

CONNECTING PEOPLE TO CAUSES:

A PRACTICAL GUIDE TO FUNDRAISING RESEARCH

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INTRODUCTION

Can charities use publicly available information to help them better understand their donors and their likely interests and preferences? Is it fair for an organisation to find out more about an individual than they've told you themselves? Are charities allowed to ask richer people to give more? What are the legal bases for processing data in this way, and how can you balance an organisation's legitimate interest with the privacy rights and expectations of individuals?

All of these questions (and more!) have been routinely asked and the answers much debated in the fundraising community. We know that fundraisers and fundraising researchers want to do the right thing and ensure that all of their work is done according to the law and of a high standard. But following the Information Commissioner's Office (ICO) issuing fines to a number of charities for breaches of Data Protection law in December 2016–February 2017, some fundraising practices were called into question. Add to the mix the fact that the law is changing with the introduction of the General Data Protection Regulation (GDPR) coming into force in May 2018, it's not surprising that many fundraisers and charities are unsure of what they can do and how they can do it.

This guide aims to provide practical advice to the fundraising community on how they can ensure that their prospect research and major donor fundraising practices are fair and lawful under GDPR, and give people the confidence and support to be able to carry out excellent fundraising that works for both charities and donors.

“My practice is to go first to those who know the cause and believe in it, and ask them to give as generously as possible. When they have done so, I go next to those who may be presumed to have a favourable opinion and to be disposed to listening, and secure their adherence. Lastly I go to those who know little of the matter or have no predilection for it, and influence them by presentation of the names of those who have already given. Do not neglect those who you are sure will give nothing, for in some of them you will be mistaken.”

Benjamin Franklin

What is prospect research?

Prospect research is the identification of, and subsequent research into, prospective major donors and influencers – individuals, trusts and companies – with a view to maximising their support for your organisation.

It involves the gathering and analysis of biographical, financial, corporate and philanthropic information from a wide variety of sources, both publicly available and those unique to your organisation (such as your supporter database).

It is used within major donor fundraising to help maximise the potential of a major donor by gathering and managing a variety of information which the fundraiser can use to make their relationship with the individual as rewarding as possible to both the individual and the organisation.

ABOUT THIS GUIDE

Trying to apply the principles set out in data protection legislation to areas of fundraising practice can seem tricky. Concepts such as 'reasonable expectation', 'fairness', or 'intrusion' are all subjective and open to interpretation. This is because data protection legislation is 'principles based', and compliance means respecting those rights and acting fairly. The ICO's enforcement action give us some idea of how the ICO interpret these factors, but the area of fundraising research does not easily lend itself to simple and straightforward guidance: often there won't be a clear 'yes or no' answer. What might be intrusive to one group of people could be entirely unremarkable to another.

This guide does not try to give you definitive answers and tell you what you can or can't do in every situation – that will always depend on the particular context and circumstance of the charity and the activity.

Instead, our approach is to give fundraisers an understanding of the law and an outline of the process to go through to help guide your work. The aim is not to give you the answer, but to help you be able to come to the right answers for your organisations.

It is important that you document this process – just like the GCSE Maths teacher said – “you need to show your workings.” This will help you evidence that you are being accountable and demonstrate good governance in being aware of and working compliantly with the principles of GDPR. The accountability principle is a key part of GDPR and being accountable will be a specific requirement which will include accurate record keeping.

We also hope that by going through this process, charities and fundraisers will feel more confident and assured about how to go about their work, will help organisations set strategy and plan activity, as well as ensuring that they are asking the right questions and complying with their responsibilities. Charities will always need to make a decision and judgement themselves – we hope that this guide provides the support needed to help them do that.

The information in this publication is necessarily of a general nature, the guidance is not a substitute for legal advice and specific advice should be sought for specific situations. The publication reflects interpretation of the incoming law and guidance as at February 2018 and we advise all fundraisers and charities to be aware of the ICO guidance and to review it regularly.

At a glance: key steps to fundraising research

- Understand the different legal bases for processing data and decide on the most appropriate one to use – there are six, but the two most relevant for fundraising will be:
 - a. Consent = “here’s what we’d like to do with your data, is that OK?”
 - b. Legitimate Interest = “Here’s what we already do / would like to do with your data. Please let us know if you’d prefer us not to.”
- If you are going to rely on your legitimate interest, review the checklist from the ICO to ensure the processing will be fair and lawful including carrying out a balancing exercise to ensure your activity doesn’t override individual privacy rights.
- Undertake a Data Privacy Impact Assessment (DPIA) on major areas of work that you’re thinking of doing to assess the impact on individuals’ privacy rights.
- Keep your privacy notice accurate and up to date, with clear information on how individual data is going to be used and make sure that people are provided with the information as soon as reasonable. Remember it can be provided through a layered approach (which includes your statement to individuals, and your external facing “privacy policy”)
- If you are researching people new to your organisation (who will not have seen your privacy notice), ensure you inform them of the types of data you have stored when you first make contact (or within 30 days, whichever is the sooner) and inform them of their privacy rights including the right to object.
- Discuss with senior management/Board of trustees where appropriate to ensure a whole-organisation approach.
- Only do what you said you would do with an individual’s data (or things that will be within the reasonable expectations of individuals based on what you’ve told them).
- Once research is completed, make sure you keep it securely and for no longer than is necessary – decide on your data retention policy and follow it.
- Review the impact and effect, gather evidence, to inform your practice and future decisions – this includes the positive impact of your research and the experience of supporters.

SECTION ONE:
WHAT IS
PROSPECT
RESEARCH AND
MAJOR DONOR
FUNDRAISING
ALL ABOUT?

Role of major donor fundraising – why does it work (for charities and for donors).

Background

Major gift fundraising is usually very cost-effective, it can raise a lot of money, and it often brings valuable volunteering wisdom to a charity.

Major gifts are often characterised as a way of raising money for capital or one-off appeals, but this is not invariably true. Some charities have established high-level individual giving programmes which receive unrestricted resources. Regardless of purpose, the most successful major gift fundraising programmes develop long-term relationships with their donors who often become a charity's most passionate advocates.

The growth of major gift fundraising from individuals has been most marked in the University sector, with over £400m raised in 2015/16, 40% of the total raised across the sector. Arts organisations have enjoyed similar success. In 2013 Fundraising Directors identified Major Gift fundraising as one of the big growth areas, with 95% expecting to see an increase in major gift income¹.

What is a major gift?

There is no single amount which defines a major gift. To a charity raising £1,000 each year, a gift of £250 would almost undoubtedly be a major gift, although most charities would set a threshold higher than this. However, a 2013 report for the Institute of Fundraising found that 89% of charities would regard a gift of £10,000 or more as a major gift².

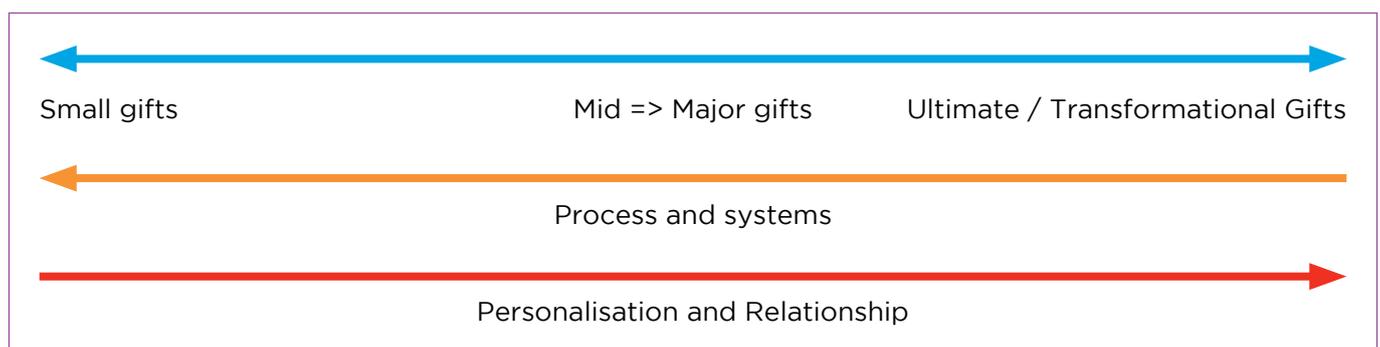
Why are these gifts important?

