



GDPR – Getting Data Protection Ready

Communicating with your Audiences

On 25 May 2018 the General Data Protection Regulation (GDPR) replaced the Data Protection Act (DPA). The aim of GDPR is to give individuals more control over how their personal data is used and for businesses to be more transparent in how that data is processed. These FAQs were produced by Ian Grey of Wadiff Consulting.

What do I need to have in place to send out emails?

You need to establish the 'lawful basis' before sending an email. It applies for newsletters, email blasts or on a one-to-one basis. Article 6 of the GDPR lists the 'lawful basis' options those likely to be most relevant for an exhibitor are *consent*, *legitimate interest* or to fulfil a *contract*. (see notes below)

If someone sends an email to ask a question, are there any issues with sending a reply?

Sending a reply falls under legitimate interest or contract, depending on the question. As part of the answer, you could include a link to a page where they could give their consent to receive newsletters.

What do I do with my existing email lists?

You need to know the *current* lawful basis for contacting individuals. If you are not sure of this, you should delete their details. If you are using legitimate interest, do a 'balancing test' to confirm the criteria are still valid. If you are using consent, it is unlikely the details you hold will meet the GDPR requirements of being 'specific, informed and unambiguous' so you need to go back and ask for consent again. This should be a one-off activity where you give details on why you currently use their personal data and what you will do with it in the future. You need to give details on:

- the identity and the contact details of the data controller
- the contact details of the data protection officer (if applicable)
- how long you will keep the data
- who data can be passed to (if applicable)
- if you will transfer the data to a country that does not meet the adequacy test to protect data and safeguards in place to protect the data. The list of countries can be found at http://ec.europa.eu/justice/data-protection/international-transfers/adequacy/index_en.htm
- their rights to ask to see the personal data being held, for data to be updated or erased, for processing to be restricted, to data portability, to withdraw consent, to lodge a complaint with a supervisory authority

If someone puts a contact email on LinkedIn in their profile - and they have connected with you - can you use that outside of LinkedIn?

The safest route is to communicate with them on LinkedIn. The LinkedIn terms include "we prohibit both the act of scraping others' content from our services, and the development and support of tools to scrape LinkedIn services."

If you have first party consent, can you send a message from a third party to this person as long as it is within your standard email template? E.g. Show header, 'A message from our partner' then content?

It should not be an issue if they have opted-in to receive this type of content. The same applies to a media partner agreeing to send information about an event to their database on your behalf. For this to be valid, the people receiving it must have opted-in to that type of content with the media partner.

How long can you leave it before contacting a customer again? A year?

There is no fixed time period, but you must have a lawful basis for contacting them. If it is related to an event run every other year, contacting them after 18 months would be a reasonable expectation.

Is verbal consent valid?

It is, but as you need to have a record of when consent was given and what was consented to, it would usually require the conversation to be recorded.

Can we send an email to unsolicited addresses to ask permission to contact them? For example, emails from a list provided by a third party.

If you can use legitimate interest as the lawful basis, they can be contacted. If you are relying on consent and the details are from a list provided by a third party, you need to have evidence from the third party about the consent given. This would be the date and time they gave the consent, the wording of the consent and the opt-in option(s) they selected to have contacts from a third party. An option with something like "our trusted partners" is **not** valid as it has to be "specific, informed and unambiguous".

If all of that is OK, the email you send them has to include where you obtained their details and what you will do with their personal data. This is covered in Article 14 of the GDPR. The data controller – the company sending the email - is responsible for dealing with any issues raised by email recipients. In practice, the use of third party lists is likely to end as the risks of using them are too high.

We sometimes send emails to a generic company email address, e.g. info@company.co.uk, and mark it for the personal attention of an individual. Can this still be done?

Sending it to a generic email address is OK, but marking it for the personal attention of a named individual is likely to cause an issue.

If personal contact information is readily available online, e.g. from a search on Google, can you contact them? Yes, providing you have a lawful basis for contacting them. Legitimate interest is likely to be the one that could be used; do a balancing test to determine if you could contact them without having an impact on their interests and fundamental rights.

Is telemarketing, as an alternative to emails, still valid?

Yes. The Privacy and Electronic Communications Regulations (PECR) sits alongside the Data Protection Act and allows live calls to numbers that are not listed on the Telephone Preference Service (TPS) or Corporate TPS (CTPS) or a company's list of individuals who have asked not to be contacted by phone. The PECR is going to be replaced by the ePrivacy Regulation that aligns it with the GDPR.

NOTES

1. Consent

Consent needs to be given in a way that is "specific, informed and unambiguous". The use of opt-outs or prefilled boxes is not allowed. You have to be more transparent over any third parties it will be shared with or marketing you plan to do, including that on behalf of third parties. Records of when consent was given and what was consented to need to be kept as an individual can ask the data controller why emails are being sent. Records would usually be kept as emails or in a database.

ICO Consent Guidelines <https://ico.org.uk/media/about-the-ico/consultations/2013551/draft-gdpr-consent-guidance-for-consultation-201703.pdf>

Consent does not last forever. Some sectors, charities for example, have guidelines on when you need to go back and ask for consent - it is two years - but the majority don't. At the end of the period that is deemed as reasonable, go back and ask for consent again.

2. Legitimate interest

You may under certain circumstances be able to rely upon the option of having a 'legitimate interest' to process data which will constitute a lawful basis of using personal data, without the need to obtain 'consent' of the individual. The ICO make a point of stating that the use of personal data in marketing may constitute a 'legitimate interest'. When a business relies upon 'legitimate interest' it needs to be able to demonstrate that it has balanced its interests against the interests and fundamental rights of the individual around their privacy and show they are only receiving emails that are relevant for them. A possible legitimate interest is sending an email to an individual who attended the same event the previous year. Another one is sending a follow-up email to an individual who came to a stand at an event and had their badge scanned; this is covered in more detail below. If you want to engage a speaker, an email sent under legitimate interest is likely to be valid as you will be offering to pay for their services or offering expenses. Ultimately, whether or not you have a legitimate interest is subjective and very much dependent upon the specific circumstances of each case.

When legitimate interest is used you will need to show evidence that a 'balancing test' has been performed to confirm this approach is valid and the processing is necessary. Guidance on legitimate interest is available from the ICO, the Article 29 Data Protection Working Party (WP29) and the Data Protection Network (DPN). <https://www.dpnetwork.org.uk/dpn-legitimate-interests-guidance/>

The DPN guidance is a good place to start. It includes details on why legitimate interest can be a better approach than consent in some circumstances and includes questions to do a 'balancing test'. Please note that the DPN guidance had not been ratified by the ICO at the time these FAQs were produced, so some details may need to change at a later date.

3. Contract

This is applicable for sending out invoices, to confirm an order has been placed or where a question was asked as part of the sales process and the best way to answer it is by email.

**** LEGALLY CHECKED BY LEE & THOMPSON LLP ****

FAQs on General GDPR questions and Collecting Data for an Event are also available.