

# **CITY & COUNTY OF SWANSEA**



## **GUIDANCE FOR SCHOOLS**

**ON THE USE OF IMAGES OF PEOPLE:**

**PHOTOGRAPHS, VIDEOS AND WEBCAMS**

## 1 Introduction

The Data Protection Act (the Act) came into force on 1<sup>st</sup> March 2000 and offers more protection to individuals while imposing more onerous obligations on organisations such as the City and County of Swansea (the Authority) when handling personal data.

Personal data is any information which identifies a living individual for example their name, address or payroll number and concerns the privacy of that individual.

The Act contains statutory guidelines called 'data protection principles' and requires that personal data be:

Fairly and lawfully processed (which includes compliance with other conditions in the Act eg consent obtained from the individual affected)

Obtained for one or more specified and lawful purposes – no further processing in a manner incompatible

adequate relevant and not excessive

accurate and up to date

kept only as long as is necessary

processed in accordance with data subject rights (eg subject access)

Protected by appropriate technical measures eg secure IT

Not transferred to countries outside EEA unless that country has adequate legal protection in place to safeguard that personal data

Any use of photographic images either by still, video or webcam which clearly identify individuals must be carried out in compliance with the Act. The increased use of the internet has led to concerns regarding the inappropriate use of images of both children and adults on the Authority's website and in publications.

This guidance, together with the Authority's Data protection Policy and related employee guidance is intended to assist staff to comply with the Act specifically when dealing with photographic images.

## **2 Consent**

It is important to obtain consent from the parent, guardian or carer of a child or young person up to the age of 16 (this is called 'parental consent'). Children aged between 16 – 18 may give their own consent. Most children attend primary and secondary schools for up to a period of five years and it is therefore recommended that consent is obtained to cover the whole five-year period.

You must make clear:

- Why you are using that person's image
- What you will be using it for and
- Who might want to look at the pictures

Consent forms can be sent to parents with the school registration pack. To assist in ensuring that changes of circumstances are recorded, it is advisable that photographs are kept with the signed consent forms. Consent from teachers and any other adults who may appear in the photograph or video is also required. Once a member of staff or child leaves the School it is recommended that photographs are not re used and are destroyed.

Details of available sample consent forms are found at Appendix A.

## **3 Use of existing photographs**

If re using older photographs held on file for which consent was previously obtained for paper publication, it is advisable to renew this consent if the photograph is over 2 years old and/or is to be used on the website. Avoid using photographs of children after they have left the school.

If consent was never obtained because the photos were taken before the Act came into force extra care is required for example never use a picture of an untraceable person on a matter which relates to a mental problem or an illness.

The following points may be useful guidelines in indicating circumstances under which it would be acceptable to use photos for which permission was not obtained:

- For what purpose was the photograph originally taken, eg was it taken for a specific project such as the school prospectus:
- Where was the photograph taken, eg was it taken in a public place such as on a school trip to a museum?
- When was it taken, eg was it taken recently or a long time ago?

## 4 Other issues

Occasionally, members of the Press may take photographs or film footage at School. Although the Press can claim an exemption under the Data Protection Act for journalistic work (section 32), some parents may object to their children appearing in the media. For this reason an opt out is included on the consent forms for schools.

Wherever possible it is recommended that images of children from different ethnic communities and children with disabilities are used to ensure that School publications are inclusive of the whole community and comply with the Disability Discrimination Act.

Only use images of pupils in suitable dress, to reduce the risk of the images being used inappropriately. For example, do not use photographs of children in swimming costumes. Be aware of copyright implications with any photographs that you may use from elsewhere. Copyright issues are dealt with at para 10.

## 5 Websites

The government's website [www.safety.ngfl.gov.uk/schools](http://www.safety.ngfl.gov.uk/schools) contains useful information for Schools that use the internet or have their own website.

