

That brings us to the DPC's request for my comment, if any, on the Department's reply:

“There is no record of the ITS number and PPSN for this data subject having been re-associated”

I have not yet figured out why the DPC is asking me this.

The evidence that the Department had the data I requested and did not give it to me is overwhelming. Maybe it is that the DPC wants to know if I believe that the Department never re-associated the ITS number and the PPSN in my case.

Let me be crystal clear. Without a shadow of a doubt, the Department re-associated the data. There can be no doubt that the State, not just a Department, which never once hesitated to act unlawfully, which broke every rule and regulation, which lied to me and about me repeatedly, which treated my data with contempt, which used each and every opportunity, legal or not, to denigrate my good name in every way possible, which used every tool available to it to unlawfully share my data with each other and with third parties, which had done everything in its power to manufacture an image of me as someone with a reputation for untruthfulness, both had and reassociated the ITS number and the PPSN in my data.

Maybe the DPC is asking me what I would like the DPC to do? I would like the DPC to fine the Department of Social Protection 4% of its annual turnover as a lesson to politicians and civil servants everywhere that the treatment of Irish citizens' data that I have outlined herein should not be tolerated. That fine would come to €1 billion and would be paid to the Exchequer. It would be a pyrrhic victory, but it would send a message.

The DPC could easily make three decisions, based on the evidence I have put in this reply –

1. The Public Services Card was used unlawfully as a mass surveillance system.
2. The denial of 'Test Cases' is 'Erroneous Information'.
3. I am a truthful individual and have not through the many years of these multiple processes engaged in any falsehoods.

The last one is very important to me. I did not set out to be a whistleblower. I set out to help my workmates and I to ensure that there was a financial safety net in place: to ensure that if we were to become injured that we would not be left in dire financial circumstances. It is the endemic corruption that exists within this State, that has turned me and many others into whistleblowers.

This State, through its collection of data, and unlawful sharing of that data knows everything about me, and this point is important. They know that I am very unwell, that I need to have an operation to have part of my bowel removed but that I am not a priority in an overstretched public service and that I cannot afford to go private.

This has been my worst year health wise since 2010 when I underwent at least 25 operations, chemo, skin grafts and so much I do not want to remember. This State also knows that I am as poor as a church mouse. I have 467 euro in my bank account, bills of twice that and for the first time in 24 years, I may not be able to pay my mortgage this month. The State knows all of this.

The State also knows that my podcasting project (tortoiseshack.ie) which I began with Tony Groves five years ago is on its knees and will be gone in a month or two. They know that I have never made a single cent out of it. It really saddens me that it will go, I do not think anybody understands how much I have used it as a platform to expose and tell this story.

One of the very first people I spoke to on a pod about bogus self-employment was journalist Ken Foxe and many more since. The state know that I am to be divorced in February, they know this because that data is available, and they have never hesitated to get any and all data about me. I am

on Legal Aid. I have had five different solicitors. I have not spoken to anybody all year as I have been too desperately ill to understand and the State knows all of this.

Every State agent, acting for the State, who never once hesitated to act unlawfully to deny me my employee rights, and to use all and every tool available to them to punch at me, has gotten a promotion or is living on a pension fattened by a promotion for kicking at me.

What did I get? I got cancer, separated, disabled and in February I will be divorced and I could be homeless. The State knows all of this and uses it against me. Delay, deny and wait for me to die is the entire focus of all those involved and there is not one entity in the entire apparatus of the State who will act as it should, that includes the Office of the Data Protection Commissioner.

The chronology of this complaint shows that the Office of the DPC has been unprofessional, to the point of obstruction about this complaint –

Chronology

4 February 2019	McMahon sends Subject Access Request (SAR) to the Department of Social Protection
(date unknown) 2019	Department of Social Protection responds to McMahon in a manner he felt was unsatisfactory.
July 2019	McMahon queries Swords Express on 7 July and Transdev on 23 July and NTA on 24 July asking them what data is recorded about his travel.
July 2019	Transdev replied “We conform that no personal data is collected”.
26 July 2019	NTA emails McMahon that data (operator ID, number, route, date and time of journey, and fare) are provided to Department of Employment Affairs and Social Protection (DEASP)
2019	NTA emails McMahon that the Department of Employment Affairs and Social Protection (DEASP) is the organiser of the free travel scheme and should be the party asked why data is required. 1 October 2019 McMahon emailed the NTA to ask what legislation enabled the transfer of data to the DEASP.
October 2019	McMahon complains to DPC that the Department’s response to his SAR did not return data regarding the journeys he had made using the PSC travel pass, and that he believed that the Department had access to this data.
7 October 2019	NTA emailed McMahon (and McMahon forwarded to DPC) replying to his query of 1 October, citing Section 261 (2) of the Social Welfare Consolidation Act 2005 and Section 38 of the Data Protection Act 2018.
7 November 2019	SecGen of DEASP tells the Oireachtas PAC that ticket inspectors can phone the DEASP to check that a card is valid.
15 November 2019	DPC writes to McMahon informing him that his complaint is valid and that a person will be assigned to it.
9 December 2019	The DPC emailed McMahon to say it was waiting to review DEASP’s report the PAC.
23 October 2020	McMahon requested an update from the DPC, after a silence of 10 months.
3 November 2020	McMahon writes to the DPC repeating his request.

4 November 2020 The DPC replied to McMahon to acknowledge his complaint, informing him of his rights as a complainant, and promising to assign a case officer.

4 November 2020 (the same day) The DPC emailed McMahon to apologise for the delay and acknowledging that it should have acknowledged that his complaint was valid sooner. The DPC said it would complete its own-volition inquiry in to the Public Services Card first, and address “all outstanding elements of your complaint” based on the outcome of the inquiry.

8 November 2020 McMahon replies to the DPC clarifying that its own-volition inquiry concerns the PSC outside of the context of social welfare, whereas his complaint concerns the Department of Social Protection. He asked for his complaint to be addressed without delay, and to be notified within 14 days.

25 November 2020 McMahon writes to the DPC requesting an acknowledgement of his previous email.

16 December 2020 McMahon writes to the DPC requesting an update.

23 December 2020 The DPC replied to McMahon, telling him his complaint is in a queue of complaints awaiting a case officer in order to be examined.

16 April 2021 The DPC emailed McMahon apologising for the “delay in responding further to your complaint”, and saying matter was “under review”.

23 June 2021 McMahon replied to the DPC with strong sentiments of disappointment at its failure to act on his complaint.

1 July 2021 The DPC replied to McMahon to apologise again for the delay and telling him his complaint was still in the queue to be assigned to a case officer. It said “unfortunately, we are not in a position to advise on a timeline for the assignment of a case officer”.

23 July 2021 The DPC replied to McMahon to apologise again for the delay, and telling him his complaint was still in the queue to be assigned to a case officer.

2 September 2021 The DPC told McMahon that a case officer had been assigned, and asking for permission to share his identity with the Department.

5 September 2021 McMahon replied to the DPC granting his consent.

September 2021 The DPC contacted McMahon (by phone) to request copies of screenshots from McMahon’s complaint in a different format.

17 September 2021 McMahon provided the requested materials to the DPC.

20 October 2021 The DPC emailed McMahon requesting the materials and saying the complaint would be closed if they were not received by 3 November 2021.

20 October 2021 McMahon replied to the DPC alerting it that he had provided the materials on 17 September.

20 October 2021 The DPC replied to McMahon saying it had no record of his email of 17 September.

20 October 2021 The DPC replied to McMahon saying that it had retrieved his email of 17 September and apologised.

Date unknown	DPC writes to Department of Social Protection (DSP) to request information about its use of data from the Free Travel Pass
16 December 2021	DSP responds to DPC with information about the data provided to it by the NTA.
12 January 2022	The DPC wrote to McMahon telling him that the Department had requested an extension in responding to it but had now done so. The DPC was currently reviewing this and would update McMahon.
12 January 2022	McMahon asked the DPC to provide him with a copy of the Department's response.
19 January 2022	McMahon asked the DPC repeating his request to provide him with a copy of the Department's response, saying he was engaged in an interpartes process and therefore had a right to respond.
20 January 2022	DPC writes to McMahon copying correspondence from the Department of Social Protection (DSP). The data received by DSP do not include people's locations. DPC requests reply from McMahon by 21 February 2022.
21 February 2022	Mr. McMahon replies.
30 May 2022	I made another SAR to the Department.
30 June 2022	I received a partial reply from the Department attaching the exact same files as were supplied to me on foot of my 4 th February 2019 SAR reply. I was informed that further searches are taking place and there may be more data.
29 August 2022	I received another set of files from the Department in reply to my May 2002 SAR. Many of these are, false, redacted or otherwise compromised pieces of data contained in several files, much of which I had not seen before. These documents stretch back to 2000, and I have made other SAR or Data Access Requests in the past to the Department which revealed other documentation which is not included in any of the SAR replies in 2019 or 2022.
6 September 2022	I wrote to the Department and said that it was clear from the data I had received, that much more data existed which is not included in the data sent to me in either 2019 or 2022.
8 September 2022	The Department wrote to me and stated that they had searched for my data and unless I could give them an indication as to where they have stored the rest of my data, they are unable to provide more data. I cannot possibly know the recording and reporting structures in the Department nor where they store data. I do know that a lot more data exists which I will come to.

Dear Mr McMahon

Thank you for your emails. As per our previous responses to you regarding your access request, we have provided information from the following areas:

- PRSI Records
- Invalidity Pension
- Household Benefit/Free Travel
- Child Benefit
- Medical Records
- Client Identity Services
- Social Welfare Appeals Office
- Minister's Office
- Scope Section

With regard to the records from these areas, redactions were made to records where another individual's personal data is involved or where the information does not relate to your personal data. Some information in Folder 7 was withheld under Section 162 of the Data Protection Act under Legal Privilege.

If you could offer any guidance as to any other areas where further records could be obtained, we will endeavour to find them. In the absence of further guidance, we have no more records to send you.

Yours sincerely

27 September 2022 DPC writes to me looking for my observation on the Department's claim
"There is no record of the ITS number and PPSN for this data subject having been re-associated"

QUESTIONS

- It is almost three years to the month since the Office of the DPC accepted my complaint as valid. I had a right to have my data from the Department within 28 days. Why is it taking the Office of the DPC so long to finalize their actions on this valid complaint?
- In February 2020, the acting Minister for Social Welfare authorised the deletion of all data and all logs in relation to my complaint. Why hasn't the DPC made a ruling on this?
- On the 8th of November 2020, the Office of the DPC clearly acknowledge that my complaint is actionable and requested that I allow my complaint be joined with the DPC's 'own volition' actions. I have never understood why the Office of the DPC made this request and I would like it explained to me in a way that makes sense.
- Why, after clearly recognising that my complaint was actionable on the 8th of November 2020, did the Office of the DPC put my actionable complaint back in a queue of complaints? It is most certainly my belief that I was deliberately ignored for not complying with the unexplained request of 8th November 2020.

OTHER ISSUES OF IMPORTANCE

1. Association of PSC numbers with ITS numbers

According to the Department of Social Protection email to the DPC of 16 December 2021, the Public Services Card "unique non-identifying number" that is processed by the National Transport (NTA)'s "integrated ticketing system" (ITS). Since this number is unique and persistent, then it is likely to be pseudonymous personal data. The ITS generates an ITS number for each Free Travel Card and is provided to the NTA. This ITS number is used to record "usage transactions". Individual's records of a journey dates, times and destinations allows the Department to build a comprehensive database of an individual's movements using the Public Services Card free travel pass.