Major gifts can have a significant impact on an organisation. Whether it is a high profile gift or one made very quietly, these gifts often enable a charity to make a step change. And against a background where lower level individual giving is under considerable pressure, this income stream is often dependent on a different economic cycle which helps a charity's resilience.

How does major gift fundraising work?

David Dunlop, who was for many years Senior Development Officer at Cornell University and one of the most successful major gifts fundraisers of the twentieth century, described a spectrum of gifts received by a charity³.

He characterised smaller gifts as the result of fundraising which is 90% process and 10% personal interaction.



By contrast, the largest, most transformational, gifts are usually the result of less than 10% process and more than 90% personal interaction with the charity or cause. He described the very largest gifts as most likely to happen because the CEO or Chair of the organisation was sharing her dreams with an existing donor who had already given generously. This is highly personalised fundraising.

In every case the manner of interaction, the fundraising approach, time taken to agree that a gift will be made, the level of negotiation required and feedback expected will significantly vary from donor to donor. And almost invariably there will have been extensive one to-one personal interaction between staff and/or volunteers working for the charity and the donor. Even in the rare case that a major donor emerges out of the blue, the response from the charity and ongoing relationship development is likely to be highly personalised.

There is another factor present in much major giving, although not all. Deciding to make a very large gift is rarely done on the spur-of-the-moment – it is usually the result of analysis which is both emotional and intellectual. While an emotional connection with the charity is almost always present, it is unlikely that someone would make a major gift without some amount of detached analysis as well. Few people obtain and maintain significant wealth without being careful, and we should not expect them to be any less careful when it comes to giving. This is important because it means that the use of emotional messages alone is far less likely to be successful in major gift fundraising than in individual giving. For this reason this mode of fundraising carries a very low risk of emotionally pressuring people.

How do donors benefit from giving?

There is an extensive research in a variety of academic disciplines on the benefit which accrues to donors when they give, irrespective of the size of the gifts⁴. Countless major

donors to all kinds of causes have said that giving away their wealth has been amongst the most satisfying things they have ever done. Many ultra-wealthy donors are now slipping down the wealth rankings simply because of their philanthropy⁵, while others are encouraged and enabled by their wealth managers and a host of NGOs (for example, Charities Aid Foundation and the 46 members of the UK Community Foundations Network) to discover the joy of giving⁶.

While some say that donors will give major gifts to be able to benefit from tax relief, it is almost impossible to save money by making lawful charitable gifts. Former Chancellor George Osborne learned this when he proposed a limit on tax relief on charitable taxation⁷. In addition there are strict limits on the financial benefit someone may receive in return for a gift subject to tax relief. And for every donor who wants to have their name on a building there are countless more who shun the publicity, and for whom any recognition which is agreed is to encourage others rather than to draw attention to themselves. Major donors are more likely to describe themselves as more fulfilled personally, socially and even emotionally having given a large gift.

nfpSynergy's October 2017 report on major giving⁸ found that Theresa Lloyd's earlier research on donor motivation was still valid. Interlocking influences that drive giving amongst the wealthy were **belief in the cause, being a catalyst for change, self-actualisation, duty and responsibility and relationships**⁹.

This context is important because it underlines two important principles about major gift fundraising:

- Firstly, the transaction is entirely optional. It is unlikely any charity would ever succeed in pressurising someone into making a major gift
- Secondly, the transaction is highly personal, and a “boilerplate” approach is unlikely to be successful for the charity or satisfying for the donor.

What does Major Gift Fundraising involve?

Writers on major gift fundraising have observed a number of steps (usually somewhere between 5 and 7) which are usually seen in the solicitation and stewardship of a large gift. We use 5 in this guidance. Each step appears below, together with typical (but not exhaustive) details of the kinds of data processing carried out.

What data is used in major donor fundraising for the purposes of prospect research?

As we have demonstrated above, the major gift fundraising process is intensely personal. But to start with, although sometimes individuals will seek out organisations themselves, someone who has the capacity and inclination to make a gift often needs to be identified and approached by

#	Step	Data Processing
1	Identification of a person who might give at a major gift level	<ul style="list-style-type: none"> Looking into a charity's own database to identify supporters who have been more generous than average in the past Recommendations from volunteers Research using publicly available data to identify those with capacity and inclination to give
2	Using prospect research to understand more about a potential donor's affinity, propensity and capacity to your organisation, and synthesising this into an action plan	<ul style="list-style-type: none"> Charities have to safeguard reputation and therefore due diligence is needed Charities seek to use resources efficiently and be respectful towards their donors. (NB They do not wish to approach inappropriately those not capable of providing a high level of support or the vulnerable.) Donors and potential donors expect charities to prepare properly prior to being contacted¹⁰ Donors have a better experience and give more if they are asked to support projects in which they are interested
3	Contacting the person and giving them opportunities to become involved with the charity	<ul style="list-style-type: none"> Use of contact details to get in touch, by charity staff or volunteers Charities using publicly available information and resources to conduct prospect research Delivery of privacy notice using layered approach and giving individuals an opportunity to object Ongoing contact, with details being recorded as appropriate while continuing to check internal and external suppression lists
4	At the right moment, asking for and negotiating a gift	<ul style="list-style-type: none"> Preparation of a proposal and negotiation over the gift Possible contact with donor's professional advisors and preparation of formal documentation
5	Providing appropriate follow-up and stewardship	<ul style="list-style-type: none"> Ongoing data processing to ensure donor receives excellent stewardship Discussions about deeper involvement to the mutual benefit of the charity and donor

the organisation in the first instance. It would be folly to mail every existing donor asking whether they could make a gift of more than £10,000 because it puts the money at the centre of the interaction not the cause (and it would feel odd to most recipients!). Some stratification is needed.

We are not suggesting that the respect a charity shows for someone who gives £5 should be any different from someone who gives £500,000. But the fundraising approach needs to be different – one size doesn't fit all. And research from Dr Beth Breeze, Director of the Centre for Philanthropy, at the University of Kent's School of Social Policy, Sociology and Social Research, shows that the most common reason that wealthier donors don't give more to charity is that they are not asked to do so!

For all these reasons, research to identify potential donors is desirable and necessary, for both the charity and the potential donor, most especially where it concentrates on a combination of financial information and perceived interest in, and identification with the cause.

Where does this data come from?

From supporters themselves

If the charity has an existing supporter-base then it's an obvious next step to ask who from amongst that supporter base might be able to give a larger than average gift. There will already be some clues on the database. If someone has already given a gift of £1,000 then you know they are capable of making one! Some charities have asked their supporters questions which can reveal the extent of their interest and financial ability to support the cause. For years many universities have asked alumni to tick boxes on questionnaires based on salary band.

From friends & volunteers

Often charities start their major gift fundraising with a small group of those who are willing and able to give at a major gift level and to ask those they know to become involved too. So here the names of potential donors come from their friends and business associates.

From the public domain

Whilst the printing press undoubtedly increased the quantity and circulation, personal data has been in the public domain since long before the printed word. The silicon chip multiplied the quantity of this data, while the internet and the consequent social media explosion and the increased move towards democratising data has amplified this yet further. GDPR is at least in part a response to this changing landscape of who holds data on whom, who has access to it and how control is exercised over it.

Theoretically, it would be possible for charities to ignore all of this and confine themselves to using data given to them directly. But the result would be neither desirable or efficient for charities and would be very unlikely to meet the needs and interests of individuals involved in major giving or who may want to give larger donations in the future.

In the early days of major gift fundraising in the UK, charities would buy copies of Who's Who, tear it up into chunks, and then get volunteers to go through sections of the charity card file which corresponded to their chunk of Who's Who to see who was listed. Much the same thing happened when the Sunday Times Rich List was first published in 1989.

