

Document DP2 – Matrix of sources of personal data, legal bases and documents to use

The data controller must establish what legal basis it wishes to rely on so that it may process an individual's data. To do this it must know whether the data is personal data or sensitive personal data. The definitions of both personal and sensitive personal data are outlined below:

- **'personal data'** means any information relating to an individual who can be identified, such as by a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- **'sensitive personal data'** means *personal data* revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the *processing* of genetic data, biometric data, data concerning health, an individual's sex life or sexual orientation and an individual's criminal convictions.

We have produced this matrix to help REC members identify (1) the legal bases they may have to process personal data and (2) identify what documents to use. Data controllers must be able to justify the legal basis that they use. The following is an extract from the [Article 29 Guidance on consent](#)

Article 6 sets the conditions for a lawful personal data processing and describes six lawful bases on which a controller can rely. The application of one of these six bases must be established prior to the processing and in relation to a specific purpose. As a general rule, a processing activity for one specific purpose cannot be based on multiple lawful bases. Nonetheless, it is possible to rely on more than one lawful basis to legitimise processing if the data is used for several purposes, as each purpose must be connected to a lawful basis. However, the controller must have identified these purposes and their appropriate lawful bases in advance. The lawful basis cannot be modified in the course of processing. Hence, the controller cannot swap between lawful bases. For example, it is not allowed to retrospectively utilise the legitimate interest basis in order to justify processing, where problems have been encountered with the validity of consent. Therefore, under the GDPR, controllers that ask for a data subject's consent to the use of personal data shall in principle not be able to rely on the other lawful bases in Article 6 as a "back-up", either when they cannot demonstrate that GDPR-compliant consent has been given by a data subject or if valid consent is subsequently withdrawn. Because of the requirement to disclose the lawful basis which the controller is relying upon at the time of collection of personal data, controllers must have decided in advance of collection what the applicable lawful basis is.

The REC have produced a suite of GDPR-related model documents which are available in our [Model Document Library](#). Information on the lawful basis for processing is available in the [REC's guide to the GDPR](#).

Source of personal data	Forms to provide	Legal basis for processing - Initial contact				Legal basis for processing - Ongoing contact			
		Legitimate interests ¹	Performance of a contract	Consent ²	Legal obligation ³	Performance of a contract	Consent	Legal obligation	Vital interests ⁴
Face to face/ walk-in	<ul style="list-style-type: none"> Registration form DP5A – Privacy statement Optional – infographic ‘Jobseekers – know your data protection rights’ 	Y – as agency provides work-finding services and individual seeking work	Y (if clear can assist and provide terms at time of registration)	Y provided (a) consent is valid and (b) aware that consent can be withdrawn	N	Y	Y	Y	Y
Candidate uploads CV to agency website			N		N	Y	Y	Y	Y
Referral (e.g. by a friend)	<ul style="list-style-type: none"> Registration form DP5B – Privacy statement Optional – infographic ‘Jobseekers – know your data protection rights’ 	Y	N	Only if you have a positive indication that they have consented to you contacting them.	N	Y	Y	Y	Y
Agency finds individual via jobs board	<ul style="list-style-type: none"> DP5B – Privacy statement Registration form (depends on how recruiter manages registration process) 	Y – provided relevant role	N	N	N	Y	Y	Y	Y
Agency finds individual on LinkedIn	<ul style="list-style-type: none"> Registration form DP5B – Privacy statement 	N	N	Y – provided individual indicated via “Career interests” that they are happy to be contacted	N	Y	Y	Y	Y
Additional documents				Form DP6 - Consent				Form DP6 - Consent	

¹ Legitimate interests cannot be used to process sensitive personal data.

² Consent must (a) be valid (must be explicit consent for sensitive personal data) but (b) can be withdrawn (applies only to personal data given by the individual)

³ Particularly relevant where there is an ongoing obligation to process data e.g. for payroll purposes.

⁴ To be used in limited circumstances only, e.g. life or death.