Subject Access Request, FOI & the Right of Access

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Pembroke Privacy

Agenda

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- Foundations: sources of law and key GDPR definitions
- The right of access under the GDPR (Articles 12 and 15)
- Recent CJEU case law on the right of access
- Scope and restrictions: Article 23 GDPR
- Restrictions under the Data Protection Act 2018 (s.60 and s.162)
- Part 5 DPA 2018 – law enforcement processing
- Access modification regulations and children
- Case studies
- FOI – high level overview
- FOI and DSAR overlap
- The Office of the Information Commissioner and the DPC: differences in approach
- Building an efficient process to deal with requests
- Emerging trends and DPC case studies

Main Law

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- **EU Charter of Fundamental Rights:** Art 7 (private life) and Art 8 (protection of personal data – Art 8(2) expressly includes the right of access)
- **Art 16 TFEU:** "Everyone has the right to the protection of personal data concerning them"
- **ECHR:** Art 8 – right to respect for private and family life
- **Irish Constitution:** Articles 16.1.4; 34; 40.3.1, 2 & 5; 40.6.1; 41; 43
- **General Data Protection Regulation** (EU) 2016/679
- **Data Protection Act 2018** – including Part 5 (law enforcement, transposing Directive (EU) 2016/680)
- **Freedom of Information Act 2014**
- **EU AI Act** (EU) 2024/1689 – Art 86 right to an explanation of individual decisions
- **Common law / equity**
- *Historic:* Data Protection Directive 1995; Data Protection Acts 1988 and 2003 (the 1988 Act continues to apply to certain processing, e.g. national security, defence and international relations – see s.8 DPA 2018)

GDPR – Key Definitions & Introduction to DSARs

GDPR Key Definitions

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Personal Data - GDPR (Art 4(1)): "any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person"



Special Categories of Data- GDPR (Rec 10, 34, 35, 51 & Art 9(1)): "personal data, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, data concerning health or sex life and sexual orientation; genetic data or biometric data."

CJEU – a broad concept: opinions and assessments about a person are personal data (*Nowak*, C-434/16); whether pseudonymised data are personal data depends on who holds them and the means reasonably likely to be used (*EDPS v SRB*, C-413/23 P).

Examples of Personal Data

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- Personnel/employment files
- Medical Records
- Financial Information
- Recordings of telephone calls
- E-mails
- Records of websites visited
- CCTV Images
- Application forms



Key Terms in the GDPR

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A Data controller controls the contents and use of personal data

GDPR: "Art 4(7) means the natural or legal person, public authority agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data."

Joint Controller: where two or more controllers jointly determine the purposes and means of the processing of personal data:

- must clearly state their respective responsibilities;
- An "arrangement" is required (Art 26) – not necessarily a contract; it may designate a contact point and its essence must be made available to data subjects;
- data subject may exercise rights against each separately



Key Terms (contd.)

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Data processor (GDPR Art 4(8)): means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller.

(Note - this does NOT include an employee of a Data Controller (who processes such data in the context of his/her employment). Processing must be governed by a contract or other legal act (Art 28(3)).

Processing means: any operation or set of operations performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. (i.e. doing ANYTHING with the data!)

Data Subject Access Rights

Data Subject Access Information Rights

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Article 15(1) GDPR

"The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him/her are being processed, and, where that is the case, ACCESS to the personal data AND the following information"…… (see next slide)



Access & Information Rights

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a) the purposes of processing;
b) the categories of personal data concerned;
c) the recipients or categories of recipient to whom the personal data have been or will be disclosed, in particular recipients in third countries or international organisations;
d) where possible, the envisaged period for which the personal data will be stored, or, if not possible, the criteria used to determine that period;
e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of processing of personal data concerning the data subject or to object to such processing;
f) the right to lodge a complaint with a supervisory authority;
g) where the personal data are not collected from the data subject, any available information as to their source;
h) The existence of automated decision-making, including profiling, referred to in Article 22 (1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

Art 15 (1) GDPR

Art 15 – What the CJEU Has Added

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- **Art 15(2):** where data are transferred to a third country or international organisation, the data subject must be told of the appropriate safeguards (Art 46).
- **Recipients – Österreichische Post (C-154/21, 12 Jan 2023):** the data subject may choose to be told the identity of the actual recipients, unless it is impossible to identify them or the request is manifestly unfounded or excessive.
- **Access logs – Pankki S (C-579/21, 22 Jun 2023):** dates and purposes of consultations of the data must be provided. Employees who consulted the data acting under the controller's authority are generally not "recipients".
- **Automated decisions – SCHUFA (C-634/21, 7 Dec 2023):** a score that plays a determining role in a decision taken by another body is itself an Art 22 decision.
- **"Meaningful information about the logic involved" – Dun & Bradstreet Austria (C-203/22, 27 Feb 2025):** explain the procedure and principles actually applied, concisely and intelligibly. Trade secrets are weighed by the DPA or court – not a ground to refuse outright.

Access Rights

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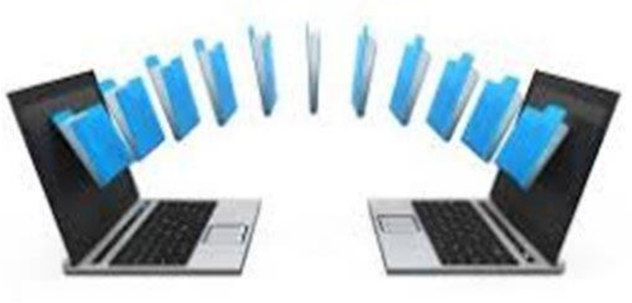
Article 15 (3) – Right of access by the data subject

The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.



Case- "provide a copy"

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K.H. and Others v Slovakia (ECtHR, 28 April 2009, App. no. 32881/04) (Art 8 ECHR)

- Roma women – suspected sterilisation procedure carried out.
- Slovak courts – right to VIEW only
- ECtHR – no; just consulting/viewing the files doesn't provide effective access to the relevant documents.

