

**Comhairle Contae Mhuineacháin**

**Monaghan County Council**



**Photography and Video Policy**

**Adopted by Management Team at its meeting on**

**1<sup>st</sup> September 2020**

## Photography and Video Policy

### 1.0 Purpose

The purpose of this policy is to provide guidance on how to ensure that the rights, interests and privacy of individuals are respected in the collection, processing and use of images taken by Monaghan County Council.

### 2.0 Scope

This policy applies to all who work with Monaghan County Council, as employees, Elected Members, independent contractors or subcontractors on a permanent or temporary basis ('staff').

### 3.0 Photograph/Video

The use of images plays an important role in many aspects of the Council's work. Images in many formats can be used to record, document, demonstrate, promote and celebrate activities and experiences.

Monaghan County Council regularly organises events and at these events it is standard practice to take photographs or videos of the proceedings or/and individuals. These images may be used in documentation for the local press; Monaghan County Council's Website and Social media platforms; Monaghan County Council's Newsletter; Staff portal and promotional leaflets and publications.

Under GDPR and the Data Protection Act 2018 the taking and storing of photographs and the recording and/or storing of video and audio recording is considered processing<sup>1</sup> Where an individual is identifiable in an image, the data is considered personal data.<sup>2</sup>

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<sup>1</sup> In GDPR '**processing**' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. (Article 4)

<sup>2</sup> **Personal data** is defined in the GDPR as any information relating to an individual or identifiable natural person ('data subject'): an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an ID number, location data, an on-line identifier or to one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that natural person.

#### 4.0 Purpose of the images

Photographs or videos shall only be used for the purposes for which they are collected. For example, if a photograph or video is taken for use on the Staff Portal, it should not be posted on the council's website without further consent being obtained.

#### 5.0 Lawful basis - consent

Monaghan County Council must obtain the **consent**<sup>3</sup> of individuals prior to the taking or publishing of images. Consent must be freely given, specific, informed and unambiguous.

Where an individual or group of people are the focus of an image, consent shall be sought before the image is taken. The potential subjects shall be informed where and for what reason their image may be used and given the chance to opt in or out of the image. By remaining in the frame of the picture or videoing, the individuals are giving consent for the image to be used.

Where an individual is not identifiable from a photograph or video, consent is not required for the image to be used.

If a child under the age of 16 years are clearly recognisable in an image, consent from a parent or guardian must be obtained.

#### 6.0 Notice and choice

Prior to an event taking place, it shall be best practice to provide notice and choice in advance of images being taken. This can be achieved by displaying notices/signs at events or through the inclusion of a notification in printed programmes, publicity materials, invites, sign in sheets or emails giving a warning that photography or videoing may be taking place. The notice/sign shall include the purpose for which the images will be used including the opportunity to opt out of the images if desired. To ensure fairness and transparency individuals should be informed if the images will be made available to a third party, used for marketing purposes or displayed on the council's website or Social media platforms. An example of a notice/sign is set out in **Appendix 1**.

This can also be achieved **verbally** by making an announcement prior to the images being taken to allow attendees exercise their rights not to participate by opting out of the photograph or video. The announcement shall include the purpose for which the images will be used.

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<sup>3</sup> **Consent** of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.

## 7.0 Parental Consent

Children would be considered vulnerable data subjects and need particular attention when processing their personal data because they may be less aware of the risks involved. Images should **not** be taken of children under 16 years or processed unless explicit **parental consent** is obtained in a written form prior to the taking of the images. An example of a consent form to be used for this purpose is set out in **Appendix 2**.

### 7.1 School Children/Children attending Council events

Sensitivity and discretion should be shown at all times when working with children. Where there are children from a school, youth group or otherwise (for example, Comhairle na nÓg, Comhaltas, Sports Clubs) attending a council event, individual organisers must ensure that prior **written parental consent** has been obtained from the parents or school/youth group acting on behalf of the parents in line with the school's/youth group's GDPR policies prior to images being taken or processed. It is preferable to use images that depict an activity or group context, rather than a particular child. In general, children should not be identified, with the exception where they are being publicly acknowledged (for example, receiving an award) for which parental permission has been received. No images should be taken which would give rise to embarrassment or distress.

