

LEGAL REASONING TO PROCESS AN INDIVIDUAL'S DATA

The Data Protection Act 2018 (or GDPR), places great responsibility on a solicitor and any third party that they instruct when it comes to processing an individual's data. The Information Commissioners Office (ICO) have made it extremely clear that we must all be able to demonstrate governance and compliance and that we will be accountable.

Before processing any personal data, you must ensure that you have a lawful basis for processing data on which you are to rely. There are six legitimising processing conditions as set out in Article 6:

(a) **Consent:** the individual has given clear consent for you to process their personal data for a specific purpose.

(b) **Contract:** the processing is necessary for a contract you have with the individual, or because they have asked you to take specific steps before entering into a contract.

(c) **Legal obligation:** the processing is necessary for you to comply with the law (not including contractual obligations).

(d) **Vital interests:** the processing is necessary to protect someone's life.

(e) **Public task:** the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law.

(f) **Legitimate interests:** the processing is necessary for your legitimate interests or the legitimate interests of a third party unless there is a good reason to protect the individual's data which overrides those legitimate interests.

INVESTIGATING WITHOUT THE SUBJECTS CONSENT

Given that 99% of our activity as professional investigators and process servers is necessarily undertaken without the subject's knowledge and therefore consent, it is most probable that our client and we will be seeking to justify processing on the grounds of having '**Legitimate Interests**'.

The ICO go into some detail about the subject of legitimate Interest and the requirements upon which it can be used as a legal basis to process data without consent.

- The legitimate interests can be your interests or the interests of third parties. They can include commercial interests, individual interests or broader societal benefits.
- The processing must be necessary. If you can reasonably achieve the same result in another less intrusive way, legitimate interests will not apply.
- You must balance your interests against the individuals. If they would not reasonably expect the processing, or if it would cause unjustified harm, their interests are likely to override your legitimate interests.
- Keep a record of your legitimate interests assessment (LIA) to help you demonstrate compliance if required. You must include details of your legitimate interests in your privacy information.

DEMONSTRATING COMPLIANCE

The ICO talk about the need to demonstrate compliance a lot. On the subject of legitimate interest, it is clear that you must be able to articulate why your legitimate interest outweighs the data subject's fundamental right to privacy, before relying on it as your legal basis to process. ^[1]

Tremark undertake an LIA in the form of a Data Processing Impact Assessment (DPIA) on our client's behalf on every single instruction we receive and before any data processing takes place. This DPIA is retained on file to demonstrate that consideration was undertaken before any processing occurred and that our planned data processing was proportionate.

Each DPIA includes:

- A systematic description of the envisaged processing operations and purposes of processing

- An assessment of the risks to the rights of data subjects

- The measures envisaged addressing the risks, including safeguards, security and mechanisms to ensure the protection of personal data.

- An assessment of the necessity and proportionality of the processing
 - is there a legitimate interest behind the processing?
 - is the processing necessary for that purpose?
 - is the legitimate interest overridden by the individual's interests, rights or freedoms?