

SCRP 8b General Data Protection Regulations (GDPR) Guidance on media images

General principles	GDPR applies to photos if people can be identified in the photo
	If someone can be identified in a photo, you need to get their consent to use the photo. But consent is not needed for reporting and journalism.
	If a photo might cause offence, distress or embarrassment, or if someone specifically asks you not to take their photo - don't .
Photos of large groups	OK to take photos if people might reasonably expect photos to be taken at an event, and the photos won't impact on individuals' privacy.
	<p>Good practice</p> <ul style="list-style-type: none"> • Tell people that photos will be taken • Give people the opportunity to opt out of photos • Make reasonable efforts not to take photos of people who don't want, eg ask them to move to a separate area
Photos of small groups and individuals	OK to take photos of people in their professional capacity, eg Mayor, CEO, Line Officers, without specific consent.
	OK to take photos for the purpose of journalism or reporting, without specific consent.
	<p>Good practice</p> <p>Any other situation, you will need to get people's consent in writing on a consent form.</p>
Photos of children	For children under 18, a parent / guardian's consent must be given to use their photo.
	<p>Good practice</p> <p>It's often difficult or impossible for SCRCP to get parental consent ourselves for photos of children.</p> <p>Therefore we must be guided by the school / group's policy on photos of children. If they say no, we don't take photos. We may not be able to use photos taken by the school either.</p> <p>If consent is not obtained, consider alternatives which don't identify individuals, such as photos of backs of heads or hands.</p>

Photos of people with disabilities	Photos showing identifiable people with visible disabilities could be classified as sensitive data. Therefore special care needs to be taken to ensure consent is obtained to take / use such photos.
	<p>Good practice</p> <ul style="list-style-type: none"> • When working in partnership with a school, college or disability support group, SCRP should be guided by their policy on photo consents. • For photography at public events which are attended by people with disabilities: <ul style="list-style-type: none"> ○ make sure everyone understands photos will be taken ○ give people the opportunity to opt out of photos ○ make reasonable attempts to avoid photographing those who do not wish to be photographed.

The General Data Protection Regulation has been law in the UK since May 2018. The government has stated it will continue to apply after the UK leaves the EU.

Does GDPR apply to photos?

Yes it can – read on.

Photos of people can be personal data

If someone can be identified from a photo, then that photo is personal data.

GDPR applies if you share, publish or exhibit photos of identifiable people. Saving and using photos of identifiable people counts as processing personal data under the GDPR.

Photos can be ‘sensitive data’ if they are used to uniquely identify an individual (eg at airport security). If photos are sensitive data, they need greater security and care in use.

What are the lawful bases for taking and using photos of people?

The GDPR requires us to justify why we need to use personal data, including photos of people. The lawful bases for processing are set out in Article 6 of the GDPR. At least one of these must apply whenever you process personal data:

GDPR basis for using personal data	What it means	Examples of when you might use this in community rail partnerships
Consent	The individual has given clear consent for you to process their personal data for a specific purpose	Photos of individuals for use in publications, eg line guide or annual review. Use a consent form to gain consent.
Legitimate interests	The processing is necessary for your legitimate interests, unless there is a good reason to protect the individual's personal data which overrides those legitimate interests.	<ul style="list-style-type: none"> • Reporting community events at stations • Journalism
Contract	The processing is necessary for a contract you have with the individual.	Contract with model for promotional photos of SCRIP rail lines Work ID photos
Legal obligation	The processing is necessary for you to comply with the law	SCRIP unlikely to need to use this

Photos of large groups

Where the image is of a crowd, and individuals are not identifiable, this is unlikely to be personal data and the GDPR will not apply. However, SCRIP often takes photos of community events where individuals could be recognised. At these events ask yourself:

- Might people *reasonably expect* photos to be taken at this public event?
- Will the photographs have *minimal privacy impact* on the individuals?

If the answer to both these questions is yes, then you should be able to use legitimate interests as a basis to take photographs, without having to get individual consent.

