

ABERDEEN CITY COUNCIL

COMMITTEE: Licensing Committee
DATE: 28 January 2014
DIRECTOR: Angela Scott
TITLE OF REPORT: CCTV – Taxis and Private Hire Cars
REPORT NUMBER: CG/14/003

1. PURPOSE OF REPORT

To advise the Committee of recent developments towards CCTV in respect of taxis and private hire cars and to propose an appropriate legal and policy response for the licensing authority.

2. RECOMMENDATION(S)

That the Committee:

- a. notes the draft policy on CCTV in taxis and private hire cars;
- b. agrees in principle to the proposed new CCTV licence conditions for taxis and private hire cars; and
- c. instructs officers to write to the Scottish Information Commissioner to seek her view on the proposed policy and thereafter report back.

3. FINANCIAL IMPLICATIONS

Installation of a CCTV system in vehicles would be voluntary and therefore be paid for by the licence holder or their insurer. There is no requirement for payment towards its costs by the licensing authority.

4. OTHER IMPLICATIONS

It is necessary to ensure that the Licensing Committee's policy is legally compliant with the Data Protection Act 1998. Accordingly, the relevant data protection officers for the Council shall be consulted on the draft policy. It is recommended that the Scottish Information Commissioner is also consulted.

5. BACKGROUND/MAIN ISSUES

1. External Recording CCTV Systems

The licensing authority has received requests from suppliers of CCTV products to approve the introduction of CCTV in taxis and private hire cars. It appears there is a commercial venture between an insurance company and a CCTV company offering CCTV as part of the insurance package. The purpose of introducing CCTV is apparently to provide evidence in the event of an accident.

We are advised that the camera would be mounted internally within the rear view mirror vehicle but would only record events outside the front of the vehicle and there would be no audio recording. The system would not record inside the vehicle. It has been explained that the recorded images would only be accessed in the event of the accident and that the relevant company would be responsible for the information as the data controller. It appears that the insurance company is aware of the legal implications in terms of the Data Protection Act 1998.

The responsibility for protection of the recorded data would therefore be that of the relevant CCTV company/insurer and/or licence holder and would not be that of the licensing authority. The policy and conditions should make this clear.

Whilst such obligation for processing would attach to the relevant data controller, the licensing authority and the Council has a responsibility to ensure it does not condone inappropriate collection or processing of audio or visual recordings.

2. Internal Recording CCTV Systems

Although the current request appears to be limited to accident event recording there are wider considerations for the licensing authority in respect of CCTV in taxis, which ought to be considered to ensure compliance with data protection principles. In the circumstances, it is proposed that the attached policy document (see Appendix 1) be approved to set out the licensing authority's position on CCTV in taxis and private hire cars and that this be supported by the proposed new conditions of licence (see Appendix 2) for both taxi and private hire car licences.

The Information Commissioner for England and Wales has provided useful enforcement rulings in respect of the CCTV policies of licensing authorities in England.

For example, one such ruling advises that it is a breach of the Data Protection Act 1998 ("the 1998 Act") to have a policy requiring the mandatory recording of passengers' and drivers' conversations in taxis or private hire cars. Furthermore, it is inappropriate in terms of the 1998

Act for a licensing authority to require all taxis and private hire vehicles to install CCTV equipment to constantly record images and the conversations of both drivers and passengers.

The general view of the Commissioner appears to be that recording all conversations would be disproportionate given the very low number of incidents occurring compared to the number of trouble free taxi journeys. As such the proposed policy would not permit the recording of conversations inside taxis and private hire cars.

As a general principle the Commissioner recommends that the privacy of drivers and passengers is respected. Therefore, whilst it may be appropriate to use CCTV in taxis and private hire cars the licensing authority must be careful with regard to the extent it permits its use, particularly when audio recording is involved.

The Commissioner also stated that: "We hope this action sends a clear message to local authorities that they must properly consider all the legal obligations on them before requiring the installation of CCTV or similar equipment and that audio recording should be very much the exception, rather than the rule."

"The Data Protection Act states that organisations can only collect personal data when it is fair and lawful to do so. For CCTV equipment in taxis, the ICO advises that images should only be recorded where it is clearly justifiable."

3. Suggested Consolidated Policy Approach on CCTV Systems

In the circumstances, it is recommended that the Licensing Committee policy permits external visual CCTV recording without audio as standard. Although, the licence holder must notify the licensing holder in writing if they install such a system and comply with their legal obligations in terms of their licence condition and the Data Protection Act 1998.

The proposed conditions of licence make it clear that the licensing authority is not the responsible data controller in respect of CCTV.

Internal CCTV recording of images and/or audio would not be permitted.

