

Safe Use of Images in St Mary's School 2004

Introduction

Increasingly, technology is making it easier to use pictures and images in printed materials or on the web. Along with this increased freedom comes the responsibility to protect vulnerable individuals.

This has become a complicated area and these notes are designed to help staff. We have tried to cover most areas but there may still be other situations that have not been addressed

Throughout this document, photographs (both digital and film) and video are referred to as images.

Why is this document being issued?

This document is being issued to ensure that the safety of children is not compromised, and that the school does not leave itself open to litigation regarding the misuse of images.

In the past, many of us have kept collections of images and when the need arose (e.g. for a newsletter), we searched through them and found one that looked the best. Some of these images were old or no history of the image was traceable.

Now, if we are producing a leaflet, report, exhibition, display or poster and want to include an original image of people (i.e. one that is not obviously from a picture library), it is necessary to obtain permission from those individuals in the picture. The one exception to this is an image taken of people in a public place. But even here, there are issues to bear in mind. For example a photo of a man on a bench in a park alongside information about mental illness. The easiest way to do this is to get the necessary permissions when the image is taken.

1998 Data Protection Act

Most people think of this Act as being associated with computer databases only. However as time has gone on, more of the Act's provisions have been introduced, and now covers the use of images.

The Data Protection Act 1998 lists the following eight principles which require that data is:

1. Processed fairly and lawfully
2. Obtained only for one or more specified purposes, and not processed incompatibly with them
3. Adequate, relevant and not excessive in relation to the purpose/s
4. Accurate and kept up to date Not kept for longer than necessary for the purpose/s
5. Processed in accordance with the rights of the data subjects
6. Kept secure
7. Not transferred to a country outside the European Economic Area which does not have adequate data protection rules.

There are several key terms used in the Data Protection Act. These are outlined below together with definitions of how these apply when taking images within schools.

- **Personal Data**

Photos or images of pupils are classed as personal data.

- **Data Subject**

This is the child (or adult, eg. a member of school staff) who is the subject of the personal data.

- **Data Controller**

This is the person or body who determines why and how personal data is to be "processed". There can be joint Data Controllers where two Data Controllers act together in determining the purposes and manner of processing or Data Controllers "in common" where a pool of personal data is shared and each controller acts independently of each other. The School, the LEA, and the Photographer are all Data Controllers. Data Controllers have to inform the Information Commissioner about their Data Processing and all local authorities

notify the Information Commissioner about this on behalf of many of their schools.

- **Data Processing**

This is anything that is done with data including obtaining, recording, storing, organising, adapting, altering, retrieving, using, disclosing, erasing etc. The guidance to the Data Protection Act 1998 states, "It is difficult to imagine any activity involving data which is not covered by this definition". Taking photographs, developing them, altering them, distributing them and storing them etc. are all acts of data processing, as are all the stages involved in making a film of a performance/event.

- **Data Processor**

This is any person (other than an employee) who processes the data on behalf of the Data Controller. The photographer/film-maker can also be a Data Processor as they are not School employees.

Planning

First and foremost, it is important to plan what you want to use the image for and to ensure that you give yourself enough time to communicate with parents/carers and external agencies where necessary. Acting without thinking through the possible outcomes causes most of the problems that are likely to occur in using images. With a little foresight, most problems can be avoided.

- **What are you intending to use the image for?**

It is important to consider how exactly you intend to use the image. If you are planning to take pictures of people engaged in a particular activity or pastime because you are publicising that event, there should be little problem as long as the relevant consents have been obtained.

If you are intending to use images in information that covers sensitive areas such as abuse, violence or mental illness, **always** use images from an external image library. Library images have been specially posed using models who have given their consent and been paid for their time, and can be used for this type of material.

Even library images may have restrictions on how they can be used. Some images will not be usable for social services issues, whilst others will not be able to be used for images larger than A3 size - e.g. posters, billboards and advertising or on the web.

- **Have you consulted parents and governors?**

You may decide that you wish to get a professional company in to videotape a performance or a production. In such circumstances, you may then feel it is acceptable to restrict the use of photography by parents. Reasons that may be cited for this are because of the obstruction caused by large numbers of the audience taking their own films/pictures or because the professionally produced tape is then going to be sold to generate income for the school.

