

Blake Laphorn Tarlo Lyons' nursery and childcare news

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all change! New guidance on the meaning of personal data

Data protection is a term with which all nursery owners should be familiar. The Data Protection Act (DPA) covers a wide range of processing of information from paper and computer records, to images of children and voice and video recordings. Failure to comply with data protection principles in a setting is likely to provoke a deeply emotional reaction from parents and is also backed up by the law. An effective data protection strategy is therefore essential.

The DPA applies to the processing of "personal data". New guidance from the Information Commissioner widens the ambit of data to which the DPA applies.

Prior to the new guidance, the definition of personal data was governed partly by the DPA and partly by the Durant decision (a 2003 case), which narrowed the definition. Under the DPA, to be personal data, information must:

- relate to a living individual who can be identified from that information (or other information in/ likely to come into the setting's possession); and
- be processed in certain ways, such as on computer or in a paper filing system.

Durant qualified this by requiring that the information has to:

- be biographical in a significant sense, (not just recording the individual's involvement in a matter or an event which has no personal connotations)
- have the individual as its focus (rather than some other individual/event with whom or in which he may have been involved) and
- be capable of affecting an individual's privacy.

Many providers rely on guidance from the Information Commissioner (in the light of Durant) that suggests that footage shot on webcams in a nursery setting, using fixed cameras, will not be covered by the DPA because the cameras cannot be moved to focus on a particular individual.

The view on personal data in the new guidance, however, returns to a wider definition of personal data. The two conditions under the DPA still apply but for data to be considered to relate to a living individual (the first criteria under the DPA) it must contain one of the

following elements:

- be about a particular person, or
- be used/likely to be used to evaluate, treat in a certain way or influence the status or behaviour of an individual, or
- be likely to have an impact on an individual's rights and interests.

The guidance states that the conditions in the Durant ruling i.e. focus, biographical significance and effect on privacy, need be considered only if the information is not clearly about an identifiable individual.

Under the new guidance webcam footage and CCTV use are subject to the DPA, which means that consents should be obtained from the parents of all children in a particular room if the setting is to comply with the guidance.

points to note:

- Settings currently following the Durant principles and treating certain processing activities as outside the DPA (such as use of webcams) may be taking an unnecessary risk.
- Settings should review their current data protection policies and ensure that all processing of information that identifies a living individual is covered, and that procedures are in place to ensure the policy is complied with.
- Settings should ensure that when they use webcams, they have the written consent of parents to the processing, and that the systems are secure.



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