



## PROSPECTING FOR GOLD LTD.

### **Prospect Research, Wealth Screening and Data Protection - an update 18 months since GDPR**

It is now over 18 months since the General Data Protection Regulation (GDPR) came into operation. What has it meant for prospect research and wealth screening?

Wealth screening is not and never has been illegal. Nor is prospect research. What we have seen over the last 18 months is a wide range of not for profit organisations taking appropriate steps to ensure they conduct their research in a way that meets the requirements of the General Data Protection Regulation (GDPR) and Data Protection Act 2018 and adheres to best practice.

***What does this mean?*** In summary, for most this means a Data Protection Impact Assessment for major gifts research, a legitimate interest assessment for specific activities, updating privacy notices, communicating the updates and getting going!

A key to demonstrating compliance is accountability which means documenting what you do. This guide highlights key factors to consider and document when developing and implementing your prospect research and wealth screening activities.

### **Prospecting for Gold's position**

At Prospecting for Gold, we have rigorously reviewed and, where appropriate, updated our procedures. We annually review our **Data Protection Impact Assessment** which assesses our compliance against the data protection legislation. We have undertaken and annually review our Legitimate Interest Assessment and associated balancing test. A summary statement of our Legitimate Interest for prospect research is available in our [Privacy Notice](#).

Our client contract covers all relevant data protection requirements and provides recommendations to our clients on steps to inform their supporters of the use of our services.

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

## Data protection at that heart of best practice 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. Keeping Privacy by Design front and centre in your approach to research will help keep your activities lawful and enable you to build better relationships with your supporters.

Critical to building a strong relationship with supporters is clearly communicating 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?

Under the UK's Data Protection Act 2018 and the General Data Protection Regulation ((EU) 2016/679) (GDPR), personal data is information relating to an identifiable person. Identifiers may include 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.

Particular categories of data are classified as special category personal data. 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

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

- 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:

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:

*“Consent is one lawful basis for processing, but there are alternatives. Consent is not inherently better or more important than these alternatives. If consent is difficult, you should consider using an alternative”.*

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.”*

Make sure you understand the legal basis that you are going to rely on for research and wealth screening and document your decisions.

## 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 or larger societal benefits, but it 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 or disproportionate impact.

The ICO has published guidance on conducting a Legitimate Interest Assessment which can be accessed [here](#).

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

Our experience is that most organisations that are conducting prospect research, including wealth screening, are relying on Legitimate Interest.

The Guidance issued by the Institute of Fundraising (available [here](#)) and by CASE ([here](#)) provides guidance on using legitimate interest for research and wealth screening. The key questions to ask are:

- What activity do you want to do? What is the purpose of the processing?
- Is this processing necessary for that purpose? Have you considered other ways of achieving your objective?
- Have you got a legitimate interest taking into account the individual’s reasonable expectations?
- When you apply a balancing test, can you be confident that you are not overriding the individual’s rights?

Answering these questions can enable you to assess if the activity you wish to undertake can pass the legitimate interest test.

In conducting the assessment, you should look at both the positive and negative consequences of the processing. For example, the activity may enable you to raise funds and ensures that only the appropriate people are further researched or potentially asked for major gifts.

You do not need to eliminate all impact on the individual whose data you are processing. The focus is on ensuring there is no disproportionate impact. To quote the CASE guidance (page 4)

*“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.”*

## Prospect research and consent

Our experience over the last 18 months is that consent is **not** generally being used as the lawful basis for prospect research and wealth screening.

There are certain non-research 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.

The area where consent is most relevant to prospect research is around processing any special category data (see page 2 above). 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 – being clear about the research you conduct

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 objecting to any specific aspects of your processing, in this case prospect research activities.

You must ensure that your Privacy Notice reflects how your organisation uses personal data. It is useful to explain why you are using the information in a particular way so that your supporters understand why it is important. Be as detailed as you can, but make certain the final statement is clear and easy to understand and provides the opportunity to object to specific processing activities. 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 subject’s rights including to withdraw consent to processing and the right to object to or opt out of specific processing activities
- 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

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?

