



The Data Protection Commission (DPC) is frequently asked about whether it is lawful from a data protection perspective for landlords (or letting agents acting on their behalf) to require certain information or documentation from prospective tenants. The purpose of this guidance is to assist both landlords (or letting agents acting on their behalf) and tenants in understanding which information may be appropriate to request at the initial application stage for a residential tenancy. In such a case the landlord will usually be the data controller for any personal data which they collect from prospective tenants (who are data subjects for the purposes of data protection law).

Under the General Data Protection Regulation (GDPR), data controllers must comply with a range of obligations regarding their collection and use of personal data. Some of the key obligations are discussed below.

The DPC has identified a trend in recent times where much information is sought by landlords at the initial application stage from numerous prospective tenants, the overwhelming majority of whom will not ultimately become a tenant of that landlord. Where a landlord intends to let a property and seeks to collect personal data from prospective tenants in connection with this purpose, it is particularly important that only information (personal data) which is necessary for the negotiating and entering into the new tenancy is collected and that the landlord is transparent with prospective tenants about why they are collecting the information and what they will use it for.

## **Applying the Principles of Data Protection**

The principles relating to the processing of personal data (Article 5 GDPR) are the core obligations of data controllers when they process personal data. These principles are: lawfulness, fairness, and transparency; purpose limitation; data minimisation; accuracy; storage limitation; integrity and confidentiality; and accountability. Set out briefly below are some considerations as to how these principles will apply in a landlord-tenant relationship.

### ***Lawfulness of Collecting and Processing Personal Data***

One of the first questions which landlords should ask themselves before collecting any personal data is *“What is my justification for collecting this personal data?”* This is because, under the GDPR, any processing of personal data must have a legal basis, in other words a justification in law for the processing. There are 6 legal bases for processing personal

data which are set out in Article 6 GDPR, namely: consent of the data subject; necessary for performance of / entry into a contract; necessary for compliance with a legal obligation; necessary for protecting a person's vital interests; necessary for performance of a task in the public interest or the exercise of official authority; or necessary for the legitimate interests of the controller or another party.

Landlords should be wary of seeking to rely on **consent** as a legal basis for the collection of personal data from prospective tenants, as the imbalance of power in the landlord-tenant relationship will likely mean that the consent is not 'freely given' by the tenant for the processing of their personal data – which is a requirement where relying on consent under the GDPR.

In the majority of cases, the most appropriate legal basis justifying the collection of personal data which is necessary for a new tenancy will be where it is *"necessary for the performance of a **contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract"* (Article 6.1(b) GDPR). For example, this is likely to apply where a preferred tenant has been identified by a landlord or letting agent and steps are being made towards entering into a lease or tenancy agreement. In such a case, identifying details like name, existing address, and the contact details of the tenant will be required.

However depending on the nature of the personal data being sought there may be circumstances where other legal bases are more appropriate. For example, the collection of the PPSN of a tenant so that the landlord can register the tenancy with the Residential Tenancies Board (RTB) would more appropriately fall under the legal basis of the processing being necessary for **compliance with a legal obligation** of the controller (Article 6.1(c) because the landlord is under an obligation to register and provide this information to the RTB.

In other cases landlords may seek certain information in order to protect their own financial or property interests (e.g. a reference from a previous landlord in respect of the prospective tenant to whom the property is being offered) and, in such cases, reliance may be placed on the **legitimate interests** legal basis. However, where this is the case, the landlord must be able to demonstrate how the personal data sought (in particular the nature and extent of the information being requested in a reference) is not disproportionate or outweighed by the rights of the tenant (i.e. their right to privacy and protection of their personal data).

### ***Other Principles of Data Protection***

One of the most important principles for landlords and letting agents to consider in the case of prospective tenants, is the principle of **data minimisation**. This requires that any personal data collected be adequate, relevant and, significant to this context, *limited to*

*what is necessary* for the original purposes of collection. This means that only the minimum amount of personal data necessary to achieve a stated purpose should be collected. In the case of prospective tenants, the amount of personal data necessary should be significantly less than the personal data which might be necessary at a later point to enter into a tenancy agreement once an offer is actually made.

It will be difficult for a controller to justify, by reference to the principle of data minimisation, the extensive collection of personal data such as financial statements, utility bills, references, PPSNs, etc., from numerous, or all, interested parties at the initial stages of advertising or hosting viewings of a property. This is because such information will generally not be necessary at the early stages of the leasing process, where interested persons may simply be looking to view a property or make enquiries in relation to it. In most cases such information will not be necessary until such time as a landlord decides upon a preferred tenant and makes an offer to a prospective tenant (which will usually be conditional on references, confirmation of ability to pay rent, etc.).

Therefore the practice of seeking information such as references, tax details, financial details, proof of identity, etc., from numerous potential tenants in advance of making a specific tenancy offer will generally not be consistent with the obligation under the GDPR to collect only relevant personal data and to limit it to what is necessary in relation to the original purpose.

Landlords must also comply with the principle of **purpose limitation**, which requires that personal data is only collected for *“specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes”*. This means that it should be clear to the prospective tenant why their personal data is being requested and it should only be used for that purpose. Personal data should not be requested, collected, or stored by landlords on a ‘just in case’ basis, for some undefined or undeclared future purpose.

