

Unveiling the concept of Legitimate Interest: A Guide for **Controllers and Processors** in Nigeria's Data Landscape

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Introduction

In the era of digital advancement, ensuring rights of data subjects¹ in processing of personal data² is a crucial consideration. The Nigeria Data Protection Act, 2023 (NDPA/Act) addresses this need, aligning with the constitutional privacy rights of individuals and international best practices. A notable provision of the NDPA is the acknowledgment of legitimate interest as a lawful basis for processing personal data in Nigeria, expanding on the grounds set by the previous Nigerian Data Protection Regulation (Regulation). Under the Regulation, lawful grounds for data processing included obtaining the data subject's consent, processing for contract-related purposes, fulfilling legal obligations, protecting vital interests, and conducting public interest tasks or exercising official authority.³

The introduction of legitimate interest in data processing under the NDPA in Nigeria offers flexibility for controllers and processors. It allows a pragmatic approach to address various situations where explicit consent may not be suitable. While providing a balance between fulfilling legitimate needs and respecting data subject rights, the use of legitimate interest requires careful consideration. This article explores the significance of legitimate interest in maintaining a balance between individual privacy and processor interests.

What is legitimate interest?

Legitimate interest can be a challenging concept to comprehend unlike other lawful bases like *consent*, *legal obligation*, *performance of a contract*, *vital interest* which are more straightforward.⁴ The lack of clarity surrounding the meaning of legitimate interest is exemplified by a case in Amsterdam, where the Court of First Instance referred questions to the Court of Justice of the European Union (CJEU). The case involved the Dutch Data Protection Authority fining the Royal Dutch Tennis Association EUR 525,000 for sharing member data with sponsors for commercial interests.⁵ The CJEU was tasked with clarifying whether legitimate interest should be confined to law-based interests and if purely commercial interests could be considered legitimate, provided they comply with the law. While we await the CJEU's response to these questions and its ruling on the matter, it is noteworthy that the CJEU had previously ruled in *The Rigas Case*⁶ that “*not all legitimate interests’ can be used to justify the processing of an individual’s personal data, even when a public authority has deemed such processing necessary.*”

Article 29 Working Party (Art. 29 WP)⁷ an independent European Union advisory body on data protection and privacy⁸ stated that *interest* involves considering the broader stake or benefit that a controller, such as a company, may have in data processing. For instance, a company aiming to ensure the health and safety of its personnel at a nuclear power plant may establish access control procedures. This serves as a legitimate purpose for processing specific personal data, aligning with the company's objective. This processing is undertaken with the primary aim

¹ means an individual to whom personal data relates

² means any information relating to an individual, who can be identified or is identifiable, directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social, or economic identity of that individual

³ Article 2.2 of the NDPR

⁴ <https://www.sagacitysolutions.co.uk/about/news-and-blog/what-is-legitimate-interest/>

⁵ <https://www.fedma.org/2022/10/06/dutch-court-refers-preliminary-questions-cjeu-scope-legitimate-interest/>

⁶ CJEU, Case C-13/16 Valsts policijas Rīgas reģiona pārvaldes Kārtības policijas pārvalde v Rīgas pašvaldības SIA ‘Rīgas satiks’, 4 May 2017.

⁷ Known in full as, the Working Party on the Protection of Individuals with regard to the Processing of Personal Data

⁸ Now replaced by [European Data Protection Board](#) (EDPB) on 25 May 2018 in accordance with the [EU General Data Protection Regulation](#) (GDPR)

of enhancing and maintaining the well-being and safety of the staff involved. While the General Data Protection Regulation (“GDPR”) does not explicitly define legitimate interest, it acknowledges it as a lawful basis for processing personal data. The GDPR states:

“ *Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child....*”⁹

According to the Information Commissioners Office (ICO)¹⁰ guidance it states that “*legitimate interests can be your own interests or the interests of third parties. They can include commercial interests, individual interests or broader societal benefits.*”¹¹

The National Data Protection Act (NDPA) lacks a precise definition of legitimate interest but outlines conditions in Section 25(2) that disqualify certain interests as legitimate in personal data processing. These conditions include overriding the fundamental rights of data subjects, being incompatible with other lawful bases, and violating the data subject’s reasonable expectations. These serve as guidelines to prevent misuse of legitimate interest in data processing in Nigeria. However, despite its potential advantages, relying on legitimate interest poses risks, and the challenge lies in effectively using it while adhering to data privacy principles.

