

## Disclosure of CCTV and mobile phone footage in exclusions

Following reviews in recent cases where CCTV and/or mobile phone footage has formed part of the school's case for exclusion, we have updated our advice to ensure that schools are compliant with current legislation and practices.

### Data protection

Video footage is subject to data protection where you can identify a person from the footage. To use video footage for exclusion proceedings you must identify a lawful basis for processing under Article 6 of the UK General Data Protection Regulation ("GDPR").

If the information is considered special category information, then you will need to identify both a lawful basis under Article 6 of the GDPR and a separate condition for processing under Article 9. N.B. It is unlikely that standard footage from either CCTV and/or mobile phones would be considered special category personal information, however schools should be mindful of the audio contained in the footage and the metadata that is attached to the video file.

### Lawful basis for processing

Consent is the first basis for lawful processing but where that cannot be obtained, schools must consider the other bases of lawful processing information and, if appropriate, the lawful bases for processing special category information.

In exclusions where consent is not given then it is likely that the lawful bases for processing are:

#### 1. Personal information

Public task - Article 6.1(e) GDPR - the processing is necessary for you to perform a task in the public interest or for your official functions, and the task or function has a clear basis in law; and/or

#### 2. Special category personal information

Substantial public interest - Article 9.2(g) GDPR - In order to rely on the substantial public interest basis to process special category personal information you must also ensure that you are able to satisfy the conditions set out in Schedule 1 Part 2 of the Data Protection Act 2018.

You have an appropriate policy document (2) You can satisfy one of the conditions set out in paragraphs 6-28 of Schedule 1 of the Data Protection Act 2018 (3) for exclusions the applicable condition will likely be "statutory etc and government purposes" condition at paragraph 6

In all cases where you are processing information you should carry out the following actions:

1. Document your decision that the processing is necessary for you to perform a task in the public interest or exercise your official authority;
2. Identify the relevant task or authority and its basis in common law or statute; and
3. Include basic information about your purposes and lawful basis in your privacy notice.

### Proportionality

Schools must consider whether processing such information is necessary and proportionate. 'Necessary' means that the processing must be a targeted and proportionate way of achieving your purpose. You do not have a lawful basis for processing if there is another reasonable and less intrusive way to achieve the same result. For example, a comprehensive witness statement may be a suitable and less intrusive alternative to video footage.

Please note that under no circumstances should a school share unredacted footage/images of other individuals for the purpose of exclusion proceedings. All identifiable individuals should be redacted, save for the subject of the exclusion process. If the school believes that it is necessary to include other individuals without redaction then they should seek legal advice before doing so.

### Other considerations

Where pupils provide footage to school then schools should be mindful of any risk to that pupil. If there is a risk of harm, then the footage should not be disclosed.

To ensure fair process schools should not rely on footage that has not been disclosed to all parties involved in the appeal. Failure to disclose video footage may result in a flawed decision and a potential challenge.

If a school is obtaining footage from social media, particularly if it requires either repeated visits to a page and/or creation of a profile to obtain the footage then schools should be aware of the protections contained in the Regulation of Investigatory Powers Act 2000 ("RIPA") and page 27 of the Council's RIPA policy which addresses internet surveillance. In those circumstances it is recommended that the schools liaise with the RIPA Legal Officer before attempting to obtain any footage.

Legal officer contact details:

- Name: Hatoon Zeb
- Email: [ZebH@ealing.gov.uk](mailto:ZebH@ealing.gov.uk)
- Telephone: 020 8825 8461

In some cases, there may be a concurrent police investigation alongside the exclusion proceedings and the Police may request that evidence gathered during the appeal process be disclosed to them. In such circumstances the school may have a power to disclose such evidence by virtue of Paragraph 10 of Schedule 1 of the Data Protection Act 2018 (legislation.gov.uk) and/or Paragraph 2 of Schedule 2 Data Protection Act 2018.



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