

Data Protection Procedures of the CervicalCheck Tribunal

Introduction

The General Data Protection Regulation (EU) 2016/679) came into effect on 25 May 2018 (hereinafter ‘the Regulation’). It provides for the standardisation of the right of European citizens to data privacy.

The rights of data subjects and the obligations on data controllers and processors are set out in the 2018 Regulation.¹ Such rights and obligations include, for example, the right to be provided with, and the obligation to provide, particular information in circumstances where personal data is collected from a data subject (Article 12) and from a source other than a data subject (Article 13). Transparency regarding how organisations use and protect personal data is at the heart of the 2018 Regulation and represents a central requirement for organisations.

However, restrictions on the scope of the obligations and rights set out in the Regulation are permitted in certain circumstances under Article 23. Any such restrictions must be of limited scope and must be a necessary and proportionate measure.²

The Data Protection Act 2018 (hereinafter, the 2018 Act) gives further effect to the 2018 Regulation and transposes it into Irish law.

Accordingly, the rights of the data subject and the obligations of the data controller are set out in the 2018 Act.³

In accordance with Article 23 of the Regulation, the 2018 Act restricts, as far as necessary and proportionate, the obligations on controllers and the rights of data subjects in certain cases for the purpose of safeguarding important objectives of general public interest.⁴

Data Protection Procedures

The CervicalCheck Tribunal is committed to fulfilling its statutory obligations in respect of those whose personal data it controls.

Section 39 of the CervicalCheck Tribunal Act 2019 (hereinafter the 2019 Act) makes provision for the restriction of rights and obligations relating to the processing of personal data by the Tribunal (or ‘relevant person’ as defined therein). Such restrictions are permitted to the extent that they are necessary and proportionate to enable the Tribunal to perform its functions.

¹ Articles 12 to 22 (and Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22) and Article 34.

² Article 23.

³ Sections 87, 90, 91, 92 and 93 of the 2018 Act.

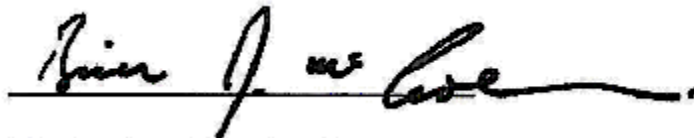
⁴ Sections 59, 60 and 61.

Section 39(2) of the 2019 Act obliges the Tribunal to establish and publish procedures providing for the restriction of the 2018 Regulation to the extent necessary and proportionate to enable the Tribunal to carry out its functions.

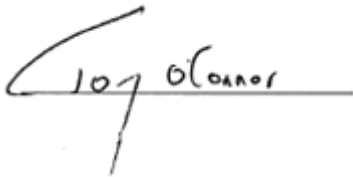
These procedures are established pursuant to that provision and come into effect on the 15th day of October 2021.

A handwritten signature in black ink, appearing to read 'Ann Power', written over a horizontal line.

Ms Justice Ann Power
Tribunal Chairperson

A handwritten signature in black ink, appearing to read 'Brian J. McGovern', written over a horizontal line.

Mr Justice Brian McGovern
Tribunal Member

A handwritten signature in black ink, appearing to read 'Tony O'Connor', written over a horizontal line.

Mr Justice Tony O'Connor
Tribunal Member

Chapter 1: Definitions

“The 2019 Act” is the CervicalCheck Tribunal Act 2019;

“The 2018 Act” is the Data Protection Act 2018;

“Tribunal” has the meaning assigned to it by section 5 of the CervicalCheck Tribunal Act 2019

“Tribunal Member” means the Chairperson or an ordinary member of the CervicalCheck Tribunal appointed by the Minister for Health under section 6 of the CervicalCheck Tribunal Act;

“Ordinary Member” has the meaning assigned to it in Section 6 of the CervicalCheck Tribunal Act 2019;

“Chairperson” means the Tribunal Chairperson as defined in 6 of the CervicalCheck Tribunal Act 2019;

“Member of Staff of the Tribunal” is a person appointed to the Tribunal under Section 8(1) of the CervicalCheck Tribunal Act 2019;

“Tribunal Expert” is a person appointed to the Tribunal under Section 9(1) of the CervicalCheck Tribunal Act 2019;

“Tribunal Counsel” and “Tribunal Solicitor” are persons appointed to the Tribunal under Section 10(1)(a) of the CervicalCheck Tribunal Act 2019;

“Tribunal record” includes any document or other material issued or received by the Tribunal and forming part of the file or record of the proceedings before the Tribunal but does not include notes taken by or for a Tribunal Member, or communications with, by or on behalf of a Tribunal Member performing a statutory function in respect of such proceedings and not intended by the Member to form part of such file or record;

“Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“proceedings” means proceedings before the Tribunal arising from a claim for compensation made by an appropriate person under section 11 of the CervicalCheck Tribunal Act;

Unless specified otherwise, terms defined in the Regulation shall have the meanings given to them in the Regulation.