How best can controllers/processors rely on legitimate interest as a lawful basis for data processing?

When utilizing legitimate interest for data processing, controllers and processors need to judiciously weigh this approach against alternative legal bases to safeguard the rights of data subjects. In specific cases, legitimate interest and consent may be the sole lawful bases for processing data, especially when corporate entities aren’t involved in data processing for contractual performance, legal compliance, or protecting vital interests. As a result, consent and legitimate interest emerge as the principal avenues for lawful data processing in these situations.

Depending solely on consent as a lawful basis may prove insufficient for full compliance with data protection laws. An illustrative case¹² in Sweden involved the Data Inspectorate imposing a fine of £13,600 on a High School. The fine stemmed from the school’s utilization of facial recognition technology to track student attendance. Despite the School Board contention to have obtained consent from the students and their guardians, the Data Inspectorate considered such consent invalid. This decision was based on the inherent power imbalance between the school and its students as the students had no genuine or free opportunity to refuse or withdraw their consent. The Court of Appeal in Stockholm upheld the decision of the Swedish Data Protection Authority. This case underscores the necessity for controllers to meticulously define the data they intend to collect and the purpose of processing. Precision in these aspects enables controllers to choose the appropriate lawful grounds for responsible data processing.¹³

The NDPA emphasizes that legitimate interest should not override the rights of data subjects and must align with other lawful processing grounds while meeting data subjects’

⁹ Article 6(1)(F) of the GDPR

¹⁰ The Information Commissioner's Office is a non-departmental public body which reports directly to the Parliament of the United Kingdom and is sponsored by the Department for Science, Innovation and Technology

¹¹ Ibid

¹² KamR Stockholm - Case No. 5888-20

¹³ <https://www.pinsentmasons.com/out-law/news/limitations-of-consent-shown-in-gdpr-cases>

reasonable expectations. In navigating the complexities of legitimate interest, Article 6(1)(f) of the GDPR recommends a Legitimate Interest Assessment (LIA) comprising three key tests:

- a. **Purpose Test (Identify the legitimate interest):** This involves defining the specific purpose behind data collection, processing, and storage. For instance, collecting customer data for information security and fraud prevention benefits both the entity and customers, establishing a legitimate reason for data processing.¹⁴

The GDPR's Preamble provides examples of legitimate interests, including fraud prevention, direct marketing, internal administrative purposes within a group of undertakings, network and information security, and preventing 'denial of service' attacks.¹⁵

- b. **Necessity Test-** Controllers must assess if processing based on legitimate interest is truly indispensable for the intended goal. They need to consider if the processing is proportionate and explore less intrusive alternatives or whether not processing data at all is feasible.
- c. **Balancing Test-** This test requires controllers and processors to weigh the legitimate interest against the risks and impact on the right of individual. The test is derived from the last part of Article 6(f) of GDPR "...*except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.*" This help to determine whether the benefits of processing outweighs an individual's interest, fundamental rights, freedom or personal concerns about data privacy or is in the public interest.

The Article 29 Working Party outlines the initial step of the balancing test, emphasizing an evaluation of the nature and source of legitimate interests against their impact on data subjects' rights. This analysis establishes a provisional balance, with greater safeguards from the controller tilting the balance in their favor. The balancing test must also consider data subjects' reasonable expectations, influenced by their relationship with the controller. An existing client or employee relationship strengthens the justification for legitimate interest, while the absence of such a relationship shifts the balance towards prioritizing the rights and interests of data subjects.

Conclusion

Legitimate interest, a pivotal lawful basis in the NDPA, is essential for sustaining business operations. Its effective application demands a comprehensive understanding of the interest's nature, potential impact on individuals, and a meticulous assessment to ensure legitimacy and necessity. Transparent communication with data subjects is crucial for trust, and the NDPA introduces the Data Protection Impact Assessment (DPIA) to identify risks, with Data Protection Officers aiding in this process. Continuous compliance with data processing principles, such as fairness, lawfulness, accuracy, minimal collection, and robust security measures, is imperative for controllers.

¹⁴ <https://www.enzuzo.com/blog/3-part-test-for-legitimate-interests-gdpr>

¹⁵ https://fpf.org/wp-content/uploads/2018/04/20180413-Legitimate-Interest_FPF_Nymity-2018.pdf

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