

Guidance

Use of Photographs for Non-CJS Purposes

FSR-G-204

Consultation Draft

This is a consultation draft and therefore should not be regarded or used as a standard. This draft is issued to allow comments from interested parties; all comments will be given consideration prior to publication. Comments should be sent to FSRConsultation4@homeoffice.gsi.gov.uk and should be submitted by 28 February 2014. This mailbox is not for general correspondence and is not routinely monitored so no acknowledgement will normally be sent.

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1.1 PREAMBLE

- 1.1.1 The Home Office Policy Advisory Board for Forensic Pathology¹ issued guidance to Home Office registered forensic pathologists on a number of subjects. In 1995 guidance was issued on the use of photographs.
- 1.1.2 In recent years it has become clear that the use of photographs obtained during the investigation of crime, particularly of injured or deceased persons, is of concern to the wider forensic science community.
- 1.1.3 A decision was therefore made to update the 1995 guidance and extend it to cover forensic science in addition to forensic pathology.
- 1.1.4 This document sets out the updated guidance. It is stressed that it is guidance to assist practitioners – it does not override legal or regulatory obligations.
- 1.1.5 It is stressed that this document sets out guidance for forensic practitioners. It provides no guidance to the police, or other law enforcement or prosecution agencies, as very different considerations apply to these bodies.

2. INTRODUCTION

- 2.1.1 During the course of an investigation, post mortem examination or a visit to the scene of an incident a practitioner may take photographs. Later in the investigation they may receive other materials, such as copies of photographs taken by the police. These materials may be archived for future reference; for example, to assist other specialists involved in the investigation, or pending the outcome of criminal proceedings or a coroner's inquest. In addition, in some circumstances photographs may be retained because of scientific interest in the incident.
- 2.1.2 As medical professionals, forensic pathologists have long been aware of the need to treat photographs and other materials obtained during the course of their work with care and respect. Forensic pathologists are especially aware of the need to treat such material with sensitivity and circumspection in

¹ The responsibilities of the Board have been transferred to the Pathology Delivery Board and the Forensic Science Regulator.

circumstances where its use is liable to cause offence or distress to members of the public.

2.1.3 Whilst other forensic practitioners may not, traditionally, have been as focussed on the issues surrounding the use of photographs this is changing.

3. SCOPE

3.1.1 Photographs are routinely used in the investigation and prosecution of crime. Such use is governed by the rules related to evidence.

3.1.2 Photographs created for use within the Criminal Justice System (CJS) may then be used for other purposes – for example in presentations, databases, publications and training materials. This guidance covers this type of use.

3.1.3 It must be stressed that this document is drafted to discuss issues within the CJS and the Coronial Justice System. No attempt has been made to consider the issues that could be raised in other systems such as the Family Courts.

4. MODIFICATION

4.1.1 This is the first issue of this document.

5. BASIC PRINCIPLES

5.1.1 The use of photographs can be subject to a number of different types of restriction. It is important that practitioners are aware of the restrictions and the possible implications on their decision with regard to use of the photograph.

5.2 Legal Obligations

5.2.1 Before making a decision to use a photograph the practitioner must be certain that such use will not violate any legal obligation. These include, but are not limited to, the following.

- a. Any statutory restrictions on the use of the photographs.
- b. Any restriction on the use of the photograph imposed by the court or agreed by parties to the case.
- c. The restriction on the use of material which is “sub-judice” or which may interfere with an investigation or prosecution.

- d. The confidentiality requirements of the Coroners (Investigations) Regulations 2013.
- e. The provisions of the Data Protection Act 2000.
- f. Any obligation within the contract under which they are instructed.

5.2.2 The practitioner must hold the copyright in the photograph or have the consent (preferably in writing) of the copyright holder.

5.2.3 Where the practitioner is acting on behalf of a public authority they must be certain that they do not act in violation of the provisions of the Human Rights Act 1998. In this regard they may do so by interfering with the following rights established by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- a. The right to a fair trial (Art. 6).
- b. The right to respect for private and family life (Art. 8).

5.3 **The Obligation of Confidentiality**

5.3.1 Pathologists should always be aware of their obligation as health professionals to safeguard confidentiality with regard to personal information. It is well established that medical confidentiality does not cease at death and therefore that information about deceased persons is subject to the same principles concerning its use and disclosure as if the individuals were still alive.

5.3.2 The obligation of confidentiality will apply to all medical practitioners.

5.3.3 Medical practitioners must adhere to the rules applied by, relevant, regulatory bodies including the General Medical Council and General Dental Council.

6. **IDENTIFIABLE PHOTOGRAPHS**

6.1 **Identifiable Photographs**

6.1.1 In this document a distinction is drawn between “identifiable” photographs and “non-identifiable” photographs. In this regard “identifiable” photographs are those where:

- a. An individual can be identified in the photograph – whether directly or as a result of material in the photograph.

- b. A specific private address can be identified in the photograph – whether directly or as a result of material in the photograph.

6.1.2 Photographs may be identifiable in relation to more than one person.

6.1.3 Photographs which would be identifiable can be made non-identifiable by appropriate cropping or obscuring of features within the photograph.

6.1.4 Photographs which would be non-identifiable can be made identifiable in a number of ways. These include, but are not limited to, the following.

- a. The accumulation of information from a series of photographs.
- b. Information provided with the photographs.
- c. The content of a presentation or article which utilises the photographs.

