

**ACTING HEAD OF LEGAL & DEMOCRATIC SERVICES**

**RICHARD IVORY, Solicitor**

Southampton City Council  
Civic Centre  
Southampton SO14 7LT



**FAREHAM** BOROUGH  
COUNCIL

www.fareham.gov.uk



**Southampton and Fareham Legal Services Partnership**

Direct Dial: 023 8083 2027  
Email: tracy.horspool@southampton.gov.uk  
Please ask for: Miss T J Horspool

Fax: 023 8083 2308  
Our ref: TJH/lcb/  
Your ref: RFA0392300  
Date: 28<sup>th</sup> September 2011

Mr Ian Inman  
Team Manager  
Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
WILMSLOW  
Cheshire SK9 5AF

Dear Mr Inman

**COMPLAINT BY MR GIFFARD**

Thank you for your letter dated 2<sup>nd</sup> September 2011 relating to a complaint that the Information Commissioner has received concerning the use of audio digital camera systems in private hire vehicles. As a point of clarification, these systems are not CCTV in the true sense of the word, they are in fact, digital imaging systems. The Council is not taking particular issue with this as it appreciates that the same obligations in data protection law apply, whatever the system, but thought it would be useful at the outset to clarify this.

You have asked the Council to revisit its policies and the way it has handled this matter. The Council will respond in turn to each of the questions you have asked and points you raise. However, firstly we feel that it would be beneficial to explain the background to the complaint and explain the operation of the cameras in the city's taxis and private hire vehicles. The Council also makes submissions in respect of the CCTV Code of Practice and the Data Protection Act 1998 (the 'DPA') before turning to the specific questions you have raised.

**1. Background**

The City Council's role and legal obligation is to regulate the local taxi businesses in accordance with a body of law dating back to 1847. The main regulating acts are the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976. There is a continuing requirement for the Council, as regulating body, to ensure that licences, vehicles and driver standards are kept at the highest level to ensure both the safety of passengers and drivers.

Cameras are now fitted to the city's licensed taxis and private hire vehicles in order to fulfil two roles: firstly to ensure the safety of the public and secondly, the safety and integrity of the driver. Recent years have seen an increase in both the number of incidents, locally and nationally, that have involved taxis. In 2009 the police investigated the murder of taxi driver Mohammed Arshad in north Worcestershire. He had been found fatally stabbed after working one evening as a self employed taxi driver.

Locally, in our adjacent borough, Eastleigh, a taxi driver was recently throttled and set on fire by one of his passengers. The benefit of digital imaging, both visual images and audio is clear. Not only is it used to identify offenders and be supporting evidence for any Police or Council licensing

enforcement actions, it has a vital use as a deterrent to would-be trouble makers and protects, and assists in protecting both drivers and passengers. In 2009 it was used to successfully identify in the region of a dozen offenders in the city alone. The picture and audio quality is exceptional and it is fully accepted as evidence in the courts as the system is fully auditable, containing details of the vehicle, camera serial number, licence number and time and date. The Council has been supporting the voluntary fitment of these systems since 2004. The early systems had no audio facility, however, all fitted since 2005 include the audio facility.

Mr Ian Inman, Information Commissioner's Office  
20<sup>th</sup> September 2011

Many drivers are subjected to considerable verbal abuse and this is one of the main supporting reasons for including audio recording in the approved camera systems that are fitted. Visual CCTV alone is not capable of yielding evidence of any verbal abuse.

## **2. The Cameras**

On 26<sup>th</sup> August 2009, the Licensing Committee of the Council resolved to make it a mandatory vehicle condition to have a digital camera fitted to licensed vehicles as part of its strategic approach and legal obligation to reduce crime and disorder and to improve driver safety. This was done after a lengthy period of consultation with both the trade and public. The cameras have been part funded by contribution from various agencies, including the Government Office South East and the Home Office, as part of the Safe City Partnership with the police. The Council currently licences in the region of 800 vehicles, of which 275 are hackney carriages, the remainder are private hire vehicles. The Council also licences about 1300 drivers who are from a multiplicity of ethnic origins and cultural backgrounds. To date, there are about 450 licensed vehicles with cameras fitted, where the proprietor has contributed in the region of £250 plus fitting charge, to obtain the device. The two types of camera approved for use by the Council have an audio recording facility. The first type runs audio and visual recordings when the taxi is in use and, when a 'trigger' is activated, such as by panic button or the use of the meter, the rate of still images increases to give the effect of video. The second type of camera records footage and audio in real time and has no such triggers.

