

LEGITIMATE INTEREST ASSESSMENT FOR THE USE OF PERSONAL DATA TO SUPPORT DIRECT MARKETING ACTIVITIES UNDER THE GDPR

PURPOSE of ASSESSMENT

To determine whether ESI.info can rely on Legitimate Interests under the GDPR for the processing of personal data to direct market its own, and its clients', products and services.

CONCLUSION

Legitimate Interests is a valid legal basis for ESI.info processing personal data to market product and service information relevant to the UK built environment as a result of its publishing activities.

V1.1 April 2018

LEGITIMATE INTEREST ASSESSMENT

This form has been completed to see whether ESI.info can rely on Legitimate Interests for the processing of personal data to direct market its own, and its clients, products and services.

The LIA assumes that all requirements relating to [Article 5 of the GDPR](#) are satisfied where applicable.

Article 5 summarises the principles relating to processing of personal data, namely that:

1. Personal data shall be:

- a. processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency')
- b. collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes ('purpose limitation')
- c. adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation')
- d. accurate and, where necessary, kept up to date; **every reasonable step must be taken** to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy')
- e. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed ('storage limitation')
- f. processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality')

2. The controller shall be responsible for, and be **able to demonstrate** compliance with, paragraph 1 ('accountability').

ESI.info believes that it conforms to all the principles outlined above and can demonstrate compliance.

The form on the following pages is based on a template sourced from the [Data Protection Network](#).

It is structured in a QA format with guidance notes in five sections:

- A. Identifying a legitimate interest
- B. The Necessity Test
- C. The Balancing Test
- D. Safeguarding and compensating controls
- E. Conclusion

For further information or questions, please email charlesrobertson@esi.info

Or write to us at:

Environmental Standard Indexes Ltd
12 F Timberbush
Edinburgh
EH6 67QH

A) IDENTIFYING A LEGITIMATE INTEREST			
	Question	Answer	Guidance
1	What is the purpose of the processing operation	<p>ESI.info's purpose when processing personal data is to promote the efficient exchange of information between buyers and sellers of products and services relating to the built environment.</p> <p>We provide <u>marketing services</u> to companies that supply products and services relating to the built environment in the UK and in countries where the UK does significant business.</p> <p>We provide free <u>information services</u> to designers, specifiers and buyers of products and services relating to the built environment.</p> <p>In order to connect buyers and sellers, we research both the buy and sell sides of the market.</p> <p>We collect and process personal business information on buyers and sellers to enable us, and our clients, to communicate more efficiently and effectively.</p>	The first stage is to identify to a Legitimate Interest – what is the purpose for processing the personal data?
2	Is the processing necessary to meet one or more specific organisational objectives?	<p>Yes.</p> <p>It is key to our business proposition. We need to make sure that people are aware of the information products and services we provide.</p>	If the processing operation is required to achieve a lawful business objective, then it is likely to be legitimate for the purposes of this assessment.
3	Is the processing necessary to meet one or more specific objectives of any Third Party?	<p>Yes.</p> <p>Sellers need to market their products and services to people in organisations that may find them useful. It is more efficient for them to rent or purchase prospect data from a company that specialises in researching the marketplace.</p> <p>Buyers need to be aware of products and services that are available to them to allow them to achieve their objectives.</p> <p>The information we publish helps built environment professionals – consultants, contractors and other buyers – make better and faster decisions about who and what to work with for their projects.</p>	While you may only need to identify one Legitimate Interest for the purposes of an LIA – the interest that you are seeking to rely on - it may be useful to list all apparent interests in the processing, those of you as the Controller, as well as those of any Third Party who are likely to have a Legitimate Interest.