4. Consultation

The taxi trade, a taxi insurance company and the Office of the Scottish Information Commissioner's office were consulted for their views on CCTV in taxis.

a. Taxi Trade – (Taxi Representatives on the Taxi Consultation Group)

The taxi trade representatives were of the view that accident recording CCTV in taxis is appropriate. It may be of assistance in reducing false insurance claims against drivers and may reduce their insurance premiums.

b. Taxi Insurer

The insurers advise that taxi drivers are more likely than other road users to be subject to false insurance claims, including deliberate staged crashes. External CCTV accident recording would help to protect against such fraudulent claims.

c. Office of the Scottish Information Commissioner

The Office of the Scottish Information Commissioner is the responsible authority for data protection matters in Scotland. One of their officers anecdotally advised that CCTV in taxis may be appropriate in certain situations.

However, in order to ensure that the data protection matters that arise from the proposed policy are adequately addressed, it is recommended that an official response from the Scottish Information Commissioner is requested by the Committee.

6. IMPACT

Corporate – To ensure that no enforcement action may be taken by the Scottish Information Commissioner against Aberdeen City Council in respect of the policy, it must be compliant with the Data Protection Act 1998.

Public – Accident event recording CCTV may be of benefit to the public, taxi drivers and the Police Service of Scotland in terms of the detection and investigation of crime.

Equality and Human Rights Impact Assessment – An Equality and Human Right Impact Assessment was not required as CCTV in taxis will impact equally on all passengers.

In terms of the Human Rights Act 1998 it is noted that CCTV could be considered a form of surveillance and/or a form of activity, which may

have an impact in terms of Article 8, which is as follows: “Everyone has the right to respect for his private and family life, his home and correspondence”. Lawful interference of this right is permitted, provided it is necessary.

It appears interference with this right would not be justifiable, in terms of a standard policy requirement or general presumption in favour of permitting installation and use of CCTV recording systems inside a taxi or private hire car. Therefore, a general policy requiring CCTV is not recommended to the Committee.

7. MANAGEMENT OF RISK

It is noted that the Licensing Committee must ensure that its policy is legally compliant with the Data Protection Act 1998 and the Human Rights Act 1998. With regard to Article 6 of the Human Rights Act “It is unlawful for a public authority to act in a way that is incompatible with a Convention Right, for example, the aforementioned Right to Private and Family Life.

8. BACKGROUND PAPERS

- The Data Protection Act 1998
- The Human Rights Act 1998
- The Information Commissioner’s News release: 25 July 2012

9. REPORT AUTHOR DETAILS

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CCTV Policy – Taxi and Private Hire Cars

The Licensing Committee permits the installation of CCTV in taxis and private hire cars in respect of external visual image recording for the purposes of accident event recording. Audio recording is not permitted.

There is a general presumption that the Licensing Committee shall not permit CCTV recording (both visual and/or audio) inside a taxi or private hire car.

It is noted that the Licensing Committee has imposed conditions of licence to support this policy. A breach of such condition is a criminal offence and therefore licence holders who breach such condition shall be reported to the Police Service of Scotland.

The condition requires that the licence holder must notify the licensing authority in writing if a CCTV system is installed in the vehicle for accident event recording. Such notification must provide details of: a) the insurance company who is acting as the data controller; b) a copy of their data protection policy in respect of the processing and control of data recordings; and c) a copy of their approval for such scheme from the Scottish Information Commissioner.

For the avoidance of doubt, Aberdeen City Council, as the licensing authority is not the data controller in respect of CCTV systems installed by licence holders or their insurers. It neither recommends the installation of CCTV nor has responsibility for control of access to any images recorded by a taxi or private hire car licence holder or their insurer.

Licence holders, insurers and CCTV companies should note that if they install CCTV in a taxi or private hire car they must meet their legal obligations under the Data Protection Act 1998.

Appendix 2

Proposed Condition for inclusion in the Conditions Applicable to Taxi Licences

The licence holder is permitted to install a Closed-Circuit Television (CCTV) system within their taxi for the purpose of external accident event recording only. Such CCTV shall only be permitted to record visual images and not audio. It is not permitted to record audio inside or outside the vehicle. The installation of internal CCTV for the recording of video images or audio within the taxi is not permitted. The licence holder also must notify the licensing authority in writing if a CCTV system is installed in the vehicle for accident event recording. Such notification must provide details of: a) the insurance/CCTV company who is acting as the data controller; b) a copy of their data protection policy in respect of the processing and control of data recordings; and c) a copy of their approval for such scheme from the Scottish Information Commissioner. The licence holder also must comply with their legal obligations under the Data Protection Act 1998.

Proposed Condition for inclusion in the Conditions Applicable to Private Hire Car Licences

The licence holder is permitted to install a Closed-Circuit Television (CCTV) system within their private hire car for the purpose of external accident event recording only. Such CCTV shall only be permitted to record visual images and not audio. It is not permitted to record audio inside or outside the vehicle. The installation of internal CCTV for the recording of video images or audio within the taxi is not permitted. The licence holder also must notify the licensing authority in writing if a CCTV system is installed in the vehicle for accident event recording. Such notification must provide details of: a) the insurance/CCTV company who is acting as the data controller; b) a copy of their data protection policy in respect of the processing and control of data recordings; and c) a copy of their approval for such scheme from the Scottish Information Commissioner. The licence holder also must comply with their legal obligations under the Data Protection Act 1998.