2. **According to the DEASP Secretary General John McKeon**, at an Oireachtas hearing on 7 November 2019, when receiving information from Iarnród Éireann ***"We do not know where they got on or off. We just know they were on that route. ... We know, say, that someone got on the Cork-Dublin train at 12 o'clock but we do not know if they got off in Portlaoise, Kildare or Dublin. We do not have that information"***. On the Luas, people "tag on" before embarking, and "tag off" at their destination, not all public transport providers operate in the same way. The Secretary General's reply fails to address the fact that if one knows a

destination and the very next journey record starts at the previous destination, the Department can reassociate this data and build a complex picture of a person's movements.

3. **The CEO of the NTA wrote to Thomas Byrne TD**, in response to a parliamentary question, on 14 November 2019 saying that the NTA cannot not itself link "the unique number of the PSC-FT [Free Travel Card] that is used for the purposes of the Integrated Ticketing Scheme with an individual. This association shall be maintained by DEASP only; consequently, it is not possible for NTA to track or identify the moments of an individual using a PSC-FT." Is the NTA and are other public transport providers retaining data beyond the time of its state purpose i.e., "administration and funding of the scheme".
4. **Instances in which a person's PSC number was linked with their ITS number.** The Department of Social Welfare reply to the DPC of 16 December 2021 confirms that the **"Department retains the capacity to re-associate an ITS number with a PSC holder"** by written request for purposes related to criminal offences. Who is this request made to? Has the Department done so, and if so, on how many occasions, and with what consequence for the people concerned?
5. **According to the DEASP Secretary General John McKeon**, at an Oireachtas hearing on 7 November 2019, **"We know the ITS number but we do not associate that number to an individual back in the Department. ... We can but we do not. ... A limited number of officers in our business intelligence unit have the capacity to do so. The only time we do it is at the request of the gardaí in the case of criminal investigation or ... the request of what I think are called [CIÉ] revenue protection officials [ticket inspectors]. They have the authority under the relevant legislation to look for that information. In such instances, we do not give CIÉ any information about the customer other than to say that it was or was not a valid card."** Are there other entities that can request the data? How many requests have been received from these authorities? How many have been granted? What was the consequence? Has this been used for the Department's own investigations? What is the legal basis for the CIE's ticket inspectors accessing these data? According to figures supplied to Thomas Byrne TD, CIE ticket inspectors used this process 35 times in 2018, 32 times in 2017 and never at all in 2016. Before February 2020, ITS information (details unknown) was shared with the Department for the purported purpose of "administration and funding of the scheme". The Department terminated this arrangement and has deleted the data. Was this the sole purpose? Or were the data used in connection with fines, prosecution or in any other respect? Did these data include the details of individual journeys, and if so, how for many journeys over the period for which this data sharing arrangement existed?
6. **The Department cites Section 132 of the Railway Safety Act 2005**, as amended, or section 41(b) of the Data Protection Act 2018 has been used for the Department's own investigations? What is the legal basis for the CIE's ticket inspectors accessing these data?
7. **Before February 2020**, ITS information (details unknown) was shared with the Department for the purported purpose of "administration and funding of the scheme". The Department terminated this arrangement and has deleted the data. Was this the sole purpose? Or were the data used in connection with fines, prosecution or in any other respect? Did these data include the details of individual journeys, and if so, how for many journeys over the period for which this data sharing arrangement existed?

8. The nature of the data According to the NTA in email to me in September 2019 Public Services Card use at a ticketing machine is recorded, and this record is shared with the Department (DEASP). The record includes **“operator ID, ITS number, route number, date and time of journey and the fare...”**. The “route number” indicates the journey travelled, the start and end point. Realistically, a ticket booked from Dublin to Cork for instance would indicate that Cork is the end destination and it doesn’t make sense to presume otherwise.

9. **Since May 2020 the NTA has shared monthly summary data.** These include the number of journeys taken by Free Travel cardholders, card type (single/spouse/companion). Are these summary data aggregated across all card holders, or are they monthly summaries about individual card holders? What other sources of journey data does the department have, the investigation by Noteworthy would indicate questionable data retention practices across the board with public transport providers, what actions is the DPC proposing to take in this area?

10. **At the Oireachtas hearing on 7 November 2019,** the chair of the Oireachtas Committee, Sean Fleming TD, requested a detailed report from the Department on the free travel card, and what information is sent to operators, and how funds are disbursed. The Secretary General said he would produce this. The Comptroller and Auditor General was also producing a related report. Do these documents exist?

The Office of the DPC has not been particularly helpful on the issue of the Public Services Card, and, in truth, I do not expect helpfulness from the Office of the DPC. I have been a prolific user of Data Protection and GDPR since 1999. I have made countless access requests over the years and I have referred some to the DPC.

I can honestly say that I have never once, in 24 years, come away from the DPC processes believing that my data has been protected. I have known for a fact since 2003, that the DPC is no better than all the other organisations who will cross a line into unlawfulness to protect the ‘Status Quo’. Both the Office of the DPC and I know that there are many hundreds of documents (data) missing from the SAR replies sent to me by the Department in 2019 and again twice in 2022.

Documents such as a ‘memo’ dated 29/6/00 written by Ms. Cathy Nugent, Finglas local office manager. This ‘memo’ was included in an email sent by Ms. Nugent to Regional Manager John Glennon, Assistant Principal Officer Ann Kelly and SWI Sean Kelly. This ‘memo’ and email is not contained in any of the SAR replies.

‘I’ve had a call from Vincent Clohissey, the couple mentioned in the attached report (memo) gained access to F13 - AMD, Ger Gleeson and Vincent Clohissey dealing’.

The ‘couple’ referred to in this memo is me and my X (I am going to refer to her as X to protect her privacy). I had gone with my X to the SW Office in Finglas. I had one question. Who sent a Social Welfare Inspector to my home, unannounced, where my X told me he put his hands on her, frightened her badly and she lied to get him out of the house while our 2 year old daughter was present.

We went to Finglas Social Welfare Office and I asked the manager Cathy Nugent who had sent him. We were treated very disrespectfully by Ms. Cathy Nugent so I went, with my X and my 2 year old daughter to Áras Mhic Dhiarmada where we got in a lift to the 3rd floor and invited ourselves to a meeting where many senior staff were present. I told them that my X had a complaint to make and

they were going to take her complaint respectfully and not push us out the door as had happened in Finglas.

That began a 10 year battle with the Department of Social Protection and a battle with An Garda Siochana to get them to investigate X's complaint. It was during this battle that I learned for a fact, that the Office of the DPC is just as corruptible as all the other agencies I have already named in this report.

X went to the Gardai and made a complaint. A few months later An Garda Siochana told X that there was 'Nothing to see'.

As I had already been using access request to get information on employment status issues, I advised X to make an Data Access Request (DAR) to An Garda Siochana which she did. She had to pay to have An Garda Siochana process her request.

When An Garda Siochana replied to her DAR, they said that no files existed, not even her complaint. X had retained a copy of her complaint which she had made to An Garda Siochana. It was a typed-up, fully processable piece of data.

In March 2001, I and my Father and X attended at a meeting in the Finglas SW Local Office at which the Regional Manager of the Department and other Department Officials were gathered to give us their 'Official Report' into their investigation into X's complaint. Their report concluded –

"It was a routine random call"

The Regional Manager also told us that Sean Kelly could sue X.

Nobody could tell us who sent him or why no record of his call to our home had been made. This meeting ended with the Department officials refusing to answer any of our questions and having us escorted from the building. Data does exist in relation to this in my files. I obtained copies of it under FOI legislation.

On 16th September 2001, I wrote to the DPC. I pointed out that Sean Kelly had requested data pertaining to me from X on the 7th March 2000 and as I had damn all to do with SW, my information was none of his business. I pointed out that Mr Kelly had breached the Data Protection Act in this regard.

On the 12th October 2001, X made a complaint to the DPC that her DAR had not been complied with by An Garda Siochana and X attached a copy of the fully processable version of the statement she gave to An Garda Siochana. X had a copy of her statement because Regional Manager of the Department of Social Welfare had insisted that she obtain a copy for 'his' investigation.

An Garda Siochana simply refused to investigate X's complaint, absolutely refused. The Department of Social Protection insisted that it had jurisdiction to investigate the complaint which resulted in documents which contain statements like the following. This document was created by Regional Manager John Glennon on the 29/9/2000 and it contains their report of an interview they conducted in my home, where both I and my X were present, on the 7th September 2000. The most disturbing aspect for me was not what Glennon said but what he did. He insisted that X show him how she alleged Kelly had put his hands on her. X had to re-enact with Glennon playing the part of Kelly and Glennon putting his hands on X. To this day I believe that Glennon insisting that he had to put his hands on X for his investigation is the lowest thing he did. This document is not in my files even though I was present through this interview. I was a witness to this -

'He (John Glennon) was obliged to pursue the issue as Sean Kelly was a member of his staff. We (John Glennon & Dave Redmond) were there representing the Minister (Dermot Ahern) on the matter. We were not judges and it may not be possible to resolve all the

issues to everyone's satisfaction. He (John Glennon) stated that the department treated the complaint very seriously and that Sean Kelly's position could be at risk if this allegation now being made against him were proved to be true. He (John Glennon) could understand that she might have felt that the Department was in some way targeting her for special treatment. It was a failing in the Department system of operating but she could be assured that she was not being specifically targeted for any reason. Mr. Glennon apologised for the breakdown in communications but she could be assured that there was no question of the Department targeting her for special attention. The visit to her residence came about as a result of a random selection process that was carried out by Sean Kelly regardless of what she may think. There was no question of her being singled out for special attention. Mr. Glennon stated that if these allegations being made against Sean Kelly were proven to be true it would mean that he was guilty of either at best professional misconduct or at worst sexual misconduct. Mr. Glennon outlined the different grades in the Department and the reporting structure involved. He told them that Sean Kelly was at the same grade level as the Local Office Manager Ms. Cathy Nugent and she would not have any authority over him or be aware of what he might be working on. He (John Glennon) said that Sean Kelly reported to an area manager who in turn reported to him. John Glennon told them Sean Kelly would have had his journey approved and that he (Sean Kelly) would have done a report on his visit'.

There are even records of John Glennon interviewing a FAS manager about X's complaint. There are hundreds of documents, letters, PQ replies, records of meetings etc. which should be contained in my SAR replies. I have boxes and boxes of the actual physical data. My name or reference to me is contained in this data which is not included in the SAR replies sent to me.

Just for example, the number of TDs who have asked direct questions of Ministers' for Social Welfare about the Department's investigation into X's complaint include Ivan Yeats, Micheal Noonan, Charles Flanagan, Dennis Naughton, Jim O'Keefe, Brendan Howlin, Thomas Gildea. David Norris, Gerard Reynolds, Jim Higgins, Bernard J Durkin, Harry Blaney, Robert Molloy, Pat Carey, John Gormley, Mary Harney, Mary Coughlan, Mary O'Rourke, Mary Hanafin, Liz O'Donnell, Sile DeValera, Liz McManus, Mildred Fox and Kathleen O'Meara.

Before I used social media, I would regularly write an update and post it to every TD in the Dail. I did this for years, many of them asked questions of the SW Minister because of the issues I raised in relation to the Department's investigation of X's complaint. When I was told at the Dail gate that they would no longer accept un-stamped letters, Senator David Norris stepped in and said I could give them all to him in one big envelope and he would put them into the post room for distribution around the Dail members.