<p>4</p>	<p>Does the GDPR, ePrivacy Regulation or other national legislation specifically identify the processing activity as being a legitimate activity, subject to the completion of a balancing test and positive outcome?</p>	<p>Recital 47 of the GDPR states “The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.”</p> <p>The ePrivacy Regulation, currently in draft format, will have sections covering direct marketing activity via electronic means. This activity is currently regulated in the UK by the Privacy and Electronic Communications Regulation 2003 (PECR).</p> <p>The Privacy and Electronic Communications Regulations (PECR) applies to the sending of electronic marketing messages (by phone, fax, email or text) and the use of cookies.</p> <p>Extensive information on direct marketing best practice and guidance is provided by organisations such as the Information Commissioner’s Office (ICO), the Direct Marketing Association (DMA), and best practice guidelines from marketing specialists such as eConsultancy.</p>	<p>For example: Legitimate Interests might be relied on where an individual’s (including client or employee) information is processed by a group of companies for the purposes of administration (Recital 48). If the Controller is processing sensitive Personal Data in the employee context, then they may be able to rely on Article 9(2) (b).</p>
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B) THE NECESSITY TEST			
1	Why is the processing activity important to the Controller?	We need to know what information people are interested in, and how people are interacting with and using our information products.	A Legitimate Interest may be elective or business critical; however, even if the Controller's interest in processing personal data for a specific purpose is obvious and legitimate, based on the objectives of the Controller, it must be a clearly articulated and communicated to the individual.
2	Why is the processing activity important to other parties the data may be disclosed to, if applicable?	<p>ESI.info generates revenue from content marketing services. Our in-house research team is tasked with identifying designers, specifiers and buyers in consulting, contracting organisations that make purchasing decisions for UK built environment projects so that we can make them aware of the products and services offered by our clients – primarily product manufacturers.</p> <p>We disclose limited personal information to demonstrate the quality of the audience we reach through our online and digital information products.</p> <p>A small portion of our clients rent list data to facilitate in-house direct marketing campaigns.</p> <p>The data we supply to these clients is carefully selected to ensure the highest possible relevance.</p> <p>Data selections are filtered to remove any information that is data protected. The filtering process may exclude individuals entirely because they have opted out of us sending them communications from our business partners, or part of their data, for example, their telephone number if they have opted out of telephone calls.</p> <p>Our clients need to market their products and services to prospect companies efficiently. It is more efficient for them to outsource their prospect data to third party specialists.</p>	<p>A Legitimate Interest could be trivial or business critical, however, the organisation needs to be able to clearly explain what it is. Some purposes will be compelling and lend greater weight to the positive side of the balance, while others may be ancillary and may have less weight in a balancing test. Consider whether your interests relate to a fundamental right, a public interest or another type of interest.</p> <p>Just because the processing is central to what the organisation does, does not make it legitimate. It is the reason for the processing balanced against the potential impact on an individual's rights that is key.</p> <p>It is important to consider whose Legitimate Interests are being relied on. Understanding this will help inform the context of the processing. In combination with the reason the Personal Data is being processed, this information will determine the weight of the Legitimate Interest that needs to be balanced.</p>

<p>3</p>	<p>Is there another way of achieving the objective?</p>	<p>No.</p> <p>We need to research the market and store personal business information to allow our clients on both the buy and sell sides to benefit from our information products and services.</p>	<ul style="list-style-type: none"> • If there isn't, then clearly the processing is necessary; Or • If there is another way but it would require disproportionate effort, then the processing is still necessary; or • If there are multiple ways of achieving the objective, then a Privacy Impact Assessment should have identified the least intrusive means of processing the data which would be necessary; or • If the processing is not necessary (It is unlikely that there will be many scenarios where a processing operation is not necessary where it has been identified as being a means to achieve a stated business objective), then Legitimate Interests cannot be relied on as a lawful basis for that processing activity
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C) THE BALANCING TEST			
1	Would the individual expect the processing activity to take place?	<p>Yes</p> <p>Free information at the point of consumption funded by advertising revenue has been a B2B publishing model since at least the 1970s.</p> <p>ESI.info has been providing free information to built environment professionals since 1989.</p>	If individuals would expect the processing to take place then the impact on the individual is likely to have already considered by them and accepted. If they have no expectation, then the impact is greater and is given more weight in the balancing test
2	Does the processing add value to a product or service that the individual uses?	<p>Yes</p> <p>Consumers of information that has been researched and collated for them, benefit from knowledge and efficiencies gained.</p>	
3	Is the processing likely to negatively impact the individual's rights?	<p>No</p> <p>There may be a minor inconvenience in that they may receive marketing messages that are not currently relevant to them.</p> <p>Provided individuals are given a mechanism to opt-out that is simple to complete, the negative impact on them is negligible.</p>	
4	Is the processing likely to result in unwarranted harm or distress to the Individual?	<p>No</p> <p>We don't store any personal information of sensitive nature.</p> <p>Most of the information we research and collate is available in the public domain or volunteered by the individual.</p>	
5	Would there be a prejudice to Data Controller if processing does not happen?	<p>Yes</p> <p>It would severely limit our ability to market the information products we offer.</p>	
6	Would there be a prejudice to the Third Party if processing does not happen?	<p>Yes</p> <p>Renting third party data to support direct marketing campaigns is cost-effective and efficient.</p> <p>It makes much more sense and is less intrusive to source data from a specialist publisher than for individual organisations to try to collate this data themselves.</p>	