Whilst these reasons may be perfectly valid, if they are not communicated to parents in good time **before** the event is due to take place, there is the possibility of misunderstandings occurring. As a worst-case scenario, this can lead to the parties involved (school and parents/carers) taking entrenched positions which can cause long-lasting damage in relations between the school and its parents/carers and pupils.

The best way to avoid this situation is for clear communication to be given to parents/carers, explaining the situation, and giving the opportunity for concerns to be fed back. This should be in the form of a letter sent home to parents outlining the intention of the headteacher and explaining why they have taken this decision.

For anything involving images and the use of photography in schools, the backing of the board of governors is essential. This will avoid you becoming isolated if any parents or carers decide that they do not agree with your views on photography or filming, e.g. at school performances (q.v.). It will avoid the possibility of having to "climb down" over an issue simply because a representation of parents/carers has voiced dissent. Even though parents and carers are present at school events because you have invited them, it is far better for ongoing home-school relations if any sort of stand-off can be avoided or quickly diffused.

Equalities issues

We have a duty to: tackle racial discrimination, promote equality of opportunity and to promote good race relations. Images should be balanced so that they represent diversity in the community, reflecting gender, race and disability. A well-balanced use of diverse images will ensure that finished work has a much wider appeal.

Remember that some children's parents/carers may have special requirements to help them understand and complete image consent forms. Be prepared to cater for anyone who requires information to be translated into a different language or supplied in other formats.

A guide to taking pictures: Appropriateness

When taking any pictures of people, it is important to ensure that the resulting images cannot be construed as being provocative in any way. For example, avoid using full-length photographs of children in swimming costumes; instead take the shot from the shoulders up.

The Institute of Sport and Recreation Management in conjunction with the National Association of Sports Development has produced a comprehensive set of guidance specifically on the issue of taking pictures of children in sports settings. They suggest that there be either a complete ban on the use of cameras, videos and mobile phones at leisure centres, or that if they are to be used, permission must be obtained and a written procedure should be in place.

Unless you specifically need to take a picture of an individual child, think about whether or not there could be problems with a specific child or children being identifiable.

The legal implications of consent

The main legal issue that should be taken into consideration, particularly when taking images of children, is that of consent. Halsbury states: "At common law, a child lacks the legal capacity to give a valid consent and that capacity is generally vested in the parent or guardian [or carer] of the child".

This "capacity for consent" is however subject to two potential external influences. The 1989 Children Act allows for the local authority to give consent for those children who are under care orders, where there is shared parental responsibility with other people, providing that consultation has taken place.

Another case - *Gillick v West Norfolk and Wisbech Area Health Authority, 1985* - gave rise to the principle that parental rights existed only so long as they were needed to protect the person and property of the child. Once the child is old enough to make up their own mind about whether they want their picture to be taken, their consent alone should be sufficient. This is known as "Gillick Competence". For those children deemed not to be "Gillick competent", parental consent must always be obtained.

This idea of Gillick Competence is not always straightforward. A legal case arose where it was held that the excitement of having one's picture taken for use in publications may mean that the decision for consent has not been given with enough consideration. The reason for parental objections must also be given careful consideration.

Children are not the only group where care needs to be exercised in using and taking of images. Adults - particularly those with learning disabilities - can also be vulnerable. Simply because the subject of your intended image may be over 18 years of age does not mean that you do not need to follow these guidelines in getting written consent.

As can be seen, there is a potential legal minefield over the whole issue of images. If you are in any way unsure about whether to use an image or not, **get consent forms signed**. If you still have concerns we will speak to one of the council's solicitors.

