

<b>D</b>	<b>DATA PROTECTION AND OTHER INFORMATION ISSUES</b>
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Appendix D1: Authority leaflet “How we use information about you”

Appendix D2: Sample school Data Protection policy

Appendix D3: Photographing or Filming children on school premises: Information for Parents.

Appendix D4: Freedom of Information Request form

Appendix D5: Policy on pupil use of mobile phones on school premises

Appendix D6: Records Management Guidelines

## D. DATA PROTECTION AND OTHER INFORMATION ISSUES

Source	Description	Reference
SEM	Data Protection Act 1998	SEM 3.3.13
CNES Intranet	Data Protection	A-Z/Data Protection
SEM	Retention of records	SEM 3.3.5

### D.1 DATA PROTECTION (GENERAL)

#### General

- D.1.1 The Data Protection Act 1998 extended data protection controls to cover any information stored about data subjects including pupils and parents in a “relevant filing system” (eg on paper documents) as well as computerised personal data. The new Act also covers computerised documents held purely for the processes of word processing which were exempt under the previous Act. It attaches conditions to processing of personal data and strengthens a person’s rights to be told about processing and to obtain copies of the personal data held about them.
- D.1.2 Full details of the Data Protection Principles, the Comhairle’s overall Data Protection registration (which includes a specific Education authority registration) and links to the Information Commissioner’s website ([www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)) are included in the Comhairle’s Intranet site at A-Z/ Data Protection.

#### School review of data holdings and uses

- D.1.3 Schools should note that it is an offence to hold personal data (ie data which can identify somebody rather than just “sensitive” data) either on manual filing systems or on computer without being covered by a Data Protection registration. Schools should regularly review the data which they hold, the purpose(s) for which they use it, where they obtain it from and to whom they give it. If any of these categories are not covered by the department’s registration (Education Administration) or another CNES registered purpose they should contact the Principal Officer (Educational Resources) with full details as a matter of urgency.

#### Accuracy and Security of data

- D.1.4 Schools are responsible for ensuring the accuracy and security of the data which they hold. Security includes both the physical security (access to computers, correct disposal of printouts etc) and making sure that the information is not lost eg through making regular backups as required.
- D.1.5 Schools should note that it is not unknown for some individuals/agencies to attempt to obtain information about pupils (or the whereabouts of a parent by locating the school where the child is being taught) by phoning a school and purporting to be from a known agency eg another Comhairle department, health board employee, another school etc. School staff should not confirm the presence of a pupil at their school or give information about that pupil unless the identity of the person making the request, and their right to the information, has been verified.

#### “Sensitive” data

- D.1.6 For sensitive data, including information about religion, medical issues, and other items set out in the Data Protection principles, specific permission must be sought from the data subject or their parents. Parents of children enrolling for the first time in Western Isles schools will be asked for this permission as part of the new standard enrolment form. The Education

Department leaflet “How we use information about you” (see Appendix D.1) is available to all schools for issue to parents and schools may wish to consider inserting appropriate text from this leaflet in the School Information handbook which is issued annually to parents (see Section M.)

Source	Description	Reference
SEM	Access to information	SEM 3.3. 7 etc

## D.2 REQUESTS FOR ACCESS TO PUPIL DATA

- D.2.1 Data subjects (individuals about whom data is held) have a right to access their data, including (in most circumstances) all manual records, word processing files and emails. For school pupils in Scotland the, Education (Pupil Records) (Scotland) Regulations 2003, which came into force on 5 January 2004, also restore the right of parents to have access to their child’s educational records. (Exceptions to this right include, for example, situations where disclosure would be likely to cause significant harm or distress to the pupil or any other person.)
- D.2.2 In meeting requests for subject access, the education authority must have regard to the general principles of confidentiality and to the Data Protection Principles. In light of this, schools should discuss any requests to access personal data, as a matter of urgency, with their Business Support Officer who will consult with the Educational Resources Service as necessary.
- D.2.3 Schools will wish to note that once a subject access request is submitted, no amendment may be made to the data held about a pupil or parent. Schools will wish to keep all manual and computer files under close review to ensure that the files contain no material which the school would not be happy to disclose to parents or pupils if required. (Instances where the files contain information relating to records of needs will generally be exempt from subject access but schools should discuss any issues on such records with their Business Support Officer.)
- D.2.4 **In light of the above, it is strongly recommended that schools regularly review their information holdings and dispose (in the appropriate manner) of any information for which there is not a core requirement. Appendix D.5 gives guidance on the length of time for which types of records must be held.**

## D.3 SCHOOL DATA PROTECTION POLICIES

- D.3.1 A sample school Data Protection policy is attached at Appendix D2. Schools should adapt the policy as necessary for their own use in consultation with their Business Support Officer.

