

GDPR and the Maritime Archaeology Trust

The Maritime Archaeology Trust (MAT) hold a limited amount of personal data relating to individuals involved with and/or interested in the work of our organisation (see below).

Data Source	Information held relating to individual	Grounds for processing under GDPR
Mailchimp contact list	First name, Surname, Email address, Category (e.g. Volunteer, Friend of MAT)	Legitimate Interest
General Contacts Database	First name, Surname, Email address, Postal address, Category (e.g. Trustee, Friend of MAT etc.)	Consent
Volunteer Contact Forms	Name, DOB (if under 18), Postal Address, Email address, Telephone No., Mobile No., Emergency contact name, Emergency contact number, Availability, Specified support needs, Activity preferences, Specified relevant qualifications/skills	Consent

In April 2018, the MAT undertook an assessment to determine if *Legitimate Interests* (as set out on the GDPR) is appropriate lawful grounds for processing in relation to MAT's Mailchimp contact list for electronic communication with individuals. Completion of the Legitimate Interests Assessment (LIA) Template provided by the Data Protection Network (November 2017) clarified that it was entirely appropriate for the MAT to process data in this way based on Legitimate Interests. Please see below for detail:

A) IDENTIFYING A LEGITIMATE INTEREST			
	Question	Answer	Guidance
1	What is the purpose of the processing operation?	To provide individuals with updates and information about MAT and its projects in electronic format.	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?	Yes, it is necessary to raise the profile of maritime archaeology and deliver the Trust's objectives.	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?	Yes, it is necessary to acknowledge funders, e.g. Heritage Lottery Fund.	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.

A) IDENTIFYING A LEGITIMATE INTEREST (continued)			
	Question	Answer	Guidance
4	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?	Yes, the GDPR says, 'the processing of Personal Data for direct marketing purposes may be regarded as carried out for a legitimate interest.' (specifically mentioned in the last sentence of Recital 47)	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).
B) THE NECESSITY TEST			
	Question	Answer	Guidance
1	Why is the processing activity important to the Controller?	To enable MAT to send emails to raise the profile of maritime archaeology, deliver our charitable objectives, demonstrate our work, encourage public support and acknowledge our funders.	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?	MAT does not disclose contact data to other parties.	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. 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. 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.

A) THE NECESSITY TEST (continued)			
	Question	Answer	Guidance
3	Is there another way of achieving the objective?	No	<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
B) THE BALANCING TEST			
	Question	Answer	Guidance
1	Would the individual expect the processing activity to take place?	Yes, as they have given us their email address	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?	Yes, it keeps them informed about opportunities for involvement	
3	Is the processing likely to negatively impact the individual's rights?	No	
4	Is the processing likely to result in unwarranted harm or distress to the Individual?	No	
5	Would there be a prejudice to Data Controller if processing does not happen?	Yes, MAT would be less likely to receive funding due to an inability to acknowledge funders and demonstrate work that their funding has enabled. We would have fewer people volunteering for us, impacting the delivery of our charitable objectives.	

A) THE BALANCING TEST (continued)			
	Question	Answer	Guidance
6	Would there be a prejudice to the Third Party if processing does not happen?	Yes, MAT would be unable to acknowledge funders and demonstrate work that funding has enabled.	
7	Is the processing in the interests of the individual whose personal data it relates to?	Yes, it keeps them informed about opportunities for involvement	
8	Are the legitimate interests of the individual aligned with the party looking to rely on their legitimate interests for the processing?	Yes, it keeps them informed about the work of the Trust (which they have expressed an interest in by giving MAT their email address) and opportunities for involvement	What are the benefits to the individual or society? 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.
9	What is the connection between the individual and the organisation?	One of more of the following: <ul style="list-style-type: none"> • Volunteer (active & inactive) • Member of Friends of MAT • Committee member • Staff member • An individual interested in the work of MAT • A member of press/media 	
10	What is the nature of the data to be processed? Does data of this nature have any special protections under GDPR?	No special protections. Individuals First Name, Surname and Email address, for press/media contacts, summary of last contact	If processing Special Categories of Personal Data, an Article 9 condition must be identified as the lawful basis of processing.
11	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?	Some individuals receive information only, some respond and reply following communications	Where there is an ongoing 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.

A) THE BALANCING TEST (continued)			
	Question	Answer	Guidance
12	Would the processing limit or undermine the rights of individuals?	No	If processing would undermine or frustrate the ability to exercise those rights in future that might well affect the balance
13	Has the personal information been obtained directly from the individual, or obtained indirectly?	<p>List: All Contacts – directly from the individual</p> <p>List: Press Contacts – a mix of directly and indirectly (i.e. via publicly available contact details provided on websites etc.)</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.
14	Is there any imbalance in who holds the power between the organisation and the individual?	<p>With every message that goes to an individual, there is a right to opt-out of being contacted in the future.</p> <p>When signing up to contact list online, the following message is provided: <i>“Please note, by signing up for our newsletter below, you are providing consent for MAT to store your name and email address on our Mailchimp contact list, your details will not be shared with any other organisation. You can opt-out at any time via a link at the bottom of each message you receive.”</i></p> <p>And people must check the Sign me up! Checkbox.</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.
15	Is it likely that the individual may expect their information to be used for this purpose?	Yes	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.

A) THE BALANCING TEST (continued)			
	Question	Answer	Guidance
16	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?	No and opt-out provided in every message	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. 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. Consider here the way the data is processed (e.g. large scale, data mining, profiling, disclosure to a large number of people or publication).
17	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?	Yes, see 14 above.	Remember that the more unusual, unexpected or intrusive the processing, the greater the importance of making the individual aware of the processing. Particularly where Legitimate Interests are to be relied on.
18	Can the individual, whose data is being processed, control the processing activity or object to it easily?	Yes, see 14 above.	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.
19	Can the scope of the processing be modified to reduce/mitigate any underlying privacy risks or harms?	The Mailchimp contact list is protected with a username and password that only MAT staff have access to. Passwords are changed regularly.	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.
B) 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.

The Mailchimp contact list is protected with a username and password that only MAT staff have access to. Passwords are changed regularly.

Individuals have the opportunity to opt-out in every message that they receive.

C) 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.

MAT are able to rely on Legitimate Interests for the maintenance and use of its Mailchimp Contact Lists for Direct Marketing because:

MAT have identified a Legitimate Interest:

- providing information to individuals that have, in the past, given MAT their email address because they are interested in the work that MAT does, is a Legitimate Interest of MAT and our funders (see Section A above)
- the GDPR says, 'the processing of Personal Data for direct marketing purposes may be regarded as carried out for a legitimate interest (Recital 47)

MAT have identified that this processing is **necessary** for carrying out our charitable purposes (see Section B above).

MAT have undertaken a Balancing Test (see Section C above) which shows that the rights and freedoms of the individual (whose data is being processed) do not override MAT's Legitimate Interest (see Section C above).

Signed by: G. Momber

Role: Trust Director

Dated: 14th May 2018

Review Date: 14th May 2019