

# Data Protection AROPS

**Louise Bennett**  
**Director of Content**  
**IDPE**

Copyright © 2017 IDPE

Enabling every school to develop a culture of giving so that they can  
provide outstanding educational opportunities

[www.idpe.org.uk](http://www.idpe.org.uk)

Good afternoon, I am Lou Bennett, Director of Content for IDPE. IDPE is the leading membership organisation for schools raising funds – we help schools to fundraise effectively. Many of you in this room represent schools which are members of IDPE and are actively raising funds.

For the benefit of everyone here today will those of you who represent schools with active development offices please raise their hands?

And those of you at schools which have yet to start fundraising with no dedicated development operation?

## Direct Marketing



The ICO have issued guidance that states *'advertising or marketing material' includes any material which 'promotes the aims and objectives of the organisation, not just about promoting products or services.'*

Copyright © 2017 IDPE

Enabling every school to develop a culture of giving so that they can provide outstanding educational opportunities

[www.idpe.org.uk](http://www.idpe.org.uk)

What counts as direct marketing? - pretty much everything we do from a marketing, admissions and development perspective!

The GDPR applies whenever you collect and use an individual's personal data – including their name, contact details, and any other information about them – this includes even if you are just holding information about them on your database, this is effectively processing personal data – and it applies if you are writing to them, e-mailing them or phoning them.

Under current data protection regulation, you are required to inform individuals as to how you will process their personal data, to be transparent – so your privacy notice will cover who you are, what data you collect, what you use it for and with whom it is shared, and as a data controller this information should be in your privacy notice, and should be readily available to individuals – ICO suggest a layered approach, i.e. providing this at different times, in different communications.

GDPR introduces additional requirements around transparency, you need to tell individuals about the legal basis for processing their personal information and include for example information about the rights of the individual as outlined before, i.e. right to erasure, right to object, etc.

So what are the legal basis for processing personal information – essentially two options for schools, consent OR legitimate interests.

## Consent



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

Copyright © 2017 IDPE

Enabling every school to develop a culture of giving so that they can provide outstanding educational opportunities

[www.idpe.org.uk](http://www.idpe.org.uk)

Consent by opt out (i.e. the individual hasn’t ticked the box to opt out) complies with current law.

Under current legislation:

Consent must be "**freely given**" it must be a genuine choice.

**“Specific”** ...individual tick boxes to receive emails, newsletter, postal mailings, telephone calls, SMS

**“Informed”** ...be transparent about what you are going to do with the personal data.

Moving forward the GDPR sets a high standard for consent - it is clearer that an indication of consent must be **“unambiguous”** and involve a **“clear affirmative action”**- no more pre-ticked boxes.

The ICO draft guidance also suggests a more granular approach to ‘consent’, so being **specific** about what different ways your personal data will be used, for development, alumni activities, school events, etc. If relying on consent from an individual in order to process their information need to explain *what* you are asking them to agree to and *why*.

## Consent



- Separate from other Terms and Conditions, and not a condition of signing up to a service
- Clear records of consent must be kept
- Specific right to withdraw consent
- Review your existing consents
- Consent is needed for certain communication
- Consent is not a one off

Copyright © 2017 IDPE

Enabling every school to develop a culture of giving so that they can provide outstanding educational opportunities

[www.idpe.org.uk](http://www.idpe.org.uk)

Other changes under GDPR for consent include:

Consent should be separate from other terms and conditions – may impact on for example parent contracts or leavers' forms? It should not generally be a precondition of signing up to a service.

You must keep clear records to demonstrate consent – can be a verbal consent but need to keep clear record of what was agreed to and when.

The GDPR gives a specific right to withdraw consent. You need to tell people about their right to withdraw, and offer them easy ways to withdraw consent at any time.

You must consider what consent you have in place for your current database – is it sufficient to continue to contact individuals on your database with the existing consent after 25 May next year?

Privacy and electronic communications regulation (PECR) place obligations on organisations which go beyond DPA/GDPR requirements around certain electronic communication channels. Will need consent for online communications.

Consent should be renewed – individuals' interests change, and therefore acquiring consent once is not enough, charities are looking at renewing consent every 2-3 years, although our discussions with ICO have discussed looking at lifestages of alumni and/or parents.

