



# EPSOM

## COLLEGE

### **Guidance for Staff on the Use of Photos and Videos of Pupils**

#### **1 Introduction**

- 1.1 This guidance note for staff covers data protection considerations which are raised when the College uses photographs and videos of pupils.
- 1.2 Where a pupil can be identified visually from a photograph or a video it will contain their personal data (even in instances where the pupil's name is not used). Its use is therefore covered by data protection legislation. This guidance sets out the measures that the School should take to comply with data protection legislation in respect of taking and using photographs and videos of pupils.
- 1.3 A photograph or video will also be subject to data protection legislation if it is possible to work out the identity of individuals even if not obvious from the photograph or video itself. For example, a football player may be identifiable from his or her shirt number even if their back is to the camera or if their face is obscured.
- 1.4 If the College breaches data protection legislation there is a risk that parents or pupils may complain to the Information Commissioner's Office (the data protection regulator) or bring a claim in court for compensation. There are also reputational consequences if the School is seen to not understand its data protection obligations.
- 1.5 Where parents or other visitors (such as grandparents and family friends) take photographs or videos for personal use this is not covered by data protection legislation. However, if an event is subject to copyright or performing rights restrictions the College may prevent visitors from taking images. The member of staff responsible for the event will co-ordinate how this is communicated to visitors in consultation with the Bursar, for example, by placing a statement in the invitations or by an announcement at the start of the event.
- 1.6 It is important that you read the following policies alongside this guidance:
  - 1.6.1 Staff ICT Acceptable Use Policy;
  - 1.6.2 Information Security Policy;
  - 1.6.3 Code of Conduct: Essential Safe Practice Advice for the Avoidance of Allegations;
  - 1.6.4 Policy on Pupils' use of ICT, Mobile Phones and Other Electronic Equipment;
  - 1.6.5 Anti-bullying policy;
  - 1.6.6 Child protection policy;
  - 1.6.7 Privacy Notice for Pupils.

- 1.7 The policies above contain specific guidance on points which are not detailed in this guidance. For example, Information Security Policy explains the measures that you must take to keep personal data (including photographs and videos) secure, particularly when you are away from the College premises.
- 1.8 All staff members who have responsibility for using photographs and videos of pupils are provided with this guidance. If staff have any questions they should speak to the Director of Marketing.
- 1.9 This guidance does not cover intellectual property considerations, such as copyright. If you think that your use of photographs or videos might raise intellectual property issues (e.g. filming a play which is subject to copyright) please speak to the Bursar.

## 2 **Scope of this guidance**

- 2.1 This guidance applies when staff (including governors and volunteers) do anything in relation to a photograph or video of a pupil. This includes, but is not limited to, taking, editing and storing photographs and videos.
- 2.2 Staff must abide by this guidance at all times, for example, on the College premises and offsite in connection with College activities.
- 2.3 This guidance does not form part of your contract of employment and may be amended by the College at any time.

## 3 **The fair processing of personal data and privacy notices**

- 3.1 The College is required under data protection legislation to process personal data fairly. A key part of this obligation involves providing individuals with an explanation of how the College uses their personal data.
- 3.2 This information is provided in a document known as a Privacy Notice. The College has a Pupil Privacy Notice and a Parent Privacy Notice which both mention the use of photographs and videos. Please familiarise yourself with these documents so that you understand what parents and pupils are told about the College's use of pupil information. A copy of both documents can be found on the website or from the Bursar.
- 3.3 As a general guide, children are considered to have sufficient maturity to exercise their own data protection rights when they reach the age of 12 years old (ie. at some stage in Year 7). The law is not prescriptive on the exact age and therefore the College has decided that all pupils and their parents will be provided with a Pupil Privacy Notice.

## 4 **When should consent be sought**

- 4.1 Broadly speaking, consent should be sought if the photograph/video, or the use of the photograph/video, is more privacy intrusive. The table at paragraph 14 below contains examples of when consent should be sought.
- 4.2 If you are going to seek consent, then please see paragraphs 4.3 to 4.10 below. If consent is not sought (i.e. because what is proposed is less privacy intrusive) then the College can usually rely on "legitimate interests" instead. This is explained at paragraphs 4.12 to **Error! Reference source not found.** below.

