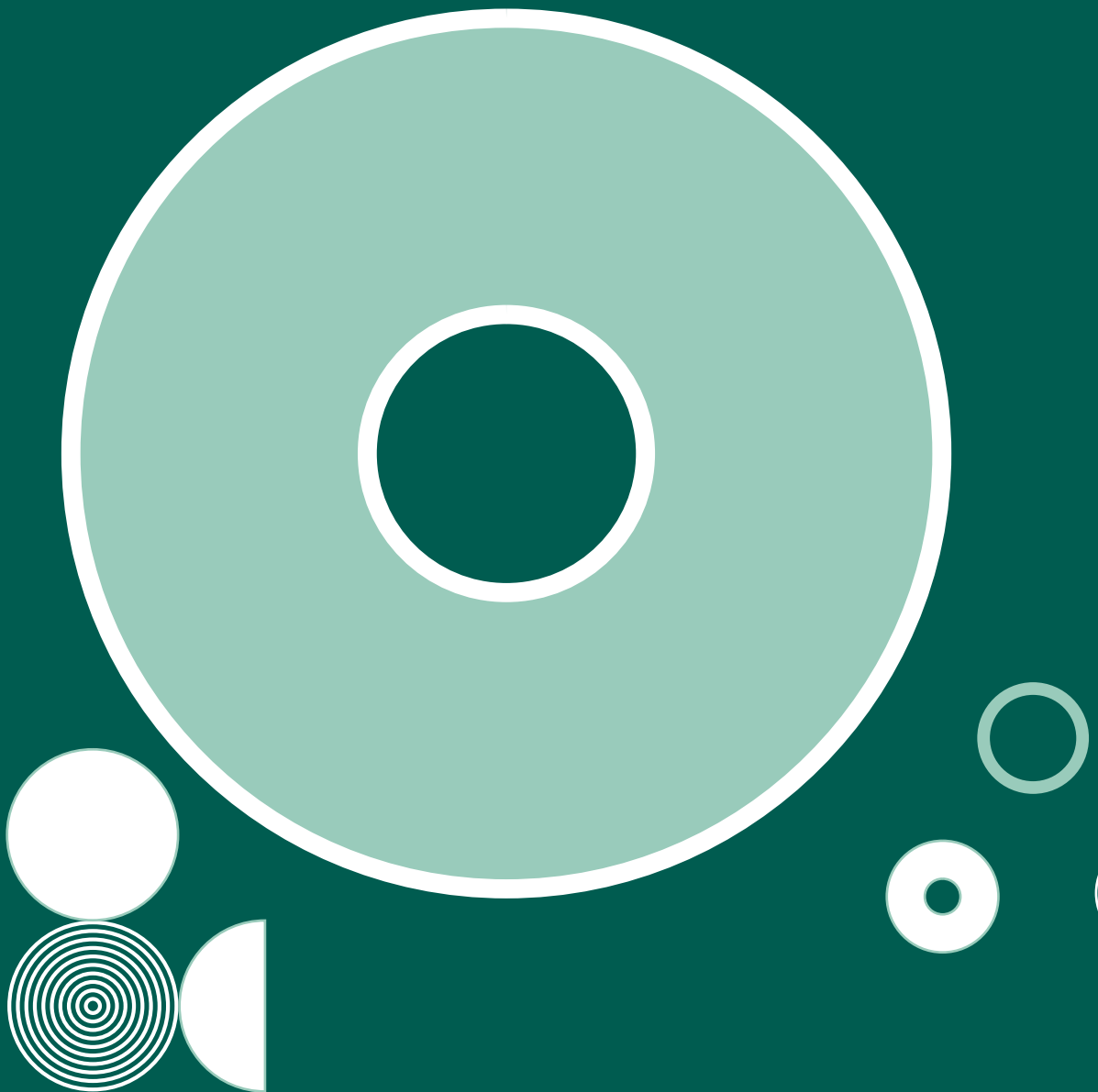


Data Protection Commission

Are there any limits
on my child's data
protection rights?



