

SECTION 28 DATA PROTECTION ACT 1998

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CERTIFICATE OF THE SECRETARY OF STATE

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**I Background**

1.1 Section 28 of the Data Protection Act 1998 ("the 1998 Act") provides for exemptions from the 1998 Act as set out below for the purpose of safeguarding national security:

1.1.1 By subsection 28(1) of the 1998 Act it is provided that personal data are exempt from any of the provisions of:

1.1.1.1 the data protection principles as set out in Schedule 1 to the 1998 Act;

1.1.1.2 Parts II, III and V of the 1998 Act; and

1.1.1.3 section 55 of the 1998 Act;

if the exemption from those provisions is required for the purpose of safeguarding national security.

1.1.2 By subsection 28(2) of the 1998 Act it is provided that a certificate signed by a Minister of the Crown certifying that the exemption from all or any of the provisions mentioned in subsection 28(1) is or at any time was required for the purpose there mentioned in respect of any personal data shall be conclusive evidence of that fact;

1.1.3 By subsection 28(3) it is provided that a certificate under subsection 28(2) of the 1998 Act may identify the personal data to which it applies by means of a general description and may be expressed to have prospective effect.

1.2 There are potentially serious adverse repercussions for the national security of the United Kingdom if the exemptions identified in this Certificate were not available.

1.3 Transport for London ("TfL") maintains a system of congestion charging cameras and traffic management cameras ("the Cameras") in relation to the Congestion Charging Zone in Central London, including any extensions which may hereafter be added thereto ("the Zone") and traffic management in the Greater London Area ("the Area");

1.3.1 on the approaches to the Zone;

- 1.3.2 on the boundaries of the Zone;
  - 1.3.3 within the Zone; and
  - 1.3.4 within the Area.
- 1.4 The Cameras collect data on vehicles approaching, passing by, entering and located within the Zone and vehicles entering into or located within the Area. TfL processes such data for the purposes of administering the charging scheme within the Zone and the management of traffic in the Area. TfL provide specific information to the Metropolitan Police and other police forces on case-by-case application under section 29 of the 1998 Act. The data collected by the Cameras are linked to other data held on statutory registers and non-statutory files by the Metropolitan Police and other police forces.

## 2 Reasons for this Certificate

- 2.1 The reasons for the granting of this Certificate are set out in the document referenced DPA/s.28/MPS/2007/CC2.
- 2.2 In summary the national security reasons for granting this Certificate set out in the document referenced DPA/s.28/MPS/2007/CC2 are:
- 2.2.1 The work of the police officers and support staff assigned by the Commissioner of Police of the Metropolis to the special operational units of the Metropolitan Police dealing with national security including, but not limited to, Counter Terrorism Command and any other police officer or individual assigned by his Chief Officer of Police (including the Chief Constable of the British Transport Police Force) to Special Branch or any other unit or special operational unit dealing with national security in any other police force in the United Kingdom (all such units hereinafter together referred to as "National Security Units") requires secrecy.
  - 2.2.2 The general principle of neither confirming nor denying whether National Security Units process data about an individual, or whether others are processing personal data for, or on behalf of with a view to assist or in relation to the functions of National Security Units, is an essential part of that secrecy.
  - 2.2.3 In dealing with subject access requests under section 7 of the 1998 Act, the relevant police forces shall examine each individual request to determine:
    - 2.2.3.1 whether adherence to that general principle is required for the purpose of safeguarding national security; and
    - 2.2.3.2 in the event that such adherence is not required, whether and to what extent the non-communication of any data or any description of data is required for the purpose of safeguarding national security.

2.2.4 The very nature of the work of National Security Units requires exemption on national security grounds from those parts of the 1998 Act that would:

2.2.4.1 prevent them passing data outside the European Economic Area; and

2.2.4.2 allow access by third parties to the premises assigned to the police officers and support staff, including consultants, of National Security Units.

2.3 This Certificate relates to the processing of the:

- images taken by the Cameras (“the Images”); and
- personal data derived from the Images, including vehicle registration mark, date, time, place and camera location;

(“the Camera Data”). In summary, the reasons relating to the processing of the Camera Data, for granting the certificate set out in the document referenced DPA/s.28/MPS/2007/CC2 are that the Camera Data will allow National Security Units to safeguard national security by:

2.3.1 providing information on the movements in London of those groups and/or individuals breaching, suspected of breaching or planning to breach national security;

2.3.2 allowing the investigation of occurrences designed to breach, damage, or having the effect of breaching or damaging national security; and

2.3.3 providing information which will allow the anticipation of the movements in London of those groups and/or individuals breaching, suspected of breaching or planning to breach national security.

