

Question: If someone attends an event organised by the group, and has their photograph taken, and this photograph is then used on the promotional material for this and any subsequent events, is there a data protection problem?

Answer:

Three words of advice “immense caution please!”

A very recent court case in the UK involving a London Borough concerning an action for breach of confidence clearly outlines the problems and issues of taking and using an individual photograph, in particular photographs of minors (Children).

Briefly, this is what happened. A local authority had taken a photograph of a young person (a minor) and had used the photograph in two service leaflets. These were entitled “A strategy for preventing youth crime” and “A strategy for children and young people who are affected or infected by HIV/AIDS”.

The implication for the family of the young person was obvious.

In this case the family had not been asked about use of the photographs, and when they were used the family had asked the Council to stop the distribution of the publications. This did not happen and the Court awarded £5,000 in damages plus £50,000 in court costs. Because the photograph had been taken without the parent’s consent, which they stated they would not had given if they had known about how and where the photograph was to be used.

Our advice is therefore:

- Always consider the possible inferences to be drawn from the photographs, their captions, and the context in which they are published.
- Try to picture yourself in the publication - what would you do? ;
- Make sure that it is clear to the individuals (adults) at the time, that the photographer is taking photographs;
- If individuals are potentially identifiable because photographs are close up (you can clearly see their face or have caption information which identify them, then tell those photographed where the photographs are to be displayed.
- If minors are involved, you **MUST** get the consent of a parent or guardian, prior to the taking of the photograph;
- Instruct photographers/ employees to give individuals who do not want to be photographed time to get out of the way;
- if the photograph is to be displayed directly on the Internet, or the photograph is going to be placed in a publication or document which will be placed on the Internet, then explain this to those who are identifiable; and
- Consider what you would do if someone objected to the publication.

For details guidance material please refer to PDF document for Photos Process Chart For standard data protection clauses for taking photographs please refer to the above document and fair collection notice statements DP1 and DP2.