

Guidance for Data Controllers who Lose Control of Data to a Third Party

The data protection rights of individuals are protected under the [General Data Protection Regulation \(GDPR\)](#) and the [Data Protection Act 2018 \(the Act\)](#), the [European Convention on Human Rights](#), the [EU's Charter of Fundamental Rights](#) and the Constitution of Ireland, [Bunreacht na hÉireann](#). The responsibilities placed on data controllers (a person, company, or other body which decides the purposes and methods of processing personal data) by the GDPR and the Act reflect the importance of those rights. The significance of those responsibilities are made clear in cases where data controllers lose control of personal data.

Wrongful retention of personal data by a third party can pose a serious risk to the rights of data subjects. Some personal data breaches – for example, misaddressed letters and emails – can disclose personal data to innocent third parties who had no intention or expectation of receiving it. In most cases a simple request from the data controller to return, delete or destroy the data will suffice, and recipients are commonly happy to comply.

However, not all recipients are willing to cooperate with a request to return or delete data. Unintended recipients of emails, documents or files may decide to retain them for their own purposes. Malicious people may threaten to disclose data or use it in unlawful ways.

The main responsibility for securing the deletion or return of wrongly held personal data lies with the lawful data controller. This responsibility arises from that controller's obligations to process data securely and to implement technical and organisational measures appropriate to the risk arising from its processing.

If a third party refuses to return or delete wrongly held personal data, the Data Protection Commission (DPC) recommends that data controllers act promptly and use all reasonable measures to address and mitigate the risks posed to data subjects and their rights. Apart from reporting the breach and all relevant information to the DPC (as required by [Article 33 of the GDPR](#)), controllers should:

- Communicate to the third party that their retention of the data is unlawful and a breach of data subjects' rights;

- Consult their legal advisors on remedies, including injunctions, that may be available to them; and
- In appropriate cases, consider informing An Garda Síochána.