The storage device for the footage is a secure hard disc, accessible only via approved secure software held by officers in the Council's dedicated Licensing team and by Hampshire Constabulary. Footage and audio are only ever accessed or downloaded in two specific instances: when a substantive complaint has been made to the Council against the driver of a specific vehicle and where a crime report has been made to the police involving the relevant vehicle and where the police have formally requested that data. No other occasions warrant access to this data and no-one else has access to the images. If either of these two limited scenarios arise, the request for access must be made in writing, state the approximate time of the event or occurrence and only the timescale relevant to the specific incident will be downloaded and decrypted.

After a maximum period of 30 days, any recorded data is automatically overwritten. The exact period of time for destruction will depend on the specification of the system installed. Only systems approved by the Licensing Manager may be installed by an independent installer, ensuring that any equipment may not be tampered with or footage be capable of release to a third party. When data has been extracted, either on behalf of the Police or the Council, it is secured in a locked evidence cabinet and strict rules of evidence are applied. Such data, together with any section 9 statements of evidence, are only ever signed over to the relevant case officer in the event of those two specific instances arising.

### **3. The CCTV Code of Practice (revised edition 2008)**

The Council is aware and mindful of the Information Commissioner's CCTV Code of Practice. The Code clearly states that CCTV must not be used to record conversations between members of the public as this is considered to be highly intrusive and unlikely to be justified. The recommendation is that a system without this facility should be chosen if possible and that any system equipped with a sound recording facility should be turned off or disabled in some way.

The Code does, however, acknowledge that there are limited circumstances in which audio recordings may be justified, subject to sufficient safeguards being in place.

3

Mr Ian Inman, Information Commissioner's Office  
20<sup>th</sup> September 2011

Two relevant examples are cited: firstly where conversations between staff and particular individuals where a reliable record is needed of what was said, such as the charging area of a police custody suite or where a recording is triggered due to a specific threat. In the limited circumstances where audio recording is justified, signs must make it very clear that audio recording is being or may be carried out.

In Southampton and indeed presumably elsewhere in the country, most complaints about taxis involve only two parties, the driver and the single passenger making the complaint or reporting the crime. It is understandably difficult in such circumstances to establish the facts. The visual images only go part way to assisting in this. Audio recordings in the city have proved that they can provide independent evidence which is essential to both the Police when investigating crime and the Council when making its decisions in taking enforcement action.

To draw on a specific example, one of the most significant cases investigated to date by the Council is a case where a private hire driver was working for a major private hire operator to carry vulnerable individuals as part of a social care contract with the Council's Health and Adult Social Care Directorate. The driver was contracted to pick up three elderly, partially sighted females and transport them to a day centre. An incident prompted the driver to lose his temper. He was abusive and made serious threats to all three passengers. The incident culminated in the three elderly and vulnerable ladies being ejected from the vehicle, without any assistance, on the roadside of one of the main arterial routes into the city. They all had significant sight defects and were found scared and confused wandering the roadside sometime later by a member of the day centre staff who went to look for them after they failed to arrive at the centre at the expected time. In this case there was a camera fitted to the vehicle. The visual download only established the partial facts of the incident. The recording of the verbal exchange between the driver and his passengers was essential independent, factual evidence later presented to the Council's Licensing Committee, subsequently established to determine the resulting complaint and to determine whether the driver's licence should be revoked. It proved even more critical as the three witnesses proved too vulnerable and too scared to provide evidence to the Committee because the driver had made threats of violence towards them.

Since its introduction, a total of 39 complaints involving hackney carriages and 22 involving private hire vehicles have been made. Only in the most serious of complaints is the recorded information ever accessed. Recorded information has been downloaded and accessed on four occasions for private hire behavioural related complaints. On two occasions, the audio recordings in particular proved that the complaints were unfounded, on the other two occasions the audio recordings proved that the driver had acted inappropriately, on one occasion involving violence and further enforcement action was taken on the basis of this evidence.