However, if a photo might cause an individual any offence, distress or embarrassment, then don't take / use it. Also take care not to use photos out of context.

Good practice when photographing large groups

- Tell people that photographs will be taken, by putting up a poster or making an announcement when group photos are about to be taken.
- Ask people to make themselves known to you if they don't want their photo taken.
- Make reasonable attempts to avoid photographing those who don't wish, eg make an announcement and ask anyone who doesn't wish to be photographed to move to a different area.



EXAMPLE

GTR station partners day out at Spa Valley heritage railway, June 2017

In this photo, everyone is aware that photos are being taken, they are posing and smiling, you can assume they are happy to have their photo taken.

Photos of small groups and individuals

Images of small groups and individuals are likely to constitute personal data.

It is OK to take photos of people in their professional capacity, eg Mayor, CEO, without getting permission, as this is part of their work roles. It is OK to use photos for reporting or journalism without getting specific consent.

To process these images or to continue using existing images, you will need to satisfy yourself that the individual was aware that their photograph would be taken and the context in which the photograph would subsequently be used.



EXAMPLE

World War 1 centenary commemoration at Horsham station – Mayor reading a citation accompanied by soldier presenting arms – Nov 2018

The Mayor and soldier are at this event in a professional capacity, and the photo is reporting an event, therefore consent is not needed.

This picture was used on social media. Verbal consent was received but not written consent on this occasion.

Photos of children

Children are given special protection under the GDPR, which states:

“Children require specific protection with regard to their personal data as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data.”

For children under 18 their parent or guardian’s written consent needs to be given to use their photo. Usually when SCRP works with children it is in partnership with a school or a group such as the Brownies. It would usually not be possible for SCRP to gain parental consent ourselves. Therefore, we should be guided by the school / group’s policy on photo consents.

However, even if the school or group has permission to take photos of children, that consent probably doesn’t extend to other third-party organisations such as SCRP. Therefore, SCRP should **not** use photos taken by the school / group for local papers or their own social media, unless we have specific assurances that all parents are OK with this.

If a school / group puts a photo of children at a CRP event on social media, we might retweet it, this is a grey area.

Good practice – photos of children

- You must get parental consent for photos of children under 18
- Be guided by the policy of the school or group you are working with. Parental consent given to the school / group probably won't extend to SCR, even if photos were taken by the school / group.
- Consider alternatives to photos of children's faces – eg photos from the back, hands or feet, photos of staff



EXAMPLE

Clearing overgrown land at Moulsecoombe station with the Forest Garden station adopters, Oct 2018

Photo carefully composed so as not to show children's faces.

Photos of people with disabilities

SCR, often works with people who are vulnerable because of disability. This is usually in partnership with a school, college, or support organisation such as the Aldingbourne Trust or the Canterbury Oast Trust.

The GDPR takes particular care over what it calls 'special category data'. Special category data under the GDPR is data about racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, data concerning health or data concerning a person's sex life or sexual orientation. When linked to other information that identifies an individual, a photo could be classed as sensitive personal data.

There is an exemption from GDPR rules for “personal data which are manifestly made public by the data subject”. So data about a person’s disability which is obvious on sight, for example if they use a wheelchair, is indeed special category data, but is obvious to everyone the person meets. SCPR should have no need to collect, store and use sensitive data about people.

In general, SCRP should be guided by the photo policy of the school, college or disability group who we are working with, and any photos will require written consent.

Good practice – photos of people with disabilities

- When working in partnership with a school, college, or disability support group, SCRP should be guided by their policy on photo consents.
- For photography at public events which are attended by people with disabilities:
 - make sure everyone understands that photos will be taken
 - give people the opportunity to opt out of photos
 - make reasonable attempts to avoid photographing those who do not wish to be photographed.