Chapter 2: Scope

These procedures apply to the processing of personal data by, for or on behalf of the Tribunal when carrying out its functions under Part 2 of the 2019 Act, and without prejudice to the generality of the foregoing, shall include the processing of:

- (i) personal data delivered to or by or held by or issued by a Tribunal Member, a Member of staff of the Tribunal, a Tribunal Expert, a Tribunal Counsel or a Tribunal Solicitor for the purposes of carrying out a function of the Tribunal under Part 2 of the 2019 Act; or
- (ii) personal data created or held by a Tribunal Member, by a member of staff of the Tribunal, by a Tribunal Expert, by a Tribunal Counsel or by a Tribunal Solicitor performing functions under the direction of a Tribunal Member, for the purposes of carrying out a function of the Tribunal under Part 2 of the 2019 Act, and which does not form part of a court record.

Chapter 3: Restrictions

In accordance with s. 39(1) of the 2019 Act and for the purposes of s. 39(2) of that Act, save to the extent specified in these Procedures, the rights and obligations provided for in the Regulation and the 2018 Act, as cited below, shall not apply to the processing of personal data referred to in these Procedures.

(Rights and obligations as specified in Articles 5, 12-22, 34 of the Regulation and Sections 71, 87, 90-93 of the 2018 Act.)

(Restrictions permitted pursuant to Article 23 of the Regulation and Sections 59, 60 and 61 of the 2018 Act.)

Chapter 4: Provision of Information

Pursuant to Articles 13 and 14 of the Regulation and Section 90 of the 2018 Act certain information must be provided to the data subject in circumstances where

- (i) personal data related to a data subject is collected from the data subject (Article 13) and
- (ii) personal data related to a data subject is obtained from a source other than the data subject (Article 14).

Section 90(2) of the 2018 Act set out the information that is to be made available to the data subject and includes:

- (a) the identity and contact details of the controller;
- (b) the contact details of the protection officer of the controller;
- (c) the purpose for which the personal data are intended to be processed or are being processed;
- (d) information detailing the right of the data subject to request access to, and the rectification or erasure of personal data; and
- (e) information detailing the right of the data subject to lodge a complaint with the Commission and the contact details of the Commission.

Section 90(3) of the 2018 Act provides that the above information may be made available to the data subject by means of publication on the website of the controller.

Accordingly, the Tribunal makes the aforesaid information publicly available through the publication of these Data Protection Procedures on the Tribunal's website www.cervicalchecktribunal.ie

These procedures fulfil the obligation to provide the relevant information to the data subject in accordance with Article 13 and 14 of the Regulation.

Chapter 5: Details to be provided to the data subject where personal data is collected from the data subject (Article 13)

The data subject has the right to be provided with, and by way of these published procedures the Tribunal fulfils its obligation to provide the following information where personal data is collected from the data subject:

- **The identity of the data controller**

The identity of the data controller is the CervicalCheck Tribunal established pursuant to Section 5(1) of the 2019 Act.

(Article 13.1(a) of the Regulation; S. 90(2)(a) of the 2018 Act.)

- **The contact details of the Data Protection Officer**

The contact details of the Tribunal's Data Protection Officer are:

Data Protection Officer,
CervicalCheck Tribunal,
The Infinity Building,
George's Court, George's Lane,
Smithfield,
Dublin 7, D07 E98Y

Email: dpo@cervicalchecktribunal.ie

Phone: (01) 674 3301

(Article 13.1(b) of the Regulation; S. 90(2)(b) of the 2018 Act.)

- **The purpose and legal basis of data processing**

Personal data is processed by and on behalf of the Tribunal for the purpose of enabling the Tribunal to perform its functions under Part 2 of the 2019 Act and the said Act of 2019 provides the legal basis for so doing.

(Article 13.1(c) of the Regulation; S. 90(2)(c) of the 2018 Act.)

- **Processing based on Article 6(1)(f) of the Data Protection Regulation**

This provision is not applicable to the processing of data by the Tribunal.

(Article 13.1(d) of the Regulation.)

- **The recipients and category of recipients of personal data**

As the controller of data, the Tribunal has an obligation to provide to the data subject information as to the recipients or categories of recipients of the personal data, if any.

