

## TEMPLATE FOR APPLYING FOI SECTION 40(2) OR EIR 12(3) 13(1)

DOF/2022-0175

### The lawfulness, fairness and transparency test

Business areas are required to carry out a “lawfulness, fairness and transparency test” when considering the disclosure of third party personal data falling within the scope of a FOI or EIR request. **In most cases**, neither of the lawful basis outlined below will apply, however the business area must complete the test as evidence as having considered.

The steps are as follows:-

#### 1. Consider the Personal Data falling within the scope of the request

**Brief description:** Personal data of 3<sup>rd</sup> parties, staff names included in the documentation who were not in a decision making roll and were included for admin purposes.

#### 2. Lawfulness

Do either of the two lawful basis below which allow for the disclosure of personal data apply? **No**

- Consent:** This will apply when the data subject(s) clear consent exists that allows you to disclose the personal data falling within the scope of this request. E.g, a member of staff may agree to their name being disclosed.
- Legitimate interests:** the disclosure is necessary for the Department’s legitimate interests or the legitimate interests of a third party that overrides the data subject(s) rights and freedoms, particularly their right to privacy.

**If no**, an exemption/exception for 3<sup>rd</sup> party personal data will apply and the form is complete.