### **3 Certification**

3.1 For the reasons identified in Section 2, I, the Right Honourable Jacqueline Smith, being a Minister of the Crown, who is a member of Her Majesty’s Cabinet, in exercise of the powers conferred by the said section 28(2) of the 1998 Act do issue this Certificate and certify as follows:

3.1.1 that any Camera Data that are processed by police officers and support staff assigned to National Security Units as described in Column 1 of Part A of the Schedule are and shall continue to be required to be exempt from those provisions of the 1998 Act that are set out in Column 2 of Part A of the Schedule;

3.1.2 that any Camera Data that are processed by TfL (in circumstances where that data processing comprises or includes the retention or disclosure of data by TfL for or to police officers assigned to National Security Units) in the course of data processing operations carried out for, on behalf of, or at the request of or with a view to assisting police officers assigned to National Security Units as described in Column 1 of Part B of the Schedule are and shall continue to be, exempt from those provisions of the 1998 Act which are set out in Column 2 of Part B of the Schedule; and

3.1.3 that any Camera Data processed by any other person or body (other than a Government Department, agency or non-departmental public body) in the course of data processing operations as a consequence of the disclosure of any Camera Data by police officers assigned to National Security Units in accordance with their statutory and common law legal powers as described in Column 1 of Part C in the Schedule are and shall continue to be exempt from those provisions of the 1998 Act which are set out in Column 2 of Part C of the Schedule;

all for the purpose of safeguarding national security, provided that:

3.2 no Camera Data shall be exempt from the provisions of section 7(1)(a) of the 1998 Act if the relevant police force, after considering any request by a data subject for access to relevant Camera Data, determines that adherence to the principle of neither confirming nor denying whether National Security Units hold Camera Data about an individual is not required for the purpose of safeguarding national security;

3.3 no Camera Data shall be exempt from the provisions of section 7(1)(b), (c) or (d) of the 1998 Act if the relevant police force, after considering any request by a data subject for access to relevant Camera Data, determines that non-communication of such data or any description of such data is not required for the purposes of safeguarding national security;

3.4 no Camera Data shall be exempt from the provisions of section 7(1)(a) of the 1998 Act if TfL after considering any request by a data subject for access to relevant Camera Data, determines that adherence to the principle of neither confirming nor denying whether TfL hold Camera Data about an individual is not required for the purpose of safeguarding national security.

#### 4 Notice

4.1 I give notice that it is a condition of this Certificate that I require:

4.1.1 the Commissioner of Police of the Metropolis and any Chief Officer of Police of any police force with responsibility for the operation of the police officers and support staff comprising National Security Units in the United Kingdom to report to me on the operation of this Certificate; and

4.1.2 the Commissioner of Police of the Metropolis to provide a report to the Information Commissioner on the general operation of this Certificate.

## SCHEDULE

### Part A

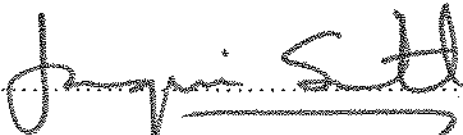
Column 1	Column 2
<p>The processing of the Camera Data by police officers and support staff assigned to National Security Units in connection with the performance of the statutory and common law functions of police officers assigned to National Security Units insofar as they relate to the safeguarding of national security.</p>	<ul style="list-style-type: none"><li>• Sections 7(1), 7(8), 10 and 12 of Part II;</li><li>• Part V which includes Schedule 9;</li><li>• the following principles of data protection from Schedule 1:<ul style="list-style-type: none"><li>• the first principle in so far as it relates to fair processing;</li><li>• the second principle;</li><li>• the sixth principle to the extent necessary to be consistent with the exemptions contained in this Certificate; and</li><li>• the eighth principle which includes Schedule 4.</li></ul></li></ul>

Part B

Column 1	Column 2
<p>The processing of the Camera Data by TFL for, on behalf of, at the request of or with a view to assisting the police officers assigned to National Security Units to carry out their statutory and common law functions insofar as the functions and the processing relate to the safeguarding of national security.</p>	<ul style="list-style-type: none"><li>• Sections 7(1) and 7(8) of Part II;</li><li>• Part V which includes Schedule 9;</li><li>• the following principles of data protection from Schedule 1:<ul style="list-style-type: none"><li>• the first principle in so far as it relates to fair processing;</li><li>• the second principle;</li><li>• the third principle; and</li><li>• the sixth principle to the extent necessary to be consistent with the exemptions contained in this Certificate.</li></ul></li></ul>

Part C

Column 1	Column 2
The processing of the Camera Data by a third party for, on behalf of, at the request of or with a view to assisting the police officers assigned to National Security Units to carry out their statutory and common law functions insofar as the functions and the processing relate to the safeguarding of national security.	<ul style="list-style-type: none"><li>• Sections 7(1), 7(8), 10 and 12 of Part II;</li><li>• Part V which includes Schedule 9;</li><li>• the following principles of data protection from Schedule 1:<ul style="list-style-type: none"><li>• the first principle in so far as it relates to fair processing;</li><li>• the second principle; and</li><li>• the sixth principle to the extent necessary to be consistent with the exemptions contained in this Certificate.</li></ul></li></ul>




The Right Honourable Jacqueline Smith

Dated:

4th July 2007

I confirm that the Secretary of State for the Home Department approved this Certificate and it was signed with her personal stamp

Signed:



Name:

PAUL WYLIE

Dated:

4th July '07