

Photography and filming in schools Code of Practice

Data Protection compliance
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This Code of Practice has been created by Devon County Council's Information Governance Team.

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1. About this code

This code offers practical advice to schools on how to obtain, use and handle images of people, appropriately and lawfully in accordance with ***The Data Protection Act 1998***.

The code applies to the collection and use of images of any person who can be identified, whether they are a pupil, teacher, other employee, governor, visitor or parent.

For the purposes of this code, an **image** is a still or moving picture of a person who can be identified.



2. Complying with the Data Protection Act

The ***Data Protection Act 1998*** protects information which is about living and identifiable individuals - this is known as **personal data**.

The ***Data Protection Act*** (DPA) provides a framework which balances the legitimate needs of organisations to collect and use personal data, against the right of individuals to respect the privacy of their personal details.

The DPA has a set of eight common-sense principles, which help organisations understand how to use personal data properly.

Personal data shall:

- be processed **fairly and lawfully**
- be processed for **limited purposes**
- be **adequate, relevant and not excessive**
- be **accurate** and where necessary **kept up to date**

- be **kept no longer than is necessary**
- be **processed in line with the individual's rights**
- be kept **secure**
- not be **transferred to countries without adequate security**.

When a school captures a person's image, whether it is by camera, CCTV, video, web camera or mobile phone, and that person can be identified, then the image is likely to be considered personal data. This means that the image must be processed in line with the data protection principles. Processing means anything that is done to the image for example recording it, using it or sharing it.

More information about the data protection principles can be found on the Information Commissioner's Office website at www.ico.gov.uk

3. Privacy notices

The **Data Protection Act** states that personal data must be processed **fairly** and **lawfully**.

To be fair, when a school wants to take a picture of someone or record their activity, they need to tell the person:

- that they are going to do this
- why
- what they are going to do with the image
- who may see it
- any non-obvious consequences - for example if the picture is going to be used on the school website, in a newsletter, school prospectus or on a televised programme.

This is known as a **privacy notice**.

If photography or filming is going to take place, people should be told beforehand and given the opportunity to object or simply move out of the picture. This is particularly important if the images are to be used by a journalist or a media company.

A privacy notice can be provided in a number of ways, for example by letter to the individuals concerned, on a poster put up around the school, or on the school website.

These notices do not have to contain obvious information and can be short.

It is important to remember that privacy notices should be clear about why the images are being collected and what they are going to be used for. It may not be considered fair or lawful if a school said they were collecting and using the images for one reason and then later used it for something completely unconnected, without going back and re-informing the individuals.

Issuing a privacy notice is not the same as asking for consent. It is not always necessary to obtain a person's consent to record or use their image, provided it is for a legitimate and lawful purpose, such as education, and does not cause that person any damage, distress or unjustified prejudice of some kind. More information about when to get consent can be found in Chapter 5.

It is good practice to provide a standard privacy notice to parents or carers when new pupils start your school about when and how their image could be used by the school. A template privacy notice can be found at [Appendix 1](#).

Example privacy notice

Filming taking place 10– 15 May

Dear pupils and parents,

Oakland School will be filming the Year 8 science experiments next month, which will be used by the students as part of their science projects.

An external filming company, ABC Productions, will be recording the student's activities on behalf of the school. The footage will be used for educational purposes and only by the school.

If you have any queries about this, please contact the school reception on 0139X XXXXXX.

4. Web cameras and websites

If web cameras are being used, the area covered by the camera must be clearly signposted to allow those who do not wish their image to be broadcasted, the opportunity to move away.

If a school wants to use a photograph of someone on their website - whether it is a teacher, pupil, parent, volunteer or visitor - they must explain to the individuals that they want to publish their photograph in this way and obtain their consent.

It is not acceptable to use an image for this purpose without the knowledge or consent of that person, such use could breach the Data Protection Act.

People should be made aware that if they give consent to their image being put onto a website, there are no restrictions on the Internet and that their image will be accessible worldwide.

5. Consent

When to obtain consent

If you are taking a photograph or filming someone on school premises and you want to use this image for educational purposes, then it is unlikely that you will need to obtain that person's consent.

However, the individual must still be informed that photography or filming is taking place and the context in which the image will be used (see Privacy Notices).

It is good practice to obtain consent if a photograph is to be used for the promotion of the school, for example in the school prospectus. If an existing image is to be re-used and it is for a different purpose than the original intention, the individuals should be notified of its re-use.

