



**This will be of interest to your Data Controller – please pass it on.**

## **How to understand Consent when processing personal data.**



Processing of personal data (& associated Consent) is one of the trickiest areas relating to personal privacy.

Yet it is also one of the things we have to do most commonly. So - what do you have to do to get this right?

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**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**.

**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.
- **Who the information will be shared with (if anyone).** 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 & 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 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** & this also applies where families are **separated** – it really helps to sort out any differences of opinion prior to signing.

**Permission versus Consent.** This is a common area of misunderstanding. Consent to personal data is **not** the same as permission relating to other aspects of a customer relationship.

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However watch out. Permission may well **lead** to processing of 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 & actually it is fundamental. It gives individuals choice over how their data is used.

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

**What about retention?** This is straightforward. Records that evidence consent should be retained in line with the retention schedule which would be as long as the relationship with the customer is maintained.

**However there are some tricky areas to know about:**

- Organisations have to decide what their lawful basis is prior to processing personal data. Once decided & documented, they have to stick with this – unless there are exceptional circumstances no switching is allowed, even if the original basis proves problematic.
- Consent is always required for electronic marketing and it's best not to aim this solely at minors or those who are infirm – special protections apply & you must conduct a Data Protection Impact Assessment (DPIA).

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

**Need help?**

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

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](mailto:steve_debruin@bathnes.gov.uk)

Also you might be interested to check out our website: [www.onewest.co.uk](http://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**

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## The One West Team



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**Our mailing address is:**

[One\\_West@bathnes.gov.uk](mailto:One_West@bathnes.gov.uk)

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