7	Is the processing in the interests of the individual whose personal data it relates to?	<p>Yes</p> <p>The more we know about an individual's information interests and preferences, the more relevant the messaging will be.</p>	
8	Are the legitimate interests of the individual aligned with the party looking to rely on their legitimate interests for the processing?	<p>The main benefit of the services we provide is to provide an efficient means for companies involved in the markets we serve to exchange information more efficiently.</p> <p>On the buy side, we make it easier for buyers to identify suitable companies to work with and products to use for their projects by providing qualified, researched information in a standard format that is easy to comprehend and compare.</p> <p>On the sell side, we make it easier for companies to communicate with individuals who may be interested in the products and services they offer.</p>	<p>What are the benefits to the individual or society?</p> <p>If the processing is to the benefit of the individual, then it is more likely that Legitimate Interests can be relied on, as the individual's interests will be aligned with those of the Controller. Where the processing is more closely aligned with the interests of the Controller or a Third Party, than with those of the individual, it is less likely that the interests will be balanced and greater emphasis needs to be placed on the context of the processing and relationship with the individual.</p>
9	What is the connection between the individual and the organisation?	<p>Individuals on our information systems have been identified as relevant to the products and services we offer.</p> <p>They fall into the following categories:</p> <p>Buy side</p> <ul style="list-style-type: none"> • Current and historical subscribers to our information products – typically architects, engineers, quantity surveyors, buyers and estimators involved in built environment projects in the UK. • Individuals we discover in the course of our research that we think would benefit from the information products and services we offer. <p>Sell side</p> <p>Information on marketing decision makers and influencers in companies selling products and services for the UK built environment sectors. Individuals fall into one of the following categories:</p> <ul style="list-style-type: none"> • Existing clients • Prospects and former clients 	

<p>10</p>	<p>What is the nature of the data to be processed? Does data of this nature have any special protections under GDPR?</p>	<p>The data we process comprises the following elements:</p> <ul style="list-style-type: none"> - names, role titles and contact details for individuals and their current business address - products and services relating to the built environment that interest them professionally - information about current and past subscriptions with us - their marketing and communication preferences <p>The data is not financial or sensitive – most is available in the public domain.</p>	<p>If processing Special Categories of Personal Data, an Article 9 condition must be identified as the lawful basis of processing.</p>
<p>11</p>	<p>Is there a two-way relationship in place between the organisation and the individual whose personal information is going to be processed? If so how close is that relationship?</p>	<p>We contact active individuals on a regular basis through our publishing activities.</p> <p>Many of the contacts on our databases have been subscribers for many years – we have been publishing and distributing free information for 30 years.</p> <p>Where the relationship has ceased due to a change in work circumstances, we record the fact and suppress the data.</p> <p>The relationship is two-way in that individuals can unsubscribe any time we contact them by email, phone or post.</p>	<p>Where there is an on-going relationship, or indeed a more formal relationship, there may well be a greater expectation on the part of the individual that their information will be processed by the organisation. The opposite is also possible but it does depend on the purpose of processing.</p>
<p>12</p>	<p>Would the processing limit or undermine the rights of individuals?</p>	<p>No</p>	<p>If processing would undermine or frustrate the ability to exercise those rights in future that might well affect the balance.</p>