If a photograph is to be used on the school website, consent from those in the picture must be obtained. In addition, if an image is to be used for commercial purposes, for example by an outside company, consent must also be obtained.

Examples of when consent is not required

- 1.** A picture is taken of a group of students working during a lesson; this image has been put up on a notice board in the school as part of a school project. This is a legitimate educational purpose and is unlikely to cause prejudice to any of the individuals in the picture so consent is not required.
- 2.** A teacher video recorded her pupils in a drama lesson. This video is to be played back to the pupils to discuss their performances. This is a legitimate educational purpose and is unlikely to cause prejudice to any of the pupils in the video so consent is not required.

Examples of when consent is required

1. A group of students attend a field trip at a local activity centre. The centre manager wants to take pictures of the students to use in their new advertising campaign, on leaflets and on their website. Consent is required. The images are not being taken by the school and used for their educational purposes.
2. A student writes an article for his school's internal newsletter and coursework, which is accompanied by a photograph of him. The school is really pleased with this pupil's article and wants to publish it in the local newspaper along with his photograph. It is unlikely that the pupil would expect to see his picture and article in a local newspaper so consent is required.

What is valid consent?

Consent must be **fully informed** which means that the person giving consent must understand why their image is being used, who may see it and any implications that may result from using or disclosing the image.

Consent can be explicit or implied. Obtaining explicit consent is good practice and can be expressed either verbally or in writing. Written consent is preferable because it reduces the scope for subsequent dispute. Implied consent can also be valid in many circumstances. It should be noted that individuals have the right to withdraw or limit consent at any time.

Consent from children and young people

Young people over 16 years old are usually considered to be competent to give consent; therefore you should seek consent from them.

However, it is recognised that schools may wish to increase the age of consent to 18 years of age because a child is legally under parental guidance until then.

Failure to obtain consent

If an image is published without the consent of the individual or parent or carer, when consent should have been obtained, they could make a complaint against the school to the Information Commissioner's Office.

In extreme cases this could result in a fine, enforcement action and damages being awarded to the complainant.

Photograph girl wins £55,000 damages

In 2001, a disabled girl who mistakenly believed she was HIV-positive was paid £55,000 in damages and legal costs after the High Court ruled that a local authority illegally used her photograph to promote an AIDS awareness campaign. The girl was photographed while attending Shrewsbury Day Nursery, run by Newham Council between 1993-1995. In 2001, her parents saw her picture 'plastered' on brochures advertising strategies for children and young people affected by or infected with HIV/AIDS and for preventing youth crime.

The pictures were taken without her parents' permission, stored and used without their knowledge or consent.

6. Using images

For schools to obtain, use or disclose images of people, they need a lawful power. Schedule 2 and Schedule 3 of **The Data Protection Act 1998** provides the full list of these powers.

Example

A school can photograph or film someone if:

- the photo or recording is for educational purposes and does not cause the individual unwarranted prejudice, damage or distress
- the person (or parent) has provided their consent
- it is necessary for preventing or detecting a crime or catching an offender (this is relevant when using CCTV cameras).

If a school wants to capture and use images of people, provided it is for educational purposes (as opposed to commercial purposes) and the use does not cause the individuals damage or distress, this will usually be considered lawful and so will not breach the Data Protection Act.

Pupils in appropriate dress

When taking photographs or filming pupils, the photographer must make sure the pupils are wearing appropriate dress, such as school uniforms or school tracksuits, to avoid privacy issues and reduce the risk of images being used inappropriately. In a sports context, avoid photography of children in PE or swimming costumes except in appropriate circumstances, for example a swimming performance review. Attention should also be paid to using appropriate camera angles for all types of photography or filming.

Limited purposes

It is important to make sure that when photographs are taken or filming is made which identify people, they should only be used in the way in which the person or people in the picture were originally told they would be. For example, if a photograph was taken of a student to appear in a classroom, it would not be appropriate for the school to re-use that photograph in other unexpected ways, for example on the school website or in their prospectus. In such a case the school would need to inform the pupil and their parent of the re-use and seek their consent to use it in this way.

Using information with pictures

If a picture of someone is published with a caption, for example in a newspaper, use only the minimum amount of personal information necessary. Details of home addresses, home telephone numbers or personal email addresses should not be published. If required, a general school email address or telephone number should be provided instead.



