



Legitimate Interests and Prospect Research

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Foreword

The General Data Protection Regulation will replace the current Data Protection Act and comes into force on 25th May, 2018. The Information Commissioner's Office (ICO) will use the GDPR to regulate how organisations gather, store and use personal data so it's a big issue for prospect research and one that we need to understand in order to be able to continue to research legally and ethically in the future.

Most of what has been written on this topic so far for the non-profit sector (including guidance on data protection from the [Fundraising Regulator](#), the [ICO](#), [NCVO](#) and [the IoF](#)) has concentrated on how GDPR will affect direct marketing and fundraising communications. This is understandable, as many non-profits are rightly concerned about how adherence to the GDPR will affect future income from direct mail or telephone fundraising, alongside the impact it will have on all forms of communication with donors or supporters. That said, and useful as all this guidance is to fundraising in general, prospect research has been rather forgotten, or (worse), mentioned in passing and largely out of context in other pieces of guidance. The result of this has been confusion and uncertainty for prospect researchers and major donor fundraising teams.

One of the main areas of confusion is which of the relevant conditions for processing data we should rely on for prospect research – Consent or Legitimate Interest (see page 6 if you need some background on these terms).

Consent, as a condition for processing personal data, has already received a great deal of attention, particularly for direct marketing. Legitimate Interests, on the other hand, despite being an equally valid condition for processing, has been rather overlooked. This paper therefore aims to explore Legitimate Interests a little by looking at some of the questions organisations must ask when analysing their data processing and reviewing some of the evidence and information that might be useful and relevant in answering those questions.

Ultimately, whilst we still don't have all the answers, we hope this paper can be used alongside existing guidance to help organisations decide whether to rely on Consent or Legitimate Interests as their condition to process data for prospect research.

If you'd like to discuss the issues outlined in this paper please do get in touch by emailing Nicola Williams on nicolaw@factory.com.

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Executive Summary

There is a strong argument for reviewing **the legitimate interests condition** if only because the process of deciding whether or not to rely on legitimate interests is a very useful exercise **in deepening our understanding of prospect research**. Through thorough analysis of the function of prospect research, we can understand how it contributes to fundraising or operational decision making and we can start to build systems that will ensure a more robust, evidence-based approach to prospect research in the future.

Undertaking a **Legitimate Interests Assessment** alongside a **Privacy Impact Assessment** should be sufficient to prove that your organisation has taken sufficient steps to analyse data processing in order to decide on whether to rely on **consent** or **legitimate interests** as your condition for processing data.

Proving that prospect research is **necessary** for **fundraising** is a key aspect of the analysis that non-profits need to do around legitimate interests. Evidence already shows that prospect research can contribute enormously in developing **fundraising strategies** and ensuring **organisational efficiency**, alongside helping non-profits to **work more effectively** and **adhere to regulation** – but more still needs to be done to gather further evidence around this. Tracking prospect research metrics and analysing impact is essential in proving that research is a necessary component of fundraising.

Designing prospect research activities with the donors' expectations in mind is important when developing a **compliant approach** to **data processing**, but it is also a way to ensure we promote **public trust in fundraising** and build **confidence in prospect research** within our own organisations. Designing a hierarchy of research activities based on different types of supporter and supporter relationships can be one way to do this.

Understanding the **reasonable expectations** of **supporters** is another key area. There is already evidence which shows that **donors want non-profits** to have an understanding of their **motivations, preferences** and **interests**. There is also existing evidence to show that at least some donors expect non-profits to undertake **research** in order to achieve this. Building on this evidence to reach a deeper understanding of the reasonable expectations of non-profit supporters is important and can be done through conducting focus groups, recording feedback from individual donors, monitoring reactions to privacy policies and analysing the use of data and research resources.

Privacy policies should be seen as a way to **engage** with supporters and to **build a strong foundation** of what supporters might reasonably expect from fundraising in the future. Using privacy policies as an opportunity to not just explain the mechanism of prospect research (**what we do**) but also the benefits of research to non-profits and donors (**why we do it**) is an important aspect of a good privacy policy.

