



# Data Protection Commercial Research policy

This policy sets out how data protection legislation affects commercial research at the School. Please note that this does not cover intellectual property issues such as who owns the personal data as these are covered by the Intellectual Property policy. This policy covers what the lawful basis is for processing personal data used in commercial research.

## Purpose

The General Data Protection Regulation (GDPR) requires that we identify a lawful basis for processing personal data before we can process it. Normally for research, this lawful basis is found in Article 6(1)(e), task in the public interest, because we have received public funding to do the research. However, if the research is being paid for directly by a commercial organisation or being done to create a profit for the School or any other person or organisation, task in the public interest no longer applies. Another lawful basis must be found. This policy goes through the process for deciding what this lawful basis would be depending on where the funding for research comes from.

## Definitions

**Commercial research** is any research that is:

- Paid for directly by a business or other commercial organisation with the intent that that business or commercial organisation only will benefit from the research; OR
- Research that is intended to be used for a commercial purpose by the School, staff or students or with research partners; OR
- Research that is being repurposed for commercial use by the School, staff or students or with research partners.

**Data controller** means the organisation or individual that determines why the personal data is being processed and how. The School is the data controller for most processing of personal data for research however a business that pays for a LSE researcher to do work for them will be the data controller for that research project.

**Data processor** means the organisation or individual that processes personal data on behalf of a data controller.

This does not mean that research staff are data processors for the School as they come under the data controller umbrella of the School as a whole. However, a LSE researcher will be a data processor for a business who is paying them to conduct a particular research project.

**Lawful basis** means the reason we are processing the data as set out in [Article 6](#) and/or [Article 9](#) of the General Data Protection Regulation (GDPR). If we cannot identify a lawful basis in these articles, we cannot process personal data as we will be in breach of the GDPR. Research is generally covered by Public Task or Legitimate Interest in Article 6 and Research in Article 9.

**Special categories data** means the personal data that is particularly sensitive as set out in Article 9 and personal data relating to crime and the justice system. This data is listed as ‘racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation’.

**Consent** for data protection is specifically set out in Articles 6 and 9 as a lawful basis. It can only be used as a reason for processing if you can handle the withdrawal of consent at any time. As such, it should only be used as a lawful basis where no other lawful basis exists. **This compares to informed consent** for research ethics purposes which is a different process. Informed consent to research will always be required for any research involving human participants.

## Commercial research and data protection

- 1) This policy only covers commercial research where personal data is used. Personal data and special categories personal data have the definitions set in the General Data Protection Regulation (GDPR)<sup>1</sup>. The School’s Data Protection policy covers how the School manages data protection generally.
- 2) Where research is being conducted in behalf of a business or other commercial organisation, they will be the data controller and the School the data processor. Where the research is either intended to be used for a commercial purpose or is being repurposed for commercial use, the School is the data controller (jointly with any research partners if these exist). Any agreements signed relating to the research must reflect these relationships.

### Lawful basis

- 3) The main issue with commercial research versus other research conducted by or on behalf of the School is the lawful basis for processing as set out in Article 6 of the GDPR, and Article 9 of the GDPR for special categories personal data. Article 6(e) task in a public interest does not apply to commercial research and 9(2)(j) processing special categories data for scientific research purposes may not apply to commercial research.
- 4) As such, the lawful bases for commercial research available are:
  - Personal data generally
    - a. Article 6(f), legitimate interests; the preferred option. Applies where it can be demonstrated that research for a commercial purpose does not override the interests, rights and freedoms of the data subject. If necessary, a legitimate interests assessment should be conducted before research is undertaken.
    - b. Article 6(a), consent; while this is available, it should only be used where consent can be withdrawn without affecting the research or the commercial activity. Consent in data protection terms should be unambiguous and recorded. As stated in the definitions, informed consent for ethical purposes is separate to the lawful basis so will need to be obtained regardless of which lawful basis is used.

<sup>1</sup> EU or UK, depending on whether this policy is being read prior to 31<sup>st</sup> December 2020 (EU GDPR applies) or from 1<sup>st</sup> January 2021 (UK GDPR applies).

Special categories data

- c. Article 9(2)(a), explicit consent; has the same issues as Article 6(a).
  - d. Article 9(2)(d), legitimate activities of a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim; can be used when conducting paid research on behalf of such an organisation where the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes. The organisation needs to confirm that it has collected the right consents from their members etc for the research.
  - e. Article 9(2)(j) research; while this covers academic research generally, it may be hard to argue that this can be used for processing where the commercial activity is more obvious than the research component. For example, a business paying researchers regarding staff balance for equality purposes is likely to be covered by this lawful basis whereas gathering health data via a paid app that a researcher will apply an algorithm to in order to profile individuals will not be. It will depend on whether the commercial activity outweighs the research element, which would need to be decided on a case by case basis. The DPO should be contacted if researchers need to decide.
- 5) Personal data that was collected for publicly funded research but is being repurposed for commercial research must be processed under a new lawful basis as set out in 4). Data subjects should also be made aware of the change in purpose where possible.

