1. The posting of photographs and social media

This information is designed to provide foster carers with practical information and advice on the use of social media and the posting of photographs of children in foster care, and what action needs to be taken by carers to protect children’s rights and ensure their wellbeing.

Photographs are important mementos that record children’s history, achievements and life experiences. However it is important that foster carers are aware of the risks of posting photos using social media. When photos are posted online and shared through social media they can be downloaded, manipulated, reused and retransmitted freely by others, without any control by the photo’s owner.

It is also important that foster carers understand the legal implications of using social media and know how to avoid breaching the law. The right to privacy must also be considered; a child or their family may not want their situation revealed on social media.

It is important to have a discussion with your agency worker if you require further information, advice or support before deciding whether or not to post photos of children in care, on social media.

2. Social media defined

Social media is the term used for internet-based tools for sharing and discussing information among people. It refers to user-generated information, opinions and other content shared over open digital networks.

Social media may also include (although is not limited to):

- social networking sites (for example Facebook, Myspace, LinkedIn, Bebo, Yammer)
- micro-blogging (for example Twitter)
- video and photo sharing websites (for example Flickr or YouTube)
- forums, discussion boards and groups (for example Google groups, Whirlpool)
- instant messaging (including SMS)

3. The law

Children, Youth and Families Act 2005

The Children, Youth and Families Act 2005 is the legislation that provides for the protection of all Victorian children. It is not unlawful for a photo of a child who is in out-of-home care to be posted on social media.
Social media and posting of photographs of children in care

It is unlawful to publish information that is likely to lead to the identification of a child as being subject to a Children's Court order, regardless of whether or not this information accompanies a photo. Such information includes (but is not limited to):

- the name and address of a child
- identification of their school
- the relationship of a child to identified relatives or their association with friends, officials and professional acquaintances.

Restrictions on the publication of information likely to identify a child as being subject to court proceedings is broader than social media (includes print media) and applies to all persons in all situations; except with the permission of the President of the Children's Court, or of the Secretary of the Department of Human Services. A breach of the Act can result in prosecution and lead to a fine of up to $12,214 or two years imprisonment.

Information provided to foster carers about a child by the department or foster care agency as part of the placement matching process, or via a confidential report cannot be used by a carer beyond informing their decision to accept a placement or to provide appropriate care for the child. For example, a carer can disclose a medical condition to a registered medical practitioner for the purpose of providing medical treatment or services to a child but cannot disclose a child’s medical condition to friends, family or anyone else, where the disclosure serves no medical or care related purpose. A breach of the Act in this regard can result in prosecution and lead to a fine of up to $1,221.

The Charter of Human Rights and Responsibilities Act 2006, the Information Privacy Act 2000 and the Health Records Act 2001 also contain provisions to protect and promote human rights, privacy and fair and responsible handling of information between government, agencies and individuals.

4. Avoiding a breach of the law

Foster carers are not responsible for monitoring or enforcing controls on the use of social media by others outside their immediate care and control i.e. adult members of the community, other people’s children.

Foster carers are encouraged to notify their foster care agency if they have concerns about the impact of the use of social media on children in their care. Carers need to instil safe and responsible social media practices with children for whom they care.

A common sense approach is to never identify a child as a foster child, or a child in care, a child subject to a court order (past or present), a child subject to court proceedings or child protection involvement (past or present) or identify a foster carer when pictured with a child in care.

5. Other considerations

Consider the child first. Children in care, their parents and family have a right to privacy and their wishes need to be considered and respected. A child or their family may not want other people knowing that they are in care. Commentary which accompanies photos on social media with identifying references to the child’s care situation, the ‘foster carer’ or ‘foster care’ household must be avoided.

Consult as appropriate. The Charter for Children in Out-of-Home Care includes the right for a child to be treated with respect, to have a say, and be heard. Posting photographs with accompanying non-sensitive information on social media such as the child’s sporting accomplishments may seem innocent, but even if it does not breach any of the laws defined above, it may be contrary to the child’s wishes. Speak with the child first and if appropriate, use their care team to seek the views of the child’s parents, extended family, caseworkers and other professionals.

Be aware. Check the terms and conditions of social media platforms. Set privacy settings. Protect your personal information and consider anything posted on a social networking site as public. Use this information sheet and seek advice from your foster care agency when you are unsure about compromising the privacy of children in care or their families.

6. Further information

For further information, support and advice contact your foster care agency (Community Service Organisation).