

Communicating with special categories data subjects

Data Protection and PECR guidance for staff

This guidance covers how to communicate with data subjects on the basis of special categories data e.g. targeting communications at staff, students and others on the basis of their special categories data.

Data Protection – what you need to do

Data Protection is not about stopping you processing personal data, it is about ensuring that when you do, you do so properly and in accordance with individual's rights. When it comes to processing special categories data – health data, ethnicity, sexual life, political party or trade union membership, religious belief – then you have to be more careful. This does not mean you can't communicate with people on the basis of their special categories data, but you must consider the following.

1. Identify a lawful basis for processing.

The first step is considering why you want to contact data subjects on the basis of their special categories data.

Sometimes this will be because you are required to by law e.g. we have to report on certain equalities data. So Article 9(2)(b) processing under employment or social protection law would be your lawful basis. Sometimes you are conducting research in this area, so Article 9(2)(j) research would be your lawful basis. It's unlikely that in these two cases you would be using the data to contact data subjects however.

As such, explicit consent is the most likely lawful basis if you are contacting data subjects directly and you would have to work with the requirements relating to explicit consent in order to process personal data on that basis.

2. What does explicit consent require?

That you have consent in writing; that you are able to stop processing at any point when the data subject requests it and that consent is not binding, that is, contractual.

In writing means that you have an email or the data subject has ticked a box of their own volition to show they are happy to be contacted.

You should provide a similar method for data subjects to let you know if consent is

withdrawn. For example, if you have used a website to capture consent, you should allow people to withdraw consent on the website or provide an easy to find email address on that page to let you know consent has been withdrawn.

3. Privacy notice – have you told people what you are going to do with their data?

If you are collecting data directly from data subjects, you should provide a privacy notice or informed consent form that tells them why you need the data and what you should do with it. If you are collecting data via a website, there should be text with the form.

If you are using data collected by someone else, either they or you should let the data subjects know where you got it from. If you are processing special categories data on behalf of an organisation for research, they should have let data subjects know that you will be conducting this research. It is still worth producing an information notice or briefing on the research. There is an exemption to notifying data subjects for research purposes when you have obtained the data from another source, but you should still aim for transparency.

Any School systems that allow for communications to be sent on the basis of special categories data held in this systems must explicitly say if the communication is being sent on behalf of a third party.

4. So if I've obtained my data from a third party, what should I be doing?

You may have been tasked with, for example, surveying all BAME students in your department. You have their data in front of you. Are you allowed to contact them?

The short answer is yes. The School allows students to declare ethnicity up front and as this is special categories data, a 'not declared' option is available. So students have made an explicit choice of ethnic category. You can send one email out to them that allows them to volunteer to fill out the survey.

What if you don't have the data to begin with? You can set up a website for collecting the data as set out in 3, then advertise it through the Staff and Student newsletters. You can contact the staff networks like Spectrum or organisations like the SU to see if they are happy to send a message out to their members. As long as you have a purpose for using the data that fits within a lawful basis and you are being transparent with data subjects, you can use whatever networks exist to get your message out about your service or event.

To summarise:

- Work out why you want to process the data and which lawful basis fits
- If gathering under explicit consent, make both consenting and withdrawing consent easy
- Tell data subjects what you are doing with their data.
- You can use data collected by someone else if you can cover the three points listed above.
- Use networks and newsletters to point people towards where they can provide you with their data.

PECR – what you need to do

PECR, or the Privacy and E-Communications Regulations, govern how you should communicate or market to people. Telling people about a new group you have set up, about a research project requiring volunteers or about an event or newsletters is considered marketing.

If you have used explicit consent as your lawful basis, you will be covered for PECR as long as you have told people how you will contact them. For example, 'By ticking this box, you are consenting for us to contact you using the email address you have provided'. You can also provide alternatives for contact like email, telephone, text messaging, voice messaging, depending on how you think it best to contact people. You cannot contact people using a method they have not consented to but you can provide them the options.

Review schedule

| Review interval | Next review due by | Next review start |
|-----------------|--------------------|-------------------|
| 3 years | 31/12/2027 | 1/12/2027 |

Version history

| Version | Date | Approved by | Notes |
|---------|------------|-------------|--|
| 1 | 13/11/2018 | GDPRWG | Reviewed 9/12/2021, no changes required. |
| 1.1 | 21/10/2024 | IGMB | Minor changes |

Links

| Reference | Link |
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Contacts

| Position | Name | Email | Notes |
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Communications and Training

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|---|---------------------|
| Will this document be publicised through Internal Communications? | Yes / No |
| Will training needs arise from this policy | Yes / No |
| If Yes, please give details | |