

## General Data Protection Regulation fact sheet number 5

### Direct Marketing / Mailing lists

How should you handle contacting people on mailing lists under the GDPR? There are a number of issues to take into consideration, not least the fact that we also need to bear in mind the requirements of the Privacy in Electronic Communications Regulations [PECR] (until the new e-Privacy Regulation terms are decided upon and come into force) when sending any electronic marketing such as telephone messages or emails.

However, to deal with GDPR first;

1. Is the data held in a mailing list actually *personal data*? Probably. Even a business email address can be personal data as an address of [firstname.surname@port.ac.uk](mailto:firstname.surname@port.ac.uk) will identify a person and the fact that they work at the University of Portsmouth. But even if an address is [enquiries@port.ac.uk](mailto:enquiries@port.ac.uk) why not treat it as important and look after it, update it and keep it safe?
2. We need a *legal basis* for processing the personal data in the mailing list. The Information Commissioner's Office (ICO) has stated "You can rely on **legitimate interests** for marketing activities if you can show that how you use people's data is proportionate, has a minimal privacy impact, and people would not be surprised or likely to object – but only if you don't need consent under PECR"<sup>1</sup>, and "The GDPR highlights some processing activities where the legitimate interests basis is likely to apply...direct marketing"<sup>2</sup>.

The legal basis of **legitimate interests** requires that the "...processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child" (Article 6.1.f). In order to make sure that our processing is not only for our own legitimate interests but does not override the rights and freedoms of the individuals on the mailing list, we need to undertake a Legitimate Interests assessment (LIA). The ICO has details of what should be considered in an LIA at <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/legitimate-interests/when-can-we-rely-on-legitimate-interests/>.

3. The first time we contact anyone for marketing purposes – and particularly when we have received their contact details from a third party and not directly from the individual concerned – we need to provide either our privacy notice or a link to that notice to inform the individuals what we intend to use their data for. Further details on the information that should be included in the privacy notice can be found in Fact Sheet 4.

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<sup>1</sup> Taken from the ICO Guide to the General Data Protection Regulation (accessed 15 May 2018 <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/legitimate-interests/>)

<sup>2</sup> Taken from the ICO guidance on legitimate interests under GDPR [https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/legitimate-interests/when-can-we-rely-on-legitimate-interests/#public\\_authorities](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/legitimate-interests/when-can-we-rely-on-legitimate-interests/#public_authorities)

We also need to make clear to individuals what we will do with their data when we first collect it. That is, if we collect contact details for attendees at an event, we need to tell them if we will continue to hold their details and to contact them again after the event.

The Privacy in Electronic Communications Regulations (PECR) allow that it is acceptable to send direct marketing to existing customers (that is, those who have previously contacted you about a service or product) so long as those individuals are given a clear opportunity at the beginning of the relationship to opt out of receiving such marketing emails, and are always given an Unsubscribe option in any email marketing. Further details on the correct application of the PECR can be found at <https://ico.org.uk/for-organisations/guide-to-pecr/>.

For more information, please contact the University's Data Protection Officer, Samantha Hill, on ext 3642 or [information-matters@port.ac.uk](mailto:information-matters@port.ac.uk).