

Direct Marketing Policy

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Direct Marketing and GDPR - Guidelines for Staff

TU Dublin is an academic community of students and staff, in a higher education institution that is practice-based and research-informed, currently based on a number of different campuses across Dublin.

1. What is Direct Marketing?

Direct marketing is broadly defined as promoting an activity, product or service to individuals and specific rules apply if this is sent electronically and to people that the University does not have an existing relationship with (this will usually apply to third parties such as prospects, customers, visitors, people you think may be interested in hearing about your work).

Under GDPR, Direct marketing is a processing activity which includes a number of different processes e.g. collecting personal data, creating profiles/records about these data subjects and their preferences and then sending personalised communications to them.

2. Legislation Governing Direct Marketing

The General Data Protection Regulation (GDPR) came into force in May 2018 and requires anyone collecting and using personal data, e.g. email addresses, to provide

those people with details about what we in Technological University Dublin (TU Dublin) are using their data for. Where this relates to direct marketing sent electronically e.g. email, SMS or social media direct message, we may need to seek their consent in advance and respect their wishes should they want to stop receiving the information from us. We must bear in mind the conflicting relationship between direct marketing practices and evolving privacy legislation.

The new e-Privacy Regulation, currently going through the legislative process, applies to all direct marketing through electronic means and will trigger reform of current electronic marketing rules.

Relevant Legislation	Scope	Applicability
Electronic Privacy Regulations 2011 (“EP Regulation”)	Electronic marketing in Ireland	<ul style="list-style-type: none"> • Customers/individuals • Companies
General Data Protection Regulation	Requirements in relation to processing personal data (including for direct marketing purposes)	<ul style="list-style-type: none"> • Identifiable Customers / Individuals attributed to companies, i.e. Directors, Sole Traders and Partners

3. Policy

This Policy highlights the key requirements a School or Functional Area is required to adhere to when carrying out direct marketing to data subjects or businesses. It explains Direct Marketing and Data Protection requirements for Schools or Functional Areas intending to conduct Direct Marketing communicating with potential students, patients, funders, potential donors and other individuals when promoting TU Dublin. Schools and Functional Areas must comply with legislative requirements and manage any potential or actual risk related to such activity.

Schools and Functional Areas will not always need to process personal data to carry out a direct marketing exercise. However, they must still comply with electronic marketing rules. Where Schools and Functional Areas do use personal data to conduct direct marketing, they must ensure to comply with GDPR in addition to electronic marketing rules. For further guidance on GDPR requirements please see the University’s Data Protection Policy.

4. Staff and Students

To fulfil its public role as a practice-based University, TU Dublin endeavours to ensure that all members of our staff and students in the community receive information about the wide range of activities being organised by colleagues and students in different disciplines and different locations and, in particular, where it concerns exhibition of students’ work, performances or presentation of research. Information about student and staff successes and achievements is also shared through TU Dublin student and staff email addresses, e-zines and websites.

If information relates to colleagues’ roles or to students’ courses, it is acceptable to share it through email, ensuring that the recipients’ email addresses are not visible. Other information that does not specifically relate to these areas should not be shared in this way. Any form of marketing to such audiences must follow this TU Dublin Direct Marketing Policy. For example, it must offer a way for people to ‘opt out’, and this preference should be recorded to ensure that they do not receive future communications.

5. Third Parties

Where we want to send marketing information electronically to third parties such as business contacts, visitors or customers, we need to be particularly careful to ensure that we comply with data protection legislation.

In most instances, these individuals must be asked for their consent, or 'to opt-in', as this is considered electronic marketing and, in addition to the GDPR, the Privacy and Electronic Communications Regulations also apply which stipulate that consent is the only valid basis for the sending of marketing information in this context.

To be valid, the consent must be 'unambiguous'. This means an 'opt-in' tick box or, in the case of a mailing list, the individual provided their contact details with the knowledge that they would receive ongoing information.

Once we have unambiguous consent we still need to provide people with an opportunity to change their minds in each communication sent. If they have not engaged with us (e.g. attending an event or using a service) in a long time (usually three to five years) we need to ask them for their consent again. No response to a request of this kind is considered the same as an 'opt-out'.

Direct marketing can be solicited or unsolicited. Solicited marketing is marketing which has been specifically requested by the individual and providing that GDPR is complied with, there is no restriction on this (refer to Section 5 of the University's Data Protection Policy on Data Subject Rights for more details on the requirements). Electronic marketing rules will apply where the marketing is unsolicited, i.e. the marketing has not been specifically requested.

