Solving Privacy Paradox | KNOW YOUR RIGHTS AND OBLIGATIONS
SolPriPa 3

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STATE DATA PROTECTION INSPECTORATE

PROCESSING OF PERSONAL DATA BASED ON LEGITIMATE INTERESTS (Article 6(1)(F) GDPR)

Personal data may be processed only where all three conditions are met:

1 LEGITIMATE INTEREST

KEY QUESTION: WHAT IS THE CONTROLLER SEEKING TO ACHIEVE?

- The interest must be **lawful, clearly defined and real**
- It cannot be hypothetical, speculative or merely declarative.
- Examples of legitimate interests include **IT system security and fraud prevention.**

2 NECESSITY

KEY QUESTION: IS THE PROCESSING NECESSARY?

- Assessing necessity requires an objective assessment of whether:
  - the interest could be achieved without this processing;
  - there are less privacy-intrusive alternatives;
  - only the personal data that are genuinely necessary are processed.
- Necessity must be assessed objectively. It cannot be justified by the controller’s subjective interest in achieving its objectives more easily or conveniently.

3 BALANCING TEST

KEY QUESTION: DO THE DATA SUBJECT’S RIGHTS AND FREEDOMS OVERRIDE THE INTEREST PURSUED?

- When assessing whether there is a balance between the data subject’s rights and freedoms and the interest pursued, the following should be considered:
  - the nature of the personal data processed;
  - the risks and consequences arising from the processing;
  - the data subject’s reasonable expectations (could the data subject reasonably expect such processing?);
  - whether sufficient safeguards are in place to protect the data subject’s rights and freedoms.

- **Legitimate interest is not a "fallback" legal basis.** If any one of these three conditions is not met, Article 6(1)(f) GDPR cannot be relied upon.

- **Conditions are independent.** A strong legitimate interest does not compensate for a lack of necessity or for a balancing test that weighs against the controller.

- **The balancing test is not a mere formality.** The controller should carefully document the balancing assessment in accordance with the accountability principle established in Article 5(2) GDPR.

- **The data subject's reasonable expectations** are one of the most important factors in the balancing test. When assessing whether an individual could reasonably expect such processing, account should be taken of the relationship between the data subject and the controller, the context of the processing, and the information provided to the data subject (compliance with the requirements of the transparency principle).

- **The data subject has the right to object** to processing based on legitimate interests. The controller must ensure and facilitate the exercise of the data subject's right to object to the processing under Article 21 GDPR.

Useful references

- GDPR Recitals **47, 48 and 49.**
- GDPR **Article 5(2), Article 6(1)(f), Article 12(1), Articles 13, 14 and 21.**
- European Data Protection Board (EDPB), **Guidelines 1/2024 on processing of personal data based on Article 6(1)(f) GDPR.**