What is a “Copy”? – CJEU

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- **F.F. (CRIF) (C-487/21, 4 May 2023):** a “copy” is a faithful and intelligible reproduction of all the personal data undergoing processing.
  - Where context is needed to make the data intelligible, provide copies of extracts of documents, whole documents or extracts from databases.
  - Art 15(3) is not a free-standing right to documents – it is the way access to the data is given.
- **FT v DW (C-307/22, 26 Oct 2023):** the first copy must be free of charge, and the controller cannot ask why it is wanted.
  - A request made to support a medical negligence claim is valid.
  - National rules charging for the first copy cannot override Art 15(3).
  - A patient may be entitled to a complete copy of the medical record where needed to understand the data.
- **In practice:** a schedule or summary alone will rarely be enough.

Time limits/modalities

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GDPR requires that responses :

- are provided within **one month** of the request. Note: extension of time for two further months where necessary, taking into account the complexity and number of the requests. Must inform the DS of any extension within one month & reasons for delay. (Art 12(3) GDPR)
- Where request is made by electronic form means, the information shall be provided by electronic means where possible unless otherwise requested by the data subject. (Art 12(3) GDPR)
- If controller does not take action on the request, must inform DS without delay within one month of receipt of the reasons for not taking action and on the possibility of lodging a complaint with the SA & seeking a judicial remedy. (Art 12(3) GDPR)
- **Counting the month:** from the day of receipt to the corresponding date in the following month; if that is a weekend or public holiday, the next working day (Regulation 1182/71; EDPB Guidelines 01/2022).

Extension of Time Limit

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- Assess whether one month time limit is feasible
- Inform the data subject of the extension and provide reasons (as soon as possible). It can be useful to ask the data subject to reduce the scope of their request at the same time.
- Can be helpful to provide a copy of any personal data which is easily accessible.
- Narrowing the scope is an invitation, not a condition: if the requester declines, the full request must still be answered (EDPB Guidelines 01/2022).



Manifestly Unfounded or Excessive

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Actions taken under Article 15 shall be provided free of charge. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may either:

- Charge a reasonable fee taking into account the administrative costs of providing the information
- Refuse to act on the request

The Controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request. (Article 12(5) GDPR)

Manifestly Unfounded or Excessive

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Recital 63 – " *A data subject should have the right of access to personal data which have been collected concerning him or her, and to exercise that right and easily and at reasonable intervals in order to be aware of, and verify, the lawfulness of the processing…"*

What is a reasonable interval?

Unfounded or Excessive – Recent Developments

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- Read narrowly; the burden of proof is on the controller (Art 12(5); EDPB Guidelines 01/2022).
- **Motive is irrelevant:** a request made to gather evidence for litigation is valid (*FT v DW*, C-307/22).
- **Volume alone is not enough:** an abusive intention must be shown (C-416/23, 9 Jan 2025 – on requests to a supervisory authority; useful by analogy).
- **Reasonable intervals (Recital 63):** consider how often the data change.
- **Watch this space:**
  - Digital Omnibus proposal (European Commission, Nov 2025): amendment to Art 12(5) to allow controllers to refuse or charge for requests used for purposes other than data protection.

Unfounded or Excessive – Recent Developments – Brillen Rotler

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- An Austrian resident voluntarily subscribed to the newsletter of Brillen Rottler GmbH & Co. KG, a German optician, and provided personal data through its website.
- **Thirteen days later**, the individual made an Article 15 GDPR access request.
- Brillen Rottler GmbH & Co. KG refused the request as abusive. The company relied on publicly available reports indicating that the individual systematically subscribed to companies' newsletters, made access requests and then sought compensation.
- The individual maintained that the request was legitimate and claimed **at least €1,000 in non-material damages** resulting from the refusal

On **31 July 2024**, the Amtsgericht Arnsberg referred questions to the CJEU concerning:

1. whether even a **first** Article 15 request can be "excessive" under Article 12(5) GDPR;
2. whether infringement of the Article 15 right of access can give rise to compensation under Article 82; and
3. whether loss of control over data, or uncertainty about whether data are being processed, can constitute non-material damage.

Unfounded or Excessive – Recent Developments – Brillen Rotler ctd

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The CJEU held that:

1. even a first Article 15 request may be refused as excessive where the controller proves, from all the circumstances, that the request was made with an abusive intention, such as artificially creating a basis for compensation.
2. However, an infringement of the right of access can itself support an Article 82 claim.
3. Loss of control over data or uncertainty about processing may constitute non-material damage, but actual damage and causation must be proved, and
4. compensation is unavailable where the claimant's own conduct was the determining cause of the alleged damage.

Restrictions to Right of Access

Scope of the Right of Access – Practicalities

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Data does not consist of personal data

Scope: Article 15(3) gives "*a copy of the personal data undergoing processing".*

Recital 15 GDPR

" *The protection of natural persons should apply to the processing of personal data by automated means, as well as the manual processing, if the personal data are contained or are intended to be contained in the filing system. Files or sets of files… which are not structured according to specific criteria should not fall within the scope of this Regulation"*

Note: this is not a right to documents as such – but context may require extracts or whole documents (*F.F.*, C-487/21).

Scope of the Right of Access – Practicalities

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Data does not consist of personal data

Recital 27 GDPR

" *This Regulation does not apply to the personal data of deceased persons. Member States may provide for rules regarding the processing of personal data of deceased persons.*"

For records of deceased persons, consider FOI: Freedom of Information Act 2014 (Section 37(8)) Regulations 2016 (S.I. No. 218 of 2016).