6. Electronic Marketing

TU Dublin can use an individual's electronic contact details, including email and mobile phone number for the purposes of direct marketing (via telephone, email, SMS) when:

- The individual has consented to direct marketing within the last 5 years; or
- TU Dublin has obtained the electronic contact details in the course of service or event within the last 12 months and the direct marketing material relates to a 'similar product or service', provided the individual was given an opportunity to refuse such contact at the time the data was collected, also known under electronic marketing rules as a 'Soft Opt - in'.

Note that 'Similar Products or Services' are defined as a like for like, of the same kind, nature or amount or having a similar resemblance. Schools and Functional Areas engaged in direct marketing activity are expected to pay close attention to the limitations which this definition sets down.

When Schools and Functional Areas use electronic marketing they have to ensure the following:

- If a School or Functional Area wishes to capture data subjects consent for future marketing activities during a TU Dublin or non-TU Dublin event, it would be recommended to use an Opt-in (i.e. obtain explicit consent).
- Give data subjects the opportunity to object to direct marketing in an easy manner and without charge, by offering an Opt-out option.
- Do not include a marketing message within email signatures.
- Before electronic email marketing by email, Schools and Functional Areas are required to screen the names and addresses against the email preference consent.

If a School or Functional Area contacts data subjects over the phone for marketing purposes, both for calls and SMS marketing, the School or Functional Area has to ensure the following requirements are met:

- Data subjects have consented to phone marketing, including phone calls and/or SMS.
- Phone numbers have to be kept up-to-date in order to avoid contacting a wrong individual with marketing communications.
- Provide an opt-out option for phone marketing.
- Keep records of consents and opt-outs for phone marketing.

Please refer to Section 3.2 of the University's Data Protection Policy for more information on valid consent.

7. Postal Marketing

Electronic marketing rules only cover direct marketing through electronic means (e.g. telephone, email, SMS). Therefore, if Schools or Functional Areas are carrying out postal marketing, electronic marketing rules will not apply. However before Schools or Functional Areas can use personal data for postal marketing, they must ensure that the marketing is compliant with GDPR. Please refer to Section 5 of the University's Data Protection Policy for more information on Data Subjects Rights.

For postal marketing to be considered direct marketing it has to be addressed to a named person and must be promoting a product or service. Unaddressed mail sent to a household or business is not covered by GDPR as no personal data is used. GDPR does not include market surveys seeking data subjects' views, e.g. opinion on political matters or radio listenership preferences.

8. Consent and Transparency

New accountability requirements means that there is a need for stricter controls around records of consent, including being able to demonstrate that an individual has consented and that the consent is clearly distinguishable from other matters.

9. Valid consent

Functional Areas are required to ensure that where consent is required for direct marketing that it is valid by meeting the following requirements:

- Consent must be freely given, specific, informed and unambiguous.
- Consent must be a clear, affirmative action. It is important to ensure that it is a positive affirmation, e.g. positive opt-in. Pre-ticked boxes or silence does not constitute consent.
- Consent for direct marketing purposes must be distinguishable, clear, and is not "bundled" with other written agreements or declarations, i.e. consent required for direct marketing purposes must be separate from consent for other types of processing activities.
- Be clear and concise when collecting consent.
- Be specific when collecting consent from individuals so they know exactly what they are consenting to.
- Name any third party controllers who will rely on the consent.
- Make it easy for individuals to withdraw consent and provide information on how to withdraw.

- Keep evidence of consent – who, when, how, and what individuals were told when they provided consent. TU Dublin is required to be able to evidence that consent is in place for direct marketing purposes as part of its accountability responsibilities under GDPR.
- Keep consent under review and refresh it if anything changes.

Consent - As Data Controller, TU Dublin needs to look at how we currently manage consent in general and specifically in relation to direct marketing campaigns and look at the management of this consent. We should identify consent mechanisms and ensure we have adequate consent for all personal data with clear distinguishable records of consent.

10. Right to Object

Data subjects have the right to object to direct marketing, including profiling. Where an individual exercises their right to object to direct marketing, TU Dublin must stop processing the personal data for these purposes immediately. Schools and Functional Areas must deal with an objection for processing at any time and free of charge. Please refer to Section 5 of the University's Data Protection Policy for further details on Data Subject Rights.

The University regularly sends information to our staff and students using their University email address. Where this relates to their job or course, this is generally considered to be acceptable as it is not marketing an activity, product or service. However, if the information does fall into this category you will need to provide a way for people to 'opt-out'. If staff or students have signed up to receive some information, but change their mind, they should also be given the option to opt-out.

Managing Opt-outs: How are opt-outs managed across the organisation? Include opt-outs in every direct marketing message. Organisations should assess whether they have the technical and/or manual means to process an opt-out across all systems where personal data are stored without undue delay.

