Commissioner to try to mediate an individual complaint before issuing a decision. The 'amicable resolution' mechanism likewise reflects the fact that, so far as the issuing of "decisions" under Section 10 is concerned, the Commissioner's role is to deal with specific complaints as they relate to identified individuals.

In this case, you are seeking a different type of decision, i.e. a generally-drawn decision that, as a matter of principle, and as a matter of law, the POD scheme contravenes the DP Acts. For the reasons I have outlined, it is not open to the Commissioner to issue such a decision under Section 10 of the DP Acts.

I trust this clarifies matters.

Kind regards

[REDACTED]
Senior Investigations Officer
Office of the Data Protection Commissioner
Tel: [REDACTED]

[REDACTED]