Scope of the Right of Access – Practicalities

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Individual not specifically identified-

"personal data" per Art 4(1) and

Recital 26 "*account should be taken of all the means reasonably likely to be used..*"



Scope of the Right of Access – Practicalities

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Manual data not held in a relevant filing system

Recital 15 GDPR

" *The protection of natural persons should apply to… manual processing , if the personal data are contained or are intended to be contained in the filing system. Files or sets of files… which are not structured according to specific criteria should not fall within the scope of this Regulation" …*

The CJEU reads "filing system" broadly: notes structured by specific criteria that allow data to be easily retrieved can suffice (*Jehovan todistajat*, C-25/17, 10 July 2018).



Restriction to Right of Access

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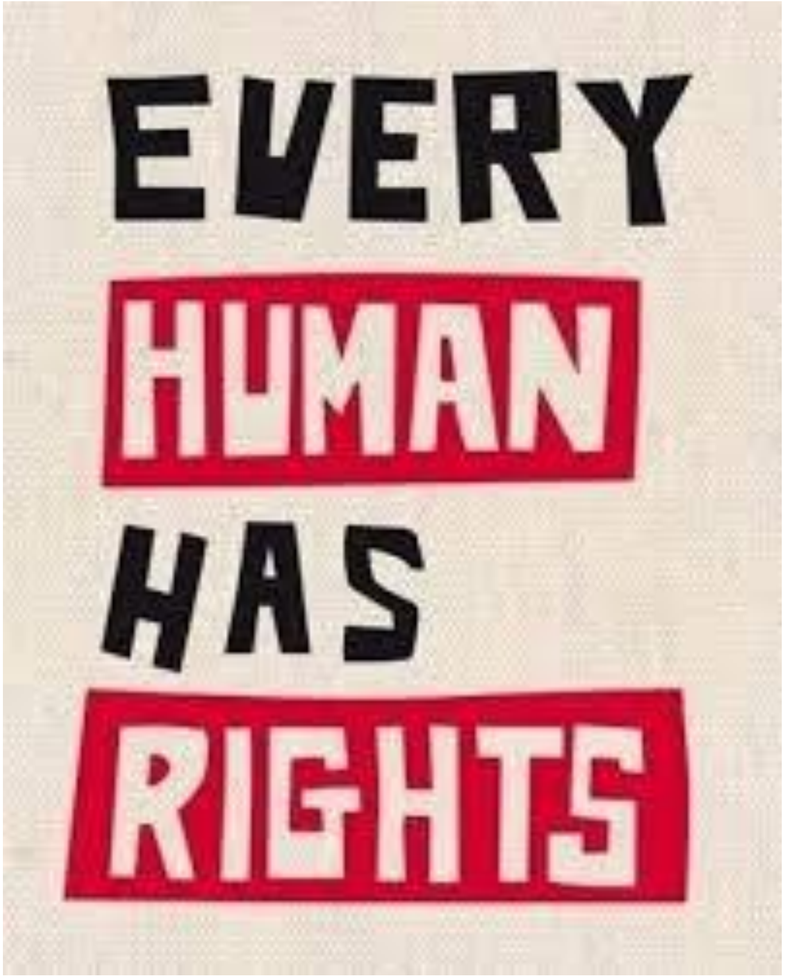
Article 15 (4) – Right of access by the data subject

The right to obtain a copy referred to in Article 15 (3) shall not adversely affect the rights and freedoms of others.

- Rights of others justify redaction or masking – not refusal of the whole request (EDPB Guidelines 01/2022).
- Includes trade secrets and intellectual property (Recital 63) – but the result should not be a refusal to provide all information.



Article 23- GDPR Restrictions

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Member State Governments may restrict by legislative measure the scope of the obligations and rights provided for in Art 15… when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard: (ctd on next slide)

Article 23- GDPR Restrictions

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- National security
- Defense
- Public security
- Prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties including safeguarding against and the prevention of threats to public security
- Other important objectives of general public interest in particular an important economic or financial interest of the Union/MS including monetary, budgetary and taxation and public health and social security (ctd on next slide)

Article 23- GDPR Restrictions

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- Protection of judicial independence and judicial proceedings
- Prevention investigation, detection and prosecution of breaches of ethics for regulated professions
- Monitoring inspection or regulatory function connected to the exercise of official authority in (a) to and (g)
- Protection of the data subject or the rights and freedoms of others
- The enforcement of civil law claims

Applying a Restriction in Practice

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- The restricting law must meet **Art 23(2)**: purposes, categories of data, scope, safeguards against abuse, the controller, storage periods, risks, and the right to be informed of the restriction.
- Apply each restriction **case by case**: necessary and proportionate, and respecting the essence of the right (EDPB Guidelines 10/2020).
- **Document** for every refusal or redaction:
  - the provision relied on
  - why disclosure would prejudice the protected objective
  - what was withheld, and a review date
- Lift the restriction once the reason no longer applies.
- Tell the data subject about the restriction unless that would itself prejudice its purpose (Art 23(2)(h)).

Restrictions to Right of Access under DPA 2018

Restrictions – s.60(3)(a) DPA 2018

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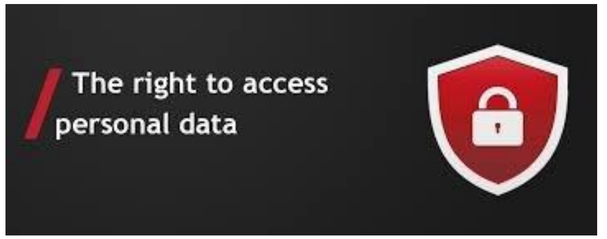
Access rights and obligations are restricted to the extent the restrictions are necessary and proportionate:

- (i) to safeguard cabinet confidentiality, parliamentary privilege, national security, defence and the international relations of the State
- (ii) for the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties
- (iii) for the administration of any tax, duty or other money due or owing to the State or a local authority
- (iv) in contemplation of or for the establishment, exercise or defence of a legal claim or prospective legal claim – see also **s.162** (legal privilege)
- (v) for the enforcement of civil law claims
- (vi) for estimating the liability of a controller on a claim for damages or compensation, where disclosure would prejudice the controller's interests



Restrictions to Right of Access- The Irish DP Act

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S60(3)(b) Access rights and obligations are restricted where…

the personal data consist of an expression of opinion about the data subject by another person given in confidence or on the understanding that it would be treated as confidential to a person who has a legitimate interest in receiving the information



Restrictions to Right of Access- The Irish DP Act

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S60(3)(b) Access rights and obligations are restricted to the extent that:

(i) the personal data concerned are kept by the **Commission** or

(ii) the **Information Commissioner** for the performance of his/her functions

(iii) by the **Comptroller and Auditor General** for the performance of his/her functions.