All during this time, the Office of the DPC sat on its hands and did nothing. The Office of the DPC had prima-facia evidence that data did exist into X's complaint in An Garda Siochana and that An Garda Siochana had not carried out any investigation of any kind and the Department of Social Protection was covering up for its own 'cover-up' investigation which is shown in another document, on the 14th June 2002, a reply was sent to X from the Secretary General of the Department in relation to her request of 25th March 2002 for a copy of the report by John Glennon and Dave Redmond. In this reply it stated:

"It is considered that the release of the Final Report of the Review Team to you balances the need for accountability and transparency owed to you while at the same time maintaining the confidentiality necessarily arising from the employer/employee relationship. In the circumstances, therefore, it has been decided not to release the previous report involved"

Just for a moment consider what was going on here. The DPC had in its possession a piece of data which prima facie proved that X's complaint was not investigated by An Garda Síochána. More than five months after X made her complaint to the DPC, the Department of Social Welfare was telling X that she could not see a copy of their investigation, into an allegation of assault, which they have never had any jurisdiction to carry out. Prompt action from the DPC could have ended it all right there. But the DPC refused to focus on anything but the statement.

The fact that there should have been an investigation file too was repeatedly ignored by the DPC and X raised it many times in writing. This is only 3 months after the Department of Social Welfare told the Ombudsman that a 1995 Appeal of a Scope Section decision was a 'Test Case', which is reported in the Ombudsman's report of February 2002. The Social Welfare Minister was, at that time, writing to Deputy John Bruton as follows about X in reply to letters I had written to various TDs about the Department's refusal to release their investigation Report –

The matter has been examined by senior officials in the Department. I understand that the examination has been finalised and that the Department concerned is in the process of writing to the person concerned.

This was an acting Minister for Social Welfare telling an opposition TD that the Department's investigation into an allegation of assault, for which the department has no jurisdiction, that instead of referring the entire matter to An Garda Síochána who do have the jurisdiction to investigate allegations of assault, the Department were sending more letters to X. I was asking the question and so was X and so there should be records of this data in my files.

On the 28th of February 2002, a letter was sent from the Secretary General of the Department of Social Community and Family Affairs to X. In his letter, Eddie Sullivan stated:

"I have accepted their findings that there is no evidence to support or sustain serious allegations of misconduct made against the officer concerned"

The 'Attached Report' was in fact two documents:

- a) The 'Report' of the Review Team Dated 18th July 2001 &
- b) The 'Addendum Document' dated 29th November 2001.

Both of these documents were cobbled together, and a one page 'Overall Summary' was added as the final page. This overall summary stated:

"The Review Team concludes that there is no evidence to support or sustain the serious allegations of misconduct made against the inspector"

But that is not why the Review Team was set up. In May 2001 the Review Team identified exactly the two specific reasons for which the Review Team was set up. The Review Team was set up to establish:

- 1. Whether the investigation already carried out comprehensively considered all of the allegations.**
- 2. Whether the investigation already carried out equally vindicated the rights of;**
 - a) X**
 - b) Sean Kelly**

Within six weeks, the Review Team had carried out their review of the investigation and had reported back to the Secretary General, Eddie Sullivan.

On the question as to whether John Glennon and Dave Redmond had comprehensively considered all of the allegations, the Review Team established that:

- ***It was not appropriate that the Regional Manager should foregone due process by forming a personal view on the likely outcome***
- ***(John Glennon) believed that the allegation was so outrageous that he would not even put it to the inspector for comment.***
- ***Allegations were not put, or properly put, to the inspector for his comment.***

On the second specific question, as to whether the investigation carried out by Glennon and Redmond equally vindicated the rights of a) X, b) Sean Kelly, the Review Team established that:

“The Absence of due process in relation to these allegations is a defect in the investigative process and one that requires attention”

When John Glennon was in my home on the 7th February 2000, and he insisted that he needed to ‘re-enact’ where X was saying Sean Kelly put his hands on her, John Glennon was not ‘investigating’, he had forgone due process by forming a personal view on the likely outcome. John Glennon believed that the allegation was so outrageous that he would not even put it to the inspector for comment. John wasn’t ‘investigating’, when he put his hands on X in our home on the 7th February 2000, he was assaulting X.

Secretary General Sullivan is correct that there is no evidence to support X’s allegations. Secretary General is correct because no investigation was ever done. And all of this was happening while the Office of the DPC was sitting on prima facie evidence that An Garda Siochana had not investigated a complaint of assault against a Social Welfare Inspector and that the Department was lying to X about the reasons for X’s call to her home. X had complained that Sean Kelly’s call to our home was not part of his normal duties. On the 12th March 2002, a letter was sent from Eltin Moran (Social Welfare) to the Office of the DPC. The only available extract from Eltin's letter states:

“The record indicates that Mr. Glennon confirmed that the visit was part of a routine exercise being carried out by field officers on the day in question”

On the 27th March, the Office of the DPC wrote back to Eltin Moran (SW Data Manager):

“I would appreciate if you would state under what legislation the Social Welfare was working when he called to X's home in the context of the review exercise referred to in your letter”

The very same day Eltin sent his reply to the Office of the Data Protection Commissioner:

“My understanding of the circumstances of the Social Welfare Inspector's visit to X is that he was reviewing her entitlement to Unemployment Assistance”

So there we have it, crystal clear, undeniable, in writing, the specific legislation relied upon by Sean Kelly to access X's information was the specific legislation for reviewing X's entitlement to Unemployment Assistance.

X was not in receipt of Unemployment Assistance, never had been.

On the 2nd November 2001, Ms. Anne Gardner HEO, Office of the DPC telephoned Crime and Security Branch, Garda HQ and spoke to Sgr. Tom Croke. Sgt. Croke confirmed that X had indicated exactly what data she was looking for. Ms. Gardner informed Sgt. Croke that:

“If there was info on computer in Ashbourne Garda Station that she (X) should have received a copy in response to her access request”

Ms. Gardner agreed to write to Assistant Commissioner Pat O'Toole, Crime and Security Branch, Garda HQ. The same day Anne sent a letter to Pat O'Toole. Anne requested that Assistant Commissioner O'Toole:

“Establish if there is personal data held on computer in Ashbourne Garda Station relating to X and if so, that a copy of that data would issue directly to her”

WHY was Ms. Gardner being directed to write to the Crime and Security Branch? Did the Office of the DPC not ask why she was being directed to the branch responsible for the administration of national security, counter terrorism and serious crime investigations within the Garda Síochána? Neither X nor I were terrorists. A DAR from me to An Garda Síochána sometime later does show that the Crime and Security Branch responsible for the administration of national security, counter terrorism and serious crime investigations within the Garda Síochána does indeed have a file on me.

On the 27th November 2001, a letter was sent from Garda HQ to Ms. Anne Gardner (Data Protection). This letter stated:

“There is no personal data held in Ashbourne Garda Station”

At the beginning of December 2001, a letter was sent to X from the Office of the DPC. Despite having prima facie evidence in their possession showing that An Garda Síochána were lying, the Office of the DPC told X that An Garda Síochána stated that there was no data in relation to X. In an astonishing attempt to wash their hands of the clear breach of the Data Protection legislation by the Gardai, the Data Protection Office stated:

“I trust you find this a satisfactory conclusion to your complaint”

X did not find it a satisfactory conclusion to her complaint, not by a long shot. X wrote back to the Data Protection Commissioner and told him so.

Elsewhere, a letter was sent to An Garda Síochána from Anne Gardner (Data Protection). In her letter to Assistant Commissioner O'Toole, Crime and Security Branch, Anne pointed out the bleeding obvious:

“The response to the access request did not include a copy of the statement”

Anne offered to discuss the matter and clarify any points with Assistant Commissioner O'Toole. She also notified him of his obligations under the Data Protection Act.

On the 18th July 2002, an Assistant Data Protection Commissioner telephoned Ashbourne Garda Station and spoke to Sgt. Pat Kearns. In a written record of this telephone call the Assistant Data Protection Commissioner stated that she was:

“Trying to conclude the complaint and wanted to be absolutely certain that they had no data on computer”

Sgt. Kearns said that he understood and that he would check out the position and contact the Assistant Data Protection Commissioner the following week. He did not do so.

On the 19th August 2002, the Assistant Data Protection Commissioner telephoned Sgt. Kearns at Ashbourne Garda Station to remind him of her call on the 18th July 2002. Sgt. Kearns told the Assistant Data Protection Commissioner that he would phone back.

On the 23rd August 2002, Sgt. Pat Kearns telephoned the Assistant Data Protection Commissioner. He said that he had checked all computers re. data relating to X. The Assistant Data Protection Commissioner asked if it was possible to type in X's name and search for a document. Sgt. Kearns said it was possible to do this. The Assistant Data Protection Commissioner informed Sgt. Kearns that

this would appear to be data within the meaning of the Data Protection Act. Sgt. Kearns said that X had already obtained a copy. In reply, the Assistant Data Protection Commissioner stated:

“I explained at length, that the fact that she had already obtained a copy sometime previous to the data access request was irrelevant. If they held it on computer on the date of receipt of the access request, they were obliged to give her a copy in response to the access request”

Nine months earlier, Assistant Garda Commissioner O'Toole, Garda HQ, wrote to Data Protection and had stated:

“There is no personal data held in Ashbourne Garda Station”

From the rank of Sergeant to Assistant Garda Commissioner, various Gardai had bald faced lied to the Office of the DPC and X about the existence of her data.

On the 4th September 2002, the Assistant Data Protection Commissioner wrote to D/Chief Supt. Martin Callinan, Security and Intelligence Branch, An Garda Siochana. In this letter the Assistant Data Protection Commissioner wrote:

- ***In your reply of November 29th 2001, and 5th March 2002, you indicated that the report was not held on a computer in Ashbourne Garda Station, in a form in which it could be processed, at the time of X's access request. Before writing to X to conclude her complaint, that there was no data about her, held on computer in Ashbourne Garda Station (and to speedily conclude matters), in particular point 1 of your letter of 5 March, 2002, I phoned Ashbourne Garda Station to clarify matters. During this discussion, I was informed that a copy of X's statement is indeed held on computer in Ashbourne Garda Station, and in processable form.***
- ***There is in fact personal data on computer which is fully processable, she is entitled in law to this information.***
- ***This office wishes to be informed as to whether or not you now propose to accede to X's access request under section 4.***
- ***I would also like to be informed as to why this latest information was not furnished in your reply of 5 March 2002.***

D/Chief Superintendent Callinan had very serious questions to answer. The frankness and gravity of the written questions from the Assistant Data Protection Commissioner, Ms. Anne Gardner, were exceptional. Unfortunately for X, Ms. Gardner would never again have any input into the cover up by An Garda Siochana. It does not pay to demand honesty from An Garda Siochana.

On the 10th September 2002, a letter was sent from Garda HQ to the Office of the DPC which stated that an internal enquiry was underway.

On the same day, X wrote to the Office of the DPC and made a DAR to that office, that is how we obtained all the details of the investigation from the Office of the DPC.

On the 24th September 2002, an Garda Siochana sent a letter to the Assistant Data Protection Commissioner, Ms. Anne Gardner. In this letter, despite numerous previous denials at the very highest levels, D/Chief Superintendent Callinan was finally forced to admit:

“There is in fact a copy of a statement made by X held there in processable form”.

It had taken over a year for An Garda Siochana to admit that X had gone to Ashbourne Garda Station and had indeed made a statement. To that point there was no official record within An Garda Siochana that any complaint had been made against Sean Kelly. Now that a statement was proven to

exist, Everest questions needed to be answered by the internal Garda investigation. Not least of which were:

- (i) Why was X's complaint and statement not recorded on the PULSE system?
- (ii) Where were the details of the investigation and the names of the investigating officers?
- (iii) Why was there no record of contact between the Department of Social Welfare and An Garda Siochana? (An obscure reference did exist in SW records);
- (iv) And most importantly, why did no records exist to show that an investigation actually took place or to show that Sean Kelly was questioned by An Garda Siochana?