In some cases an individual or group may want their names published alongside their picture. For example, a competition winner, sports team or someone who has received an award. In the case of publishing pupil information, it is good practice to check with the pupil's parents whether they are happy for their child's name to be published alongside their picture.

Retention

The Data Protection Act stipulates that personal data must not be kept for any longer than is necessary - this applies to information as well as photographs that identify particular people.

7. Data subjects' rights

Individuals have several rights under the **Data Protection Act** in relation to how their information is processed.

These rights include the right to:

- request a copy of the personal data (including images) held about them; this is known as a Subject Access Request (Section 7 of the DPA)
- prevent their personal data being used in a way which causes them unwarranted damage or distress (Section 10 of the DPA)
- prevent their personal data being used for direct marketing purposes (Section 11 of the DPA)
- compensation if they have suffered damage as a result of their personal data not being processed in accordance with the DPA (Section 13 of the DPA)

The Act does not provide retention periods for schools to adopt, so it is up to the school to decide how long they need to keep photographs for and what they are going to do with them when they no longer need them, for example give them to the pupil or securely destroy them.

If a school decides the photographs are required for historical purposes, for example in the case of class or year group photographs, these can be retained indefinitely.



- have inaccurate or misleading information held about them corrected or destroyed (Section 14 of the DPA).

Schools should identify a member of staff who will be able to deal with these situations as they arise. More information about these rights can be obtained from the Information Commissioner's Office at www.ico.gov.uk.

8. Storing images securely

It is a requirement under **The Data Protection Act**, to make sure that personal data is kept secure; this includes photographs and video recordings.

Images held in manual form must be held securely, for example in a locked drawer or filing cabinet. Electronic images should be held in a protected folder with restricted access, to make sure that only authorised individuals can access them.

Encryption

Images, especially of pupils, should not be stored on unencrypted portable equipment such as laptops, memory sticks and mobile phones. Storing personal information on these devices is not considered secure. There have been many high-profile data losses over the last few years across the public sector, which have included the loss of children's data.

We strongly advise that schools encrypt their portable equipment in case personal information is downloaded and subsequently lost or stolen.

In April 2010, the Information Commissioner was given the power to fine any organisation that loses personal data or has a serious security breach (including stolen equipment containing personal data) up to £500,000. In such cases, the Information Commissioner will need evidence from the organisation that they had adequate safeguards in place to help prevent such security incidents.

The Information Commissioner does not look favourably on organisations which permit personal data to be downloaded onto unencrypted equipment.

For more information on how to purchase encryption software, contact ScoMis on **01392 385300**.

Reporting security incidents

Devon County Council has an incident reporting policy. Staff should notify the Council's Information Governance Manager of any loss, theft or wrongful disclosure of personal or sensitive business data.

Although schools are responsible for how they handle their information and are not accountable to the Council for any data losses or security breaches, we ask schools to tell us about any security incidents, such as loss or theft of information or equipment containing personal data, so we can offer support quickly where required, and be prepared should there be any media coverage following the incident.

The incident reporting policy has been implemented so the Council and schools can learn from reported incidents. It is not the intention to apply or apportion any blame to members of staff.

To report an information security incident, please fill out our security incident reporting form which can be found at

www.devon.gov.uk/incidentreporting

Further information on reporting a security incident can be obtained from Devon County Council's Information Governance Team on **01392 384678**.

9. Photography and filming at school events

The **Data Protection Act** does not prevent parents or other family members from photographing their children on sports day, in school performances or in other school events.

Schools are entitled to decide whether or not they allow photography to take place on their premises, however, it should not be banned for fear of breaching **The Data Protection Act** (the DPA). The DPA does not apply to parents or other family members taking pictures of their children for their own personal use, for example to go in a family photo album.

If a school decides that photography is allowed, it should inform parents or carers of this before the event. When taking photographs, parents do not need to obtain the permission of the other parents in case their child appears in the picture.

Professional photographers

If professional photographers attend a school event, this should be made clear to those attending, preferably beforehand. Professional photographers should, out of courtesy, approach people nearby who are in the picture and explain that a photograph or filming is about to take place in case they want to move away.

Inappropriate behaviour

If someone is suspected of taking inappropriate or unauthorised pictures then the school should ask them to stop and leave the site. The incident should be recorded and, if appropriate, reported to the Police.



10. Using CCTV in schools

The **Data Protection Act 1998** applies to the use of CCTV where the images identify individuals. The Information Commissioner's Office has produced a **CCTV Code of Practice** for organisations and businesses that use CCTV.