Computers in every office and the wide availability of data has rendered the "Who's Who" method redundant but the principle remains the same. There is data in the public domain which can help charities focus their major gift fundraising efforts effectively.

Practical examples of data use

Below are a few examples of how charities may use and process data for fundraising purposes under legitimate interest or consent. We set out the potential grounds for lawful processing under each example, which are explained more fully later in the document. As well as looking at the grounds for processing, it is important to note that for non-intrusive profiling work and segmentation to take place there should

be mention of it in the charity's privacy notice which will have previously been sent to or brought to the attention of the individuals on the database.

1. Segmentation

Many organisations segment their supporter databases to look for giving patterns amongst their current supporters. For example, a charity has a list of donors and discovers a pattern – that people who live in a certain cluster of postcodes tend to give more often and to give larger gifts than average. It decides to organise a donor cultivation event in the area, and invites the 50 people who have given the most over the last three years to the event.

Grounds for lawful processing: Consent or Legitimate Interest subject to balancing test.

2. Finding new supporters

An environmental charity is fundraising for its work on encouraging a switch to sustainable energy and food production. It has a small team of volunteers who form a fundraising board. They are a mixture of major donors, a trustee of an environmental grant making trust and a leading environmental journalist.

The board have a small list of potential donors that they have assembled from those they are in touch with. This has been augmented by another group, assembled from donor data, of those who've given over £10,000 to the charity before. The volunteers, at their first meeting each year, consider the charity's privacy statement and notice, and the volunteers understand that while acting for the charity they must ensure their activities fit within the policy and should not disclose donor or potential donor to anyone outside the charity.

The size of the charity's ambition is greater than the existing potential donor pool can support. New potential donors are needed. Their prospect researcher carries out a series of searches of newspaper articles about environmental sustainability, looking for

indications of interest on the part of wealthy people. She puts together a list of 60 or so extra potential donors as a result. She wants to know who has been vocal and public about their commitment to sustainability. Some are already involved with other charities, while others have taken to Twitter to campaign for more sustainable economic and agricultural activity.

The list, together with some brief notes on each person, is presented to the Board, to Trustees (who have also understood the charity's privacy notice since they are ultimately responsible for it) and to senior staff to find out who has connections with these potential donors. Some are removed from the list as a result, while the charity plans the beginnings of donor cultivation activity with others.

The charity's policies address how to deal with someone's rights in this scenario. It provides that only the necessary information be collected at an early stage – enough to confirm the person's likely interest in the charity, to confirm that they may well be able to make a large gift, and to construct a sensible solicitation plan. On first contact with the person, the charity follows the requirements of fair processing and transparency to make sure the person knows who the charity is and the broad purpose of getting in touch – to see if the person would be interested in hearing more about the charity and to explore whether they would like to become involved with its work. It's important to remember that first contact with a potential supporter cannot be via email (as this would need consent under PECR).

Grounds for lawful processing: Legitimate Interest subject to balancing test since you can't get consent from someone who you've only just identified and not yet met or communicated with.

3. A supporter introducing their friends to a charity

Supporters of a charity such as trustees and volunteers will sometimes refer their friends to an organisation. For example, a donor calls up the Head of Philanthropy at an international NGO to

say they met someone at a social function who would love to hear more about the charity. The donor has already said she would ask the Head of Philanthropy to call her new friend.

Two practical planning questions arise from this introduction. Firstly, is the person someone who has the means to make an approach from the philanthropy team worthwhile, and secondly, is there any reason why the NGO should not accept money from this person if a solicitation were successful?

The Head of Philanthropy asks the donor to tell her a little more about this person, but nothing very substantive emerges from this. So the name of the person is passed to the prospect researcher who does some light touch work to make an assessment of their wealth and interests as well as to carry out a top-level due diligence exercise. Following this, the Head of Philanthropy gets in touch with the new potential donor explaining the nature, explaining the nature of the introduction she has been given, and seeking a meeting.

Ground for lawful processing: Legitimate Interest – it's not possible to get consent from someone you've not met yet.

4. Undertaking basic prospect research and developing a closer relationship

A fundraiser at a social welfare charity asks its database to report the names of the 250 people who have given the most over the last three years. The charity only has one major gifts fundraiser, and that person can't possibly try to have a face to face meeting with the charity's top 250 donors, so some selection is needed.

Many are concentrated in the charity's home town, but a few are much further away. Conscious of the need to spend charity resources effectively, the fundraiser knows that she would need to justify the time and expense of dedicating a whole day to a meeting with just one person. But if that person gave a gift of £25,000 then it would all be worth it.

So she identifies those who live at a distance and enters their names into Google. It turns out

one is the founder of a major fund management company. There is a short biography on the company website which says that the donor was originally from the same part of the country as the charity. She gets in touch via post or telephone (as long as not on TPS) and a meeting is willingly arranged, to which the potential donor brings their partner.

Grounds for lawful processing: Legitimate Interest subject to balancing exercise.

The fundraiser is absolutely delighted to leave an enthusiastic and open meeting with a further cheque for £1,000 for a particular project. At that meeting it had become clear that the donor and their partner are both passionate about the work the charity does and its impact on beneficiaries and the town in which the charity is based. There is clearly an opportunity to ask them both to become more involved. During the course of the meeting the fundraiser takes the opportunity to ask the donor and their partner for their consent for future processing of data and can provide the individual with the organisation's privacy notice. At the end of the meeting the fundraiser invites the donor and partner to meet the charity's CEO and one of their front line workers.

Prior to that meeting the fundraiser produces a short biography of the donor and the partner in order to brief her colleagues. This contains the names of the donor and partner, some details about their occupations and some suggested steps for the CEO as to how the relationship between charity and donor might develop, and a sense of the extent to which the couple might be able to support the charity. This is informed by the discovery that made while preparing the briefing that the donor's partner is trustee of a significant regional grant making trust.

Grounds for lawful processing: Consent.

5. Modelling

A charity needs to consider how it might enlarge its pool of potential major donors. It starts by adding a simple ranking on its database by scoring the postcodes of its donors with a value

of 1 to 5 depending on how much has been given by them. It adds in some data about longevity of giving and initial gift size and scores each of these 1 to 5 as well. The average score for a £500 donor is around 11.

The charity then adds up scores for all of the other donors on their database, and finds there are 100 people who score more than 11 but are not giving at £500 or more. It sends out a sensitively worded mailing to those who scored 11 or above and enjoys some success. Those who give at £1,000 or more are contacted to ask if a fundraiser could come and talk with them about how their gift has made a difference and how they might develop their connection with the charity.

Grounds for lawful processing: Legitimate Interest subject to balancing test, or Consent could be sought at the point of sending out the mailing to the 11 individuals.

6. Due Diligence

A volunteer for a university fundraising campaign says that he can introduce the Director of Development to someone he's done business with who may well be interested in funding scholarships at the university. The scholarships would be for students from the donor's country which is emerging from a long period of civil unrest into one embracing democracy and civil society. The university needs to assure itself that the money for the gift had been obtained legally by the donor and that it had been done in a way which does not conflict with the university's own values. It is therefore necessary to carry out some research on the sources of the donor's money, his previous business practices and reputation. Enquiries are made first of the volunteer, who assures the university that he can vouch for the potential donor. Additionally the Development Office uses a Due Diligence website to carry out some basic research but this does not provide very much, perhaps because the person has made his money in a country where higher standards of corporate governance are only just emerging. This does not satisfy the university's

ethics committee which needs more concrete evidence than this. Meanwhile the volunteer is getting a little impatient and badly wants to help by effecting an introduction. But following the Woolf Enquiry¹¹ on the Gaddafi gifts to the London School of Economics the university has a very strict policy that in the event that it is not sure about the provenance of a potential donor's money, then "all necessary steps must be taken" to safeguard both the University's reputation and integrity.

