



CASE Guidelines on GDPR Compliance: Wealth screening and prospect research

Version 10, June 2019

Introduction

These guidelines aim to help Higher Education Institutions (HEIs) comply with the requirements of the General Data Protection Regulation (GDPR) when conducting wealth screening or prospect research, and when collecting contact details from publicly available sources or from third parties. These guidelines have been reviewed by the Information Commissioner's Office (ICO).

Principle based legislation

The GDPR is principles-based rather than rules-based legislation, which means that these guidelines cannot be definitive. Rather, it is for you to consider your circumstances against the requirements of the GDPR, to assess whether you believe that your working practices are lawful, and to document why. Under Article 5(2) of the GDPR, you are required to be able to demonstrate compliance with the data protection principles, and the ICO consistently emphasises the importance of documenting your reasoning and decisions to demonstrate compliance in any investigation. These guidelines suggest some of the ways that you can accomplish this.

Wealth screening, prospect research and collecting contact details

These guidelines focus on three areas raised by the ICO as topics of potential concern. This section explains what is meant in this document by *wealth screening*, *prospect research*, and *collecting contact details*:

- **Wealth screening**, where a development office, either in house or via a third party, uses publicly available information to identify within a large pool of alumni and potential supporters those few individuals with the likely financial resources to be able to provide significant support. And just as importantly, to identify those individuals without the financial means to provide significant support, to avoid approaching them with unwelcome proposals. Wealth screening may use a variety of publicly available sources, such as public records databases and documents made available by government bodies, archives from media outlets, archived press releases, and other reputable web-sites. The results from wealth screening should always be reviewed manually to ensure that no automated decisions are taken that could significantly affect individuals.
- **Prospect research**, where a development office, either in house or via a third party, uses publicly available quantitative and qualitative information to assess an



individual's inclination to provide financial and non-financial support and their areas of philanthropic interest, to enable the formulation of an approach which the individual finds attractive. This research may include financial information (including assessment of income and whether particular donations or funding appeals may be of interest), philanthropy and other giving (including donations to other organisations), other support (for example, details of volunteering roles), career highlights and other life achievements, and information about areas of interest and extra-curricular activities.

- **Collecting contact details**, where a development office obtains postal addresses, telephone numbers, e-mail addresses or other contact details from publicly available sources or from third parties to update or augment existing data held.

The remainder of this document sets out some of the regulatory requirements and issues to consider before carrying out these activities.

Providing transparency and the opportunity to object

Alumni and supporters expect, and the GDPR requires, transparency about what personal data you process, for what purposes, from where you collect it, and with whom you share it. HEIs usually provide this and other required information in a privacy notice. With respect to these guidelines, it is essential that your privacy notice adequately describes:

- any wealth screening or prospect research that you conduct, together with the sources (or categories of sources) that you use
- any use of third-parties to conduct wealth screening or prospect research
- any collection of contact details from publicly available sources or from third parties

You are not required to use the terms *wealth screening* or *prospect research*, especially as the meaning of these terms may not be clear to alumni and supporters: the GDPR requires that privacy information is easily accessible and easy to understand, and that clear and plain language is used.

Your privacy notice must explain the rights of alumni and supporters, including the right to object to processing and the right to erasure of personal data in many circumstances.

You must *provide* your privacy notice to alumni and supporters. The GDPR does not prescribe how to provide your privacy notice. Most HEIs publish their privacy notice on their website and actively communicate it by way of the inclusion of links in:

- privacy notices and other communications supplied to students before they become alumni
- appropriate postal communications
- the footer of bulk emails
- personal email signatures.

When collecting the personal data of new constituents from third parties or other sources, you must provide your privacy notice within one month, unless this involves a disproportionate effort or seriously impairs the objectives of the processing (in which case you must still protect individuals' rights and make the privacy information publicly available). If you postpone providing privacy information then you must:

- provide it at the earliest appropriate point in the developing relationship when disproportionate effort or impairment no longer applies, for example in your first written communication



- take into account the reasonable expectations of individuals about your processing of their personal data (for example, you may conclude that high net worth individuals reasonably expect publicly available information about their wealth and philanthropic interests to be processed by charitable organisations)
- produce a Data Protection Impact Assessment (see below) and conclude that the processing does not result in a high risk to the rights and freedoms of the individuals

By adequately providing transparent privacy information you can ensure that your processing of personal data, including with regard to wealth screening and prospect research, is within the reasonable expectations of alumni and supporters, and that they have an opportunity to exercise their right to object to this processing.

