

ABERDEEN CITY COUNCIL

COMMITTEE	Licensing Committee
DATE	1 September 2015
DIRECTOR	Angela Scott (Acting Director)
TITLE OF REPORT	Review of CCTV Policy for Taxis and Private Hire Cars – Removable Storage Devices
REPORT NUMBER	CG/15/89
CHECKLIST COMPLETED	Yes

1. PURPOSE OF REPORT

To present the findings of the review of the Committee's CCTV policy in relation to removable storage devices.

2. RECOMMENDATION(S)

It is recommended that the Committee:-

- a. amend the Licensing Committee's CCTV Policy for Taxis and Private Hire Cars, as per the underlined red text in the document at Appendix 1, to permit the use of removable storage devices for the recording of video and audio data; and
- b. in parallel to re-emphasise the data protection legal obligations.

3. FINANCIAL IMPLICATIONS

There are no additional financial implications.

4. OTHER IMPLICATIONS

None.

5. BACKGROUND/MAIN ISSUES

At its meeting on Tuesday, 27 January 2015 the Licensing Committee considered a request for an exemption from their existing CCTV policy for Taxis and Private Hire Cars from an insurance company that provides CCTV systems. The request for exemption was to permit the use of their CCTV system which met all the policy requirements other than that they used an SD card to store the recorded data, whereas the policy permitted only hard drive storage. The Committee granted the request for an exemption and instructed officers to review the requirements of the present policy, in particular in respect of SD cards and report back to them.

For the purposes of this discussion it may be beneficial to refer instead to 'removable storage devices', rather than specifically to SD cards. This appears to be a practical and appropriate approach as effectively the same principle and arguments apply to the use of all types of removable storage in a CCTV system. In this manner further exemption requests or policy updates for other additional types of removable storage devices would be rendered unnecessary.

There are various relevant factors to take into account in considering whether or not to amend the policy to permit SD card storage. The most important of these are: a) what is the role of the Licensing Committee in this area; b) what is the purpose of the policy; c) and why was only hard drive storage permitted originally. It follows therefore that the primary question the Committee must satisfy itself of is - would changing the storage requirement defeat the policy's purpose or dilute its impact to an unacceptable level so as to render the policy ineffectual?

With regard to the relevant factors:

- a) The Licensing Committee's role is that of licensing authority. This role could be described as that of a regulatory public authority that exercises autonomous authority over the regulation of taxis and private hire cars and their drivers, within its local authority area. In such role the Committee has responsibility to ensure that the holders of the licences it issues do not breach the specific terms of the Civic Government (Scotland) Act 1982 ("1982 Act"). It also has a broader duty to ensure the safety of passengers travelling in taxis and private hire cars, as this is the main policy purpose of the taxis parts of 1982 Act.

Accordingly it is appropriate for the Committee to ensure that licence holders are aware of their legal duties in relation to the privacy and data protection of their passengers. The Committee is following good practice by offering licence holders policy guidance and placing upon them the CCTV condition of licence. This should avoid them inadvertently breaching other legislation such as the Data Protection Act 1998 which could have a detrimental impact on their licences.

The Committee should not condone or support a practice that runs contrary to other legislation, or a regulatory function of another public authority, in this instance the Scottish Information Commissioner.

If the Committee wishes to amend its policy they may wish to clarify in debate the reasons for amending the policy, e.g. to increase the availability of types and designs of CCTV systems for licence holders. A reason for debate over such issues is that Members may wish to consider if a purely commercial request is a legitimate reason (within their statutory remit) for changing their policy.

- b) The purpose of the Committee's policy is to ensure that licence holders do not install CCTV systems and record CCTV images of their passengers contrary to the terms of the Data Protection Act 1998. Members also have previously reflected upon in debate whether or not such behaviour potentially could be deemed not fit and proper for a holder of a licence under the Civic Government (Scotland) Act 1982. This was one of the considerations that gave the Committee a legitimate remit to make its policy.

The policy is helpful to licence holders and the public as it summarises the complex legislation and provides licence holders and insurance companies with a step by step process which is easy to follow in order to legally use CCTV in their vehicles. If the policy is adhered to, then CCTV can be used to ensure the safety of drivers whilst also giving their passengers comfort that their privacy is not being breached. The policy demonstrates also that suitable safeguards are in place in order that recorded images of passengers will not be used for illegal or illegitimate purposes.

