

Photographic Images and Privacy – Information Sheet

Introduction

State Government agencies often want to use images of people for promotional purposes. This can include the use of photographs or videos of staff or members of the public in publications such as annual reports, brochures and information sheets.

In utilising photographic images or video footage agencies must ensure that they are not breaching their obligations under the Government's Information Privacy Principles.

Agencies should be aware that individuals are often sensitive about how and in what context their image is used. Agencies should also be mindful of cultural issues that may impact on the appropriateness of using images of individuals in particular contexts.

Agencies should show respect for an individual's right to exercise control over the use and disclosure of their image.

Photographs as Personal Information

The Information Privacy Principles (IPPs)¹ define personal information as 'information or an opinion, whether true or not, relating to a natural person or the affairs of a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.'

A photograph or video image therefore would constitute personal information for the purposes of the IPPs where a person's identity is clear or could reasonably be established from that image.

Identity

To determine whether a person's identity is apparent or can be reasonably ascertained from the image, you could consider whether:

- » The image is blurred or taken at significant distance.
- » The person is the primary subject or incidental to the photograph or video footage.

¹ Information Privacy Principles, forming Premier and Cabinet Circular 12 reissued 1992.

- » Sufficient time has passed since the photograph or video footage was taken which has diminished the potential that the person's identity could be ascertained.
- » The photograph or video footage was taken in a public place featuring a large number of people.
- » The photograph or video footage is captioned or subtitled with names or other facts that may lead to identification.

Consent

The Privacy Committee recommends an agency obtain informed consent for any images of individuals taken for promotional purposes. Agencies should utilise consent forms that contain explicit detail on the purposes for which the photograph or video footage will be used.

In some circumstances it can be difficult to gain informed consent. In cases where it is intended to take photographs or video footage at a large event, agencies may consider giving notice to people attending the function that photographs or video footage will be taken and used for specified purposes. Giving notice demonstrates respect for individual privacy and allows an attendee to make arrangements if they are sensitive to the use of their image.

Specific care should be taken in the publication of photographs or video images of children. It is recommended that the consent of the child's parent or legal guardian be sought in relation to photographs or video footage of persons under the age of eighteen.

Purpose and Disclosure

It is also important to consider the purpose for which the photograph or video was taken and the extent to which the subject of the photograph or video was informed of its intended use.

In the case of archived photographs or video footage it can be difficult to determine to what extent the subject may have been informed and therefore difficult to determine whether consent was given.

If you intend using a person's image for a different purpose other than they were advised, you need to seek their consent, unless they would reasonably expect you to use their image for that other purpose. For example, if a photograph was taken for the purposes of previous annual reports or agency publications then it may be reasonable to determine that the subject understood that the photograph was to be used for promotional purposes with a similar audience or distribution.

Agencies should also be aware that explanation of purpose must be specific and recognise the differences in publishing images across different media. The online publication of photographs, including agency websites, poses different risks to privacy than hard copy publications. Photographs and video placed online are often more easily replicated or manipulated than those published in hard copy form or utilised in a specific presentation. They may also be subject to much wider distribution.

Agencies should also take care that in disclosing photographic images or video footage to external organisations they are not breaching personal privacy. While some organisations (e.g. media) are exempt from the provisions of the Commonwealth's *Privacy Act 1988*, agencies are still subject to the disclosure provisions of the IPPs.

Consent should always be sought when considering the disclosure of photographs or video footage of individuals to external organisations.

Opt-out

Where possible, an individual who is incidental to the photograph or video footage, that is, they form part of a crowd or have given implied consent through attendance at a public event, should have some options available to seek removal of their image from the publication. This allows the individual some measure of control over how their personal information is used. If using images for promotion on a website, agencies should also consider whether a person's image can be easily removed from the website on request if necessary.

Acknowledgements:

The Privacy Committee of South Australia acknowledges the informative work undertaken by the Office of the Federal Privacy Commissioner and the Office of the Victorian Privacy Commissioner in the area of images and privacy. This information sheet builds on the guidance material produced by those offices.

Need further assistance?

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