

Procedures for obtaining informed consent for recordings and images of people

to support Data Protection Policy

PROCEDURES

HERIOT-WATT UNIVERSITY
PROCEDURES
for obtaining informed consent for recordings and images of people
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1. INTRODUCTION

Still and moving images and sound recordings featuring identifiable individuals contain personal data of these individuals. As an organisation that creates and commissions images and recordings of people, the University is the Data Controller for this personal data. These procedures set out the circumstances in which it is necessary to seek the consent of the individuals concerned and how to ensure that we manage recordings and images of people in accordance with their rights as data subjects under the UK Data Protection Act, 1998 and the data protection laws of other relevant jurisdictions.

These procedures support the Data Protection Policy and also other policies relating to the management of student and staff records, such as the Student Records Management Policy. These procedures form part of the University Information Security Policy Framework.

2 SCOPE

The scope of these procedures applies to information that we hold about all current and former Heriot-Watt University students or staff, regardless of where or how they studied or worked.

These procedures apply to all still and moving images and recordings created or commissioned by University employees, contractors or volunteers in the course of their work for the University. The University is the Data Controller for all such images and recordings that feature people, regardless of where the recordings take place. The University determines the purpose of recording and is legally responsible and accountable for its use.

These procedures do not apply to images or audio-visual recordings created by members of the University community or visitors for their own private use on their own personally owned equipment. The University is not the Data Controller for such recordings. However, personal use of images or audio-visual recordings to harass or cause distress to others may be subject to disciplinary sanctions in accordance with other University regulations and policies governing the conduct of students, colleagues and other users and may also be in breach of criminal law.

3. LEGAL CONDITIONS FOR PROCESSING RECORDINGS OF PEOPLE

In order to process personal data lawfully, the University must comply with a relevant condition for processing. When processing still and moving images for promotional, journalistic and archival purposes the University will need to rely on one of the following conditions.

- 3.1 In some circumstances the University can rely on the condition that the processing is *necessary* for its legitimate interests as long as the processing is not unwarranted because of its prejudicial effect on the rights, freedoms or legitimate interests of the individual. Relevant examples include

- photography involving staff in senior or “public facing” roles,
- filming of graduation ceremonies – a key event in the

University calendar- as long as graduands and their families are informed in advance and chose to attend in the knowledge that the event is being filmed.

- filming or photography of other events or general views of the campus where the image or recording represents an unposed record of the event and any images of people are incidental then formal consent is not required as long as clearly visible notices are displayed to inform people that filming is taking place in that area so individuals can move out of the picture

3.2 Where the University wishes to process images featuring students for promotional purposes e.g. a recruitment video or prospectus, the students are under no obligation to take part. Therefore we have to rely on their consent to process their personal data in this way. Consent must be “freely given, specific and informed”. It is important to keep a record of the individuals’ consent. It is also important to note that an individual may subsequently withdraw their consent to further processing of their image.

3.3 Where the University invites newspaper or TV photographers or film crews to take still and moving images of news events for journalistic purposes, this is legitimate as long as the individuals involved in the event are fully informed in advance and given the opportunity to opt out of the picture, where appropriate

4 Photographs and recordings featuring students

4.1 Where the University records or commissions photography or filming of particular students and those individuals are the focus of the pictures, consent must be obtained from the individual(s). An example would be an image of a small group of students chatting around a table in the Library or Cafe Brio.

The consent form they are asked to sign should state why the University is recording the images and what they will be used for, so that the individuals concerned can make an informed choice. A model consent form is provided in Appendix A. Consent should be obtained from University students who feature in photographs or film in these circumstances, regardless of whether the images are being taken on University campus or elsewhere.

The School, Institute or Professional Service commissioning the photography is responsible for ensuring that the University retains the signed agreement as an audit trail for the life of the image. To facilitate this, at the end of each project, a file containing the completed consent forms and copies of the images/recordings should be transferred to Media Services and Heritage and Information Governance for retention.

4.2 Students under 18 years old

The Age of Legal Capacity (Scotland) Act 1991 states that individuals aged 16 years and over in Scotland have capacity to enter into legal contracts. There is therefore no reason why a student aged between 16 and 18 years old cannot

consent or object in the same way as an 18 year old to their image being captured or used by the University.

5. Photographs and recordings featuring staff

Colleagues in senior or public facing roles should have a reasonable expectation that their images will be used by the University in a variety of circumstances. In these situations the University is relying on its legitimate interests to use images of the members of staff. Managers are responsible for explaining this to colleagues within their teams, to help manage their expectations, and for making the public facing nature of the role clear in job descriptions at recruitment stage and in the contract of employment.

Where colleagues are not in senior or public facing roles, they should be asked to consent to their images being recorded.

If a member of staff objects to their image being used in a particular way (for example being posted on a notice board), in such situations the University should remove or avoid using the relevant image.

