

Data Protection Guidance Note - photographing, filming and recording of adults and children

What constitutes personal data?

Photograph or film images where individuals are the focus will constitute their personal data, irrespective of whether further information (e.g. their name) is also present. Use of such images whether in print (e.g. newspapers or magazines) or on social media (e.g. Facebook or Twitter) will constitute the processing of personal data, which we must do in accordance with data protection requirements.

The 'incidental' capture of someone's image may not be their personal data. Whether it is will depend on a number of issues such as image quality, image focus, proximity of the individual in the image and our intended use of the image. An image that is not someone's personal data can be used without having to consider data protection requirements.

Lawful basis for processing?

Complying with data protection requirements means having a lawful basis to process and this note focuses on those most likely to be relied on – consent and legitimate interest.

Consent

Consent means we obtain informed and explicit permission from the individuals (the parents / guardians for under 18s) for the taking and use of images¹. **Remember**, consent cannot be implied and nor can it be an opt-out option e.g. 'tick the box if you don't want to consent'.

The use of consent negates the risk of challenge to the use and processing of someone's personal data. It also allows images to be retained and used for longer periods of time. However, consent can be withdrawn and should that happen then the Council will have to stop using the images, delete those we hold and remove them from any media where it is possible to do so.

To rely on consent, the attached form² should be used. Electronic consent can be given but it will need to be on the basis of the information and declarations contained on the form.

Consent is likely to be the best option if:

- It is reasonable and practical to gain and record consent
- Individuals have a genuine and realistic option to withdraw consent and images will be relatively easy to remove or delete
- Images may be retained and used more than once
- Individuals may not necessarily be aware that images will be taken and published
- There is a possibility that individuals may be negatively impacted by the recording or publishing of their images
- Images of children are involved

¹ From May 2019 Councillors will be signing a consent form confirming that we may take and use images of them for Council business, meaning we won't need to obtain separate consent each time.

² Section C should be completed by the Service to give the specifics of the event / course and the duration of it. If we want to keep / use the images beyond two years, the number of years should be inserted in Section D. The individual (and parent/guardian on behalf of anyone under 18) then completes Sections A, B & D as appropriate.

Legitimate interest

This allows us to weigh up the interests of the person using the image against the interests of the individual whose image it is. On the whole it will be the Council's interests or wider society benefits, but on occasion it could be a third party's interests (e.g. our contractors or business partners).

Considerations in assessing legitimate interest are;

- why we want the images, how we will use them and for how long³;
- would individuals reasonably expect us to take and use images in the intended way;
- impact on the individual and whether use would cause unwarranted harm.

Where the use would not be reasonably expected or it would cause unwarranted harm, an individual's interests are likely to override ours. Where the individual's interests do not override ours, then the image can be used.⁴ It should be noted that where children are involved, their interests are to be given greater weight in the balance due to the enhanced protection they have.

Publicity material / event information should say that photos will be taken and explain how they will be used.

Images should be used strictly in accordance with the timeframes stated in the assessment and not retained thereafter on the basis that we might want to use them in the future.

Unused images should be deleted.

Legitimate interest requires a formal assessment to be documented using the attached form. Assessments should be specific to the event / course and not carried out on a generic basis.

Relying on legitimate interest may be more appropriate where:

- It is not practical to obtain consent from all identifiable individuals
- Individuals will be under a reasonable expectation that photos and recordings may be taken
- Realistically, individuals will not be able to withdraw consent and it will not be feasible to delete all captured images
- Images or recordings are being used only for one specific and stated purpose
- Images of children are not involved

Which approach to use?

This is about risk fundamentally and it will be for the Services processing the personal data to have considered the risk and covered off such risk appropriately. The boxes above should help determine the appropriate approach. In addition the comments below will help;

- Where someone is invited to an event where they have been informed that their photo will be taken and used (e.g. a photo call) it is likely to be acceptable to proceed without obtaining further consent – the fact that they were invited and attended is likely to be sufficient to evidence consent. However, if the image is not going to be used immediately and / or may be re-used in the future, it is likely to be necessary to obtain the express consent to ensure we can evidence this if challenged.

³ The longer we intend to keep them for use the greater the impact on the individuals.

⁴ Our interests and those of the data subject do not have to align and our interests can still prevail as long as there is a clear justification for any impact on the individual.

