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Explanatory Memorandum](#)

AN BILLE UM PRÍOBHÁIDEACHT 2006
PRIVACY BILL 2006

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

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ACTS REFERRED TO

| | |
|--|--------------|
| Broadcasting Act 2001 | 2001, No. 4 |
| Civil Liability Act 1961 | 1961, No. 41 |
| Courts (Supplemental Provisions) Act 1961 | 1961, No. 39 |
| Data Protection Acts 1988 and 2003 | |
| Freedom of Information Act 1997 | 1997, No. 13 |
| Local Government Act 2001 | 2001, No. 37 |
| Non-Fatal Offences Against the Person Act 1997 | 1997, No. 26 |
| Statute of Limitations 1957 | 1957, No. 6 |



AN BILLE UM PRÍOBHÁIDEACHT 2006
PRIVACY BILL 2006

BILL

entitled

5 AN ACT TO PROVIDE FOR A TORT OF VIOLATION OF
PRIVACY; AND TO PROVIDE FOR MATTERS CONNec-
TED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Definitions.

10 “act” includes disclosure;

“Act of 1957” means the Statute of Limitations 1957;

“disclosure” means, in relation to information, documentation or
other material concerning an individual, disclosure of that infor-
mation, documentation or material to the public or a section of the
15 public, and cognate words shall be construed accordingly;

“individual” means a person other than a body corporate;

“local authority” has the same meaning as it has in the Local Govern-
ment Act 2001;

20 “plaintiff” includes a defendant counterclaiming in respect of a
violation of privacy;

“privacy action” means an action for an order under *section 8* for
violation of privacy;

“public body” has the same meaning as it has in the Freedom of
Information Act 1997;

25 “public place” means any place to which members of the public have
access whether as of right or by permission, and whether subject to
or free of charge;

“public servant” means—

30 (a) a civil servant of the State or a civil servant of the
Government,

(b) a person who holds a position in any body established by
or under an enactment,

- (c) a person duly appointed—
 - (i) by a Minister of the Government, the Government, either House of the Oireachtas or a court established by law, or
 - (ii) under an enactment, 5
 - to conduct an inquiry or investigation in relation to any matter,
- (d) a person who holds a position in a local authority,
- (e) a member of the Garda Síochána,
- (f) a member of the Defence Forces; 10

“surveillance” includes, in relation to an individual—

- (a) aural or visual surveillance of that individual,
- (b) eavesdropping on, watching, spying on, besetting or following that individual,
- (c) the interception or recording by any person of a communication from an individual to another person by any means (whether electronic or otherwise), 15
- (d) the recording by any means of a conversation between 2 or more individuals without the knowledge of one or more of those individuals by any person including one of those individuals, 20

whether or not effected by trespassing on the property of another.

Tort of violation of privacy.

2.—(1) A person who, wilfully and without lawful authority, violates the privacy of an individual commits a tort (to be known, and in this Act referred to, as the “tort of violation of privacy”). 25

(2) The tort of violation of privacy is actionable without proof of special damage.

Entitlement to privacy.

3.—(1) For the purposes of this section, the privacy to which an individual is entitled is that which is reasonable in all the circumstances having regard to the rights of others and to the requirements of public order, public morality and the common good. 30

(2) Without prejudice to the generality of *subsection (1)* and subject to *sections 5* and *6*, it shall be a violation of the privacy of an individual for a person—

- (a) to subject an individual to surveillance, 35
- (b) to disclose information, documentation or material obtained by surveillance whether or not such surveillance was carried out by or on behalf of the person disclosing such information,
- (c) to use the name, likeness or voice of the individual, without the consent of that individual, for the purpose of— 40

(i) advertising or promoting the sale of, or trade in, any property or service, or

(ii) financial gain to the said person,

5 if, in the course of such use, the individual concerned is identified or, as a result of such use, is capable of being identified, and the said person knew that that individual had not given such consent,

10 (d) to disclose letters, diaries, medical records or other documents concerning the individual or information obtained therefrom, or

(e) to commit an act described in section 10 of the Non-Fatal Offences Against the Person Act 1997.

15 4.—(1) The court in a privacy action shall, in determining whether an act of a person constitutes a violation of the privacy of an individual, have regard to the nature of the act concerned and all of the relevant circumstances, including—

Matters to which court shall have regard.

(a) the place where, and the occasion on which, the act was committed,

(b) the age of the individual,

20 (c) any office or position (whether of emolument or not) held by the individual and any functions performable by the individual by virtue of his or her holding that office or position, and the extent (if any) to which the act pertains to that office or position or any or all of those functions,

25 (d) the purpose for which information, documentation or other material (if any) obtained as a result of the act was, or was intended to be, used,

(e) whether the person, in doing the act, intentionally or recklessly trespassed on the property of another, and

30 (f) whether the person, in doing the act, committed an offence.