It is not appropriate to ask the potential donor for consent to carry out the research that is needed, partly because the University requires ethical assurances before a connection is made between it and a potential donor in this situation, and also because if there were any possibility that money laundering has been involved then the law requires that the organisation carrying out the due diligence must not inform the person.

Accordingly the university contracts a third party Due Diligence company to produce a report which aims to answer some specific questions: has the person made money through the sale of arms or through modern slavery; has the person been convicted in a recognised court of something which would bring the university into disrepute; is there any other obvious "no-go" indication? The report is quickly returned to the university observing that there is no indication that this is the case, and while the potential donor has espoused some strongly opinionated views, they are no more so than others from whom the university has accepted gifts. The introduction goes ahead and a gift is made. Some members of staff object, but the Vice-Chancellor points to the benefit that will come from the gifts and to the assurance process which has been followed.

NB – GDPR requires that individuals are informed about data processing. Most commentators are taking the view that this information should be provided at the latest, within one month of starting to process an individual's data. After one month, if you have

not provided the information there is a risk of being found to be in breach, which increases the longer you leave it.

Grounds for lawful processing: Legal Requirement in respect of money laundering and the protection of the charity's reputation (see CC20 guidance from the Charity Commission) and Legitimate Interest

7. Campaign Planning

Fundraising research is often used to provide insight and analysis to help organisations plan a fundraising campaign. For example, a regional theatre is planning a major redevelopment and has secured Arts Council funding for part of the cost. There is a balance of £1.5 million to be raised and hitherto the theatre's fundraising has been largely limited to a Friends' scheme and to asking ticket buyers to top up the cost of their ticket to the nearest £5.

However the theatre has a large population of ticket buyers some of whom are regular attenders. Ticket buying information exists for the last five years' productions. A volunteer board has been started and they have already identified friends and associates who may be interested in providing financial support and help to fundraise. As the board begins to contact some of their friends they discover that many are, in fact, active patrons of the same theatre. The board asks the fundraising office if there is some way of identifying wealthy people amongst those who regularly attend.

The fundraising officer starts to answer this question by referring to the theatre's privacy notice which was revised a year or so earlier (and communicated to individuals at the time) to include specific details about using information on people's financial means in relation to fundraising. Consideration of the reasonable expectation of individuals needs to take place – and while the change of the privacy notice was communicated to individuals a year ago, the officer double checks to ensure that the individuals have been provided with the latest version of the privacy notice.

The processing information has been communicated to supporters when sending out subsequent quarterly events guides and programmes, as well as when buying tickets. The theatre decides that those supporters have been adequately informed about how their data will be processed and so would not be surprised or intruded upon if they ask an external company to compare the theatre database against the supplier's list of people who can afford the level of donation sought. (This assessment will always have to take into account the relevant context and circumstance to make a judgement on individuals' reasonable expectations).

Some discussion takes place internally as to which people on the theatre database should be screened. A decision is reached that it should only be people who have been to three or more performances in the last two years, or those who have been coming every year for the last four years. These are judged to be the people closest and most committed to the theatre. 33,000 records are screened and around 1% match the agency's database. The theatre purchases information on the wealthiest 50 of these, the agency returning the name of the person who matched as well as verified public domain information about their likely wealth and business/employment status. (The theatre does not change its fundraising strategy in respect of the 99% who did not match and the 0.8% of supporters whose data was not purchased.)

This information is used by the fundraising office, together with a list of names of those whom the volunteer board has suggested (there was some overlap) to put together a 'top 100 potential donors' list. This group of potential donors becomes the focus of engagement work over the next two years by the CEO, the fundraisers and the volunteer board. The money is raised, the Arts Council grant awarded and the capital project completed. In the end, the lead donors to the project turned out to be a couple identified by the wealth screening process. They have been absolutely delighted to have been involved with the development of this important regional theatre. (This is a true story!)

Grounds for lawful processing: Consent or Legitimate Interest subject to balancing test and rights in respect of profiling

These are just some examples of the ways in which data is used by charities in their major gift fundraising operations.

Getting major gifts fundraising right can be transformative. Such gifts are almost never raised if the charity does not respect those who give it their time and money. That respect needs to include the person's privacy rights. But sometimes it may seem as if data protection law requires you to do something that's odd; something that doesn't feel like part of normal social interaction. If you're adapting your fundraising activity in order to be compliant, and now this is getting in the way of what felt like normal human behaviour, then this may be a sign you've misunderstood the requirements or that there's a better way of complying. For example, some have thought it's a legal requirement to get a potential donor to sign a piece of paper to say they've read a privacy notice or to give them a whole long notice when they first meet. It isn't, though often the best way of providing privacy information will be at the point at which the data is first collected.

A note about what happens when people give

Just as in other types of giving, giving in this way can also help to meet a donor's own wishes or even need to make a contribution to society, to make a difference.

A purely economic model suggests that donors are materially poorer having made their gift, and that this is the sum of the whole transaction, since unlike a purchase, no 'goods' have been received and the charity has no obligation to provide anything for the donor.

But anyone who has ever been a fundraiser knows that the purely economic model is deficient as a way of understanding the "value

exchange"¹² which takes place when someone gives. Tim Cook, CEO of Apple said about his philanthropy: "You want to be the pebble in the pond that creates the ripple for change"¹³." while Paul Allen, co-founder of Microsoft said "You look at things you enjoy in your life, but much more important is what you can do to make the world a better place"¹⁴." These are not the words of people who feel materially poorer as a result of their giving; they are the words of people who gain enormous satisfaction and fulfilment from their giving. And this is not just true of the very wealthy. Research in North America and the UK shows that those who use their money to benefit others are happier than those who don't¹⁵.

Why is this important? Because in making a judgement about how we fundraise and communicate with individuals any harm which might come to them must be taken into account. While it is impossible to guard entirely against the possibility that someone will be offended by a request for a donation, for others the opportunity to make a significant gift will be a life-changing positive experience which may leave them with fewer financial assets but an immeasurably richer life.

How are you thinking about the donor experience?

The GDPR does not apply differently, whether an individual is a donor who gives a smaller amount or a major donor/high net worth individual. However, the major donor or HNWI may have different requirements or expectations in relation to charity fundraising. It is both sensible, and in many cases necessary for fundraisers to think carefully about how best to approach and communicate with people who give more.

The Commission on Donor Experience reviewed all areas of fundraising and has set out recommendations and guidance on how charities can improve the major donor experience available at <http://sofii.org/cde/project-9-major-donors>

SECTION TWO: LAWFUL BASIS FOR PROCESSING DATA

Whenever a charity handles an individual's personal data, they have to do so in a way that is compliant with data protection legislation. When 'processing' that data (i.e. doing anything with it, including obtaining, recording or holding or using it for any purpose) organisations have certain duties and individuals have certain rights.

That means that if you are keeping an individual's name and contact details and recording any information about them (including their history of charitable donations, their job and sector they work in, their interests) you need to do it fairly, lawfully and transparently. It also has to be kept securely, accurately, and for no longer than is necessary. For more information on data protection principles and obligations, go to <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

Key definition:

The GDPR applies to 'personal data' meaning any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier.

This definition provides for a wide range of personal identifiers to constitute personal data, including name, identification number, location data or online identifier, reflecting changes in technology and the way organisations collect information about people.

The GDPR applies to both automated personal data and to manual filing systems where personal data are accessible according to specific criteria. This could include alphabetically ordered sets of manual records containing personal data.

Personal data that has been pseudonymised – eg key-coded – is likely to fall within the scope of the GDPR unless it is very difficult it is to attribute the key code to a particular individual.

Making Processing Lawful

Personal data may only be processed if it can be done so according to one of the lawful bases (or "grounds for processing") set out in the legislation. In nearly all cases for charities they will either need the 'consent' of the individual or be able to satisfy the 'legitimate interest' condition¹⁶.

Making Processing Fair

The processing of the data must also be done fairly – this means people need to know what you're doing with their data. Transparency is a key part of fair processing – if people do not know what you intend to do with their data and how it will be processed, they cannot exercise their rights to object.