An Coimisinéir Cosanta Sonraí
Data Protection Commissioner

Restrictions to Right of Access- The Irish DP Act

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S60(6)

Regulations may be made restricting the rights and obligations.. where necessary for the purposes of safeguarding **important objectives of general public interest..**

(subject to review mechanism - including consultation with DPC and respecting the essence of the right to data protection per S60(8)-(12) DPA 2018)

Regulations made include S.I. No. 534 of 2020 (Central Bank of Ireland). Check the Irish Statute Book for other s.60(6) regulations currently in force.

Restrictions to Right of Access- The Irish DP Act

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S60(7)

“Important objectives of general public interest”:

- preventing threats to public security and public safety
- avoiding obstructions to any official or legal inquiry, investigation or process, including any out-of-court redress procedure, proceedings pending or due before a court, tribunal of inquiry or commission of investigation
- preventing, detecting, investigating and prosecuting breaches of discipline by, or the unfitness or incompetence of, persons who are or were authorised by law to carry on a profession or any other regulated activity and the imposition of sanctions for same
- preventing, detecting, investigating or prosecuting breaches of ethics for regulated professions;

Restrictions to Right of Access- The Irish DP Act

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S60(7)

"Important objectives of general public interest:

(e) taking any action for the purposes of considering and investigating a complaint made to a regulatory body in respect of a person carrying out a profession or other regulated activity where the profession or activity is regulated by that body and the imposition of sanctions on foot of such a complaint;

(f) preventing, detecting, investigating or prosecuting, whether in the State or elsewhere, breaches of the law which are subject to civil or administrative sanctions and enforcing such sanctions;

(g) the identification of assets which are derived from, or are suspected to derive from, criminal conduct and the taking of appropriate action to deprive or deny persons of those assets or the benefits of those assets and any investigation or preparatory work in relation to any related proceedings;

Restrictions to Right of Access- The Irish DP Act

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S60(7)

"Important objectives of general public interest:

(h) ensuring the effective operation of the immigration system, the system for granting persons international protection in the State and the system for the acquisition by persons of Irish citizenship, including by preventing, detecting and investigating abuses of those systems or breaches of the law relating to those systems

(i) safeguarding the economic or financial interests of the European Union or the State, including on monetary, budgetary and taxation matters;

(j) safeguarding monetary policy, the smooth operation of payment systems, the resolution of regulated financial service providers (within the meaning of the Central Bank Act 1942), the operation of deposit-guarantee schemes, the protection of consumers and the effective regulation of financial service providers (within the meaning of the Central Bank Act 1942);
(S.I. No. 534/2020 - Data Protection Act 2018 (section 60(6)) (Central Bank of Ireland) Regulations 2020

Restrictions to Right of Access- The Irish DP Act

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S60(7)

"Important objectives of general public interest:

(k) protecting members of the public against—

(i)financial loss or detriment due to the dishonesty, malpractice or other improper conduct of, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate or other entities,

(ii)financial loss or detriment due to the conduct of individuals who have been adjudicated bankrupt, or

(iii)financial loss or detriment due to the conduct of individuals who have been involved in the management of a body corporate which has been the subject of a receivership, examinership or liquidation under the Act of 2014;

Restrictions to Right of Access- The Irish DP Act

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S60(7)

"Important objectives of general public interest:

(l) protecting—

(i)the health, safety, dignity, well-being of individuals at work against risks arising out of or in connection with their employment, and

(ii)members of the public against discrimination or unfair treatment in the provision of goods or services to them;

(m) the keeping of public registers for reasons of general public interest, whether the registers are accessible to the public on a general or restricted basis;

(n) safeguarding the integrity and security of examinations systems;

(o) safeguarding public health, social security, social protection and humanitarian activities.

Part 5 DPA 2018 – Law Enforcement

Part 5 DPA 2018 – Law Enforcement Processing

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- Part 5 transposes the **Law Enforcement Directive** (Directive (EU) 2016/680).
- Applies to **competent authorities** processing for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including safeguarding against threats to public security.
- May include state bodies with investigation or prosecution functions, not only An Garda Síochána.
- **Right of access: s.91** – confirmation, access and information broadly similar to Art 15, within one month.
- **Restrictions** – access may be restricted where necessary and proportionate, e.g. to avoid prejudicing investigations or prosecutions, or to protect public or national security or the rights of others.
- Where access is restricted, the data subject may ask the DPC to verify the lawfulness of the processing (indirect access, Art 17 LED).
- **In practice:** flag systems and records processed for law-enforcement purposes so the right regime is applied at triage.

Other Regulations

Other Regulations

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Data Protection Act 2018 (Access Modification) (Health) Regulations 2022 (S.I. No. 121 of 2022)

- Health data not to be supplied where this would be likely to cause serious harm to the physical or mental health of the data subject – decision by, or after consulting, the appropriate health practitioner.
- Must be a "real, tangible possibility of harm" – *Mr X v A Health Board* (DPC, 2000, under the 1989 Regulations).

Data Protection Act 2018 (Access Modification) (Social Work) Regulations 2022 (S.I. No. 122 of 2022)

These replace the 1989 Regulations made under the 1988 Act.



Age Limits

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- The GDPR sets no age at which a child can make an access request – children are rights-holders in their own right.
- DPC *Fundamentals for a Child-Oriented Approach to Data Processing* (Dec 2021): consider the child's age and maturity case by case.
- A parent or guardian may make a request on the child's behalf where this is in the child's best interests.
- Take care where disclosure to a parent may not be in the child's best interests (e.g. child protection, family disputes).
- Options: the child alone; a parent or guardian on the child's behalf; or both jointly.