We do not all need to reinvent the wheel. We are all analysing similar processing, making use of similar data sources and we are tasked with adhering to the same regulation. There are opportunities for **collaborative working**, including **gathering evidence** and supporting each other with information based on **our own experiences** of working through this process. The prospect research community should be working more closely to achieve our ultimate aim of being able to support our organisations with **legal** and **ethical research**.

Useful resources and links

Throughout this paper there are links to many documents from the ICO, Fundraising Regulator and the Institute of Fundraising but it is worth taking some time to review some of the blogs and pieces of guidance which specifically explain and explore consent and legitimate interest in detail (if you haven't already). Whilst very few of these resources concentrate on prospect research explicitly, they are useful in providing context to the issue of deciding on a condition for processing.

- Start with Adrian Beney's recent and informative blogs around consent and legitimate interest – this [first one](#) provides a clear overview of the conditions for processing and [the second](#) explores the advantages and disadvantages of both.
- Fundraising Regulator: [Guidance on Consent](#).
- The Institute of Fundraising: [GDPR The Essentials for Fundraising](#).
- [ICO conference paper](#) from the Fundraising & Regulatory Compliance event in Feb 2017.
- Tim Turner's [guide to data protection and fundraising](#).
- You could read the actual GDPR (although the [ICO website](#) brings together the pertinent sections if you're pushed for time).

It is also worth noting that the ICO will be bringing out specific guidance on consent, legitimate interests and profiling/automated decision making at some point, although it is unclear when. It would be wise not to wait around for these, however, as the legitimate interests guidance in particular may not be with us until the autumn, which doesn't leave much time for planning/implementation for GDPR prior to May 2018.

The 'Legitimate Interests Assessment' (LIA) tool

To rely on legitimate interests, organisations must undertake a balancing exercise to make sure their need to undertake prospect research does not override the rights and freedoms of the data subject. This sounds relatively straightforward but it is actually very difficult and confusing to work out how to do this in practice. Up until now there has been a lack of clear guidance but thankfully, the good people at the Data Protection Network have produced some [guidance on legitimate interests](#), which includes a very helpful '**Legitimate Interests Assessment' (LIA)** tool.

The LIA is a structured process to be used in deciding whether or not legitimate interests can be used as a condition for processing. Whilst it has not been written expressly for prospect research it is sufficiently generic to be applied to any form of data processing and can be easily adapted to suit various needs. Importantly, the ICO has "expressed full support for the central concept" of an LIA, which is probably as close as we'll get to actual approval. This means that using the LIA to analyse processing, documenting the process and – crucially – also completing a [Privacy Impact Assessment](#) should be sufficient proof that your organisation has met the required standards for deciding on a condition for processing.

The guidance outlines **three stages** of an **LIA**:

1. Identify a **Legitimate Interest**
2. Carry out a **Necessity Test**
3. Carry out a **Balancing Test**

The LIA is a set of questions which enable you to work through the three stages. We hope that this paper will contribute towards an understanding of how these questions can be approached.

Is prospect research necessary and does it add value?

It is imperative, in order to rely on legitimate interests, that prospect research can be proven to be necessary – the DPN guidance defines ‘necessary’ as “not synonymous with ‘indispensable’ but neither ... as wide as ‘ordinary’, ‘useful’, ‘reasonable’ or ‘desirable’.”

Of course, anyone who works in prospect research knows how necessary it is, but now we need to prove it. To do so we can look at how it contributes to efficient and effective fundraising and how it enables us to adhere to regulation. We can do this by identifying and using metrics that we can track to provide evidence for this.

Prospect research contributes to efficient and effective fundraising

The recent report ‘[Good Asking](#)’⁵ highlights that 90% of respondents state that prospect research makes non-profit organisations more efficient and effective. But how exactly does it do this?