### 8.0 Photographs/Videos taken for Personal use - Household exemption

Photographs or videos taken purely for personal use are not subject to GDPR and the Data Protection Act 2018 once the individual does not intend to post or publish the images anywhere. This type of activity falls under the so-called GDPR 'household exemption'<sup>4</sup> which provides that GDPR does not apply when a person processes personal data (for example taking a photograph of someone in the course of a purely personal or household activity with no connection to a professional, business or official activity).

For example, if a member of staff takes a photograph at a council event for their own personal use, consent is not required. However, if this photograph is later supplied to the Council for Corporate use, such as the Council's website or Staff Portal, it becomes subject to GDPR and the Act and cannot be used without obtaining **consent** from the individuals in the image.

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<sup>4</sup> *This Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity. Personal or household activities could include correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities. (Recital 18)*

## 9.0 Employee Photographs

Monaghan County Council collects employees digital photograph for the purpose of identifying them as an employee, to contribute to effective customer services, to add their staff details to our Staff Portal and Website, and to protect the health, safety, dignity, well-being of individuals at work against risks arising out of or in connection with their employment.

The legal bases for the processing of employee photographs are: -

- The processing is necessary for the performance of a contract to which the employee has entered into;
- The processing is necessary for compliance with a legal obligation to which the council is subject; Health & Safety Act 2005;
- The processing is necessary for the purposes of the legitimate interests of the Council, for example office management.

In addition, the Council may also, with employee's **consent** take photographs for the purpose of creating and publishing our staff newsletter 'Monaghan Matters', Monaghan County Council's website and Social media platforms.

## 10.0 Publish and display images

Where an individual is not readily identifiable from a photograph or video, it will not be necessary to obtain consent to display or publish the image. This applies to individuals whose images are incidental detail, such as crowd scenes for large public events or ceremonial occasions and in general council scenes. Prior to taking the images, individuals in the foreground should be given the opportunity to move away if they wish.

If an image captures only one or two individuals in a setting rather than a crowd scene, consent must be obtained from the individuals prior to publishing and displaying the image.

## 11.0 External photographer

Where an external photographer is engaged by the council to take photographs/videos, as a Data Controller he/she will own the copyright of the images. This should be covered in the photographer's terms and conditions. Permission to use images owned by a photographer is by prior agreement. However, it is important that external photographers are made fully aware of the requirements of this policy in relation to Data Protection law.

While photographs or videos taken for journalistic purposes may be exempt from some parts of data protection, individuals may still have some concerns about their image appearing in the local paper or press and therefore should be provided with prior notice.

Where photographs or images are supplied by a third party, whether by an institution, individual or an agency, the provider of the images must be able to confirm that the identifiable individuals have **consented** to the distribution and subsequent use of the images. It is ultimately the council's responsibility to ensure that **consent** has been obtained before further publishing.

## **12.0 Consent obtained retrospectively**

It may be necessary to obtain consent retrospectively if images are being used for a different purpose than originally intended, in this instance, consent should be sought for further use of the images.

If the council wish to use images for which no consent was sought at the time, for example a photograph taken prior to data protection (pre- 1988), every reasonable effort must be made to gain consent. If it is impossible to trace the subject and gain consent, before re-using the image, the council should consider if the individuals were aware that their photograph was being taken and assess whether the subjects of the photograph could have reasonably expected it to be used by the council. If use of the image could cause damage or distress to the individuals in the photograph because of the way in which the image will be used, the image should not be published or re-used.

GDPR does not apply to the personal data of deceased persons. If the council wishes to re-use an old image and are certain that no-one in the image is still living, this does not fall under the provisions of GDPR and the Data Protection Act. If there is a doubt whether individuals in the image may still be living, it is the responsibility of staff to estimate the individuals age based on a time the image was taken and assume a lifespan of one hundred years.

## **13.0 Right to withdraw consent**

The taking and publishing of photographs and videos are based on **consent** and individuals must be informed that they have the right to withdraw this consent at any time. However, the withdrawal of consent does not affect the previous use of images before the consent was withdrawn. The council respects the wishes of an individual who may have given their consent for the collection and use of their image but subsequently wish to withdraw consent. In this case, all reasonable steps will be taken by the council to securely delete these photographs and videos. The council will ensure that no further use is made of the images.