### **Consent**

- 4.3 Consent should be sought as follows:
- 4.3.1 for children in Year 7 and below, consent should be sought from parents or legal guardians.
  - 4.3.2 for children in Years 8 and over, consent should only be obtained from the pupil unless you consider there is a particular reason to also speak to their parents/legal guardians.
- 4.4 You must keep a written record of how and when the consent was obtained. This may be by obtaining consent in writing (e.g. by email) or by making a note of the conversation which is then sent to their Housemaster/mistress for them to file on Badger. In particular the following should be noted:
- 4.4.1 who consented?
  - 4.4.2 when did he/she consent?
  - 4.4.3 what was he/she told?
  - 4.4.4 how did he/she consent e.g. by email or verbally?
- 4.5 There may be situations where consent was originally obtained from a parent and the School would like to continue using the privacy intrusive photograph/video after the pupil gains the maturity to exercise their own data protection rights (usually aged 12 years old). In these cases, the consent should be refreshed to also come from the pupil and this should be documented as explained at 4.4.
- 4.6 An individual must be able to withdraw their consent at any time and they should be told about their right to do so when the consent is requested.
- 4.7 Consent must also be:
- 4.7.1 Freely given: This means, for example, that the consent must be a genuine choice. You cannot, for example, make consent a condition of taking part in an activity.
  - 4.7.2 Specific and informed: This means that it must be very clear what the consent relates to. In addition, a "general consent" which would cover all of the different scenarios in which a school may conceivably take or use photographs is unlikely to be compliant. Sometimes it may be appropriate to have a separate tickbox for different purposes.
  - 4.7.3 Unambiguous: There must be a clear positive action that the individual has consented, for example, by them returning a completed consent form. "Opt-in" tickboxes should be used rather than "opt-out" tickboxes. Verbal consent can be valid, but again, this must be accompanied by a positive statement on the part of the individual that they consent. Silence or inactivity does not count as valid consent.
- 4.8 If consent is withdrawn this should be recorded on the written record referred to at paragraph 4.4 above and all relevant staff should be made aware of the change. The date of withdrawal should be noted together with any other relevant information, such as, any reason given for withdrawing the consent.
- 4.9 The withdrawal of consent does not apply retrospectively. This means that any use of an image before the consent was withdrawn is still valid.
- 4.10 If a photograph or video is published before consent is withdrawn then the College should stop using the image as soon as possible. In many cases this will be straightforward but for some types of publications it may take more time.

- 4.11 Any consent obtained will only last for a finite period. As a starting point, two years is seen a reasonable time period but this will very much depend on the circumstances. For example, if someone consents to their image being used in a magazine advert for 2022 only, it would not be reasonable to include it in any 2023 editions of the magazine.

### **Legitimate interests**

- 4.12 The College will rely on the legitimate interests legal ground for taking and using photographs and videos which are less privacy intrusive. Legitimate interests is the appropriate legal ground when the use of the photograph or video is:
- 4.12.1 within the reasonable expectations of the pupil and their parents; and
  - 4.12.2 they are unlikely to object to its use.
- 4.13 In order to rely on legitimate interests in compliance with the General Data Protection Regulation (GDPR), the College has documented its decision as to why this is the appropriate ground for using less privacy intrusive photographs and videos.
- 4.14 If you would like to see this documentation or if you have any questions about consent or legitimate interests please speak to the Bursar.

## **5 Former pupils**

- 5.1 The College can rely on the information provided in the Privacy Notice about photographs and videos for a reasonable period after the pupil has left the College. Pupils have been told in the Privacy Notice that photographs and videos of them may be used after they have left the College.
- 5.2 The key point to consider is the pupil's expectations and these expectations can be managed using the Privacy Notice. If a pupil would not expect a photograph or video of them to be used years after it was taken then the College should consider discontinuing its use.
- 5.3 If a photograph or video is more privacy intrusive consent should be obtained as explained at section 4 above.

## **6 Younger pupils**

- 6.1 It is arguable that where a pupil is younger (e.g. below the age of 12) photographs and videos should be treated with greater caution particularly when published externally e.g. on the College's website.
- 6.2 The College may therefore choose to obtain consent in the vast majority of cases but this is not a legal requirement.

## **7 Devices**

- 7.1 Staff should only use College owned devices to take photographs or videos of pupils unless there are exceptional circumstances. An example of an exceptional circumstance is if a photograph or video needs to be taken urgently for safeguarding reasons.
- 7.2 Staff must comply with the Staff ICT Acceptable Use Policy at all times.

## **8 Taking photographs and videos**

- 8.1 Staff must not take photographs or videos (including live streaming) of pupils which:

- 8.1.1 might cause embarrassment or distress;
- 8.1.2 are associated with distressing or sensitive issues;
- 8.1.3 are taken during one-to-one situations; or
- 8.1.4 are unnecessarily intrusive.