35 (2) Without prejudice to the generality of *subsection (1)*, the court in a privacy action shall, in determining whether a disclosure concerning an individual is a violation of the privacy of the individual, have regard to the nature of the disclosure and all other relevant circumstances, including—

(a) whether the disclosure—

(i) consists in whole or in part of sensitive or intimate private facts concerning the individual,

40 (ii) concerns the individual's private, home or family life, or

(iii) is in contravention of a duty of a public body not to disclose information, documentation or material of a class to which the disclosure relates,

45 (b) the manner of the disclosure, and

(c) the extent of the disclosure.

(3) The claim of a plaintiff in a privacy action brought in respect of a disclosure shall not be defeated by reason only of the defendant's proving that the disclosure consisted of information—

(a) that, at the time of the disclosure, was contained in a register or other similar document to which members of the public or a section of the public had access, 5

(b) that the plaintiff had already disclosed to members of his or her family or to his or her friends, or

(c) that, subject to *section 6(b)*, had already been disclosed by a person other than the defendant without the consent of the plaintiff. 10

(4) The claim of a plaintiff in a privacy action brought in respect of a disclosure shall not be defeated by reason only of the defendant's proving that the disclosure related to an event or occurrence that happened in a public place or a place that, at the time of the disclosure, was visible to members of the public. 15

Defences.

5.—(1) It shall be a defence to a privacy action for the defendant to prove that the act in respect of which the action was brought—

(a) was done for the purpose of lawfully defending or protecting a person or property (including the prosecution or defence of proceedings either civil or criminal), 20

(b) was authorised or required by law or by a court or process of a court established by law,

(c) was done by a public servant— 25

(i) acting in the course of his or her duties, or

(ii) in circumstances where he or she had reasonable grounds for believing that he or she was acting in the course of his or her duties, or

(d) consisted of the installation or operation, in good faith, of a closed circuit television system or other surveillance system— 30

(i) for a purpose authorised by law, or

(ii) for the purpose of detecting or preventing the commission of an offence or the protection of persons or property, 35

(e) was an act of newsgathering, provided any disclosure of material obtained as a result of such act was—

(i) done in good faith,

(ii) for the purpose of discussing a subject of public importance, 40

(iii) for the public benefit, and

(iv) fair and reasonable in all of the circumstances.

(2) In this section—

“act of newsgathering” means an act that is reasonable in all of the circumstances and that consists of, or is necessary or incidental to—

5 (a) the acquisition or preparation of material for publication in a periodical, or

(b) the acquisition or preparation of material for broadcasting.

“broadcasting” shall be construed in accordance with the Broadcasting Act 2001;

10 “periodical” means any newspaper, magazine, journal or other publication that is printed, published or issued, or that circulates, in the State at regular or substantially regular intervals and includes any version thereof published, in whole or in part, on the internet or by other electronic means.

15 6.—Disclosure by a person of any information, documentation or other material concerning an individual is not a violation of privacy where— Certain disclosures not a violation of privacy.

(a) the disclosure was done in good faith and was—

(i) for the purpose of discussing a subject of public importance,

20 (ii) for the public benefit, and

(iii) fair and reasonable in all of the circumstances,

25 (b) it is obtained by another person in violation of the privacy of the individual and was later disclosed in good faith by the first-mentioned person in circumstances where at the time of disclosure—

(i) he or she had no knowledge of, and

(ii) there existed no reasonable grounds for his or her believing,

that it had been so obtained,

30 (c) the disclosure is of a statement to which the defence of absolute privilege or defence of qualified privilege under the law of defamation would apply,

(d) the disclosure is made by a public servant—

(i) acting in the course of his or her duties, or

35 (ii) in circumstances where he or she had reasonable grounds for believing that he or she was acting in the course of his or her duties, or

40 (e) it consists of the disclosure of personal data within the meaning of the Data Protection Acts 1988 and 2003 other than in contravention of those Acts.

7.—(1) A privacy action may be brought in the High Court or Circuit Court.

(2) The Third Schedule to the Courts (Supplemental Provisions) Act 1961 is amended by the insertion of the following:

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| 7B. | A privacy action within the meaning of the <i>Privacy Act 2006</i> | Where the amount of the claim exceeds €50,000 | At the election of the plaintiff— (a) the judge of the circuit where the tort is alleged to have been committed, or (b) the judge of the circuit where the defendants or one of the defendants resides or carries on business. |
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Remedies.

