



PROSPECTING FOR GOLD LTD.

Prospect Research, Wealth Screening and Data Protection

As the May deadline for GDPR approaches, we have prepared our latest update on Prospect Research, Wealth Screening and Data Protection.

Wealth screening is not and never has been illegal. Nor is prospect research. The key is to make sure you meet the requirements of the new General Data Protection Regulation (GDPR) so you can lawfully undertake these activities.

Data protection – a basis for best practice in relationship fundraising

A strong, open, and honest relationship with donors is at the heart of good fundraising. The way charities handle the personal data of supporters is key to cultivating confidence and trust. So privacy by design, the building block of GDPR, should be your way of working.

With the implementation of GDPR, there is a much keener focus on reviewing processes and documenting what we do, how we do it and our lawful basis for the activities. This guide highlights key factors to consider for prospect research and wealth screening.

Critical to building a strong relationship with supporters is clearly communicating about how you use personal data. This gives you an open door to explain the importance of philanthropy to your supporters while also improving the efficacy of your own fundraising research.

What is personal data?

For GDPR, personal data is information relating to an identifiable person. The person may be identified by identifiers such as name, ID number, location data or an online identifier. GDPR applies to both automated personal data and to manual filing systems where personal data is accessible according to specific criteria. Personal data that has been pseudonymised can fall within the scope of GDPR depending on how difficult it is to attribute the pseudonym to a specific individual.

GDPR also brings in special categories of personal data. These are similar to sensitive personal data from the Data Protection Act, although there are additions. In summary, the special categories of personal data cover:

- Race or ethnic origin
- Political opinions
- Religious or philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data (where used to identify individuals)
- Health
- Sex life or sexual orientation.

Special rules also apply to the processing of information around criminal offences.

Grounds for lawfully processing data

Our first advice is to ask you not to rely on your “usual practices” and assume that they are compliant. Read through the General Data Protection Regulation (GDPR) and the guidance relating to it on the Information Commissioner’s Office’s (ICO’s) website to understand where you may need to modify your practices. Links to specific areas of guidance issued by both the ICO and other organisations are included below.

The law sets out a number of grounds for lawfully processing personal data:

- Legitimate Interest
- Consent
- Contract
- Legal Obligation
- Vital Interests
- Public Task

The various bases for processing are not ranked, one is not better than the other. They can apply at different times.

For most fundraising organisations, there are two grounds that you can use for fairly and lawfully processing personal data for prospect research purposes:

1. The processing is necessary for the purposes of a **Legitimate Interest** pursued by the charity. This Legitimate Interest must be balanced against the rights of the individual and is normally combined with the provision of *fair processing* information (usually included in a **Privacy Notice**); or
2. The data subject has given their **Consent** to the processing.

To quote Information Commissioner Elizabeth Denham “*Consent is not the ‘silver bullet’ for GDPR compliance.*”

The ICO’s Consent Guidance says:

“As a general rule, whenever you have difficulty meeting the standard for consent, this is a warning sign that consent may not be the most appropriate basis for your processing. So we recommend you look for another basis.”

Their Legitimate Interest Guidance says:

“Legitimate Interest is the most flexible lawful basis for processing, but you cannot assume it will always be the most appropriate. It is likely to be most appropriate where you use people’s data in ways they would reasonably expect and which have a minimal privacy impact, or where there is a compelling justification for the processing.”

Both grounds for processing data are described more fully below.

Legitimate Interest

Article 6 (1)(f) of GDPR provides Legitimate Interest as a lawful basis for processing personal data. It may be a Legitimate Interest of your own organisation, a third party, commercial interests as well as larger societal benefits but they must not override the interests or fundamental rights and freedom of the individual whose data you are processing. GDPR makes particular mention of the need to be mindful of the need to protect children’s personal data when considering relying on Legitimate Interest.