Fundraising and Direct Marketing

When an organisation 'processes' personal data for different purposes, they have to do so in accordance with one of the 6 lawful bases set out in the GDPR.

'Direct marketing/fundraising' is one purpose for processing data, and so charities need to have a lawful basis to do any fundraising research or communication with individuals.

That would include: finding out information about an individual so that you can decide whether to invite them to an event; making a judgement about the level of support that they might want to give to your cause; finding out if they have supported similar charities in the past; or their job and sector they work in. These are all activities that would count as direct marketing as they are all for the potential purpose of communicating appropriately with that individual to engage them with your cause.

To undertake any of the above activities (or other similar ones) the grounds you are likely to rely on are consent or legitimate interest.

The lawful basis for processing personal data: Consent and legitimate interest

Consent (or, “This is what we’d like to do, is that OK?”)

Under GDPR, consent needs to be “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”.

This means that individuals must have agreed for their personal data to be processed for that purpose, and that agreement cannot be inferred, or assumed: essentially the individual must have been told how their information would be used and expressed their agreement by taking some positive action. This could be an ‘opt-in’ tick box, putting their email address in a box where it is absolutely clear that by doing so they are consenting to something (e.g. for them to be sent future communications from that charity), but the consent can also be given orally or through taking a clear action, such as putting a business card in a box so that they can receive more information as long as clear privacy information is given explaining what the data they are providing will be used for.

We advise all organisations to review guidance from the ICO on both consent and legitimate interest (when it has been published), noting that whilst their guidance represents good or best practice, there may be occasions where it is not possible to achieve a higher standard than compliance with the law.

It might be tempting to think that consent is the most straightforward and easiest condition under which to research and segment your donors to tailor fundraising planning. You ask an individual if they are happy for their details to be collected and used for this purpose, and if they say yes then you can do it.

But consent will not always be appropriate. Clearly you can’t ask someone for consent to process their data before you have worked out who they are, so new potential donor research cannot rely on consent. And it must be remembered that if you ask someone for their consent and get no answer, then you do not have their consent. Furthermore if someone does not respond to a request for consent, then it is unlikely to be appropriate to rely on the alternative ground of legitimate interest, for processing their data. Even if an individual does consent, they can withdraw it at any time.

Legitimate interest – (or, “this is what we’d like to do, here’s how you can tell us not to”)

Organisations can lawfully undertake many aspects of major gift fundraising activity where they have a legitimate interest in doing so, and when that legitimate interest does not override the rights and freedoms of the individual. It’s different from ‘consent’, as it requires organisations to weigh up their (or others) legitimate interests on one hand, with the rights (such as the right to privacy) of the individual on the other hand. This involves being mindful that the activity is not unduly intrusive as well as ensuring that the individual has had the chance to prevent their data being used in that way. It is worth remembering that there will be times where the individual’s rights and freedoms will override an organisation’s legitimate interest, so legitimate interest cannot always be relied on as a lawful basis for processing data.

Consent might seem the ‘safest’ basis to use for research and direct marketing activity. But, it might not always be the most practical, feasible, or appropriate basis. The standard for valid consent is high under GDPR, it needs renewing periodically and it can’t be obtained from someone you don’t yet know. The ICO recognise this in their draft consent guidance, stating: “If consent is difficult, this is often because another lawful basis is more appropriate, so you should consider the alternatives¹⁷.”

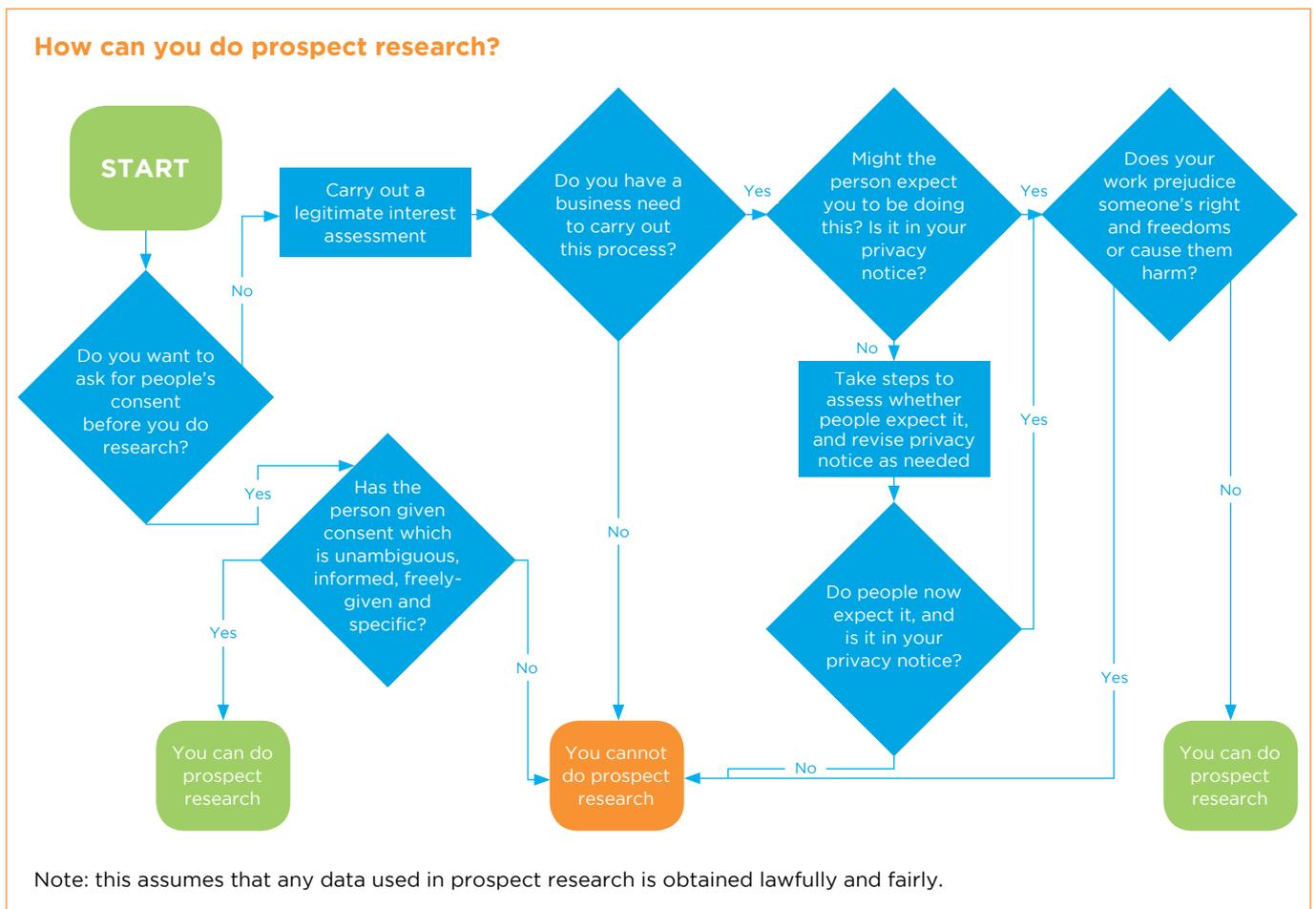
Situations in donor research where legitimate interest might be a more practical and appropriate basis could include:

- If the charity is identifying new potential donors – you can't get consent from someone you haven't yet identified
- where the charity has had no contact or relationship with a particular individual in the past but wants to find out a bit more about them before making an initial approach;
- where supporters have engaged with and / or donated to the charity in the past and there is an existing relationship;
- where it is practically difficult to ask for, obtain or maintain consent

Whether or not legitimate interest is a valid basis will always have to be determined on a case by case basis. A different assessment may need to be made at each combination of a particular business process (e.g. prospect research, donor cultivation, stewardship) and the constituency of the donor (e.g. existing donors, ticket buyers, campaigners, volunteers, prospective donors etc.)

