



KING'S COLLEGE SCHOOL
WIMBLEDON

Guidance for Staff on the use of Photographs and Videos of Pupils by the School

The Corporation of King's College School

King's College School, Wimbledon

King's College Junior School, Wimbledon

Wimbledon Common Preparatory School

I Introduction

- 1.1 This guidance note for staff covers the data protection implications of the school taking and using photographs and videos of pupils.
- 1.2 Where a pupil can be identified from a photograph or a video (whether or not the pupil is named) it will contain their personal data. 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 school 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 school may prevent visitors from taking images. The Headteacher will co-ordinate how this is communicated to visitors. 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 which are included in the staff handbook:
 - 1.6.1 staff code of conduct;
 - 1.6.2 acceptable use of IT policy for staff;
 - 1.6.3 acceptable use of IT policy for pupils;
 - 1.6.4 anti-bullying policy;
 - 1.6.5 safeguarding and child protection policy;
 - 1.6.6 data protection policy; and
 - 1.6.7 data protection policy for staff.
- 1.7 The policies above contain specific guidance on points that are not detailed in this guidance. For example, our data protection policy for staff explains the measures that you must take to keep personal data (including photographs and videos) secure, particularly when you are away from the school 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 Headteacher.
- 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. videoing a play that 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 school premises and off site in connection with school activities.
- 2.3 This guidance does not form part of your contract of employment and may be amended by the school at any time.

3 The fair processing of personal data and privacy notices

- 3.1 The school 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 school uses their personal data.
- 3.2 This information is provided in a document known as a privacy notice. The school has a pupil privacy notice that mentions the use of photographs and videos. Please familiarise yourself with this document so that you understand what parents and pupils are told about the school's use of pupil information.
- 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. The law is not prescriptive on the exact age and therefore the school has decided that:
 - 3.3.1 for children in Year 6 and below, the school will make a pupil privacy notice available to parents only;
 - 3.3.2 for children in Years 7 to 13, the School will make a pupil privacy notice available to both parents and pupils.
- 3.4 In light of this, the school has two separate privacy notices:
 - 3.4.1 one in relation to children in Year 6 and below which is drafted to be read by parents; and
 - 3.4.2 one for children in Year 7 and above which is drafted to be read by the pupils themselves even though this is also available to parents.

These privacy notices can be found on our school website here:
<http://www.wimbledoncommonprep.co.uk/unclassified/privacy>

4 When should consent be obtained

- 4.1 Consent means that the school obtains consent for that particular use as an additional step to providing the wording about photographs and videos contained in the privacy notice. Broadly speaking, consent should be sought if the photograph, or the use of the photograph is more privacy intrusive. The table at paragraph 15 below contains examples of when consent should be sought.
- 4.2 If you are going to seek consent, you should apply the principles in paragraphs 4.3 to 4.11 below. If consent is sought, the school can usually rely on “legitimate interests”. This is explained at paragraphs 4.12 – 4.16 below.
- 4.3 Consent should be sought as follows:
 - 4.3.1 for children in Year 6 and below, consent should be sought from parents;

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- 4.3.2 for children in Years 7 to 11, consent should be sought from both pupils and parents; and
 - 4.3.3 for children 16 years or older, consent should only be obtained from the pupil unless you consider there is a particular reason to also speak to their parents.
 - 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 kept in the relevant section of Kim. 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?
 - 4.4.5 were they advised of their right to withdraw consent?
 - 4.5 There may be occasions when consent was originally obtained from a parent and the school would like to continue using the privacy intrusive photograph / video after he 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 in accordance with paragraph 4.4 above.
 - 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 that the consent must be a genuine choice. You cannot for example make consent a condition of taking part in the activity.
 - 4.7.2 **Specific and informed:** this means that it must be very clear what the consent related to. In addition a general consent would cover all of the different scenarios in which a school may conceivably take or use photographs is unlikely to be compliant.
 - 4.7.3 **Unambiguous:** there must be a clear positive action that the individual has consented to, for example, by them returning a completed consent form, verbally agreeing or sending an email with their agreement. If tickboxes are used these must be “opt in” tickboxes rather than “opt out”. 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 is not valid consent.
 - 4.8 If consent is withdrawn this should be recorded on the written record mentioned at paragraph 4.4 above so that all relevant staff are 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 school 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 as 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 2017 only, it would not be reasonable to include it in any 2018 edition of the magazine.

- 4.12 Please speak to the bursar if you have any questions about consent.
- 4.13 The school 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 photograph or video is:
- 4.13.1 within the reasonable expectations of the pupil and their parents; and
- 4.13.2 they are unlikely to object to its use.
- 4.14 In order to rely on legitimate interests in compliance with the General Data Protection Regulation (GDPR) the school has documented via privacy notices, its decision as to why this is the appropriate ground for using less privacy intrusive photographs and videos.

5 Former pupils

- 5.1 The school can rely on the information provided in the privacy notice about photographs and videos for a reasonable period after the pupil has left the school (please see paragraph 4.11 below for “reasonable period”). Pupils are informed via the privacy notice that photographs and videos of them may be used after they have left the school.
- 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 school 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 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 school's website.
- 6.2 The school may therefore choose to obtain consent in the vast majority of cases but this is not a legal requirement.

7 Use of Personal Devices

- 7.1 Staff should only use school owned devices, including cameras, 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. In the event that photographs are taken on a member of staff's personal device these should be uploaded to the school's system as soon as practicable and the images or footage deleted from the personal device and any back up storage.
- 7.2 Staff must comply with the Acceptable Use of IT for Staff Policy and the Data Protection Policy for Staff 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 Staff Code of Conduct for additional guidance on staff 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 Headteacher.

