



Chartered property,  
land and construction  
surveyors

A Guide to

# Processing Personal Data from Prospective Purchasers during The Property Sales Process

SCSI Guidance Note



# Introduction

This Guidance Note provides information in relation to considerations and responsibilities of property services providers who are processing personal data about prospective purchasers during the property sales process (including arranging viewings, taking bids or closing a sale).

Property services providers (PSPs) who seek any form of personal data at any stage of the property sales process

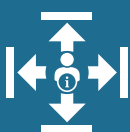
are classified as controllers under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018. When processing personal data, controllers must comply, and demonstrate compliance, with the data protection principles set out in the GDPR.

These principles, which are set out in Article 5 of the GDPR legislation, are outlined below:



## Lawfulness, fairness and transparency –

processing of personal data must be lawful, fair and transparent.



## Purpose limitation –

personal data should only be collected for specified, explicit, and legitimate purposes and not further processed in a manner that is incompatible with those purposes.



## Data minimisation –

processing of personal data must be adequate, relevant, and limited to what is necessary in relation to the purposes for which they are processed.



## Accuracy –

controllers must ensure that personal data are accurate and, where necessary, kept up to date; taking every reasonable step to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay.



## Storage limitation –

Personal data should only be kept in a form which permits identification of data subjects for as long as is necessary for the purposes for which the personal data are processed.



## Integrity and confidentiality

Personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including protection against unauthorised or unlawful access to or use of personal data.





# Prospective Purchaser Personal Data Guidance

## a. Viewing Process

The Data Protection Commission (DPC) has issued guidance on the collection of personal data prior to viewing a property. It includes the following guidance:

- in accordance with the principle of data minimisation, PSPs should collect no more personal data beyond what is necessary to arrange a viewing of a property,
- the personal data that a PSP collects to arrange a property viewing for prospective purchasers will be significantly less than the data that may be required at a later stage of the property sales process,
- the DPC does not consider there can be any justification (COVID-19 related restrictions included) for the extensive collection of personal data such as financial statements, proof of funds, utility bills, PPS numbers etc. from prospective purchasers at the initial stages of advertising or hosting viewings of a property.

PSPs should be aware of the following and undertake appropriate steps to adhere to the GDPR principles when collecting data for the purpose of arranging a viewing:

1. Ensure the data being sought is necessary for the purpose of arranging a viewing. This may include basic contact details such as name, email address and telephone number.
2. As with all personal data collected, the PSP must ensure they have a lawful basis, in other words a justification in law for the collection and processing. There are 6 legal bases for processing personal data which are set out in Article 6 of the GDPR. These are: 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.

3. In accordance with the requirement to be transparent, the PSP must provide information to the prospective purchaser about their processing of the personal data including why they are collecting the personal data, the purpose for which it will be used (including providing information where legitimate interest has been determined as the lawful basis— see point 4) and when it will be deleted. If personal data is being retained e.g., for marketing purposes, consent must be obtained from the prospective purchaser. This information should be included in a privacy notice.
4. There may be limited instances where the PSP, as controller, in conversation with their client or otherwise, deem there is a necessary and sufficient legitimate interest for the collection of additional personal data to have a secure viewing. In such instances, there then exists **heightened obligations** on the PSP, who is obliged to ensure the legitimate interests pursued are balanced with the rights and interests of the data subject. They must further demonstrate that the intended processing of the personal data is necessary to achieve the legitimate interest.  
  
Grounds for legitimate interest will be specific to each property and will vary from property to property.
5. If a PSP is relying on a legitimate interest basis, it will be necessary to carry out, and keep a full record of, an assessment to ensure that it can process personal data under the principle of legitimate interest.
6. PSPs must be able to clearly justify the need for all data which has been gathered under the 'legitimate interest' basis and keep a record as to how they arrived at this determination<sup>1</sup>.
7. SCSi members should consult their health and safety procedures when arranging viewings, particularly when operating as a lone worker, and ensure that reasonable steps are undertaken to assess and mitigate any potential risks when viewing a property. Additional personal data collection may be deemed necessary by a PSP to host a safe and secure viewing<sup>2</sup>.
8. It is important that PSPs keep personal data about prospective purchasers secure.
9. PSPs, as controllers, are ultimately responsible for how they collect and use personal data about prospective purchasers. Where they conflict, the requirements of the GDPR and the Data Protection Act 2018 take precedence over instructions contained in letters of engagement or otherwise.



<sup>1</sup>For further information visit <https://www.dataprotection.ie/sites/default/files/uploads/2020-04/Guidance%20on%20Legal%20Bases.pdf>

<sup>2</sup> For further resources, see the RICS Guidance Note on Health and Safety for Residential Property Managers and the RICS Surveying Safely Protocol document which set out practical guidance about the significant health, safety and environmental matters relating to surveying.

10. In the instance where potential purchasers proactively send their data to the PSP, under the principle of data minimisation, PSPs should securely dispose this data and should communicate with the data subject that this data is not necessary for the purpose of arranging the viewing and will not be processed at this time.

## b. Bidding Process

If the prospective purchaser is progressing to the latter stages of negotiation, then the PSP may reassess the personal data they will need, e.g. if the prospective purchaser is placing a bid on the property, this may expand the amount of data required by the PSP.

The PSP should consider the following once the bidding process has commenced:

1. Identify and outline additional personal data requirements, if necessary, and ensure that there is a lawful basis for the collection of the additional personal data.
2. Determine whether it is necessary to provide further information to the prospective purchaser about the processing of their personal data if it has not already been provided.
3. Any type of proof of funds received should be recorded with minimal detail on the PSP's database and kept secure.
4. Beyond recording sight of proof of funds, PSPs should not retain copies of financial information, including but not limited to bank statements, AIP document etc.
5. All hard copies of digital documents containing information relating to proof of funds must be disposed of securely once reviewed. All digital copies of information relating to proof funds must be securely deleted once reviewed.

6. All hard/soft copies of documents containing personal data relating to unsuccessful bidders must be disposed of securely within a reasonable timeframe.

## c. Sale Close

When the bidding process has concluded and before a contract is prepared in relation to the sale of the property, the PSP will issue a 'sales letter' to the prospective purchaser's solicitor outlining the terms of the sales agreement whilst the contract is drawn up by the vendor's solicitor. As part of this process, PSPs will retain relevant documents relating to the sale:

1. PSPs should refer to their company's retention policy in relation to how long contract/sale data should be stored for. Generally, personal data should be kept for the least amount of time necessary for the purpose for which it was collected in accordance with the requirements of the PSP's business and any legal requirements including the requirements of the Property Services Regulation Act 2011 in relation to retention of records.
2. Personal data should be stored securely while in the PSP's possession and deleted fully and safely at the appointed time.
3. As with all forms of personal data collection, the prospective purchaser/purchaser should be informed as to why their personal data is being stored and what information is being stored.

### Data Subject Rights

PSPs as controllers should also be aware of and provide for the rights of data subjects under GDPR legislation.

*This guidance does not constitute legal and/or professional advice. All information set out in this guidance is provided for information purposes only and does not purport to be legal or professional advice or a definitive interpretation of any law.*



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Society of Chartered Surveyors Ireland,  
38 Merrion Square,  
Dublin 2, D02 EV61,  
Ireland.

Tel: + 353 (0)1 644 5500

Email: [info@scsi.ie](mailto:info@scsi.ie)

