

FACTSHEET ON LEGITIMATE INTERESTS

Lawful processing of personal data

Section 28 of the Data Protection Act 2017 (DPA) stipulates that personal data shall be lawfully processed if at least **one** of the 9 criteria [28(1)(a) to 28(1)(b)(i) - (viii)] mentioned under it applies.

Legitimate interests as a lawful criterion for processing

Section 28(1)(b)(vii) of the DPA allows personal data to be processed for legitimate interests pursued by the controller or by a third party to whom the data are disclosed subject to a balancing test performed against the rights and freedoms or legitimate interests of the data subject.

28. Lawful processing

(1) No person shall process personal data unless –

(a) the data subject consents to the processing for one or more specified purposes;

(b) the processing is necessary –

(i) for the performance of a contract to which the data subject is a party or in order to take steps at the request of the data subject before entering into a contract;

(ii) for compliance with any legal obligation to which the controller is subject;

(iii) in order to protect the vital interests of the data subject or another person;

(iv) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(v) the performance of any task carried out by a public authority;

(vi) the exercise, by any person in the public interest, of any other functions of a public nature;

(vii) for the legitimate interests pursued by the controller or by a third party to whom the data are disclosed, except if the processing is unwarranted in any particular case having regard to the harm and prejudice to the rights and freedoms or legitimate interests of the data subject; or

(viii) for the purpose of historical, statistical or scientific research.

The outcome of the balancing test will determine whether section 28(1)(b)(vii) may be relied upon for a given processing. This criterion for lawful processing should not be construed as 'the weakest link' or an open door to legitimise a processing operation that does not satisfy any other lawful grounds for processing. Judicious use of section 28(1)(b)(vii) of the DPA should be made based on the outcome of the balancing test and subject to adequate safeguards.



Criteria of legitimate interest

The 3 criteria of 'legitimate interest' are:

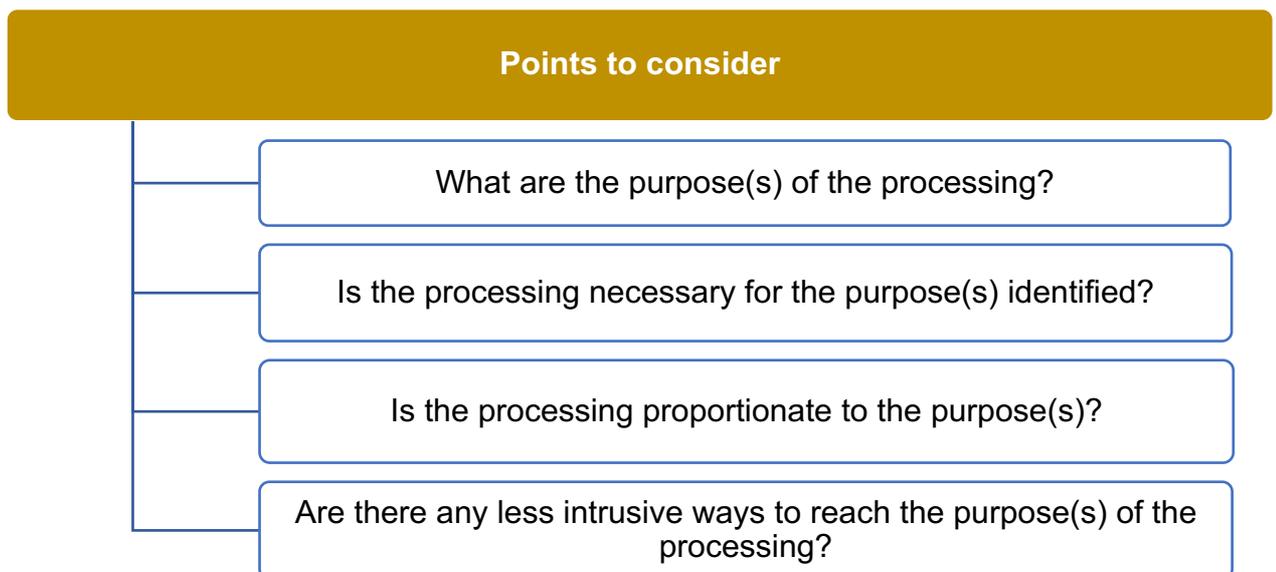
- be lawful,
- be adequately articulated to allow the balancing test to be carried out,
- represent a real and present interest (i.e. not be speculative).

