

# Data Protection Ireland

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## Headlines

- Civil servant jailed for one of the ‘most serious data breaches ever’, p.19
- ODPC publishes guidance on securing data in the cloud, p.20

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## Guidance takes strict interpretation of GDPR consent

The Article 29 Working Party has published its guidance on consent in the context of the GDPR, and the guidelines appear to apply a strict interpretation of the principles that underpin valid consent in the GDPR.

Giving an overview, the Working Party said “in practice, the GDPR raises the bar with regard to implementing consent mechanisms and introduces several new requirements that oblige controllers to alter consent mechanisms, rather than rewriting privacy policies alone.”

The guidelines address in depth the elements of valid consent under Article 4(11), reiterating that consent must be (i) freely given, (ii) specific, (iii) informed, and (iv) unambiguously indicated.

Organisations are reminded that consent will not always be the best mechanism to legitimise their processing. Indeed, the Working Party urges organisations to consider whether it is more appropriate to rely on alternative lawful bases for processing the information under the new Regulation.

“Generally, consent can only be an appropriate lawful basis if a data subject is offered control and is offered a genuine choice with regard to accepting or declining the terms offered or declining them without detriment,” it said.

“When asking for consent, a controller has the duty to assess whether it will meet all the requirements to obtain valid consent. If obtained in full compliance with the GDPR, consent is a tool that gives data subjects control over

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## ECJ rules that failed exam candidate gets right to written paper

In a judgment that is the culmination of a process lasting over eight years, the European Court of Justice has ruled that a written exam paper amounts to personal data.

In 2009, Peter Nowak, a student with Chartered Accountants Ireland (CAI), asked to view his exam scripts with a view to challenging the result.

The CAI denied him the request, claiming the

papers did not constitute personal data under data protection legislation.

Mr Nowak then sought assistance from the Data Protection Commissioner, but he was told exam scripts “would not generally constitute personal data”.

This provoked a legal challenge, although Mr Nowak’s efforts were rejected by the Circuit Court and High Court.

A subsequent Supreme Court hearing led to the issue being referred to the ECJ for guidance on whether an exam script constituted personal data.

In July 2017, an opinion document issued by the ECJ Advocate General found the content of exam papers did in fact make for personal data. Advocate General opinions are persuasive but not bind-

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