- For publicised / larger events with photographers present, then we need to consider questions such as – have attendees been told photos will be taken, how will we use them, how long we will retain them, will we re-use for different purposes in time, etc. Having to ask questions such as this indicates that it is not likely to be acceptable to proceed without properly documenting the lawful basis to process.
- Where children are involved, because of the enhanced protection they have and responsibility on the Council to ensure their interests are protected, it will be much harder to rely on the legitimate interest lawful basis.

While the preference of the Council is that consent should be used, as this reduces the risk of challenge to the use of someone's personal data, it is accepted that this is not always a suitable approach. This could be because the circumstances make obtaining consent too onerous or because the ability of the individual to withdraw consent may pose too much of a potential burden (e.g. having to delete / remove all images of that person where possible). However, using legitimate interest requires an assessment to be carried out and also for images that have not been used to be deleted and for those that are used to be deleted once the stated timeframe for use passes. It will also be harder to satisfy the balancing test when children are involved.

Decision and documentation

It will be for the Service organising the event to determine whether the need to satisfy data protection requirements is engaged and, if so, what the appropriate lawful basis should be and to ensure that the relevant documentation (consent forms or legitimate interest assessment) is completed and retained and can be produced to the Data Protection Officer to justify the position adopted in case of challenge or criticism.

Published September 2018

Photography, filming and recording consent form (for adults and children)



East Devon District Council often takes photographs or video film to help us promote the good things that happen in our area. These images may appear on our website, on social media, in our printed publications, within exhibition and presentation material and on reception area screens in our buildings. We may also send them to our news media and external publications. This form seeks your consent for East Devon District Council to use these photos, images and audio in accordance with Data Protection laws.

Section A: about you (adult)

Full name	Click here to enter text.
-----------	---

Section B: about your child (To be completed by Parent or Legal Guardian of under 18s)

Full name	Click here to enter text.	Date of birth	Click here to enter a date.
-----------	---	---------------	---

Section C: about the photo/film (To be completed by organiser)

Occasion/event/location(s) (i.e. Summer fair at Honiton, tenants WWI event in Exmouth, First Aid Training Course in Knowle, Sidmouth):
Date / period of time images to be taken on / over:
Any restrictions / limitations on use:
Organiser's name and position within EDDC:

Section D: your consent

I give consent for East Devon District Council to publish, republish or otherwise transmit still and moving images and audio of myself and/or my child/children for (unless limited above) purposes such as:

- Publicity, fundraising and advertising materials, including printed publications
- Presentation and exhibition materials
- Websites, social media channels and digital communications
- News media and their associated websites and social media channels including print, television and radio

I understand that images and audio will be stored electronically in accordance with Data Protection laws and may be used for two years from the date of this form or for such other period of time as specified here:

.....

Your signature
Date Click here to enter a date.

You have the right to withdraw this consent at any time by emailing dataprotection@eastdevon.gov.uk, in which case we will not use the image further, we will delete what we hold and remove images where we can. However we will not have control over images that have been printed or shared on social media.

Should you have any questions or concerns regarding how we will handle and process your data from this consent form please contact the Council's Data Protection Officer on 01395 516551, email dataprotection@eastdevon.gov.uk, or write to the Data Protection Officer at East Devon District Council, Knowle, Sidmouth, EX10 8HL.

Legitimate Interest Assessment - use of photo / video images

Service:

Event / Course details:

Please state who the images will be of – the data subject(s) – the format of the images, what they will be used for and for how long:

What is the purpose (i.e. what is the legitimate interest)?

Consider:

What is to be achieved by processing this data and who benefits / are there wider public benefits?

How important are these benefits?

What is the impact of not processing this data?

Is the use of the data unethical or unlawful in any way?

Is the processing necessary to achieve the purpose?

Consider:

Does this processing actually help to further that interest?

Is it a reasonable way to go about it?

Is there another less intrusive way to achieve the same result?

Assessment / balancing test - consider the impact of the processing on the data subjects and whether this overrides the legitimate interest identified?

Consider:

Relationship with the data subject and whether data subject is a child or vulnerable in any other way?

Would people reasonably expect you to use their data in this way – would anyone object or find it intrusive?

What is the possible impact on the data subjects and how big an impact would it have?

Can you adopt any safeguards to minimise the impact e.g. an opt-out?

Remember:

Where it would be unreasonable to take / use the images or it would cause unwarranted harm, the data subject's interests are likely to override anyone else's

Greater weight in the balance to the protection for personal data of children.

The longer we intend to use the images for the greater the impact on the individual.

Decision:	Use images / Don't use images
Author:	
Date:	