



Early Childhood Ireland's Response to the Data Protection Commission's Public Consultation on the Processing of Children's Personal Data 2019.

Introduction

Early Childhood Ireland is the largest organisation in the early years sector. We represent early years providers who support children and their families through preschool, afterschool, and full day-care provision nationwide. Our work includes quality enhancement, publications, advocacy, training, business support & information for a sector that employs over 25,000 people today. We are responding to the Data Protection Commission's public consultation on the processing of children's personal data in our capacity as the largest representative body of early learning and care providers in Ireland.

Early Childhood Ireland views children as competent learners and citizens with rights, and their parents as champions in the lives of children. Therefore, we fully support the point outlined in the consultation document, that children have the same rights as adults in relation to their personal data, which does not belong to anyone else, even their parent or guardian. We are really encouraged that the EU General Data Protection Regulation (GDPR) has encompassed and underlined the protection of children and the position of children as data subjects.

We believe that all organisations (data controllers) holding children's personal data should ensure they are fully compliant with their transparency obligations under the GDPR when communicating this data to children. However, to ensure children can realise their data protection rights, it is essential all organisations are assisted by the Data Protection Commission (DPC) or relevant Government department in meeting their transparency obligations.

In this submission, we underline that young children have equal data protection rights that must be upheld where possible. We believe that organisations must make all possible efforts to enable young children to realise these rights. Yet we also recognise the additional assistance that organisations will require in this regard. We also outline the unique circumstances early learning and care providers face in meeting their transparency obligations. Below we have answered the relevant questions outlined in the Data Protection Commission's public consultation document.

Methods to Convey Data to Children

There is a two-fold difficulty in suggesting methods to be used by all organisations to communicate personal data to children. This difficulty arises from both the variation in organisations and the children that may request access to their personal data. Firstly, a variety of organisations hold children's personal data; the data is held for a variety of purposes including legal obligations to do so, and a range of data is acquired. Secondly, children that make requests for their personal data, are unique individuals, that vary by age, and have individual communication styles and abilities. These two factors will impact on the methods used to clearly communicate personal data to children and should be considered when approaching transparency obligations to children.

However, some universal principles are applicable to the methods used by organisations to clearly convey children's personal data. Under Article 12.1 of the GDPR, organisations must ensure that they use clear, plain language that a child can understand, when fulfilling their transparency obligations. We believe that for each child to realise their transparency rights, the communication of personal data to children should be delivered in an individualised manner, tailored to each unique child, and incorporating their age and abilities.

We highlight the importance of devising ways to communicate personal data to young children. We acknowledge that young children many have difficulties in understanding the concept of data protection, but it is important to remember that they do not lose their transparency rights just because they are unable to read. Therefore, we believe that organisations have a duty to strive to communicate personal data and rights to young children, where possible.

At the same time, young children that are unable to exercise their data protection rights due to their age and level of understanding, have a right to be protected by their parents and guardians. Article 5 of the UN Convention on the Rights of the Child (UNCRC) recognises the duty of parents/guardians to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance to children in exercising their rights. This means parents must facilitate their young children in realising and understanding their data protection rights where they cannot do this for themselves.

Therefore, in principle we agree that two sets of transparency data should be provided where an organisation aims its products at both children and adults. However, we emphasise that this must not create an unnecessary burden for organisations in creating two datasets for every child, as a younger child may not ever request this data. The Data Protection Commission could provide communications templates and materials for organisations that can be used on foot of a request from a young child. We envisage these templates and materials will be more frequently used when awareness of GDPR and data protection rights become more widespread throughout society.

Assistance required for organisations in meeting their obligations

To ensure all children realise their rights to their personal data, it is essential all organisations holding children's personal data are assisted by the Data Protection Commission or relevant Government department in meeting their transparency obligations towards children. We acknowledge that the Data Protection Commission intends to produce guidance materials for both children and the organisations who process the personal data of children and codes of conduct in conjunction with sector stakeholders.