An Coimisiún um
Chosaint Sonraí
Data Protection
Commission

DATA PROTECTION COMMISSION,
21 FITZWILLIAM SQUARE, DUBLIN 2

What data protection rights does my child have?

Children have the same range of data protection rights as adults. This means that when a parent exercises their child's data protection rights, they are entitled, with some exceptions as detailed below, to be told what information an organisation has about their child, to ask for a copy of that information, to ask to have the information updated, corrected or erased, and every other right that adults have under the General Data Protection Regulation (GDPR) and related laws. The GDPR provides extra protections for children. For example, only parents or guardians can give consent for children below a certain age, transparency information addressed to children must be in language that they can easily understand, and children have a particular right to have their information erased if they wish.

And all of these rights are absolute?

No. Just like with adults, your child's right to data protection is not an absolute right. This means that there may be situations where children (and parents or guardians acting on their behalf) may face restrictions on the use their data protection rights. For example, GDPR or other laws may require competing factors or other persons' rights and interests to be taken into account. The following are a few examples of situations where your child's data protection rights might be limited.

Private photos and videos

It's important to understand that data protection law usually doesn't apply to the information about others that you collect in the course of your day-to-day private activities. For example, the personal data of other people that you keep in your address book, your private correspondence and your private photo and video albums will generally not be considered as data protection concerns, provided you don't share the personal data publicly and keep it only for personal reasons.

What this means is that, for example, if you have a dispute with a friend or neighbour about privately held data involving your child, in most cases this will not be something that the Data Protection Commission (DPC) can resolve. Most people would agree that these sorts of disputes should be resolved between the parties themselves and that the authorities should get involved only in exceptional cases.

Example

Your neighbour complains that your child trespassed on his property and rang his doorbell as a practical joke. He shows you a picture of your child caught in the act, which he took on his phone from inside his house. You might understandably feel affronted that someone took a picture of your child without your permission, and wonder whether this infringes data protection law. In this case, provided your neighbour took the picture lawfully, it's unlikely to be a matter that falls within the DPC's power to address.

The best solution to these kinds of dispute is to try to resolve them privately. It's always a good idea to take a common sense and common courtesy approach to taking and sharing pictures of others, whether in a public or private space, and to be open to deleting pictures and videos of others upon request.

The position can be different when someone shares privately held personal data with the world at large, for example, by posting photos or videos on public social media, blogs, or personal websites. The key difference here is that your child's data has been shared with a potentially indefinite global audience. The data can no longer be said to be held privately, since anyone can now access it and make copies of it.

Example

Instead of just showing you the picture on his phone, your neighbour shares it on his public social media as part of a post complaining about the behaviour of children in the area. In this case, because your neighbour has publicly shared your child's data online, it's no longer a private matter and it might be a data protection issue. In such cases, the best thing to do is contact the social media company directly to have the post taken down as quickly as possible.

Documents that contain both your child's and other people's data

When asking for details or copies of your child's personal data, bear in mind that, as is the case for everyone else, your child is entitled only to their own personal data and not the personal data of other people. This is particularly relevant when you are asking for a copy of a document that contains both your child's data and the data of others, such as other children or the staff at your child's school. The organisation that has your child's data may have to redact the document, or even just give you the specific information about your child separately, in order to protect the rights to privacy and data protection of the other people who are involved.

Example

You receive an email from your child's school informing you that another parent has made an allegation of bullying against your child. The email attaches a redacted version of the letter sent by the other parent. This includes a description of the alleged incident but omits any information identifying the parent or their child. When you ask for a full copy of the letter, the school refuses because the other child has asked to remain anonymous.

Because a serious allegation has been made against your child, you may wonder whether you are entitled to a full copy of the letter under data protection law, as this might help you to respond to the allegation and to give your child's side of the story. From your perspective, it might make more sense to contact the other parent directly to straighten things out.