Almost 50% of all non-profits receive the majority of their funding from individuals¹ and over £9.5bn was donated by individuals to non-profits during 2015.^{2,3} Fundraised income from individuals is necessary for the continued survival of the sector as it is estimated that reductions in government funding for the non-profit sector will heavily contribute to a £4.6bn shortfall in sector funding by 2018/19.⁴ However, despite the generosity of the British public, the vast majority of donors don’t just give spontaneously; they need to be asked to give and asked to give well⁵. In order to do this, non-profits need a realistic and achievable fundraising strategy.⁶

Prospect research is a necessary component of a fundraising strategy as it enables non-profits to:

- identify the number of **relevant current donors** for particular campaigns or programmes
- identify the number of **new potential donors** for particular campaigns or programmes
- understand the **likely gift capacity** of those donors
- understand the **motivations, preferences** and **philanthropic/ professional** interests of donors
- review the **philanthropic landscape** for future strategic planning

This information contributes to organisational efficiency, ensuring non-profits are making the best use of their donated income by planning effectively. Non-profits that are run effectively raise more money as evidence shows that donors are more likely to give if they feel a non-profit is competent and efficient in how they use funds,^{7, 8} and

are less likely to give if they feel their donations are not used efficiently or the non-profit is badly run.^{9,10,11,12,13,14}

In terms of major gift fundraising specifically, academic studies have shown that investing substantially in prospect research is necessary as a strong link exists between the breadth of research undertaken into prospects' finances, attitudes and values and a successful major gifts programme.¹⁴ Additionally, a 2012 review of research into major donor fundraising specifically recommended investment in prospect research as a necessary component in successful fundraising in order to encourage long-term relationships with donors.¹⁵

Prospect research is therefore a necessary component of a well-run non-profit, as it contributes to fundraising strategy, efficiency and competence which leads to increased income from individual donors.

Prospect research is necessary for non-profits to adhere to regulation

Due diligence research is necessary to adhere to the Charity Commission's [Know Your Donor](#) principle in order to **protect** charities from potential **reputational and financial harm**. This includes identifying and verifying donors, understanding their business activities, the provenance of funds and analysing any risks that may arise from accepting a gift. Prospect research can do all of this.

Gift capacity analysis and new donor identification is **necessary** for non-profits to adhere to [The Code of Fundraising Practice](#) which outlines that fundraisers must not place undue pressure on a person to donate. Prospect research ensures undue pressure is not placed on the same donors indefinitely (by identifying new prospects for the pipeline) and that relevant donation amounts are solicited from donors so as not to inadvertently place undue pressure on them to give more than they are able to.

Realistic strategy: Charity Commission [CC20 guidance](#) stipulates that trustees are now responsible for ensuring that fundraising targets are realistic and any money raised is used effectively.

Ideas for tracking prospect research metrics

Reporting on research metrics can be a useful way to prove research is necessary in assisting non-profits to achieve efficiency, competence and to adhere to regulation. Some metrics that are relatively straightforward to track and collate to support this are:

The **number of prospects** (at varying levels) identified, through ...

... **database screening, network research & new prospects research.**

Number of prospects identified that went on to make a **gift** ...

... and the **total** in **£s** of gifts or type of support **received.**

Number of other **donors/supporters** the new donors brought to the org ...

... and the **total** in **£s** of their **gifts** or **types of support.**

Number of **due diligence research** profiles undertaken ...

... and the **potential reputational** and **financial risk avoided.**

Ways in which **research** contributed to **relationship development** (e.g. number of major donor meetings supported by information found through research).

Research-driven data or analytics used to support the development of **fundraising strategies, operational decision making** or contribute to **project/campaign/annual reports.**

Number of individuals screened **out** of a **fundraising programme** (e.g. major giving) that would **not** have been **relevant** or **appropriate** for them.

Quantifying **additional support** provided to **fundraisers**, e.g.

- Supplementary **prospect/donor** information (profiles)
- **Event preparation**
- **Prospect management support** (e.g. research used to back up decision making)

Tracking this information and collating results links prospect research with fundraising strategy, total income raised and adherence to regulatory requirements, thereby proving necessity.

What other evidence and information proves that prospect research is necessary?

