

# Our Lady of Mercy Catholic Education Trust



## St Anthony's Girls' Catholic Academy

<b>Policy type:</b>	<b>School</b>
<b>Policy:</b>	<b>The Lawful Basis for Processing Data</b>
Ratified by MAT Directors:	December 2019
Head Teacher signature:	<i>M. Shepherd.</i>
Chair of Directors signature:	<i>Shepherd.</i>
Review Date:	December 2020
Ownership:	M. Shepherd (Head Teacher)

- You must have a valid lawful basis in order to process personal data.
- There are six available lawful bases for processing (see below). No single basis is 'better' or more important than the others - which basis is most appropriate to use will depend on your purpose and relationship with the individual.
- Most lawful bases require that processing is 'necessary'. If you can reasonably achieve the same purpose without the processing, you won't have a lawful basis.
- You must determine your lawful basis before you begin processing, and you should document it. Take care to get it right first time - you should not swap to a different lawful basis at a later date without good reason.
- Your privacy notice should include your lawful basis for processing as well as the purposes of the processing.

**The six lawful bases for processing are:**

- *The lawful bases for processing are set out in Article 6 of the GDPR. At least one of these must apply whenever you process personal data:*
- **Consent:** *the individual has given clear consent for you to process their personal data for a specific purpose.*
- **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.*
- **Legal obligation:** *the processing is necessary for you to comply with the law (not including contractual obligations).*
- **Vital interests:** *the processing is necessary to protect someone's life.*
- **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.*
- **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 personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)*

- If your purposes change, you may be able to continue processing under the original lawful basis if your new purpose is compatible with your initial purpose (unless your original lawful basis was consent).
- If you are processing special category data you need to identify both a lawful basis for general processing and an additional condition for processing this type of data.
- If you are processing criminal conviction data or data about offences you need to identify both a lawful basis for general processing and an additional condition for processing this type of data.
- The first principle of GDPR requires that you process all personal data lawfully, fairly and in a transparent manner. Processing is only lawful if you have a lawful basis under Article 6. And to comply with the accountability principle in Article 5(2), you must be able to demonstrate that a lawful basis applies.
- If no lawful basis applies to your processing, your processing will be unlawful and in breach of the first principle. Individuals also have the right to erase personal data which has been processed unlawfully.
- The individual's right to be informed under Article 13 and 14 requires you to provide people with information about your lawful basis for processing. This means you need to include these details in your privacy notice.
- Many of the lawful bases for processing depend on the processing being "necessary". This does not mean that processing always has to be essential. However, it must be a targeted and proportionate way of achieving the purpose. The lawful basis will not apply if you can reasonably achieve the purpose by some other less intrusive means.
- It is not enough to argue that processing is necessary because you have chosen to operate your business in a particular way. The question is whether the processing is a necessary for the stated purpose, not whether it is a necessary part of your chosen method of pursuing that purpose.
- You must determine your lawful basis before starting to process personal data. It's important to get this right first time. If you find at a later date that your chosen basis was actually inappropriate, it will be difficult to simply swap to a different one. Even if a different basis could have applied from the start,

retrospectively switching lawful basis is likely to be inherently unfair to the individual and lead to breaches of accountability and transparency requirements.

- If there is a genuine change in circumstances or you have a new and unanticipated purpose which means there is a good reason to review your lawful basis and make a change, you need to inform the individual and document the change.
- If your purposes change over time or you have a new purpose which you did not originally anticipate, you may not need a new lawful basis as long as your new purpose is compatible with the original purpose.
- However, the GDPR specifically says this does not apply to processing based on consent. Consent must always be specific and informed. You need to either get fresh consent which specifically covers the new purpose, or find a different basis for the new purpose. If you do get specific consent for the new purpose, you do not need to show it is compatible.
- In other cases, in order to assess whether the new purpose is compatible with the original purpose you should take into account:
  - any link between your initial purpose and the new purpose;
  - the context in which you collected the data - in particular, your relationship with the individual and what they would reasonably expect;
  - the nature of the personal data - eg is it special category data or criminal offence data;
  - the possible consequences for individuals of the new processing; and
  - whether there are appropriate safeguards - eg encryption or pseudonymisation.
- This list is not exhaustive and what you need to look at depends on the particular circumstances.
- As a general rule, if the new purpose is very different from the original purpose, would be unexpected, or would have an unjustified impact on the individual, it is unlikely to be compatible with your original purpose for collecting the data. You need to identify and document a new lawful basis to process the data for that new purpose.
- The principle of accountability requires you to be able to demonstrate that you are complying with the GDPR, and have appropriate policies and processes. This means that you need to be

able to show that you have properly considered which lawful basis applies to each processing purpose and can justify your decision.

- You need therefore to keep a record of which basis you are relying on for each processing purpose, and a justification for why you believe it applies. There is no standard form for this, as long as you ensure that what you record is sufficient to demonstrate that a lawful basis applies. This will help you comply with accountability obligations, and will also help you when writing your privacy notices.
- It is your responsibility to ensure that you can demonstrate which lawful basis applies to the particular processing purpose.
- You need to include information about your lawful basis (or bases, if more than one applies) in your privacy notice. Under the transparency provisions of the GDPR, the information you need to give people includes:
  - your intended purposes for processing the personal data; and
  - the lawful basis for the processing.
- This applies whether you collect the personal data directly from the individual or you collect their data from another source.
- If you are processing special category data, you need to identify both a lawful basis for processing and a special category condition for processing in compliance with Article 9. You should document both your lawful basis for processing and your special category condition so that you can demonstrate compliance and accountability.
- If you are processing data about criminal convictions, criminal offences or related security measures, you need both a lawful basis for processing and a separate condition for processing this data in compliance with Article 10. You should document both your lawful basis for processing and your criminal offence data condition so that you can demonstrate compliance and accountability.

This information is the responsibility of the Head Teacher.