

Legitimate Interest Assessment (LIA)

LIA Completed date:	14.12.2020
Project/ Change name:	SCHR Misconduct Disclosure Scheme
Project/ Change owner:	Gaelle Pertot
LIA Owner:	Gaelle Pertot
Approved by:	Milgo Ali
Approval date:	14.01.2021

Background

This template should be completed if **either/ both** of the following statements are true:

- You have completed the Data Protection Impact Assessment screening questionnaire and the result was an LIA is necessary
- You intend to process existing data in a new way, for which your legal basis for processing is legitimate interest

Once you have completed this form, it should be sent to the head of your team for review. Once this sign-off has been recorded, please send it to your Information Governance champion – details of who this is can be found on [RedRoom](#).

Sign-off details can be found at the end of this document.

For additional, supporting information, please see the British Red Cross Data Processing Agreement which is available on RedRoom:

Purpose

What do you want to do and why?

	Question	Answer
1	Give a brief overview of the data processing activity	<p>British Red Cross (“BRC”) wishes to implement the SCHR Misconduct Disclosure Scheme (the “Scheme”). The purpose of this Scheme is to establish a minimum standard for humanitarian, development and other civil society organisations to share information as part of their recruitment process about people who have been found to have committed sexual harassment, sexual abuse or sexual exploitation (“Misconduct”) during employment.</p> <p>Organisations participating in the Scheme (“Participating Organisations”) will share Misconduct history relating to data subjects who work, or have in the past worked, for the Participating</p>

		<p>Organisation as an employee with other Participating Organisations.</p> <p>Participating Organisations will:</p> <ul style="list-style-type: none"> • only request the personal data as part of their recruitment processes (i.e. the process by which each Participating Organisation assesses the suitability of an individual for a position); • use a standardised form (the Statement of Conduct) to respond to a request for information; • use information contained in the Statement of Conduct to inform their decision as to whether to hire or appoint the data subject. <p>Further details on the Scheme and an example Statement of Conduct are available here: https://www.schr.info/the-misconduct-disclosure-scheme</p>
2	What is the purpose of the data processing?	<p>The purpose of the processing is to share and receive relevant information about people who have been found to have been involved in or committed Misconduct, during employment for the primary purpose of making informed recruitment/appointment decisions.</p> <p>The aim is to create a safer working environment for anyone who works for BRC, and the communities and individuals it serves. The wider aim is to help foster an enhanced reputation for the Aid sector as a whole, with increased protections for those it serves.</p>
3	What is the legitimate interest of the organisation in processing the data in this way?	<p>The legitimate interest of BRC and the other Participating Organisations is to ensure the recruitment process only approves candidates who can safely work with the communities and individuals served by the charity. This will enable BRC and Participating Organisations to be seen by the public to be taking action against recent sexual exploitation and abuse (SEA) occurrences in the Aid sector.</p>

Necessity

To achieve your objective, do you need to process the data in the way intended:

	Question	Answer
1	How will processing the personal data in your intended way help you achieve your stated objective?	<p>Processing the data will ensure that BRC is made aware of previous incidents of Misconduct that might impact an individual's suitability for a role, but which might not be caught by standard criminal background checks or reference procedures.</p> <p>By processing the personal data in this way, BRC will also be able to share important information about candidates with other Participating Organisations for them to make informed decisions during their recruitment processes. This should help to prevent</p>

		those who have committed Misconduct from moving between organisations in the Aid sector undetected.
2	<p>Could you achieve your objective without processing personal data, or in a way that means you don't have to process the data in the same way?</p>	<p>No, we cannot achieve the objectives set out above without processing personal data.</p> <p>We have considered whether we could achieve the same objectives by processing less personal data, but have concluded that this would not be possible. The data we plan to request or provide is already very limited, and processing less personal data is unlikely to give us or other Participating Organisations the information that we/they require to make recruitment/appointment decisions</p> <p>BRC could instead ask individuals to voluntarily disclose this data, but there is a high risk that the data collected would not be accurate.</p>
3	<p>What would be the impact of not being able to process the data in this way?</p>	<p>If we do not process the data, staff members with substantiated prior incidents of Misconduct would be able to move to another NGO in the aid sector, without that organisation's knowledge of the Misconduct. Likewise, if BRC is not a participant in the Scheme, it could recruit someone from another NGO without knowing whether they have been found to have been involved in or committed Misconduct.</p> <p>This means that, if the data is not processed, there is the potential for harm to BRC's employees and those receiving aid from BRC, as well as reputational risks to the BRC and the Aid sector more generally.</p>
4	<p>Can the scope of the processing be modified to reduce/mitigate any underlying privacy risks or harms?</p> <p>If 'yes', how? If 'no', why?</p>	<p>In terms of information requested by BRC from other Participating Organisations, no, we do not believe there is any possibility for the scope of the processing to be modified. The scope of the processing is already limited by the use of a standardised Statement of Conduct form, which asks only for the information needed for BRC to make informed recruitment decisions (e.g. details of any findings of Misconduct or investigations for Misconduct which were ongoing when the individual left employment). This will allow BRC to process only the data they need to make these decisions and reduces the risk that unnecessary personal data will be processed.</p> <p>In terms of information requested by other Participating Organisations, we may be able, in some circumstances, to modify the scope of the information processed. In most circumstances, we do not expect this to be necessary or appropriate, since Participating Organisations should limit the scope of the information they request, in the same way that BRC plans to do. If however a Participating Organisation asks for information which</p>