<p>13</p>	<p>Has the personal information been obtained directly from the individual, or obtained indirectly?</p>	<p>Information is collected both directly and indirectly.</p> <p>Information is predominantly collected directly through research activities and electronic subscription forms.</p> <p>Where information is collected indirectly, we validate the information through telephone research and direct email marketing (for example, by sending invitations to subscribe to our free information products) before any data is made available to third parties.</p>	<p>If the information was obtained directly from the individual then you should take due consideration of the notice of fair processing (e.g. your Privacy Notice), the relationship with the individual and their expectations of use. If the data was collected directly and these factors are positive, then it may help to tip the balance in favour of the processing operation. Where Personal Data is not collected directly, there may need to be a more compelling Legitimate Interest to overcome this. It will also depend on the context of the processing and if the organisation has a two-way relationship with the individual.</p>
<p>14</p>	<p>Is there any imbalance in who holds the power between the organisation and the individual?</p>	<p>No. We make it easy for individuals to unsubscribe from the products and services we offer.</p>	<p>Does the individual have a choice regarding the processing of their personal information? If the organisation has a dominant position, this will tip the balance slightly against the use of Legitimate Interests. That said, the rights and freedoms of individuals laid down in the GDPR go some way to redressing this issue. The Controller will need to consider how it addresses any imbalance of power to ensure individuals' rights are not impacted.</p>
<p>15</p>	<p>Is it likely that the individual may expect their information to be used for this purpose?</p>	<p>Yes.</p> <p>Individuals in the B2B sector are used to being offered free information.</p> <p>The direct marketing of building product information has been common practice for well over 30 years.</p>	<p>Given the relationship between the parties, services/products being provided, including the information notices available, would the individual reasonably expect or anticipate that their information would be used for those or connected purposes? The stronger the expectation, the greater the chances that Legitimate Interests can be relied on.</p>

<p>16</p>	<p>Could the processing be considered intrusive or inappropriate? In particular, could it be perceived as such by the individual or in the context of the relationship?</p>	<p>Great care is taken to ensure that communications are tailored to the needs individuals.</p> <p>Where individuals consider communications to be intrusive (they find the communication distracting) or inappropriate (i.e. the content is not relevant to them), we make it easy for them to unsubscribe from future communications.</p> <p>Unsubscribe rates from electronic communications ESI.info sends on its own behalf or on behalf of its clients are very low. ISP complaints are extremely rare.</p> <p>Individuals that do not engage with electronic communications are periodically removed from our own lists and the address books we supply to clients.</p>	<p>Processing should not be unwarranted - intrusion into the private life of an individual may be justified based on the nature of the relationship or special circumstances.</p> <p>However, the greater the intrusion, perceived or otherwise, the more overwhelming the Legitimate Interest should be and the more the rights of the individual must be considered within the balance.</p> <p>Consider here the way the data is processed (e.g. large scale, data mining, profiling, disclosure to a large number of people or publication).</p>
<p>17</p>	<p>Is a fair processing notice provided to the individual, if so, how? Are they sufficiently clear and up front regarding the purposes of the processing?</p>	<p>We research the buyer side of the market using a combination of:</p> <ol style="list-style-type: none"> 1. In-house databases which have been built over the course of over 30 years providing information services to the built environment marketplace 2. Public facing websites and directories 3. Online sign up forms 4. Telephone research <p>Public facing websites researched include membership organisations and websites belonging to organisations we know are involved in the built environment.</p> <p>Where information is publicly available, we either send the individuals a marketing message offering them the option to subscribe to our publications or call them to find out more about what they are interested in.</p> <p>Individuals that are spoken to are offered the option of opting into our publications. If the individual is not available, it is common for one of their colleagues to make the decision on their behalf.</p>	<p>Remember that the more unusual, unexpected or intrusive the processing, the greater the importance of making the individual aware of the processing.</p> <p>Particularly where Legitimate Interests are to be relied on.</p>
<p>18</p>	<p>Can the individual, whose data is being processed, control the processing activity or object to it easily?</p>	<p>Yes</p> <p>Individuals sent marketing messages by email are given the option to unsubscribe from such messages.</p> <p>Individuals who ESI.info calls can unsubscribe from marketing messages from us or our business partners.</p>	<p>Giving the individual increased control or elements of control may help a Controller rely on Legitimate Interests where otherwise they could not. If individual control is not possible or not appropriate, explain why.</p>

