



**Please pass to your Leadership Team &
Teaching Staff**

Understanding Consent when processing personal data



Processing of personal data – what do you have to do in relation to consent?

The General Data Protection Regulation (GDPR) says a lot about **consent** – but our summary in this bulletin is here to help.

Given the range of staff who touch on processing personal data, it's well worth all staff understanding fully so please take some time to circulate it.

The GDPR says: Consent is a 'freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her'.

While this is fairly straightforward to understand, it can be tricky to apply practically, so how does this **translate** to reality?

First off – intention. Keep it simple, consent forms with a choice of 'yes' or 'no' are a common way of evidencing the intention required – boxes though must **not** be pre-populated with an answer.

Secondly – opt in not opt out. You must ask people to **opt in** to services rather than **opt out** (fundraising activities by the PTA or offers on books being examples of where opt in is required).

Next - When **seeking** an individual's consent to processing data they need to know:

- **What their information will be used for and why you need it.** You need to make this clear on your form, and signpost or link to the Privacy Notice on your website. Also – recognise in this that different things have differing levels of risk and are more or less sensitive.
- **How long the information will be retained for.** This should reflect your retention schedule but often disposal can be when the student leaves.
- **Who the information will be shared with (if anyone).** Examples might be an organiser of an activity or photography. Also if a third party, you should ensure there is a contract and that they are GDPR compliant.

What about consent withdrawal? - There must be an option to do this at any time and it must be as easy as the process of giving consent in the

first place. So - you must provide details of how – for example via a school contact email address.

If individuals withdraw consent you should act promptly. For note though – processing leading up to that point is ok. Also; future service levels must not be reduced if withdrawal happens.

Should families look at any permissions together? The answer is **yes**. Parents may be aware of issues that may not seem so relevant to a young person (for example around safeguarding). This also applies where families are **separated** – it really helps to sort out any differences of opinion prior to signing.

How should schools approach familial differences of opinion? When there is a dispute the School must always act in a student's best interests, and the older the student is, or the more able they are to understand, the more weight their wishes will carry.

What about older students? Parental consent doesn't automatically expire when the child reaches the age at which they can consent for themselves so schools need to continue to consider it. It's good practice to regularly refresh consent, as well as when joining a school or sixth form.

Permission versus Consent. This is a common area of misunderstanding. Consent to personal data is **not** the same as permission to take part in a school activity (e.g. a trip or use of school internet).

However watch out. Permission may well **lead** to processing of information – for example a trip permission form may ask for health information. That means you have to be clear that you really need this information and also transparent in what you are doing (Privacy Notices should be clear about this and can help with this one).

Is it ok to have many different consent forms? – Yes, it is and actually it is fundamental. It gives individuals choice over how their data is used. For instance just because a student might be ok with their image being used on internal displays does not mean that applies to it being on the school's website.

How about keeping things up to date? It's important that parents and pupils are asked periodically whether the information held is still correct. In particular if there has been no refresh since GDPR came into force (25th May 2018) this is essential.

And how about retention? This is straightforward. Records that evidence consent should be retained as long as the student is in the school or otherwise in line with the retention schedule.

However there are some tricky areas to know about:

- Schools have to decide what their lawful basis is prior to processing personal data. Once decided and documented, they have to stick with this – unless there are exceptional circumstances no switching is allowed, even if the original basis proves problematic.
- Sometimes schools can use data for other purposes without relying on consent. This for instance may apply to images where the processing of them on SIMS is ‘public task’ and necessary for safeguarding.
- Consent is always required for electronic marketing and it’s best not to aim this solely at children – special protections apply and you must conduct a Data Protection Impact Assessment (DPIA).
- There are times when other lawful bases for processing information exist. For example, where a school is legitimately processing data other than for performing their tasks as a ‘public authority’ (like in the use of certain Apps) then a Legitimate Interest Assessment can be undertaken to obtain what the school needs.

If in **doubt** then **contact us** – we are happy to help with advice where uncertain.

Finally what about records? – It’s actually straightforward - schools need to consider their basis for processing and document it on their Record of Processing Activities (RoPA).

Need help?

If you use us for your DPO service we have a range of templates to support you including ROPA and a range of newly updated permission options. The link is here: <https://www.onewest.co.uk/my-account/members-area/> you will need your password ready.

If not a One West member and you want to talk about obtaining our DPO service you can speak to: steve_debruin@bathnes.gov.uk

Also you might be interested to check out our website: www.onewest.co.uk for more interesting information.

If you want to you can also call us on [01225 395959](tel:01225395959). We are happy to help wherever we can.

Thanks

The One West Team



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Our mailing address is:

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