## Legitimate Interests



“..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.**”

Copyright © 2017 IDPE

Enabling every school to develop a culture of giving so that they can provide outstanding educational opportunities

[www.idpe.org.uk](http://www.idpe.org.uk)

There may be circumstances when a school may have a legitimate interest to send direct marketing material without consent (as long as there is an opt out option). Essentially your school will need to consider whether an individual would reasonably expect their personal data to be used in this way and whether your school could demonstrate that they are processing personal data within these reasonable expectations.

The key here is to decide whether you school's legitimate interests can be overridden by the rights of the people whose data you're processing? How intrusive is your processing? How unexpected is your processing?

## Legal basis for “fair and lawful processing”

- Legitimate Interests
- Consent



Copyright © 2017 IDPE

Enabling every school to develop a culture of giving so that they can  
provide outstanding educational opportunities

[www.idpe.org.uk](http://www.idpe.org.uk)

Which legal basis should you use for processing personal data? Key here is to consider reasonable expectations of your alumni or donors and how you will evidence how you came to the decision, i.e. accountability.

Legitimate interests may be seen as an attractive ‘fall back’ but under GDPR it may be more risky – you must consider the balance between your interests (or relevant 3<sup>rd</sup> party) and the rights of an individual **and document** the process, especially where your decision affects children.

The more intrusive the activity the harder it is to rely on legitimate interests, e.g. sending a Christmas card to prospective parents may be less intrusive than sharing details of parents with a third party wealth screening company.

Individuals have the right to object at any time to processing of their personal data based upon legitimate interests grounds.

## Privacy notices



- Under GDPR privacy information must be:
- concise, transparent, intelligible and easily accessible
  - written in clear and plain language, **particularly if addressed to a child**
  - increase in provision of information including **right to withdraw consent at any time**

Copyright © 2017 IDPE

Enabling every school to develop a culture of giving so that they can provide outstanding educational opportunities

[www.idpe.org.uk](http://www.idpe.org.uk)

Under current data protection legislation, schools are legally required to provide certain minimum information to individuals (e.g. staff, pupils and parents) about how their personal data is processed. Commonly provided through a Privacy Notice:

- who you are
- what you are going to do with their information
- who it will be shared with
- any extra information you need to give individuals to enable fair processing of the info e.g. if an individual is unlikely to know that you use their information for a particular purpose such as sharing info with a fundraising organisation

Under GDPR, the list of info which has to be provided will increase (emphasis on making privacy notices understandable and accessible). Some mandatory information will always have to be communicated whilst other info need only be provided in specific cases e.g. if a school intends to process personal data for different purposes than that at the time of collection, for example wealth screening. The privacy notice must also be provided in a concise, transparent, intelligible and easily accessible way AND written in clear and plain language, particularly if addressed to a child.

- School identity and contact details
- Purpose and legal basis for processing of data
- Who you share the personal data with – so any third party organisations
- Transfers outside EU and how data is protected - unlikely to apply
- Retention period or criteria used to set this – how long will you keep personal data
- Tell individuals' all their legal rights e.g. the right to withdraw their consent to their data being used for marketing or for school fundraising
- Right to complain to ICO

Also consider how you will obtain consent or inform individuals following any changes to your privacy notice, and how individuals can revoke this consent if they do not agree with these changes. It should also be noted that privacy information must be provided within a reasonable period of having obtained any personal data (within one month). If the data is being used to communicate with the individual, at the latest, when the first communication takes place; or if disclosure to another recipient is envisaged, at the latest, before the data are disclosed.

## Wealth screening and data matching



In December 2016, the ICO issued civil monetary penalty notices to BHF and RSPCA for:

- disclosure of personal data under the 'Reciprocate' scheme
- the use of wealth research companies to conduct wealth analysis to analyse the financial status of potential donors
- data-matching and tele-matching

ICO issued civil monetary penalty notices to a further 11 charities in April this year.

A statement was issued by the Charity Commission and the Fundraising Regulator which orders charities to:

***“immediately cease certain data handling practices unless the charity has explicit consent”***

Copyright © 2017 IDPE

Enabling every school to develop a culture of giving so that they can provide outstanding educational opportunities

[www.idpe.org.uk](http://www.idpe.org.uk)

Wealth screening is building up a picture of how wealthy someone is. Data matching is obtaining personal data from other sources in order to “fill in the blanks” for example requesting phone numbers from a tele-matching company.

The ICO has recently fined several charities for essentially lack of transparency with their donors.