6. General photography and filming

Where colleagues take or commission photographs or filming for the University in which objects, buildings and areas are going to be the focus rather than particular people, students, staff and visitors should be given advance notice of this whenever possible by

1. Advertising it on the University's intranet and notice boards. The notice should publicise the date, time and place of the session, the purpose of the recording and details of the University contact in case of any queries or concerns.
2. Placing clearly visible notices around the area on the relevant day providing this information.

People can then opt out of appearing incidentally in the recording and can avoid the area(s) if they wish to do so.

7. Photography and filming at University events

7.1 Graduations

Prior to graduation ceremonies, the organisers must inform graduands, guests and other attendees that still and moving images of the ceremony will be webcast live and captured on DVD, copies of which will be available immediately after the ceremony. Those in attendance at related events such as receptions must also be informed where the event is to be photographed or filmed. This information needs to be provided in the graduation packs and other literature issued to attendees in advance of the event. Contact details should be provided for anyone with concerns. If someone contacts the University with an objection to their image being captured at a graduation

ceremony, the Information Commissioner's Office (ICO) guidance states that realistic alternative arrangements should be explored with that individual. Given that the ceremonies are webcast and recorded live the only practicable alternative for an individual who does not want their appearance at a graduation ceremony to be captured on film is likely to be for them to graduate in absentia.

The fact that photographers or a camera crew are present at the ceremony and will be filming it should also be publicised at the event, using clearly visible notices, so that people can make informed decisions as to whether they wish to avoid being caught on camera. Model notices can be found in Appendix B.

7.2 Other events

If the University is hosting events such as VIP lectures, launches and book signings at which images will be captured by photographers for certain purposes, attendees need to be made aware of this in advance whenever possible by

1. putting a notice on the invitations or other documentation issued to guests
2. putting up signage at the event to publicise the fact that photographers or a film crew will be present

On site photographers should be briefed about why the images are being recorded and what they will be used for so that they are able to answer any queries from people at the event prior to taking photographs of them. This will allow people the opportunity to opt out.

8. Photography or recordings of University groups

Students/staff who choose to join University groups such as the choir, orchestra and pipe band should have a reasonable expectation that they will appear in front of an audience from time to time. If they do not want to appear in the public eye it is unlikely that they would sign up to be part of such a group that will undoubtedly perform on stage at various events.

When University groups are recruiting new members, it is advisable to provide new members with a consent form stating that it is the University's policy to take still images and recordings of the performances of such University run groups for various purposes. By joining the group and signing the consent form, each individual will be consenting to their image being captured and used in this way.

Where there are a number of existing members who joined the groups before these procedures were put in place for obtaining consent, an opportunity should be given to group members to opt out of having their image recorded. If, for example, a musical event is scheduled to take place, the University should publicise that there will be a photographer or film crew on site and will

be recording images for particular purposes. The organiser should inform group members that they can and should avoid the event if they do not want to be recorded, and give them the opportunity to speak to someone if they have any particular concerns. This information should also be posted on the Heriot-Watt University music web pages.

If the University intends to record images of performances that include images of the audience, this should be stated on tickets and posters advertising the events.

Signage at performances should be used to inform people attending that the performance will be filmed and that their images may be recorded in case anyone has not seen the advance notice. This will give them a chance to stay clear of the photography or filming.

9. What to do if someone objects to the use of their image

If an individual objects to a certain photograph or recording of them being used in a particular way, the commissioner or user of the image should seek advice from the Data Protection Officer. While the University may have a legitimate interest in using the image or recording, this needs to be balanced with the rights of the individual and any damage or distress that may arise from the continued use of the recording. Wherever possible, the user should respect the wishes of the individual and remove or avoid using the relevant image or recording.

10. Recording lectures, meetings and interviews

10.1 Recording by Students with disabilities

Students who find it impossible or difficult to take lecture notes (e.g. who have provided evidence of visual/hearing impairment, dyslexia, dysgraphia or mobility impairments) can ask the Disability Advisers to make arrangements with their lecturers in order to allow them to record lectures. Students needing to record oral lectures should note that the content of an oral lecture remains the property of the lecturer delivering it. When taping a lecture, the recording must only be used for the student's personal study. It must not be reproduced or passed on to anyone else, other than for transcription purposes. All students who make arrangements to record lectures will be asked to sign a declaration agreeing to these conditions of use which are set out in the University Guidance for staff and students on recording of oral lectures by students with specific learning needs. For more information, contact the Disability Advisers in the Student Support and Accommodation Service.

10.2 Use of video/teleconferencing

Use of lecture capture systems and video conference facilities in lecture theatres, seminar and meeting rooms presents both privacy and intellectual property issues and also falls within the remit of the Terms and Conditions for use of the JANET Videoconferencing Recording Service. Under this agreement, signed by the University, JANET has the right to require the

University to provide an audit trail of compliance with its procedures for obtaining the informed consents, as appropriate, from conference participators to the recording of a videoconference.

