

**GOVERNANCE FRAMEWORK DOCUMENT
BETWEEN THE DEPARTMENT OF JUSTICE AND EQUALITY
AND THE OFFICE OF THE DATA PROTECTION COMMISSIONER (ODPC)
2016 - 2018**



AN ROINN DLÍ AGUS CIRT AGUS COMHIONANNAS
DEPARTMENT OF JUSTICE AND EQUALITY

An Coimisinéir
Cosanta Sonraí



Data Protection
Commissioner

Governance Framework Document

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1. Introduction

This Framework Document has been drawn up by the Department of Justice and Equality in consultation with the Office of the Data Protection Commissioner. It sets out the broad governance framework within which the Commission will operate and defines key roles and responsibilities which underpin the relationship between the Office and the Department of Justice and Equality. While this document does not confer any legal powers or responsibilities, it forms a key part of the overall governance framework.

Any question regarding the interpretation of this document shall be determined by the Minister/Department after consultation with the Office. It should be noted that the relevant legislative provisions will, of course, take precedence over any part of this document.

2. Status, Mission and Objectives

2.1 Status

The role of the Data Protection Commissioner [DPC] was established under the Data Protection Act 1988. The Data Protection Commissioner is appointed by Government and is independent in the exercise of her functions.

The Data Protection Commissioner and those staff assigned to her office are responsible for upholding the rights of individuals as set out in the Data Protection Acts 1998 and 2003 and enforcing the obligations upon data controllers. Individuals who feel their rights are being infringed can complain to the Commissioner, who will investigate the matter, and take whatever steps may be necessary to resolve it

The Data Protection Amendment Act, 2003, updated the legislation, implementing the provisions of EU Directive 95/46 on the protection of personal data. The Acts set out the general principle that individuals should be in a position to control how data relating to them is used.

The current EU Directive 95/46 will be superseded by a new EU data protection framework comprising a General Data Protection Regulation (GDPR) and a Law Enforcement Directive. Current indications are that agreement on the provisions of the GDPR will be formally adopted by mid-2016, following which a two year period to implementation commences. It is anticipated that the DPC will require a significant increase in resources to effectively enforce the provisions of the GDPR, particularly as the GDPR provides for a "one stop shop" for multinationals which will place Ireland as the lead regulator for all of the large Internet companies based in Ireland.

The DPC is responsible under EU law for oversight of the processing of personal data by organisations based in Ireland. This responsibility includes dealing with complaints against such organisations – including complaints from individuals in other EU countries – and carrying out audits/ investigations of the data protection practices of major holders of personal data. This work increasingly involves action through the Courts, requiring the engagement of outside legal expertise.

The Office of the Data Protection Commissioner [ODPC] is required to coordinate its activities as necessary with other EU Data Protection Authorities (DPAs), both bilaterally and through the "Article 29" Working Party established under Directive 95/46/EC. The ODPC's oversight responsibility for multinational companies also involves regular contact with non-EU regulators both bilaterally and in multilateral fora.

The ODPC was first established in 1989 in Dublin, relocated to Portarlington, Co Laois in 2005 under a government decentralisation programme, and now operates from two locations.

A Government Decision at the end of 2014 enabled the Commissioner to open her Dublin Office, which is temporarily located at Harcourt Road in Dublin and will move to a permanent location in 2016.

The doubling of the ODPC's budget to €3.65m for 2015 facilitated the recruitment to date of new staff including legal, technical, audit and communications specialists as well as policy and administrative staff. A number of the existing specialists in the legal, technology, investigations and audit roles continue to be based in Portarlington, along with policy and administrative teams. The headcount of the Office now stands at 50. The DPC's budget allocation for 2016 is 4.748m.

The purpose of this Governance Framework document is to set out the arrangements for the effective governance, financing and operation of the Office.

2.2 Mission

The Mission of the Office of the Data Protection Commissioner as outlined in its Strategy Statement (2014-2016), is to protect the individual's right to data privacy by enabling people to know, and to exercise control over, how their personal information is used, in accordance with the Data Protection Acts and related legislation.

2.3 Objectives

The strategic objectives of the Office of the Data Protection Commissioner in support of its Mission are:

- To vindicate the individual's right to protection of personal data as laid down by law.
- To maximise levels of awareness and compliance with data protection obligations among those keeping personal data.
- To provide timely, practical and easily understood guidance to individuals and organisations.
- To ensure that the individual's right to protection of their personal data forms part of the strategy for the more efficient delivery of public services, including public security.
- To carry out its activities in a cost-effective manner, making maximum use of technology and shared services, working cooperatively with other regulators and avoiding the imposition of unnecessary regulatory burdens on organisations.
- Prepare for a new Regulatory environment when new EU regulatory proposals in the area of data protection come into force.

3. Responsibilities

3.1 The Minister

The Minister of State, Dara Murphy T.D. has special responsibility for European Affairs, Data Protection and the EU Single Digital Market. The Minister for Justice and Equality, Francis Fitzgerald T.D. is accountable to the Oireachtas for the activities and performance of the Office of the Data Protection Commissioner.