The Council accepts that an automatic rolling audio recording in its licensed taxi cabs as opposed to an activated only in limited circumstances scenario may not be seen by the Information

Commissioner as a proportionate or justifiable use of audio recordings but it would submit that it may not always be practical or of benefit to the driver to self activate the audio recording, for instance, when the driver is the person delivering the abuse to the passenger. It is also not realistic to expect a passenger to have the knowledge or wherewithal to activate the recording if he or she felt under threat.

In light of the above, the Council therefore submits that the form and manner of audio recording as it currently exists is justifiable and compliant with the DPA.

The Council appreciates that the Code of Practice provides practical guidance on compliance and that such compliance demonstrates that the legal requirements of the DPA have been met. In the first instance the Council would submit that it is both acting in accordance with the Code and that audio recording is justified with sufficient safeguards are in place.

4

Mr Ian Inman, Information Commissioner's Office  
20<sup>th</sup> September 2011

Alternatively, if the Information Commissioner's Office takes the view that audio recordings in this case are in breach of the Code, the Council maintains that the Code itself is not strict law and the Council submits that it is nevertheless still complying with the provisions of the DPA.

#### **4. Compliance with the DPA**

##### *Principle 1 – Fair & Lawful Processing*

The Council submits that it is compliant with the fair processing requirements of the DPA. The Council is the data controller for the processing of the data. There is a clear notice in the rear window of each vehicle with the facility, and, in purpose built vehicles, also on the security screen that separates the driver and the passenger. Such notice comprises reverse digitally printed window stickers measuring 70mm x 100mm showing an image of both camera and microphone with the wording: '*Warning – Images and audio are recorded in this vehicle to prevent crime and ensure public safety. This Scheme is controlled by Southampton City Council. For more information call 023 8083 2792*'. The Council also has an up-to-date Notification lodged with the Information Commissioner's Office which describes the processing of this data under Purpose 11, Crime Prevention and the Detection and the Prosecution of Offenders.

The Council further submits that it satisfies a number of Schedule 2 DPA conditions, including, but not limited to condition 3, where the processing is necessary for the exercise of any legal obligation to which the data controller is subject, condition 5(b) where the processing is necessary for the exercise of any functions conferred on any person by or under any enactment and condition 5(d), where the processing is necessary for the exercise of any functions of a public nature exercised in the public interest by any person.

The Council submits that the legal obligations and public functions that it is both subject to and exercises relate in essence to the regulatory activity it performs under the taxi licensing acts, namely the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 as well as its general duty under section 17 of the Crime and Disorder Act 1998 to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all it reasonably can, to prevent crime and disorder in its area. These are clearly obligations of a public nature exercised in the public interest.

Regarding the issue of the 'necessity' of the processing, the Council confirms that it has objectively considered this and asserts that the purposes of the processing are valid, that such purposes can be achieved to the highest required standards only by processing the personal data in the

circumstances described. Further, in light of the background to the scheme outlined at the outset and on the basis of the evidence presented – both by examples given and of the statistical information detailed - the Council considers that the digital images and audio footage is proportionate to the aim pursued.

#### *Principle 2 – Processed for Limited Purposes*

The visual and audio recording is for the prevention and detection of crime and disorder. No further use beyond that is permitted. This is evidenced by the access and retention safeguards outlined previously.

5

Mr Ian Inman, Information Commissioner's Office  
20<sup>th</sup> September 2011

#### *Principle 3 – Adequate, Relevant and Not Excessive*

As explained previously, although the camera and audio recordings are activated each time the taxi is in use, the recorded footage is only accessed in limited circumstances i.e. whenever either a complaint has been made or a crime is being investigated by a limited number of trained officers. Unaccessed information is deleted after a short period of time, and only retained up to a maximum of 30 days.

#### *Principle 4 – Accurate and Up to Date*

The Council submits that by the very nature of the footage, such data is accurate as it records real events.

#### *Principle 5 – Not Kept for Longer than Necessary*

The Council's retention and destruction arrangements are stringent and have been outlined previously. Accessed information in the two limited circumstances detailed previously is kept for the duration of the investigation or prosecution and then destroyed in line with the Council's retention schedule.

#### *Principle 6 – Processed in line with the Rights of the Data Subject*

The Council submits that it complies with all of its obligations under the DPA, but in particular the section 7 right of access of the data subject and section 10, the right to prevent processing. The Council has not received any section 10 notices and does of course comply with any subject access requests for such footage in accordance with its standard procedures.

