

RECOMMENDED PROTOCOL FOR THE USE OF PHOTOS OF CHILDREN

1. **Important legislation**

- 1.1 Children's Act
- 1.2 General Data Protection Regulation (GDPR)
- 1.3 Protection of Personal Information (POPI) Act

2. **Important principles and obligations from legislation and best practice**

2.1 Best interests of child paramount (Children's Act)

Section 9: In all matters concerning the care, protection and wellbeing of a child the standard that the child's best interest is of paramount importance must be applied.

2.2 Children need special protection (GDPR, Children's Act and POPI Act)

Children are identified as "vulnerable individuals" and deserving of special protection.

2.3 Every person has the right to privacy which includes a right to protection against the unlawful collection, retention, dissemination and use of personal information (Constitution – Section 14, POPI Act)

2.4 Some of the obligations under the POPI Act include:

- a) Only collect information and images that you need for a specific purpose.
- b) Ensure data is relevant, accurate and up to date.
- c) Only hold information/data as much as you need, and only for as long as you need it.
- d) Allow the subject of the information to see it upon request.

2.5 The responsible person must obtain permission from a competent person prior to the processing of personal information concerning a child by (POPI Act, Part C).

A competent person means any person who is legally competent to consent to any action or decision being taken in respect of any matter concerning a child such as a parent/guardian.

2.6 Reasonable measures must be put in place to protect the integrity and confidentiality of the personal information collected from children (POPI Act, Part C).

3. **Potential risk factors to consider when using photos/images of children**

- 3.1 A child may be targeted for harmful purposes by a person who does not have that child's best interest in mind. The risk increases when an image is shared where the child's face is clearly visible or the image is coupled with personal information such as the child's name or location.
- 3.2 Harmful purposes include the use of the image for cyber-bullying, child pornography etc.
- 3.3 Images may also be used to track children e.g. for the purpose of human trafficking or in domestic disputes.
- 3.4 Images may impact children negatively later on life e.g. when they go for job interviews as adults and a search is done on their name. Remember that artificial intelligence has the

ability to pick up images of a person across time through facial recognition without the person's name linked to that image initially.

3.5 Organisations using images of children without proper consent and protective measures may be taken to court for using photos of children in violation of data protection legislation.

4. Potential non-compliance implications for individuals and the organisation

4.1 Non-compliance with the POPI Act may lead to unnecessary financial and reputational risks; negative media publicity; loss of stakeholder confidence and trust; fines issued by the Information Regulator and civil action by a data subject.

4.2 Non-compliance with the POPI Act could also expose the responsible party to a penalty of a fine and/or imprisonment of up to 12 months. In certain cases the penalty for non-compliance could be a fine and/or imprisonment of up to 10 years (Section 107).

5. Recommended guidelines for the taking and use of photos/images of children

5.1 Do a thorough risk assessment with the above mentioned legislation, principles and risks in mind, considering both the potential consequences for the organisation and the child.

5.2 In using an image of a child, you will be expected to use your judgement as to whether the image may cause any harm, ridicule or emotional pain to the child – whether it is now or in the future, in hard copy or on-line.

5.3 It is therefore the safest to refrain from using any identifiable pictures of children as this can place them in the path of harm. Remember that you have no control over how others may use these images once posted on-line. Best practice is to refrain from using identifiable images of children as not all consequences can be foreseen.

5.4 If you do decide to use images of children, only use images that are relevant to the organisation's activities and services and within well-defined boundaries as outlined in your photography policy.

5.5 Develop a photography policy for the use of photos/images of children within your organisation and make sure that all staff members, volunteers and visitors comply with this policy. Update this policy regularly as new legislation develops and new risks are identified.

5.6 Make the organisation's policy on obtaining and publishing images of children readily available to share information on what is considered appropriate behaviour when obtaining images using a camera, mobile phone or video recorder.

5.7 Take special care when visitors are visiting the children of your organisation. Develop visitor protocols and make sure that visitors understand the photography policy of the organisation.

5.8 Only take and use pictures of children when you have written consent from a competent person such as the child's parent/guardian, clearly outlining in the consent form the purpose of taking the image, explaining how the image will be used and for how long. Stick to the purposes that you stipulated in the consent form and keep these consent forms for as long as the image is kept.

5.9 If the image is no longer going to be used, discard in a safe way.

5.10 If children are old enough and it is possible, try to get the consent of the child. Children have the right to participate and to be consulted about the use of images which may impact them. It could be recorded on a child's permission form.

- 5.11 Take the time to explain these purposes to the parent/guardian as well as child as clearly as possible to increase the person's understanding of what he/she is consenting to.
- 5.12 Remember that consent is voluntary for both adults and children. Therefore, any person may decide to withdraw their consent at anytime, even if they have provided written consent originally.
- 5.13 If you do decide to use photos, use images where individual children are not clearly identifiable such as photos taken from a distance, side or back or where only hands or feet are visible. You may also aim to cover the child's face with a positive sign or a picture/certificate or get permission from the child to use images of their art work/thank you letters instead of photos of the child.
- 5.14 There should be no identifying personal information accompanying the images such as the child's name, location or contact details. Even school clothes or banners of an organisation may give information about a child's whereabouts. Group photos reduce the risk of identifying individual children, but are not still not a complete safeguard.
- 5.15 Do not display information about children's hobbies, likes or dislikes, location etc. because these can be used as grooming tools for paedophiles or other persons.
- 5.16 Never display children involving minimal clothing e.g. when children are participating in swimming activities, sports, dance/drama or gymnastics.
- 5.17 Never use photos that portray the child in a negative light e.g. a child crying etc.
- 5.18 Be careful to adapt images for example adding elements/drawings which were not part of the original photo as this may infringe on the child's dignity. Also, take special care when using photos of children with special needs.
- 5.19 Make sure that the photographer is aware that images cannot be sold or use for other purposes as agreed in the consent form with the legal competent person. Aim to sign an agreement with the photographer to ensure that the photographer works and uses images in line with the organisation's policies.
- 5.20 Do not allow photographers to have unsupervised or individual access to children.
- 5.21 Images or video recordings of children must be kept securely. Hard copies of images should be kept in a locked drawer and electronic images should be stored in a protected folder with restricted access.
- 5.22 Make sure all images of children are stored safely by outlining in the photo policy:
 - a) How and where images will be stored.
 - b) Who will have access to these images.
- 5.23 Avoid storing images on unencrypted equipment such as memory sticks or mobile phones.
- 5.24 Remember that when a device is lost which contained children's information or images, the parent/guardian should be informed of this.
- 5.25 Train children on how they should use photos/images of themselves and other children in order to empower them with protective behaviour and to reduce the risk of harm.
- 5.26 Lastly, always use the best interest question in decision-making to ensure that the best interest of children remains paramount.

Drafted by Mariette Jacobs from Ezrah Community Training and Development NPC (www.ezrah.co.za) with input from the Drakenstein Child Protection Steering Group as an initiative to share resources in the best interest of children (**Date: 24th of October 2018**)