The internal Garda Investigation concluded and a letter was sent to the Office of the DPC from Garda Headquarters. It was then that a Ms. Adrienne McGill appeared to 'take over' from Ms. Anne Gardner (Assistant Data Protection Commissioner). Anne had asked all the difficult questions to that point. An Garda Siochana and the Department of Social Welfare literally had their backs to the wall trying to explain their lies to her, but now she was gone.

On the 16th October 2002, Ms. McGill of the Office of the DPC wrote to X and stated:

"In their (An Garda Siochana) response they stated;

'It would appear that this misunderstanding was due to an administrative error and any inconvenience caused is regretted'.

I trust this concludes the matter to your satisfaction"

X received a letter from D/Chief Superintendent Martin Callinan:

Páirc an Fhionn-Uisce
Baile Átha Cliath 8

Tel. / Teileafón (01) 6662804

Fax. / Facs (01) 6662805

Please quote the following Ref. No.



Phoenix Park,
Dublin 8.

Web Site : www.garda.ie

E-mail. naconf@iol.ie

CS 37/01(124239)
3/01/112/1



Re: Subject Access Request under Section 4 Data Protection Act 1988.

Your Subject Access request under the above Act dated 24th September 2001 and our reply of 9th October 2001 has reference.

Following further investigation in this matter it now transpires that there is a copy of your statement held on computer at Ashbourne Garda Station. Please find a copy of that statement attached herewith.

I wish to state that there was no deliberate attempt to deny you a copy of your statement. This misunderstanding was due to an administrative error and any inconvenience caused to you is regretted.

Yours sincerely,


MARTIN CALLINAN
D/CHIEF SUPERINTENDENT

This is An Garda Síochána prevarication at its very best. X had provided Data Protection with the statement as proof that she had made a complaint and statement to An Garda Síochána only after they denied the existence of any data.

X had insisted from the outset that much more data should exist. Martin Callinan did not address the undeniable fact that no investigation had ever been carried out and his excuse of 'Administrative Error' does not explain repeated denials by several Gardai (including himself) of the existence of any data whatsoever including his written assurances to Data Protection on 29th November 2001 and again on 5th March 2002 that his inquiries revealed that no data existed.

On the 12th November 2002, X wrote back to the Office of the Data Protection Commissioner. She again gave detailed reasons as to why the response from D/Chief Superintendent Martin Callinan did not conclude the matter at all. In her letter X explained that other data should exist and that as it

stood, the reply from Martin Callinan conclusively exposed that there was no record of any investigation whatsoever, no record that Kelly had ever been asked a question. X requested a formal decision, as she had done since the 10th October 2001.

Two days later, the Office of the Data Protection Commissioner complied with X's DAR to them and X received written records of every telephone call and letter sent to An Garda Siochana and the Department of Social Welfare by Data Protection. It was not until then that X and I got to see the sustained and deliberate lies told to Data Protection by both.

On the 24th September 2002, a letter was sent from An Garda Siochana Headquarters to Ms. Anne Gardner, Assistant Data Protection Commissioner. In this letter An Garda Siochana finally admitted:

“There is in fact a statement made by X held there (Ashbourne Garda Station) in processable form”

On the 20th March 2003, Deputy Data Protection Commissioner Tom Maguire wrote to X. He enclosed a 'Draft Decision' in regard to X's DAR to An Garda Siochana. X had been asking for this decision for almost eighteen months. During that time, An Garda Siochana had repeatedly denied the existence of any Data.

Just why Tom Maguire sent a 'Draft' decision instead of a 'Final' decision is not explained, but it is not difficult to work out. Mr. Maguire did not want to offend An Garda Siochana. An Garda Siochana does not like being subject to Data Protection legislation. Mr. Maguire had no intention of offending An Garda Siochana by making a decision against them. Sending the 'Draft' decision to X was merely a formality. Mr. Maguire could not send it to An Garda Siochana without also sending it to X, but have no doubt, this was Mr. Maguire showing An Garda Siochana that he was 'On Side' and wasn't going to rock the cover-up boat. Mr. Maguire allowed X to have 21 days to make her 'Observations' on his 'Draft' decision.

From that moment on, from the delivery of Tom Maguire's draft decision, I have known that the Office of the DPC does not protect X's, mine or anybody else's data. The Office of the DPC is in the business of protecting the 'Status Quo' no matter how corrupt that status quo is –



Data Protection

Commissioner

An Coimisinéir Cosanta Sonraí

Our Ref: 3/01/112/1

20 March 2003

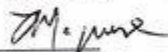
Ms X

Ashbourne
Co Meath

Dear Ms X

I wish to refer to your complaint under the Data Protection Act, 1988. I have now prepared a " **DRAFT** Decision" (copy attached) for consideration by the Commissioner. Before submitting the " **DRAFT** Decision" to the Commissioner I wish to afford both parties an opportunity to present any further observations which they consider appropriate. I would appreciate it if you would let me have any observations which you wish to make before 10th April, 2003.

Yours sincerely


Tom Maguire
Deputy Commissioner

DECISION OF THE DATA PROTECTION COMMISSIONER

under Section 10 (1) (b) (ii) of the Data Protection Act, 1988

File reference: 3/01/112/1

Decision number:

Complainant: Ms. X Ashbourne Co Meath	Data Controller: Commissioner An Garda Síochána Garda Headquarters Phoenix Park Dublin 7
	Registered Number (if registered under section 16 of the Data Protection Act): 0315/A

DRAFT DECISION

CASE BACKGROUND

On 12 October, 2001, I received a complaint, under the Data Protection Act, 1988, from Ms. X Ashbourne, Co. Meath alleging that An Garda Síochána did not comply with her access request.

INVESTIGATION OF CASE

Ms. X wrote to An Garda Síochána on 18 September, 2001 making an access request under section 4 of the Data Protection Act, 1988. She told them that she had made a complaint and had given a statement in Ashbourne Garda Station on 7 July, 2000, and that she wished to have all information pertaining to her from that file. An Garda Síochána wrote to Ms. X on 20 September, 2001 stating that in order to process her application she should forward the following information :

- * Previous addresses in this jurisdiction
- * Date of birth
- * Any previous names used
- * Cheque/Postal Order for £5 payable to the Accountant Dept. of Justice

On 9th October, 2001 An Garda Síochána replied to Ms. X stating ;

*" that a search of the Garda Pulse Databases reveals no personal data on you.
The searches were carried out on the basis of the identification particulars supplied to
this office as per your correspondence.
I wish to acknowledge receipt of £5 request fee".*

Ms. X made a complaint to my Office, indicating that An Garda Síochána had information relating to her, and she enclosed a copy of a typed statement that she had made to them on 7 July, 2000. My Office wrote to the Assistant Commissioner, Crime & Security Branch, Garda Headquarters on 2 November, 2001 requesting if he would,

" establish if there is personal data held on computer in Ashbourne Garda Station, relating to Ms. X and if so, that a copy of that data would issue directly to her".

An Garda Síochána responded on 27 November, 2001 stating that;

*" There is no personal data held on the Garda Pulse Database in relation to MS X
I have also been informed by the Superintendent at Ashbourne that there is no
personal data held on computer at Ashbourne Garda Station in relation to Ms. X*

*MS X has been supplied with a copy of both her hand written and typed statement
by the Gardai at Ashbourne".*

My Office informed Ms. X of this in a letter dated 3 December, 2001. On 5 December, 2001 Ms. X phoned my Office and informed an official that she was not satisfied with the response that my Office had received from An Garda Síochána. She stated that, sometime after she had made the statement to the Gardai in Ashbourne, she required a copy of the statement for the Department of Social, Community and Family Affairs. She went to the Garda Station and requested a copy of the statement. She said that she was given a copy of the typed statement, which she said she did not read, but placed it in an envelope and sent it to the Department of Social, Community and Family Affairs. On 19 December, 2001 a letter was received from Ms. X, confirming in writing, her dissatisfaction with the investigation of her complaint.

On 14 December, 2001 my Office wrote again to the Assistant Commissioner, Crime & Security Branch, Garda Headquarters requesting clarification and a written response was received on 5 March, 2002 stating that Ms X data was not held in Ashbourne Garda Station, at the time of her access request, in a form in which it could be processed,

On 18 July, 2002 an official from my Office phoned Ashbourne Garda Station to establish if there was any data held there on computer relating to Ms X. A member of An Garda Síochána said that he would check the position. Later, he contacted my Office and confirmed that there was a statement from Ms. X held on computer, but that she had already received a copy. It was explained to him that Ms. X was entitled to be given a further copy of the statement in response to her access request. On 4 September, 2002 my Office wrote to the Chief Superintendent, Crime & Security Division requesting that An Garda Síochána accede to Ms. X access request. In response to that letter, the Chief Superintendent stated, in a letter dated 20 September, 2002 -

" On receipt of your letter I carried out further enquiries with Ashbourne Garda Station and following a further search of the computer system there, I have been informed that there is in fact a copy of a statement made by Ms. X held there in processable form.

I have also been informed that Ms. X has previously been supplied with a copy of her statement by the Gardai at Ashbourne. I will now make immediate arrangements for a further copy of her statement to be forwarded to her in response to her access request

subsequently any processing operation can be performed upon the word-processed record, such an operation cannot be "solely for the purpose of preparing the text of documents", whatever else the purpose may be. Accordingly, I am of the opinion that word-processed records, which are kept on computer media after the document in question has been finalised, constitute "data" for the purposes of the Data Protection Act and therefore must be considered when responding to an access request from a data subject. (I should point out that the definition of "processing" contained in the Data Protection (Amendment) Bill, 2002 which is at present before the Oireachtas, applies to processing "whether or not by automatic means" and to manual personal data kept in a structured filing system. There is no exemption in the Bill for "text preparation" and, accordingly, once the Bill is enacted, the word processing exemption will be irrelevant).

I now must consider whether the copy of her statement that had been given to Ms. X by the Gardai can be deemed as having satisfied her subsequent access request. In my view, had the Gardai been conscious of the fact that word processed documents retained on computer come within the terms of the Act, the correct approach in response to the access request would have been to give her a copy of the statement and to say that no other data was held. However, I consider that at a minimum the terms of section 4 would have been satisfied by confirming that no data, other than that already supplied to her already was held on computer. The Gardai in their response to me of 27 November, 2001 were clear that "Ms. X had been supplied with a copy of both her hand written and typed statement by the Gardai at Ashbourne". No other data in word processed form or otherwise was held on computer and so Ms. X in this case was not denied her data protection rights or otherwise adversely affected by the failure of the Gardai to consider word processed documents which are retained on computer as coming within the terms of a Data Protection Access Request.

While there are grounds for upholding the complaint from a strict interpretation of section 4, however, I consider that it would have been reasonable for the Gardai to determine that her access request had been satisfied already by virtue of the fact that she had been supplied with a copy of the typed version of her statement and as no other personal information was maintained by them. Accordingly, I do not uphold the complaint in this instance.

DECISION

Ms. X was entitled to a copy of her statement in response to her access request under section 4 of the Data Protection Act, 1988. However, I find that the fact that she had already been supplied with a copy of the typed version of her statement should have satisfied the terms of section 4 of the Act.

Notice of right of appeal

have been informed of the Commissioner's decision. The complainant is hereby informed that is entitled, if aggrieved by the Commissioner's decision, to appeal against it to the Circuit Court under Section 26 of the Act within 21 days of receipt of this notification.

Tom Maguire

20 March, 2003

I have known since this decision that the Office of the DPC is corruptible. Not those in the lower rankings of the DPC; they did everything they were meant to do, albeit slowly, but they did their jobs. It is the executive class at the upper echelons that have covered up for serious wrongdoing by An Garda Síochána with this draft decision.