		<p>appears to be excessive, BRC will consider its data privacy obligations before providing the data requested.</p> <p>In all other respects, we believe that the scope of the processing is already subject to appropriate limitations, including:</p> <ul style="list-style-type: none"> • Statements of Conduct will only be created and shared by Authorised HR Personnel within BRC (to minimise the number of people who collect and share data subject's data). • BRC also has in place internal security measures which will be managed by International HR and HR Advice and Casework. For example, BRC's template statement of conduct will be saved in Shared Drive- staff files, only available to Authorised HR Personnel. • Misconduct histories will only be shared with, and accessed by, Authorised HR Personnel within other Participating Organisations. An up-to-date list of Organisations and Authorised Personnel within such organisations will be maintained by the Scheme: https://www.schr.info/mds-registry
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Balance

Consider the impact on individuals' interests and rights and freedoms and assess whether this overrides your legitimate interests:

Reasonable expectations		
	Question	Answer
1	Would the individual expect the processing activity to take place? (give reasons why you think this, e.g. quotes from the fair processing statements they have been served)	<p>We will communicate BRC's participation in the Scheme by email to the existing employees it is applicable to (all International Directorate staff). FAQ material will be made available and the HR Project Adviser will be a contact point for answering any questions. If an investigation is being carried out or a staff member faces a formal warning for Misconduct, we would also inform the data subject about BRC's participation in the scheme. Current employees will therefore expect the processing activity to take place.</p> <p>We will also communicate our participation in the Scheme to job applicants at the application stage, during interview and during the onboarding process, when requesting references from previous employers. The candidate can withdraw their application at any stage as is their right, but they do not have the opportunity to object to the BRC being part of the scheme. Candidates will have all information prior to accepting the BRC offer and can request further information. Candidates will therefore also expect the processing activity to take place, and can take steps to avoid this by withdrawing their job application if they wish.</p>
2	What is the connection between the individual and the organisation? Is the relationship two-way	<p>The individual can be a current BRC staff member/leaver/or new candidate.</p> <p>For current staff members there will be a close and on-going</p>

	<p>between the organisation and the individual? If so, how close is the relationship?</p> <ul style="list-style-type: none"> • On-going • Periodic • One-off 	<p>relationship with BRC. For leavers there is likely to have been a close relationship with BRC prior to their departure. There is, therefore, likely to be a greater expectation from these individuals that the data BRC holds about them will be processed by the charity.</p> <p>For new candidates, there is potentially only a one-off relationship with BRC (for example if they do not end up starting work for the organisation).</p> <p>However, BRC will only ask for a Statement of Conduct for candidates at the latest possible stage of the recruitment process, to ensure that data is not processed for individuals BRC is not planning to hire.</p> <p>All candidates will also be informed at several points throughout the recruitment process that BRC participates in the Scheme. Even individuals who have a one-off relationship with BRC might therefore have an expectation that BRC would process their data.</p>
<p>3</p>	<p>Has the personal information being processed been obtained directly from the individual?</p> <p>If not, please state the source and whether or the data subject has been informed that their data may be shared and used in this way.</p>	<p>No, the data comes from Authorised HR Personnel within Participating Organisations in the Scheme. .</p> <p>Data Subjects will be informed by BRC that it participates in the Scheme and therefore may share and use this data. For existing employees this will be done by way of:</p> <ul style="list-style-type: none"> • Email to the existing employees whom it is applicable to (all International Directorate staff); • FAQ material being made available; • Appointing the HR Project Adviser to be a contact point for answering any questions; • If an investigation is being made or a staff member faces a potential formal warning or dismissal for Misconduct, BRC would remind the data subject about BRC's participation in the Scheme (and that their data could be shared in future with a potential employer); and • Outlining the process of completing Statements of Conduct in the relevant policies on RedRoom. <p>For job candidates, this information will be shared:</p> <ul style="list-style-type: none"> • at the application stage; • during interview; and • during the onboarding process, when requesting references from previous employers.
<p>4</p>	<p>Could the processing be considered intrusive or inappropriate? In particular, could it be perceived as such by the individual?</p>	<p><u>Given that BRC will potentially be processing sensitive personal data (e.g. information relating to an individual's sex life or sexual orientation), this may be perceived by some individuals as intrusive.</u></p> <p>However, the Scheme is designed to include a proportionate approach to sharing of such information and its overarching aim is to protect individuals within the Aid sector from SEA incidents. This Scheme is also intended to be consistent with and support implementation of the Core Humanitarian Standard on Quality and</p>

