

# Transparency and prospect research

**Prospect research is a valuable tool for fundraisers, but it raises important data protection issues.**

**Molly Waiting** summarises a recent case which gives some useful tips on compliance.



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Molly trained at Bates Wells and specialises in data privacy, working with organisations of all sizes on their data protection compliance – from small charities to multinational corporations. Molly advises regularly on data protection provisions in commercial contracts, as well as complex data sharing agreements and controller-processor relationships. Molly also has extensive experience advising on marketing communications, including consent wording, B2B communications and data sharing in marketing campaigns.

Do you research potential donors? Checking directorships or trusteeships with Companies House? See whether a donor supports your charity's objects on Twitter? Despite the Information Commissioner's Office (ICO) crackdown against the lack of transparency in these activities in 2016 and 2017, prospect research remains an extremely useful tool in fundraising, particularly for access to major gifts.

Under the General Data Protection Regulation (GDPR), transparency has become even more important. Transparency involves providing information and assistance to individuals to help them understand how you use their personal information and empowering them to challenge this use, if they wish to.

This spring, the Polish data protection authority – the UODO – fined a data analytics company for breach of its transparency obligations under Article 14 of GDPR. Article 14 applies when controllers obtain personal information from secondary sources (not directly from the individual). Under Article 14, you are required to provide individuals with certain details about how their personal information is processed.

In this case, the company collected personal information from public sources (such as the Polish version of Companies House) for its business activities. Where the company had email addresses, the company emailed individuals a copy of its privacy notice. Although the company had postal addresses for other individuals, the company relied on the notice on its website, deciding that postage would be disproportionately expensive. There is an exception to the Article 14 requirements, in Article 14(5)(b), which states that the information does not need to be provided to the extent that it would involve a disproportionate effort.

The UODO disagreed with the company's decision and found:

- Website notice is insufficient. Individuals cannot exercise their rights if they are not aware of the use of their personal information in the first place.
- Cost or financial impact should not factor into this decision, as this placed the company's profits over the rights of the individuals.
- The company knowingly and deliberately breached Article 14 GDPR, because it was aware of its obligations.

There are a few points to note. First, the decision of the UODO only applies in Poland and not in the UK. Second, the company is reportedly appealing the decision. However, we can still draw a few useful tips about compliance with Article 14 GDPR when performing prospect research:

- Details of your research must be included prominently in your privacy notice, including the personal information collected and a description of the sources.
- You must send your privacy notice directly to individuals (whether via email, post or another communication channel). Simply making it available on your website (without linking to it in an email or message) is unlikely to be sufficiently transparent.
- The cost or effort involved in providing a notice when you have contact details (in this case, postal addresses) is unlikely to be considered a disproportionate effort under Article 14(5)(b).
- If you partially comply, the ICO may follow the UODO's lead and conclude that your breach is deliberate.

## FIND OUT MORE

You can find more guidance on prospect research in the Institute of Fundraising's publication: 'Connecting People to Causes' <https://www.institute-of-fundraising.org.uk/library/iof-connecting-people-to-causes/> (to which Bates Wells contributed).