3.2 Data Protection Commissioner

The Data Protection Commissioner is appointed by Government and is independent in the exercise of her functions. The Commissioner is responsible for upholding the rights of individuals as set out in the Acts, and enforcing the obligations upon data controllers. The Commissioner makes an annual report to the Oireachtas.

On a day to day basis the Commissioner and her office are responsible for:

- the consideration and investigation of complaints from individuals who deem their data protection rights to have been breached by either public or private sector entities.
- enforcement of the Data Protection legislation, as appropriate, against data controllers which contravene the Acts.
- the provision of guidance in relation to the application of data protection legislation.
- the general administration and business of the office.
- the performance of any other functions as may be required by the Office.

Individuals who feel their rights are being infringed can complain to the Commissioner, who will investigate the matter, and take whatever steps may be necessary to resolve it.

The Commissioner maintains a register, available for public inspection, giving general details about the data handling practices of many important data controllers, such as Government Departments and financial institutions.

The Commissioner has a role to play in the enforcement of Electronic Communications Data Protection and Privacy Regulations (S.I. 336 of 2011). These regulations make the sending of unsolicited direct marketing messages by electronic means an offence and among other things make provision for a telephone marketing opt-out register.

In addition to her primary responsibilities, the Data Protection Commissioner also exercises functions arising from Ireland's membership of the European Union (See "European Functions") and in relation to other statutory functions provided for under legislation.

The Accounting Officer for the ODPC is the Secretary General of the Department of Justice and Equality.

3.3 Staff of the Office of the Data Protection Commissioner

The Office of the Data Protection Commissioner is staffed by generalist civil servants and also has a number of specialist posts including legal, technology, audit and communications.

4. Relationship with the Department of Justice and Equality

4.1 Departmental Oversight – Governance Framework

This Governance Framework document sets out the broad governance and accountability framework within which the Data Protection Commissioner and her office will operate. The document also defines key roles and responsibilities which underpin the relationship between the Commissioner and her office and the Department of Justice and Equality. It will be updated as necessary, and at least every three years.

4.2 Statement of Strategy

The ODPC's Strategy Statement 2014-2016 is available on its website, www.dataprotection.ie.

4.3 Annual Report

Section 14(1) of the Data Protection Act 1998 provides that the Commissioner prepares a report each year in relation to her activities in the preceding year. Copies of the report are required to be laid before the Houses of the Oireachtas.

4.4 Accounts

Section 9, Schedule 2 of the Act provides that the Commissioner keeps in such form as may be approved of by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of all moneys received or expended by her and all such special accounts (if any) as the Minister, with the consent of the Minister for Finance, may direct.

Accounts kept in respect of each year are to be submitted by the Commissioner in the following year on a date (not later than a date specified by the Minister) to the Comptroller and Auditor General for audit and, as soon as possible after the audit, a copy of those accounts, or of such extracts from those accounts as the Minister may specify, together with the report of the Comptroller and Auditor General on the accounts, will be presented by the Commissioner to the Minister who shall cause copies of the documents presented to her to be laid before each House of the Oireachtas.

4.5 Corporate Governance

The ODPC is subject to a range of corporate governance obligations including the Code of Practice for the Governance of State Bodies, a revised version of which is expected to issue shortly from the Department of Public Expenditure and Reform. A Governance Standard for Justice and Equality Sector Bodies is also expected to be published shortly. To confirm compliance (or otherwise) with key provisions of the Code of Practice and the Corporate Governance Standard for Justice and Equality Bodies, the ODPC will complete, on an annual basis, a Compliance Statement in order to provide risk assurance to the Department that the systems of internal control, risk management and other areas of compliance are operating effectively.

5. Relationship with other Organisations

The following is an overview of the Data Protection Commissioner's relationship with organisations both at national and EU level:

The Data Protection Commissioner in conjunction with the Communications Regulator (Comreg) has responsibility for oversight of the additional data protection rules that apply to the activities of companies offering public communications services. These are laid down in Statutory Instrument 336 of 2011 which give effect to the European Union's Electronic Privacy Directive 2002/58/EC (as amended by Directive 2006/24/EC) and Directive 2009/136/EC.

The Data Protection Commissioner also has responsibilities under the Disability Act 2005 (in relation to the processing of genetic data) and the British-Irish Agreement Act 1999 (in relation to North-South Bodies).

Customs: The Data Protection Commissioner is designated by section 6 of the Customs Act of 2001 as the national supervisory authority for the purposes of the Naples II Convention, continues to be so designated, and is designated as the national supervisory authority for the purposes of Article 24 of the CIS Decision.

Europol: The Data Protection Commissioner is designated as the national supervisory body for the purposes of the Europol Act 2012 and the Europol Council Decision 2009/371/JHA.

Eurodac: The Data Protection Commissioner is the supervisory authority in the state for the Eurodac system established under Council Regulation 2725/2000 (EU).