Case Studies

Case Study 1: The Grievance Emails

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Aoife works in a Government Department. She has raised a grievance against her line manager. She makes an access request for **all emails and Teams messages that refer to her** over the past 18 months.

The Department replies after five weeks. It provides her HR file only and says:

- emails *about* Aoife written by colleagues are "not her personal data";
- because she has signalled a possible claim to the Workplace Relations Commission, the remaining material is withheld under the "legal claims" restriction;
- all correspondence with the Department's solicitors is privileged.

Aoife complains to the DPC.

For discussion

- Which parts of the Department's response can it defend, and which can it not?
- Does Aoife's motive (the grievance) matter?
- What should the Department have done in the first month?

Case Study 1: The Answer

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- **Emails about Aoife are her personal data.** Opinions and assessments about a person are personal data (*Nowak*, C-434/16). She is entitled to a copy, with context where needed (*F.F.*, C-487/21).
- **Her motive is irrelevant** – a request linked to a dispute is still valid (*FT v DW*, C-307/22).
- **No blanket restriction.** s.60(3)(a)(iv) applies only to the extent necessary and proportionate, record by record, with reasons recorded.
- **Privilege (s.162)** covers legal advice and litigation communications with the solicitors – need to look at the emails – do they contain legal advice/comms re Litigation?
- **Timing:** the response came after the one-month deadline with no extension notice (Art 12(3)).
- **Colleagues' data:** redact where needed (Art 15(4)) – not a reason to withhold the emails.
- **Likely DPC outcome:** the Department is directed to carry out a full search of email and Teams and release the material with appropriate redactions; infringement of Art 12(3) and Art 15.

FOI - High Level Overview

Concept of FOI

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Conceptually – “fostering an attitude of openness”

Themes: “transparency and accountability”

Enables people to gain access to official information to the greatest extent possible consistent with the public interest and the right of privacy of individuals



Brief Summary of FOI Act

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The Freedom of Information Act 2014 provides the following statutory rights:

- to access information held by a body to which FOI legislation applies
- to have official information amended where it is incomplete, incorrect or misleading
- to obtain reasons for decisions affecting an individual

Brief Summary of FOI Act

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- A “record” can be a paper document or information held on computer. It includes, for example, printouts, maps, plans, microfilm, audio-visual material, disks and tapes.
- Access to records

(1)Subject to this Act, every person has a right to …access to any record held by an FOI body and the right so conferred is referred to in this Act as the right of access.

(2)An FOI body shall give reasonable assistance to a person who is seeking a record under this Act— (a) in relation to the making of the FOI request for access to the record, and (b) if the person has a disability, so as to facilitate the exercise by the person of his or her rights under this Act.

(3)An FOI body, in performing any function under this Act, shall have regard to— (a) the need to achieve greater openness in the activities of FOI bodies and to promote adherence by them to the principle of transparency in government and public affairs, (b) the need to strengthen the accountability and improve the quality of decision making of FOI bodies, and (c) the need to inform scrutiny, discussion, comment and review by the public of the activities of FOI bodies and facilitate more effective participation by the public in consultations relating to the role, responsibilities and performance of FOI bodies.

Refusal to Grant Access

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- Refusal to grant access Part IV FOI Act:

- Administrative grounds; and
- Exempt record grounds

- Decision Makers Manual: Part 2 Exemptions and Consultations Procedures explains the operation of Part IV



Refusal to Grant Access

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Part IV: Tests

- **Public Interest test:**
- Is the overriding public interest best served by disclosure of a particular record and does this public interest outweigh the potential harm or injury arising from the disclosure?
- Decision Makers should list the arguments for and against, and weigh them up before making a decision – OIC review

- **Injury/Harm test**
- Would disclosure have an adverse effect on a specific interest?

Refusal to Grant Access

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Part IV: Tests

- Class Test - e.g. types of records (privileged etc)
- Third Parties – named on record (interaction with Data Protection)
- Third party interests – e.g. commercially sensitive; personal or confidential – may be disclosed in the public interest but consultation procedures apply (S38)
- Certificates from Minister (S34)

Administrative Grounds for Refusal of Requests

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1. Non-existence or failure to locate a record - s.15(1)(a)
2. Record not sought with due particularity - s.15(1)(b)
3. Substantial disruption to the work of the FOI body - s.15(1)(c) eg voluminous requests
4. Information already in the public domain - s.15(1)(d)
5. Publication of the record required by law - s.15(1)(e)
6. FOI Body intends to publish the record - s.15(1)(f)
7. Frivolous or vexatious request - s.15(1)(g)
8. Non-payment of fee or deposit - s.15(1)(h)
9. Records already released - s.15(1)(i)
10. Records otherwise available - s.15(2)

Exempt Requests

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1. Meetings of the Government - S.28
2. Deliberations of FOI Bodies - S. 29
3. Functions and Negotiations of FOI Bodies - S. 30
4. Parliamentary, Court & certain other matters - S. 31
5. Law Enforcement and Public Safety - S. 32
6. Security, Defence and International Relations - S. 33
7. Ministerial Certificates - S. 34
8. Information obtained in Confidence - S. 35
9. Commercially Sensitive Information - S. 36
10. **Personal Information - S. 37**
11. Research and Natural Resources - S. 39
12. Economic and Financial Interests of the State - S. 40
13. Enactments relating to non-disclosure of records - S. 41

Personal Information (Section 37)

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A head shall refuse to grant an FOI request if access to the record concerned would involve the disclosure of personal information (including personal information relating to a deceased individual).

Exceptions – s.37(2): including where the information relates to the requester (s.37(2)(a)), the third party consents, the information is publicly available, or disclosure is necessary to avoid a serious and imminent danger to life or health.



