

TIP SHEET 3



Lawful bases for data collection and processing

To ensure the safeguarding of data that is collected and processed, data legislation normally identifies specific lawful bases under which data can be collected and processed. The lawful bases for data processing have different rules about how data is treated or managed.

In general, one of the following lawful bases must exist for personal data to be processed. (There may be slight variations in different national legislation, so it is therefore important to check the actual wording of the law for the country in which data collecting and/or processing the data.

Lawful bases for data collection and processing:

(a) Consent: the individual has given clear consent for their personal data to be processed for a specific purpose.

(b) Contract: the processing is necessary for a contract with an individual, or because the individual has asked that specific steps be taken before entering into a contract.

(c) Legal obligation: the processing is necessary for compliance with the law (not including contractual obligations).

(d) Vital interests: the processing is necessary to protect life (normally in an emergency situation).

(e) 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 (generally used by governments).

(f) Legitimate interests: the processing is necessary for your legitimate interests or the legitimate interests of a third party. However, if your interest in processing an individual's data could infringe on the rights and freedoms of the individual or put them at risk of harm, you cannot use this lawful basis, and/or you should not collect the data.

In some cases, you might be collecting part of your data under one lawful basis and using different bases for other data. For example, you might collect and process some data under 'legitimate interest' but obtain consent for more sensitive data. Your processes and systems will need to reflect the lawful bases that you have chosen, and these should be decided during the design phase of your data collection and processing. If you change your mind and want to switch to a different lawful basis once you have started collecting the data, you will need to re-collect the data so that you have everything in place according to the lawful basis requirements.

▶ [The UK Information Commissioner's Office site](#) provides helpful resources and tools to help you determine which lawful bases is correct for the type of processing you will be doing.

Legitimate bases for UN agencies

When working in humanitarian situations, some agencies, such as United Nation (UN) bodies, are exempt from national legislation, and a separate set of rules apply. The UN and the international Committee of the Red Cross (ICRC), for example, generally work under the principle of Legitimate and Fair Processing and have established legitimate bases for data collection.

The UNHCR Data Protection Policy uses the following legitimate bases:

- Consent of the data subject.
- Vital or best interests of the data subject.
- To enable UNHCR to carry out its mandate.
- Beyond UNHCR's mandate, to ensure the safety and security of persons of concern or other individuals.

▶ See the UNHCR's [Policy on the Protection of Personal Data of Persons of Concern](#)

TIP SHEET 3 (continued)



The ICRC data policy includes the following legitimate bases:

- Consent of the data subject.
- Vital interest of the data subject or of another person.
- Public interest, in particular, based on the ICRC's mandate under IHL and/or the Statutes of the Movement.
- Legitimate interests of the ICRC.
- Performance of a contract.
- Compliance with a legal obligation

▶ See the ICRC's [Rules on Personal Data Protection](#)

Additional tips

- Before collecting data, determine your lawful basis (See additional tip sheets on consent and legitimate interest for more detail).
- Choose the right lawful basis very carefully because you cannot change to a different lawful basis halfway through your data collection without a particularly good reason.
- For most development work, undertaken by NGOs, INGOs and consulting firms or individuals working on M&E the lawful basis will be consent, contract, or legitimate interest.
- For government work, public interest or vital interest are likely to be the lawful basis. In some cases, governments might be allowed to collect and use any data they choose from their citizens.
- Be extremely cautious about switching from consent to a different basis partway through your data collection exercise simply because you begin to encounter difficulties getting consent.
- Document how you selected the lawful basis so that you have it in writing (This [interactive tool](#) is useful for making the right decision).
- The language you use to explain why you are collecting data (e. g. your privacy notice or language that you include on a survey) should include your lawful basis for processing as well as the purpose of the processing.
- If working in a humanitarian or emergency situation, carefully consider and document how your lawful basis matches one of the UN legitimate bases. In such cases it is possible that you would use either consent or legitimate interest, but you may also be obligated to work under one of the legitimate bases established by the humanitarian agency leading the response.

Keep the following in mind:

- No single basis is 'better' or more important than the others – which basis is most appropriate to use will depend on your organisation's purpose and relationship with the individual.
- Different countries might use distinct categories and lawful bases, so it is important to become familiar with data privacy laws in your country of operation as well as the country which is the source of your funding. You may need to comply with laws of more than one place if your data is crossing borders.
- If you can reasonably achieve the same purpose or goal without processing personal data, then you will not have a lawful or legitimate basis and should not be collecting the data.
- If your purposes for processing the data change, you might be able to continue processing under the original lawful basis if your new purpose is compatible with your initial purpose. However, if your original lawful basis was consent and you want to use the data for a purpose other than for what you originally planned, it might be necessary to re-obtain consent from the data subjects.
- 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. Special category data includes highly sensitive data such as biometrics.

▶ More helpful resources about lawful bases are available [here](#)