For Legitimate Interest to apply, the processing must be necessary, and you **must** balance your organisation's interest with the impact on your supporters whose data you are processing. Your assessment of this balance must be clearly documented. You must consider the reasonable expectations of the individuals whose data you are processing based on their relationship with your organisation. You cannot cause them unwarranted harm.

The Data Protection Network has published some very helpful guidance which includes a framework for a three stage balancing test. You can download it [here](#). The ICO has also now published guidance which can be accessed [here](#). This contains a simpler version of the balancing test.

The combination of a **Privacy Notice** and **Legitimate Interest** case is often referred to as *fair processing*. This can form the legal basis for processing data without explicit consent.

Applying Legitimate Interest to prospect research and wealth screening

The recent guidance issued by the IoF (available [here](#)) provides some specific examples of how you can apply Legitimate Interest to prospect research. They summarise the key questions to ask as:

- What activity do you want to do?
- Have you got a legitimate interest taking into account the individual's reasonable expectations?
- Can you be confident that you are not overriding the individual's rights?
- Can it pass the legitimate interest test?

Consent

Consent is another basis for processing personal data which can apply to fundraising related activities. There are certain activities where consent is required, such as electronic communications which are subject to the Privacy in Electronic Communication Regulations (PECR). There are other areas where you may choose to use consent if you believe it is the most appropriate lawful basis for processing the personal data.

If you are relying on consent, you need to ensure that the consent you have meets the more detailed requirements of GDPR. Under GDPR, consent needs to be a freely given, specific, informed and an unambiguous indication of the data subject's wishes. It can be a written or verbal statement or clear affirmative action which signifies a person's agreement to the processing of their personal data.

To be sure any consents you already have are GDPR compliant, you will need to review the consent that you have from existing supporters or that you gather from new supporters. You need to be able to prove that you do have consent so detailed recording of consent is critical.

When processing any of the special categories of data (see page 1), consent is usually required. There are some exceptions, which are detailed in Article 9(2) of GDPR. The one most likely to apply to prospect research is where processing relates to personal data which is manifestly made public by the data subject. For example, if a person is interviewed in a leading national newspaper and speaks openly about their personal experience living with a specific medical condition, this information has been made public by the data subject.

Privacy Notices

Keeping supporters informed about how their data is being used is a key principle of both the Data Protection Act and GDPR. You can do this in your **Privacy Notice**. Your Privacy Notice must be readily available and accessible to people whose data you process. You should also inform them of updates

and changes and ensure that they have an easy mechanism for opting out of any specific aspects of your processing, in this case prospect research activities.

So, what might you need to include? It is useful to explain why you are using the information in a particular way so your supporters understand why it is important. Be as detailed as you can, but ensure the final statement is clear and easy to understand. The type of information that you need to cover in your Privacy Notice includes:

- Details of the data controller (and data protection officer)
- Purposes for which the data will be processed and the legal basis for processing
- Explanation of the organisation's Legitimate Interest
- Categories of personal data
- Who it will be shared with
- Countries where it may be transferred
- How long will it be kept
- Data subjects rights including to withdraw consent to processing and the right to opt out
- Sources of personal data
- Any automated decision making or profiling (different to prospect research)

When thinking about prospect research and wealth screening, you will also want to be sure you describe:

- Why you do the research
- The types of research you undertake e.g. wealth screening, financial analysis
- Your data sources including a brief description of any publicly accessible information you use
- Use of third parties, possibly naming them and specifying the activities they undertake for you

Each organisation has to provide a Privacy Notice that reflects how it uses personal data. There is no generic Privacy Notice. Review your Privacy Notice and ask someone unconnected with your cause to explain what it means to them. Does their response suggest that it is clear? Make improvements wherever possible. We suggest that you look at the [ICO guidance on **Privacy Notices**](#) to see some good and bad examples.

To highlight how prospect research and wealth screening might be described in a Privacy Notice, we have provided this example below.