Personal Information (Section 37)

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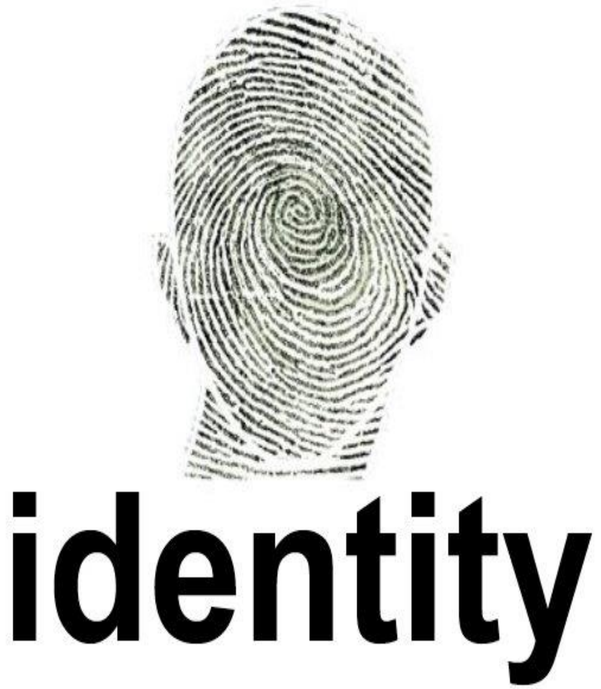
What is “personal information”?

“information about an identifiable individual that –

(a) would be known only to the individual or members of family/friends OR

(b) held by an FOI body on the understanding that it would be treated as confidential"



Personal Information (Section 37)

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Types of personal information (not exhaustive)

- Information relating to a person's educational, medical, psychiatric or psychological history
- Financial affairs
- Employment history/personnel record; views about the person
- Competence or ability of an individual
- Criminal history
- Religion, age, sexual orientation or marital status
- Name/identifiers (e.g. PPS no)



Health Records - Section 37(3)

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- Medical records relating to the requestor or social work records do not have to be released where disclosure of the information might be prejudicial to the requestor's physical or mental health, wellbeing or emotional condition.
- Alternative access arrangements – make available via health professional



Section 37- Public Interest

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- If the public interest outweighs the right to privacy or the grant of the request would benefit the individual, then the request may be granted.
- If the public interest would be better served by releasing the information, the public body may do so.



Section 37- Public Interest

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Where third party personal information is included the head shall refuse to grant an FOI request in respect of that information.



Confidential, Commercially Sensitive, and Personal Information – Procedure

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Section 38 sets out the procedure to be applied when considering Sections 35, 36 or 37.

It sets out certain time limits for notification to interested parties and their ability to make submissions.

Fees and Charges – Section 27

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Fees may be charged as per regulation

No fee for making an FOI request; timelines are on the following slides.



Fees and Charges – Section 27

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- Estimated costs and search and retrieval and copying of record;
- No charge for personal information (Section 27(4));
- No charge if cost would be less than minimum amount;
- Minimum and maximum levels prescribed; and
- Deposit – 20% of costs

FOI Timelines and Reviews

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- **Acknowledge** the request within 2 weeks.
- **Decision** within 4 weeks of receipt (s.13).
- **Extension** of up to 4 further weeks for a large number of records or multiple requests for the same records (s.14) – notify before the 4 weeks expire.
- **No decision in time** = deemed refusal, opening the route to review.
- **Internal review** (s.21): apply within 4 weeks of the decision; review decided within 3 weeks.
- **Review by the Information Commissioner** (s.22): generally within 6 months; decisions binding, with appeal to the High Court on a point of law (s.24).
- **Review fees** are not charged where the request relates only to the requester's own personal information.

FOI and DSAR Overlap

Overlap

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Data Protection	FOI
Human right	**Every person's right (s.11)**
All sectors	**Public Sector only**
Focus on privacy	**Focus on openness**
Right of access	**Right of access**

Art 86 GDPR: personal data in official documents may be disclosed under national access-to-documents law – the legal bridge between FOI and data protection.

FOI and Data Protection – How They Fit

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- The two regimes are independent: a request under one does not remove rights under the other.
- Art 86 GDPR allows personal data in official documents to be disclosed under FOI law.
- **FOI release is release to the world** – except access to one's own personal information (s.37(2)(a)), which is release to the requester only. A DSAR response is private to the requester.
- The DPC and the Information Commissioner act independently; complaints go to the regulator for the regime relied on.

Requests Citing Both Regimes

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- Contact the requester promptly and explain the differences: time limits, scope, review routes and fees.
- You may **invite** them to proceed under one Act – but it is their choice. If they rely on Art 15, a full GDPR response (Art 15(1)–(3), within one month) is still required.
- **Running both:** log two requests, track both deadlines, carry out one search, and record which regime each decision is made under.
- **Exemptions differ** (Art 15(4), Art 23 / s.60 v Part 4 FOI including s.37): the same record may need different redactions under each.

Consequences of Non-Compliance - FOI

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Main **functions** of Information Commissioner

- Reviewing decisions of FOI bodies
- Reviewing the operation of the FOI Acts to ensure compliance
- Encouraging the voluntary publication of information above and beyond the minimum requirements of the FOI Acts
- Preparing and publishing commentaries on the practical operation of the Acts
- The publication of an Annual Report

Consequences:

Negative publicity/reputational damage

- OIC review decisions are legally binding on FOI bodies; appeal to the High Court on a point of law (s.24).

Enforcement and Penalties

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- The DPC can investigate compliance on receipt of a complaint or of its own volition.
- **Corrective powers (Art 58):** reprimands, orders to comply with data subject requests, bans and fines.
- **Fines:** up to €20m or 4% of global annual turnover – but for public bodies not acting as undertakings, capped at **€1m (s.141 DPA 2018)**.
- Enforcement and information notices – failure to comply is a criminal offence.
- **Damages:** Art 82 GDPR and s.117 DPA 2018. No "seriousness" threshold for non-material damage (*UI v Österreichische Post*, C-300/21). *Collins v FBD* [2013] IEHC 137 (proof of damage under the 1988 Act) no longer reflects the law.
- Cross-border cases: the EDPB consistency mechanism (European Data Protection Board).
- **Criminal offences** under the DPA 2018 include failing to comply with an enforcement or information notice, providing false information to the DPC, and disclosing personal data obtained without authority.