Consent:

• Forms

A consent form is available to send out to the parents/carers of all children when they first start attending the school. This form is a blanket consent form which asks parents/carers to give their consent for the use of their child's image in the following ways:

1. In the school prospectus and other printed publications that the school may produce for promotional purposes;
2. On the school's website;
3. Recorded/transmitted on video or a webcam;
4. In display material that may be used in the school's communal areas or externally, e.g. at an exhibition promoting the school;
5. General media appearances - e.g. an activity taking place at the school which local/national media organisations may be attending or which may result in photos being sent by the school to the press (via the web and e-mail or using traditional non-electronic methods)

A copy of this form is attached as an appendix. While generally, it would not be sufficient to have blanket consent to take images without then giving parents/carers the opportunity to see the image concerned, this would create a large amount of bureaucracy for schools. This is why a large number of UK local authorities, has opted for this system. Even if parents/carers have signed this blanket consent form, you still have a duty of care to ensure that any images used are in the right consent and are appropriate.

• How long is the consent valid for?

To minimise administrative work needed to maintain a consent form system, it makes sense for consent to last for the entire period that the child attends the school.

A change in a child's circumstances may have on the consent given. An example of this may be where the child's parents divorce and a custody wrangle ensues.

You should also note that where one parent or carer does not give consent and the other does, consent is not given.

• Consent of adults who work at the school

Adults who work at the school and whose image may be included in photographs or videotapes should also have their consent sought before these images or videotapes are published. The adult consent form is attached in the appendix and should be kept in the member of staff's personnel file.

Safeguarding your work

Once you have taken the pictures and have had clearance from parents or carers to use them, think about how you are going to store them. If you are going to keep hard copies of the images, it is important that you keep them in a secure location so that they will be protected from fire and also so that they cannot become misplaced. This will minimise the possibility of someone else accessing and using them without realising who they belong to and the context in which they should be used.

You may decide that you wish to keep digital versions of the images only. In situations like this, you should keep the digital images on a secure network location so that the images will be backed up regularly and can be restored if you should lose them accidentally. If you don't wish to keep the original hard copy versions, you should destroy them.

Using images that have been taken by other people

If you have seen an image elsewhere that you would like to use for work that you are doing, it is vital that you get permission to do so before using the image. Find out who holds the copyright and contact them to explain what you want to do and which images you wish to use. Bear in mind that sometimes, it will not be possible to

use an existing image and you will have to consider using an alternative image or creating a new one of your own.

- ***If in doubt - don't use the image.***

Existing images held by school

There may be existing images that you would like to use, and you need to consider whether or not consent has ever been given. If it has but the subject of the image has since left the school, you must either not use the image or alternatively, try and get a renewed consent for the image. It is not desirable to continue using images of children who have since left the school.

If you find a picture that you would like to use but you are unsure where it came from (e.g. it is not a former pupil of the school), you should tread carefully as you may find that you are in breach of copyright. This is particularly the case if you end up using the picture for a purpose other than was intended when it was originally published. **Do not use any picture of which you are unsure of the ownership/usage obligations.**

When you come to publish your material

Once you have got the images you need and the consent to use them, you will be keen to get your work written and published. It is important to bear in mind the following points, particularly if the images relate to school children and teachers.

- **Using the images you have taken**

When using images of children, you should follow these general guidelines:

1. If you publish a picture, do not publish a name.
2. If you publish a name, do not publish a picture.
3. Do not publish the full names or addresses of pupils.
4. Do not publish e-mail addresses of pupils.
5. Do not publish individual close-up portraits of pupils (group photographs are OK but bear in mind that these should be "general" shots rather than images of children doing PE, which could be considered provocative).
6. When publishing pupils' work simply label it as by "*John in Year 3*".
7. Give staff the opportunity to request that their contact information is not included in any material published.

Press attendance - informing parents and carers and dealing with concerns

If the press is likely to attend an event that you are running, it's important to inform parents/carers and give them the opportunity to let you know if they do not want images of their child appearing in the press/media.

The press is exempt from the Data Protection Act. You should keep in mind that when a press image has been captured the data controller for that image is the media organisation concerned and not the school. Any objections/representations about that image will therefore need to be made to that organisation rather than the school.

Webcams

At the moment the school does not use webcams, but this is likely to change in the future. Webcams can be used in two ways: to be 'always on' and showing a particular view and as part of a web-conference. A major question is "why do you want a web cam?" The answer might be obvious ("Because we want to show people part of our school on a 'real-time' basis") but there are a number of issues you need to think about before you place it.