8.—(1) The court in a privacy action may—

- (a) make an order prohibiting the doing by the defendant of any act that it considers would violate the privacy of the plaintiff, 10
- (b) order the defendant to pay such damages (if any) to the plaintiff as the court considers appropriate,
- (c) order the defendant to pay to the plaintiff damages equal to any, or any likely, financial gain accruing to the defendant as a result of the violation of the plaintiff's privacy, 15
- (d) order the defendant to deliver to the plaintiff any documents, articles, photographs or other material, and all copies thereof, concerning the plaintiff or belonging to the plaintiff that are in the possession or procurement of the defendant and that were obtained or made as a result of the violation of the plaintiff's privacy. 20

(2) The court in a privacy action may, in addition to any order under *subsection (1)*, grant to the plaintiff such other relief as in all the circumstances of the case it considers appropriate. 25

(3) The court in a privacy action may make such order as to costs as it considers appropriate.

(4) The court in a privacy action may make an award of aggravated, or exemplary or punitive, damages as if the cause of action to which the action relates were a cause of action at common law. 30

Dismissal for want of prosecution.

9.—(1) Where rules of court provide that the plaintiff in a privacy action is, not later than one year from the bringing of the privacy action, required to do any thing and the plaintiff fails to so do, the defendant may, upon the expiration of that period, apply to the court to have the action dismissed, and the court shall dismiss the action upon such application unless the dismissal of the action would result in injustice being done. 35

(2) An application under this section shall be brought by motion on notice to the plaintiff.

5 **10.**—Upon the hearing of an appeal from a decision of the High Court in a privacy action, the Supreme Court may, in addition to any other order that it deems appropriate to make, substitute for any amount of damages awarded to the plaintiff by the High Court such amount as it considers appropriate. Appeals in privacy actions.

11.—(1) Section 11 of the Act of 1957 is amended— Limitation of action.

(a) in subsection (2), by—

10 (i) the substitution, in paragraph (a), of the words “Subject to paragraphs (b), (c), and (d) of this subsection” for the words “Subject to paragraphs (b), and (c) of this subsection”, and

(ii) the insertion of the following paragraphs:

15 “(d) A privacy action within the meaning of the *Privacy Act 2006* shall not be brought after the expiration of—

(i) one year, or

20 (ii) such longer period as the court may direct not exceeding 2 years,

from the date on which the cause of action accrued.”,

and

(b) the insertion of the following subsections:

25 “(3C) The court shall not give a direction under subsection (2)(d)(ii) (inserted by *section 11(1)(a)* of the *Privacy Act 2006*) unless it is satisfied that—

(a) the interests of justice require the giving of the direction,

30 (b) the prejudice that the plaintiff would suffer if the direction were not given would significantly outweigh the prejudice that the defendant would suffer if the direction were given,

35 and the court shall, in deciding whether to give such a direction, have regard to the reason for the failure to bring the action within the period specified in subparagraph (i) of the said subsection (2)(d) and the extent to which any evidence relevant to the matter is, by virtue of the delay, no longer capable of being adduced.

40 (3D) For the purposes of the bringing of a privacy action under the *Privacy Act 2006*, the date of accrual of the cause of action shall be the date upon which the violation of privacy was first discovered by the plaintiff or reasonably discoverable by him or her.”.

(2) Section 49 of the Act of 1957 is amended by the insertion of the following subsection:

“(3A) In the case of privacy actions within the meaning of the *Privacy Act 2006*, subsection (1) of this section shall have effect as if for the words ‘six years’ there were substituted the words ‘one year or such longer period as the court may direct not exceeding two years.’”.

Notice of intention to bring action.

12.—(1) An individual shall not bring a privacy action unless—

(a) before the bringing of the action and before the expiration of 3 months from the date of accrual of the cause of action in accordance with the Act of 1957, he or she informs, by notice in writing, the person against whom he or she proposes to bring the action of his or her intention to so do, or

(b) the court in which he or she intends to bring the action gives its consent to the action being brought without there being compliance with *paragraph (a)*.

(2) Any period during which a person is under a disability in accordance with the Act of 1957 shall not be reckonable for the purposes of measuring the period of 3 months specified in *subsection (1)*.

Hearing of action other than in public.

13.—(1) Upon the application of any individual, a court before which any action founded on tort is brought may, for the purpose of protecting the privacy of the individual, order that—

(a) the action or any part of the action, including any interim or interlocutory application, shall be heard otherwise than in public,

(b) all persons (other than the parties to the proceedings and persons of such a class as the court may specify) should not be present during the action or any part of the action, including any interim or interlocutory application,

(c) the identity of the individual shall not be disclosed other than to such person, or person belonging to such class of persons, as may be specified in the order concerned, or

(d) there shall be no publication or broadcast of any material likely to lead to the identification of the person.

(2) This section shall not affect any other power of a court to order that—

(a) proceedings before it shall be heard otherwise than in public,

(b) the identity of any party to those proceedings or to whom those proceedings relate, or any person called as a witness in those proceedings, shall not be disclosed, or

(c) there shall be no publication or broadcast of any material likely to lead to the identification of a person referred to in *paragraph (b)*.

