

PRIVACY NOTICE - VOLUNTEERS

Background

This privacy notice is intended to make the individual whose data you are processing aware of how their personal data is being used and what personal data relating to them is being processed. The obligation to provide a privacy notice only applies to data controllers and there is no requirement to provide one if you are only a data processor in relation to the relevant personal data. However, please note that it is possible to be both a data controller and a data processor in relation to the same personal data, so whether an organisation is a data controller or data processor for any particular processing activity will require careful consideration. A data controller is defined as 'a natural or legal person, public authority, agency or other body, which, alone or jointly with others, determines the purposes and means of the processing of personal data' whereas a data processor is defined as 'a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller'.

So a data controller is the person that controls how the data is used and processed. For example, an employer will always be a data controller of personal data relating to its employees. A data processor is a person who processes the personal data in accordance with the instructions of the data controller. They are usually a supplier to the data controller, but not all suppliers are data processors. For example, an outsourced payroll provider will be a data processor, as they will process the payroll information they are provided with by the employer strictly in accordance with the instructions of the data controller. However, a health insurance provider providing health insurance to the employer's employees would be a data controller because, although they are supplying a product to the employees of the employer, they will decide how they use and process the personal data they are provided with in order to provide the insurance product.

Essentially a sports organisation will always be the data controller of the personal data relating to its members, its representatives and its staff/employees but, occasionally, if say it is giving presentations for or arranging workshops or training sessions on behalf of other organisations, it might only be a data processor of the personal data of the attendees/participants.

Amending the Privacy Notice

THIS PRIVACY NOTICE HAS BEEN PREPARED WITH SPORTS ORGANISATIONS IN MIND FOR THE CATEGORY OF INDIVIDUAL DESCRIBED IN THE HEADING, BUT AS EACH AND EVERY SPORTS ORGANISATION WILL PROCESS AND STORE PERSONAL INFORMATION IN DIFFERENT WAYS, ITS CONTENT MAY NOT ALWAYS BE APPLICABLE OR

APPROPRIATE AND IT HAS ONLY BEEN DESIGNED TO BE USED AS A STARTING POINT.

Therefore the content may need to be amended to take account of this and this has been highlighted on this drafting note where applicable. In particular the categories of personal data processed by your organisation as a data controller (*paras 1 (**Personal Information we may collect from you**) and 2 (**Special Categories of Personal Information**)*) together with the list of processing activities and the purposes for processing (*para 4 (**Uses made of the Information**)*) may need to be amended/added to as appropriate. The purposes for processing will include any activities where you pass the personal data to a data processor to process on your behalf.

Where possible, the privacy notice should be amended to include any future processing activities which are planned or likely in order to minimise the need to update and re-issue a revised data privacy notice in the future.

The requirement is that the privacy notice must be fair and transparent, but it should also be easy to understand and clear. These two aims can conflict so it is always a balance as to how much detail to include (to promote transparency) and how much to keep it simple (so that is easily readable).

Providing the Privacy Notice

Once completed, the privacy notice should be sent to individuals either at the time the personal information is collected (where you have obtained personal information from an individual directly) or at first point of contact with the individual/ within one month of data collection (whichever is the first to occur) (where the personal information has been obtained indirectly). It is often convenient to use the same medium you use to collect the personal information to deliver privacy notices.

So, if you are collecting information through an online form, for example, you should provide a link to the notice as the individual fills out the form or you may wish to use a layered approach, as it allows you to provide the key privacy information immediately, e.g. what you will be using the personal information for and have a link to more detailed information in the form of the privacy notice elsewhere for those that may want it. It would not be best practice to collect information through the form and then email the individual with a separate link to a privacy notice, as it is not providing the privacy notice at the time of collection of the personal data.

Where personal information is collected and consents sought via a paper-based form, again it would be advisable to provide a copy of the privacy notice, together with the form at the point of data collection. Where there is not enough space to provide more detail on a form or this would be entirely impractical, adopting a layered approach again can be useful as it allows you to include key information

on the bottom of the form, together with a prominent reference to the organisation's detailed privacy notice to ensure that it is as easy as possible for individuals to view the terms of the notice before providing their personal information if they wish.

Consents

Please note that the requirement to provide a privacy notice is a separate legal issue as to whether any consents are required from the individual for any activities which involve the processing of their personal data. Whilst the issue of obtaining consents is often combined with a privacy notice, legally they do not need to be combined and could be separated (*see Advice Note on Direct Marketing for example consent wording*).

If you do wish to obtain consents in the privacy notice, e.g. a member will sign and return it to the organisation, then wording can be added to the end of the privacy notice to obtain the required consents. Please note that a separate consent should be obtained for each different activity for which consent is required, and any consent boxes should not be pre-ticked. You should not take a global consent covering a range of different uses of personal data where consent is being relied upon as the basis of processing.

