

Qs & As for Employees:

Obtaining Consent for Photographs, Video and Audio Recordings

On June 10, 2006, all Ontario Universities were made subject to the provincial *Freedom of Information and Protection of Privacy Act* (FIPPA). It is the policy of York University to comply with FIPPA's requirements for the personal information that the University collects, uses and discloses. Accordingly, York has developed a [guideline](#) on obtaining consent when photographs, video and audio recordings are made of students and other individuals by York University employees. The following provides some frequently asked questions with respect to taking and using photographs, video and audio recordings for use by York University and its representatives and agents.

Question #1: Are photographs, video images and voice recordings personal information?

A: Yes.

FIPPA defines personal information as "recorded information about an identifiable individual". Where personal information is being collected, FIPPA requires the University to give notice, including the mandate for the collection (i.e., the *York University Act, 1965*), the purpose(s) for which the information is being collected, and the name of an individual who can answer questions about the collection. Note that personal information does not include information about one's business identity; therefore, information about York University employees (staff and faculty) is not considered to be personal information.

For the most part, personal information can be used and disclosed only with the consent—explicit or implicit—of the individual to whom it pertains. However, it can be disclosed without consent in situations where such disclosure does not constitute an unjustified invasion of privacy. York University has determined that simple attendance on campus does not constitute an unjustified invasion of privacy. Nevertheless, where practical and as a courtesy, it is prudent to ask individuals for their consent, especially where the image or recording may be considered to be more sensitive. Thus, an image of a student walking into the Counselling and Development Centre is more sensitive than an image of a student walking into the Scott Library.

Question #2: How do I give notice?

A: Notice can be given verbally or in writing.

With small groups of people, simply ask them. For larger groups, you can make an announcement, post a written notice at the entrance to the place where the event is taking place, or place a notice on a website. The point is to ensure that the notice comes to the attention of the individuals you wish to photograph or record, and then abide by their wishes.

Remember, you do not need to provide notice or obtain consent from University staff or faculty who are acting in their official capacity. However, it may be common courtesy to do so.

Notice is not required for journalistic publications created specifically for access by the general public—such as YFile, Ylife, and YorkU magazine. However, it is good practice to do so simply as a common courtesy. If photographs or audio or video recordings are going to be stored in an image bank and/or used for another purpose in future, it is important to obtain written consent.

Question #3: What is verbal or implied consent?

A: Verbal consent means that someone tells you that you may take their photograph, or make an audio or video recording of them and use it in the way you have outlined in your notice.

Implied consent occurs when someone's actions indicate that they agree to be photographed or audio/video recorded. Examples of implied consent are:

- you tell someone you are about to take her photo to put on a faculty website, and she willingly poses for it
- you announce to a class that all those who do not want to be included in your video should move to one side of the room; those who do not move have implied that they consent to be video recorded

Verbal or implied consent are sufficient in many situations, but you may wish to document it for the file so that a record is kept to substantiate consent should a question arise at a later date.

Question #4: I am an instructor who videotapes classroom activities as a part of my course curriculum. Do I need to obtain consent from the students?

A: If video recording, audio recording, filming or photographing students in a specific activity is required to facilitate learning and feedback and/or evaluation of students' attainment of a learning objective of the course, then you do not need to get consent from the students. However, it is recommended as a best practice that notice be provided in the course syllabus that such activity will occur.

Question #5: When do I use a consent form?

A: While it is prudent to get a consent form every time you take a photograph, video or audio recording, there are circumstances where obtaining written consent is cumbersome or not necessary. Use a consent form in the following circumstances:

- for well-known individuals such as celebrities and public figures
- for all University marketing and advertising campaigns
- for photographs and audio or video recordings that are to be placed in an image bank or repository to be repurposed in the future
- for any situation where you consider it is important to have a written record that an individual agrees to be photographed or recorded and agrees to the use and disclosure of their voice or image

Question #6: When do I use the long form versus the short form?

A: Use the long form for celebrities and public figures and for University marketing and advertising campaigns.

The long form includes a waiver, indemnity and release, so if there is any chance that a photograph or audio/video recording taken for editorial purposes will be reused for marketing or advertising, then the long form should be used.

The short form can be used for all other purposes.

Question #7: Do I need to get consent to take a photo of people walking around campus?

A: No. It is not considered an unjustified invasion of personal privacy to take an image of an individual that simply records attendance on campus. However, if practical, it is prudent and courteous to ask for consent. (See also the answer for Question #1).

Question #8: What could happen if I don't have consent and the use of the photo or audio/video recording is challenged?

A: You may be required to remove a photograph or an audio/video recording from the web, or to destroy material that includes an image for which you don't have consent. This is to be avoided as it involves both a cost and a risk to York's reputation.

Question #9: Do third party photographers need to give notice and obtain consent?

A: Yes, if the third party is taking the photos, video or audio recordings on behalf of the University or for the use of the University.

If the third party takes photographs for its own purposes, the third party must abide by any legal requirements bearing on that third party, and by whatever rules the University sets. York University is private property, and therefore individuals and organizations must comply with York's policies and rules. Third parties should be informed that the University is covered by FIPPA and that they must respect the privacy of our students. We would expect that third parties taking photographs or making video or audio recordings would ask the subjects for their consent. (Note that all requests for use of University space are coordinated by the Office of University Events and Community Relations.)

Question #10: What about using previously existing photos?

A: FIPPA is retroactive and therefore it is incumbent upon the University to protect the privacy of all personal information in its custody or control. Staff should consider the benefits of obtaining consents retroactively, especially for images on active websites.

Question #11: Are there guidelines for storage of the consent forms and for how long the forms should be retained?

A: The consent form (and any documentation about verbal or implied consent) should be retained for as long as the image or recording is being used and/or stored in an image bank.

Consult the [Common Records Schedule](#) for more information on retention and disposition of University records.

The guideline and accompanying forms can be found on the Marketing and Communications website: <http://www.yorku.ca/ycom/documentsforms.html>.