
Data Protection Legal Basis Guidance

This document is intended to explain the different legal basis for processing personal information.



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Before personal information can be processed, there must be a legal basis under the General Data Protection Regulations which applies.

Personal data is any information which can be used to identify someone, from a name and address to something less obvious like an IP address or reference number.

Special Category data is defined in the General Data Protection Regulations as any of the following:

- Race
- Religious/Philosophical Beliefs
- Ethnicity
- Political Opinions
- Trade Union Membership
- Genetic/Biometric Data
- Health data (including Social Care)
- Sexual Orientation

Processing Personal Data

To process any personal data, which is not special category data, there must be a legal basis under Article 6 for doing so. There may be more than one which applies:

Please note, for Special Category Data, see [Article 9](#) below

Article 6	Lawfulness of processing	Explanatory text
1.a	<i>"the data subject has given consent to the processing of his or her personal data for one or more specific purposes"</i>	<p>You can process someone's personal data where they have been consulted and actively given their opt-in consent.</p> <p>It is very rare as a Council that we would process personal information solely based on consent as we carry out a lot of public tasks as stated in 1.e, comply with laws as stated in 1.c and customers apply for services through us as stated in 1.b.</p> <p>There are special rules around processing personal data where the only legal basis for doing so is Consent. If none of the below legal basis applies to</p>

		your processing and you are only processing solely on Consent, then please see the “ Consent ” section below.
1.b	<i>“processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract”</i>	The sharing of the information is necessary because of contractual reasons or is necessary to provide a service that the individuals have applied for. There does not have to physically be a contract in place, but if someone applies for a service from us, then this legal basis would apply.
1.c	<i>“processing is necessary for compliance with a legal obligation to which the controller is subject”</i>	The law specifically states that the information must be processed. For example, processing information for Council Tax purposes is explicitly stated in the Local Government Finance Act 1992. Similarly, processing information for Health and Safety purposes such as an accident book, is explicitly stated in the Health and Safety at Work Act 1974.
1.d	<i>“processing is necessary in order to protect the vital interests of the data subject or of another natural person”</i>	Information is being processed to help protect the vital interests of an individual. For example, processing personal information in Safeguarding cases.
1.e	<i>“processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”</i>	The information is being processed as part of carrying out a legal duty to which we are obliged to as a Council. This is where the law doesn’t explicitly say you must process personal data, but you are doing so to help comply with a legal requirement that we have to do as a Council.
1.f	<i>“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”</i>	The information is being processed because it is in the Council’s legitimate interests to do so. Where we are using this as a the only legal basis, the we must fully document what our legitimate interests are and ensure that they do not override the interests and rights of the individuals who the information is about, especially where the individuals are children/young people or vulnerable adults.

Processing Special Category Data

Special Category Data is defined by the GDPR and listed above. To process “special category” personal data, there must be a lawful basis under Article 9 for doing so:

Article 9	Lawfulness of processing	Explanatory text
2.a	<i>“the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject”</i>	<p>You can process someone’s personal data where they have been consulted and actively given their explicit opt-in consent.</p> <p>It is very rare as a Council that we would process personal information solely based on consent as we carry out a lot of public tasks as stated in 1.e, comply with laws as stated in 1.c and customers apply for services through us as stated in 1.b.</p> <p>There are special rules around processing personal data where the only legal basis for doing so is Consent. If none of the below legal basis applies to your processing and you are only processing solely on Consent, then please see the “<u>Consent</u>” section below.</p>
2.b	<i>“processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject”</i>	<p>The processing is necessary for employment purposes.</p> <p>For example, processing information about a member of staff’s trade union membership or reasonable adjustments for work due to a health condition.</p>
2.c	<i>“processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent”</i>	<p>Information is being processed to help protect the vital interests of individual themselves, or someone else where the person who the information is about is not capable of giving consent.</p> <p>For example, in safeguarding cases</p>
2.d	<i>“processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the</i>	<p>The information is being shared as part of the duty of a foundation, association or any other not for profit organisation with a political, religious or trade union aim and the individual have consented to their information being shared.</p> <p>The Council cannot rely on this legal basis, but, for example, Unison/GMB can in processing information in regards trade union membership.</p>

	<i>body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects”</i>	
2.e	<i>“processing relates to personal data which are manifestly made public by the data subject”</i>	The information being processed has already been made public by the individual themselves, for example, on Social Media.
2.f	<i>“processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity”</i>	The information is being processed as it is part of legal proceedings.
2.g	<i>“processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject”</i>	The information is being processed because it is substantially in the public interest to process. For example, information relating to emergency planning.
2.h	<i>“processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3”</i>	The information is being processed for the purposes of the health and safety of an individual and is being processed by a medical professional, for example, a Social Worker or Doctor.
2.i	<i>“ processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of</i>	The information is being processed for reasons of public health, for example, if there is an epidemic in which the public need to be aware of (ie bird flu).

