

April 2019

Surveillance Camera Commissioner consultation response to the Department for Transport consultation on statutory guidance for taxi and private hire vehicles licensing authorities.

1. The Surveillance Camera Commissioner welcomes the opportunity to provide input in to this consultation on statutory guidance for licensing authorities with regard to taxis. He has worked with the Department for Transport in development of the draft guidance that was issued for consultation.
2. The Commissioner recognises that it refers local authorities to the Surveillance Camera Code of Practice. The Protection of Freedoms Act 2012 (PoFA) s.33(5) sets out that they must pay due regard to the code. It is also encouraging that the guidance refers to a number of the tools the Commissioner has issued to help organisations comply with the 12 guiding principles in the code. As relevant authorities under PoFA, local authorities must be made aware that if they do not pay due regard to the code this is admissible as evidence in court. The Crown Prosecution Service revised their Disclosure Manual in December 2018 to reflect this.
3. That said blanket licencing may be disproportionate and should only be used where there is a strong justification as set out in paragraph 1.15 of the code:

When a relevant authority has licensing functions and considers the use of surveillance camera systems as part of the conditions attached to a licence or certificate, it must in particular have regard to guiding principle one in this code. Any proposed imposition of a blanket requirement to attach surveillance camera conditions as part of the conditions attached to a licence or certificate is likely to give rise to concerns about the proportionality of such an approach and will require an appropriately strong justification and must be kept under regular review.

4. The Commissioner is aware of the blanket requirement for taxis in Rotherham to have CCTV installed. This was one of a number of measures implemented following the child abuse issues in the Town where taxis were used to transport a number of the victims. Here there was persuasive evidence to argue sufficient justification but the Commissioner would not expect widespread installation of CCTV in taxis without well evidenced justifications. The local authority's Senior Responsible Officer for compliance with PoFA and the code will be able to advise on justification requirements for CCTV.

5. Furthermore, CCTV in taxis typically also records audio (as well as video). The recording of conversations is extremely intrusive and requires strong justification as set out in paragraph 3.3.2 of the code:

Any proposed deployment that includes audio recording in a public place is likely to require a strong justification of necessity to establish its proportionality. There is a strong presumption that a surveillance camera system must not be used to record conversations as this is highly intrusive and unlikely to be justified.

6. A key part in the process for justifying a surveillance camera system is consultation. The Commissioner would expect to see clear evidence of public consultation before any final decision about installation is made. This consultation should involve members of the public, taxi drivers, police and any relevant regulators.
7. Local authorities must also have completed a data protection impact assessment prior to installation and have consulted their data protection officer and legal teams. There is a surveillance camera specific DPIA template on the Commissioner's website which was developed in conjunction with the Information Commissioner's Office.
8. Where it is the case that taxi drivers use the vehicle for their own private use the Commissioner would expect there to be a facility to switch off recording. In addition there must be clear policies and procedures in place regarding how the CCTV system is used and who can access the footage it records and where CCTV systems are IP enabled (connected to the internet) then they must be cyber secure.
9. The Commissioner would recommend that installation of any system should include a full operational requirement which can be achieved by using the Commissioner's Buyers' Toolkit and/or Passport to Compliance documents. This will ensure that a system is installed that is fit for purpose and actually delivers footage that can be used in court if required. Whilst the Commissioner appreciates the austere times that local authorities are working in, he would not expect that substandard systems are installed to save money particularly if the justification of the system is passenger and driver safety.