It fulfils this obligation as follows. Material comprised in a Tribunal record may be made available to a party to the proceedings concerned (or to that party's legal representative) or to another person:

- i. where the 2019 Act, including rules made under Section 26 of that Act require or permit, or
- ii. if applicable, where the practice of the Tribunal so permits

(Article 13.1(e) of the Regulation, the 2018 Act: Section 90(2)(f)(iii).)

- **Transfer of data to a third country**

The Tribunal, as a data controller, has an obligation to inform the data subject, where applicable, of the transfer of any personal information concerning the data subject to a third country or international organisation.

In certain circumstances, including, where the transcription of digital audio records of proceedings is carried out for the Tribunal in a third country, material comprised in a Tribunal record may be transferred to a third country. Where such transfers take place, the Tribunal shall seek to ensure that all data disclosed is subject to appropriate safeguards.

(Article 13.1(f) of the Regulation; S. 90(2)(f)) of the 2018 Act.)

- **Retention of data**

As part of the further information required to be provided to the data subject, pursuant to Article 13.2, to ensure fair and transparent processing in respect of the data subject, the Tribunal shall retain the subject's personal data at its premises for the period required to discharge its statutory functions.

Upon dissolution of the Tribunal, the Tribunal records may be deposited with the Minister for Health under s. 36 of the 2019 Act and become 'a departmental record' by virtue of s. 1(2) of the National Archives Act 1986.

Records of proceedings are therefore liable to be retained, preserved and transferred to the National Archives in accordance with and subject to ss. 7 and 8 of that Act.

(Article 13.2(a) of the Regulation; S. 90(2)(f)(ii) of the 2018 Act.)

- **Right to access data**

The Tribunal, being obliged to inform the data subject of the data subject's right to request access to information concerning the data subject, permits the right to request access to personal data contained in a Tribunal record but such right is confined to the circumstances permitted under the 2019 Act, including, rules made under Section 26 thereof, or where the practice of the Tribunal so provides.

For the avoidance of doubt, no such right is exercisable in respect of personal data referred to in Chapter 2(ii) of these Procedures, which data remains confidential and immune from production.

(Article 13.2(b) of the Regulation; S. 90(2)(d) of the 2018 Act.)

- **Right to rectification**

The Tribunal, being obliged to inform the data subject of the existence of the data subject's right to request the rectification of personal data at the time personal data is obtained, confirms the right to request rectification of personal data contained in a Tribunal record but such right is confined to the circumstances where the 2019 Act, including rules made under Section 26 of that Act, or where the practice of the Tribunal so permits.

For the avoidance of doubt, that no such right is exercisable in respect of personal data referred to in chapter 2(ii) of these procedures, which data remains confidential and immune from production.

(Article 13.2(b) of the Regulation; S. 90(2)(d) of the 2018 Act.)

- **Processing based of Article 6.1(f) of the Data Protection Regulation**

This provision is not applicable to the processing of data by the Tribunal.

(Article 13.1(d) of the Regulation.)

- **Right to lodge a complaint about the use of your personal information**

The Tribunal recognises the data subject's right to lodge a complaint with a supervisory authority regarding the use of the data subject's personal information

If you have a complaint about the use of your personal information by the Tribunal, you can register a complaint with the Tribunal's Data Protection Officer in writing or by email.

It is also open to you to raise a complaint about the use of your personal information by the Tribunal, with the Data Protection Commission at www.dataprotection.ie.

(Article 13.2(d) of the Regulation; S. 90(2)(e) of the 2018 Act.)

- **Basis of the requirement to provide data**

The controller of data is obliged to inform the data subject of whether the provision of data by the data subject is a statutory or contractual requirement, or a requirement necessary to form a contract. The controller shall also inform the data subject of whether the data subject is obliged to provide the personal information and the possible consequences of a failure to comply with this obligation.

The nature of the data subject's obligation to provide personal data will depend on the circumstances but arises ultimately from the functions conferred on the Tribunal by the 2019 Act.

Where the personal data is provided by a claimant in proceedings before the Tribunal, it is essentially provided voluntarily and with the intention of, or directed towards, seeking a remedy in those proceedings and failure to provide it may diminish the prospects of securing that remedy.

Where the personal data is provided by a respondent in such proceedings it is essentially provided voluntarily and with the intention of defending those proceedings and a failure to provide it may diminish the prospects of successfully defending the proceedings and may involve a risk of being found in default of response. Where the personal data is provided under a summons to give evidence in Tribunal proceedings it is essentially provided under compulsion and a failure to provide it may render the person so summoned liable to be found in contempt or to be found guilty of an offence under section 38 of the 2019 Act.