The above outlines just some of the pieces of evidence and ideas that build towards an understanding of why prospect research is necessary, but it is not an exhaustive list. Other ideas are:

One area would be to measure the **impact** of prospect research. Measuring **outputs** (such as the ones listed above) for research is relatively straightforward – but measuring **impact** is another thing altogether. Impact is tricky to define and to measure for many reasons but if you are interested in joining a project to measure the impact of prospect research, please do get in touch with me at Factory on nicolaw@factory.com.

An understanding of the risks of **not** doing prospect research is essential. For example, what intelligence, information and insight would your organisation lack if you could no longer do prospect research? What impact would this have on your organisation's ability to identify donors, or build relationships with them? What might the impact be for donors – would it result in an increase in the number of asks at an inappropriate level or in irrelevant communications, invites and approaches? An increase in **annoyance** and a reduction in **trust** and **income**? Can you quantify the resources – human and financial – that would be wasted making inappropriate communications and approaches? Understanding the risk of not doing research is **as important** as understanding the risks that come from doing it.

Do you have any **qualitative feedback** from key fundraising colleagues, finance execs and senior management about the necessity of research in your organisation that you could use as evidence?

Could you do a comparison of overall income figures **before** and **after** prospect research was introduced to your organisation (this can be reviewed on a campaign or overall level)?

For more evidence on why prospect research is necessary make use of the [Good Asking report](#)⁵ and please let us know if you are measuring other factors or if you have other ideas which could contribute to an understanding of how prospect research is necessary.

Is prospect research within the reasonable expectations of supporters?

This is a huge issue when it comes to analysing processing for legitimate interests. The concept of reasonable expectations formed a large part of the reasoning behind the ICO's punitive action against charities in 2016/17, and has largely fuelled their argument against prospect research and Screening.

For more detailed information on reasonable expectations see Recital 47 of the [GDPR](#) where it says "The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing". Therefore, having a robust evidence base to show that donors whose data might be used for prospect research would **reasonably** expect this to happen should underpin your rationale for relying on legitimate interests.

So, what *do* supporters reasonably expect?

A lot of academic and sector research has been undertaken into the reasons donors (not just major donors) donate to charity and the ways they expect and prefer non-profits to behave when fundraising.

Why they give: donors (both major donors and non-major donors) give to non-profits when they feel an **affinity** and **connection** with the cause^{9,10,15,13}, this affinity or connection can come from a donor's personal or professional life.⁷

What they want from non-profits: donors want effective and appropriate fundraising communications from a non-profit which are suited to their areas of interest,¹⁵ preferring personalised communications to generic ones.¹ They also prefer to be introduced to a non-profit by a peer.⁹

What they get out of it: donors who develop positive relationships with non-profits are more likely to want to donate. They will experience joy, satisfaction, fulfilment and enrichment through giving.^{9,10,15,1} Many donors see giving as a way to achieve happiness for themselves and others,¹³ but non-profits need to take account of donors' interests and provide them with relevant opportunities for involvement.¹²

What they don't want: Conversely, donors do not like being asked for inappropriate amounts,^{15,6} to be sent inappropriate / unwanted communications,¹ or to be asked for support at the wrong time and place¹⁰ – these behaviours lead to an unsatisfactory experience for the donor and are likely to discourage them from further involvement with a non-profit.⁶

Prospect research, of course, helps with all of the above – it ensures communications are relevant, that fundraisers are respectful and prepared for meetings, that there is an understanding of what might be an appropriate donation request and which project/campaign areas might be of interest to the donor through their personal or professional experiences.⁵ It also avoids wasting donors' time and helps to provide donors with great opportunities which lead to personal fulfilment and joy.⁵

But just because prospect research helps meet the expectations and preferences of donors, does that in itself imply that donors would **reasonably expect** non-profits to undertake research to do this? Evidence exists to suggest that at least some donors would. For example, 78% of major donors who stated that fundraising had improved in the past 10 years cited that this was directly due to non-profits doing their research prior to approaching them.⁹ Also, the Good Asking report⁵ contains some strong evidence around this, as these example quotes from fundraisers show:

"All of the major donors I have spoken to on this subject are unanimous in their appreciation of the care and attention to detail that has gone into the solicitation process to ensure that the kind of projects we have asked them to support align with their own interests."