## D.4 FILMING/PHOTOGRAPHY ON SCHOOL PREMISES

### General

- D.4.1 Pupils are sometimes filmed or photographed on school premises for a variety of reasons including recording of curricular activities, events such as school concerts or plays, or for school publicity material eg school websites. The photographs or film may or may not be accompanied by details about the pupil such as name, age, year group or general home location.

D.4.2 Where filming of pupils under Minimum School Leaving Age is taking place through a media company, that company must already obtain the permission of the pupil's parent or guardian under Performance Licensing legislation. Having regard to Data Protection, Child Protection principles and the basic principle of parental consent to activities relating to their children, it has been agreed that any official photographing or filming of children where the images might be for public consumption (ie media, website or official school videos) should only take place in school premises or grounds with the prior written consent of parents.

#### **Parental choice**

D.4.3 This policy relates to official school photos or filming or official requests made to the school. It is recognised that there are certain situations which might in practice be outwith the school's control (eg a parent inadvertently capturing the image of another child at a school sports day). Where schools have specific concerns in such circumstances, they should discuss these with their Business Support Officer. To ensure that schools have the optimum flexibility to allow filming which parents would support, schools should seek permission in advance of any activities taking place by asking the parent(s) or guardian to complete the form at Appendix D.3 when the pupil is enrolled.

D.4.4 The form gives parents/guardians the options of:

- (i) agreeing to photographs of their child appearing in any publication or form (ie on the school internet site) approved by the Head Teacher;
- (ii) not agreeing to photographs or film of their child appearing in any form;
- (iii) agreeing to photographs or film of their child being used only in certain ways (which they are invited to specify); and
- (iv) advising the school whether they are happy for school-approved information about their child to accompany any photographs or film or whether they wish to restrict it.

D.4.5 Once completed, the parental consent should be retained in the pupil's file **and will remain in force (transferring between schools as appropriate) until such time as it is revoked.**

#### **Delay in Receiving Completed Form**

D.4.6 The school should take the view that the parent or guardian's permission has **not** been given until the completed form is received.

#### **Action Where a Pupil Disagrees with His or Her Parent's or Guardian's View**

D.4.7 Schools will normally accept a parent or guardian's decision on the use of photographs, films or information about a particular pupil. If a pupil disagrees with, and wishes to vary their parent or guardian's decision, the school should contact their Business Support Officer to discuss whether the pupil is of sufficient maturity to understand the nature and impact of the decision which they wish to make.

## **D. 5 FREEDOM OF INFORMATION ACT**

D.5.1 The Freedom of Information Act gives wider access to data (including data which is not "personal" data) from January 2005. Corporate guidance on this legislation is being developed and will be issued to schools when available. Further information on the new Act can also be obtained at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk).

D.5.2 Where a member of staff at schools level receives a request for information under the Freedom of Information Act, they should consider in the first instance whether the information is already in the public arena (eg on the Education Intranet site or in the school's Information

Handbook.) If the information is already available to the public it should simply be provided to the member of the public on request.

D.5.3 Where a Freedom of Information request is received in respect of information which would not normally be made available to the public, the following action should be taken:

- (i) telephone request or person attending the school: send or give a copy of the Freedom of Information Access Request form (as at Appendix D.4) to the person making the request and advise him or her to submit the completed form to the Comhairle. Where possible, the Educational Resources Service (Principal Officer) should be notified that the form has been issued and a broad indication given of the area with which the request was concerned;
- (ii) email request: forward to the Principal Officer (Educational Resources Service) immediately on receipt;
- (iii) written request: date stamp the request and fax immediately to the Principal Officer (Educational Resources Service.)

D.5.4 From time to time, schools may be asked for information in connection with an FOI request for information which has been received elsewhere in the Department or in the Comhairle. These requests have a legal 20 day time limit and should be treated as high priority by all school staff.

## **D.6 POLICY ON PUPIL USE OF MOBILE PHONES ON SCHOOL PREMISES**

D.6.1 The Comhairle's policy on pupil use of mobile phones on school premises is set out at Appendix D.5. It is suggested that all schools should include this policy in the School Information Handbooks which are issued annually to parents.

