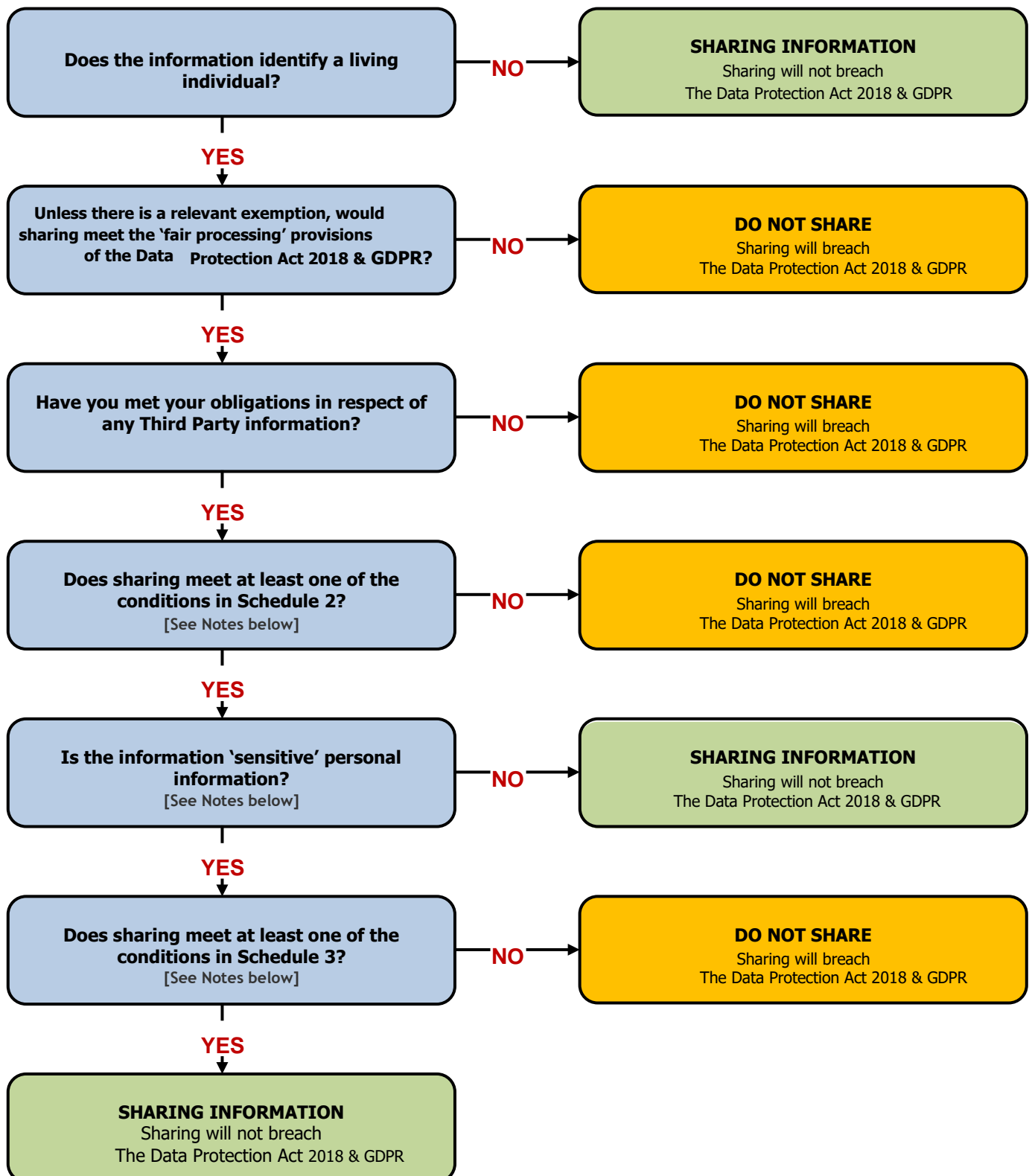


Flowchart 2 - Is information sharing compatible with the DPA?



2.1 Additional DPA Information

a) Article 6 (previously Schedule 2 Conditions)

Under the GDPR, processing personal data will be lawful only if, at least one of the conditions in Article 6 is met.