(Article 13.2(e) of the Regulation; S. 90(2)(f) of the 2018 Act.)

- **Processing data for a purpose other than that for which it was collected**

Insofar as any data collected from a data subject is intended to be further processed for a purpose other than it was originally collected, the data controller has an obligation to inform the data subject of the purpose of the further processing before such processing occurs along with any relevant further information as referred to in Article 13.2.

Personal data held by the Tribunal may be further processed for purposes connected with the administration of the Tribunal, including, the publication of a determination of the Tribunal. It should be noted, however, that in accordance with, s. 28(6) of the 2019 Act, with the exception of cases that have been heard in public on foot of a request by a claimant and agreement by the Tribunal, any

determinations published shall exclude any information that identifies or that could reasonably lead to the identification of any of the parties.

Personal data held by the Tribunal may be further processed for purposes connected with the efficient management and operation of the Tribunal, including, for the purpose of statistical analysis. Any such processing for statistical analysis purposes will be subject to technical and organisational measures to ensure respect for the principle of data minimisation. The Tribunal does not permit data held by it to be used by third parties for marketing or other commercial purposes.

(Article 13.3 of the Regulation.)

Chapter 6: Details to be provided to the data subject where personal data is collected from a source other than the data subject

- **The identity of the data controller**

The identity of the data controller is the CervicalCheck Tribunal established pursuant to Section 5(1) of the 2019 Act.

(Article 14.1(a) of the Regulation; S. 90(2)(a) of the 2018 Act.)

- **The contact details of the Data Protection Officer**

The contact details of the Tribunal's Data Protection Officer are:

Data Protection Officer,
CervicalCheck Tribunal,
The Infinity Building,
Geo'ge's Court, Geo'ge's Lane,
Smithfield,
Dublin 7, D07 E98Y

Email: dpo@cervicalchecktribunal.ie

Phone: (01) 674 3301

(Article 14.1(b) of the Regulation; S. 90(2)(b) of the 2018 Act.)

- **The purpose and legal basis of data processing**

Personal data is processed by and on behalf of the Tribunal for the purpose of enabling the Tribunal to perform its functions under Part 2 of the 2019 Act and the said Act of 2019 provides the legal basis for so doing.

(Article 14.1(c) of the Regulation; S. 90(2)(c) of the 2018 Act.)

- **The categories of personal data concerned**

The Tribunal, as controller of data, is obliged to provide to the data subject the categories of personal data concerned.

In discharge of that obligation, the Tribunal confirms that the specific categories of personal data concerned depend on the nature of the proceedings and include the content of pleadings and other Tribunal documents lodged, exchanged or issued, evidence given, and submissions made in proceedings. However, in view of the functions of the Tribunal, it is likely that the categories of personal data concerned will also include data relating to health.

(Article 14.1(d) of the Regulation; S. 90(2)(f) of the 2018 Act.)

- **The recipients and category of recipients of personal data**

As the controller of data, the Tribunal has an obligation to provide to the data subject information as to the recipients or categories of recipients of the personal data, if any.

It fulfils this obligation as follows. Material comprised in a Tribunal record may be made available to a party to the proceedings concerned (or to that party's legal representative) or to another person:

- i. where the 2019 Act, including rules made under Section 26 of that Act require or permit, or
- ii. if applicable, where the practice of the Tribunal so permits

(Article 14.1(e) of the Regulation; S. 90(2)(f)(iii) of the 2018 Act.)

- **Transfer of data to a third country**

The Tribunal, as a data controller, has an obligation to inform the data subject, where applicable, of the transfer of any personal information concerning the data subject to a third country or international organisation.

In certain circumstances, including, where the transcription of digital audio records of proceedings is carried out for the Tribunal in a third country, material comprised in a Tribunal record may be transferred to a third country. Where such transfers take place, the Tribunal shall seek to ensure that all data disclosed is subject to appropriate safeguards.

(Article 14.1(f) of the Regulation; S. 90(2)(f) of the 2018 Act.)

- **Retention of Data**

As part of the further information required to be provided to the data subject, pursuant to Article 13.2, to ensure fair and transparent processing in respect of the data subject, the Tribunal shall retain the subject's personal data at its premises for the period required to discharge its statutory functions.

Upon dissolution of the Tribunal, the Tribunal records may be deposited with the Minister for Health under s. 36 of the 2019 Act and become 'a departmental record' by virtue of s. 1(2) of the National Archives Act 1986.

Records of proceedings are therefore liable to be retained, preserved and transferred to the National Archives in accordance with and subject to ss. 7 and 8 of that Act.