- c) A reason that SD card (removable storage) was not initially permitted was in order to ensure the integrity of the CCTV system. The Committee wished to avoid a situation whereby

recorded data could be easily removed from the CCTV system and downloaded to devices. The reasoning was that is easier to lose a small removable device, or for it to be stolen or automatically uploaded to the internet by accident.

Hard drive storage (i.e. securely locked inside the CCTV system) was preferred as it was only accessible by the insurance/ CCTV provider and they would only access it when it was necessary to show the authorities footage of an incident. This appeared to ensure the proper processing and secure storage of the data and also prevent loss or theft.

It is appreciated that the Committee wishes to be permissive for licence holders and allow removable storage devices as it supports the use of a greater variety of models of CCTV system. They should however be aware of the potential consequence of such amendment, i.e. where easy access is provided to the recorded data, by removable storage device, it makes it possible for misuse of the recorded data to occur whether directly or by loss or theft.

That said the Committee could take on trust that its licence holders will abide by the rules of the Data Protection Act 1998 and its policy and condition. The Committee has been clear in its policy and condition that they (including the Council) do not act as data controller for data recorded in taxis or private hire cars, and it is up to the relevant data controller for each of those individual businesses to take sufficient precautions to guarantee the safe and secure storage and processing of data.

Permitting the use of removable storage devices would decrease the effectiveness of the policy, although it would not render it ineffectual. It simply changes the emphasis to one of greater responsibility on the licence holder and data controller.

Based on the relevant factors it is recommended that if the Committee wishes to amend its policy it emphasises in the amendments that where removable storage is used in a CCTV system the licence holder and data controller are responsible for its secure storage and processing. It should also be made mandatory that the licence holder/data controller detail in their own data protection policy how they will ensure the secure storage and processing of the recorded data.

Members can view the proposed amendments to their policy (in red) at Appendix 1. The amendments are deemed adequate to maintain a sufficient level of data protection in the updated policy.

Consultation

Consultation was undertaken with a range of interested parties internally and externally. Suggestions from Police Scotland and the Council's data protection legal officers have been incorporated in the report.

6. IMPACT

Corporate – The policy and condition of the Licensing Committee are designed to ensure that the Council does not condone inappropriate use of CCTV in Taxis and Private Hire Cars and as far as possible make sure that licence holders will not use CCTV without following the obligatory compliance procedures set out therein.

Public - This report is likely to be of interest to members of the public as many people are interested in CCTV recordings in transport settings, and more generally matters around privacy and data protection. Neither an Equality and Human Rights Impact Assessment (EHRIA) nor a Privacy Impact Assessment (PIA) were required during completion of this report. For information, the rationale for why a PIA was not required is that the Committee/Council is not the relevant data controller.

7. MANAGEMENT OF RISK

In diluting the policy the Committee should be aware that it may open itself up to criticism if breaches of data security do occur as a result.

To minimise such risk the amended policy seeks to ensure that licence holders are required to be compliant with the Data Protection Act 1998. Accordingly the licence holder/data controller must satisfy the Licensing Committee's condition of licence and updated policy. The licensing authority is not data controller and it takes no responsibility for the control and processing of data recorded by licence holders, their drivers or CCTV or insurance companies.

8. BACKGROUND PAPERS

- The Data Protection Act 1998
- The Human Right Act 1998

9. REPORT AUTHOR DETAILS

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CCTV Policy – Taxi and Private Hire Cars

CCTV surveillance cameras must only be used as a necessary and proportionate response to a real and pressing problem.

External (Accident) Recording

The licensing authority may permit the installation and operation of CCTV in taxis and private hire cars in respect of external image recording, for legitimate purposes only, e.g. accident event recording (in relation to insurance claims) and to assist with the prevention, detection and prosecution of crime. External audio recording is not permitted.

Internal (Incident) Recording

The licensing authority may permit the installation and operation of CCTV in taxis and private hire cars in respect of internal image recording, for legitimate purposes only, e.g. to record incidents inside the vehicle to improve passenger and driver safety and for the prevention, detection and prosecution of crime. Internal audio recording is not permitted except by way of a “panic button”, which may be pressed by the driver to record audio only on the occurrence of an incident.

Internal and External Systems

Dual function internal and external CCTV systems may be permitted, provided they meet the necessary requirements (see below), which are the same as those for specific internal or external systems.