<p>19</p>	<p>Can the scope of the processing be modified to reduce/mitigate any underlying privacy risks or harms?</p>	<p>We believe there are no underlying privacy risks or harms to mitigate. None of the information we hold or publish is of a sensitive nature that would compromise an individual's reputation or well-being.</p> <p>Our forward plan is to allow individuals to take full control over their personal data. This means they will be able to tell us what they are interested in, manage their subscriptions and specify their communication preferences through an online personal account.</p>	<p>This is a similar concept to a Data Protection Impact Assessment. Where a DPIA might identify potential privacy harms it also allows the organisation to mitigate the risk of non-compliance by adapting or altering the scope of the activity. The same is true for an LIA. If you conclude that the processing presents a privacy risk to the individual, the processing can be limited or adapted to reduce the potential impact.</p>
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D) SAFEGUARDS AND COMPENSATING CONTROLS

D) Safeguards and Compensating Controls

Safeguards include a range of compensating controls or measures which may be put in place to protect the individual, or to reduce any risks or potentially negative impacts of processing. These are likely to have been identified via a Privacy Impact Assessment conducted in relation to the proposed activity. For example: data minimisation, de-identification, technical and organisational measures, privacy by design, adding extra transparency, additional layers of encryption, multi-factor authentication, retention, restricted access, opt-out options, hashing, salting, and other technical security methods used to protect data.

Please include a description of any compensating controls that will be put in place or are already in place to preserve the rights of the individual.

CURRENT

Online accounts

When individuals register to create an online account, they are given clear links to our [Privacy and Cookies Policy](#). Our privacy policy provides contact details to allow anyone to contact us regarding any personal information we may hold on them.

Email opt-outs

All email communications we send out identify us clearly and provide clear unsubscribe links. Unsubscribes are currently managed by our email platform provider. They are also recorded in our CRM database.

Telephone opt-outs

Any individual we speak to can unsubscribe from any email, postal or telephone communication. We record individual's communication preferences from ESI.info and our business partners for each of the following channels: email, post and telephone. Individuals who have opted-out are excluded from data selection routines automatically.

Suppression of inaccurate data

Individuals are verified using electronic measures, as well as planned research and validation work. When we find an individual no longer works for an organisation, we suppress their file.

Security

All the personal information we hold is stored on secure password- and firewall- protected servers.

FUTURE

Privacy by design

Individuals will be able to take full control over their personal data through their ESI.info online account.

This means they will be able to:

- Edit their personal information
- Manage their subscriptions to all our information products and services
- State and edit their information interests
- State and edit their preferences at a granular level for receiving communications from ESI.INFO and its business partners
- Exercise their right to erasure

Management of redundant data

We will identify and mark up individuals who are no longer relevant and delete them from our systems on an annual basis.

E) REACHING A DECISION AND DOCUMENTING THE OUTCOME

Using the responses above, now document if you believe you are able to rely on Legitimate Interests for the processing operation. Please explain, perhaps using bullet points, why you are, or are not, able to rely on this legal basis. You should draw on the answers you have provided in this LIA.

Outcome of Assessment:

Legitimate Interests is a valid legal basis for ESI.info processing personal data to market product and service information relevant to the UK built environment as a result of its publishing activities.

The main reasons why we are able to rely on Legitimate Interest as a legal basis are:

- The information and services we offer are designed to help individuals make better decisions about who to work with and what products to use for their projects
- The individual information we process is largely publicly available and is not sensitive
- We only market information about the built environment to individuals involved in the UK built environment
- We take great care to ensure that communications are relevant to individuals by classifying organisations and the roles of individuals within them
- We only select individuals for our clients who we think are likely to be interested in the products and services they are offering
- We make it easy for anyone we communicate with to unsubscribe from future communications by email, phone or post, and encourage third parties we supply data to do the same
- We keep and check suppression files to make sure individual's stated preferences are respected
- We have very low unsubscribe rates from any communications we send out indicating that our communications are not considered overly disruptive or irrelevant
- We rarely received any complaints from individuals whose data we process
- We have been following direct marketing best practice guidelines for well over 20 years

Signed by: Charles Robertson

charlesrobertson@esi.info

Role: Managing Director

Dated: 23rd April 2018

Next LIA review date: January 2019 or when the ePrivacy Regulations come into force if sooner