Mr. Tom Maguire
Deputy Commissioner
Data Protection Office
Block 4
Irish Life Centre
Talbot St.
Dublin 1.

Ashbourne
Co. Meath.

Your ref: 3/01/112/1
Date: 9th April 2003

Dear Deputy Commissioner Maguire,

In response to your draft decision dated 20th March 2003, my observations are as follows.

Background on my complaint:

1. On the 18th September 2001 I made a data access request to the Garda Síochána.
2. I received a reply dated 20th September 2001 from the Gardai in which they stated that:

"In order to process your application you should forward the following information; previous addresses in this jurisdiction, date of birth, any previous names used by yourself, cheque/postal order for £5 punt payable to the Accountant Dpt. of Justice".

I replied to this and I supplied full particulars to the Gardai in order that they process my request of the 18th September 2001. I supplied a cheque for the above amount. I gave full and complete information as to where data may be held and I clearly identified Ashbourne Garda Station. Anne Gardner, Assistant Commissioner confirmed this in a report file reference 3/01/112/01 in which she states

"He (Sgt. Croke Garda H.Q.) said her application stated that she wished to get a copy of her complaint file from Ashbourne Garda Station". (enclosed)

3. On the 9th of October 2001, 21 days after my access request, I received a letter from the Gardai, which informed me that:

*"A search of the Garda Pulse databases reveals **no personal data** on you. The searches were carried out on the basis of the identification particulars supplied to this office as per your correspondence. I wish to acknowledge receipt of £5 request fee".*

Subsequently the Garda Siochana cashed the cheque for £5.

4. On the 10th October 2001, I wrote to your office and I made a complaint that my data access request had not been complied with. As evidence to support my case, I provided a copy of a document, which had been given to me in person in Ashbourne Garda Station by Garda Cerra McGovern 011861, in September 2000, one full year prior to my access request. I did not receive this document as a result of an access request and no reference to it was made in the Garda H.Q. reply to my access request in their letter dated 9th October 2001. The Garda Siochana replied:

"That a search ... reveals no personal data on you".

Position of the Garda Siochana

1. 9th October 2001.

The Garda Siochana reply to my access request states:

"I wish to refer to your request in the above matter and to inform you that a search of the Garda Pulse Database reveals no personal data on you. The searches were carried out on the basis of the identification particulars supplied to this office as per your correspondence".

2. 27th November 2001

Ms Anne Gardner wrote to Pat O'Toole, Assistant Commissioner, Crime and Security Branch, Garda Headquarters, on the 2nd November 2001 and requested if he would:

"Establish if there is personal data held on computer in Ashbourne Garda Station, relating to Ms. X, and if so, that a copy of that data would issue directly to her".

On the 27th November 2001, 70 days after my access request and 49 days after the Garda Head Quarters reply to that request, Garda Head-Quarters wrote to your office. In direct reply to Ms. Gardner's question regarding data held on me in Ashbourne Garda Station, Garda HQ wrote to your office and stated:

"There is no personal data held in Ashbourne Garda Station"

No data was issued to me in response to Ms. Gardner's request.

2. 5th March 2002

168 days after my access request your office once again received a letter from Garda HQ in reply to a further request from Ms. Gardner, which stated unequivocally:

"There is no personal data held on computer at Ashbourne Garda Station in relation to Ms. X". (Superintendent in Ashbourne Garda Station).

Observation no.1

On three separate occasions following my access request, Senior Garda Headquarter Officials and a Superintendent at Ashbourne Garda Station denied the existence of any data relating to me, in particular, data held in Ashbourne Garda Station.

**Investigation of my complaint by the Office of the Data Protection
Commissioner**

1. 2nd November 2001

Ms. Gardner phoned Crime and Security Branch, Garda HQ and spoke to Sgt. Tom Croke. Sgt Croke confirmed that I had indicated exactly what I was looking for in my reply to them of 20th September 2001. Ms. Gardner informed Sgt Croke that:

*"If there was info. on computer in Ashbourne Garda Station that she, X
X should have received a copy in response to her access request".*

Ms. Gardner agreed to write to Assistant Commissioner Pat O'Toole, Crime and Security Branch, Garda HQ. Ms. Gardner wrote to A.C. O'Toole and requested that he:

"Establish if there is personal data held on computer in Ashbourne Garda Station relating to Ms. and if so, that a copy of that data would issue directly to her".

2. 14th December 2001

Ms. Gardner wrote to Pat O'Toole, Asst. Commissioner, Crime and Security Branch, Garda HQ. Ms. Gardner stated:

"The response to the access request did not include a copy of the statement".

Ms. Gardner further stated:

"My interpretation of the response was that the Gardai did not consider that they were obliged to provide a copy of the particular data involved under section 4 of the act, as they had stated that there was no personal data held on computer in relation to her".

Ms. Gardner requested details to clarify the position and enclosed a copy of a case study 4 from the commissioner's 1999 annual report for information. Ms. Gardner offered to discuss and clarify any points.

3. 18th July 2002

Ms. Anne Gardner rang Ashbourne Garda Station and spoke to Sgt. Pat Kearns. Ms. Gardner stated that she was:

"Trying to conclude the complaint and wanted to absolutely certain that they had no data on computer".

Sgt Kearns said that he understood and that he would check out the position and contact Ms. Gardner early the following week.

4. 19th August 2002

Ms. Anne Gardner rang Sgt. Pat Kearns to remind him of her phone call on the 18th July 2002. Sgt. Kearns said that he would phone back.

5. 23rd August 2002

Sgt. Kearns phoned Ms. Gardner. He said that he had checked all computers re data relating to Ms. X. Ms. Gardner asked if it was possible to type in my name and search for the document. Sgt. Kearns said it was possible to do this. Ms. Gardner informed Sgt. Kearns that this would appear to be data within the meaning of the Data Protection Act. Sgt. Kearns said that I had already obtained a copy of this. In reply to this Ms. Gardner stated:

"I explained at length, that the fact that she (MS. X) had already obtained a copy sometime previous to the data access request was irrelevant".

Ms. Gardner further stated:

"If they held it on computer on the date of receipt of the access request, they were obliged to give her (MS. X) a copy in response to the access request".

6. 4th September 2002

Ms. Gardner wrote to D/Chief Supt. Martin Callinan, Security and Intelligence, Garda HQ. Ms. Gardner stated:

"In your reply of 29 November, 2001 and 5 March, 2002 you indicated that the report was not held on a computer in Ashbourne Garda Station, in a form in which it could be processed, at the time of Ms. X access request. Before writing to Ms. X to conclude her complaint, that there was no data about her, held on computer in Ashbourne Garda Station (and to speedily conclude matters), in particular point 1 of your letter of 5 March, 2002, I phoned Ashbourne Garda Station to clarify matters. During this discussion, I was informed that a copy of Ms. X statement is indeed held on computer in Ashbourne Garda Station, and in a processable form".

Ms. Gardner further wrote:

"There is in fact personal data on a computer which is fully processable, she is entitled in law to this information".

And:

"This office wishes to be informed as to whether or not you now propose to accede to Ms. X access request under section 4. I would also like to be

informed as to why this latest information was not furnished in your reply of 5 March, 2002".

7. 10th September 2002

Your office received a letter from Garda HQ informing you that an internal enquiry was underway.

8. 24th September 2002

~~Your office received a letter from Garda HQ confirming that data on me existed in processable in Ashbourne Garda Station and as per Ms. Gardner's letter of 4th September 2002 arrangements would be made to forward my data to me.~~

Observation no.2

On the 20th September 2002, 367 days after my data access request and 348 days after the written Garda HQ reply to my request and further written denials on the 27th November 2001 and 5th March 2002, Garda HQ were finally forced to admit that

"There is in fact a copy of a statement made by Ms. X held there (Ashbourne Garda Station) in processable form".

THE DRAFT DECISION

Analysis of data protection issues

1. In your analysis of the data protection issues, you maintain that the question arises as to whether the Garda could rely on the word processing exemption to substantiate their view that there was no personal data on me.

This interpretation was originally raised by Ms. Gardner in her letter of 14th December 2001 to Asst. Commissioner Pat O'Toole. In this letter Ms. Gardner states:

"The response to the access request (9th October 2001) did not include a copy of the statement and Ms. X maintains that it should have. My interpretation of the response was that the Garda did not consider that they were obliged to provide a copy of the particular data involved (ie. copy of Ms. X statement) under section 4 of the act, as they had stated that there was no personal data held on computer in relation to her".

In conclusion of Ms. Gardner's interpretation it is your opinion that

"Word processed records, which are kept on computer media after the documentation in question has been finalized, constitute 'data' for the purposes of the data protection act and therefore must be considered when responding to an access request from a data subject".

Observation no.3

- a). It is beyond doubt that Ms. Gardner's discovery of data, held in a processable form in Ashbourne Garda Station, during a telephone enquiry with Sgt. Kearns on the 28th August 2002 renders this interpretation null and void.
- b). I find it astonishing that you deem this interpretation, which was later proved to be incorrect, as one to be included in the draft decision. It is beyond doubt that the question does not arise as to whether the Gardai could rely on the word processing exemption as the document in question still exists in a processable form in Ashbourne Garda Station.
- c). It is clear that the document denied as data by Garda HQ on the 9th October 2001, 27th November 2001 and on the 5th March 2002 did indeed constitute data. This fact is accepted and conceded by Garda HQ in their letter of 20th Sept 2002, 347 days after they first denied the existence of any data. In this letter the Chief Superintendent, Crime and Security division, finally admits

"There is in fact a copy of a statement made by Ms. X held there in processable form".

This interpretation is entirely based upon a groundless assumption that Garda HQ were relying upon a word processing exemption to substantiate their view that there was no data held on me. The true factual position is that this interpretation was never at any stage put forward by Garda HQ and cannot be relied upon by the office of the Data Protection Commissioner. Its inclusion in your draft decision is a deliberate 'red herring' and it appears that its inclusion serves only to complicate a very straight forward complaint.

Analysis of data protection issues

2. In your analysis of the data protection issues, you further state:

"I now must consider whether the copy of her statement that had been given to Ms. X can be deemed as having satisfied her subsequent access request".

Observation no.4

I protest in the strongest possible terms, this absurd and outrageous 'consideration' put forward by you. It is incomprehensible that you, the Deputy Commissioner hold that a document, which was provided to me in person, in Ashbourne Garda Station in September 2000, one year before I made my one and only access request, could in any conceivable way be considered by you as compliance by Garda HQ to my **subsequent** access request. Events prior to my access request (18th September 2001) **do not** exempt the Gardai from their obligations under the acts. The Gardai were informed of this in no uncertain terms by Ms. Anne Gardner on the following dates:

2nd November 2001

Ms. Gardner informed Sgt. Croke:

"That if there was info. on computer in Ashbourne Garda Station she should have received a copy in response to her access request".

14th December 2001

Ms. Gardner wrote to the Asst. Commissioner, Pat O'Toole. She enclosed a copy of state study 4 from the Commissioners annual report. She offered to

have received a copy in response to her access request".

14th December 2001

Ms. Gardner wrote to the Asst. Commissioner, Pat O'Toole. She enclosed a copy of state study 4 from the Commissioners annual report. She offered to discuss the matter or to clarify any points in relation to my data in Ashbourne Garda Station.

23rd August 2002, Ms. Gardner informed Sgt. Kearns:

"I explained at length, that the fact that she had already obtained a copy sometime previous to the access request was irrelevant and that if they held it

on computer on the date of receipt of the access request, they were obliged to give her a copy in response to the access request".