Each organisation will have to:

- identify a legitimate interest;
- show that the processing is necessary to achieve it; and
- balance it against the individual's interests, rights and freedoms



More information from the ICO on legitimate interest and their checklist is available at <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/legitimate-interests/>

Privacy notices will need to draw attention to the use of legitimate interest and people's right to object to processing on this ground.

Assessing the things above are the core of the "Legitimate Interest Assessment". A documented outcome of this assessment would be the primary source should the regulator ask for evidence that you had properly considered people's rights and freedoms and freedoms and would go towards evidencing accountability under GDPR.

Can we use publicly available information to find out more about our supporters or to find new ones?

This information can include public sources about individuals (such as media coverage, 'rich list' publications, notices of appointments, Companies House data) as well as information published by individuals themselves (social media messages, LinkedIn profiles etc), and collections of public data (electoral roll).

In its conference paper '[Fundraising and regulatory compliance](#)' the ICO states that "The DPA doesn't stop you getting and using information from publicly available sources. However, you need to do ensure that the way you do it complies with all the DPA's requirements."

However, it also states that "The fact that personal information is publicly available doesn't make it 'fair game'", you still need to have a lawful basis for the processing, and that the more intrusive the activity, the more likely it is that consent would be required before you process the data. Therefore, thinking about the intrusiveness of the processing should be part of an assessment and balancing exercise for legitimate interest, including thinking about

the appropriateness of the sources of that information and the expectations of individuals as to what data on those sites are used for (e.g., Twitter, Facebook post, Companies House, or the Sunday Times Rich List).

You may also want to look at the privacy notices and terms and conditions of the data sources, as well as the context of their use. This will help you assess how people expect data from those sources to be used. You might decide that Twitter or LinkedIn, as very public data sources are reasonable to use, but Facebook which is often a much more private environment is not. You would need to explain your use of such social media in your privacy notice.

Making processing fair – privacy notices

Any data controller must ensure that individuals are provided with your privacy notice explaining who you are and what you are doing with that data. There is some flexibility in how and when you give them, and ICO accepts that sometimes a 'layered approach' is helpful, with information provided on an 'as-needed' basis.

Although there are some limited circumstances where it would reasonable not to provide such a notice, you should assume that you to do have to unless it would involve effort out of all proportion to the impact on the individual.

ICO says: "If the processing will significantly affect the individual, you should put whatever resources are needed into telling them, but you shouldn't put massive resources into telling people about something that affects them very little. However, if it would be relatively easy for you to inform individuals you should always do it."

What does this mean in practice – how and when to provide people with the privacy notice and how can we process the information fairly and lawfully?

- While there is some flexibility here and the level of intrusion into a person's privacy will need to be taken into account, your privacy notice should make it clear that you use their publicly available personal information for your direct marketing purposes. Including this in your privacy notice helps to set people's expectation about how you will process their data.
- Where your research activity leads you to make contact with a potential new supporter, you should provide, or make available to them, your privacy notice as you normally would as part of your communication with them (for example, through a fair processing notice and layered approach), and it should include information about how you obtained their details. On first contact you would want to make sure they know who you are and broadly why you are getting in touch. You would then want to have a policy in place which describes how you will provide the full information. That might then be drawn to their attention verbally, including information in a letter or email. If you are using consent as your ground for processing then you should record their consent for you to process their data. You do not need to do this if you are using Legitimate Interest, but in that case your privacy notice must include their right to prevent you processing their data.
- Often using publicly available information for research purposes will result in the charity choosing not to contact a number of people for fundraising purposes. For example, you might be researching to find potential supporters who are interested in a very specific campaign or project, and so you will only want to contact a small number of people to ask them to be involved to support the campaign. However, technically, to comply with the requirement for fairness

and transparency individuals should still be told that you have processed their data and receive your privacy notice.

- Consider the reasonable expectations of people when considering whether you are processing that personal information fairly. Where you are using publicly available information think about where the information has come from and the purpose for which it was collected, the purpose for which you want to use it, what they've been told, and their likely reasonable expectations.
- The reasonable expectation of the individual should be taken into account (e.g, a well-known business person who is attending an event is more likely to have an expectation of more research being undertaken). However, you should remember that not every person will have the same expectation, and if in doubt it is safer to err on the side of caution when thinking of their reasonable expectations.
- As with all processing of data for direct marketing purposes, individuals need to be able to opt out of the processing of that information and that information should be provided in your privacy notice.

Special categories of data¹⁸:

If you are processing information for fundraising about individuals under the following headings then you should always assume you need consent, unless you are certain you qualify for an exemption (which will apply on a case by case basis).

- racial or ethnic origin,
- political opinions,
- religious or philosophical beliefs,
- trade union membership,
- the processing of genetic data,
- biometric data for the purpose of uniquely identifying a natural person,
- data concerning health or data concerning a natural person's sex life or sexual orientation

So what would you do if a potential donor says to you “I am giving now because I have a terminal diagnosis and I want to see the outcome of my giving while I’m still alive”? Can you record that information?

In most cases it would be reasonable to ask “would it be OK if I make a note of that on our database so that I can make sure we are aware of that important piece of information? It would be restricted to those who would need to know.”

Putting the legal principles into practice: how you can fairly and lawfully undertake research on individuals

Being fair and lawful

The ICO agrees that you can undertake research through using publicly available information and use that to tailor your communications with individuals provided it is done lawfully, fairly and transparently. This means that you need to be able to apply the legitimate interest test described below (including checks that you are not overriding the rights and freedoms of individuals), or obtain the individual’s consent to it taking place. Once you have established what lawful condition you want to use, you then need to ensure that how you are going to use that person’s data is being done fairly.

This means that you must: provide enough information to give people a clear understanding of how their data will be used, do what you say you will with their information and not use it in a way they wouldn’t expect or you haven’t told them about, and give people easy opportunities to express any preference that they don’t want their data to be used in that way.

While telling people and making available information on how you intend to use their data helps to achieve transparency, just telling them does not automatically make it fair.

What does this look like – how do we do a balancing exercise?

If organisations want to rely on the legitimate interest ground, they will need to undertake the balancing exercise to understand and assess their interest and ensure it doesn’t override an individual’s privacy rights. This balancing exercise, and the outcome, will be different for individual organisations depending on your work, your supporters and past relationship with them, and the activity you intend to do. This guidance cannot do this balancing exercise for the whole fundraising sector, but instead provides an example of how it can be done and the process that each organisation will need to work through and questions to consider.

Legitimate interest of the organisation v the rights of the individual

In all cases, and for all activity, evidence and information must be taken into account to ensure that the organisation’s legitimate interest is not causing unwarranted damage or distress to an individual through the processing of their data. An assessment should be made as to any likely intrusion on the individual’s privacy; any complaints received; and any available wider evidence to inform you of people’s reasonable expectations. If the interest of the charity in undertaking this activity, is outweighed by the need to protect individual then the charity will not be able to rely on the legitimate interests ground to process the individual’s data.

Charities will need to make a judgement call for themselves on this and be satisfied that they are not overriding an individual’s privacy rights. Organisations should look for evidence and information which helps to demonstrate why the legitimate interest test can be satisfied, including donor experience and insight, complaint levels, or wider sector research as well as direct feedback and evidence from your supporters. The balancing test should not just be a one off activity, but reviewed over time to ensure any new relevant information is included or to meet the changing expectations of supporters.

Remember, it's not enough for you to just do a balancing exercise and make a judgement, you should also communicate this to individuals through your privacy notices to clearly explain your reasons for believing it is in your organisation's interests and give them opportunities to exercise their right to object to the processing taking place. For many research activities that are less intrusive, being clear to individuals and transparent about your basis for processing, how you intend to use the data, and undertaking the balancing exercise will help to satisfy yourselves that you won't be overriding their interests and freedoms.

What is intrusive? Or unexpected?

