

## **Transcript: 'Know Your Data' - Taking photos at school events**

Welcome to 'Know Your Data' a podcast by the Irish Data Protection Commission. My name is Jennifer Dolan and I'm Assistant Commissioner for Children's Policy in the DPC. At the DPC, we receive a large number of queries from schools, parents and even photographers about taking photos at school events. In this episode we're going to run through the importance of a common sense approach to taking photos at school events.

One question we get into the office is whether the GDPR has banned people from taking photos in a public place. To start off, it's important to point out that this is not the case. Provided you're not harassing anyone, there's nothing under the GDPR preventing people from taking photos in a public place. Where things can change however is if you decide to publish these photos to a wide audience. Taking a photo in public is generally fine, it's what you do with that photo that can potentially become a data protection issue and can potentially make you a data controller.

Parents, friends and family often like to capture important milestones on camera, such as school plays, sports days and concerts, as keepsakes that they can look back on. Another question we regularly get in is whether or not there is anything under the GDPR that prevents them from taking photos at these types of events. Where photos are being taken in a personal capacity by family and friends simply as keepsakes this will likely fall under the so-called household exemption under the GDPR which states that the GDPR does not apply to the processing of personal data by an individual in the course of a purely personal or household activity. If one of these photos winds up on a parent's private social media account this may not be strictly prohibited by the GDPR either, as the GDPR states that the household exemption could include social networking. However if a parent publishes a photo of their child online which also contains images of other children, and the parents of one of the other children was uncomfortable with this and asks for the photo to be taken down, then common sense and indeed common courtesy would suggest that the photo should be taken down. It's important to point out that ultimately it is at the discretion of schools to develop their own policies relating to the taking of photos taken by friends and family at school events.

So what about official photography at school events? Schools often take photos, or hire photographers to attend school events, and document important occasions. In many cases these photos end up on the school's website, in the school's newsletter or even in the local newspaper. In this situation schools are in a very different position to parents and families in that they cannot rely on the household exemption as they are acting as what we call data controller. This means they have specific obligations under the GDPR and must have a legal basis for processing the personal data, in this case taking and storing photos. There are six different legal bases for processing personal data under the GDPR and you can find out more about them on our website [www.dataprotection.ie](http://www.dataprotection.ie). In some instances schools may be relying on consent, for example, as their legal basis for taking and storing photographs. This consent is often obtained through a consent form at the start of the year. However, it's important to note that consent is not the only legal basis for processing personal data and it's up to the schools to assess which is the most appropriate legal basis for the taking storing and or publication of photos of school events. In any case where a school plans to take photos at school events, they must outline which events photographs will be taken at, what they will be used for and by whom and how long the photos will be kept for. If they're relying on consent they must also highlight the parent's right to withdraw their consent at any point in the future.

We shouldn't forget about children and young people themselves in this scenario, who should also be made aware of what the photos will be used for and where they will appear. In fact, depending on the context and the age of the student, schools may wish to seek the consent of both the parent or guardian and the student.

So what about photographing large groups at school events? As I mentioned earlier, it's at the discretion of schools to develop their own policies relating to taking photos at school events and if they're relying on consent as their legal basis then it's ultimately up to schools to be able to identify those who have consented to being photographed and those who haven't. One such way could be for example by giving color-coded stickers or lanyards to attendees. One colour could be used to identify those who wish to be photographed and the other to identify those who haven't consented to being photographed. However, as I mentioned earlier, there are six legal bases for processing personal data

under the GDPR and consent is just one of them. There may be occasions where a school is relying on another legal basis. For example, if a school is taking photos of its facilities for publication in a school brochure and there are a large number of students in the background of the various photos, the school could potentially rely on legitimate interest as their legal basis in this instance, provided of course they've carried out a balancing exercise to make sure that the rights and interests of the child are taken into account and aren't unfairly disregarded. The most important thing is that schools must be able to demonstrate their assessment of the data protection issues at play and back up their reason for relying on a particular legal basis.

The GDPR doesn't provide an exact road map on when you can and can't take and publish photos at school events. But taking a balanced and common sense approach will go a long way towards ensuring that individual rights are respected, while also ensuring that data protection doesn't become an obstacle to capturing and celebrating school events.

If you're unsure about any of the terms we've used in this podcast you can find a list of definitions on key data protection terms on our website at [www.dataprotection.ie](http://www.dataprotection.ie). We've also published a blog on the topic of taking photos at school events, which you'll also find on our website too. This has been 'Know Your Data' the Data Protection Commission Ireland podcast.

Don't forget you can find us on Twitter and Instagram @DPCIreland and on LinkedIn.

Thanks for listening.