	<i>quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy”</i>	
2.j	<i>“processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.”</i>	The information is being processed for purposes of archiving information in the public interest and/or scientific/historical research purposes.

Still not sure of the legal basis for processing personal information

The Information Commissioner’s Office have a useful interactive tool to find out what is your legal basis for processing and can be found on the link below:

<https://ico.org.uk/for-organisations/resources-and-support/getting-ready-for-the-gdpr-resources/lawful-basis-interactive-guidance-tool/>

Consent

What is Consent?

Consent is defined in law as:

“any freely given, specific, informed and unambiguous indication of the data subject’s wishes by which he or she, by statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her”

Do we need someone's consent to process their information?

Consent is not always strictly necessary for processing. Just because we obtain someone's signature, does not mean that they have provided their consent. For someone to provide their consent, they must have a valid choice whether or not to provide their information to us.

Consent is often confused with transparency. When we collect someone's personal information, by law, we have to tell them what we are going to use it for. Sometimes, we may ask someone to provide an indication that they accept how we are going to use their information, but this does not mean that they are providing their information with their consent.

Consent must be freely given and there **must be a valid choice**. People must have the genuine right to refuse and there should be no repercussions if refusing their consent. If we cannot meet this requirement, then we need to have another legal basis for processing their information, listed above.

If consent is difficult, then look for another legal basis.

Example

When someone applies to use our Library Service, then the legal basis for processing their information would be "to perform a contract", because they are entering into an agreement to use a Council Service. However, to add them to a distribution list for us to provide them with weekly newsletters telling them about events that may interest them in Sheffield, we would need their consent to do this.

What rules are there around using Consent?

Consent means offering individuals genuine choice and control.

- Consent requires a positive opt-in. Do not use pre-ticked boxes or any other method of consent by default
- Keep your consent requests separate from other terms and conditions
- Be specific and granular. Vague or blanket consent is not enough
- Be clear and concise
- Name any third parties who will rely on the consent
- When using consent, it must be as easy to withdraw their consent at any time as it was to provide, therefore, make it easy for people to withdraw consent and tell them how
- Keep evidence of consent – who, when, how, and what you told people
- Keep a suppression list of people who have asked to opt-out
- Keep consent under review, and refresh it if anything changes
- Avoid making consent a precondition of a service, because if that is the case, then we can't rely on Consent

What are the key changes to make in line with the General Data Protection Regulations?

Where you are only processing personal information on the basis of consent and no other legal basis, you will need to review your consent mechanisms to make sure they meet the GDPR requirements on being specific, granular, clear, prominent, opt-in, documented and easily withdrawn. This may mean that you will need to contact your Service Users to obtain/refresh their consent.

The key new points are as follows:

- **Unbundled:** consent requests must be separate from other terms and conditions. Consent should not be a precondition of signing up to a service unless necessary for that service.
- **Active opt-in:** pre-ticked opt-in boxes are invalid – use unticked opt-in boxes or similar active opt-in methods
- **Granular:** give granular options to consent separately to different types of processing wherever appropriate.
- **Named:** name your organisation and any third parties who will be relying on consent
- **Documented:** keep records to demonstrate what the individual has consented to, including what they were told, and when and how they consented.
- **Easy to withdraw:** tell people they have the right to withdraw their consent at any time, and how to do this. It must be as easy to withdraw as it was to give consent. This means you will need to have simple and effective withdrawal mechanisms in place.
- **No imbalance in the relationship:** consent will not be freely given if there is imbalance in the relationship between the individual and the controller – this will make consent particularly difficult for public authorities and for employers, who should look for an alternative lawful basis.

Further information

The Information Commissioner's Office has produced guidance on consent which can be found on the link below:

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/>