## **COMHAIRLE NAN EILEAN SIAR**

### **EDUCATION DEPARTMENT**

## **HOW WE USE INFORMATION ABOUT YOU**

### **Why do we hold information about you or your child ?**

Like other education authorities, Comhairle nan Eilean Siar's Education Department holds information about your child (and some information about you) for educational purposes and for education administration. This information may be in computer or manual records and the authority has overall responsibility for ensuring that the information is used and maintained securely in accordance with the requirements and principles of the Data Protection Act 1988 and other relevant legislation.

### **Is the Comhairle registered as required by the Data Protection Act ?**

Comhairle nan Eilean Siar is registered for a number of purposes, including Education Administration, under the Data Protection Act. Full information about the Comhairle's Data Protection Registration and general information about Data Protection can be obtained from the Information Commissioner [Information Line: 01625-545745, Website: [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)].

### **What sort of information might we hold about you or your child ?**

The data which we hold about you and your child includes information to enable us to identify and contact you or your child (such as addresses, contact telephone numbers, your child's date of birth); about your child's progress in school (examination and assessment results and teachers' reports) and to help you exercise your rights (such as your right to vote and stand in school board elections.) We may also hold some information about your child which the Data Protection Act classifies as "sensitive" such as any information which you may have given us about a medical condition or an allergy to enable us to make suitable educational or dietary provision.

Full details of the sorts of information we may hold are contained in the education authority's registered entry.

### **Is all of this information held for every child ?**

No. In line with the Data Protection principles, we only hold the information on an individual which is necessary to allow us to carry out our duties as an education authority.

### **How is the information kept up to date ?**

The information we hold will be as accurate as possible. If you inform the school of a change of circumstances with regard to you or your child, the records will be updated as

soon as possible. You will also receive a copy of your child's computer records once a year to enable you to confirm their accuracy.

### **How long will the school hold data about me or my child ?**

Information about individuals will not be held any longer than necessary. If your child transfers to another school their records will be transferred to the new school as well. When your child leaves school, we will keep the records only for as long as required by law.

### **Can I see these records ?**

The Data Protection Act gives data subjects a right to see their own personal data in most circumstances. You will receive a copy of your child's computer records annually to check their accuracy. If you would like to see records at any other time, you should approach the school to make your request.

### **Will this cost me anything ?**

No.

### **Who else will have access to my child's records ?**

The school or the authority will, in general, only disclose data about individuals with their consent. However, there are circumstances in which the school or the education authority may need to disclose data without explicit consent for that occasion including:

- Pupil information disclosed to authorised recipients related to education and administration necessary for the school or the education authorities to perform its statutory duties and obligations.
- Pupil information disclosed to authorised recipients in respect of a pupil's health, safety and welfare.
- Pupil data disclosed to parents in respect of their child's progress, achievements, attendance etc.

Unavoidable disclosures, for example to an engineer during computer system maintenance.

Only authorised staff are allowed to make external disclosures of personal data. Data used within the school by administrative staff and teachers will only be made available where the person requesting the information is a professional working within the school with a legitimate "need to know" the information to carry out their work. Schools also take appropriate measures to ensure the physical security of personal data either in computer form or in manual records.

### **Where can I go for more information ?**

Any queries or concerns about data protection in general should be addressed to the Information Commissioner (see above). If you would like to discuss information held by your child's school, you should discuss it with the school in the first instance.

### **SAMPLE SCHOOL DATA PROTECTION POLICY**

The Education Authority has overall responsibility for ensuring that records are maintained, including security and access arrangements, in accordance with Comhairle nan Eilean Siar policy and statutory provisions.

[ ] School intends to comply fully with the requirements and principles of the Data Protection Act 1998. All staff involved in the collection, processing and disclosure of personal data are aware of their duties and responsibilities within the Act.

#### **Registered Purposes**

The Data Protection Registration entry for Comhairle nan Eilean Siar's education activities is included in the Comhairle's overall Data Protection registration which can be viewed at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk). Information held for these purposes will not be used for any other purpose without the data subject's consent.

#### **Fair Obtaining and Processing**

[ ] School undertakes to obtain and process data fairly and lawfully by informing data subjects of the reason for data collection and the purpose for which the data is held, the likely recipients of the data and the data subjects' rights of access. In this context:

- "processing" means obtaining, recording or holding the information or data or carrying out any set of operations on the information or data.
- "data subject" means an individual who is the subject of personal data or the person to whom the information relates.
- "personal data" means data, which relates to a living individual who can be identified. Addresses and telephone numbers are particularly vulnerable to abuse, as can names and photographs, if published in the press, media and Internet.
- "parent" has the meaning given in the Education Scotland Act 1980 and includes any person having parental responsibility or care of a child.