It is recommended that school websites **avoid** using:

- Personal details or full names (first name and surname) of any child or adult in a photograph, although first names can be used in some circumstances
- Personal e-mail or postal addresses, and telephone or fax numbers.

When using a photograph of an individual pupil, do not include that child's first name in the accompanying text or photo caption. If a pupil is named in the text, do not include a photograph of that child. This will avoid the risk of inappropriate and unwelcome attention from people outside the school.

As an alternative pupils could be asked to draw a picture of a pupil or member of staff for the School website. The use of group or class photographs with very general labels such as 'a science lesson' or 'making Christmas decorations' is also acceptable.

## 6 School prospectuses and other school publications

Although most school literature is sent to a very specific audience, it is advisable to avoid using personal details or full names of any child in a photograph and avoid naming a child in the text or accompanying photo caption if they appear in a photograph - and vice versa.

## 7 Videos

Before any children or young people up to the age of 16 can appear in video productions, parental consent must be obtained in the same way as for photographs of children, using the relevant parental consent form. Similarly, you must get the permission of anyone in your video who is not part of a crowd and is easily recognisable.

Parents/guardians can make video recordings of nativity plays and similar school events because there is an exemption under the Act for personal and domestic purposes. The School should inform parents who wish to do so that the recordings they make should be for personal and domestic use only and no other use. This should be done before the event and parents who object to their child being in a school play which may be videoed should express their preference when such a production is proposed.

## **8 Webcams**

The regulations for using webcams are similar to those for CCTV (closed-circuit television). This means that the area in which a webcam is used must be well signposted and people must know that the webcam is there before they enter that area. As with photographs, you must tell the person:

- why the webcam is there
- what you will use the images for, and
- who might want to look at the pictures.

## **9 MMS phones**

Multi media messaging service mobile phones can take and transmit images which may be personal data. Schools should consider banning the use of such phones particularly in situations where children are not fully dressed - changing rooms etc.

## **10 Copyright**

It is important to be sure of the copyright position of any photographs you intend to use, because photographic images are considered as artistic works under the laws of copyright.

Copyright is the right given to authors and creators of works, such as books, films or computer programmes, to control the exploitation of their works. This right broadly covers copying, adapting, issuing copies to the public, performing in public and broadcasting the material. Copyright arises automatically and does not depend on the completion of any formalities, such as registration. Remember that photographs obtained from the Internet are also subject to copyright. The first owner of copyright is usually the author of

the work. The major exception is where such work is made in the course of employment, in which case the employer owns the copyright.

Commissioning and paying for work does not procure the copyright. Contractors and freelancers own the first copyright in their work unless the commissioning contract agrees otherwise.

You should also remember that copyright lasts for over 50 years. Photographs taken after 1 August 1989 are protected for 70 years after the death of the photographer. There are different rules regarding older photographs depending on the relevant Copyright Act at the time there were taken. See the table below.

Date photograph taken	Length of copyright
Before 1912	Expired
1 July 1912 - 1 June 1957	50 years from the end of the year in which the photograph was taken
1 June 1957 - 1 August 1989	70 years from when the negative was taken
After 1 August 1989	70 years after the death of the photographer

Photographs on the internet that are not owned by the Council should have a photographic credit attached to them. It is the responsibility of the person publishing photographs on the Authority's website to ensure that all photographs are correctly credited to their author. Photographs owned by the Council do not need a credit.

## **Sample consent form for photographs, videos and webcams**

Available forms are available separately under the following headings:

**Consent form for use by City & County of Swansea schools** - to be used by headteachers wishing to use images of children for all school-based literature and recordings

**Consent form for Council non-school staff commissioning photography of children** - to be used when City & County of Swansea is requesting the use of images of children

**Consent form for Council staff commissioning photography of adults** - for use when using any images of adults for a City & County of Swansea publication

**Verbal consent form** - for use at large events when you might need someone's consent unexpectedly, eg a race winner

**Consent form for using photographs of staff on the internet** - any staff pictures placed on the net must have explicit consent before they go live.