

3. Respondent Details

Data Protection Commissioner

Canal House, Station Road, Portarlinton, Co. Laois

Original status: Respondent

Solicitor: Philip Lee Solicitors

Counsel: Paul Anthony McDermott BL

4. Information about the decision that it is sought to appeal

1. The appeal is sought from the entire decision.
2. *On 7 October 2009* - the Appellant sat the exam; *12 May 2010* - the Appellant made the data access request with the ICAI; *1 June 2010* - the ICAI responded to the Appellant's data access request failing to produce a copy of the examination script and certain appeals process documentation; *1 July 2010 & 14 July 2010* - the Appellant filed a complaint comprising of two separate letters; on *21 July 2010* the Office of the DPC sent the letter dismissing the complaint finding no matters for investigation.
3. The relevant orders made in the Court of Appeal:
 - a) The appeal be dismissed
 - b) Costs of the proceedings awarded to the respondent

5. Reasons why the Supreme Court should grant leave to appeal

1. The Appeal relates to the interpretation of Sections 10 and 26 of the Data Protection Acts 1988 & 2003 which relates to the right of appeal to the Courts therefore constitutes a matter of public importance.
2. The interpretation of the High Court judge in relation to the right of appeal pursuant to Section 26 of the Data Protection Acts, 1988 & 2003 and concurrence of the Court of Appeal judges is unsustainable in law (adjudicated that no appeal lay to the Courts when the Commissioner declines fully investigate a complaint) and against the terms of common sense.
3. The understanding of the merits of the case by the Court of Appeal judges to the effect that the Appellant's examination scripts is not personal data and the complaint was *frivolous or vexatious* is unsustainable in law.

4. The Court of Appeal dismissed the appeal, having heard the merits of the appeal, concurring with the decision of the learned High Court judge, giving no justification for same.
5. The Court of Appeal judges seemed to be biased and prejudiced.

6. Ground(s) of appeal which will be relied on if leave to appeal is granted:

1. The Court of Appeal judges erred in law in holding that Appellant did not have a right of appeal to the Circuit Court from a decision of the Respondent not to investigate the Appellant's complaint, in that:
 - (a) Section 10(1)(b)(ii) requires the Respondent to notify a complainant about the decision in relation to their complaint, includes a decision not to investigate.
 - (b) A decision not to investigate is a decision in relation to a complaint for which provision is made for appeal under Section 26(1)(d).
 - (c) The Act requires to be construed in a manner consistent with the State's obligations under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (hereafter "Directive 95/46") which requires that there be appeals through the courts from decisions of supervisory authorities giving rise to complaints.
2. The Court of Appeal judges erred in law the examination script the subject matter of the complaint was not personal data within the meaning of the Acts:
 - a) The examination script was personal to the Appellant and contained his biometric data – his handwriting and the product of his brainwork during the exam;
 - b) The Appellant can be identified by the examination script in conjunction with other information (examination number or – an unique identifier) in the possession of the ICAI, the data controller in this case;
 - c) The examination script contained information relating to the Appellant and is placed in the Appellant's personal file at the ICAI or its manual filing;
 - d) An examination script is considered as personal data by the equivalent UK Data Protection Act 1998.

7. Order(s) sought:

1. An Order setting aside the Orders of the Court of Appeal; the High Court and the Circuit Court in these proceedings;

2. An order remitting the complaint to the Respondent to consider the Appellant's complaint having regard to the judgment of this Court;
3. Costs Order.

Are you asking the Court of Appeal to:- Depart from (or distinguish) one of its own decisions? *No*; Make a reference to the Court of Justice of the European Union? *No*

Will you request a priority hearing? Yes

Reasons:

a) Matter of public importance

The appeal relates to the interpretation of Section 10 & 26 Data Protection Acts which did or will affect many complaints to the Data Protection Commissioner and complainant's right to appeal against his or her decision including the decision not to investigate on the grounds that the complaint is *vexatious or frivolous*.

Currently, there are other appeals to the Supreme Court regarding similar issue in *Fox v. Data Protection Commissioner* and few appeals pending at the level of Circuit Court and High Court.

b) Appellant's employment matter started at the Employment Appeals Tribunal on 11 February 2010 will not be determined until the Supreme Court hear and adjudicate on this case.

By letter dated 21 May 2014 (letter provided when application for priority was heard) the Employment Appeals Tribunal advised that "*As the Tribunal has not been informed of the outcome of this appeal no determination issued in the case brought before the Tribunal.*"

In the event of the Supreme Court proceedings being finalised you should immediately notify the Tribunal of the outcome, enclosing a copy of the said judgment."

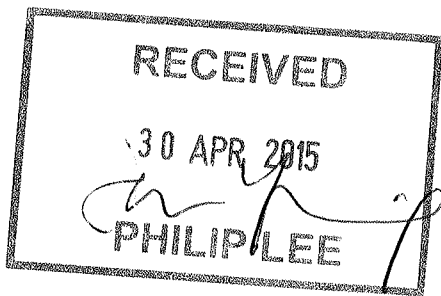
- c) **Interpretation of law which is unsustainable should be corrected with the immediate effect.**
- d) **The application for priority was before the Chief Justice on 26 June 2014.**
- e) **The appeal relates to two simple questions and the appeal hearing will be short.**

Dated this 30th day of April 2015

SIGNED: NOWAK
PETER NOWAK
APPELLANT IN PERSON

Court Record No.

THE SUPREME COURT



Between:

PETER NOWAK

Appellant

-and-

DATA PROTECTION
COMMISSIONER

Respondent

Application for leave and Notice of appeal

PETER NOWAK
APPELLANT IN PERSON
1F RATHBORNE CLOSE
ASHTOWN
DUBLIN 15