Legitimate interest assessment

If you choose to rely on legitimate interest as your legal basis for processing personal data, then you should produce a legitimate interest assessment. This is not a strict legal requirement, but without an assessment you may not be able to meet the accountability requirement to be able to demonstrate that your processing is lawful.

A legitimate interest assessment should:

- identify your legitimate interest – the purposes for processing personal data
- demonstrate the necessity of processing for the intended purposes
- balance your legitimate interest against the interests and fundamental rights of alumni and supporters

For example, your legitimate interest in conducting wealth screening or prospect research might be to enable you to identify the small number of individuals in a large pool of contactable alumni or potential supporters who may have both the means and the inclination to provide material support to your strategic teaching and research objectives for the public good.

In order to be *legitimate*, your interest must be:

- lawful (ie in accordance with applicable EU and national law)
- articulated sufficiently clearly and specifically to allow the balancing test to be carried out (see below)
- a real and present interest (ie not be speculative)

In order to demonstrate the *necessity* of processing for the intended purpose you should consider whether other less intrusive means are available to achieve the same end. For example:

- whether individuals with the means and inclination to provide material support can be identified without processing their publicly available personal data
- whether individuals without the means and inclination can be excluded from further processing of their personal data at an early stage

In applying the balancing test, you should consider whether:

- your processing has any undue impact on alumni or supporters, including any legal impact (see the example below)
- your processing is in the public interest or for the wider benefit of society



- the personal data is collected from publicly available sources (including whether third-party wealth screening or prospect research relies upon publicly available sources)¹
- the processing is in the reasonable expectation of alumni or supporters
- there is an imbalance of power between your HEI and alumni or supporters
- alumni and supporters can easily object to the processing

In assessing the impact of the processing, both positive and negative consequences should be taken into account. For example, wealth screening or prospect research may have the following results:

- They may enable you to raise the philanthropic funds required to pursue your strategic research and teaching objectives, for the public good.
- For most people you may conclude from your research that you will not approach them for support, saving people without the means or inclination to provide support from dealing with unwelcome approaches, and limiting further research on these people.
- Where you conclude that people are likely to have interest in and the ability to provide support a likely next step may be either to invite the prospective donor to an event which you believe will be of interest or to invite them to a meeting. The prospective donor is free to decline an event invitation or a meeting request, and if they choose to accept, they may enjoy the experience.
- By providing transparent privacy information you enable people to exercise their right to object to processing of their publicly available personal data.
- If the prospective donor is interested in developing a closer relationship then at an appropriate point, and after considerable discussion, you may ask whether they would like to receive a tailored proposal for support, which would reflect your discussions and research into their areas of interest, philanthropic ambitions and capacity to give. The prospective donor is free to decline or to proceed and may ultimately choose to provide support.
- In many cases such proposals may be warmly welcomed, and in some cases may result in a deep philanthropic relationship which the donor finds highly rewarding.

Finally, it is important to emphasise that the purpose of the balancing exercise is not to prevent **any** negative impact on the data subject. Rather, its purpose is to prevent disproportionate impact.

You should keep a record of your legitimate interest assessment to help you to meet your accountability requirements under the GDPR to be able to demonstrate that your processing of personal data is lawful.

Data Protection Impact Assessment

The GDPR requires a Data Protection Impact Assessment (DPIA) in situations where processing personal data is likely to result in a high risk to the rights and freedoms of alumni or supporters. The ICO has advised HEIs to consider producing a DPIA for wealth screening and prospect research. You may find it helpful to produce distinct DPIAs covering specific

¹ In their *Opinion on Legitimate Interest* (see the end references), the Article 29 Working Party conclude in § III.3.4.b.ii, Page 39: “That said, the fact that personal data is publicly available may be considered as a factor in the assessment...”



areas of likely high risk, rather than a comprehensive DPIA covering the whole of fundraising and supporter relations.