Schools should endeavour to comply with this code to make sure they do not breach the Data Protection Act when setting up cameras and using or disclosing the images recorded.

The CCTV Code of Practice covers areas such as, positioning cameras, storing and viewing the images, disclosure, retention and responsibilities. It also includes information about an individual's right to see the images, under the **Data**

Protection Act 1998 and the **Freedom of Information Act 2000**.

The Code of Practice can be found on the Information Commissioner's website at www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/ico_cctvfinal_2301.pdf

11. Acceptable behaviour

Schools should be aware that students, staff or parents could make and distribute images of people without the school's knowledge or consent.

Images can be obtained in a number of different ways, for example by mobile phone, camera, web cam and video camera.

Schools should make it clear in all relevant policies that taking pictures of people without their knowledge or permission (including permission from the school), or misusing or defacing images is not allowed. Policies should make it clear of the consequences of breaching these rules, for example disciplinary action will be taken.

Schools should keep themselves up to date with advancements in technology and should devise their own acceptable use and behaviour policy, in relation to photography and filming.

The acceptable use and behaviour policy should be applicable to pupils, staff and visitors and should be communicated to anyone entering onto school premises.

Conclusion

Taking photographs or filming pupils is often a normal part of school practice. The **Data Protection Act 1998** does not stop a person's image from being captured, but it does require the image to be obtained fairly, used for a legitimate purpose which does not cause the individual distress or prejudice and be kept securely.

If a picture is used by the school for educational purposes then it is not necessary to obtain the individual's consent, unless that individual is the sole focus of the picture or the use or distribution of the picture could cause that individual damage, distress or prejudice of some kind.

However, **The Data Protection Act** does still require the person to be told beforehand that they are going to be photographed or filmed, why and the likely consequences. If a person's photograph is to be published on the Internet or used for commercial purposes, consent should be obtained.

It is recommended that schools develop an acceptable use and behaviour policy in relation to photography and filming, on and off the school premises (for example on school trips) and distribute this to staff, pupils, parents and carers, to make sure images are not taken without an individual's knowledge or used inappropriately.

Some quick tips can be found at Appendix 2, to help you when taking photographs or filming pupils, teachers and other staff.



Template privacy notice - using pupil images in school

Dear parent or carer

Occasionally we may take photographs or film pupils at our school for educational purposes. This could include displaying the images on project boards or in school newsletters. We may also take class or individual photographs for historical records.

The images that we take of our pupils may also be used to promote the school and could be published on leaflets, in our prospectus or on our website. We will not use your child's photograph in this way, without informing you first and obtaining your permission.

There are times when our school is visited by the media who will take photographs or film high-profile events. Pupils will often appear in these images which may be published in local or national newspapers or used on televised programmes.

Our promise

- We will not use your child's image for any purpose if it would prejudice the interests of your child.
- We will only use images of pupils who are suitably dressed in a school uniform or track suit and will avoid taking pictures or video recordings of pupils in swimming costumes, except in appropriate circumstances, for example a swimming performance.
- We will only use the minimum amount of personal information about your child in any publication, such as first name, school name and possibly year group, and will never reveal full names (unless appropriate), personal email addresses, home telephone numbers or home addresses.
- We will keep your child's images and personal information secure and will destroy individual images when your child leaves the school or give them to you, unless we need them for historical or educational purposes.
- We will not use your child's image for any reason other than those stated, unless we have a legal obligation or power, or have received consent from you.

If you have any concerns about your child being photographed while at our school, or if you have any queries about how these photographs may be used, please contact the school reception.

Quick tips for taking and using images

Images should only be used for legitimate and lawful purposes, such as education.

Consent should be obtained if images are to be published on the Internet or used for commercial purposes. Consent should also be obtained if the individual is likely to be distressed by the use.

Consider the human rights of individuals, especially their right to privacy. Consider where they are, what they are doing and whether or not they have an expectation of privacy.

Privacy notices should be used to inform people that photography or filming is taking place. It should describe when the event will take place and what the images will be used for.

Do not give out specific details of children appearing in photos without considering the potential for misuse. Keep personal information to a minimum.

Photographers should tell people that they are about to take a photograph or at least make it obvious so they can move out of the way if they want to.

Create a school policy on how and when pictures can be taken and published.

Keep photographs, CCTV images and other footage in a secure place.



Notes

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Telephone 01392 384678

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