8.2 Please see the College's Code of Conduct: Essential Safe Practice Advice for the Avoidance of Allegations for further guidance on the taking of photographs and videos of pupils.

8.3 Staff must not send or show photographs or videos of pupils to third parties, such as publishers or web designers, unless this has been authorised by the Bursar or the Director of Marketing.

## 9 **Photographs and videos of pupils taken by other organisations**

9.1 There may be situations where a third party takes photographs or videos of pupils. This should only happen with the consent of a senior member of staff and where there is appropriate supervision. For example:

- 9.1.1 the College might hire a professional photographer/film crew to take official College photographs or films;
- 9.1.2 a company used by the College to provide extra-curricular activities asks to use photographs of our pupils for advertising purposes; or
- 9.1.3 a photographer from a media outlet might attend an event at the College.

9.2 If the press will be attending College events, the College will let parents and pupils know about this via newsletters, bulletins or on publicity materials. Informing parents and pupils in this way will need to be done in a sufficiently clear way in order to meet the Privacy Notice requirements mentioned at section 3 above. Staff should consult with the Bursar to check that the information provided is sufficient to constitute a Privacy Notice.

9.3 The same principles apply here as set out above in respect of fair processing and obtaining consent. Therefore, the College may need to seek consent before allowing the photographs and videos to be taken by another organisation. Please see section 4 above. You should speak to the Bursar if you have any questions.

9.4 The Bursar is responsible for considering other data protection issues such as ensuring that there is an appropriate agreement in place with the other organisation where necessary.

## 10 **Taking photographs and videos of pupils from other schools**

10.1 There will be situations where pupils from other schools attend events at the College. If the College is taking photographs and videos there are data protection considerations.

10.2 Other schools should be told in advance that photographs and videos will be taken of their pupils and asked if there are any pupils for whom this will be a problem, for example, because of safeguarding concerns.

10.3 For those uses which are more privacy intrusive (e.g. those in the red category), you should ask the other school to obtain consent on our behalf from either the parent and / or pupil, as age appropriate, and to provide written confirmation that this consent has been obtained.

## 11 **When other schools take photographs and videos of the College's pupils**

11.1 Other schools should also follow the guidance provided at section 10 above. If you have any concerns that another school is photographing and / or videoing our pupils without speaking to us first, please tell the Bursar immediately.

## 12 **Taking photographs of prospective pupils at open days and taster days**

12.1 If the College intends to take photographs and videos at an Open Day or a Taster Day before the pupil has joined the College then parents should be told about this. Either when they tell the College they will be attending or on the day itself. This can be done verbally if it is not practicable to provide written information.

12.2 We also recommend that the photographer (whether internal or external) is told to make pupils and parents aware of his/her presence before taking photographs and to explain where the photographs will be published in broad terms. Pupils and parents should be given the opportunity to not appear in the photographs.

12.3 If the College does want to use a photograph of a prospective pupil in a privacy intrusive way then consent should be sought as explained at section 4 above.

## 13 **Safeguarding**

13.1 Staff must be mindful of safeguarding issues when taking and using photographs and videos of pupils.

13.2 Staff must raise any concerns about the welfare of a child in accordance with the procedures in the College's safeguarding and child protection policy. For example, concerns should be reported if they become aware of anyone:

13.2.1 taking an unusually large number of images;

13.2.2 taking images in inappropriate settings such as cloakrooms, toilets or changing areas; or

13.2.3 taking images of children who are apparently unaware that they are being photographed or filmed.

13.3 If staff are ever unsure, they must always speak to the Designated Safeguarding Lead.

## 14 **Practical examples**

14.1 The table below includes practical examples which are colour coded to illustrate whether or not consent should be obtained. If staff have any questions they should speak to the Director of Marketing.

14.2 **Green** denotes that there is no need to obtain consent for the use provided that the use is covered in the privacy notice.

14.3 **Amber** suggests a borderline case where it is not possible to be prescriptive.

14.3.1 Staff should decide whether consent is needed taking into account relevant factors, such as:

- (a) where the photograph is published. For example, there is a difference between a photograph on the homepage of the College website or the front cover of the prospectus and a photograph appearing in a less prominent area of the website or prospectus;
- (b) the age of the pupil - the younger the pupil the greater the need for consent; and
- (c) how the pupil is dressed e.g. if the pupil is dressed for swimming or gymnastics and prominently displayed in the photograph this suggests that consent should be sought.