However, the right thing for the school to do here is to withhold that information because it belongs to someone else. Even though your child has a right to a copy of their own data, this is not an absolute right. Your child's right has to be balanced against other considerations, such as the rights to privacy and data protection of the other people involved. Most people would agree that a child, or indeed anyone, has a right to make an anonymous complaint, and person A's data protection rights should not be used to forcibly reveal the identity of person B.

In short, your child's data protection rights have to be balanced against the rights of other people, such as their friends, classmates, teachers and school staff. These people also have a right to ensure that their personal data is protected.

Legal obligations and your child's data

Many organisations have legal obligations to keep certain information about your child. For example, your child's school needs information such as their class, subjects, grades, and emergency contact information in order to educate and protect your child when they are on school property. Your child's GP must keep their medical records for a certain period, even after you change GPs. If your child has a passport, then the Passport Office will need to keep certain records about your child's application, so that they know when it comes up for renewal and for other purposes. All of these organisations have to keep some of your child's data even if you don't consent to it or change your mind down the line.

Keep in mind that data protection law doesn't necessarily override other areas of law. If an organisation is legally required to keep certain information about your child – for example under health legislation or child protection legislation – then those legal obligations will affect and perhaps limit your child's rights in relation to that data. For example, it might not be possible to have that data altered or deleted, at least right away.

Newspaper articles

One of the basic principles of data protection law is that it should not be used as a tool to suppress other fundamental rights, such as the right to freedom of speech and of information. News, current affairs reporting and other forms of journalism are important examples of freedom of expression, and laws make specific provision for how these should operate in the context of data protection. These laws may restrict how and when people, including children or parents and guardians acting for them, may exercise their data protection rights. There are also long-standing rules and safeguards around media reporting on children which protect children from journalism that would infringe their right to privacy. However, if your child is the subject of a newspaper article and there is a significant public interest in the story, it might not always be possible to have the article deleted. In some circumstances, you may however be able to have the article delisted from search engines so that no one searching your child's name will be able to find it. The important point to note is that neither the right to freedom of expression nor a person's right to data protection is absolute, and balancing them will depend on the facts and circumstances of each case, as well as applicable laws.

Legal claims

Another situation where data protection rights may have to be balanced against other persons' rights is where holding and processing data is necessary to take or defend legal claims.

Example

A young person in a fast-food restaurant witnesses an incident such as a person tripping or being pushed. The young person tells a manager what they saw and gives their name. Another person makes a personal injury claim against the restaurant but the young person does not want to be involved.

If that young person (or their parent on their behalf) exercises their right to have their personal data erased, the restaurant may have grounds to decline, because they need that data to defend against the legal claim. However, the restaurant will be able to hold onto this data only for as long as they are exposed to legal proceedings in relation to the incident. Once the time for making legal claims has expired, the restaurant will have no reason to keep the data and must delete it.

In summary

Data protection rights are not absolute and will often need to be balanced against other rights and interests. But even where your child's rights may be restricted, your child will always have the right to seek to exercise their data protection rights, to get an explanation if their request is refused and the grounds on which it's being refused. They can still complain to the DPC if they are not satisfied.

Key takeaways for parents

- Children have all the same data protection rights as adults. But as is the case for adults, these rights are not absolute.
- One example of where data protection rights are more limited is in relation to private photos and videos. Data protection law doesn't usually apply to information that is held by private individuals and is not shared publicly. Disputes about privately-held data are best resolved privately.
- Your child is entitled only to their own data and not to the data of other people. If you make a request for a document that contains both your child's and other people's data, then it should be redacted to protect the other people's rights.
- Data protection law doesn't trump other areas of law. Some organisations have legal obligations to hold onto your child's data whether or not you agree with it.
- Data protection law recognises the importance of freedom of expression in newspapers and other forms of journalism. This can restrict some data protection rights, but it is often possible to have articles delisted from search engines.
- Your child's data may be retained if it's necessary to defend against a legal claim, but only for the minimum amount of time necessary.