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 the Headteacher and where there is appropriate supervision. For example:

9.1.1 the school might hire a professional photographer to take official school photographs or to video a school play;

9.1.2 a company used by the school 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 school.

9.2 If the press will be attending school events, the school will let parents and pupils know about this via email, 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 school may need to seek consent before allowing the photographs and videos to be taken by another organisation. Please see section 4 above. You should refer to the table at section 15 below to guide you on when consent should be obtained. Please 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 Photographs and videos to be used by the School's overseas schools

10.1 The school may provide photographs and videos of our pupils to our overseas schools for promotional reasons. However, this should always be authorised by the Headteacher first.

11 Taking photographs and videos of pupils from other schools

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

11.2 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.

11.3 For those uses which are more privacy intrusive (e.g. those in the red category as set out in the table in paragraph 15 below), the other school should be asked 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.

12 **When other schools take photographs and videos of the School's pupils**

- 12.1 Other schools should also follow the guidance provided at section 11 above. If you have any concerns that another school is photographing and / or videoing our pupils without speaking to us first, please tell the Headteacher immediately.

13 **Taking photographs of prospective pupils at open days and taster days**

- 13.1 If the school intends to take photographs and videos at an open day or a taster day before the pupil has joined the school then parents should be told about this. Either when they tell the school they will be attending or on the day itself. This can be done verbally if it is not practicable to provide written information.
- 13.2 The photographer (whether internal or external) should be 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 not to appear in the photographs.
- 13.3 If the school wants to use a photograph of a prospective pupil in privacy intrusive way then consent should be sought as explained at section 4 above.

14 **Safeguarding**

- 14.1 Staff must be mindful of safeguarding issues when taking and using photographs and videos of pupils.
- 14.2 Staff must raise any concerns about the welfare of a child in accordance with the procedures in the school's Safeguarding Policy. For example, concerns should be reported if they become aware of anyone:
- 14.2.1 taking an unusually large number of images;
 - 14.2.2 taking images in inappropriate settings such as cloakrooms, toilets or changing areas;
or
 - 14.2.3 taking images of children who are apparently unaware that they are being photographed or filmed.
- 14.3 If staff are ever unsure, they must always speak to the Designated Safeguarding Lead.

15 **Practical examples**

- 15.1 The table below includes practical examples that are colour coded to illustrate whether or not consent should be obtained. If staff have any questions they should speak to the bursar.
- 15.2 **Green** denotes that there is no need to obtain consent for the use provided that the use is covered in the privacy notice.
- 15.3 **Amber** suggests a borderline case where it is not possible to be prescriptive.
- 15.3.1 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 school 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.

15.3.2 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 the school may wish to dispense with consent if the school considers 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 school has been publishing photos and videos in the amber category for a number of years in the absence of consent without any complaints.

15.4 **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
•	A photograph of a group of pupils, without their names, published on the school website or in the prospectus (i.e. an external publication), which does not raise any of the factors listed at paragraph 15.3 which would make the use more privacy intrusive. Other online platforms, such as social media, fall under the amber category.
•	A photograph of a single pupil or of a group of pupils (with or without their names) taken during a school trip, a sporting event or another school activity to be used for an internal exhibition or display.
•	Official school photographs of the whole school, or class, to be purchased by parents.
•	A photograph of a pupil to be used internally, for example on Schoolbase/KIM, library cards, building passes.
•	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 the bursar 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.
•	A photograph of a single pupil or a group of pupils sent only to the school community (e.g. in an internal newsletter, or on the password protected parental portal). This could be with or without the pupil's full name.
•	A photograph of a single pupil or a group of pupils used in a third party publication (e.g. the local newspaper) without the pupil's name.
•	A photograph of a single pupil in the school's prospectus or on the school's website without the pupil's name. For groups of pupils without their names

	please see the first row of this table which is indicated to be "green".
•	A photograph of a single pupil or a group of pupils 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 school's pupils and to the pupils of any other school) explaining that they will be recorded.</p> <p>If another school 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>
•	A photograph published alongside a pupil's name in a local newspaper.
•	A photograph of a single pupil or a group of pupils or a video of a single pupil or a group of pupils published alongside the pupil's town of residence.
•	A photograph of a single pupil or a group of pupils or a video of a single pupil or a group of pupils to be used by one of the school's overseas schools even if it does not include the pupil's name (either the first name only or the full name).
•	A photograph of a single pupil or a group of pupils in the school's prospectus, on the school's website or any other external publication with the pupil's name (either the first name only or the full name).
•	A photograph of a single pupil or a group of pupils used in social media with the pupil's name (either the first name only or the full name), e.g. on the school's Facebook page.
•	A photograph of a pupil or a group of pupils displayed in a prominent place, with or without the pupil's name, e.g. on the side of the school's minibus or on a billboard.
•	A photograph of a pupil or a group of pupils used in a national advertising campaign with or without the pupil's name (either the first name only or the full name).
•	A case study in the school prospectus which focuses on one particularly gifted pupil.

16 **Objections**

- 16.1 The school allows parents and pupils to object to the use of photographs and videos. For example, the school's privacy notice tells parents / pupils to contact a specific member of staff with any objections and / or concerns.
- 16.2 Any objection will take precedence over the publicity requirements of the school. This is the case even if this guidance states that consent is not required for the proposed use.
- 16.3 Situations may arise where the pupil and their parents disagree about the use of a photograph:
- 16.3.1 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;
 - 16.3.2 if a pupil in Year 7 - 11 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.
- 16.4 There may be pupils at the school whose images cannot be used under any circumstances, even if the use would ordinarily fall under the "green" category in the examples above.
- 16.5 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 school become known. The bursar keeps a list of such individuals and staff should make sure that they are aware not to use photographs or videos of them.