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 publicly 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 call us on XXXXX.*

## **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 understand the potential impact of your activities on your data subjects so that you can develop and implement research practices which are compliant with data protection requirements. If completed thoroughly, this will clearly identify any areas which you may feel are high risk and enable you to mitigate these and amend your practices. Prospecting for Gold's consultants can assist you in preparing your Data Protection Impact Assessment.

## 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.

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. This will affect which supporters you may decide to include in your wealth screening process. You should undertake a legitimate interest assessment and document the outcome to ensure that it is valid to proceed on this basis.

Your **Privacy Notice** must clearly state that you use personal data in this way, as per the example above. It should give people the opportunity to object to the processing. We suggest you mention by name any organisations that will conduct wealth screening for you.

## Desk research

Desk research continues to be a cornerstone of major gift fundraising. Individuals of the calibre of major donors are busy people and expect you to have done your homework. Not having done so will reflect poorly on you and your organisation.

For all forms of desk research, we suggest you document the information required at each decision point, how long you will retain the data and include this in your data protection impact assessment for major gift fundraising.

### **Using publicly accessible information**

A great deal has been said about the use of publicly accessible information for research purposes. It can be used, but you must take into account how the sources 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 newspaper or online. We have noticed that some organisations are also choosing to only use data sources that are not behind (expensive) paywalls.

At Prospecting for Gold, we use the following hierarchy for assessing the robustness of publicly accessible sources of information:

1. Public Registers; including Companies House Data, Electoral Commission (Political Donations), Electoral Roll (Open Register), FCA (Financial Services Register), The Law Society, Land Registry. These have a legal requirement to be present and up to date.
2. Trade & Industry References; Professional directories which are both self-disclosed and maintained regularly, Charities Commission website.
3. UK Reference Volumes; including Who's Who, Debrett's People of Today, Debrett's Peerage, City of London Livery Company information, Trustfunding.org.uk. Self-disclosed but may be updated less frequently.
4. Print and Broadcast Media; including quality newspapers (The Telegraph, The Times and Sunday Times, City AM) magazines, rich lists.
5. Internet; including general google searches, company websites, online-only articles, social media such as LinkedIn and justgiving.com.

Remember, your **Privacy Notice** should make it clear that you may undertake this type of research. Include the fact that you may review publicly available information about an individual to help you gain a better understanding of 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. In doing this 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.

### ***Researching new prospects***

Researching new potential donors can be undertaken lawfully. 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. The GDPR provides three scenarios for the timing of this information: Article 14 (3) (a) within one month; Article 14 (3) (b) when you first communicate OR Article 14 (3) (c) before you share it with someone else.

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. Disproportionate effort can also be taken into account. 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.

Advice we have received suggests that when you first communicate with the data subject is a valid lawful position taking into account the need to be proportionate and not render impossible the purpose of the processing. The CASE guidance provides further helpful advice.

### ***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.

## **Using third parties**

Charities can still work with third parties for prospect research and screening. You must ensure that a data processing contract specifies the nature of the processing and ensures 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

## Things you should do to support your prospect research activities

1. Undertake a **Data Protection Impact Assessment** around the research that you need to support your major gifts programme.
2. Undertake a Legitimate Interest Assessment and document your **Legitimate Interest** to use data for prospect research; include your assessment of how your supporters are impacted by your actions.
3. 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. We recommend reviewing your Privacy Notice every 12 months to ensure you adequately describe the ways you use personal data across all aspects of your organisation.
4. Consider what **Consent** you need to capture and ensure you have a robust system for gaining and recording consent that is given.
5. 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.
6. **Review** your practices regularly and consider how the legal framework and current guidance may impact upon them.
7. 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.

## Get in touch

Prospecting for Gold are very experienced in managing day to day compliance with data protection and other fundraising regulations. 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, [kerry@prospectingforgold.co.uk](mailto:kerry@prospectingforgold.co.uk); tel: 07913 028195.

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