Steps to consider when performing the legitimate assessment

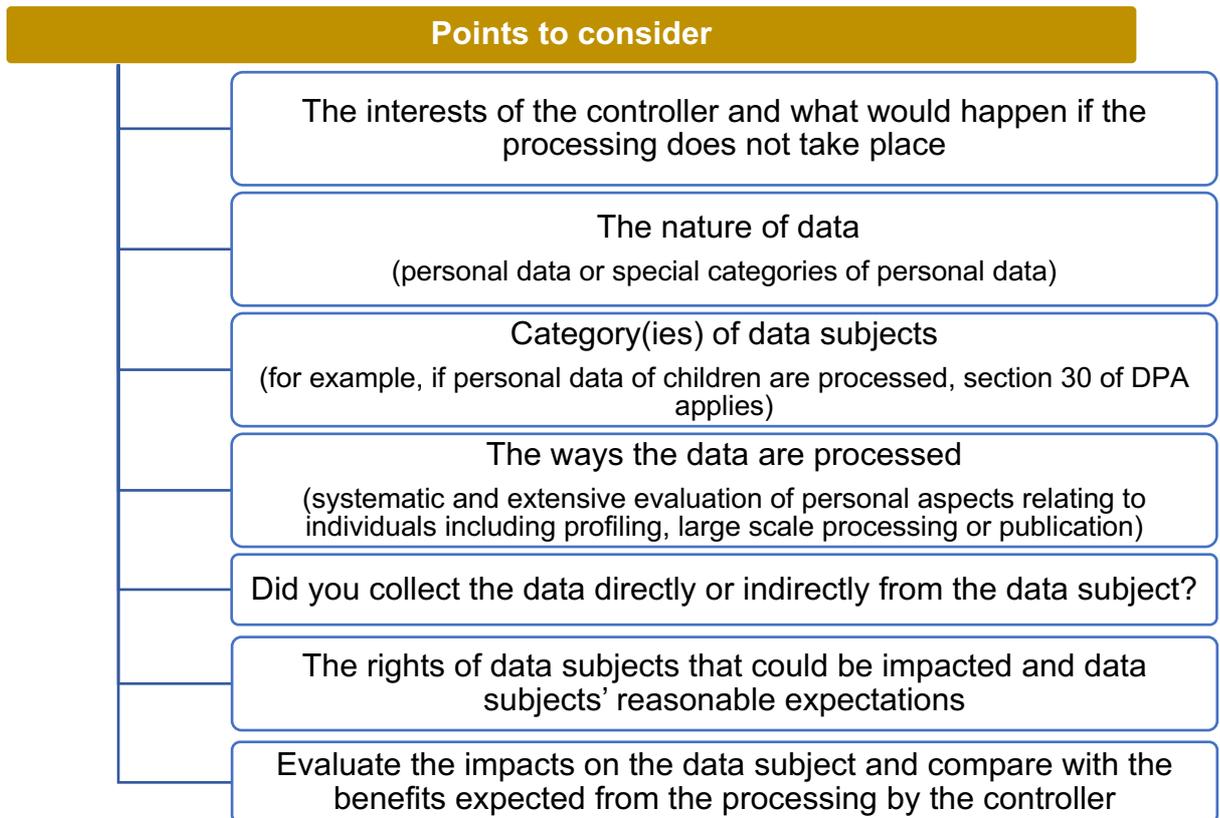
1. Does the interest qualify as 'legitimate interest'?