However, we believe that stakeholder engagement should go further than drawing up codes of conduct. In order for children to realise their transparency rights, every organisation should be as fully equipped to deliver on these rights as possible. Therefore, we believe the DPC should firstly produce templates and materials to be used by organisations to communicate data to children. Secondly, we believe that the DPC should identify any additional financial costs that organisations may incur in fulfilling their transparency obligations. Lastly, we hope to see the DPC provide relevant information and training for organisations on communicating personal data to children.

We highlight again the specialised approach that will need to be taken when communicating with young children and the additional training and resources this will require. In assisting early years providers with communicating personal data to young children, we recommend that the DPC should engage with the Department of Children and Youth Affairs Participation Unit on the three responsibilities of the DPC that we have outlined above.

We also highlight the importance of Article 12.5 in the GDPR which outlines that accessing personal data should be free. Some organisations will need additional assistance with financing extra administration and time, to ensure that children or their families can realise their rights at no cost and without harm to the sustainability of organisations. We highlight early years providers as an example of these organisations, which is explored in more detail below.

Data Protection and Young Children

We are really encouraged by the DPC's consultation with children of school age as an inclusive practice fulfilling the right children have under the UNCRC to express their views freely on matters that affect them. However, we would like to see a similar consultation conducted with younger children in early years settings, as they have equal data protection rights. Of course, we are aware that very young children will struggle to understand some of the data protection concepts and due weight must be given to their age and maturity. Yet a consultation process with younger children will aid organisations as a first step, in making the best effort possible to ensure young children can access their transparency rights.

A consultation process that involves young children where appropriate, their parents/guardians and early years providers, will ensure that any methods of data communication with young children will be evidence-based. We highlight the Mosaic Approach as an example of a possible method that could be used in the consultation. This approach is widely used to gather the views of young children (Joseph Rowntree Foundation, 2001). Yet again we encourage formal consultation with the early years sector on the best consultation approaches.

We believe there is scope for a range of methods to be used to communicate data to young children. We highlight in the GDPR, under Article 12, that the delivery of personal data can go beyond written means, where appropriate, including verbal delivery or the use of icons. This means that methods that have been used to gain consent from young children in research, through pictures, could be adapted to fit data protection purposes.

We also advocate for innovative methods of communication of personal data to children. For example, as an organisation, we continually highlight the importance of play in children's learning and understanding. The importance of play has also been recognised in the First 5 Strategy, a whole-of-Government strategy for babies, young children and their families 2019-2028. There could be room to adopt a play-based strategy to communicate data protection rights for relevant age groups, to communicating data to children.

However, we underline that all methods of communication of personal data to children should be formed from consultation with the early years sector and piloted with different groups of children and stakeholders. This approach would ensure that any communications strategies, codes of conduct or materials produced are evidence-based.

Accessing Personal Data and Erasure Requests

In order to access personal data, it must be ensured that children first understand they have a right to access this information or request it to be deleted. We highlight Recital 38 of the GDPR that outlines children may not be aware of their rights in relation to the processing of personal data. This warrants extra effort by organisations using children's data to try their utmost to ensure children realise their transparency rights. We also highlight Article 57 of the GDPR that underlines the role of the DPC in promoting awareness among the public about their data protection rights. We believe

that in order to adequately fulfil this role, this principle needs to extend to raising awareness of data protection rights among young children as well.

Of course, for younger children, highlighting data protection rights will prove difficult. However, we encourage the DPC to work with early years sector stakeholders to discover the best ways to introduce young children to their rights under the GDPR. There could even be room for inclusion of these rights on early years curriculums like Aistear.

However, given the age and maturity of children in early learning and care settings, we believe that parents must fulfil their duty to safeguard children's rights as outlined earlier. This means they must be able to make erasure and access requests on behalf of their young child.

Other factors aside from the age of a child need to be taken into consideration when dealing with data erasure requests. These include the fact that some organisations are legally required in some circumstances to retain data for set periods. Although this fact is recognised in the GDPR, organisations will require support in communicating this point to children.