"I recall many a meeting with major or potential major donors in which they either commended the fact that 'I had done my research' before coming to see them or appreciated a quick, efficient meeting that resulted from good preparation based on thorough research."

Furthermore, the Good Asking report⁵ provides further statistics, such as that the majority (60%) of respondents in a 2017 YouGov survey who agreed that they want charities to communicate in a tailored way also believe that charities should be able to make use of publicly available information in order to do this. However, forthcoming research from nfpSynergy¹⁶ highlights some of the differences in the expectations of different types of donors in relation to fundraising communications and also around

their attitudes towards how charities use publicly available data (outlining, for example, that only 14% would choose to 'opt in' to charities using it in fundraising).

The more evidence we (as a sector) and you (in your own organisation) can gather around donor **preferences** and donor **expectations**, the more robust our position will be. For example, most fundraising teams (especially major donor fundraisers) will have anecdotal evidence from donors that could be useful and interesting, and we should get better at recording and collating this. See page 15 (under 'What other evidence can we gather around reasonable expectations?') for further ideas that may help to generate greater understanding and evidence around this topic.

Is prospect research an intrusive or inappropriate use of data?

On the whole, the existing evidence shown above would suggest that many donors expect and welcome research but it is perfectly likely that an analysis of your supporter base through your PIA and LIA will suggest that some of the individuals on your database might *not* reasonably expect research to be undertaken. This group will most likely include those individuals whose data was obtained for a purpose that is not entirely compatible with fundraising – this is important because analysing the reasonable expectations of data subjects includes understanding their **relationship with you**.

For example, at the [IoF GDPR seminar conducted by Birketts](#) in June 2017 a distinction was made about the different types of supporters on a database and what they might reasonably expect based on their relationship with the non-profit. They used an example; take two supporters on a database, one is a donor and the other once bought some of your charity Christmas cards via your website. Birketts said the **donor** might indeed reasonably expect their details to be used in fundraising activities such as Screening or research, but perhaps not the card buyer. So, one of the processes in reviewing legitimate interests is to understand the **purpose** for which you hold the data, and the relationship you have with the data subject because of it.

The result of this may be that, in the future, there are segments of your database that you do not put into in a dataset for Screening project, or groups of individual supporters whom you do not research. Recording the reasoning behind this decision making is an important part of building a rationale for legitimate interests.

You may, for example, design a 'hierarchy of research' based on the relationship you have with individuals and decide that certain lower levels of research (which are not intrusive) are acceptable for a wider range of data subjects, but more in-depth research, which could be deemed more intrusive, is only conducted when an individual donor has a) shown a certain level of affinity and b) is likely to be wealthy (based on an analysis of non-intrusive factors such as past giving, geodemographic/postcode analysis or job title etc).

The LIA specifies that “the greater the intrusion ... the more the rights of the individual must be considered”, so designing your prospect research activities with the donors’ expectations and the level of intrusion in mind is important in developing a compliant approach to data processing – but, more importantly, it is also a way to ensure we promote trust in fundraising and build confidence in prospect research.

What other evidence can we gather around reasonable expectations?

Many organisations and institutions feel their balancing exercise has already shown that legitimate interests is a valid condition for processing data for prospect research. Even if this is the case, however, it would be useful to continue analysing and building up further evidence to support this conclusion. One of the ways to do this would be by gathering more of our donors’ and supporters’ views. Some examples of how we might do this are:

Focus groups: many non-profits are planning and undertaking focus groups with donors to discuss their knowledge, expectations and reactions to all aspects of fundraising, including prospect research.

Capturing individual feedback: there is a wealth of anecdotal evidence about donors expecting prospect research (e.g. see the Good Asking report). Many major donor fundraisers can quote time and again the instances when a donor was glad the fundraiser was well prepared and had done their research prior to a meeting. Unfortunately, this anecdotal evidence has not been systematically captured and recorded – it is now time to gather and collate this feedback and encourage major donor fundraisers to make a point of asking donors (when relevant / appropriate) how they feel about prospect research processes.

