

# Print View

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Tree: **GDPR: Should I get consent?**

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## **Solutions**

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[For Call Centers \(/application/call-center.php\)](/application/call-center.php)

[Self-Hosted Solution \(/application/enterprise.php\)](/application/enterprise.php)




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# Consent as a legal basis for processing



It's not always necessary or desirable to ask for consent to process people's personal data. Asking for consent when withdrawal or refusal cannot be honoured, when there is a significant imbalance of power between the Data Controller and the Data Subject or when there are other requirements (such as laws, contracts or other obligations) which may require the data to be processed, is unlikely to meet the "fair, lawful and transparent" principle in GDPR.

Data Security & (/data-security-plan.php)GDPR (/gdpr)

This tool is designed to help you think about when you should ask for consent to process personal data and when you should rely on a different legal basis.

 (<https://twitter.com/zingtree>)  (<https://www.linkedin.com/company/zingtree>)

**If you are processing special categories of personal data, you must separately review the legal basis for these separately. You may still need consent!**

 (<https://www.youtube.com/channel/UC4I2xNZFiMWf7-XnXTh95tA>) 

**Before you start:** (<https://www.facebook.com/pages/Zingtree/1439779526287065>)

First: think about the purposes for which you are going to be processing the personal data.

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Next: break down the processing activities - collection, storage, analysis, cross-referencing, sharing (internal and external), retention and deletion

Consider each of these processing activities when answering the questions.

Is there a law that requires you to carry out the processing?

Yes →2

No →3



Node #2 Your legal basis is Article 6.1(c)



## Your legal basis is Article 6.1(c)

### You should not ask for consent

If there is a law that requires you to carry out the processing, the individual has no real choice as to whether to allow you to process their personal data. Asking for consent in this case would be misleading and unfair. Make sure your privacy notice explains the purpose of your processing and how this relates to the law.



Node #3 Are you acting officially, in the public interest?



## Are you acting officially, in the public interest?

Are you acting officially as a public authority?

Is the processing necessary for a task carried out in the public interest, by you as a public authority?

Have you answered "yes" to both questions above?

Yes →4

No →5



Node #4 Your legal basis is Article 6.1(e)



## Your legal basis is Article 6.1(e)

### You should not ask for consent

If the processing is necessary for you to carry out activities in the public interest, with official authority then you should not ask for consent as it may not be possible to honour refusal or withdrawal later on. Your privacy notice must explain why the processing is necessary.



Node #5 Do you have a contract?

?

## Do you have a contract?

Do you have a contract with the individual that you or they would be unable to fulfil unless you carry out this processing of their personal data?

Do you have a contract with the individual that you or they would be unable to fulfil unless you carry out this processing of their personal data?

Yes →6

No →7



Node #6 Your legal basis is Article 6.1(b)



## Your legal basis is Article 6.1(b)

### You should not ask for consent

Your record-keeping and legal risk-management requirements are likely to mean that you will not be able to honour refusal or withdrawal of consent. Your privacy notice must explain why the processing is necessary for the contract.



Node #7 Pre-contract

?

## Pre-contract

Where you and the individual data subject are negotiating or discussing entering into a contract

Has the individual asked you to take steps to enter into a contract with them which involves this processing of their personal data?

Yes →6

No →8





Node #8 Is someone at risk?



## Is someone at risk?

Will someone's life or safety be in immediate danger if you don't process this personal data?

Yes →9

No →10



Node #9 Your legal basis is Article 6.1(d)



## Your legal basis is Article 6.1(d)

### You should not ask for consent

If someone is at immediate serious risk, you should carry out the processing and make sure you keep a record of why and how you made this decision.

Asking for consent to process personal data is unlikely to be appropriate in this situation, especially if the data you are processing is about an individual who presents a risk to others.

You may need to ask for consent to disclose information, to meet the requirements of confidentiality law, but this is **not** the same thing as consent for processing personal data.



## Legitimate interests

Article 6.1(f)

You can process personal data for an activity that is in your - or someone else's - legitimate interests, providing that these interests and activities aren't in conflict with the individual's rights and freedoms.

You need to carefully consider whether the processing might prejudice the individual's rights or their own interests and whether the processing would be "reasonably expected" by the individual.

Do you have a legitimate interest for the processing that does not conflict with the individual's rights and freedoms?

Yes →13

No →12



Node #11 Your legal basis is Article 6.1(f)



## Your legal basis is Article 6.1(f)

### Consent may not be the best option

If stopping the processing (e.g. deleting the data, no longer analysing it, not updating it, ceasing to share it) would be difficult for you to do because it would create gaps in key records, require complex systems changes or prevent your organisation carrying out its activities then it is unlikely you will be able to honour refusal or withdrawal of consent. Your privacy notice must inform the individual that you are processing on the basis of legitimate interests, describe what those interests are and explain how the processing purpose and activities fulfil those interests.



Node #12 You should ask for consent



## You should ask for consent

Make sure that:

- the individual is fully informed about the processing they are giving consent for;
- they take some kind of action to indicate their consent,
- you have a record of their consent



Node #13 You might need to ask for consent



## You might need to ask for consent

Would stopping the processing be too difficult, inconvenient or problematic for you to realistically do if consent is refused or later withdrawn?

Is there a significant power imbalance between you and the individual?

Have you answered "Yes" to any of these questions?

Yes →11

No →12

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