Early learning and care settings are obliged to retain certain types of children's personal data for a set period of time under the Child Care Act 1991 (Early Years Services) Regulations 2016.¹ Additionally, some data needs to be retained for up to a period of 21 years in circumstances, such as issues of safeguarding concerns and for insurance purposes.

In cases where data is required to be retained, there remains an obligation on providers and other organisations to clearly communicate to children where appropriate, why their requests for data erasure cannot be completed and why this data is stored. For children in early years settings, this must also be clearly explained to parents/guardians given the young age of the children.

Additional Support for Early Years Providers

Early years providers are an example of organisations that will need support to fully meet their transparency obligations to both children and their parents/guardians. This results from the young age of the children they cater to; the existing administration burden they face in providing early learning and care, and sustainability issues in the sector, including staff retention and recruitment issues.

Early years providers conduct the important task of recording and holding children's personal data to enable children to avail of high-quality early learning and care, to track their learning and development, and for their safety. This administration can prove burdensome for providers, who must remain compliant with Tusla and Pobal regulations. This is acknowledged in the Programme Support Payments made to providers by the Department for Children and Youth Affairs to assist with the administration of childcare schemes. Also, the new national childcare scheme launched in 2019, requires providers to go through more training and manage altered administration procedures.

The introduction of the GDPR created an additional administration and training burden in the early years sector. Early years providers altered data retention policies and ensured that early years staff are trained and fully aware of their obligations under the GDPR. We as an organisation assisted early years providers with the GDPR changes by creating data retention policy templates, providing

¹ Examples of minimum time periods for retaining data can be found in the Appendices of the Tusla Quality Regulatory Framework.

accessible GDPR training and our Support Point information service was used by providers for assistance with these issues.

Some of the main issues faced by our members in meeting transparency obligations included problems with redacting other children's personal data to fulfil data requests. Early years providers highlighted this as costly, and very time consuming. Plus, we found that providers are not always aware of this requirement until they must deal with an access request.² This is an issue that needs to be kept in mind when devising communications materials for organisations. It also emphasises the need for stakeholder engagement to uncover sector specific difficulties in meeting transparency obligations.

Responding to any additional administration and facilitating young children to realise their data protection rights, will require additional state finance to pay for non-contact hours in early years settings as well as any communication materials required. We highlight the administration burden the early years sector faces in the context of the current staffing crisis in the early years sector. Nearly half of staff in the sector work part-time, and there is a high turnover rate of 25%, with average wages of €12.17 per hour (Pobal, 2018).

Although, we fully support young children accessing their personal data rights, we underline that early learning and care providers will need additional assistance from the Data Protection Commission or relevant government department in facilitating these rights. We envisage that this will need to be in the form of financial supports, communications materials and training for staff. The assistance must cover any consultation period on methods to communicate with children and extend if any new methods are introduced. All types of early years providers will need additional assistance with their communications obligations, including community, private, smaller and larger settings. The assistance provided to them should be tailored to their needs, based on DPC stakeholder engagement with different types of settings.

Conclusion

In this submission, we have made it clear that organisations must realise their transparency obligations in a manner that is tailored to individual children. We are encouraged by the steps that the Data Protection Commission has taken in this regard, by consulting with children in schools.

However, we believe that as young children have the same data protection rights as older children, organisations should strive to ensure, that they enable young children to realise these rights. As a first step, we have outlined in this submission that young children should be consulted on data protection issues in the same manner as school-age children.

However, organisations will need support from the Data Protection Commission in the form of materials, training and financing in some cases, to enable all children to realise their data protection rights. In particular, we have highlighted the unique support that early years providers will need due to the administration burden they already face, the sustainability crisis engulfing the early years sector and the young age of children who avail of their services. This support must be based on the results of extensive, evidence based early years stakeholder engagement.

² This information was discovered through our information service Support Point, which provides assistance and information to early years providers on data protection issues.

References

Pobal (2018) *Early Years Sector Profile 2017/18*. Pobal: Dublin.

Joseph Rowntree Foundation (2001) *Listening to young children: The Mosaic approach*. Available at: <https://www.jrf.org.uk/report/listening-young-children-mosaic-approach> [Accessed March 2019].