Surveys: if you work for a HEI you can get involved in a study into the reasonable expectations of alumni being undertaken through the Hartshook Centre for Philanthropy – please email europa@case.org to express your interest in the reasonable expectations study if you’d like to be involved.

Sources and resources: as part of a Privacy Impact Assessment, researchers need to undertake an analysis of the data sources and resources which are typically used in order to decide if supporters would reasonably expect them to be used in research. For some sources (e.g. the Sunday Times Rich List), this is a relatively straightforward analysis (they are very public and accessible), but for others it is a more sensitive issue. As we all broadly use the same resources it may make sense for there to be a sector-wide analysis of these sources, so we end up with a standardised view of which sources are within reasonable expectations, and which are not.

Analysis of reaction to privacy policies: under GDPR, privacy policies need to be actively provided to supporters (not just made available on a website) – see below under ‘How do you ensure data subjects are informed and in control of data processing?’ for more details on this.

Privacy policies: further investigation

Factory have been speaking to various institutions who are relying on legitimate interests and who have started the process of sending their privacy policies to their supporters and donors. These privacy policies include, in detail, the various aspects of prospect research – providing information on Screening, profiling and wealth analysis. So far, there have only been a tiny number of donors who have chosen to ‘opt out’ of research or Screening. We believe this reaction to privacy policies is indicative of how our donors and supporters feel about prospect research and so far, the reaction suggests they do not feel it is an unfair or unnecessary use of data, and it is within their reasonable expectations (otherwise, presumably, there would have been a high level of opt-outs or complaints).

Factory are co-ordinating a project to analyse the reactions of donors and supporters when they receive an updated privacy policy from a non-profit. This will collate various statistics (not personal data), such as:

- number of privacy policies **sent out** and by **which methods**
- number of **opens** / **click-throughs** (for emails)
- number of **complaints** / **opt-outs** / **comments** (over a fixed period)
- what **type** of supporter is **opting out** or **complaining**
content of **complaints** or **comments**

What results will be a statistical analysis of the reactions to privacy policies which can be used as evidence by anyone in the prospect research sector who wants to use it.

More details will follow on this, but if enough organisations are involved in this then we should be able to build up a strong body of evidence that will tell us how donors are reacting to information about prospect research across the sector. Please email me at nicolaw@factory.com if you'd like to be involved in this project.

Does processing infringe on the rights of the data subject?

What rights do data subjects have?

Under legitimate interests, another part of the balancing exercise is to look at how or if prospect research infringes on the rights and freedoms of the data subject – in short, you need to ensure that your right/need to undertake research is not overridden by the rights of the individual.

In part, this is still related to reasonable expectations (again, [GDPR Recital 47](#) states “The legitimate interests of a controller ... may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller.”)

However, another aspect is to review and ensure you abide by the other rights of data subjects under the GDPR, which are:

1. The right to be informed how Personal Data is **processed**
2. The right of **access** to Personal Data
3. The right to **rectification**
4. The right to **erasure**
5. The right to **restrict processing**
6. The right to **data portability**
7. The right to **object**
8. Rights in relation to **automated decision making** and **profiling**

For a full outline of each of the above refer to the [ICO webpage about rights](#) and also look at page 8 of the DPN guidance as this outlines some anomalies of processing data under legitimate interests (e.g. for data portability and the right to erasure). Below we will look specifically at the ‘right to be informed’ and the ‘right to object’, as these are fundamental to legitimate interests and pose interesting questions for how we communicate to our supporters about prospect research.

How do you ensure data subjects are informed and in control of data processing?

Essentially, if you are relying on legitimate interests, this comes down to ensuring you have an up to date privacy policy which you actively communicate to supporters which details a) what you will do with their data and b) gives them the chance to opt out of the data processing. Under GDPR, these are fundamental rights of the data subject and as such they must be adhered to.