(Article 14.2(a) of the Regulation; S. 90(2)(f)(ii) of the 2018 Act.)

- **Processing based of Article 6(1)(f) of the Data Protection Regulation**

This provision is not applicable to the processing of data by the Tribunal.

(Article 13.1(d) of the Regulation.)

- **Right to access data**

The Tribunal, being obliged to inform the data subject of the data subject's right to request access to information concerning the data subject, permits the right to request access to personal data contained in a Tribunal record but such right is confined to the circumstances permitted under the 2019 Act, including, rules made under Section 26 thereof, or where the practice of the Tribunal so provides.

For the avoidance of doubt, no such right is exercisable in respect of personal data referred to in Chapter 2(ii) of these Procedures, which data remains confidential and immune from production.

(Article 14.2(c) of the Regulation; S. 90(2)(d) of the 2018 Act.)

- **Right to rectification**

The Tribunal, being obliged to inform the data subject of the existence of the data subject's right to request the rectification of personal data at the time personal data is obtained, confirms the right to request rectification of personal data contained in a Tribunal record but such right is confined to the circumstances where the 2019 Act, including rules made under Section 26 of that Act, or where the practice of the Tribunal so permits.

For the avoidance of doubt, no such right is exercisable in respect of personal data referred to in Chapter 2(ii) of these procedures, which data remains confidential and immune from production.

(Article 14.2(c) of the Regulation; S. 90(2)(d) of the 2018 Act.)

- **Right to lodge a complaint about the use of your personal information**

The Tribunal recognises the data subject's right to lodge a complaint with a supervisory authority regarding the use of the data subject's personal information

If you have a complaint about the use of your personal information by the Tribunal, you can register a complaint with the Tribunal's Data Protection Officer in writing or by email.

It is also open to you to raise a complaint about the use of your personal information by the Tribunal, with the Data Protection Commission at www.dataprotection.ie.

(Article 14.2(e) of the Regulation; S. 90(2)(e) of the 2018 Act.)

- **Source of the Personal data**

As the controller of data, the Tribunal is required to inform the data subject of the source from which the controller obtained the personal data and to identify whether it came from a publicly accessible source.

The source from which personal data originates in Tribunal proceedings is usually the party who initiates those proceedings. That party may, in his, her or its pleadings and documents submitted to the Tribunal, rely on other sources, (including publicly accessible sources), or on a person summoned to give evidence before the Tribunal, or on a person who, not being a party to proceedings, is required to provide discovery in proceedings.

(Article 14.2(f) of the Regulation.)

- **Processing data for a purpose other than that for which it was collected**

Insofar as any data collected from a data subject is intended to be further processed for a purpose other than it was originally collected, the data controller has an obligation to inform the data subject of the purpose of the further processing before such processing occurs along with any relevant further information as referred to in Article 14.2.

Personal data held by the Tribunal may be further processed for purposes connected with the administration of the Tribunal, including, the publication of a

determination of the Tribunal. It should be noted, however, that in accordance with, s. 28(6) of the 2019 Act, with the exception of cases that have been heard in public on foot of a request by a claimant and agreement by the Tribunal, any determinations published shall exclude any information that identifies or that could reasonably lead to the identification of any of the parties.

Personal data held by the Tribunal may be further processed for purposes connected with the efficient management and operation of the Tribunal, including, for the purpose of statistical analysis. Any such processing for statistical analysis purposes will be subject to technical and organisational measures to ensure respect for the principle of data minimisation. The Tribunal does not permit data held by it to be used by third parties for marketing or other commercial purposes.

(Article 14.4 of the Regulation.)

Chapter 7: Right of access by the data subject

The Regulation sets out a general framework for the data subject's right of access in Article 15. The right of access confers upon the data subject the right to obtain confirmation from the controller of whether the data subject's personal data is being processed and, where that is this case, access to the personal data and to the information listed in Article 15.

The right of access to personal data contained in a Tribunal record or a recording of Tribunal proceedings is confined to the circumstances where the 2019 Act, including any practice direction issued under s. 25(2) or Rules made under s. 26 of that Act, or where the practice of the Tribunal, permit.

(Article 15 of the Regulation; S. 91 of the 2018 Act.)

Chapter 8: Right to rectification

Article 16 of the Regulation states that the data subject shall have the right to obtain the rectification of any inaccurate personal data without undue delay.

In full compliance with this provision, an application by a data subject for rectification of inaccurate personal data contained in an order or determination of the Tribunal may be made under Rule 5(6) or 46(3) of the Tribunal Rules made under s. 26 of the 2019 Act.

(Article 16 of the Regulation; S. 92 of the 2018 Act.)