#### *Principle 7 – Security*

As explained previously, there is a strict and limited access to the recorded footage by a limited number of persons on a restricted basis. Further, the recording devices in the car are mounted in deliberately inaccessible locations and either the memory card or hard drive is locked into the device. Only the Council has the access key and the encrypted software enabling the downloading of the footage.

#### *Principle 8 – Transfer out of the Country*

The data is not transferred out of the country.

## 5. The Council's Response to the Specific Questions of the Information Commissioner

- i. *If there is anything you can do to resolve the complaint at this point, please take the relevant action and let us know what you have done*

Currently the issue of the reasonableness of the Council's condition to have digital and audio recording in its licensed taxis is awaiting hearing in the Crown Court. The matter is due to be heard on 20<sup>th</sup> and 21<sup>st</sup> October 2011. Subject to the consideration of any appeal, the Council reserves its position until judgement has been given.

- ii. *If you feel that you have complied with the DPA in this case, please provide detailed arguments to support your position*

Please see the Council's case as submitted above.

6

Mr Ian Inman, Information Commissioner's Office  
20<sup>th</sup> September 2011

- iii. *Details of any safeguards you have in place to help ensure you handle personal data properly, particularly in relation to fair processing*

The Council has a range of measures in place to ensure compliance with the DPA. Measures relevant to this complaint include:

- The Council has a corporate Information Compliance Officer whose responsibility it is to ensure compliance with the Freedom of Information Act and Data Protection Act across the Council.
- The Council has a suite of policies to ensure safeguarding of personal information. These include the Data Protection policy, Information Security Policy, Data Loss Policy and so on.
- Management Academy – the Council arranges for intensive information law training for managers and dissemination to staff.
- The Council's Code of Conduct describes standards of service and conduct expected of its employees and refers to Confidentiality and Disclosure of Information. It states, '*All Council information should be treated as confidential unless the employee is sure that it is for public consumption. Even confirming that someone is a tenant or employed by the Council may be a breach of confidentiality... For guidance contact your line manager. An employee must not use any information obtained in the course of his/her employment for personal gain or benefit, nor pass it on to others who might use it in such a way.*
- Data Protection breaches are a disciplinary offence.
- We have extensive information on our intranet pages for employees to reference, including information on how to handle Subject Access requests.
- The Council trains its staff in a variety of ways at variety of levels. This includes:
  - Computer Based Training
  - Data Protection training face-to-face to key staff. The Children and Adults Services directorate deliver an Information Governance Training course to train and update staff on Data Protection issues that may be particularly relevant to their Directorate
  - Basic Level Data Protection training is offered to all staff;
  - The Information Compliance Officer sends a Newsletter to departmental information champions and other key officers within departments on information issues and reminding staff to adhere to the Council's Data Protection policies. It also contains updates as to any data protection breaches or complaints and the lessons to be learned from them.

- Staff are also regularly reminded about their obligations via emails, e-bulletins, training sessions and face-to-face meetings.
  - An information governance structure and regular meeting of governance groups addressing the issue of breaches and issuing remediation reports following such breaches
  - A data breach reporting structure where all known breaches are assessed by a senior solicitor who will take the decision to self report to the Information Commissioner when appropriate
- iv. *Details of any steps you have taken or intend to take to add to or strengthen these safeguards*

The Council considers that it does have sufficient safeguards in place and that compliance in this regard is a matter of interpretation of the DPA and the Code of Practice. We, of course, await both your decision and the court's decision in this regard and will reassess our safeguards for ensuring compliance with the DPA as soon as this has been determined.

7

Mr Ian Inman, Information Commissioner's Office  
20<sup>th</sup> September 2011

Please note that the Council's Information Compliance Officer is no longer Mrs Janice Austin, the addressee to whom your correspondence was sent. The Council's current Information Compliance Officer is a Mr Vikas Gupta. We would be grateful if any further complaints could be addressed to Mr Gupta personally.

We look forward to hearing from you further.

Yours sincerely



**Tracy Horspool**  
**Senior Solicitor (Corporate)**  
**for Head of Legal & Democratic Services**

**If you would like this letter sent to you in another format or language, please contact the number at the top of this letter.**