The ICO has argued that there are some activities which would be deemed so intrusive to individuals and beyond their reasonable expectations that a balancing exercise under legitimate interest would find that the individuals' rights outweighed those of the charity and the charity could not rely on the legitimate interests ground. For organisations to be able to undertake these activities, the individual would instead have needed to give their consent. An example (highly unlikely actually to be carried out by a charity) might be investigating a Facebook or Instagram feed which they had not made private, and making judgements about their wealth based on their holiday snaps.

Using a fair processing notice and privacy notice to set out your lawful basis and inform people of their rights will give people clear and appropriate information as to how their data will be used by a charity as well as an opportunity to opt out of the processing. The clearer and more prominent the information about the processing is to individuals, the better as this would mean that the processing is more likely to be within their reasonable expectations.

Having provided this information, the following activities are, in principle, capable of being lawful under an organisation's legitimate interest condition.

Balancing exercises for legitimate interests

What activity do we want to do?	Have we got a legitimate interest taking account the individual's reasonable expectations?	Can we be confident we aren't overriding the individual's rights?	Can it pass the legitimate interest test?
<p>We would like to find out more about some specific individuals who have supported us at a higher level, e.g, given a donation of over £500 so that we can tailor our future communications to them.</p>	<p>Yes, we have a legitimate interest in doing this activity.</p> <p>By tailoring our communications to supporters according to their interests the experience of those individuals, will be improved as they will receive communications that are more interesting and engaging to them. This allows us to do more for our cause, by understanding likely philanthropic interests and making a better connection between our charity and our supporters.</p>	<p>As above, they have provided us with their details and our privacy notice has been provided to them with all relevant information.</p>	<p>Yes.</p> <p>As the individual has already supported us we believe that this activity would be within their reasonable expectations as we have provided them with our privacy notice to clearly explain the lawful basis and future processing but we will always consider whether it will override their privacy rights.</p> <p>We have received no previous objections from individuals about this work and we have no wider evidence from research or feedback from supporters that this would be thought of as intrusive.</p> <p>As above, we will review this on an ongoing basis, keep any information we hold securely, and ensure that we do not hold any information for longer than is necessary.</p>

Don't forget, that in doing balancing exercises for legitimate interest you also need to demonstrate that the processing of data is necessary

What activity do we want to do?	Have we got a legitimate interest taking account the individual's reasonable expectations?	Can we be confident we aren't overriding the individual's rights?	Can it pass the legitimate interest test?
<p>We would like to sift information on the general demographic information of the local area that a supporter lives in. The address information that an individual has provided to us would be enhanced through general demographic information from a third party supplier (e.g, Experian/ MOSAIC).</p> <p>This extra information would help us to tailor our future communications and fundraising requests to try and be most relevant to that individual.</p>	<p>Yes, we have a legitimate interest in doing this activity. We need to be able to send direct marketing to supporters so that we can raise money for our cause, and the more informed we can be on our supporters, the more our direct marketing communications with supporters can be appropriate and relevant to them. These are individuals who have a pre-existing relationship with us by supporting us in the past.</p> <p>We have clear information in our privacy notice about using data in this way.</p> <p>We have made that privacy notice accessible to the individual and provided a fair processing notice.</p> <p>The individual was given a clear opportunity to prevent their data being used in this way and they have not done so.</p>	<p>Yes, because we have a lawful basis for processing this data, we have provided the right information at the right time, and not received any objection from the individual.</p> <p>Because this information is general demographic information based on an area we believe that it is not intrusive and believe that it will give the individual a better experience of their engagement with us.</p>	<p>Yes.</p> <p>We believe that there is a low risk that this activity will mean that there is a mismatch between our legitimate interests and the individual's privacy rights.</p> <p>We will continue to review any insight, evidence, information that is available on this kind of activity and take into account any feedback or complaints that we get from supporters.</p> <p>We will remind people from time to time in the future that we process their data for fundraising purposes and give them further opportunities to register any objection.</p>

What activity do we want to do?	Have we got a legitimate interest taking account the individual's reasonable expectations?	Can we be confident we aren't overriding the individual's rights?	Can it pass the legitimate interest test?
<p>We would like to find new supporters and potential major donors to our cause by researching to find individuals who might be interested in our cause or be able to support us at a high level. These might be local business people who have been prominent in our community or people who have made public an interest in our particular area of work.</p> <p>The activity would involve looking at publicly available information (press articles, public profiles on networking sites etc)</p>	<p>Yes, we believe we have a legitimate interest to do this.</p> <p>For our charity to survive and do more for our cause, we need to find new supporters and raise more money. Without doing research to find people who might be interested in donating to us we can only do 'mass' fundraising (door drops, advertising) which is untargeted expensive, and a less efficient use of charity resources.</p>	<p>Yes, we do not believe that this activity would be deemed that intrusive or beyond individual's reasonable expectations as it's information that is all publicly available and we have made the following assessments and processes.</p> <p>As we do not have a pre-existing relationship with the individual they might not expect our particular organisation processing their data in this way. Therefore, we need to ensure that we provide them with our privacy notice to make them aware that we have processed their data for this purpose at the earliest opportunity - and within 1 month.</p> <p>If, following contact with an individual we do not have a response, then we should stop processing the data.</p>	<p>Potentially yes, but not in all cases.</p> <p>We understand that there is more of a risk that this could be deemed intrusive as the individual does not have a prior relationship with us and would not be aware straight away that we are processing their data in this way.</p> <p>We would also need to make a judgement on a case by case basis according to the sources of the information and whether we think it would become too intrusive.</p> <p>We will review any responses or questions that individuals might have if we contact them after this activity to continually assess whether individuals view it as beyond their reasonable expectations.</p>

Is the activity 'necessary'?

To rely on legitimate interest, charities will need to be able to demonstrate that it is necessary to use the publicly available information to build up biographical information on people based on their interests and ability to support the charity at higher financial levels. Essentially, the charity needs to show that this is the necessary way of achieving their objective. For example, how much does the charity rely on the donations and support that this type of activity raises? Without doing this activity, how much would the charity lose in likely resources and what would be the impact? This necessity and benefit to the charity should be understood and demonstrated so that it can show that the activity is necessary.

There is not a 'one size fits all' approach for using legitimate interest. Charities will need to use their judgement and make a decision based on their legitimate interest and review evidence and available information and having gone through a balancing process to ensure the rights of individuals are not overridden. Doing a Privacy Impact Assessment can help guide and inform your decision making.

Checklist of the kind of information that could be reviewed:

- ✓ Complaint levels to your organisation
- ✓ Numbers of people that exercise their rights to prevent marketing
- ✓ Your organisation's own research into the expectations of major donors
- ✓ Sector-wide evidence and insight on the expectations of individuals (including 'Good Asking: the role of research in efficient, effective enjoyable fundraising' by Dr. Beth Breeze <https://www.institute-of-fundraising.org.uk/guidance/research/good-asking/>)
- ✓ Anecdotal feedback from your supporters and people whose data you process
- ✓ The response rates/success of your fundraising and communications – are people responding to what you send them?

How do we make sure people are informed about how we use their data?

Even if you can establish a 'legitimate interest', the processing won't be fair unless you have taken steps to ensure that people are aware and informed about how their data will be used. A key issue that came out in the recent ICO rulings was not that 'the activity was itself unfair, but not telling people about it was'.

So, how can you make sure that you are giving people the right information, and at the right time, so that it is fair? And how does this work differently for people whose data you already hold, compared to individuals where there isn't a pre-existing relationship? One of the most important things that you need to do is to provide,

or make accessible to them, your organisation's full privacy notice. This will explain how you hold their data, what you do with it, and should give the individual all the information they need.

The ICO's guidance on Privacy Notices under GDPR is available at <https://ico.org.uk/for-organisations/guide-to-data-protection/privacy-notices-transparency-and-control/privacy-notices-under-the-eu-general-data-protection-regulation/>

1. At the point of collecting data from individuals

The easiest and best way to ensure that people are informed is to tell them at the first opportunity when they provide you with their personal details and information, for example

when they give you a donation, sign up to take part in a sponsored activity, or register to come to a fundraising event. This can be online or paper-based (through responding to a flyer or newspaper advert) but you should be using this opportunity to give people key information about how their data will be processed and what you want to do with it.