- **CONSENT** - The data subject has given consent to the processing of their personal data for one or more specific purposes
- **CONTRACT** - The processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of a data subject prior to entering into a contract
- **LEGAL OBLIGATION** - The processing is necessary to comply with a legal obligation to which the controller is subject
- **VITAL INTEREST** - The processing is necessary to protect the vital interests of the data subject or another person
- **PUBLIC INTEREST** - The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
- **LEGITIMATE INTEREST** - The 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 and fundamental rights and freedoms of the data subject which require protection of personal data, especially where the data subject is a child (This cannot apply if you are a public authority processing data to perform your official tasks).

b) Article 9 abbreviated conditions (previously Schedule 3 Conditions)

In the case of sensitive personal data, as well as satisfying one of the conditions in Article 6, at least one of the following conditions must also apply:

- The data subject has given explicit consent to the processing for one or more specific purposes (except where EU or member state law provides that the data subject may not consent to this particular type of processing).
- The processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment law, insofar as it is authorised by EU or member state law (or a collective agreement pursuant to member state law) providing for adequate safeguards for the fundamental rights and the interests of the data subject.
 - It is necessary for the purposes of performing or exercising obligations or rights which are imposed or conferred by law on the controller or data subject in connection with employment; and
 - When the processing is carried out, the controller has an appropriate policy in place which meets certain safeguards.
- The processing is necessary to protect the vital interests of the data subject or of another natural person, where the data subject is physically or legally incapable of giving consent

- The processing is carried out with appropriate safeguards in the course of the legitimate activities of a foundation, association or other not-for-profit body which has a political, philosophical, religious or trade union aim. The processing must only relate to members or former members of that body, or persons who have regular contact with it, in connection with its purposes. Personal data must not be disclosed to anyone outside that body without the data subject's consent.
- Processing relates to personal data which is manifestly made public by the data subject
- Processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity.
- Under the GDPR and DPA 2018, the administration of justice is dealt with as one of the "substantial public interest" conditions (for additional information refer to Substantial public interest in GDPR).
- Under the GDPR and DPA 2018, preventing fraud is dealt with as one of the "substantial public interest" conditions (for additional information refer to Substantial public interest in GDPR).
- Under the GDPR and DPA 2018, suspicion of terrorist financing or money laundering is dealt with as one of the "substantial public interest" conditions (for additional information refer to Substantial public interest in GDPR).
- Processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services.
Processing must be carried out on the basis of EU or member state law or pursuant to contract with a health professional subject to certain conditions and safeguards
Those conditions and safeguards are that data must be processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by any other person also subject to an obligation of secrecy under union or member state law or rules established by national competent bodies.
The DPA 2018 provides that the circumstances in which processing is carried out subject to conditions and safeguards include those where it is carried out either by or under the responsibility of a health professional or a social work professional, or by another person who in the circumstances owes a duty of confidentiality under an enactment or rule of law (section 11(1) of GDPR).
- Under the GDPR and DPA 2018, race equality is dealt with as one of the "substantial public interest" conditions (for additional information refer to Substantial public interest in GDPR).

c) **Lawfulness, fairness and Transparency**

To comply with the First principle of the Data Protection Act 2018 and GDPR organisations must:

- identify valid grounds under the GDPR (known as a 'lawful basis') for collecting and using personal data.
- ensure that nothing is done with the data in breach of any other laws.
- use personal data in a way that is fair. This means you must not process the data in a way that is unduly detrimental, unexpected or misleading to the individuals concerned.
- be clear, open and honest with people from the start about how you will use their personal data
- ensure people know who is responsible for their personal information (Data Controller)
- who information is being shared with and why

d) **Special Category Data (previously known as Sensitive Data)**

Special category data is defined as:

- Race
- Ethnic Origin
- Politics
- Religion
- Trade Union Membership
- Genetics
- Biometrics (where used for ID purposes)
- Health
- Sex life; or
- Sexual orientation

Within the new Data Protection Act 2018 and GDPR, Special Category Data no longer includes personal data relating to criminal offences and convictions, as there are separate and specific safeguards for this type of data in Article 10.

e) **The Data Protection Principles**

Following the implementation of the Data Protection Act 2018 and GDPR the rules for processing personal information have changed slightly. There are seven principles that state information must be:

1. Lawfulness, fairness and transparency
2. Purpose limitation
3. Data minimisation
4. Accuracy
5. Storage limitation
6. Integrity and confidentiality (security)
7. Accountability principle

The key changes from Data Protection Act 1998 are:

- there is no principle for individuals' rights. This is now dealt with separately in Chapter III of the GDPR;
- there is no principle for international transfers of personal data. This is now dealt with separately in Chapter V of the GDPR
- there is a new accountability principle. This specifically requires you to take responsibility for complying with the principles, and to have appropriate processes and records in place to demonstrate that you comply.