4th September 2002

Ms. Gardner wrote to D/Chief Supt. Martin Callinan and informed him:

"As it appears from the recent phone conversation with Ashbourne Garda Station that there is in fact personal data on a computer which is fully processable, she is entitled by law to this information".

As I have already stated it is absurd and outrageous that a document which was neither received nor given as part of a written access request in September 2000 could satisfy my one and only written access request of 18th September 2001.

Analysis of data protection issues cont'd

3. You state:

"In my view had the Garda been conscious of the fact that word processed documents retained on computer come within the terms of the act..."

Observation no.5

As per Ms. Gardner's telephone conversation with Sgt. Kearns on the 28th August 2002, my data is held on computer media. To continuously use the term 'word processor' is not acceptable. The fact is that the Gardai have admitted that they hold data on computer. This 'word processing' exemption claim is irrelevant. The Gardai are conscious of the fact that documents retained on computer come within the terms of the act and their stated position is:

"That this misunderstanding was due to an administrative error".

For you to state that the Gardai were not conscious of the conditions of the act

is ridiculous. The Garda Commissioner is the registered data controller and cannot be ignorant of the law.

On the 14th December 2001, Ms. Anne Gardner clearly identified the Gardai's obligations in relation to data and enclosed to them a case study and offered to discuss and clarify any points that the Gardai did not understand. Even after this, Garda HQ denied in writing the existence of my data. There is no justifiable grounds for you or the Gardai to claim that they were not conscious of their obligations. They had after all been given every opportunity to clarify and discuss their obligations with Ms. Gardner.

I must remind you that An Garda Siochana are registered with your office and that the data controller is identified as the Garda Siochana Commissioner. If the Garda Commissioner had any doubts about his obligations he had the full resources of the state to clarify his position. This did not happen.

My access request is not the first access request to be received by the Gardai. There is no excuse for an organization in the best possible position to understand the legislation to claim that they were not conscious of it.

The true factual position is that An Garda Siochana were at the time of my request fully conscious of their obligations under the data protection act.

Analysis of data protection issues cont'd

4. You state that:

"The correct approach in response to the access request would have been to give her a copy of the statement and to say that no other data was held".

Observation no.6

What you neglect to state is that this did not happen. There was no mention of any data held on me in the Garda response to my access request and in fact the response maintained that there was no data at all. This hypothetical response to my access request is completely immaterial and 'would haves' play no part in your consideration only what actually happened can be considered by you when making a decision on my complaint.

Analysis of data protection issues cont'd

5. You state:

"However, I consider that at a minimum the terms of section 4 would have been satisfied by confirming that no data, other than that already supplied to her was held on computer"

Observation no.7

Again you do not state that this did not happen nor do you state that the Gardai did not satisfy what you call the minimum terms of section 4 in their reply to my access request and again this hypothetical 'would have' response plays no part in this decision.

Analysis of data protection issues cont'd

6. You state:

"The Gardai in their response to me of 27th November 2001 were clear that Ms. X had been supplied with a copy of both her hand written and typed statement by the Gardai at Ashbourne".

Observation no.8

- a). The Garda response of 27th November 2001 was not a response to me. It was a response to the investigating officer, Asst. Commissioner, Ms. Anne Gardner.
- b). The Garda response of 27th November 2001 was not a reply to my access request. The Garda reply to my access request is dated 9th October 2001.
- c). The Garda response of 27th November 2001 was an emphatic denial of the existence of any data relating to me. That they acknowledge that I had been supplied with a typed statement, one year prior to my access request, did not in any way satisfy my data access request of 18th September 2001. Indeed this acknowledgement came about as a result of Ms. Gardner's letter to An Garda Siochana when she informed them that I had a document in my possession, which I believed to be data.
- d). The Gardai in their letter of 27th November 2001 were forced to admit that I did indeed have a typed statement but they denied that this typed statement was data and therefore this reply could not satisfy the minimum terms of section 4 as hypothesised by you.

Analysis of data protection issues cont'd

7. You state:

"No other data in word processed form or otherwise was held on computer"

Observation no.9

- a). The true factual position is that on three separate occasions, the Gardai in writing denied the existence of **any data**.
- b). For you to use the phrase '**no other data**' is completely unacceptable. It was the Garda position in their reply to me that **no data** in any form was held on computer.

-
- c). It appears that you are using your own hypothetical situation in regard to the minimum terms of section 4 to draw this conclusion. However, as the Garda response to my access request denied the existence of any data it is this and not your hypothetical procrastinations, which must form the basis for your conclusion.
 - d). There is clear evidence that data apart from that which was denied (ie my statement) exists. I refer you to your definition of 'processing' contained in the data protection amendment bill 2002.
-

"Whether or not by automatic means."

There is no reasonable explanation as to why my statement was the only information entered onto a computer from the manual file (kept in a structured filing system). There should at the very least be:

- A record of the investigation
- A record of the investigating officers
- Copy of statement of party against whom complaint was made
- Records of correspondence with the Department of Social, Community and Family Affairs
- Records of the actions taken by the Gardai to properly investigate my complaint.

- e). No explanation has been received by your office as to why no data, in regard to my complaint, was entered onto the PULSE system. Nor has your office sought an explanation. As per my conversation with Ms. Anne Gardner, I accept the Garda claim that there was no data on the pulse system. However the fact that no data was entered onto the PULSE system proves beyond doubt that my complaint was never fully or properly investigated.

Analysis of data protection issues cont'd

- 8. You state:

"Ms. X in this case was not denied her data protection rights... by the failure of the Gardai to consider word processed documents which are retained on a computer as coming within the terms of a data protection access".

Observation no. 10

- a). Again Mr. Maguire you are using your own hypothetical interpretation in regard to word processing. The true factual position is that the denial of my data, which was held on a computer was due to an 'administrative error' and not due to an

interpretation of 'word processing exemption' put forward by your office. As per previous observations this entire interpretation was proved to be null and void by Ms. Anne Gardner during her telephone conversation with Sgt. Kearns on the 23rd August 2002. You cannot ignore the fact that it is accepted and conceded by An Garda Síochána that they did not comply with my access request.

Analysis of data protection issues cont'd

9. You state:

"Ms. X in this case was not... .. adversely affected by the failure of the Garda to consider word processed documents which are retained on computer as coming within the terms of a data protection access request".

Observation no. 11

- a). Again Mr. Maguire you are using your own hypothetical interpretation in regard to word processing. The true factual position is that the denial of my data, which was held on a computer was due to an 'administrative error' and not due to an interpretation of 'word processing exemption' put forward by your office. As per previous observations this entire interpretation was proved to be null and void by Ms. Anne Gardner during her telephone conversation with Sgt. Kearns on the 23rd August 2002. You cannot ignore the fact that it is accepted and conceded by An Garda Síochána that they did not comply with my access request
- b). The failure of the Gardai to comply with my data access request has denied me the right of access to my own personal data and therefore has denied me the right of obtaining control over the use of my own data. This point is clearly illustrated in your analysis of data protection issues where you state that:

"A copy of the statement that Ms. X had given to the Gardai in Ashbourne Garda Station on 7th July 2000".

The true factual position is that I gave a statement to the Gardai in Ashbourne Garda Station on 22nd July 2000. This error in dates arises from the transferal of my written statement to computer media. In my written statement, which was signed by me, the date is clearly identified as the 22nd July 2000. This is only one

signed by me, the date is clearly identified as the 22nd July 2000. This is only one of several substantial and blatant errors, which has been used as evidence not only by your office but also by the Department of Social, Community and Family Affairs. As I am taking legal proceedings in this matter, it is imperative that I obtain control over my data and have these errors rectified before the matter comes before the courts.

- c). These errors in my data have been used against me on several occasions by the Department of Social, Community and Family Affairs during there 'investigations'. It is officially recorded by the Department that I gave

contradictory evidence. They're basis for this are the errors contained in the data, which the Gardai hold on computer in Ashbourne Garda Station.

d). On 3rd December 2001, your office wrote to me and stated:

"There is no personal data held on computer at Ashbourne Garda Station in relation to you".

"I trust you find this a satisfactory conclusion to your complaint"

I was deeply distressed by this. It is clear that your office did not at this stage accept that I was telling the truth. Instead your office chose to believe An Garda Siochana. On the 5th December 2001, I telephoned Ms. Gardner and explained my dissatisfaction with how my complaint had been handled. I was extremely distressed during this conversation. I followed up with a letter dated 11th December 2001 to Ms. Gardner. In this letter I explained:

"All you have done is restate my original complaint."

I requested that my complaint be examined again.

- e). Let me assure you Mr. Maguire that the Garda denials have most definitely adversely affected me. How dare you determine that it did not adversely affect me. You had never spoken to me and could not possibly know how deeply upsetting and stressful it has been to pursue my data access request.
- f). I absolutely believe that the continued denials of any data, was because I had made a detailed complaint about how my complaint to the Garda Siochana had been dealt with. In this complaint, I identified a Superintendent in Ashbourne Garda Station and highlighted in detail the errors contained on the data they held on me. It does adversely affect me that

1. The Garda Siochana response to your office on 27th November 2001 states:

"I have also been informed by the Superintendent at Ashbourne that there is no personal data held on computer at Ashbourne Garda Station in relation to Ms.

X ."

2. From the data finally sent to me in letter dated 23rd September 2002, it is clear that no effort was made to rectify the errors in my data, which I had highlighted to them previously. I continue to be adversely affected by the fact that I still do not have control over this data.

Analysis of data protection issues cont'd

10. You state:

"I consider that it would have been reasonable for the Gardai to determine that her access request had been satisfied all ready by virtue of the fact that she had been supplied with a copy of the typed version of her statement and no other personal information was maintained by them"

Observation no.12

- a). The Gardai did not determine that my access request had been satisfied already by virtue of the fact that I had been supplied with a copy of the typed version of my statement and as no other personal information was maintained by them. The true factual position is that I was entitled in law to my data. That I had received a copy of my statement one year prior to my access request is irrelevant. You are putting forward your interpretation as an argument for the Gardai. On the 9th October 2001, the D/Superintendent for the Assistant Commissioner who replied to my access request stated that there was no personal data on me. No reference at all was made to a typed statement. Indeed as Garda HQ had been informed by a Superintendent at Ashbourne Garda Station that no personal data was held on computer in relation to me, it was impossible for the D/Superintendent to know that I had received a typed statement. It was not until 20th September 2002 that Garda HQ were informed that data existed in Ashbourne Garda Station. The Chief Superintendent stated:

I carried out further enquiries with Ashbourne Garda Station and following a further search of the computer system there, I have been informed that there is in fact a copy of a statement made by Ms. X held there in processable form.

It is clear that until this point Garda HQ were completely unaware of the existence of any data.

- b). Garda HQ has always maintained that the reason they did not send me data was because no data existed and not because they considered that it had been satisfied by virtue of the fact that I had been supplied with a copy of the typed version of

Analysis of data protection issues con'd

11. You state:

"While there are grounds for upholding the complaint from a strict interpretation of section 4 however, ... I do not uphold the complaint in this instance."

To deny me the right to have my complaint in this instance is to deny me my rights. Considering the circumstances and repeated denials by the Gardai you can have no other option than to deal with my complaint to the letter of the law. Anything else is to ignore the data protection acts and to grant the Gardai an unjustifiable exemption from their obligations under the act.

Notice of appeal

It is contrary to my rights and natural justice that you would consider that I should be forced to obtain my rights under the data protection act through the court system when you freely accept that I was entitled in law to my data in response to my access request and that you have grounds to uphold my complaint. You have no grounds to deny my complaint. The Gardai if aggrieved by a decision against them have the full resources of the state to appeal to the circuit court under section 26 of the act.