The principle of **storage limitation** requires that personal data should not be kept for any longer than is necessary for the purposes of collection. So, for example, where a landlord has collected references from previous landlords or employers, etc., in order to verify the good standing of a prospective tenant to whom the property has been conditionally offered, those references should not be retained once the tenant has taken up the offer of a tenancy.

The principle of **integrity and confidentiality** means personal data should be stored in a manner that ensures an appropriate level of security and confidentiality, and this includes secure disposal where retention of personal data is no longer necessary. Given that landlords may hold important and confidential information, such as PPSNs, bank account or direct debit details, etc., it is particularly important that appropriate security

arrangements (such as hard copies being locked in filing cabinets, and soft copy information being password protected) are in place to adequately safeguard the personal data they hold.

## Recommendations

Asking the following questions may assist landlords (and letting agents acting on their behalf) in assessing their level of compliance with data protection requirements during the letting process:

- ✓ Is the individual from whom personal data is being requested just one of many prospective tenants, or someone to whom a tenancy offer is being/will be made?
- ✓ What is the purpose of collecting these personal data?
- ✓ Is there a legal basis for the collection of every item of personal data which is being requested?
- ✓ Is it fair to collect these personal data from the tenant/prospective tenant and is it clear to them why the request for such personal data is being made?
- ✓ Are the personal data the minimum necessary to achieve the purpose for which they are to be processed?
- ✓ How long will these personal data be stored for and why?
- ✓ How will these personal data be stored securely and handled confidentially?

## Case Study on Excessive Data Collection

Below is an adapted extract from the DPC's 2014 Annual Report, which related to a complaint made to DPC concerning the collection of personal data from a prospective tenant. This case study is intended to provide a practical example of some of the considerations a landlord (or letting agent) should take into account when asking prospective tenants to provide personal data.

*[Readers should keep in mind that the below case was decided based on the legislation which was in place before the GDPR and the Data Protection Act 2018; however, the relevant principles at play in this case remain largely similar under the current law.]*

## “Case Study 6: Excessive Data Collection by a Letting Agency “

In July 2014, a **prospective tenant complained** about the collection of **bank details, PPS numbers, and copies of utility bills** by a **letting agency** when **applying** to rent a property. She stated that she believed that if she did not supply all of the sought data up-front, her application would not be seriously considered by the letting agency. The complainant said that the practice of collecting such a broad range of personal data **forces prospective tenants** who are desperate to rent a property to **submit this personal information** at application stage even though they do not know if their application will be successful. She pointed out that the **majority** of applications are **unsuccessful** given the high demand for a limited supply of rental properties.

The DPC commenced an investigation of the matter with the letting agency concerned, **seeking an explanation** for the **collection of such a broad range** of personal data at application stage. In response, the letting agency said that it requested PPS numbers from applicants because this verifies that they are entitled to work in the state, and that bank details are required to show that a tenant has a bank account because they would be ineligible if they were not able to pay rent through a bank account. The DPC informed the letting agency that it **could not see any basis** for collecting bank details, PPS numbers, or copies of utility bills **at application or property-viewing stage** and urged it to cease the practice immediately. The DPC questioned the letting agency further about using the PPS number to verify the applicant’s work status. It replied to the effect that the main reason it requests PPS numbers is that it is required for the Private Residential Tenancies Board (PRTB) registration. It went on to say that it is only an added assurance that the applicant is working and it stated that it does not verify the PPS number.

The DPC accepted that personal data concerning bank details, PPS numbers and utility bills **could be requested once the applicant had been accepted as a tenant**. In October 2014, the letting agency confirmed, following our investigation, that it had **ceased the requesting of this personal data prior to the property being let** and it undertook that it would only request this information once the tenant had been accepted.

This case study is a **classic example of the temptation** for some data controllers to **collect a whole range of personal data in case they might need them** in the future. In this case, the letting agency collected a significant amount of personal data from every applicant who expressed an interest in renting a property even though, at the end of the process, only one applicant could be accepted as the new tenant and it was only in the case of that successful applicant that the full range of personal data was required. Section 2(1)(c)(iii) *[of the Data Protection Acts 1988 and 2003 – now replaced largely by Article 5 GDPR]* places an **obligation** on data controllers to **ensure that personal data** which they process is adequate, relevant and **not excessive** in relation to the purpose or purposes for which it is collected or are further processed. Data controllers must be mindful of this requirement and abide by it despite the temptation for convenience or other reasons to embark on an unnecessarily broad data collection exercise.

## Further Information

For further information on the data protection obligations of landlords or letting agents when they are acting as data controllers, see the ['For Organisations' section](#) of the DPC website.

For further information on the data protection rights of prospective tenants when they are applying to rent a residential property, see the ['For Individuals' section](#) of the DPC website.

It should be noted that there are also a number of other specific laws which regulate the relationship between landlords and tenants, with the DPC only having regulatory oversight of any data protection issues which might arise from such a relationship. For more general information about residential tenancies, we suggest consulting the [website of the Residential Tenancies Board \(RTB\)](#), which operates Ireland's National Tenancy Register and has responsibility for resolving disputes between landlords, tenants, and third parties in relation to residential tenancies in Ireland.