14.3.2 You may decide that consent is not required in the particular circumstances albeit that there is more of a risk of a complaint than under green. In particular you may wish to dispense with consent if you consider that pupils and parents would not expect to be asked for consent and are unlikely to object if the image is used without their consent for the specific use. This might be the case if the College has been publishing photos and videos in the amber category for a number of years in the absence of consent without any complaints.

14.4 **Red** means that staff must obtain consent before publishing the photograph or video.

Where a use is amber or red but the pupil cannot be identified because the photograph or video is taken from far away then consent is not required.

Status	Examples of proposed uses
<b>GREEN</b>	
•	A photograph of a group of pupils, without their names, published on the College website or in the prospectus, which does not raise any of the factors listed at paragraph 14.3 which would make the use more privacy intrusive. Please note that we consider other online platforms, such as social media, to fall under the amber category.
•	Photographs of pupils taken on a school trip or a sporting event to be used for an internal exhibition or display.
•	Official College photographs of the whole College, or class, to be purchased by parents.
•	A photograph of a pupil to be used internally, for example on iSAMS.
•	Video recordings taken for internal pupil assessments / internal pupil coaching. For example, in music, drama or sports lessons. This assumes that the recording is done on an occasional basis for a specific purpose and that everyone in the room knows that the recording is taking place.  The recording should also be relevant to the purpose. For example, if only a small number of pupils are being assessed it may not be appropriate to capture images of other pupils. If the recording is to be used as a revision tool for those pupils who were not able to attend, or if the recording is made to assess staff, please speak to Director of Marketing as extra considerations may apply.
•	The use of a webcam to broadcast images of pupils internally, for example, to allow one class to see another as part of an IT lesson.

<b>AMBER</b>	
●	A photograph sent only to the College community (e.g. in an internal newsletter, or on the password protected parental portal) with or without the pupil's name.
●	A photograph used in a third-party publication (e.g. the local newspaper) without the pupil's name.
●	A photograph of a pupil in the College's prospectus or on the College's website without the pupil's name.
●	A photograph used in social media without the pupil's name e.g. on Twitter.
●	<p>The streaming of video footage of live rugby matches or practices with commentary.</p> <p>A statement should be read out to the pupils (both to the College's pupils and to the pupils of any other school) explaining that they will be recorded.</p> <p>If another College is involved they should be told about the recording in advance and asked to notify the participants.</p> <p>The pupils should be given the opportunity to object. If a pupil objects they should be given the option to not take part in the match. If they still wish to take part in the match then the recording should not go ahead.</p> <p>If commentary on the match or a match report is also to be provided (which includes pupil names or other identifying information) this should be explained in advance.</p>
●	<p>The use of a webcam to broadcast images of a class of pupils to another school (for example, where two schools are working together on a classroom project).</p> <p>The pupils should be told that their images will be broadcast and given the opportunity to object.</p>
<b>RED</b>	
●	A photograph published alongside a pupil's name in a local newspaper.
●	A photograph or video published alongside a pupil's town of residence.
●	A photograph in the College's prospectus or on the College's website with the pupil's name.
●	A photograph used in social media with the pupil's name, e.g. on the College's Facebook page.
●	A photograph displayed in a prominent place, with or without the pupil's name, e.g. on the side of the College's minibus or on a billboard.
●	A photograph used in a national advertising campaign with or without the pupil's name.



•	A case study in the College prospectus which focuses on a specific pupil.
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## 15 **Objections**

- 15.1 The College allows parents and pupils to object to the use of photographs and videos. For example, the College's Privacy Notice tells parents / pupils to contact a specific member of staff with any objections and / or concerns.
- 15.2 Any objection will take precedence over the publicity requirements of the College. This is the case even if this guidance states that consent is not required for the proposed use.
- 15.3 Situations may arise where the pupil and their parents disagree about the use of a photograph:
  - 15.3.1 if a pupil objects to the use of their photograph / video it should not be published, even if their parents have consented. Parents should be informed of the pupil's decision;
  - 15.3.2 if a pupil in Year 8 or over consents to the publication but their parents object, the photograph / video should not be published. Even though the pupil is old enough to exercise their own data protection rights, not adhering to the parents' view could lead to reputational damage.
- 15.4 There may be pupils at the College whose images cannot be used under any circumstances, even if the use would ordinarily fall under the "green" category in the examples above.
- 15.5 This would be relevant if, for example, the pupil had famous parents or there might be a risk that they will be abducted should their presence at the College become known. The Marketing Department keeps a list of such individuals and staff should make sure that they are aware not to use photographs or videos of them.