While your full privacy notice should be available on your website, and also be available in a form to send out to people if they request it, it is often not very practical or possible for all the information to be provided up front. The ICO recognises that, and recommends that organisations adopt a 'layered' approach where you provide key details up front, with clear links and information about how people can find out more. This will often give the key messages about the purposes for which data will be used (e.g. direct marketing and financial analysis), any information needed to make the processing fair, and opportunities and information on how people can clearly prevent their data being used in that way.

Where you might want to do activities that are more 'intrusive' or likely to be beyond the reasonable expectations of individuals you can think about how to make that information more readily available. For example, you could have a message 'pop up' box on a website to draw people's attention to a particular activity or provide information, or you could put that information in fundraising material and donation forms.

Key points on privacy notices:

- Have a privacy notice available that sufficiently covers the research activity that you intend to do – the wording must be clear enough so that people understand how their data will be used – and think about whether you need to draw people's attention to any specific parts;
- Make sure that the privacy policy is made readily available and easily accessible to the individual – at the time that the individual provides you their details or sooner, if there is an earlier practical opportunity;
- Give them a sufficient and clear opportunity to easily communicate to you that they don't want that processing of data to take place – this is normally set out in detail in your privacy notice

What could this look like in practice?

At the time of providing their details to a charity, the individual must be made aware of the charity's privacy notice. This is done through the provision of a 'fair processing notice'. An example of text relating to prospect research and major gift fundraising could be:

Example information for a fair processing notice

In addition to the information you give us, we may add information from publicly available sources including data from, for example, reputable newspapers, Companies House, or LinkedIn/Twitter. We do this in order to manage our fundraising effectively and to give you the best experience by tailoring our approaches to you according to your interests as well as the level at which you could potentially support us.

For further information about how we hold and use your data, please see our privacy notice. We will never allow other organisations to use your data for their own purposes, although sometimes we use third parties to carry out work for us.

(NB that this is included for illustrative purposes only and is not intended as a template for use.)

In the Policy Notice itself, there must be wording which gives people the awareness and understanding of how that data may be used and clear information about how they can prevent the processing if they want to.

Example of an extract for a privacy notice

How 'Charity XXX' will collect information about you and what we will do with it.

We use data you provide, sometimes together with data obtained elsewhere, for the purpose of managing our fundraising efficiently and effectively so we can raise more to spend on [the cause.] This will include data which helps us effectively target and tailor our communications so that we can make appropriate requests to supporters who may be able to support us at a higher level. We also use publicly available information to find new potential supporters and invite them to be involved in supporting our cause through tailored communications which may be of interest to them.

External data sources include publicly available information such as Companies House, Charity Commission and other charity registers, Who's Who and Debrett's guides, Electoral Roll, reputable newspaper articles, publications, company websites and biographies on professional networking sites as well as geographic and demographic information based on your postcode. This allows us to segment our database and gives us a better understanding of our supporters. If you would prefer us not to use your data in this way please let us know by emailing XXXXX or calling us on XXXXXX.

(NB that this is included for illustrative purposes only and is not intended as a template for use.)

What happens if we need to update or change our policy notice?

Organisations do need to update their privacy policies from time to time. When they do, it's important that people are aware and that any key changes are brought to their attention. So, if you are updating your privacy policy to include for the first time information on you matching their details with publicly available information to tailor your communications, then you need to do more than just update the policy on your website. Think about how to communicate it actively to individuals so they will be aware that you have updated the privacy policy and also to be clear about what's changed.

If you have an individual's email then you could do it through an email, or you could include information in the post to them. (Note that PECR only requires consent for direct marketing. If not direct marketing then sending by email does not require consent.) Sending a privacy notice on its own is not direct marketing and therefore would not require consent. The updated information could be part of your regular communications (ie., it doesn't have to be a letter sent only to tell them that the privacy policy has changed), but it should be sufficiently clear and prominent so that people are aware - we would recommend you summarise key changes in the body of the covering letter.

For example, "We have recently updated our privacy policy to include information on how we match publicly available information with your details so that we can tailor our approaches to you according to your preferences and interests as well as the level at which you could potentially support us. More details can be found at xxxxx".

FURTHER INFORMATION

Throughout this guide we have tried to set out the key steps and information that fundraisers need to take into account when thinking about major donor fundraising and prospect research with a specific focus on the use of personal data.

Finding the right supporter for your cause can be transformative for both the charity and the individual, but it always has to be done lawfully and fairly. We hope that the information provided here will help charities and fundraisers understand the lawful bases for processing data and how to put principles into practice.

Further information and guidance on data protection and fundraising regulation is available at

Institute of Fundraising

www.institute-of-fundraising.org.uk/gdpr

Information Commissioner's Office

www.ico.org.uk

Fundraising Regulator

www.fundraisingregulator.org.uk

Scottish Fundraising Standards Panel

www.goodfundraising.scot/

Researchers in Fundraising Special Interest Group

Researchers in Fundraising (RiF) is a special interest group of the Institute of Fundraising and is the leading forum for the exchange of ideas and best practice amongst prospect researchers in fundraising and development departments throughout the UK.

For more information on the group, including their Awards, resources, and networking events go to <https://www.institute-of-fundraising.org.uk/groups/sig-researchers/>

REFERENCES

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- 1 <https://www.institute-of-fundraising.org.uk/documents/good-value-report/>
 - 2 *ibid*
 - 3 For more on David Dunlop's approach to major gift fundraising see <http://sharpenet.com/give-take/conversation-david-dunlop-part/>
 - 4 See Beth Breeze and Theresa Lloyd, *Richer Lives: why rich people give* for an introduction <https://www.dsc.org.uk/publication/richer-lives-why-rich-people-give/>
 - 5 <https://www.forbes.com/sites/katevinton/2017/07/27/jeff-bezos-overtakes-bill-gates-to-become-worlds-richest-man/#576025e7791c>
 - 6 <https://www.ukcommunityfoundations.org/>
 - 7 <https://www.cafonline.org/about-us/campaigns-and-public-affairs/previous-campaigns-and-projects/give-it-back-george>
 - 8 <https://nfpsynergy.net/blog/major-donors-10-key-points>
 - 9 Lloyd, Theresa (2004), *Why Rich People Give*. London, Association of Charitable Foundations
 - 10 p23, Major Donor fundraising conference 2014 <https://www.institute-of-fundraising.org.uk/library/mdf-theresa-lloyd/>
 - 11 <http://www.woolfse.com/>
 - 12 See Durel, John W. "No Mission, No Money: No Money, No Mission." *The Journal of Museum Education* 35, no. 2 (2010): 193-200. <http://www.jstor.org/stable/25801349>. for an exploration of value exchange in philanthropy in the arts sector and the intimate link between mission and money
 - 13 <https://www.weforum.org/agenda/2015/12/11-quotes-from-famous-philanthropists/>
 - 14 *ibid*
 - 15 Prosocial Spending and Happiness: Using Money to Benefit Others Pays Off, Dunn, Aknin, Norton, Harvard Business School <https://dash.harvard.edu/handle/1/11189976>
 - 16 Some processing may be carried out under other grounds, notably "contract" e.g. selling someone an event ticket or "legal obligation", e.g. passing data to HMRC for Gift Aid claims.
 - 17 <https://ico.org.uk/media/about-the-ico/consultations/2013551/draft-gdpr-consent-guidance-for-consultation-201703.pdf> page 11
 - 18 Special Categories of Data are how the GDPR describes "Sensitive Personal Data"

NOTES



CONNECTING PEOPLE TO CAUSES:

A PRACTICAL GUIDE TO FUNDRAISING RESEARCH

Disclaimer:

The publication reflects interpretation of the incoming law and guidance as at February 2018 and we advise all fundraisers and charities to be aware of the ICO guidance and to review it regularly.

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