6.1.5 It is therefore important that the practitioner considers whether the photographs are identifiable in the context of all photographs and information that will be used.

6.2 Sensitive Identifiable Photographs

6.2.1 In this document the term sensitive identifiable photograph shall be used to describe identifiable photographs (as described above) that are such that the content requires more careful handling.

6.2.2 In relation to photographs of persons the term sensitive would apply, but not be limited to, the following.

- a. Photographs of a deceased person.
- b. Photographs of persons under 18 years old.
- c. Photographs of persons in a state of undress.
- d. Photographs that could tend to identify victims of sexual offences.

6.2.3 In relation to photographs of locations the term sensitive would apply, but not be limited to, the following.

- a. Photographs that identify the location of offences and thus draw public attention which would not otherwise be drawn.
- b. Photographs that tend to identify the location of sexual offences or offences involving children when this information is not in the public domain.

6.2.4 Photographs which would be sensitive can be made non-sensitive by appropriate cropping or obscuring of features within the photograph.

7. GUIDANCE ON USE

7.1 Use Within the Criminal Justice or Coronial Justice Systems

7.1.1 The use of identifiable and non-identifiable photographs of persons and locations in reports, statements and evidence within the criminal or coronial justice systems is clearly acceptable.

7.1.2 Similarly, the use of sensitive identifiable photographs is acceptable. This is true even where the photographs are explicit or, perhaps, even shocking.

7.1.3 When deciding to use identifiable (and particularly sensitive identifiable) photographs practitioners should consider whether it is necessary and appropriate. This may be a particular concern in coroner's courts where the evidence may be disclosed to the family.

7.2 Databases

7.2.1 The use of identifiable and non-identifiable photographs of locations is acceptable in databases restricted to CJS agencies. All persons with access must have sufficient security clearance (as provided by HM Government or the police) and be aware of the restriction on use of the information held in the database. The required level of clearance will be determined by the body controlling the database.

7.2.2 The use of identifiable and non-identifiable photographs of persons is acceptable in databases restricted to CJS agencies. Ideally appropriate consent should be obtained. All persons with access must have sufficient security clearance and be aware of the restriction on use of the information held in the database.

7.2.3 The use of sensitive identifiable photographs of persons or locations should, normally, only be on the basis of appropriate consent. Where used the database must be sufficiently secure, access restricted to those who need access, security clearance enforced and all users made aware of the restrictions on use of the information.

7.3 The Use of Materials for “Closed” Teaching Purposes

7.3.1 Photographs retained following post mortem examination or created during an investigation may, of course, be used by forensic practitioners for professional teaching purposes; for instance, when presenting lectures to clinicians or forensic practitioners. There may also be occasions when it is appropriate to utilise such materials in presentations to personnel who are not forensic practitioners but who need to know about the work of forensic practitioners; for example, police officers.

7.3.2 It is important to ensure that the photographic or other material used for teaching purposes is, as far as practical, made non-identifiable. This might be done by blanking out the deceased’s face, providing this does not destroy the purpose for which the photograph is being shown; e.g. where the cause of death was a head injury. In such circumstances, the practitioner should take special care to preserve the dignity of the individual.

7.3.3 The use of sensitive identifiable photographs, whilst acceptable, must be the subject of careful consideration to ensure it is appropriate. The nature of the sensitive material must be judged and the more sensitive the material the less likely it would be acceptable to use it.

7.3.4 In all cases those present should be restricted to those with a direct professional interest in the presentation and must be aware of the restrictions on use of the information used.

7.4 The Use of Materials for “Open” Teaching Purposes

7.4.1 Where material intended for professional purposes may reach a wider audience, for instance in textbooks or professional journals, every effort should be taken to safeguard the anonymity of the individuals and the confidentiality of any information used.

7.4.2 To that end the use of identifiable photographs should only be on the basis of appropriate consent.

7.4.3 The use of sensitive identifiable photographs should be very carefully considered. Unless necessary they should not be used and such use should be on the basis of appropriate consent.

7.5 Use of Materials for other Purposes

- 7.5.1 Forensic science/pathology appears to exert a strong fascination on many people and practitioners are frequently invited to describe their work to lay audiences; that is, to persons who have no legitimate professional interest in the work of pathologists.
- 7.5.2 There is no reason why practitioners should not accept such invitations. Indeed there is a genuine need to inform the public about the work and role of forensic practitioners.
- 7.5.3 Practitioners should, however, devise their presentations with care, ensuring their content is appropriate to the audience and that no offence could be caused to any viewer or listener and that confidentiality is at all times preserved. The highest standards of taste and decency should be upheld at all times. Such material should be used sensitively and should not be in the main focus of a presentation.
- 7.5.4 It is important that identifiable photographs should only be used in such circumstances where it is necessary for the purposes of the presentation and the practitioner has obtained appropriate consent.

7.6 General Principles

- 7.6.1 Regardless of the use to which the photographs there are certain principles which should be adhered to.
- a. The highest standards of taste and decency must be maintained.
 - b. The dignity of persons in the photograph must be maintained.
 - c. Care must be taken to prevent further dissemination of the images.

8. REVIEW

- 8.1.1 This document is subject to review at regular intervals.
- 8.1.2 If you have any comments please send them to the address or e-mail set out on the Internet at URL: <https://www.gov.uk/government/organisations/forensic-science-regulator>.

9. ABBREVIATIONS

Abbreviation	Meaning
CJS	Criminal Justice System
HM	Her Majesty's
URL	Uniform Resource Locator

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