Creating a DSAR Process

Recital 59 - GDPR

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"Modalities should be provided for facilitating the exercise of the data subject's rights under this Regulation, including:

- mechanisms to request and, if applicable obtain free of charge
- in particular, access to and rectification or erasure of personal data
- the exercise of the rights to object".

Recital 59 - GDPR

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"The controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means".



Recital 59 - GDPR

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"The controller should be obliged to respond to requests from the data subject without undue delay and at the latest within one month and to give reasons where the controller does not intend to comply with any such requests".



Identifying a Data Subject

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"The controller should use all reasonable measures to verify the identity of a data subject who requests access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the sole purpose of being able to react to potential requests"

Recital 64 GDPR



Checks must be **proportionate**: use information already held; do not ask for an ID document copy by default, especially where the requester is already known, e.g. staff (EDPB Guidelines 01/2022).

Data Subject Access Requests ("DSARs")

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- Article 15 of the GDPR – right to be informed and obtain copy of data
- Generally, must be responded to with within one month, extendable by a further two months in certain circumstances
- Carry out searches – IT systems, manual files etc.
- Review and determine:
- whether the data constitutes the personal data of the data subject;
- Whether any exemptions apply; and
- Whether redactions need to be carried out.
- Provide response letter and a copy of the personal data to the requester (including a reference to the right to complain to the DPC).

Creating a DSAR Process

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Creating a DSAR Process- steps:

- Verification
- Search
- Review, extract & collate and
- Response
- Thema International case (Clarke J) 2011 IEHC (discovery case)

- *IBRC v Quinn* [2015] IEHC 175 – technology-assisted review accepted for large-scale discovery

Creating a DSAR Process

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Verification and log

- Data Subject ID verification procedure
- DSAR Log & diary system
- DS Portal?
- Authorisation from 3rd party making request?

Search

- Review of systems
- Centralised data storage
- Access to data for DPO team

Review

- Protocol for review
- Extract & collate
- Exemptions
- SI's
- Technology and appropriate systems NB
- Clinical sign off (medical records)

Respond

- Comply with timeline
- Template schedules
- Template letters to DS
- Retain log of requests

Triage Every Request on Day One

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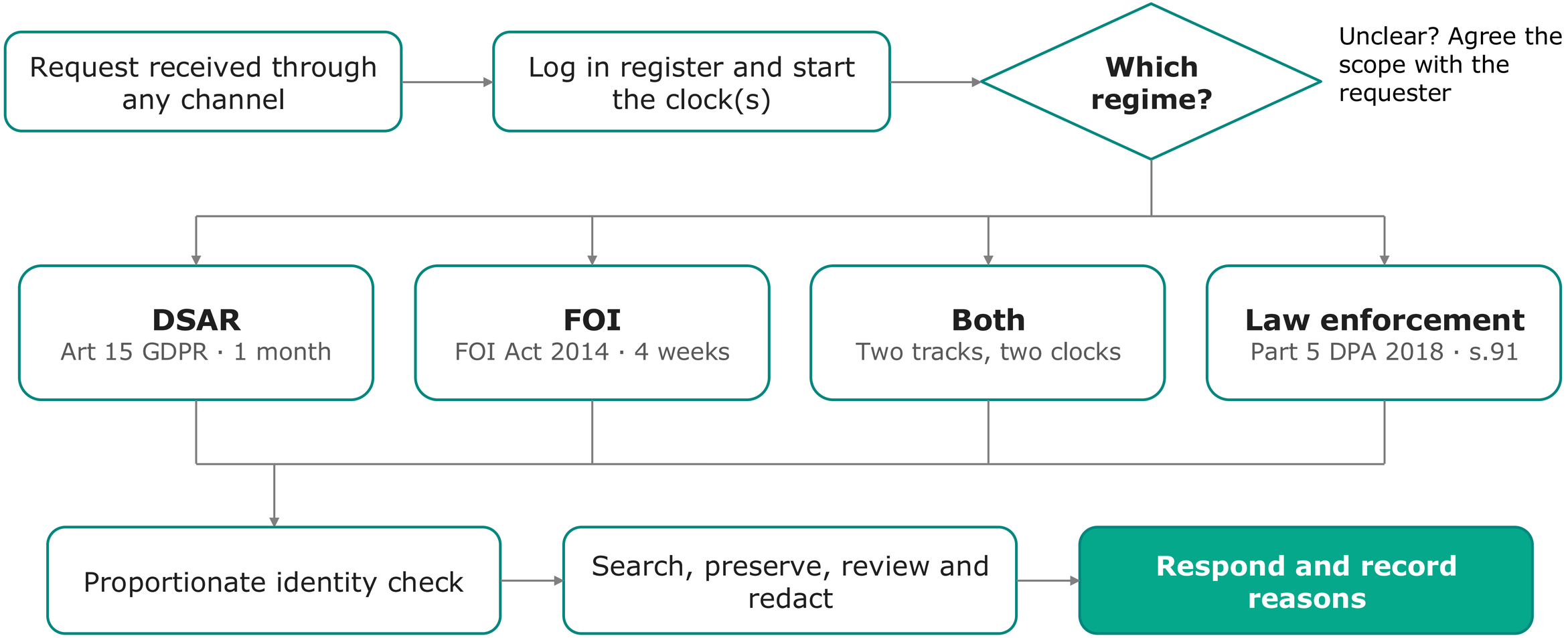

Environmental information requests are routed to the AIE Regulations at the same step.