## Legitimate interests assessment

It is recommended though not compulsory to conduct a legitimate interests assessment for commercial research, particularly where:

- 1) The research is being done to profit the School.
- 2) The personal data being used is being repurposed from publicly funded research.

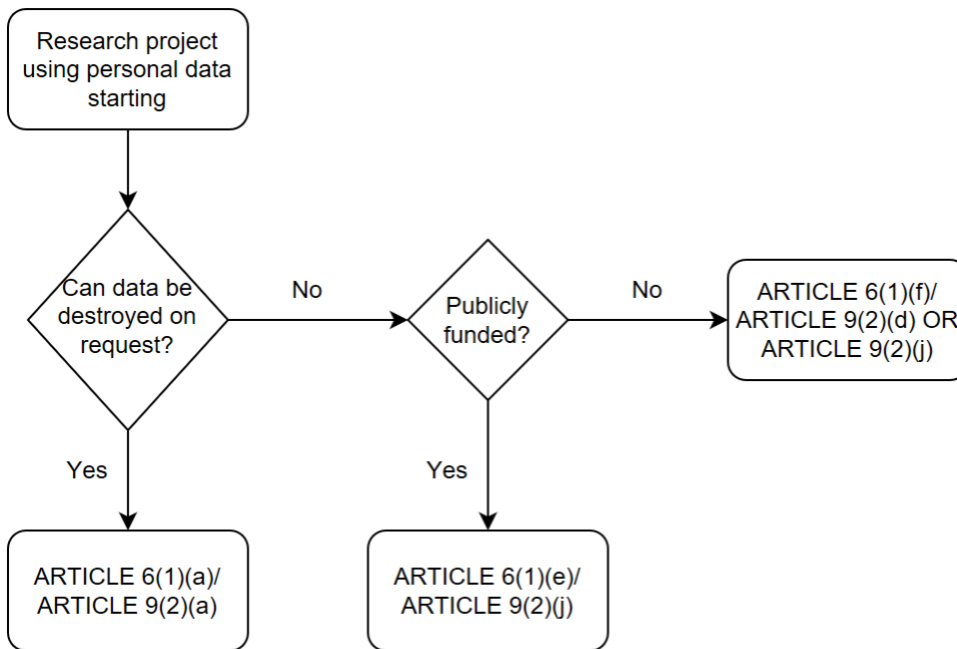
The Information Commissioner's Office has a three point test for legitimate interests:

- 1) is your purpose legitimate? Why do you want to process the data and what is the benefit to you/the School?
- 2) is it necessary to process the data for that purpose?
- 3) will the processing be in line with the data subjects' rights and expectations?

The Commercialisation Team will work with the DPO to determine when a proposed project requires a legitimate interests assessment.

## Appendix A Deciding on a lawful basis

The flowchart below covers the decisions on which lawful basis to use for both personal data and special categories personal data.



### The relevant GDPR articles

These are the GDPR articles discussed in this policy:

Article 6(1)(a): the data subject has given consent to the processing of his or her personal data for one or more specific purposes;

Article 6(1)(e): processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

Article 6(1)(f): 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 9(2)(a): the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;

Article 9(2)(d): processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;

Article 9(2)(j): processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

## Review schedule

| Review interval | Next review due by | Next review start |
|-----------------|--------------------|-------------------|
| 3 years         | 30/06/23           | 01/06/23          |

## Version history

| Version | Date       | Approved by | Notes |
|---------|------------|-------------|-------|
| 1       | 11/02/2020 |             |       |
| 1.1     | 18/06/2020 |             |       |

## Links

| Reference                    | Link  |
|------------------------------|---|
| Intellectual Property Policy | <a href="https://info.lse.ac.uk/staff/services/Policies-and-procedures/Assets/Documents/IntProPol.pdf">https://info.lse.ac.uk/staff/services/Policies-and-procedures/Assets/Documents/IntProPol.pdf</a> |
| Data Protection Policy       | <a href="https://info.lse.ac.uk/staff/services/Policies-and-procedures/Assets/Documents/datProPol.pdf">https://info.lse.ac.uk/staff/services/Policies-and-procedures/Assets/Documents/datProPol.pdf</a> |

## Contacts

| Position        | Name            | Email  | Notes |
|-----------------|-----------------|--|-------|
| Rachael Maguire | Records Manager | <a href="mailto:glpd.info.rights@lse.ac.uk">glpd.info.rights@lse.ac.uk</a> |       |

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