

More

An update on Data Protection

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Fundraising and marketing

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- Changing regulatory landscape and significant uncertainty:
 - ICO fines
 - The ICO's approach to fundraising generally
 - Impact of the GDPR
- What reflects good practice now may not be so in six months time

What counts as marketing?

- Promoting the aims and ideals of an organisation, does not only cover selling goods or services or asking for donations
- Examples of marketing:
 - adverts for fundraising events;
 - requests for funds;
 - requests for other support and calls to action; and
 - communications with alumni to keep them in touch with the work of the school.

- Individuals need to be told: Who you are; what data is collected; what it is used for; and with whom it is shared (the privacy notice requirement)
- Duty to provide or make “readily available”. Using a layered approach
- Should the fundraising privacy notice be included as a standalone document or as part of a wider privacy notice?
- GDPR introduces additional requirements around the privacy notice, e.g. tell people about the legal basis for processing and right to complain to the ICO

Two options:

1. Legitimate interests “The processing is necessary for the legitimate interests pursued by the data controller or by a third party to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
2. Consent.

An example: Use of photographs and videos for marketing: Less
privacy intrusive - rely on privacy notice wording plus legitimate interests.
More privacy intrusive - only with consent

- Consent must be:
 - Freely given
 - Specific
 - Informed
 - Unambiguous (GPDR)
- Children and data rights

- Consent generally required for more privacy intrusive activities
- The Privacy and Electronic Communications Regulations (PECR) place obligations on organisations which go beyond the DPA / GDPR requirements around certain electronic communication channels
- Consider (a) email; (b) text; (c) telephone; (d) post; (e) social media; and (f) viral marketing
- Exceptions: (a) Soft opt in for email; (b) business to business emails; and (c) solicited marketing: “Please email me a copy of the prospectus”
- Even if consent not required still mention in your privacy notice

- Consent for different purposes (asking for donations, informing about events, general updates etc.)
- Combine privacy notice and consent wording:
 - Would set out how personal data is used in order to meet the privacy notice requirement as described above plus one set of tick boxes for marketing channels and another for different purposes
 - Use the combined wording whenever appropriate, e.g. on leavers forms, online etc.

- Might not be able to evidence compliance (e.g. privacy notice and consent) for data already on database
- Options include:
 - Cease marketing until the appropriate privacy notice / consents are in place
 - Send 2 or 3 emails inviting them to consent then nothing further if no response or if they say no
 - Continue as before but take all reasonable steps to obtain consent (e.g. through a form which must be returned or an alumni portal)
- Risks associated with the second and third options

- Consider using an online platform to allow individuals to easily manage their preferences
- Online platforms are useful for:
 - discharging the privacy notice requirement and obtaining the appropriate consents;
 - ensuring that consents are refreshed (ICO suggests two years as a starting point); and
 - allowing individuals to easily manage their preferences thereby reducing the risks of complaints

- Wealth screening: Using personal data to build up a picture of how wealthy someone is
- Inform for wealth screening for activities “such as segmenting databases by reference to postcodes or other information you already have”
- Consent for wealth screening for “more intrusive activities such as profiling individuals, particularly where this involves getting more information that the individual has not given you, either directly or via third party companies”
- ICO views but untested in Court

- Data matching: obtaining personal data from other sources in order to “fill in the blanks”
- The ICO’s view appears to be that it is difficult for this to be compliant in the absence of consent
- Data matching cannot be used as a justification for keeping personal data up-to-date
- As with wealth screening, the ICO’s position is untested in court

- Examples include alumni associations and charitable foundations set up to support the school
- Are they a data controller in their own right? If so, should they register as such with the ICO?
- Does the privacy notice / consent wording cover use by both the school and the association?
- Data sharing agreements – helps to establish who “owns” the data (i.e. who are the data controller(s)) and manage issues such as access and information security

- Ensure there is a written contract in place which:
 - contains provisions requiring the contractor to protect personal data to the standard required by the DPA; and
 - requires contractor to only acting on school's instructions and any provides that personal data must only be used for the purposes of the school
- Should also carry out due diligence on the contractor
- Databases provided by third parties is a risk in light of recent ICO action

- Subject to further implementation and ICO guidance
- Fines increasing from £500K under the DPA to €20 million
- Additional rights such as the “right to be forgotten” and the right to data portability
- Agreement with data processors must contain additional wording. This is relevant to suppliers and contractors
- Data sharing agreement mandatory where the data controllers “jointly determine” how personal data is used
- Got to “keep a record of compliance” – so evidence consents



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