How to identify your lawful basis for processing personal data

This guide helps you to identify why your authority is able to process personal data and special category data. This is something that must be documented when undertaking a Data Protection Impact Assessment (DPIA).

The Information Commissioner (ICO) is the regulator for data protection law. The lawful basis conditions and how they apply are described on the ICO website.

Lawful basis

When processing personal data you must meet a lawful basis condition under UK GDPR Article 6.

If you are processing special category data, you must meet a lawful basis condition under Article 6 as well as a condition in Article 9. There are 10 conditions for processing special category data. Five of these require you to meet additional conditions and safeguards set out in Schedule 1 of the Data Protection Act 2018.

Which lawful basis condition applies depends on the reasons you are processing personal data. It is your responsibility to know the drivers for your work, and using this guide will help you to identify them. Once identified, the drivers will indicate the likely appropriate lawful basis condition.

Your authority's Data Protection Officer (DPO) will confirm the appropriate lawful basis condition and also help you to identify the relevant conditions in Schedule 1 if you are processing special category data.

Checklist

LOTI recommends working through this list in order. You start at legislation, but you don't necessarily stop there.

If you identify in legislation a duty (required by law), or power (allowed by law), this is your strongest justification for a lawful basis condition. However, it is helpful to list multiple justifications, where relevant. For example:

- A piece of law sets a duty for a local authority, and statutory guidance describes in detail how the duty should be undertaken. You document both the law and the statutory guidance.
- The local authority has the power in law to undertake a task, and has also set this task as a corporate priority. You describe both the law and the corporate priority.

1. Legislation

Legislation is likely to be the strongest justification for processing personal data because your processing is specifically required by law (a duty) or allowed by law (a power). A local authority must undertake its duties, but has discretion over whether it exercises its powers.

Where an action is required by law (duty), you will usually use the lawful basis condition of legal obligation (UK GDPR Article 6, 1 (c)). Where you have broader actions allowed under law (power), you will mostly use the condition of public task (UK GDPR Article 6, 1 (e)).

2. Statutory guidance

Statutory guidance sits beneath a law and describes what you have to do to comply with all or parts of that law. It is not strictly mandatory, but you must "have regard" to it. If an organisation chooses to act differently than what the statutory guidance recommends, it must be able to justify its decision with a very good, objective reason. Working Together to Safeguard Children or Statutory guidance for local authorities in England on civil enforcement of parking contraventions are examples of statutory guidance.

3. Case law

Case law is the collection of legal rules and interpretations established by the written decisions of judges in past court cases. Where case law has made significant decisions that impact your processing of personal data, this is normally already known to the relevant service area and the authority's legal team.

4. Professional standards

Professional standards may be described within legislation, but can also come from regulators and membership bodies, such as the Nursing and Midwifery

Council.

5. **Regulator guidance and best practice**

Similar to professional standards, a relevant regulator, like the General Medical Council, may issue guidance that describes activities needed to meet your organisation's duties.

6. **Council ambitions and strategy**

In a local authority, a lot of the duties and powers are described within legislation or statutory guidance. Most corporate strategies and ambitions cover the ways in which the organisation seeks to meet these legal duties.

You can use a corporate or Mayoral strategy, or similar, to add additional justification for the work you are undertaking. It can be used as the sole justification for a lawful basis, if you adequately explain why the council's ambitions weigh strongly against a data subject's right to privacy.

7. **Business practices**

It will be rare that you undertake work in a local authority where none of the above categories require or describe in some way the work you are undertaking. However, you may be able to justify a lawful basis condition based on your council's business practices.

Lawful basis conditions

The lawful basis conditions are listed below. Those most commonly used by local authorities are in bold.

Please note that it is rare that a local authority will use consent or explicit consent as its lawful basis for processing personal data. LOTI has a guide for local authorities on consent in data protection.

Article 6 Conditions	Article 9 Conditions
a) consent	a) explicit consent
b) necessary for the performance of a contract	b) employment and social security
c) legal obligation	c) vital interests
d) vital interests	d) not for profit, trade union

e) performance of a task carried out in the public interest	e) manifestly made public
f) purposes of the legitimate interests	f) necessary for the establishment, exercise or defence of legal claims or judicial capacity
	g) substantial public interest
	h) purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, **the provision of health or social care or treatment or the management of health or social care systems and services**
	i) public interest in the area of public health
	j) archiving purposes in the public interest, scientific or historical research purposes or statistical purposes