Creating a DSAR Process

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Review Systems & upgrade if necessary

- Identify where data is stored
- Data inventory
- Consider whether appropriate systems are in place for larger volume of requests in a shorter period of time
- Consider centralising where possible
- Consider Recital 63 – make personal data available via portal

Draft / amend processes

- Draft DSAR process – consider necessary steps (including 3rd party consent & medical sign off if necessary)
- Diary Management process
- Train DPO staff in all processes & all staff - awareness raising

Draft / amend templates

- Request Form
- DSAR acknowledgment
- Internal notifications/forms
- Internal sign offs
- Schedules
- Response letter

Large/Complex DSARs- Scope and Searches

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1. Scope of searches undertaken:

- Network and other devices e.g. laptops, iPads, etc.; and
- Manual files subject to GDPR if part of *"filing system"*, i.e. *"any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis".*

2. Search terms:

- Name and other identifiers of the data subject;
- Search terms relevant to the specific request;
- HR, management, colleagues; and
- Relevant period of time.

Large/Complex DSARs- Scope and Searches

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- Consider the scope of the request made
- Nowak v The DPC (2018) IEHC 443
- Carry out initial searches to determine the likely volume of data
- Recital 63 contd. – *"Where the controller processes a large quantity of information concerning the data subject, the controller should be able to request that, before the information is delivered, the data subject specify the information or processing activities to which the request relates"*
- If necessary, ask the requester to reduce the scope of their request or identify areas of interest.

- Asking to narrow the scope is an invitation, not a condition (EDPB Guidelines 01/2022); context may require whole documents (*F.F.*, C-487/21).

Large/Complex DSARs- Record Keeping

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1. Document the process generally and all decisions taken, e.g. in relation to extension of time, search terms etc.
2. Using specialist software for redaction and tagging.
3. Management of the review and redaction process:

- **Training and materials;**
- **Ensuring consistency;**
- **Early feedback and examples to reviewers;**
- **Quality control; and**
- **Sharing the administration burden.**

Building the System – Key Components

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Component	What good looks like	Legal hook
Intake	Requests recognised from any channel; staff forward within one working day	Art 12(2)
Register and clock	Central log: date received, regime(s), deadlines, extensions, outcome	Art 5(2), 12(3); FOI s.13–14
Identity	Proportionate checks; no default ID copies	Art 12(6); EDPB 01/2022
Data map	ROPA linked to systems and record owners	Art 30
Search	Documented protocol per system: M365, Teams, case files, CCTV, body-worn video, logs	F.F.; Pankki S
Preservation	Hold on deletion of in-scope data once a request arrives	EDPB 01/2022
Review and redaction	Redaction tool with audit trail; reasons recorded for every exemption	Art 15(4), 23; s.60; FOI s.37
Response pack	Template covering Art 15(1)(a)–(h) and 15(2), plus the copy	Art 12(1), 15
Assurance	Monthly KPIs: volumes, on-time %, extensions, refusals, complaints	Art 5(2), 24
Vendors and AI	Processors contracted to assist; AI outputs explainable	Art 28(3)(e); 15(1)(h); AI Act Art 86

Responding to Complaints & DPC Queries

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The DPC's Annual Report for 2025 indicates that subject access requests remain the single largest source of complaints, accounting for **42%** of complaints.

2025 – 42%
2023 – 39%
2022 – 42%
2021 – 42%



During 2025, the DPC received 1,280 complaints specifically relating to the right of access and remain, by a considerable margin, the DPC's biggest complaint category.

Emerging Trends

Emerging Trends

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- Access requests remain one of the largest categories of complaints to the DPC, often made in the context of wider disputes (employment, customer service, custody).
- **EDPB coordinated enforcement action on the right of access** (report January 2025): no documented procedures, inconsistent use of restrictions, excessive ID checks, incomplete responses.
- **AI and automated decisions:** Art 15(1)(h) after *SCHUFA* and *Dun & Bradstreet*; AI Act Art 86 – explanation of decisions based on high-risk AI, including access to public services (from 2 August 2026, subject to the Digital Omnibus).
- **Abuse of the right:** *Brillen Rottler* (C-526/24) and the Digital Omnibus proposal on Art 12(5).
- Media coverage still drives spikes in requests (e.g. CervicalCheck).

DPC Case Studies

Case Study 2: The Missing Footage

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Seán is involved in an altercation at the public counter of a local authority office. Two days later he emails asking for **all CCTV footage and the recording of his phone call** that day.

The local authority:

- asks for a copy of his passport and a recent utility bill before it will "open" the request – Seán already has an account with the council and emailed from the address on file;
- receives the ID documents three weeks later and starts processing;
- after six weeks tells Seán the footage has been overwritten under its 30-day retention policy, and the call recording "contains staff voices" so cannot be released.

Seán complains to the DPC.

For discussion

- Was the identity check proportionate? When did the clock start?
- Was the authority entitled to let the footage be overwritten?
- How should the call recording have been handled?

Case Study 2: The Answer

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- **Identity checks must be proportionate.** Seán was a known customer writing from his registered email – a passport and utility bill were excessive (Art 12(6); EDPB Guidelines 01/2022).
- **Because the ID demand was unjustified, the clock ran from receipt of the request**, not from receipt of the documents. The one-month deadline was missed without an extension notice (Art 12(3)).
- **Data must be preserved once a request arrives.** Letting the footage be overwritten after receipt defeats the right of access – the retention policy does not override Art 15.
- **Staff voices are not a ground to refuse.** Staff speaking in their official role can be released, or the recording partially redacted or transcribed (Art 15(4)).
- **Likely DPC outcome:** findings that Art 12 and Art 15 were infringed; a reprimand and an order to revise the request procedure (holds on deletion, ID checks). For a public body, fines are capped at €1m (s.141 DPA 2018).
- **Lesson for the system:** a hold-on-deletion step at triage, and front-desk staff trained to recognise requests.

Thank you

Questions??

Coffee Break



Lunch