CONCLUSION

As per my original complaint

1. I made a written data access request on the 18th September 2001
2. On the 9th October 2001, An Garda Siochana replied to my access request stating: *"That a search reveals no personal data on you. The searches were carried out on the basis of the identification particulars supplied to this office as per your correspondence. I wish to acknowledge receipt of £5 request fee."*
3. I was denied my right to access under section 4 of the data protection act.
4. My £5 'request fee' was money taken from me by deception. It has not been returned to me.

The failure of the Gardai to comply with my access request has greatly affected me and the errors contained in my data have now spread to your office and further.

You cannot underestimate the impact this blatantly biased 'draft decision' has had upon me. For this draft decision to be put before the Data Protection Commissioner is unfair in the extreme. I am extremely dissatisfied with the way my complaint has been handled and in particular with your unjustifiable denial of my complaint. From the outset you have been in the business of state protection and not data protection, denying rights, not upholding rights, accepting what is false and ignoring the true factual position.

Yours sincerely,



On the 16th July 2003, the Data Protection Commissioner, Mr. Joe Meade wrote to X and enclosed his 'Final Decision' on X's complaint about An Garda Síochána non-compliance with her access request. Although he did his utmost to minimalise X's complaint, Joe Meade had no choice but to decide that An Garda Síochána had indeed failed to comply with X's Data Access Request -

DECISION OF THE DATA PROTECTION COMMISSIONER
under Section 10 (1) (b) (ii) of the Data Protection Act, 1988

File reference: 3/01/112/1 Decision number: 4/03.

<p>Complainant: Ms. X Ashbourne Co. Meath</p>	<p>Data Controller: Commissioner An Garda Síochána Garda Headquarters Phoenix Park Dublin 7</p> <hr/> <p>Registered Number (if registered under section 16 of the Data Protection Act): 0315/A</p>
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CASE BACKGROUND

On 12 October, 2001, I received a complaint, under the Data Protection Act, 1988, from Ms. X Ashbourne, Co. Meath alleging that An Garda Síochána did not comply with her access request.

INVESTIGATION OF CASE

Ms. X wrote to An Garda Síochána on 18 September, 2001 making an access request under section 4 of the Data Protection Act, 1988. She told them that she had made a complaint and had given a statement in Ashbourne Garda Station and that she wished to have all information pertaining to her from that file. An Garda Síochána wrote to Ms. X on 20 September, 2001 stating that in order to process her application she should forward the following information :

**** Previous addresses in this jurisdiction**

- * Date of birth**
- * Any previous names used**
- * Cheque/Postal Order for £5 payable to the Accountant Dept. of Justice"**

On 9th October, 2001 An Garda Síochána replied to Ms. X stating ;

*" that a search of the Garda Pulse Databases reveals no personal data on you.
The searches were carried out on the basis of the identification particulars supplied to
this office as per your correspondence.
I wish to acknowledge receipt of £5 request fee".*

Ms. X made a complaint to my Office, indicating that An Garda Síochána had information relating to her - she said that she had received a letter from An Garda Síochána dated 10th August, 2001 stating that Superintendent (Ashbourne) had reviewed her complaint made on 30th June, 2000 and a statement she had made on 22nd July, 2000. As evidence that there was data, she enclosed a copy of the statement typed by An Garda Síochána that she had made to them on 22 July, 2000. My Office wrote to the Assistant Commissioner, Crime & Security Branch, Garda Headquarters on 2 November, 2001 enclosing a copy of the Garda letter of 10th August, 2001 to Ms. X requesting if he would ;

*" establish if there is personal data held on computer in Ashbourne Garda Station,
relating to Ms. X and if so, that a copy of that data would issue directly to her".*

An Garda Síochána responded on 27 November, 2001 stating that;

*" There is no personal data held on the Garda Pulse Database in relation to X
X I have also been informed by the Superintendent at Ashbourne that there is no
personal data held on computer at Ashbourne Garda Station in relation to Ms. X*

*Ms. X has been supplied with a copy of both her hand written and typed statement
by the Gardaí at Ashbourne".*

My Office informed Ms. X of this in a letter dated 3 December, 2001. On 5 December, 2001 Ms. X phoned my Office and informed an official that she was not satisfied with the response that my Office had received from An Garda Síochána. She stated that, sometime after she had made the statement to the Gardaí in Ashbourne, she required a copy of the statement for the Department of Social, Community and Family Affairs. She went to the Garda Station and requested a copy of the statement. She said that she was given a copy of the typed statement, which she said she did not read, but placed it in an envelope and sent it to the Department of Social, Community and Family Affairs. On 19 December, 2001 a letter was received from Ms. X, confirming in writing, the facts outlined in the telephone call.

On 14 December, 2001 my Office wrote again to the Assistant Commissioner, Crime & Security Branch, Garda Headquarters drawing attention to the point that the typed statement may come within the definition of "personal data" under the Act and requesting clarification. A written response was received on 5 March, 2002 stating that Ms. X's data was not held in Ashbourne Garda Station, at the time of her access request, in a form in which it could be processed,

To avoid further correspondence and to finally conclude the matter, on 18 July, 2002 an official from my office phoned Ashbourne Garda Station to clarify if there was a possibility that data was held there on computer relating to Ms. X. Subsequently, the Gardai in Ashbourne confirmed that there was a statement from Ms. X held on computer there, but that she had already received a copy. It was explained that Ms. X was entitled to be given a further copy of the statement in response to her access request. On 4 September, 2002 my Office wrote to the Chief Superintendent, Crime & Security Branch requesting that An Garda Síochána accede to Ms. X access request. In response to that letter, the Chief Superintendent stated, in a letter dated 20 September, 2002 -

" On receipt of your letter I carried out further enquiries with Ashbourne Garda Station and following a further search of the computer system there, I have been informed that there is in fact a copy of a statement made by Ms. X held there in processable form.

I have also been informed that Ms. X has previously been supplied with a copy of her statement by the Gardai at Ashbourne. I will now make immediate arrangements for a further copy of her statement to be forwarded to her in response to her access request under section 4.

I should also state that at no time was there any deliberate attempt to deny Ms. X a copy of her statement. It would appear that this misunderstanding was due to an administrative error and any inconvenience caused is regretted".

Up to June 2003 further correspondence arose between my office, the data controller and the complainant to clarify certain matters. The various responses received have been considered by me and referred to where appropriate in this decision.

ANALYSIS OF DATA PROTECTION ISSUES

On 18 September, 2001 Ms. X made an access request to the Gardai under section 4 of the Data Protection Act, 1988. She supplied the relevant information that was requested from her and she also paid the £5 search fee. The Gardai responded to her on 9 October, 2001 stating that ;

"a search of the Garda Pulse Databases reveals no personal data on you".

This information did not fully reflect the position as a copy of the statement that Ms. X had given to the Gardai in Ashbourne Garda Station on 7 July, 2000 was held on a stand alone computer in a fully processable form at Ashbourne Garda Station.

Section 4(1)(a) of the Data Protection Act, 1988 provides that ;

"Subject to the provisions of this Act, an individual shall, if he so requests a data controller in writing---

(i) be informed by the data controller whether the data kept by him include personal data relating to the individual, and

(ii) be supplied by the data controller with a copy of the information constituting any such data,

as soon as may be and in any event not more than 40 days after compliance by the

individual with the provisions of this section; and, where any of the information is expressed in terms that are not intelligible to the average person without explanation, the information shall be accompanied by an explanation of those terms."

The right of access to one's own personal data is a most important right and is the starting point for obtaining control over the use of one's own data.

I now must consider whether the copy of her statement that had been given to Miss X by the Gardai can be deemed as having satisfied her subsequent access request. In my view, had the Gardai been conscious of the fact that data was retained on computer in Ashbourne Garda Station, the correct approach in response to the access request would have been to give her a copy of the data and to state that no other data was held. However, I consider that, at a minimum, the terms of section 4 would have been satisfied by confirming that no data, other than that already supplied to her, was held on computer. The Gardai in their response to me of 27 November, 2001 were clear that

"Ms. X has been supplied with a copy of both her hand written and typed statement by the Gardai at Ashbourne".

As a general rule, I consider that where a data subject has already obtained data in response to a previous access request or otherwise, then there may be no need for a data controller to supply duplicate data in response to a subsequent access request, provided that the data has not been changed. This is consistent with the provisions of sections 4(10) and 4(11) of the Data Protection (Amendment) Act, 2003 which provide as follows:

"(10). Where a data controller has previously complied with a request under subsection (1) of this section, the data controller is not obliged to comply with a subsequent identical or similar request under that subsection by the same individual unless, in the opinion of the data controller, a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

(11). In determining for the purpose of subsection (10) of this section whether the reasonable interval specified in that subsection has elapsed, regard shall be had to the nature of the data, the purpose for which the data are processed and the frequency with which the data are altered".

However, I consider that for An Garda Síochána to have relied on the supply of the typed version of the statement, it would have been necessary for them to have referred to the fact that no other data, beyond the statement already supplied, were held on computer. In my view, when the access request was received, a search should have been made, both on the Pulse system and on the local Garda Station system so as to ensure that all possible areas where personal data could be held were reviewed.

I accept An Garda Síochána's point in the letter dated 20 September, 2002 that the failure to regard the statement as "data" was due to an administrative error, and I also accept that there has been no deliberate attempt by the Gardai to deny the complainant her right of access. I am satisfied also that An Garda Síochána are aware of their Data Protection responsibilities.

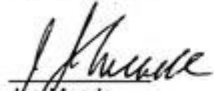
Ultimately, in my considered view, the reality is that the complainant was not furnished with the data held on the local Garda Station system within 40 days.

DECISION

I find accordingly that Ms. X was entitled to a copy of her statement held on the local Garda Station computer in response to her access request under section 4 of the Data Protection Act, 1988.

Notice of right of appeal

An Garda Síochána have been informed of the Commissioner's decision. The complainant is hereby informed that she is entitled, if aggrieved by the Commissioner's decision, to appeal against it to the Circuit Court under Section 26 of the Act within 21 days of receipt of this notification.



Joe Meade
Data Protection Commissioner
16 July, 2003

When I first read Joe Meade's Final Decision, it wasn't clear to me that this was a decision in X's favour. I telephoned the Office of the DPC and asked them to clarify. I was referred to the last line on the second last page which stated "Ultimately, in my considered view, the reality is that the complainant was not furnished with the data held on the Local Garda Station system within 40 days".

I rang the Office of the DPC and pointed out that a letter from An Garda Síochána stated that a 'File' i.e. 'Data in a Processable Form' did actually exist and that it was fully investigated. The person on the other end of the line in Data Protection agreed that this contradicted the position of An Garda Síochána in Joe Meade's decision, but insisted that the decision was already in X's favour.

I asked if the Data Protection Commissioner was going to address the disappearance of this 'file'. I was informed that the decision against An Garda Síochána was made and could not be altered. Data Protection would have nothing more to do with it. I protested in the strongest possible terms that the decision did not address the fact that much more data than X's statement was still missing. As evidence to support my position I offered to send a copy of a letter which had been sent directly to me from the Chief Superintendent for the Assistant Commissioner of An Garda Síochána on the 10th August 2001.

Riarachán Coire,
Ceanncheathrú an Gharda Síochána,
Páirc an Fhionnuisce,
Baile Átha Cliath 8.

Tel/Teileafón: 06 62603 / 04

Fax/Facs: 06 62698

Please quote the following ref. number



Crime Administration,
Garda Headquarters,
Phoenix Park,
Dublin 8

Web site: www.garda.ie

E-mail: crimead@iol.ie

Date:

C13/9/01

Mr Martin McMahon,



Dear Mr McMahon,

I am to refer to your recent correspondence regarding alleged incidents involving Mr Sean Kelly.

