

Case 202000820

Enforcement Order

**St. Ignatius Catholic School
(owned and operated by St. Ignatius Catholic Church)**

18 March 2021

EXECUTIVE SUMMARY

The Office of the Ombudsman received a complaint setting out a number of alleged failures of the St. Ignatius Catholic School (the school) to comply with the Data Protection Law, 2017 (DPL).¹ The issues raised in the complaint were as follows:

- a) the removal of the complainant's HR file from the HR office;
- b) the recording of a meeting between the complainant and their line manager, and uncertainty over whether any other meetings with the complainant or other members of staff had previously been recorded;
- c) the school's response to the complainant's request for a copy of the recording under section 8 of the DPL; and
- d) the school's response to the complainant's request for a copy of the minutes of or notes from a performance evaluation meeting, and rectification of inaccurate personal data.

We investigated the matter and found that the temporary removal of the complainant's HR file did not lead to any breaches of the school's data protection responsibilities, although all school staff should have been provided with a privacy notice explaining what personal data is collected about them and what it is used for.

The school did not obtain appropriate consent to record the meeting. The consent given was neither unambiguous nor freely given, the complainant was not sufficiently informed before being asked to

¹ Unless otherwise indicated, in this order all references to sections and schedules are to sections and schedules of the Data Protection Law, 2017. All references to regulations are to regulations of the Data Protection Regulations, 2018.

give consent and the school did not take into account the significant imbalance between the position of the employee (the complainant) and the employer (the school). Consequently, the school did not have an appropriate legal basis for the processing of this personal data. The Ombudsman therefore required that all copies of the recording, including any transcripts or extracts, be destroyed within 10 days of receipt of this enforcement order, including any copies of the recording held on behalf of the school, such as that held by legal advisers.

The Ombudsman recommended that the school develop procedures allowing it to recognize when consent is an appropriate legal basis for the processing of personal data in accordance with the legal standard set out in the DPL, including procedures on documenting consent and managing situations where consent is withdrawn.

The school missed the statutory deadline for responding to the request for a copy of the recording and thus failed to meet its obligations under section 8 of the DPL.

The complainant did not provide the school with a written request for the minutes of or notes from the performance evaluation meeting. Since section 8(4) of the DPL requires a subject access request to be made in writing, the non-response by the school was not a compliance failure. However, the Ombudsman encouraged the school to recognize the complainant's verbal request, or ask the complainant to provide the request in writing.

INTRODUCTION

[Redacted]

CONSIDERATION OF ISSUES

[Redacted]

FINDINGS, RECOMMENDATIONS AND DECISIONS

Under section 45(1) of the DPL, I make the following findings, recommendations and decisions:

- 1) The removal of the complainant's personnel file from the HR Office did not constitute a breach of the school's data protection responsibilities.
- 2) The processing of the complainant's personal data through the recording of the meeting violated the first data protection principle, as it was neither fair nor lawful, for the following reasons:
 - a. The school did not have an appropriate legal basis, as required under the first data protection principle, for the processing of the recording. It sought to rely on consent as a legal basis for this processing, but the consent that it relied upon was neither unambiguous nor freely given, nor was it sufficiently informed. The school also failed to take into account the significant imbalance between the position of the employer (the school) and the employee (the complainant), as required under schedule 5, paragraph 4.
 - b. It is not clear whether suitable fair processing information was provided to allow the complainant to understand what the recording would be used for, including sharing the recording with the school's legal advisors. If it has not already done so, and to the extent that no applicable exemption applies, the

school is required to provide a privacy notice to its staff to explain the uses of their personal data, in accordance with schedule 1, part 2, paragraph 2, of the DPL.

- 3) Since the processing of the complainant's personal data in the form of the recording of the meeting breached the first data protection principle, I require the school to destroy all copies of the recording of this meeting, including any transcripts or extracts taken from the recording, within 10 days of receipt of this enforcement order. This also includes any copies of the recording held on behalf of the school, such as that held by its legal advisers.
- 4) I also recommend that the school develops procedures allowing it to recognize when consent is an appropriate legal basis for the processing of personal data. These procedures should allow the school to recognize when consent meets the legal standard set out in the DPL, including documenting the act of giving consent and developing a process to manage the possible withdrawal of consent.
- 5) The school missed the statutory deadline for responding to the complainant's request for a copy of the recording of the meeting, and thus failed to meet its obligations under section 8 of the DPL. The school has now provided the complainant with a copy of the recording. I recommend that the school develops procedures for the management of data subjects' rights, to ensure that it meets its obligations under the DPL.
- 6) Since the complainant did not provide the request for the minutes of or notes from the performance evaluation meeting in writing, as required under section 8(4) of the DPL, no compliance failures have been identified on the part of the school in relation to this issue. However, best practice is that data subjects should be advised at the time of any verbal requests that they need to put their requests in writing. I encourage the school to recognize the complainant's verbal request for a copy of these minutes and provide such copy in line with its obligations under section 8 of the DPL. If it requires a formal written request in line with section 8(4), then it should communicate this requirement to the complainant without delay.



Under section 47, a person who has received an enforcement order under the DPL may, within 45 days of receipt and upon notice of the Ombudsman, seek judicial review of the order to the Grand Court.

Sandy Hermiston
Ombudsman