		<p>Accountability (CHS).</p> <p><u>The data shared will be minimised as much as possible to be only what is needed to achieve these aims. It will also be shared with only a limited number of individuals (Authorised HR Personnel) within any Participating Organisation.</u></p> <p><u>Given the aims of the scheme, and the limitations on the data processed, BRC believes that the invasive nature of some of the data shared can be justified.</u></p>
5	<p>Will you be disclosing the data to a third party?</p> <p>If so, who is the third party? Why is the processing activity important to other parties the data may be disclosed to? Is there adequate data protection procedure in place (please share)?</p>	<p>Yes.</p> <p>Information will be shared between Participating Organisations of the Scheme. The mutual sharing of the information is important to the functioning of the Scheme and its ability to prevent individuals who have committed Misconduct moving between organisations in the Aid sector undetected. Other Participating Organisations are likely to have the same or similar interests to BRC in processing this data.</p> <p>Data protection procedures have been put in place for this data. BRC has carried out a Data Protection Impact Assessment (DPIA) to understand the risks to data subjects through this processing and how they can be mitigated. One such mitigation strategy is that BRC has appointed Authorised HR Personnel who will be the only individuals providing and receiving Statements of Conduct for the organisation. This should help to minimise the number of individuals who process personal data.</p>
6	<p>Has the data subject been informed that their personal data will be shared with a third party?</p>	<p>Yes, BRC will make clear in its communications to current employees and leavers that it participates in the Scheme and therefore that their data may be shared with another Participating Organisation.</p> <p>Internal communications will be made about the existence of the Scheme via FAQs, policies on RedRoom and presentations to employees. This information will also be shared throughout the recruitment procedure.</p> <p>This information will further be provided to affected or potentially affected data subjects through updates to the relevant privacy notices. Access to the terms of the scheme and copy of this LIA will also be made available.</p>

Likely impact of processing

Question	Answer
1 Does the processing add value to a product, service, or experience that the individual uses?	The processing may provide confidence of a safe workplace for the individual. It also assures individuals that British Red Cross is strongly committed to tackling safeguarding concerns within the sector.

		<p>The Scheme ensures that all organisations who sign up to it work to a common minimum exchange of relevant sensitive information, while respecting applicable legal and regulatory requirements. By so doing it contributes to organisations' work to prevent and address the consequences of sexual harassment and sexual exploitation and abuse in the humanitarian and development sector.</p>
2	<p>Is the processing likely to negatively impact the individual's rights*, or to result in unwarranted harm or distress to the individual?</p> <p><i>*Either rights under GDPR, or other relevant legislation (i.e. Human Rights act)</i></p>	<p>Clearly, sharing Misconduct data could have a negative impact on the data subject, who may be turned down for roles with the BRC or other participating organisations.</p> <p>However, we need to balance this with the need to protect those individuals the BRC and other participating organisations work with.</p> <p>The expectation is that the majority of data subjects who will be part of the Scheme will benefit from it in terms of a safer working environment, and an enhanced reputation for the sector.</p>
3	<p>Are the legitimate interests of the individual aligned with the party looking to rely on their legitimate interests for the processing?</p>	<p>BRC's interests lie in creating a safer working environment at the charity and preventing and addressing the consequences of sexual harassment, sexual exploitation and abuse in the humanitarian and development sector. BRC expects that the legitimate interests of most employees, former employees and job applicants would align with these interests, although this will not necessarily be the case for all.</p> <p>Subject to the risk-mitigation measures outlined in this assessment, BRC believes that any conflicting interests of employees, former employees and job applicants are overridden by the legitimate interests of BRC and others, as set out above.</p>
4	<p>Would there be a prejudice to the Data Controller if processing does not happen?</p> <p>If Yes, why?</p>	<p>Yes. If processing does not happen, it will be more difficult for BRC to comply with its obligations towards both its employees and the individuals and communities it serves. There would be a higher likelihood that BRC would end up recruiting individuals who constitute a risk to colleagues and/or others. If such individuals went on to commit (further) acts of Misconduct whilst at BRC, BRC (and the Aid sector in general) would likely suffer reputational damage,</p>
5	<p>Can the individual, whose data is being processed, control the processing activity or object to it easily?</p> <p>If 'yes', how?</p> <p>If 'no', why?</p>	<p>No, the individual cannot control the processing activity because Participating Organisations will be sharing factual statements about an individual's Misconduct history (if any) and it would not be appropriate for the individual to have control of this.</p> <p>However individuals will be made aware of BRC's (or their potential new employer's) participation in the Scheme when they apply for a role, and they will therefore have the option of</p>