<input type="checkbox"/>	Lawful
<input type="checkbox"/>	Adequately articulated to allow the balancing test to be performed against the rights and freedoms or legitimate interests of the data subject
<input type="checkbox"/>	Real and present interest (not speculative)

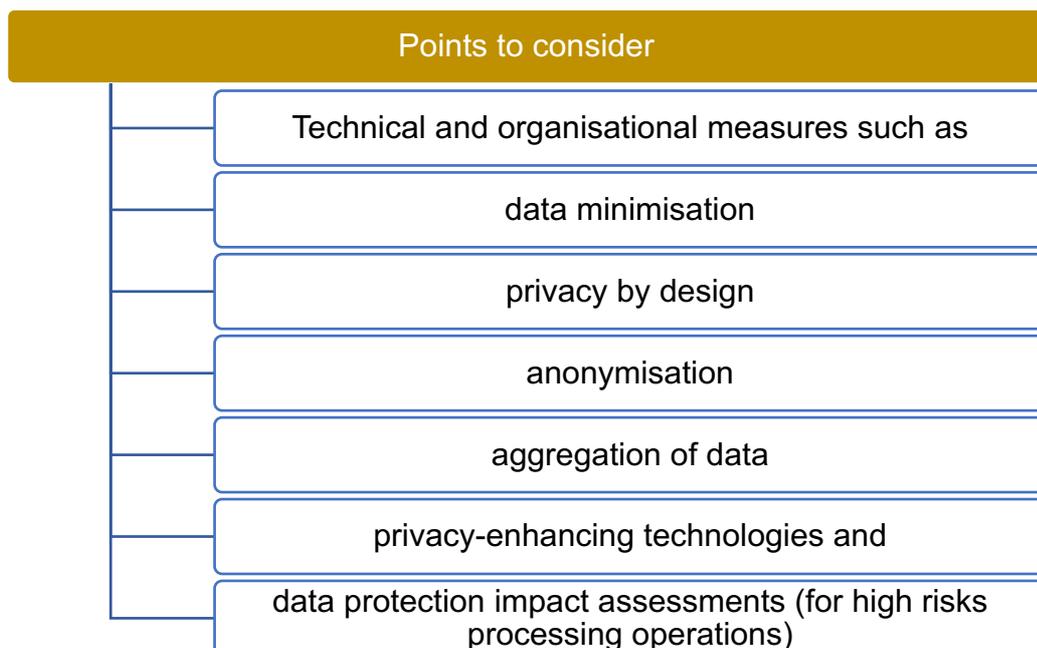
2. Purpose and Necessity test



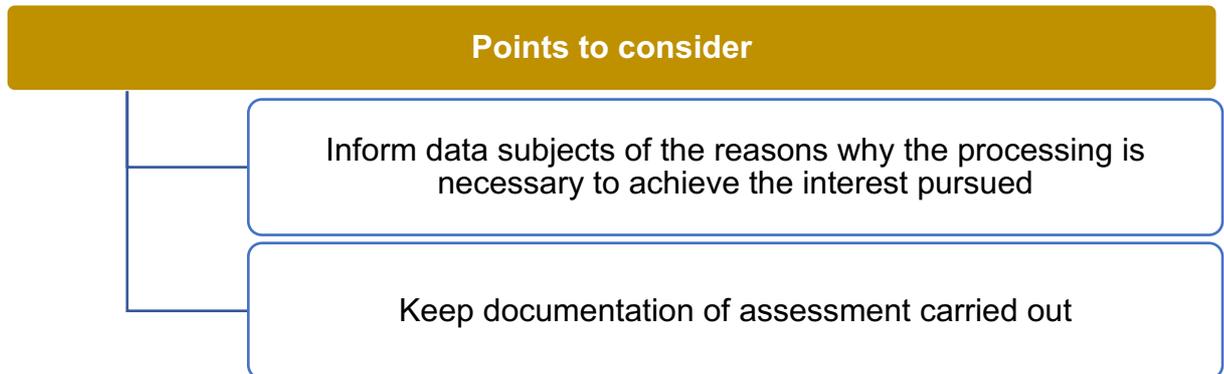
3. Balancing Test- Does the controller's interest(s) override the fundamental rights or interests of the data subjects?