#### **Data Integrity**

The school undertakes to ensure data integrity by the following methods:

- **Data Accuracy:** Data held will be as accurate as is reasonably possible. If a data subject informs the school of a change of circumstances the computer record will be updated as soon as is practicable. When a data subject challenges the accuracy of their data the school will immediately review the record and make any necessary changes.
- **Data Adequacy and Relevance:** Data held about people will be adequate, relevant and not excessive in relation to the purpose for which the data is held. In order to ensure compliance with this principle, the school will check records regularly for missing, irrelevant or seemingly excessive information and may contact subjects to verify certain items of data.
- **Length of Time:** Data held about individuals will not be kept longer than necessary for the purpose registered. It is the duty of the Head Teacher to ensure that obsolete data is properly erased.

## **Subject Access**

The Data Protection Act extends to all data subjects a right to their own personal data. To ensure that people receive only information about themselves, a formal system of requests is in place. Where a request for subject access is received from a pupil, the school's policy is that:

- Requests from pupils will be processed as any subject access request and a copy will be given directly to the pupil, unless it is clear that they do not understand the nature of the request.
- Requests from pupils who do not appear to understand the nature of the request will be referred to their parents or carers.
- Requests from parents in respect of their own child will be processed as requests made on behalf of the data subject (the child).

## **Processing Subject Access Requests**

Formal requests for access are free but must be made in writing. However, you will generally be able to see your child's records, without a formal request, at the school after making the appropriate arrangements for an appointment.

## **Authorised Disclosures**

The school will, in general, only disclose data about individuals with their consent. However, there are circumstances in which the school or the education authority may need to disclose data without explicit consent for that occasion. These could include:

- Pupil data disclosed to authorised recipients related to education and administration necessary for the school or the education authority to perform its statutory duties and obligations.
- Pupil data disclosed to authorised recipients in respect of a pupil's health, safety and welfare.
- Pupil data disclosed to parents in respect of their child's progress, achievements, attendance, attitude or general demeanour within or in the vicinity of the school.
- Staff data disclosed to relevant authorities eg payroll or administrative information
- Unavoidable disclosures, for example to an engineer during computer maintenance.

Only authorised staff are allowed to make external disclosures of personal data. Data used within the school by administrative staff and teachers will only be made available where the person requesting the information is a professional working within the school with a legitimate "need to know" the information to carry out their work. The school will not disclose anything on pupils' records which would be likely to cause harm to their physical or mental well being or to that of anyone else.

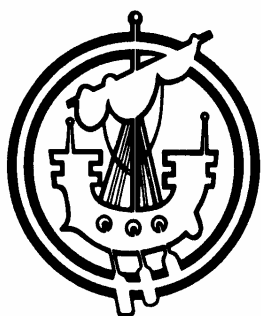
## **Data and Computer Security**

[ ] School undertakes to ensure the security of personal data through appropriate building security measures, backup procedures, security software for computer systems and ensuring that only authorised people are allowed to access data.

Any queries or concerns about the security of data in the school should, in the first instance, be addressed to the Head Teacher.

Further details on any aspects of this policy and its implementation can be obtained from [ .....]





## **COMHAIRLE NAN** **EILEAN SIAR**

Department of Education

### **PHOTOGRAPHING OR FILMING PUPILS ON SCHOOL PREMISES**

## **Information for Parents**

### **Procedures**

Pupils may be filmed or photographed on school premises for a variety of reasons including recording of curricular activities, events such as school concerts or plays, or for school publicity material eg school websites. The photographs or film may or may not be accompanied by details about the pupil such as name, age, year group or general home location.

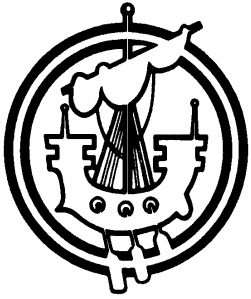
Where filming of pupils under Minimum School Leaving Age is taking place through a media company, that company must already obtain the permission of the pupil's parent or guardian under Performance Licensing legislation. Having regard to Data Protection, Child Protection principles and the basic principle of parental consent to activities relating to their children, it has now been agreed that any official photographing or filming of children where the images might be for public consumption (ie media, website or official school videos) should only take place in school premises or grounds with the prior written consent of parents.

This policy relates to official school photos or filming or official requests made to the school. You will recognise that there are certain situations which might in practice be outwith the school's control (eg another parent inadvertently capturing an image of your child at a school sports day.) If you have specific concerns about this, you should discuss these with your child's school.