- **Does our school need a webcam?**

It is unlikely that a permanent webcam could ever realistically be used as a security device. To avoid the camera one would simply need to visit the web site, see the area the camera covered, and avoid that location. Conversely, webcams that are used to show what is happening on websites may only serve to show would-be

thieves when the school buildings are unoccupied.

- **Where would it be placed?**

Is it somewhere which is worth relaying live to the rest of the world? Is it somewhere 'sensitive'? If we choose to place the webcam overlooking our ICT suite, then we would need to be able to guarantee that there will never be a picture taken of a child for whom we do not have parental consent for photography/filming. We will then be faced with the decision between excluding these children from the ICT suite or otherwise ensuring that the camera is turned off every time any such child enters the area.

It is extremely unlikely that we would ever use a webcam in this way

- **Notification and legislation**

We would need to notify people that they are entering an area that is filmed by a webcam (in the same way as currently happens with CCTV). There are other issues - if an incident occurred within view of the webcam would anyone such as the police or other authorities request images from the webcam or could they be used in legal proceedings? The answers to these are unclear, but there are a host of potential issues. It is likely that the school would need to address the following issues and head teachers should ensure that they have the agreement of the governing body to any decision that is taken.

- **When *could* a webcam be used?**

There are a number of situations in which a webcam could be safely used:

1. where images from the webcam are sent to the school intranet or a number of machines within the school
2. where the scene in view of the webcam is such that it does not raise any of the issues listed above. Such scenes might be:
 - an experiment underway
 - observation of an aspect of the school which can be used in lessons ("What do the school's resident slow worm / stick insects do at night?")
 - while videoconferencing with another school or institution. In these circumstances we would only use the London Grid for Learning 'Click-to-Meet' facility which is only available to schools attached to, and monitored by, the LGfL.

Mobile 'phones with cameras

More and more mobile 'phones now have integrated cameras. This opens up a whole new area of photography and highlights the need for schools to be aware of the potential for images to be taken and then misused. Many sports centres have become aware of the potential for abuse and now ban the use of mobile 'phones with cameras from changing areas, swimming pools and so on. There is no reason to assume that the same potential risk could not occur in schools.

The Scottish Secondary Teachers' Association has issued a call for a complete ban on camera 'phones within schools citing that, apart from personal safety problems, the cameras also create a confidentiality risk for documents such as examination papers. There is also evidence that some schools are now banning their use in case any pictures taken on these phones end up on the Internet. St Mary's does not allow pupils to have mobile 'phones in school.

Videotaping of school plays and performances by parents and carers

A question that frequently arises is whether parents can make video recordings of nativity plays or other performances. According to the Data Protection Act, parents are not required to comply with this legislation when taking photographs of their children, for their own private use, at an organised event. As long as the parents have been invited to the event and the subsequent pictures are intended for family or private use, there is, therefore, no breach of the Act.

The parents are there at the invitation of the school and it is up to the headteacher to decide whether or not to allow videos or photographs to be taken by parents during the event. For instance, if the headteacher is aware of any children who may be at risk and who are participating in the event, they may wish to restrict photography.

When hosting an event where parents are permitted to take photographs or videos, make it clear from the start that any images taken must be for private use only and ask for them not to be put on the Internet. This is to avoid breaching Data Protection legislation (particularly if a parent posts a picture on the web that shows children other than just their own child). We might provide written guidance to parents beforehand and/or make an announcement at the start of the event.

If we decide at some point to ban photography by parents or carers, it would be up to us to give them prior warning that this will be the case. We should ensure that you clearly set out the reasons why you are banning the use of cameras. For example, if we are banning parents taking their own videos because our school is producing its own version for fund-raising purposes, we may decide to allocate a space at the back of the hall where parents can film their own videos. This could be offered this as an alternative to the commercially produced video. This is far less likely to be as inflammatory as a total ban. Whatever we may decide to do in the future, it is essential that we have the agreement and backing of our board of governors.