Ms. [redacted] complaint to An Garda Síochána was fully investigated and a conclusion reached that there was no evidence to warrant a prosecution in this case. Following a meeting with Ms. [redacted] last August, Superintendent Lambe reviewed the file and agreed with the original decision in the matter.

Yours sincerely,


CHIEF SUPERINTENDENT for
ASSISTANT COMMISSIONER

X would never have been able to properly refute Tom Maguire's Draft decision without the information/data she had obtained from the Office of the Data Protection Commissioner following her DAR to that office.

Having the same information to hand as Data Protection and An Garda Síochána had put X on an equal footing. Unfortunately, the Data Protection (Amendment) Act of 2003 removed an individual's right to be on an equal footing. The Amendment Act exempted the office of the Data Protection Commissioner from the very legislation it was charged to uphold. Never again would the Office of the DPC have to comply with an access request from an individual. Never again would Data Protection run the risk of having a legally unsustainable decision or draft decision annihilated by determined honesty and complete control over one's data. X was the first and last person to do so.

Even though Joe Meade's decision was not nearly as strong as it should have been, it was still a decision that the registered Data Controller of An Garda Síochána, the Garda Commissioner, had breached the Data Protection Act. Whether this decision was pinned on outgoing Garda Commissioner Byrne or incoming Garda Commissioner Conroy is not altogether clear.

On 7th October 2003, X was up at 8am. She made breakfast for five-year-old 'K' and they sat at the kitchen table chatting. I could hear them from the bedroom directly above. This was our usual morning routine when I was working swing shift. I would have to get up in a few minutes to take 'K' to school, but for the moment I was trying to eke out a few last minutes in bed before I got up.

BANG, BANG, BANG. I sat bolt upright in bed. It sounded like someone was kicking the front door as hard as they could. X was at the door, before I could react. The next thing I heard were loud male voices and heavy footsteps coming up the stairs at speed. From the time of the first bang to a man standing at the end of my bed shouting at me took, at most, ten seconds. I had no idea who he was or what he wanted. Almost immediately he was joined by another man. I genuinely feared that these men were there to do me harm. The following is X's written account of what happened:

“At approximately eight forty five on the morning of the 7th October 2003, I was startled by a loud banging on my front door. I was in the process of getting my daughter ready for school. I was dressed in only my nightgown and my fiancé was in bed. I opened my front door and was confronted by three large men and a woman who asked for my fiancé Mr. Martin McMahon. I asked them who they were. One of the men informed me that he had a warrant to search my home.

My initial reaction was to call up the stairs to Martin. As I did this the men pushed my front door fully open and stormed in past me and my terrified five-year-old daughter. I was told to go into the kitchen with my daughter. The female Garda accompanied me.

In my kitchen I informed Garda Maria O'Sullivan that I believed the only reason the Gardai were in my home was because my complaint against An Garda Síochána had been upheld by the Data Protection Commissioner. I then informed Garda O'Sullivan that I was going upstairs with 'K' to check that Martin was ok. Garda O'Sullivan followed me up the stairs.

As I entered my bedroom I saw Martin sitting up in bed. He was visibly very shocked. A Garda Armstrong was in the bedroom with Martin. He angrily informed me that I was not allowed in my bedroom. I asked Garda Armstrong 'why' and he told me that I wasn't allowed to be in the same room as Martin. I left the room and went into my daughter's bedroom followed by Garda O'Sullivan.

I asked Garda O'Sullivan where she and her companions were stationed. She informed me that they were from the National Drugs Unit in Dublin Castle and that they had a warrant to search my home for drugs. I was adamant that it was a ridiculous and completely transparent excuse and that the purpose of the raid was to intimidate me and my family.

In reply to questions from Garda O'Sullivan I informed her that I had lived here in my home for almost four years with my fiancé Martin and my daughter 'K'. I informed Garda O'Sullivan that given the circumstances I believed that I should telephone my solicitor. Garda O'Sullivan stated that I could not phone until after they had left.

At this stage I was worried about my daughter's health and I administered her with her prescribed asthma medication. I asked Garda O'Sullivan could we go downstairs, and we went to the kitchen. Again, I stated that this raid was because of my Data Access complaint. Garda O'Sullivan then asked me my name, age and my mother's address. I informed Garda O'Sullivan that I didn't believe it was appropriate to answer questions without telephoning my solicitor. She stated for a second time that I could not telephone

my solicitor until after she and her companions had left. I answered her questions including Martins date of birth. It was approximately then that I was joined by Martin.

Immediately on entering the kitchen Martin told me that he believed that they were purposely harassing us because of my Data Access request. Martin looked through the living room door and saw Garda Armstrong reading documents on the coffee table. Martin went to the door and informed Garda Armstrong that the documents were privileged information and that he should not be reading them. Garda Armstrong ignored Martin.

Martin repeated his concerns. Garda Armstrong shouted at Martin that it was his search to conduct as he pleased at which point the door was slammed in Martin's face. The documents which were being examined included three legal submissions including one from the state solicitor, letters from solicitors, barristers and civil servants, over twenty personally signed letters from TD's, correspondence from senior trade unionists, the Revenue Commissioners, the Department of Social, Community and Family Affairs, The Office of the Chairman of the Public Accounts Committee, the DPP and over two hundred other associated documents. I asked Garda O'Sullivan permission to telephone work to inform them that I would be late. This telephone call I was allowed to make after Garda O'Sullivan consulted with Sergeant Brennan. I returned to the kitchen. I was very upset and crying at the sink where I was with my daughter. I saw Garda Armstrong walking around the front of my house wearing blue latex gloves. I asked Garda O'Sullivan to close the front door as it had been left wide open. Garda O'Sullivan closed the door. At this stage, Martin and I were joined in the kitchen by the four Gardai. Martin asked to look at the search warrant. Garda Armstrong stated that we had already seen it. Martin stated that he had not and I confirmed that I had not. One of the Gardai held up the warrant. Martin asked could he see it, he was informed that he could not touch it but he could read it from the Garda's hands. Martin asked me to write down the name William Armstrong which he read from the warrant. Martin informed me that the warrant was for cocaine and we both expressed our shock at the absurdity of the warrant. I then requested the names of the Gardai. None of the four responded and I informed them that I had a right to know. Garda Armstrong shouted that I already had his name. I told him that I did not and he said that I had taken it down from the warrant. I then asked each of the others and took down their names. I pointed out that no drugs had been found in my home and that their continued hostility toward me was unnecessary. The Gardai then left my home. It was nine thirty in the morning. There was no justifiable reason for such action in my home. An Garda Siochana decided that I would allow the use of my home for the trafficking of cocaine. This is an absolute lie. For an Garda Siochana to further decide that my fiancé Martin is in any way involved with cocaine or cocaine trafficking is also an absolute lie. Martin is a hardworking man whose voluntary work for the employment rights of the disadvantaged has been recognised at the highest levels and is well documented. The only reason for the raid on my home was to harass and intimidate me and my family. This intimidation has left me and my family feeling terrorised. To be in any way associated with cocaine puts my life, Martins life and our daughter 'K's' life in danger'.

On the 17th December 2003, X wrote to the Data Protection Commissioner, Mr. Joe Meade. She requested an appointment to discuss the harassment and intimidation she had been subjected to since her complaint was upheld against An Garda Siochana. X also informed Joe Meade that An Garda Siochana were refusing to accept her current access request

On the 16th January 2004, the office of the DPC wrote to X. In this letter, X was informed that the Commissioner would not meet with her to discuss the harassment and intimidation she had been subjected to resulting from her Access Request. The other astounding admission from Data

Protection was that it was now Garda policy to return access requests they deemed 'incomplete'. This 'Policy' from An Garda Siochana renders all access request figures published as worthless.

That a young woman who made a complaint to the DPC that her complaint to AGS about a SWI assaulting her in her own home and was harassed by An Garda Siochana for doing so, never made it into the DPC annual report in 2003, nor in 2004, in fact all complaints both I and my X had in with the DPC at the time were fobbed off by the DPC one at a time.

I would spend the next decade writing to the Department of Social Welfare or getting anybody I could to write to the Department of Social Welfare to ask the same questions over and over, who sent him, why aren't there any records of Sean Kelly being in my home? In 2009, I made a statement to my local Garda station, which took 75 hours to make, about everything I knew which included 2 Forensic Handwriting Reports I had paid for which prove this document is a forgery -



As I was giving the statement to An Garda Síochana, a senior officer insisted on interrupting one session to read out a letter from the DPP which said forged documents were a misdemeanour and because it hadn't been used anywhere it was beyond the statute of limitations and the DPP would be doing nothing about it. I insisted on finishing my statement.

Sometime later in 2009, a Garda called to the SW Office in Finglas and asked to speak to Sean Kelly. On seeing the Garda, Sean Kelly ran away and refuse to reappear in front of the Garda. A member of the SW staff told the Garda that Mr. Kelly would not talk to him. In 2010, the DPP informed me that they would not do anything. I was undergoing cancer treatment at the time.

So that brings me neatly back to what I expect the Office of the DPC to do. Neither the 2019 SAR nor the 2022 SAR replies have been properly complied with. I fully expect the DPC to do what it has always done and cover up for the 'Status Quo', however, it's not so easy to cover-up on me anymore. As I said, I did not start out as a whistleblower, nor was I a terrorist, but I have learned

how to use guerrilla tactics to extract enough information to hold the unlawful status quo to account.

Using mine and Tony's podcast platform the Tortoiseshack.ie, I have built up a vast network of people who will not let a bad decision go. I am an activist whistleblower. If ways do not exist to get the true factual data into the public domain, I create them, harass and harangue until I can exploit every avenue available to prove that the 'Status Quo' is acting outside of the law.

The Office of the DPC is required to make decisions. Even a decision by the Office of the DPC not to make a decision, is a decision. Make the right decision and I will thank the Office of the DPC. Make the wrong decisions and even if it takes me 19 years and 3 months to prove that the Office of the DPC sided with those who never once hesitated to act unlawfully, I will.

I have a legal right to control over my data. People have a right to take public transport without being watched by the Department of Social Protection. People have a right to be correctly classified as employees when they are employees.

The true factual position, which I have a right to have recorded in my data, is that when the highest Court in this land, the Supreme Court, speaks, the conversation is over. It is the place of politicians to instruct civil servants to implement the decisions of the Supreme Court.

It is not the position of politicians to instruct civil servants to hold meetings with interested parties in order to actively usurp the decisions of the highest court in the land.

It is not the position of civil servants to act outside of the law to ignore and overrule the decisions of the highest Court in the land and it is not the position of the Department of Social Protection to use and politically interfere with the Social Welfare Appeals Office to such a degree to allow it to become a Kangaroo Court, which believes it has the powers to ignore the rulings of the Supreme Court and to make politically motivated decisions and deliberately conceal them behind a thin veneer of legality.

Turning to Bogus Self-Employment once more, during the Oireachtas Social Welfare Committee investigating such practices in 2019, the Committee heard that the annual loss to the Exchequer is conservatively estimated as €1 billion. However, the real cost is far in excess of this figure. The losses for individual workers include pension rights, holiday and sick pay, maternity leave and access to Social Welfare payments. While the monetary cost is shocking, the real human cost relating to loss of rights, loss of financial security by means of a decent job for decent pay for ordinary workers is much more significant and has cumulative negative effects for Irish citizens and society at large.

I am an activist whistleblower, with truth on my side. I will persist and I will prevail. Let the Office of the DPC make decisions, and we will take it from there.

Yours sincerely,

Martin McMahon