For more information contact: Audio-Visual Services Manager or the Data Protection Officer.

10.3 Recording meetings of Court and other University Committees and Boards for minute taking purposes

Clerks of Court, Senate and other University committees and boards of governance may record these meetings for the purpose of producing accurate minutes of actions and decisions approved. As the members of these committees and other individuals in attendance contribute to the meetings in their professional or elected capacity on University business, the University has a legitimate interest in recording such meetings for the limited and specific purpose of creating accurate minutes.

In other instances when a minute taker wishes to record a meeting for ease of minute taking, the Convener of the meeting should obtain the consent of all present to record the meeting.

10.4 Recording meetings for evidential purposes

When one of the parties in a meeting asks to record the meeting e.g. for evidential purposes, the individual must obtain the consent of the other parties before recording the interview. All parties must sign consent for the following conditions of recording:

The person recording the meeting must provide a complete copy of the recording for the convener or the senior University representative or organiser of the meeting.

If the meeting relates to confidential University business e.g. the investigation of a complaint or disciplinary issues relating to the individual who wishes to record the meeting, the recording must be kept under lock and key or securely encrypted.

The recording and its contents must not be disclosed to anyone other than authorised University staff and legal representatives or the designated representative of the individual i.e. their solicitor or trade union representative.

Unauthorised disclosure of the recording or its contents to third parties may be a disciplinary offence.

All copies of the recording must be destroyed confidentially when the minutes of the meeting have been approved.

10.5 Recording meetings: security of recorded media

For all recordings of meetings on University business, the Audio-Visual Services Manager is responsible for specifying recording devices and standards to meet the University's requirements for recording quality and security.

A recording may contain confidential information and may include sensitive personal data about individuals. For this reason recorded media must be kept under lock and key or securely encrypted, transcribed in a secure area or using earphones, retained within the clerk's workplace and erased securely and permanently as soon as the minutes have been approved. The clerk is responsible for maintaining an audit trail of the recording and its erasure.

11. FURTHER HELP AND ADVICE

For further advice and assistance contact

Data Protection Officer:

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Head of Heritage and Information Governance

Governance and Legal Services

Heriot-Watt University

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12 DEFINITIONS

Data Protection Officer

means the member of staff with oversight of organisational and technical measures and controls to comply with the Data Protection Act 1998.

Personal Data means data which relates to a living person who can be identified from those data or from those data and other information that that the Data Controller holds or is likely to receive

Sensitive Personal Data Sensitive personal data (as defined in Section 2 of the Data Protection Act 1998) is personal data relating to an identifiable individual's

- a) racial or ethnic origin;
- b) political opinions;
- c) religious or other beliefs;
- d) membership of a trade union;
- e) physical or mental health or condition;
- f) sexual life;
- g) proven or alleged offences, including any legal proceedings and their outcome

In addition, the University definition of High Risk Confidential Information includes the following personal data:

Any other information that would cause significant damage or distress to an individual it was disclosed without their consent, such as bank account and financial information, marks or grades

Data Controller The organisation, in this case the University, that commissions or creates personal data and determines the purposes for which it may be used.

Responsible Officers The Secretary of the University and other officers with delegated authority or duties under these procedures

13. PROCEDURES VERSION AND HISTORY

Version No	Date of Approval	Approving Authority	Brief Description of Amendment
V. 3	04.03.2014	Secretary's Board	Addition of sensitive personal data definition



Appendix A

Consent for use of images, video and sound recordings containing personal data

I give permission to Heriot-Watt University for photographs/video/sound recordings of me to be captured and used in printed and electronic media, including the internet, for teaching and research/promotional purposes.

I understand that some images or recordings may be selected for permanent preservation in the University Archive as a record of University life and may be used for research, publication, education, lectures, broadcasting, public performance, displays and exhibitions.

Signed

Print Name.....

Date.....

If the person who is the subject of the image is less than 16 years of age, his or her parent or guardian must consent on their behalf below:

Name of person who is the subject of the image:

Relationship of signatory to this person:

Signed

Print Name

Date

Name of University organiser of photography/recording:

Role:

Email address:



Appendix B

Photography/Filming is taking place here [today/on (date)]

Please note that filming/photography is taking place [at this event/in this area] for promotional and archival purposes.

If you would prefer not to be photographed please let the photographer know.

For further information contact:

[Name and contact details of event organiser/ representative at the event]

Appendix C



Press/TV Photography/Filming is taking place here today

Please note that in-house and external photographers/film crews are recording this event for journalistic, promotional and archival purposes.

If you would prefer not to be photographed please let the photographer know.

For further information contact:

[Name and contact details of event organiser/ representative at the event]