As a fundraising organisation, we undertake in-house research and from time to time engage specialist agencies such as Prospecting for Gold to gather information about you from publicly available sources, for example, Companies House, the Electoral Register, company websites, 'rich lists', social networks such as LinkedIn, political and property registers and news archives.

We may also carry out wealth screening to fast track the research using our trusted third party partners. You will always have the right to opt out of this processing. We may also carry out research using publically available information to identify individuals who may have an affinity to our cause but with whom we are not already in touch. We also use publicly available sources to carry out due diligence on donors in line with the charity's Gift Acceptance Policy and to meet money laundering regulations.

This research helps us to understand more about you as an individual so we can focus conversations we have with you about fundraising and volunteering in the most

effective way, and ensure that we provide you with an experience as a donor or potential donor which is appropriate for you.

If you would prefer us not to use your data in this way, please email us at XXX or or call us on XXXXX.

Wealth screening

To be totally clear, wealth screening is **not** and **never has been** illegal. The ICO and the Fundraising Regulator have both reiterated this point on many occasions.

Your **Privacy Notice** must clearly state that you use personal data in this way; in this context that will be for fundraising and related research, which in turn may include wealth screening or analysis. We suggest you mention by name in your Privacy Notice any organisations that will conduct any wealth screening for you.

You may rely on your **Legitimate Interest**, providing that this has been clearly documented and you have considered the impact on your supporters of processing their data in this way. That impact may differ by types of supporter, for example an active current supporter compared to one that has infrequent or more historic contact with your organisation. You should undertake a legitimate interest assessment and document the outcome to ensure that it is valid to proceed on this basis.

Desk research

We believe that desk research will continue to be a cornerstone of major donor fundraising. Individuals of the calibre of major donors are busy people and will expect you to have done your homework. Not having done so will reflect poorly on you and your organisation.

Publicly accessible information

A great deal has been said about the use of **publicly accessible information** and its use for research purposes. This can be used, but you must take into account how such sources may have been compiled; in other words, which are most accurate and up to date, and which may include subjective information which may be misleading or even inaccurate. By way of an example, an entry in a trade directory which is self-disclosed would be regarded as more reliable than an article in newsprint or online.

Remember, your **Privacy Notice** should make it clear that you may engage in this activity. Include the fact that you may review publicly available information about an individual to help you gain a better understanding about your supporters.

Prospect briefing notes

A key part of prospect research is the preparation of briefing notes or bespoke profiles of individual prospects. With data minimisation in mind, it is well worth developing a framework which clearly identifies the level of research information you need at each stage of the solicitation process. You are taking a privacy-by-design approach.

For example, a few key facts such as top line estimate of wealth, connection to the charity and basic biographical details may be all you need to decide that someone should sit within the major donor prospect pool. As the relationship develops, you may require more detailed information, especially as you work towards the final ask. What capacity does the donor have to make a substantial gift? You also need to be confident that this is a gift you can accept in line with your organisation's gift acceptance policy. We suggest you document the information required at each decision point and include this in your data protection impact assessment for major gift fundraising.

Researching new prospects

Researching new potential donors can continue lawfully under GDPR. When you identify a new prospect through research, you will need to provide them with relevant information from your Privacy Notice at an appropriate time. There is some debate in interpreting GDPR on exactly when this notification needs to be given. While some lawyers make the case that this needs to be within one month as per GDPR Article 14 (3) (a), others argue that Article 14 (3) (b) (when you first communicate) OR (c) (before you share it with someone else) can also apply. Advice we have received suggests that when you first communicate with the data subject is a valid lawful position.

In deciding on the best approach for your organisation, you should also take into account Article 14 (5) (b) which states that you do not have to provide fair processing information if it will render impossible or seriously impair the achievement of the objectives of the processing. This means you may be in a position to argue that providing a newly researched donor with fair processing information before you have even made initial contact with them would seriously impair the purpose of the processing. A fuller description of this dilemma is available [here](#).