Filming and photography by external agencies to the school

If you are planning to nominate a third party to take photographs or film a specific event, consent will still have to be sought from parents. This is irrespective of whether or not the person is a member of staff, a member of the Parent Teacher Association or is from a commercial photographic agency. They are acting on your behalf and as such they are considered to be a "data controller" under the terms of the Data Protection Act.

This means that your photographer will need to agree to take appropriate measures to ensure that they have followed the eight principles of the Data Protection Act.

Furthermore, you will need to inform parents of the identity of the Data Controller and any representatives appointed by them - e.g. the photographer/film-maker. You should ensure that you have clearly outlined what you are intending to use the filming/photography for - e.g. to produce a video or perhaps to add to the school's website.

CRB (Criminal Records Bureau) checks should have been carried out on anyone who is on the school premises and is filming performances or taking photographs of children and who has "regular contact" with children. Always ensure that a member of staff is present when using a photographer rather than leaving children alone with him/her.

Security: The seventh principle of Data Protection

When taking images or filming events, it is important to keep the resulting data secure. There are two areas of security to consider - technical security and organisational security. In respect of technical security, measures to protect data should take into account the nature of the data and the harm that could result from a failure to comply with the Seventh Principle. Account should also be taken of the state of available security and its cost.

With regard to organisational security, the Data Controller must take reasonable steps to ensure the reliability of any employees who have access to the data. They should be reliable and trustworthy and aware of how they must comply with the Data Protection Act 1998 when handling the data.

Where a Data Processor (e.g. a photographer or film-maker) is processing the data on behalf of the Data Controller (e.g. the School), the Data Controller, must:

1. Choose a Data Processor providing sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out, and
2. Take reasonable steps to ensure compliance with those measures. In this situation, the Data Controller must ensure that the processing is carried out under a contract:
3. Which is evidenced in writing, and under which the Data Processor is to act only on instructions from the Data Controller, and
4. Which requires the Data Processor to comply with obligations equivalent to those imposed on the Data Controller by the Seventh Principle

Therefore the school/LEA will have to ensure that:

1. The appointed photographer/film-maker has adequate technical and organisational security to keep their work safe given that the subjects are children. They should recognise the harm which could result from a failure to store the photographs/film securely would at the very least be a breach of trust and loss of confidence in the school and LEA by the parents of the children.
2. The photographer/film-maker can provide guarantees in respect of security
3. Reasonable steps are taken to ensure the photographer/film-maker complies with the security available.
4. There is a written contract between school/LEA and photographer/film-maker which meets the requirements set out above.
5. Employees of the school/LEA who will have access to the data are reliable, trustworthy and aware of the Data Protection Act 1998.

Safe Use of Images in St Mary's School: Summary sheet

Planning

- What are you planning to use the image for?
- If necessary, check that you have the support of your governing body
- Check with parents and carers
- Don't use images for any subject that may cause offence, embarrassment or upset.

Appropriateness

- Make sure that any children you photograph are dressed appropriately
- Think about whether there will be any issues arising if a specific child is identifiable

Consent

- Always get consent forms signed (or check that we have a signed form) irrespective of whether the subject is a pupil or a staff member
- Make sure that we have noted any changes in the child's domestic circumstances which may make a previously signed consent form invalid
- Remember that consent forms are generally only valid whilst the child in question is attending the school.
- If consent is not given and a child is photographed/filmed, the parent could refer the matter to the Information Commissioner and the Data Controller(s) could be prosecuted and fined.

Webcams

- If we decide that the school needs a webcam, think about where it's going to be placed - e.g. do we want to advertise which parts of our school are empty for potential burglars?
- Make sure that we have consent from parents/carers
- Make sure that we have signs telling people that they are entering an area where they are likely to be filmed

Videotaping of School Plays and Performances by Parents/Carers

- Plan what your strategy will be for the filming of performances in good time - do not leave any decisions to the last minute so that an angry parent may jeopardise your performance by withdrawing their child. **At present the school has no objection to parents/carers photographing/filming school performances**, but how this happens needs to be considered - eg, setting aside a videoing area? Requests for parents not to stand and block the view of others? etc
- Make sure that you have consent from parents for any production to be **officially** filmed by the school
- Make sure that our governing body is in agreement with any actions that you have decided to take

Filming and Photography by external agencies to the school

- If you are planning to use an external photographer, make sure you have the backing of your governing body
- Ensure that any external photographer has had CRB checks
- Make sure that you have agreed with the photographer what will happen to the master copies of any pictures/films that are produced

Appendices - forms

• **Form 1: Consent form**

This form is intended to be used by when pupils first start attending the school. It can then be kept on file for the duration of the child's attendance at the school.

