

DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

DATED 15 JULY 2013

To: The Chief Constable of Hertfordshire Constabulary

Of: Hertfordshire Constabulary
Stanborough Road
Welwyn Garden City
Hertfordshire
AL8 6XF

1. The Chief Constable of Hertfordshire Constabulary (the "Chief Constable") is the data controller, as defined in section 1(1) of the Data Protection Act 1998 (the "Act"), in respect of the processing of personal data carried on by the Chief Constable and is referred to in this notice as the "data controller". Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.
2. The Act came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the "1984 Act"). By virtue of section 6(1) of the Act, the office of Data Protection Registrar originally established by section 3(1)(a) of the 1984 Act became known as the Data Protection Commissioner. From 30 January 2001, by virtue of section 18(1) of the Freedom of Information Act 2000, the Data Protection Commissioner became known instead as the Information Commissioner (the "Commissioner").
3. The Commissioner has considered complaints relating to the data controller's policy of covering the road network in the town of Royston with seven static 'Automatic Number Plate Recognition' (ANPR) cameras at six locations. At the present time, it is impossible to drive into or out of Royston without passing an ANPR camera; hence it is sometimes referred to as the 'ring of steel'. The result of this policy is that the Vehicle Registration Mark ("VRM") of every licensed vehicle keeper is recorded each time their vehicle goes past a camera.

4. The Commissioner has considered a report on the data protection and related issues arising out of this policy, in addition to correspondence entered into with the data controller and a site visit. The Commissioner is also mindful of the relevant advice he has provided in his Code of Practice on CCTV. In the light of these the Commissioner has considered the data controller's compliance with the provisions of the Act. The relevant provisions of the Act are the First and Third Data Protection Principles.
5. The First Data Protection Principle provides, at Part I of Schedule 1 to the Act, that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

 - (a) *at least one of the conditions in Schedule 2 is met, and*
 - (b) *in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*
6. The Third Data Protection Principle provides, at Part I of Schedule 1 to the Act, that:

"Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed."
7. The Commissioner is of the view that the data controller has contravened the First Data Protection Principle in that he is processing personal data unlawfully. The Commissioner has taken account of the effect of the incorporation in English law of the European Convention on Human Rights ("ECHR"), by virtue of the Human Rights Act 1998, in deciding whether or not to serve an Enforcement Notice.
8. In particular, the Commissioner is mindful of the provisions of Article 8 of the ECHR in that licensed vehicle keepers have the right to respect for private and family life, home and correspondence which has been unlawfully interfered with by the processing referred to in paragraph 3 above. A breach of Article 8 will also contravene the lawful processing requirement of the First Data Protection Principle. Consequently, the data controller has also contravened the Third Data Protection Principle in that he is processing excessive personal data.

9. The data controller has given no satisfactory explanation to the Commissioner for his policy of covering the road network through the town of Royston with seven static ANPR cameras at six locations that record the VRM of every licensed vehicle keeper going past the cameras into or out of Royston.
10. The Commissioner considered, as he is required to do under section 40(2) of the Act when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner has taken the view that, in the event of the data controller failing to address the Commissioner's concerns about the policy, it is likely to cause distress to licensed vehicle keepers. Although the recorded ANPR data may only be accessed in limited circumstances, the Commissioner is concerned that it could be used for purposes (albeit legitimate) other than those originally intended. The Commissioner is also of the view that where personal data is recorded and stored for any period of time there is always the risk that it could be subject to unauthorised or unlawful access, disclosure or other processing that results in distress to individuals, notwithstanding any security measures that may have been taken by the data controller.

In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of his powers under section 40 of the Act, he requires that the data controller shall within 90 days of the date of this Notice:

- Refrain from processing the personal data referred to in paragraph 3 above except to the extent that such processing can be justified to the satisfaction of the Commissioner as being in compliance with the First and Third Data Protection Principles following the conduct of a Privacy Impact Assessment or similar impact assessment process that defines the pressing social need, assesses the likely effectiveness of the proposed measures in addressing this, identifies the likely impact on the private life of individuals and determines that the proposed measures are a proportionate interference after taking into account any additional safeguards that might be provided.

Right of Appeal

There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 1.

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Notice is served. If the Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated the 15th day of July 2013

Signed: .

David Smith
Deputy Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

THE DATA PROTECTION ACT 1998 (PART V, SECTION 40)

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice or an information notice has been served a right of appeal to the First-tier Tribunal (General Regulatory Chamber) (the "Tribunal") against the notice.
2. If you decide to appeal and if the Tribunal considers:
 - a) that the notice against which the appeal is brought is not in accordance with the law; or
 - b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

GRC & GRP Tribunals
PO Box 9300
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

- a) The notice of appeal should be served on the Tribunal within 28 days of the date on which notice of the Commissioner's decision was served on or given to you.
- b) If your notice of appeal is late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.
- c) If you send your notice of appeal by post to the Tribunal, either in a registered letter or by the recorded delivery service, it will be treated as having been served on the

Tribunal on the date on which it is received for dispatch by the Post Office.

4. The notice of appeal should state:
- a) your name and address;
 - b) the decision which you are disputing and the date on which the notice relating to such decision was served on or given to you;
 - c) the grounds of your appeal;
 - d) whether you consider that you are likely to wish a hearing to be held by the Tribunal or not;
 - e) if you have exceeded the 28 day time limit mentioned above the special circumstances which you consider justify the acceptance of your notice of appeal by the Tribunal; and
 - f) an address for service of notices and other documents on you.

In addition, a notice of appeal may include a request for an early hearing of the appeal and the reasons for that request.

5. By virtue of section 40(7), an enforcement notice may not require any of the provisions of the notice to be complied with before the end of the period in which an appeal can be brought and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

However, section 40(7) does not apply where the notice contains a statement that the Commissioner considers that the notice should be complied with as a matter of urgency.

Section 48(3) provides that where an enforcement notice contains a statement that the notice should be complied with as a matter of urgency then, whether or not you intend to appeal against the notice, you may appeal against –

- (a) the Commissioner's decision to include the statement in the notice, or
 - (b) the effect of the inclusion of the statement as respects any part of the notice.
6. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

7. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 Statutory Instrument 2009 No. 1976 (L.20).