Conditions of Licence (~~Necessary~~ Mandatory Requirements)

The licensing authority has imposed conditions of licence to support this policy. Breach of a condition of licence is a criminal offence, which on summary conviction may result in a monetary fine. Such breaches may be reported to Police Scotland and may be subject to other sanctions under the Civic Government (Scotland) Act 1982, such as suspension of the licence.

The licence holder must meet the following requirements prior to installation of CCTV in their vehicle: a) notify the licensing authority in writing of the type of recording to be carried out (e.g. specify external and/or internal and if the internal recording includes a panic button function for audio recording); b) notify the licensing authority in writing of the technical specification of the system; c) notify the licensing authority in writing of the person/company who is acting as the data controller; d) provide the licensing authority with a copy of the licence holder’s data protection policy in respect of the processing and control of data recordings; and e) provide the licensing authority with a copy of the registration of the CCTV system with the Information Commissioner. If any of the documents or details changes the licence holder must notify the licensing authority forthwith in writing and provide a copy of the updated document(s).

The licence holder shall ensure proper use of the CCTV system, which should be operated only as per the licence holder's notification(s) to the licensing authority and within the terms of their registration with the Information Commissioner.

Data Protection Policy (Mandatory Requirements)

The licence holder's data protection policy must explain why CCTV is necessary and what controls they will use to ensure the secure storage and processing of data recordings. It should also specify the standard retention and regular secure data disposal procedures. Given the nature of these data recordings and the type of CCTV systems it is recommended that they should be deleted or overwritten daily or on up to a weekly basis.

Specification of CCTV systems

Only CCTV systems that meet the following specification shall be included on the licensing authority's approved list.

- Wiring of the CCTV system must be compliant with current British Standards.
- CCTV cameras must be permanently wired and turned on and off by the ignition only. They cannot have a switch to be turned on or off manually, or be powered by a dashboard cigarette lighter.
- The storage system for recorded data should be solid state (hard drive) and of sufficient reliability, preferably with industrial grade memory. It is not recommended that the storage of recordings of video and audio data is on removable devices such as computer discs, SD or micro SD cards, USB pens etc. Although the storage of and access to recordings on removable devices can be permitted when the data controller/licence holder satisfactorily safeguards the secure processing, storage and ultimately disposal of the data in accordance with this policy and the CCTV condition of licence. It is recommended that where removable storage is utilised the system is kept in a lockable box or compartment to prevent theft or unauthorised access.
- Stored recorded data must be encrypted and only be accessible to the data controller.

Inspection and Approval of CCTV systems

Prior to use of a CCTV system it must be inspected and approved by an authorised officer of the licensing authority. The officer shall carry out an inspection for the purpose of determining whether or not it complies with the condition and policy.

The licence holder must be able to provide an authorised officer of the licensing authority with logs and/or other appropriate documentation with regard to the installation of the CCTV system.

Before a CCTV system can be approved clear signage must be displayed within the vehicle to advise passengers that CCTV recording is in operation. Such signage must be clearly visible from the passenger seats and advise that images and sound are being recorded, e.g. for the prevention and detection of crime. It

should also provide the details of the operator (data controller) of the system and their contact number.

Maintenance and Repair

The licence holder is liable for the maintenance and repair of the CCTV system and upon request must present the vehicle to an authorised officer for investigation thereof.

The licence holder shall upon request provide an authorised officer of the licensing authority with the documentation in relation to the maintenance of the CCTV system.

Data Controller

Licence holders, insurers and CCTV companies should be aware that if they install CCTV in a taxi or private hire car they must meet the legal obligations that arise therefrom. The Data Controller is under a legal obligation to ensure that they fulfil all of the Data Protection requirements.

For example, they must have in place an appropriate procedure for complying with Subject Access Requests for recorded data from passengers, and potentially other road users in the event of recording of an accident.

The licence holder should also be aware that they are responsible for the operation of any CCTV system installed in their vehicle and any legal requirements pertaining to the operation thereof, including but not limited to legal requirements under the Data Protection Act 1998 and the Human Rights Act 1998. Failure to comply may result in sanctions by the Information Commissioner, the Licensing Authority and/or the Equality and Human Rights Commission.

Accordingly, it is recommended that if licence holders wish to install a CCTV system in their vehicle they should seek independent legal advice. The licensing authority cannot provide such advice.

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, their drivers or their insurers. The licensing authority neither recommends the installation of CCTV nor has responsibility for control of access to any data recorded by a taxi or private hire car licence holder or their insurer.

Useful Contacts

The Licensing Authority (Licensing)
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