• **Form 2: Consent form for use when taking an image of anyone aged 18 years and over.**

This form is intended to be used by schools if they need to take a picture of an adult (e.g. a member of staff or a visitor).

Using images of children

St Mary's Bryanston Square Consent Form

Name of the child's parent or carer: _____

Name of child: _____

Occasionally, we may take photographs of the children at our school. We may use these images in our school prospectus or in other printed publications that we produce, as well as on our website. We may also make video or webcam recordings for school-to-school conferences, monitoring or other educational use.

From time to time, our school may be visited by the media who will take photographs or film footage of a visiting dignitary or other high profile event. Pupils will often appear in these images, which may appear in local or national newspapers, or on televised news programmes.

To comply with the Data Protection Act 1998, we need your permission before we can photograph or make any recordings of your child. Please answer questions 1 to 4 below, then sign and date the form where shown.

Please return the completed form to the school as soon as possible. If you require help in completing this form or a translated version, please contact the school.

- | | | |
|---|-----|----|
| 1. May we use your child's photograph in the school prospectus and other printed publications that we produce for promotional purposes? | YES | NO |
| 2. May we use your child's image on our website? | YES | NO |
| 3. May we record your child's image on video or webcam? | YES | NO |
| 4. Are you happy for your child to appear in the media - e.g. if a newspaper photographer or television film crew attend an event. | YES | NO |

Please note that websites can be viewed throughout the world and not just in the United Kingdom where UK law applies. Please also note that the conditions for use of these photographs are on the second part of this form: "Conditions of Use".

I have read and understood the conditions of use on the back of this form.

Parent's or carer's signature: _____ Date: _____

Name (in block capitals): _____

Conditions of use

1. This form is valid for the period of time your child attends this school. The consent will automatically expire after this time. Please contact the school at any time if you wish to withdraw your consent.
2. We will not re-use any photographs or recordings after your child leaves this school.
3. We will not use the personal details or full names (which means first name **and** surname) of any child or adult in a photographic image on video, on our website, in our school prospectus or in any of our other printed publications.
4. We will not include personal e-mail or postal addresses, or telephone or fax numbers on video, on our website, in our school prospectus or in other printed publications.
5. If we use photographs of individual pupils, we will not use the name of that child in the accompanying text or photo caption.
6. If we name a pupil in the text, we will not use a photograph of that child to accompany the article.
7. We may include pictures of pupils and teachers that have been drawn by the pupils.
8. We may use individual, group or class photographs or footage with very general labels, such as "a science lesson" or "making Christmas decorations".
9. We will only use images of pupils who are suitably dressed, to reduce the risk of such images being used inappropriately.

CONSENT FORM TO USE AN IMAGE OR PHOTOGRAPH OF ANYONE AGED 18 YEARS OR OVER

We take the issue of data protection very seriously and we would never knowingly use an image of you without your prior consent. We would therefore ask you to read through the information below. Please fill in the details and then return the form to us. Please ensure that you sign this form.

Your Name (Block Capitals): _____

I understand that images will only be used for the following purposes: electronic and printed information, displays and exhibitions relating to the activity shown in the pictures, any similar purpose or related area

I understand that images will **NOT** be used for anything which may be viewed as negative in tone or that may cause offence, embarrassment or distress, e.g. drug/alcohol abuse.

I understand that an image will only be used for a period of up to 2 years after the date that the image was taken. After that time, it will be destroyed.

Having read the statement above, do you give your consent for images to be used?
(Please circle as appropriate)

YES, I give my consent for images to be used

NO, I do not give my consent for images to be used

Your Signature: _____

Date: _____