The key issue to address on consents is "**what do you need consent for?**" In many cases consent will not be required for how you want to use personal data. The specific issues to think about are:

- In relation to all personal data that you process (*other than special categories of personal data or personal data you process relating to criminal convictions and offences, information for which see below*), **you will only need to obtain explicit consent to process this data if and to the extent that you are unable to rely on one or more of the other lawful means for processing. These other lawful means are:**
 - the processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract e.g. for the performance of an employment contract or for the purposes of administering someone's club membership;
 - it is necessary for compliance with a legal obligation e.g. where you hold records of a spectator's attendance to comply with health and safety legislation;
 - it is necessary for the purposes of the legitimate interests pursued by you as the controller or by a third party e.g. you may have a legitimate interest to retain records in relation to club members in

order to properly administer and manage their membership (see *below for further clarification*)

- it is necessary in order to protect the vital interests of the data subject or of another natural person; or
 - it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
- This means that aside from consents for direct marketing (see *Advice Note on Direct Marketing*) then you are unlikely to need consent to process ordinary personal data in the normal activities of the sports organisation.
- However if you are processing special category personal information (such as *health data to assess someone's suitability to participate in a competition or disability information about a participant or employee*) or criminal records information it is likely that you will need some consents from individuals that the personal information relates to.
- It can be difficult for the private sector to process '*special categories of personal data*' (*i.e. information about an individual's racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and 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*) without obtaining consent. You will need to obtain explicit consents unless you can demonstrate that:
- the processing is necessary for reasons of substantial public interest, on a lawful basis;
 - it is necessary for the establishment, exercise or defence of legal claims; or
 - it is necessary for the purposes of carrying out the obligations and exercising rights in the field of employment and social security and social protection law.
- You will need to obtain explicit consents in relation to any personal data you process relating to criminal convictions and offences unless the processing is authorised by Union or Member State law. This means that unless processing information about criminal convictions is a legal requirement, then you will need consent from the individual.

- Where personal data are processed for direct marketing purposes (including any profiling to the extent that it is related to such marketing) you will need explicit consent from the data subject (see *Advice Note on Direct Marketing for further detail*). Where the data subject objects to processing for direct marketing purposes, you must promptly stop processing their data for direct marketing purposes.

Examples of where you may need to obtain consents include; (i) sending a member marketing information such as newsletters or information about your commercial partners that is not included within the membership package they signed up to or (ii) carrying out DBS checks on an individual where not required to do by law will require their consent.

Once you have determined what consents are required, the privacy notice will also need to be amended to take account of when consent is or is not being relied upon as a basis for processing personal data. Where any consent is being obtained then the basis for processing that personal data for that reason can be included in the privacy notice as consent. Where consent is not being used as a basis for processing then the reference to consent should be removed from the privacy notice.

Where the privacy notice refers to the “special category reasons for processing special category data” then to the end can be added “but excluding consent” in these cases. Also where consent is not being used as basis for processing criminal records history, then again the reference to consent should be removed from the table in the privacy notice.

Assessing whether your processing activities are necessary for legitimate interests

Legitimate interests are most likely to be an appropriate basis for processing where you use data in ways that people would reasonably expect and that have a minimal privacy impact. Where there is an impact on individuals, it may still apply if you can show there is an even more compelling benefit to the processing and the impact is justified.

There are three elements to the ‘legitimate interests’ basis for processing and it helps to think of this as a three-part test. You need 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.

'Necessary' means that the processing must be a targeted and proportionate way of achieving your purpose. You cannot rely on legitimate interests if there is another reasonable and less intrusive way to achieve the same result.

You must balance your interests against the individual's interests. In particular, if they would not reasonably expect you to use data in that way, or it would cause them unwarranted harm, their interests are likely to override yours. However, your interests do not always have to align with the individual's interests. If there is a conflict, your interests can still prevail as long as there is a clear justification for the impact on the individual.

The biggest change under the GDPR is that you now need to document your decisions on legitimate interests so that you can demonstrate compliance under the new GDPR accountability principle. Once you have carried out the three part test to assess whether legitimate interests applies, you must therefore keep a record of your assessment and the outcome. There is no standard format for this, but it's important to record your thinking to help demonstrate that you have proper decision-making processes in place and to justify the outcome.

For further guidance please see <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/legitimate-interests/>.

REMEMBER

EACH AND EVERY SPORTS ORGANISATION WILL PROCESS AND STORE PERSONAL INFORMATION IN DIFFERENT WAYS, THEREFORE YOU MUST MAKE SURE THAT THE LIST OF PROCESSING ACTIVITIES YOU INCLUDE IN YOUR PRIVACY NOTICE IS A TRUE REFLECTION OF YOUR ORGANISATION'S CURRENT AND FUTURE PROCESSING ACTIVITIES.

A PRIVACY NOTICE SHOULD GIVE INDIVIDUALS ENOUGH DETAIL TO ALLOW THEM TO UNDERSTAND WHAT YOU DO AND INTEND TO DO WITH THEIR INFORMATION AND CAN ALLOW FOR DEVELOPMENT IN THE WAY YOU USE PERSONAL DATA. HOWEVER, YOU SHOULD NOT DRAW UP A LONG LIST OF POSSIBLE FUTURE USES IF, IN REALITY, YOU DO NOT INTEND TO PROCESS PERSONAL DATA FOR THOSE PURPOSES.