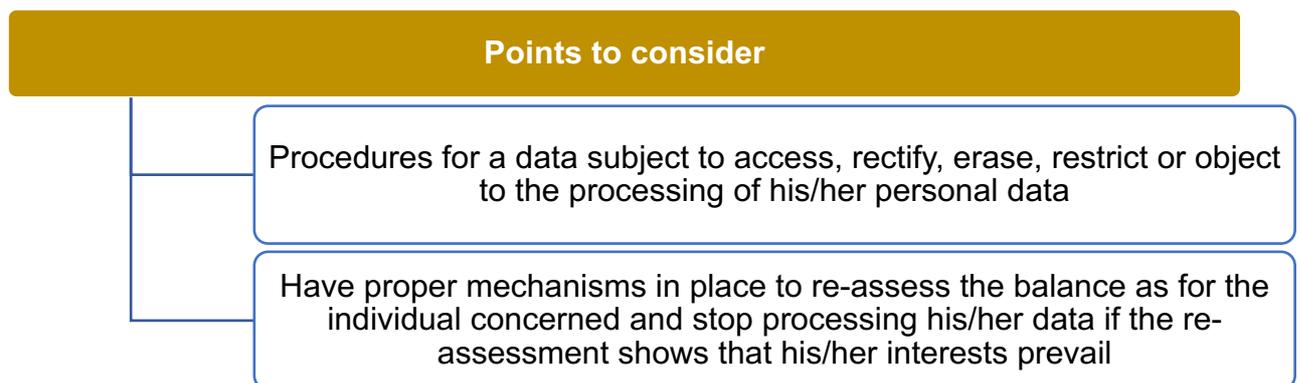
4. Establish a final balance by considering additional safeguards



5. Demonstrate compliance and ensure transparency



6. How can a data subject exercise his/her rights?



7. Decision making

Based on the assessment, can you rely on legitimate interest for the processing?

Yes

No

Examples

In the *Valsts policijas Rīgas reģiona pārvaldes Kārtības policijas pārvalde* case, a road accident occurred where a passenger of a taxi opened the door of the taxi and caused damage to the trolleybus of Rīgas satiksme.

Rīgas satiksme requested for the disclosure of the taxi passenger's data from the national police to bring civil proceedings. The police disclosed only part of the taxi passenger's information to Rīgas satiksme and refused to provide the identity document number or address of the passenger.

The CJEU found that the request for disclosure of the taxi passenger's data from the police was legitimate for Rīgas satiksme to take actions against the passenger who had caused property damage. Moreover, the identity document number or address of the passenger was strictly necessary in order to identify the passenger. Furthermore, the rights and freedoms of the passenger did not take precedence over the controller's or third parties' legitimate interest just because the data subject was a minor.

Hence, the CJEU did not find the refusal for disclosure by the police to be justified.

In the *Y v. Turkey* case, the applicant was not conscious when he reached the hospital. The ambulance staff told the hospital that the applicant was HIV positive. The applicant claimed before the ECtHR that the disclosure of the information constituted a breach of his right to respect for private life.

However, the disclosure was not considered as a violation of the applicant's rights because of the necessity to protect the safety of the hospital staff.

References

1. Article 29 Working Party (2014), Opinion 06/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC, 4 April 2014
2. European Union Agency for Fundamental Rights and Council of Europe, Handbook on European data protection law, 2018 edition
3. <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/legitimate-interests/>