- 14.—A privacy action shall be tried without a jury. Trial of privacy action.
- 15.—Section 6 of the Civil Liability Act 1961 is amended by— Extinguishment of cause of action on death.
- (a) the deletion, in paragraph (a), of “or” where it last occurs, and
- 5 (b) the insertion of the following paragraph:
- “(aa) a cause of action for violation of privacy within the meaning of the *Privacy Act 2006*, or”.
- 16.—This Act shall not affect causes of action accruing before its commencement. Saver.
- 10 17.—(1) This Act may be cited as the Privacy Act 2006. Short title and commencement.
- (2) This Act shall come into operation one month after the date of its passing.



[Click here for Bill](#)

**AN BILLE UM PRÍOBHÁIDEACHT 2006
PRIVACY BILL 2006**

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

1. The purpose of the Bill is to provide for a new tort of violation of privacy taking into account the jurisprudence of our courts and the European Court of Human Rights.

Definitions

2. *Section 1* is a standard provision defining certain terms used in the Bill.

Tort of violation of privacy

3. *Section 2* provides that it is a tort for a person wilfully and without lawful authority to violate the privacy of an individual. The tort is actionable without proof of special damage.

Entitlement to privacy

4. *Section 3* provides that a person's entitlement to privacy is that which might be reasonable in all the circumstances having regard to the rights of others and to public order and the common good. Without prejudice to the generality of the entitlement, there shall be a violation of privacy, subject to the provisions of *sections 5* (defences) and *6* (certain disclosures not a violation of privacy), by subjecting another person to surveillance and by the disclosure of information so obtained; by (unauthorised) use of name, voice or likeness of an individual for commercial purpose; by the disclosure of personal information or documents of a person or to commit an act (of harassment) as described in section 10 of the Non-Fatal Offences Against the Person Act 1997.

Matters to which the court shall have regard

5. *Section 4* provides for a range of factors to which a court shall have regard in determining whether a violation of privacy of an individual has occurred.

Defences

6. *Section 5* provides for a number of defences to an allegation of violation of privacy. These essentially involve where the act was that of a public servant acting or reasonably believing themselves to be acting in the course of their duties, the installation and operation of a closed circuit television system for a purpose authorised by law or for the protection of persons or property, for the prevention or investigation of crime or under the law or was an act of newsgathering by a newspaper or broadcaster provided that any disclosure of material obtained was done in good faith, was for the purpose of discussing a subject of public importance, was for the public benefit and was fair and reasonable in all of the circumstances.

Certain disclosures not a violation of privacy

7. *Section 6* provides for a number of instances whereby the disclosure of any matter concerning an individual is not a violation of privacy. These include where the disclosure was done in good faith for the purpose of discussing a subject of public importance, in circumstances of privilege, by a public servant in the course of their duties and as provided for under the Data Processing Acts.

Jurisdiction of courts

8. *Section 7* provides a jurisdiction for actions taken in the Circuit Court where the claim does not exceed €50,000.

Remedies

9. *Section 8* provides that in a privacy action the court may grant any one or more of the following remedies to the plaintiff: — an injunction, — award damages, — order the defendant to account to the plaintiff for profits that have accrued or may later accrue to the defendant because of the violation of privacy, — order the defendant to deliver to the plaintiff any material, articles, photographs or documents that have come into the defendant's possession because of the violation of privacy, or — grant any other relief to the plaintiff that appears to the court proper in the circumstances.

Dismissal for want of prosecution

10. *Section 9* provides that in a privacy action in which no proceeding, required by rules of court, has been taken by the plaintiff during the period of one year from the beginning of the action, the action may be dismissed on application to the court by the defendant.

Appeals in privacy actions

11. *Section 10* is self explanatory.

Limitation of action

12. *Section 11* provides that a privacy action must be brought within a period of one year from the discovery of the alleged acts, though a court may extend this period to 2 years.

Notice of intention to bring action

13. *Section 12* is self-explanatory.

Hearing of action other than in public

14. *Section 13* provides that a court may on the application of a person who claims that his or her rights under the Act have been or are about to be infringed, hear any or all of an action for violation of privacy other than in public.

Trial of Privacy Action

15. *Section 14* provides that a privacy action shall be tried without a jury.

Extinguishment of cause of action on death

16. *Section 15* provides that a right of action for violation of privacy is extinguished on the death of the person alleging the infringement.

Saver

17. *Section 16* provides that the Act should only apply to a cause of action which accrues after it comes into operation.

Short title and Commencement

18. *Section 17* is a standard provision and proposes that the Act shall come into operation one month after its passing.

Financial Implications

19. There are no discernable financial implications for the Exchequer.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,
Iúil, 2006.*