**Information on Lawful Bases**

**What are the six lawful bases for processing data?**

1. **Consent** - This is the lawful basis most people are aware of and is essentially when you have the consent from a data subject, to process their personal information. An example of this could be where an individual purchases an item online and is asked to tick a box to consent to receiving marketing emails. Under the GDPR, valid consent has become more difficult to obtain and evidence. Valid consent must be freely given, specific, informed and unambiguous. There must be a clear statement of consent or affirmative action by the data subject. Pre-ticked boxes or statements of consent buried in lengthy legal jargon will not suffice. The language must be clear, unambiguous and comprehensible for the data subject. Valid consent is therefore a high standard to achieve under GDPR and may be difficult for you to rely upon, as it may be withdrawn at any stage by an individual.
2. **Necessary for a contract** - This legal basis is useful where processing of personal information is necessary for the performance of a contract to which the data subject is a party or is required to take steps to enter into a contract. You may find this a relevant lawful basis in relation to the processing of data relating to an employee, freelancer or other individuals who are engaged to assist you with your business.
3. **Legal obligation** - This arises where you have a binding legal obligation to process personal data. This may arise in an employment context, if you were to process personal data of employees for tax purposes, as you would be obligated to do as an employer.
4. **Vital Interests** - This can be relied upon where processing is necessary to protect the vital interests of someone who is incapable of giving consent. This is a very limited lawful basis, and generally only applicable in life and death situations.
5. **Public interest** - This could be of use where processing of data is necessary for the performance of a task carried out in the public interest. This is most relevant for public authorities, but does also extend to organisations that carry out tasks in the public interest, including the administration of justice.

Generally, data controllers within the private sector will seek to rely on other lawful bases.

1. **Legitimate interest** - This lawful basis is used where the processing is considered necessary to pursue the legitimate interests of your business, unless it overrides the interests, rights or freedoms of the data subject. This is arguably the most flexible and broad lawful basis. The ICO comments that it will be appropriate where you are processing data in a way your data subject would reasonably expect, and therefore there is minimal impact on the data subject's privacy rights. You may find this to be the most appropriate lawful basis for processing data of clients or customers.

However, the following assessment should be carried out:

* Identify a legitimate interest, e.g. for the provision of good and services;
* Demonstrate that processing of personal data is necessary to achieve this legitimate interest; and
* Balance it against the privacy rights and freedoms of the data subject, to ensure that the data subject could reasonably expect you to be processing their personal data.

**Which lawful basis is appropriate?**

It is not necessary to restrict yourself to only one lawful basis however, it is not the case that you select all to cover all eventualities. Most data controllers will rely upon several lawful bases as they have a range of data processing activities which will not necessarily be covered by just one lawful basis.

It is useful to think of the purpose of your processing activity. For example, when employing an individual there are a range of processing activities which you will conduct which are necessary in order for you to employ that person and therefore ‘performance of a contract’ may be the most relevant lawful basis in this scenario.

**Lawful bases for processing ‘special category’ data**

Processing special category data is lawful where you can demonstrate that one of the following conditions applies and that the processing of such data:

* Requires the explicit consent of the data subject;
* Is necessary to exercise the rights of the data controller or data subject in the field of employment, social security and social protection, where authorised by law;
* Is required to protect the vital interests of the data subject;
* Is carried out by not for profit bodies;
* Has been made public by the data subject;
* Is required for the exercise or defence of legal claims or judicial acts;
* Is processed for reasons of substantial public interest (with a basis in law);
* Is necessary for the purposes of preventative or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, or the provision of health or social care (with a basis in law);
* Is necessary for reasons of public interest in the area of public health (with a basis in law); or
* Is required for reasons of public interest in archiving, research and statistical purposes (with a basis in law).