The content of a DPIA is similar to, but more extensive than, that of a legitimate interest assessment, and must address:

- a description of the processing and the purposes of the processing, including, where applicable, your legitimate interest in conducting the processing
- an assessment of the necessity and proportionality of the processing in relation to the purposes
- an assessment of the risks to the rights and freedoms of alumni and supporters

A number of templates for producing DPIAs are available, including from the ICO, the EU's GDPR website and the International Association of Privacy Professionals. These can be accessed in the CASE library's sample collection of DPIA's here:

<https://www.case.org/resources/sample-collection-data-protection-impact-assessments>

Many UK HEIs have produced their own template, drawing on these sources of guidance as appropriate.

If you have a Data Protection Officer, you must seek their advice when producing a DPIA.

If you conclude that the proposed processing would result in a high and unmitigated risk to alumni or supporters, then you must consult with the ICO (dpiaconsultation@ico.org.uk).

Collecting electronic contact details

Communications which contain any kind of offer (for example, an invitation to an event) are likely to be considered to be direct marketing. The ICO takes the view that any communication promoting the aims or ideals of not-for-profit organisations constitutes direct marketing.

Legislation requires demonstrable consent for direct-marketing e-mails and for telephone calls to numbers registered with the Telephone Preference Service. You will therefore not be able to use electronic contact details collected from other sources for many fundraising or alumni-relations purposes. Some HEIs have decided as a matter of policy not to accept e-mail addresses from third-parties.

Collecting postal contact details

Consent is not required for postal communication. You might conclude that alumni and supporters reasonably expect to be contacted at their new postal address when they use the Royal Mail redirection service and choose not to opt out of sharing their new address with organisations which hold previous contact details. You should make it easy to opt out of postal communication.

Providing transparency when collecting contact details

If you collect contact details from third-parties or publicly available sources, then this should be made clear in your privacy notice to ensure that this processing is within reasonable expectations and to provide alumni and supporters with an opportunity to object. You must be able to demonstrate why you believe that this processing is fair.



Repurposing information

The GDPR requires that personal data is collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes. Therefore, you must be clear in your privacy notice about all the purposes of processing personal data, including any wealth screening or prospect research.

If your development office receives information from the student records system, this should be made clear in both the privacy notice provided to students and the privacy notice provided to alumni to ensure that:

- the purpose of the processing is transparent and has a lawful basis
- the processing is within the individuals' reasonable expectations
- students and alumni have the opportunity to object.

Conclusions

“Profiling individuals for a fundraising campaign itself is not against the law, but failing to clearly tell people that you’re going to do it, is”².

There is no straightforward approach to compliance with principle-based legislation such as the GDPR. HEIs need to balance the risk of failing to attract sufficient philanthropic funding for the public good against the risk of non-compliance. Every HEI has a different approach to balancing the opposing risks and approving their adopted approach to wealth screening, prospect research, and collecting contact details.

These guidelines aim to assist HEIs in assessing working practices against the legal requirements and documenting the conclusions reached.

First and foremost, HEIs must be transparent in privacy information about any wealth screening, prospect research, or collection of contact details.

If you rely on legitimate interest you should produce a legitimate interest assessment, balancing the positive and negative impacts on individuals against your legitimate interest.

When investigating complaints, the ICO is likely to ask whether a DPIA has been completed, and to see it.

² Elizabeth Denham, Information Commissioner, 17th November 2017



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References

The English language *General Data Protection Regulation*:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>

Article 29 Working Party Opinion on Legitimate Interest [an advisory body made up of a representative from the data protection authority of each EU Member State, the European Data Protection Supervisor and the European Commission, now reconstituted as the European Data Protection Board]:

https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2014/wp217_en.pdf

Privacy and Electronic Communications (EC Directive) Regulations 2003 [current UK legislation; note that these Regulations have been subject to various amendments as summarised at <https://ico.org.uk/about-the-ico/what-we-do/legislation-we-cover/privacy-and-electronic-communications-regulations/>]:

<http://www.legislation.gov.uk/ukxi/2003/2426/contents/made>

English Language proposed *Regulation on Privacy and Electronic Communication* [future European legislation]:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017PC0010&from=EN>
