

Draft text of

PRIVACY BILL 2006

ARRANGEMENT OF SECTIONS

Section

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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 to 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

DRAFT TEXT OF PRIVACY BILL 2006

BILL

entitled

AN ACT TO PROVIDE FOR A TORT OF VIOLATION OF PRIVACY; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definitions.

1.—In this Act -

“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 information, documentation or material to the public or a section of the 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 Government Act 2001;

“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;

“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—

- (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,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;

“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),
- (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,

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”).

(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.

(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,
- (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—
 - (i) advertising or promoting the sale of, or trade in, any property or service, or
 - (ii) financial gain to the said person,
 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,
- (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.

Matters to which court shall have regard.

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—

- (a) the place where, and the occasion on which, the act was committed,
- (b) the age of the individual,
- (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,
- (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
- (f) whether the person, in doing the act, committed an offence.

(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,
 - (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,
- (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,
- (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.

(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.

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),
- (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—
 - (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—
 - (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,
- (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,
 - (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—

- (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;

“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.

Certain disclosures not a violation of privacy.

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

- (a) the disclosure was done in good faith and was—
 - (i) for the purpose of discussing a subject of public importance,
 - (ii) for the public benefit, and
 - (iii) fair and reasonable in all of the circumstances,
- (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,
- (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
 - (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
- (e) it consists of the disclosure of personal data within the meaning of the Data Protection Acts 1988 to 2003 other than in contravention of those Acts.

Jurisdiction of courts.

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:

“	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,
- (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,
- (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.

(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.

(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.

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.

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

Appeals in privacy actions.

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.

Limitation of action.

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

- (a) in subsection (2), by—
 - (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:

- “(d) A privacy action within the meaning of the *Privacy Act 2006* shall not be brought after the expiration of—
- (i) one year, or
 - (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:

“(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,
- (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,

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.

(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)*.

Trial of privacy action.

14.—A privacy action shall be tried without a jury.

Extinguishment of cause of action on death.

15.—Section 6 of the Civil Liability Act 1961 is amended by—

- (a) the deletion, in *paragraph (a)*, of “or” where it last occurs, and
- (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”.

Saver.

16.—This Act shall not affect causes of action accruing before its commencement.

Short title and commencement.

17.—(1) This Act may be cited as the Privacy Act 2006.

(2) This Act shall come into operation one month after the date of its passing.