## 14.0 Data Retention

Photographs and video images shall be retained for no longer than is necessary. For example, if images are on display in a public area such as a photo board, they will be removed within 28 days. All identifiable images will be retained for a period of **twelve months** from the date the images are taken in a manner that ensures appropriate security and confidentiality of the personal data, including protection against unauthorised or unlawful access to and against accidental loss, destruction or damage, using appropriate technical and organisational measures. Where it is necessary to retain the images beyond this period, images must be removed in a safe and secure manner once the purpose of the processing has ceased. (for example Corporate Plans, Annual Reports). Images may be stored for longer periods **only** insofar as the images are being processed solely for archiving purposes in the public interest.

Where images are kept for future use, relevant names, dates and other contextual information shall be stored with them as well as signed consent for their usage.

## 15.0 Security

All images shall be stored safely and securely using appropriate technical and organisational measures. For example, images should be stored on Monaghan County Council devices only. Duplicate and junk images should be deleted immediately, and all images kept must be clearly labelled.

## 16.0 Line Manager's responsibility

Line Managers are responsible for ensuring:

- The implementation of this policy;
- That all employees adhere to the guidance contained in this policy;
- That all employees who have access to personal images are fully aware of their responsibilities.

## 17.0 What are individual rights with respect to the processing of personal data?

Individuals have the following rights:

- The right to access the personal data the council holds about them;
- The right to require the council to rectify any inaccurate personal data about them without undue delay;
- The right to have the council erase any personal data it holds about them in circumstances such as where it is no longer necessary for the council to hold the personal data or, in some circumstances, if individuals have withdrawn their consent to the processing;

- The right to object to the council processing personal data about them such as processing for profiling or direct marketing;
- The right to ask the council to provide their personal data to them in a portable format, or where technically feasible, for the council to port that personal data to another provider provided it does not result in a disclosure of personal data relating to other people;
- The right to request a restriction of the processing of their personal data.

Where the processing of personal data is based on an individual's consent, to that processing, individuals have the right to withdraw that consent at any time but any processing that the council have carried out before the withdrawal of this consent remains lawful.

Individuals may exercise any of the above rights by contacting the Data Protection Officer or by clicking on the following link and making a [Data Subject Access Request](#) in writing.

## **18.0 Policy Review**

This policy may be subject to review from time to time. Any changes will be posted in a revised policy and will be effective when posted.

## **19.0 Data Protection Officer**

Monaghan County Council's Data Protection Officer can be contacted by:

Email: [Dataprotectionofficer@monaghancoco.ie](mailto:Dataprotectionofficer@monaghancoco.ie)

Telephone: (047) 30507

**Full details of the collection, processing and sharing of personal data by Monaghan County Council are outlined in the Council's [Privacy Notice](#) on the website.**

## Appendix 1



### **Photographs/Video will be taken at this event**



<insert name of event>

These images may be shared with the local press; posted on Monaghan County Council website & social media platforms; promotional leaflets and publications and/or in Monaghan County Council's Staff Newsletter/Staff Portal



**If you prefer not to have your photograph taken, please advise staff/photographer beforehand. Thank you.**



All images will be stored safely and securely using appropriate technical measures

Details of the collection, processing and sharing of images by Monaghan County Council including your right to withdraw consent are outlined in the Council's Photography and Video policy on the website or a copy is available upon request



## Appendix 2



### Photography/video consent form for children



**Event:** <insert name of event>

**Date:** <insert date>

**Location:** < insert location>

I hereby give consent for my child to appear in photographs/video taken at the above event. I acknowledge that they may be used in documentation for the local press; Monaghan County Council's Website and Social media platforms; Monaghan County Council's Newsletter, Staff portal and promotional leaflets and publications.

A blue rectangular graphic containing three camera icons (DSLR, smartphone, video camera) at the top. Below the icons, the word 'Yes' is followed by a square checkbox, and the word 'No' is followed by another square checkbox.

Name of Child: \_\_\_\_\_

Age of Child (0-15) \_\_\_\_\_

Name of Parent/Guardian: \_\_\_\_\_

Phone Number of Parent/Guardian: \_\_\_\_\_

Signature of Parent/Guardian: \_\_\_\_\_

Date: \_\_\_\_\_

I understand that this consent may be withdrawn by me at any time by contacting:

<Name> (insert details of person organising the event)

<Title>

<Section> Monaghan County Council

Tel: <insert> Email: <insert>

**All images will be stored safely and securely using appropriate technical measures**

**Details of the collection, processing and sharing of images by Monaghan County Council including your right to withdraw consent are outlined in the Council's Photography and Video policy on the website or a copy is available upon request**