Internal Market Information System (IMI): The Data Protection Commissioner is the supervisory authority in the state for the Internal Market Information System established under Council Regulation 1024/2012 (EU).

6. Accountability

The Commissioner is appointed directly by Government and is independent in the exercise of her statutory obligations under the DP Acts. The Commissioner's term is for a period of 5 years. The Commissioner can be removed from office if in the opinion of the Government she is incapable of performing her functions through ill-health or has stated misbehaviour. As stated in 4.5 above the Commissioner and her office are subject to the revised Code of Practice for the Governance of State Bodies.

The Office of the Data Protection Commissioner is staffed by civil servants who are bound by the Service Code of Standards and Behaviours, as well as corporate policies, procedures, circulars and Office Notices.

The Office of the Data Protection Commissioner also has the appropriate corporate governance structures in place to ensure strategic and effective leadership and management of the office. The OPDC's yearly corporate wide priorities are set out in the Strategy Statement which is then cascaded down to individual staff members through the business plan, risk register and PMDS processes.

The Commissioner also plays a role in relation to the Article 29 Working Party is composed of representatives of the national data protection authorities (DPA), the EDPS and the European Commission. While independent of all other European DPAs, she is required to participate as a voting member of A29 Working Party and share responsibility for producing appropriate guidance etc.

The Data Protection Commissioner is partially subject to the Freedom of Information Act 2014 in matters pertaining to the general administration of her office.

7. Finance and Planning

7.1 Annual Budget

The annual budget for the Office of the Data Protection Commissioner is reflected as a separate subhead within the Justice and Equality Vote (Vote 24), for which the Secretary General is the Accounting Officer.¹

The Office also has an allocation for receipts to be collected in respect of organisations required to register as data controllers and/or data processors under the Data Protection Act. Such receipts are transferred directly to the exchequer throughout the accounting year.

¹ The ODPC budget will be reflected in subhead A.7 which is part of Programme A – *Leadership in and oversight of Justice and Equality policy and delivery* - in 2016.

7.2 Financial Shared Services

In common with other organisations in the Justice and Equality Vote, the Office avails of shared services for its payment and accounting processes. Invoice payments are processed through the central accounting system in the Department's Financial Shared Services Centre (FSS) in Killarney. Payroll and expense payments are processed by the Payroll Shared Service Centre (PSSC) which is under the remit of the Department of Public Expenditure and Reform (DPER). These payments are transferred to the general ledger in FSS via the same payroll interface files as other organisations attached to the Justice and Equality Vote.

7.3 Expenditure Limits

Expenditure and approval limits which apply across the Department and which are communicated by the Department's Financial Management Unit (FMU) also apply to the Office of the Data Protection Commissioner. Similarly, the requirements set out in Public Financial Procedures and the Public Spending Code also apply.

In the event of any "new" expenditure arising over €50,000, formal sanction must be obtained internally through the Department's Financial Management Committee, which meets monthly, before any contracts can be placed. Any such expenditure requests are channelled through the FMU. Where DPER sanction is being sought, the request should be directed to Civil Governance Unit for onward transmission to DPER.

7.4 Additional Resource Requirements

Additional resource requirements are identified by the Office itself and are submitted as part of the estimates process via the Department's Civil Governance Unit. The estimates discussions are of a centralised nature and take place directly at senior official and Ministerial level with DPER at Vote Group level.²

In general, the overall budgetary provision for the Group is set for the current year and the two following years. Expenditure figures at vote and individual subhead level are reviewed, however, in advance of Budget Day in October. It is important that any additional requirements are identified well in advance of the Budget Day timescale so that they can be properly evaluated before forming part of the budgetary discussions in the July to October timeframe.

While expenditure for all subheads is monitored closely on a monthly basis, the budget holder should identify any deviations from budgetary profile as early as possible in the financial year so that any issues can be dealt with in the context of the overall budget for the Justice Vote Group well in advance of the end of the year.

²The Justice Vote Group currently comprises eight different Votes.

8. Policy

The Data Protection Commissioner from time to time may liaise with the Data Protection legislative unit of the Department of Justice and Equality in terms of providing an independent view as concerns matters of data protection policy and matters pertaining to the statutory role of the Data Protection office.

9. Audit

The legislation provides for the audit of the Office of the Data Protection Commissioner's accounts by the Comptroller and Auditor General.

10. Support Services

In addition to Financial Shared Services as outlined at 7 above, the Office of the Data Protection Commissioner avails of the shared services of the Department in relation to Human Resources.

The Data Protection Commissioner also has a Service Legal Agreement with the Department of Justice & Equality IT Division for the provision of IT services and support to the office.


11. Acknowledgment & Signatories

It is hereby acknowledged that this document forms a key part of the governance and framework for the Office of the Data Protection Commissioner and will be updated as necessary, but at least every three years.



Helen Dixon
Commissioner
Office of the Data Protection Commissioner

Date: 1st June 2016



Oonagh McPhillips
Assistant Secretary
Department of Justice and Equality

Date: 1 June 2016