There is plenty of practical information about how to go about compiling a privacy policy and allowing people to opt out, including the official ICO guidance [Privacy Notices, Transparency and Control](#) which includes a link to a page with GDPR-specific content. Alongside the practical information, however, it is worth briefly exploring the wider benefits of compiling a privacy policy because this is a real opportunity for non-profits to educate supporters about prospect research which could have a long term impact on what supporters to charity might 'reasonably expect' in the future.

We asked some Factory clients, who are relying on legitimate interests for prospect research and who have already written their privacy policies, to share their tips for how to approach writing a privacy policy and how to make the most of this opportunity to communicate with supporters:

1. We must be involved: Prospect research, in all its glory, can be difficult to explain – so researchers must be involved in designing and writing privacy policies as we are the experts in how and why we do what we do. So, if you are a researcher, don't leave it up to someone else to write the policy – get involved and make sure you have your say.

2. Address impact: Use the Privacy Policy as a way to not just explain the mechanism of research but to outline the reasons why prospect research enables non-profits to operate efficiently and to achieve their aims more quickly and effectively. Framing research in a positive light and underlining its benefits will help supporters understand why we do it. So, don't just explain what we do, explain why.

3. Think ahead: Whilst it's hard to pre-empt what research projects you might want to do in the future, try to think ahead and include information about research processes you might want to do in the future but aren't yet doing (e.g. targeted research, analytics for campaigns, screening).

4. Don't sacrifice detail for brevity: the [GDPR](#) stipulates (see Article 7.2) that privacy policies must be concise but also intelligible and written in clear and plain language. It can be very difficult to be concise when detailing prospect research and the advice from our clients is to include as much information as you need to get the point across, even if it doesn't feel very concise. The ICO has stated you can [take a layered approach](#) to providing privacy information, so you don't need to hit everyone with all the details straight away (this would be impractical in any case), you can make the information easier for the prospect to digest.

5. Use a privacy policy as an engagement tool: it is not necessary to include exhaustive detail in a privacy policy about the reasons for obtaining and holding data from different sources, as this would make it unwieldy. You can invite supporters to contact you instead, so you can discuss this detail with them, which is a great opportunity to engage with supporters on this issue and to gather further information to support your rationale around legitimate interest.

6: Get it checked over: If you can, run the policy past your legal counsel so they can review the content and point out any information you may have missed. You can also pass it to some trusted donors and ask for their feedback – they may pick up where you have used jargon or something is unclear to people who don't work in fundraising.

What else can we do?

When it comes to writing privacy policies, we don't all have to reinvent the wheel. We can learn from each other on what works, and what doesn't. Sharing ideas around what to include and how to include it would be very useful for the sector. This is tricky, as nobody currently really knows exactly what to include and how to phrase it, which means that nobody feels like an expert who can advise others – but we can start to learn from each other. Perhaps the litmus test for privacy policies will be when we start to get feedback from donors – maybe at this point we will begin to be better informed as to how to positively communicate the necessary work that we do. Sharing our experiences on this via forums or in our networks would be very useful to the prospect research community.

Looking ahead

We can see that there is already a decent amount of information, evidence and intelligence that we can use as a community to analyse our data processing when reviewing which condition for processing we will rely on.

That said, we should identify and build opportunities to gather intelligence – within our organisations and across the sector – that will not only ensure we can adhere to data protection regulation, but that will help us to underpin prospect research with a body of knowledge that proves our efficacy and importance in fundraising and to prove how our work contributes to a better experience for the donor.

We need to remember that, despite the hammering we've taken in recent months, prospect research – when done ethically – is a very good and noble thing; we help ensure that non-profits are able to use their limited funds for fundraising in the most effective and efficient way, and in order to ensure a rewarding and satisfying experience for the donor. What could be better than that?

We all want to get to a place where ethical and legal research can once again support fundraising and now is the time to work together on this – this paper outlines many areas where collaborative working and sharing of ideas could be very useful. If you'd like to be involved in any projects, or if you'd just like to share thoughts, insights and ideas please contact Nicola Williams at nicolaw@factory.com.

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