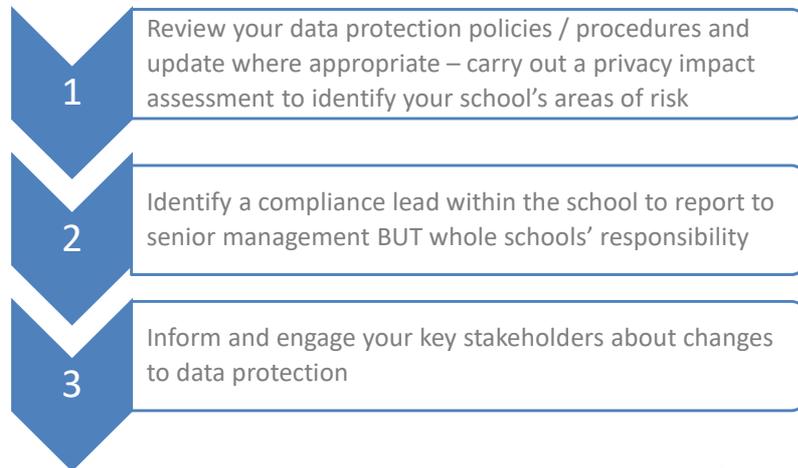
In the cases above, the questions the ICO asked were:

- Would donors have reasonably expected their personal data to be used in this way
- have the individuals given consent? (for this specifically to take place)
- was personal data used consistently with the charity’s fair processing notices?

The ICO found that this was not the case. The ICO do not ban wealth screening or data matching, but charities and schools cannot carry out these activities without consent, it is as the Charity Commission states crucial an organisation has explicit consent.

With data matching, it is also not acceptable to justify this with a need to keep personal data up-to-date.

## What do schools need to do now?



Copyright © 2017 IDPE

Enabling every school to develop a culture of giving so that they can provide outstanding educational opportunities

[www.idpe.org.uk](http://www.idpe.org.uk)

### What do schools need to do now?

It is important for your school as a whole to become familiar with current data protection legislation and the ICO’s current guidance and practice and to review where your school is at in terms of data protection, in particular considering your data protection policies and procedures, consent, privacy notices (considering the need to make these child friendly), terms and conditions and parental consents/contracts. Carry out a privacy impact assessment to identify your areas of risk – consider what information your school holds, where it is held, who is responsible for this information, how you are processing data, under what lawful basis and **how** you evidence these decisions. It is important to demonstrate your school’s commitment to data protection best practice and it may be that you need to seek legal advice.

It is the whole school’s responsibility to manage data protection, so do discuss this with your senior management team, it is important to keep everyone informed and that ownership of this is shared. Identify a compliance lead, but work together.

### Finally, keep your stakeholders informed and engaged

All schools need to inform and engage with key stakeholders about the changes to data protection legislation, e.g. in alumni magazine, back of letter from the head to parents, etc. If your school has a development office step up stewardship of your alumni and donors. This is an opportunity to evaluate communications and processes and to explore new ways of networking and developing stronger relationships with your parents, alumni and other key stakeholders.

Whilst we still do not have all the answers about the new GDPR, the ICO have been clear it is important to be proactive now. will involve by being proactive now.

## Further reading ...



### ICO guidance

- 12 steps
- Overview of the GDPR
- Privacy notices code of practice
- Draft guidance on consent

[ico.org.uk/for-organisations/data-protection-reform](http://ico.org.uk/for-organisations/data-protection-reform)

**IDPE** – sign up for our e-newsletter and receive regular updates

**Fundraising Regulator** – Personal information and fundraising: consent, purpose and transparency

**Institute of Fundraising** – launched a new guide

**Charity Commission** – Charity fundraising: a guide to trustee duties (CC20)

Copyright © 2017 IDPE

Enabling every school to develop a culture of giving so that they can provide outstanding educational opportunities

[www.idpe.org.uk](http://www.idpe.org.uk)

Whilst GDPR comes in 25 May 2018, guidance is shifting constantly. We have yet to receive final guidance from the ICO on GDPR consent and they are now considering guidance on legitimate interests later this year. It is important to recognise that any guidance is subject to further potential changes.

Schools have a 12-month lead in now to get their data processing ready for GDPR by May 2018. The transition will be easier if schools already adopt good data protection under the current law and start reviewing how they manage personal data now in readiness for next year.