Due Diligence

At times, you will also need to undertake Due Diligence research. This should be conducted in line with your organisation's gift acceptance policy and to meet regulatory requirements. This can be conducted under Legitimate Interest but you may also refer to money laundering regulations and the requirements of the Charity Commission's [CC20 Guidance](#) to inform your legal basis for processing personal data for this purpose.

In summary, you currently do **not need** explicit **Consent** to undertake the fundraising research related activities. The combination of provision of **Fair Processing Information** (usually via a **Privacy Notice**) and your **Legitimate Interest** in undertaking the analysis and using the data can provide the legal basis for the processing. You need to ensure that you have undertaken and documented the Legitimate Interest balancing test to prove this.

Using third parties

Charities can still work with third parties and must ensure that a data contract exists between them – one that specifies that the third party will **only** use the data for the purpose they are engaged for, that the data will be held securely and won't be sold on or reused for another purpose.

The type of data processing that the third party undertakes for you needs to be specified in your **Privacy Notice**.

Other considerations

Apart from the Data Protection Act 1998 and GDPR, you should **also** consider the impact of:

- The Privacy and Electronic Communications (EC Directive) Regulations 2003
- The Freedom of Information Act 2000 (or the Freedom of Information (Scotland) Act 2002 in Scotland)
- European Convention on Human Rights (ECHR) – in particular, Article 8
- The Charities Act 2016
- Fundraising Code of Practice
- CC20 guidance from the Charity Commission

Data Protection Impact Assessment

Prospecting for Gold recommends that you undertake a **Data Protection Impact Assessment** for your major gifts programme to ensure that you are not only compliant with the law as it stands now, but also with the position on 25 May 2018 following implementation of GDPR. If completed thoroughly, this will clearly identify any areas where you may not be compliant now or in the future and help you

understand how to amend your practices to achieve compliance. Prospecting for Gold's consultants can assist you in preparing your Data Protection Impact Assessment.

Things you should do now

1. Undertake a **Data Protection Impact Assessment** to consider the wider impact of your systems and processes. It should reflect the requirements of GDPR.
2. Ensure that the way you process personal information is legal. **Document** the reasons why.
3. Document your **Legitimate Interest** to process data in a certain way; include your assessment of how your supporters are impacted by your actions.
4. Review and update your **Privacy Notice** so that it accurately reflects how you process personal information (this may include personal data other than that relating to your supporters). Ensure it refers to your use of Legitimate Interest where you rely on this as your lawful basis for processing data.
5. Consider what **Consent** you need to capture and ensure you have a robust system for gaining and recording consent that is given.
6. Adopt a **Privacy by Design** approach to ensure that privacy and data protection are considered in the early stages of any future project within your organisation.
7. **Review** your practices regularly and consider how the legal framework and current guidance may impact upon them.
8. You may also wish to seek legal advice from a relevant trustee or legal advisers.

Through all of this, don't forget to carry on fundraising! Getting the administrative processes in place will set you up well for a future of high quality, respectful relationship fundraising for your major gifts.

Our position

At Prospecting for Gold, over recent months we have continued to rigorously review and, where appropriate, update our procedures. We have undertaken a **Data Protection Impact Assessment** and assessed our compliance against the Data Protection Act and GDPR. We have undertaken our Legitimate Interest assessment and associated balancing test. A summary statement of our Legitimate Interest for prospect research is available in our [Privacy Notice](#).

We have taken specialist legal advice and been advised that our operations meet the regulatory requirements for data protection and that we have robust policies and procedures in place.

Get in touch

Prospecting for Gold are very experienced in managing day to day compliance with the Data Protection Act and other fundraising regulation. We are well-positioned to assist you with the challenges that you face in this area, including whether you should seek advice from a Data Protection legal specialist.

Please do get in touch and we will do our very best to help you with common sense, practical advice and guidance.

Contact: Kerry Rock, Director of Business Development, kerry@prospectingforgold.co.uk ;
tel: 07913 028195.

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