Street photography

Sometimes we take photos of events, buildings, etc where individuals are incidentally in the background or are not the focus of the photo. These images are unlikely to contain personal data. However, if anyone objects to being in the photo, you should not take it. If the individuals are identifiable and the focus of the picture, you should ask for their consent to use their image.

Using photos of people in reporting and journalism

Journalism is specifically exempt from the GDPR, provided the purpose is reporting and it is in the public interest. Photos of public events published in newspapers are considered to be journalism.

Using photos of people on social media

If you wish to use photographs of individuals on a website or social media, the information is potentially being disclosed beyond Europe and stored in a country which does not comply with GDPR. However once a photo is on social media it is difficult to control its use.

Consent forms should include the potential for photos to be used on social media. See Appendix A

Using photos of people in publications

The person should be asked for consent to use their photo, using a consent form.

Using photos of people for marketing

'Marketing' could include using photos on SCRP's website to illustrate our programmes, such as Go Learn, or presentations about SCRP at conferences, or Line Guides.

The person should be asked for consent to use their photo for this purpose, using a consent form.

Alternatives

You could consider alternative images which do not identify individuals, such as:

- Photos of backs of heads – no faces visible
- Photos of hands, feet, etc
- Cartoons
- Photos of staff in their professional capacity
- Photos of paid models with model release form
- Images of people who are no longer alive (GDPR only applies to living people) as long as this won't cause offence, distress or embarrassment to family and friends.

Right to erasure

Individuals have the right to object to or withdraw consent for the use of their photos – either before or at any time after the photo is taken.

Where objections are raised after the photo is taken then you should reasonably review this. Unless you have special circumstances that mean you require the photo and/or it is not possible to remove it (eg it has already been published in an Annual Review) then you should stop using the relevant photo and remove it from all digital channels and files.

Storage

The general GDPR rule is that you should not keep personal data for longer than it's needed.

Some photos may have historical significance, and this is a legitimate reason to keep them. But generally, most photos will look dated after five years or so and you should then think about deleting them.



Southeast Communities Rail Partnership CIC



Using a photo retrospectively for a purpose different from the original purpose, probably means you will need to seek consent again.

Other considerations

- **Copyright**

If you take a photo, the copyright is yours.

If you pay a photographer for a photo, the copyright is yours.

If someone else took the photo and you haven't paid for it, you should check they are OK for you to use it and you should credit them by putting their name on / near the photos.

Professional photographers take a dim view of their photos being used without crediting them – it is their livelihood.

- Network Rail guidelines for taking photos at stations

<https://www.networkrail.co.uk/communities/railway-enthusiasts/railway-enthusiasts-and-photography-at-stations/>

- It is good practice to check with venues if they are happy for photos to be taken on their premises.

Further information

The authoritative source of guidance on the GDPR is the Information Commissioners Office, <https://ico.org.uk> Their guidance is constantly being updated and added to. Here is some relevant guidance:

Children and the GDPR

https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/children-and-the-gdpr/?fbclid=IwAR3cfOgeDX0wcpWmpmQQtv3CgrTD4q_RvC5o83_sUqTIKPwdgfh6DuwRY4

Taking photos in schools

<https://ico.org.uk/your-data-matters/schools/photos/>

Data protection and journalism

<https://ico.org.uk/media/for-organisations/documents/1547/data-protection-and-journalism-quick-guide.pdf>



Appendix A Consent Form

Child photo consent form

We have been working with the students at to carry out free Independent Train Travel Training workshops and ‘Try a Train’ trips and would love to use some of the photos we have taken on our trips. If you take a look at our website it will give you a flavour of what we do.

www.sussexcrcp.org

We would be grateful if you would fill in this form to give us permission to take photos of your child and use these in our printed and online publicity.

I give permission to take photographs of my child. I grant rights to use the images resulting from the photography for fundraising, publicity or other purposes to help achieve the group’s aims. This would include their use in printed and online publicity, social media, press releases and funding applications.

Name of Child	
Name of parent/guardian	
Signature of parent/guardian	
Date	