To ensure that your child's school has the optimum flexibility to allow filming which you would support, we are seeking your views on such activities in advance of their taking place. You have the options of:

- (i) agreeing to photographs of your child appearing in any publication or form (ie on the school internet site) approved by the Head Teacher;
- (i) not agreeing to photographs or film of your child appearing in any form;
- (ii) agreeing to photographs or film of your child being used only in certain ways (which you can specify)
- (iii) advising the school whether you are happy for school-approved information about your child to accompany any photographs or film - or whether you wish to restrict it.

Once completed, your preferences will be retained in your child's school file and will remain in force (transferring between schools as appropriate) until you revoke it. If you wish to change your mind at any time, complete a new form, indicating your revised preference.



# COMHAIRLE NAN EILEAN SIAR

Department of Education

## PHOTOGRAPHING OR FILMING PUPILS ON SCHOOL PREMISES

### Indication of Parent/Guardian's Preference

School	
Pupil Name	
Date of Birth	
Address	

Parent or Guardian's Declaration of Preference	(Please insert tick or information in this column as appropriate)
I agree to photographs or film of my child appearing in any publication or form approved by the Head Teacher including the school website (if applicable)	
I agree to photographs or film of my child appearing only in the following publications or circumstances (give details)	
I do not agree to photographs or film of my child appearing in any circumstances	
I agree to the following information being associated with my child's photograph or image at the discretion of the Head Teacher (please specify eg name, age, class, home location, prizes won etc) or say NONE as appropriate	

Signed	
Name (Block Capitals)	
Relationship to Child	
Date	

**COMHAIRLE NAN EILEAN SIAR**

This form is intended for use when requesting information under the Freedom of Information (Scotland) Act 2002.

**INFORMATION REQUEST FORM**

Name	
Address	
Telephone	
Email	
Details of information Requested; (Please provide sufficient detail to enable the Comhairle to identify the information you want).	
Please specify the format you wish the information to be made available in i.e. hard copy/ floppy disc/other (please specify)	
Signature of Applicant	
Date	

Data Protection Act; The personal details provided by you in this form constitute personal data in terms of the Data Protection Act 1998 ("the Act"). Your personal data will be held securely by Comhairle nan Eilean Siar and used only for the purposes of processing your request for information. In some circumstances and in order to comply with your request for information your personal data and the terms of your request may be disclosed to other persons or organisations. Further details on your rights under the Act can be obtained from the Director of Corporate Services, Comhairle nan Eilean Siar, Sandwick Road, Stornoway, Isle of Lewis, tel. 01851 703773.

**COMHAIRLE NAN EILEAN SIAR****DEPARTMENT OF EDUCATION****POLICY ON THE USE OF MOBILE PHONES BY PUPILS IN WESTERN ISLES SCHOOLS**

1. Schools should generally discourage parents and pupils from bringing mobile phones or other valuable items to schools on the grounds that they may get lost or stolen. Where a phone or other valuable item is brought to school, parents should be advised (via the School Information Handbook) that it would be advisable, where possible, to mark the items in some way to aid future identification if lost and subsequently found.
2. Where a pupil does bring a mobile phone to school, the phone must remain switched off during the school day and may not be used on school premises, grounds or during off-site school curricular activities (such as swimming or sports activities). The only exceptions to this are on school trips, where schools have the discretion to allow pupils to carry and use phones if they wish (eg during planned solo activities), in emergencies or with the express approval of a member of school staff. Head Teachers may, at their discretion, allow any member of staff to approve such requests or may nominate a specific person to consider such requests.
3. Where a school pupil is found by a member of staff to be using a mobile phone as above, for any purpose, the phone will be confiscated from the pupil. It will generally only be returned to the parent. Schools may however, at their discretion, return the phone directly to the pupil on a first breach (where they are satisfied that the pupil may not have understood the school policy) or in a situation where there is genuine concern that the pupil requires the phone directly after the school day on security, health and safety or similar grounds. Schools may also, at their discretion, allow the phone to be returned to the pupil, on receipt of a signed authorisation from the parent, where travel or other issues make it difficult for the parent to attend the school to receive the phone.
4. Schools will incorporate this policy in their school's behaviour policy or school rules and will treat breaches as they would treat any other breach of school rules.
5. Schools will include a statement of this policy in the School Information Handbook which is issued annually to parents.

**RECORDS MANAGEMENT GUIDELINES**

(Under review – new guidelines expected in 10/04)