	<p>withdrawing their application if they do not want their data to be processed.</p> <p>BRC will not be seeking candidates' consent to seeking or providing the data, as BRC does not think that this is required.</p>
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Nature of the Personal Data

	Question	Answer
1	Does the data being processed have any special protections under GDPR?	<p>Yes (some of the data).</p> <p>Any data shared which contains details of an individual's sex life and/or sexual orientation (or enough information that someone could infer such details) will constitute special category personal data.</p> <p>BRC considers that processing of this special category data is necessary for reasons of substantial public interest (see Article 9(2)(g) GDPR). The specific public interests that BRC is trying to protect are (1) preventing or detecting unlawful acts (paragraph 10, Part 2, Schedule 1, Data Protection Act 2018) and (2) safeguarding of children and of individuals at risk (paragraph 18, Part 2, Schedule 1, Data Protection Act 2018).</p>
2	Is there any imbalance in who holds the power between the organisation and the individual?	<p>Yes, there is an imbalance of power as BRC will be the current/potential employer and the individual will be seeking employment with BRC (or another Participating Organisation).</p> <p>BRC will try to address this imbalance of power by making it clear to all new job applicants at the earliest stage possible that if they apply for a role, their data may be processed in this way (e.g. by their former employer). Although the individual's consent will not be obtained, they will be fully informed about the scheme, and can withdraw from the application process if they wish.</p>

Conclusion

Based on the answers given in parts the “Purpose”, “Necessity” and “Balance” assessments:

Can you rely on legitimate interests for this processing?	Yes
<p>BRC wishes to process this data to create a safe working environment for its employees and those it provides assistance to, and to ensure that other Participating Organisations are able to do the same.</p> <p>Processing in the manner described in this assessment is necessary because it allows organisations to share and receive information about Misconduct in previous roles, which would not otherwise be detected by ordinary referencing procedures or criminal records checks. Sharing this information is vital to achieving the purposes set out above.</p> <p>In implementing this process BRC (and other Participating Organisations) are taking steps to ensure protection of data subjects’ rights as far as possible. As part of this, Participating Organisations only collect the data they need (e.g. confirmed findings of Misconduct or confirmation that an employee was under investigation for Misconduct) and this information is shared with minimal numbers of people within an organisation (those who need it for the purposes of making informed recruitment decisions).</p> <p>The processing may not be in the interests of all data subjects (e.g. those who are denied a job due to a history of Misconduct), and may in some ways be considered intrusive. However, on balance, these factors are outweighed by the legitimate interests of BRC, other Participating Organisations and the vast majority of its and their employees/service users in creating a safe environment within the Aid sector.</p>	

Sign-off

Based on the answers given in parts the “Purpose”, “Necessity” and “Balance” assessments, please conduct a high level risk assessment below:

Risk Level	Justification
Medium	<p>Purpose</p> <p>The purpose of the processing is to share upon request relevant information about people who have been found to have been involved in or committed Misconduct, during employment, for the primary purpose of making informed recruitment/appointment decisions. This may bring about risk, as disgruntled candidates who are not given roles may seek to take action against BRC.</p>
Medium	<p>Necessity</p> <p>The Statement of Conduct form will include only official conclusions of reports and disciplinary processes. The Scheme adopts a standardised Statement of Conduct form to facilitate data minimisation.</p> <p>By processing the personal data in this way, BRC will be able to share important information about</p>

	<p>candidates with other Participating Organisations for them to make informed decisions during the recruitment process. Likewise, BRC will be able to make informed decisions when participating in the Scheme, from the information provided by other participating organisations.</p> <p>There may be other ways to obtain some of this information (e.g. by asking candidates themselves), but there is a risk that the information provided may be inaccurate or misleading.</p>
Medium	<p>Balance</p> <p>Clearly, sharing misconduct data could have quite a negative impact on the data subject, who may be turned down for roles with the BRC or other participating organisations.</p> <p>However, we need to balance this with the need to protect those individuals the BRC and other Participating Organisations work with.</p> <p>The expectation is that the majority of data subjects who will be part of the scheme will benefit from it in terms of a safer working environment, and an enhanced reputation for the sector.</p>

- If **low** risk, then Departmental sign-off
- If **medium** risk, then Information Governance sign-off
- If **high** risk, then Information Governance Steering Group sign-off

Level of sign-off required (Departmental/ Information Governance/ Information Governance Steering Group)	Information Governance
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Sign-off list			
Signatory name	Title	Department	Date
<i>Milzo Ali</i>	Head of Information Governance & Data Protection Officer	Information Governance	14.01.2021