

**Second Study Commission**  
**Civil Law and Procedure**  
**63rd Annual Meeting of the IAJ – San José (Costa Rica)**  
**Questionnaire 2020**  
**DATA PROTECTION HOW RULES**  
**ARE IMPACTING ON CIVIL LITIGATION**

**Response by the Association of Judges Ireland**

**1. Do you store digital data in your jurisdiction**

Yes, digital data is stored by the Courts Service on behalf of the courts and the judiciary. The Courts Service established in 1998 is a Government agency which includes among its functions “to manage the courts and provide support services for the judges” (Courts Service Act 1998). The Courts Service currently through itself or by service providers manages the storage and protection of this data on behalf of the courts when acting in their judicial capacity. The personal data are under the control of the Courts and not the Courts Service, in accordance with section 65 of the Court Officers Act, 1926 which states that:

*“all proofs and all other documents and papers lodged in or handed in to any court in relation to or in the course of the hearing of any suit or matter shall be held by or at the order and disposal of the judge or the senior of the judges by or before whom such suit is heard.”*

**2. How is it stored and for how long.**

There is currently no statutory limitation on the length of time for which this data may be retained nor has any practice been adopted on an ad hoc basis. The Courts’ data protection notice makes it clear that the data “are retained for as long as necessary to enable the courts to perform their functions under the Constitution and law, to ensure the

administration of justice and to facilitate the efficient management and operation of the courts". The application of the notice is left to the discretion of each judge.

Before destruction, retention or withholding of records under the control of the courts can take place, the provisions of the [National Archives Act, 1986](#) must be adhered to. The definition of a "record" in the National Archives Act essentially covers any record in either paper or electronic format.

Disposal of such records must be carried out in accordance with [section 7 of the National Archives Act](#), which sets out the process by which the *Courts Service on behalf of the Courts* must apply for the disposal of records that do not warrant permanent preservation.

Furthermore, court records cannot be deleted without the authorisation of the Chief Justice or the President of the High Court - Section 7(4)(b) of the Act refers.

The Courts Service's own records do not fall under the jurisdiction of the National Archives, as the Courts Service (unlike the Courts) is not a prescribed body under the Act. However, it is the practice that the Courts Service implements archiving measures similar to those adopted by similar bodies under the Act.

A recent Circuit Court decision: *The Courts Service and the Data Protection Commissioner v. P.M.* delivered on the 3<sup>rd</sup> day of February 2020 has decided that the Courts Service can be data controllers in certain circumstances. The implications of this decision are being considered since this represents a departure from previous view that the Courts Service were processors only and that it is the Courts and the judges who are controllers.

### **3. Who has access to the digital data in your jurisdiction?**

Staff of the Courts Service with a legitimate business need to have access to the various systems and databases operated by the courts and by judges in their capacity as processors of the data on behalf of the courts and the judiciary. Some systems facilitate interaction with

court users over various platforms e.g. Courts Service Online (CSOL), the Courts Service website and “High Court Search”.

#### **4.Are there digital data protection rules in place in your jurisdiction**

Yes, the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018.

The courts are subject to the general data protection principles, including:

- 1) Lawfulness Fairness Transparency
- 2) Purpose limitation
- 3) Data minimization
- 4) Accuracy
- 5) Storage Limitation
- 6) Data confidentiality and security

Courts are also under an obligation to be able to demonstrate compliance with the applicable data protection law

Furthermore, Data Protection Legislation obliges controller and processor to set out their respective obligations and responsibilities in a contract or some other legal document.

Controllers’ obligations when personal data are processed on behalf of the courts when data are contained in court records are set out, pursuant to DP Act 2018, in

S.I. No. 659 2018 for the Superior Courts

S.I. No. 661 2018 for the Circuit Court

S.I. No. 663 2018 for the District Court

When data are not contained in court records, the processing rules are set out, pursuant to DP Act 2018, in S.I. No. 665 2018 for all courts

Certain restrictions are created by the legislation to protect the independence of the judiciary. In the case of personal data processed by or on behalf of a court when acting in its judicial capacity, the data subject's rights and the obligations of the controller of that personal data as referred to in section 158(1) of the Data Protection Act 2018 (and Article 23(f) of the

General Data Protection Regulation) are restricted to the extent that the restrictions are necessary and proportionate to safeguard judicial independence and court proceedings.

Section 157 makes the “assigned judge” responsible for dealing with complaints in regard to the processing of courts acting in their judicial capacity and excludes the Data Protection Commissioner from this supervisory and investigative role.

The following rules have been made under section 158(3) of the Data Protection Act 2018 for the purpose of ensuring the effective application of a restriction under section 158(1):

[S.I. No. 658 of 2018 Data Protection Act 2018 \(Section 158\(3\)\) Rules 2018.pdf](#)

Persons wishing to have access to a court record in court proceedings to which they are a party should firstly make inquiries of the court office concerned.

The following rules apply to requests to access personal data contained in a court record by *bona fide* members of the press or broadcast media:

[S.I. No. 660 of 2018 Data Protection Act 2018 \(S 159\(7\): Superior Courts\) Rules 2018.pdf](#)

[S.I. No. 662 of 2018 Data Protection Act 2018 \(S 159\(7\): Circuit Court\) Rules 2018.pdf](#)

[S.I. No. 664 of 2018 Data Protection Act 2018 \(S 159\(7\): District Court\) Rules 2018.pdf](#)

The following rules have been made governing the processing on behalf of a court of personal data controlled by that court when acting in its judicial capacity:

Processing of personal data contained in a record of the Supreme Court, Court of Appeal or High Court

[S.I. No. 659 of 2018 Data Protection Act 2018 \(Section 159\(1\)\) Rules 2018.pdf](#)

Processing of personal data contained in a record of the Circuit Court

[S.I. No. 661 of 2018 Data Protection Act 2018 \(Section 159\(2\)\) Rules 2018.pdf](#)

Processing of personal data contained in a record of the District Court

[S.I. No. 663 of 2018 Data Protection Act 2018 \(Section 159\(3\)\) Rules 2018.pdf](#)

Processing of personal data, other than a court record, controlled by a court when acting in its judicial capacity

[S.I. No. 665 of 2018 Data Protection Act 2018 \(Section 159\(4\)\) Rules 2018.pdf](#)

**5. Who covers the costs relating to storage and protection of the digital data in your jurisdiction?**

Ireland's system of resource allocation is grounded on the Vote accounting framework, whereby financial allocations are authorised by Government with the approval of Parliament. This approach is founded upon the 1866 Exchequer & Audit Departments Act.

The Courts Service has its own Vote (No 22), used to cover the costs of storage and protection of digital data.

### **Digital Services - the Planned Future for the Courts Service**

The Courts Service is working on a modernisation plan to include e-filing and digital case management possibilities with the objective of reducing the need to file and process paper and to support improved access to justice.