Right to Object - When an individual objects to processing for direct marketing purposes, then their personal data must no longer be processed in this way.

Consideration should be given to technical measures ensuring the interoperability of systems, data lineage, and data discovery where feasible. In the absence of such measures, clearly defined policies and processes must be implemented to ensure that no 'opt-out' slips through the cracks.

11. Monitoring and Compliance

The University is committed to ongoing review, monitoring and periodic auditing of the control processes for ongoing compliance with Data Protection policies, procedures and guidelines.

As part of this, the University will review and audit existing controls over personal data by completing and updating assessments of data protection controls for paper and electronic forms of personal data records. Please see Section 4.3 of the University's Data Protection Policy for further information on the Record of Processing Activity.

The University will also complete and update detailed Data Inventories/Data Processing Registers which will classify the data as either personal data or sensitive personal data and categorise the data by Functional Area and identify a data owner for each category. Please see Section 4.3 of the University's Data Protection Policy for further information on these Data Inventories.

Any member of staff or student of the University, or other individuals who come into contact with TU Dublin, and who considers that the Policy has not been followed in respect of personal data about themselves should raise the matter with their Head of School or Functional Area or the Information & Compliance Officer (email dataprotection@tudublin.ie) in the first instance.

Periodic checks on compliance with Data Protection policies, procedures and guidelines will be conducted by the Data Protection Officer with the input and support of Information & Compliance Officers and ICT where required.

12. Training and awareness

Key risk training and awareness to an organisation's marketing teams is important to ensure that compliant direct marketing practices are embedded into business operations.

13. Governance, Accountability and Record Keeping

New accountability requirements means that there is a need for stricter controls around records of consent, including being able to demonstrate that an individual has consented and that the consent is clearly distinguishable from other matters.

The Head of School or Functional Area is responsible for the implementation of the policy within their School or Functional Area and for developing and implementing procedures to support the compliance with the policy. It is important that Schools and Functional Areas keep records and audit trails of their data protection practices in order to demonstrate compliance with the policy.

Schools and Functional Areas may have to provide these records to the Data Protection Officer or Information & Compliance Officer for inspection or consultation.

14. Further Information

Please see Appendix A for Guidelines which have been prepared for Staff of the University in relation to Direct Marketing and GDPR.

For further guidance on GDPR requirements please see the University's Data Protection Policy. Please direct any data protection queries to dataprotection@tudublin.ie

Further information on Direct Marketing is available from the Office of the Data Protection Commissioner -

- Rules
<https://www.dataprotection.ie/en/organisations/rules-electronic-and-direct-marketing>
- Blog
<https://www.dataprotection.ie/en/news-media/blogs/direct-marketing-what-you-need-know-about-direct-marketing>

DIRECT MARKETING AND GDPR - GUIDELINES FOR STAFF

1. Refer to the TU Dublin Direct Marketing Policy

2. Consider the requirement for Consent –
Use clear phrases and avoid confusing double negatives.

If you have a mailing list of third party contact details that you use for marketing, you need to consider how you obtained these details:

- Were the details on your mailing list obtained directly from the individuals themselves?
- What were those people told about the information they would be receiving and what were their expectations?
- Did they consent to being contacted for marketing purposes?
- How long have you had the contact details? How long have they been receiving the information? Have they been offered an opt-out in each communication?

If after answering these questions you are happy that you have consent to send this type of information to your mailing list then you can carry on, ensuring that you continue to offer an opt-out in each future communication and refresh your consent or remove inactive individuals periodically.

If you are unsure whether you have consent, then you need to -

- In any emails you send, you should state that the data protection legislation has changed and that in order to carry on receiving this particular information they will need to **opt-in** to let you know that they do want to receive communications from you.
- Remember, no response is the same as an opt-out so you will need to remove non-responders from your list.
- You should also be very clear about the information they will receive. If you want to send multiple items, you should ask them to opt in to each item and respect their preferences.

Opt-in example (good practice)

"Tick if you would like to receive information about our xxx and yyy by post / by email / by telephone / by text message "

Opt-out example (not as good practice but could be **part of a mechanism of consent if used with** clicking a button to submit a Form online)

"By submitting this registration form, you indicate your consent to receiving email marketing messages from us. If you do not want to receive such messages, tick here: "

3. For further guidance on GDPR requirements please see the University's Data Protection Policy. Please direct any data protection queries to dataprotection@tudublin.ie
4. Further information on Direct Marketing is available from the website of the Office of the Data Protection Commissioner.

Rules

<https://www.dataprotection.ie/en/organisations/rules-electronic-and-direct-marketing>

Blog

<https://www.dataprotection.ie/en/news-media/blogs/direct-marketing-what-you-need-know-about-direct-marketing>