

# **DATA PROTECTION – GUIDANCE FOR SCHOOLS**

These guidelines have been jointly developed between the Data Protection Commissioner and the school representatives, in terms of article 40(g) of the Data Protection Act (“the Act”).

The Data Protection Commissioner regularly meets with a committee of school representatives composed of representatives of state schools, independent schools, church schools, the Education Division and the Office of the Prime Minister. The committee has identified various areas of discussion relating to data protection.

These guidelines are intended to define good practice to be adopted in schools. These are the first in a series that will address such topics.

## **PROCESSING OF VISUAL IMAGES IN SCHOOLS**

### **1. Background**

Visual images in the form of photos, videos or other means are very often taken, recorded, used and sometimes retained in relation to school activities whether academic or otherwise. Where these images identify students, they will constitute personal data.

These guidelines will not only define the applicability of the Act in relation to the processing of images in a school environment but will also identify good practices. The purpose for the taking of visual images can be classified under three main headings, namely for

- personal use
- official school use
- journalistic purpose

These guidelines do not cover the use of CCTV in schools.

### **2. Purpose for taking visual images**

#### **2.1 Personal Use**

The taking of visual images during school activities is not prohibited by the Data Protection Act if these are taken for personal use. Schools may therefore opt to adopt their own policy on whether to allow the taking of visual images during school activities or otherwise.

Where the taking of visual images is so allowed, parents and other persons attending the activity are to be informed that such images can only be used for personal purposes in terms of the Act. This information can either be communicated by the circular or invitation letter normally sent to parents announcing the activity, or by a verbal announcement immediately before the activity.

The person taking visual images for personal use shall be held responsible for any unlawful processing or misuse.

## 2.2 Official School Use

Processing of visual images is normally necessary in the administration of any school. In such cases the school, as a data controller, will carry certain responsibilities.

Visual images are normally processed by schools for any of the following purposes:

### 2.2.1 Administrative Purposes

The information in relation to a student on admission to or registration in a school may include a visual image of the student. No consent is required to process such information since it is necessary for the administration of the school.

### 2.2.2 Record Purposes

No consent is required when processing is necessary for school record purposes. Selected images may also form part of the historical records of the school.

### 2.2.3 Communication Purposes

A school may use various means of communication. These may include:

- Printed publications including external and internal publications eg. school magazines, annual report, newsletters;
- School notice boards (except for facilitating the taking of orders for visual images by students);
- Media – including newspapers and TV;
- School website.

Processing of visual images for such purposes will require consent.

### 2.2.4 Other Purposes

There may be instances where visual images are processed for any purpose other than the above; in such cases consent will also be required.

## 2.3 Journalistic Purposes

Public events may be held either in a school or with the participation of school students. Where visual images are taken for journalistic purposes to give publicity to the event, the school is not required to obtain consent as in this case, the school is not the data controller. Responsibility for processing rests with the journalists covering the event.

## 3. Data Protection Policy

It is good practice to develop a data protection policy covering all aspects relating to personal data processed by a school. Such policy will include guidance on the processing of visual images and will give information about the rights of the data subjects and obligations of the school as a data controller.

The policy must be communicated to all interested parties including parents and staff members.

## **4. Consent**

When visual images are processed for official school use as indicated in paragraph 2.2 above, consent may be required. The Act requires that consent be freely given, specific and informed. In the case of minors and incapacitated persons, consent is exercised by the parents or any other person who has the legal custody or guardianship of the student. Although there is no obligation at law for consent to be in writing, it is advisable that consent will be obtained on a form signed by the parents or other person as aforesaid.

Where consent is not required, parents or other such person are nevertheless to be informed about the processing of data relating to the students.

### **4.1 Consent Form**

It is good practice for schools to develop a consent form including consent for processing of visual images for communication purposes (2.2.3) or other purposes (2.2.4). In this case parents should be informed that consent may be withdrawn.

Parents should be given the option to consent for particular types of processing while objecting to others. To ensure that parents are well-informed on the consent given, the form should differentiate between the types of communication media for which consent is sought such as, visual images on school notice boards, on school magazines or other school printed publications, on school website, on newspapers or other printed publications, on television, notice boards and website of the Education Division.

### **4.2 Validity of Consent**

Although consent need not be sought annually, certain schools may opt to obtain consent on an annual basis. In any case it is good practice to seek consent at least at every stage where a student reaches a new educational level, namely kindergarten, primary, secondary and post-secondary .

## **5. The taking of visual images during school activities**

Irrespective of whether the school policy allows the taking of visual images for personal use as under paragraph 2.1 above, a school may decide to take visual images either itself or to engage a photographer. The school will retain the responsibility as a data controller even if a photographer is engaged.

### **5.1 Visual images taken by the school**

If the school decides to take the visual images itself, it may assign such task to any member of the staff or any other person not being a professional photographer. In this case the school shall ensure that all data in relation to the visual images, for example negatives, CDs, films and any other media used for the storage of images, shall be surrendered to the school when the individual taking the images has concluded his task.

Visual images may only be used for any purpose for which consent has been given and when made available to the students or their parents, these may only be used for their personal use.

## 5.2 Engaging a photographer

When a photographer is engaged by the school, the school is a data controller and the photographer is the processor acting on behalf of the school.

The school shall ensure that the photographer understands data protection considerations and that he is capable of satisfying all responsibilities and obligations, including the implementation of the necessary security measures.

The relationship between the school and the photographer shall be regulated by a written contract which shall include the following:

- (a) The photographer shall only use the visual images for the purposes indicated by the school;
- (b) Visual images shall be made available to the students or their parents only for their personal use, either by the school itself or by the photographer. The photographer shall only make visual images available to authorised persons;
- (c) For the purposes of the preceding paragraph schools shall indicate the means of identification in any of the following manners:
  - (i) the school will take the orders, place them at the photographer and collect them for distribution; or
  - (ii) the school will display visual images on notice boards, the student will indicate the photos required, and the school will issue an authorisation note. The images may then be collected directly from the photographer by the holder of the note; or
  - (iii) the school will issue an authorisation note enabling the holder to place the order directly with the photographer.
- (d) The retention period established under paragraph 6 below.

## 6. Retention Period

Visual images, irrespective of whether these are taken by the school itself or by a photographer, shall be retained for a period not exceeding three years or for such shorter period as may be established in the school data protection policy.

Where visual images are selected to form part of the historical records of the school, these may be retained for an indefinite period of time.