

You mention receiving advice from the ICO in 2008 in relation to recording driving tests but I have been unsuccessful in finding this advice from the commissioner. Could I please ask for a copy of this advice?

Please find below a copy of the advice received from the Information Commissioners Office on the 15 May 2008:

Your enquiry relates to the use of CCTV in cars used by driving instructors.

In answering we have tried to consider all of the issues which might arise as a result of the use of this type of equipment and to give you as comprehensive a response as possible.

In our view it is for the DSA to determine how driving tests will be conducted. This would include deciding whether, or not, to use of CCTV cameras which have been fitted to driving instructors' cars. We would advise DSA to look at their founding legislation to determine whether there is an obligation, for example, to conduct a test in **any** vehicle which meets the basic requirements or whether DSA could issue their own constraints on the type of vehicle to be used.

If CCTV is used within a vehicle during any driving test then the footage of the test would be the personal data of both the examiner and the student and would be captured by the Data Protection Act. There is an exemption in the Act for Domestic use, but a driving instructor could not claim this as his or her car is also his place of business and the CCTV would be deployed for business use. This would make him or her the data controller in respect of this information.

There are circumstances in which a driving instructor might find it helpful to use CCTV, for example to make CCTV tapes of lessons and tests, for the purposes of reviewing them with the student afterwards as part of the lesson. It might also be helpful to use the footage to review, with the pupil, any underlying causes for a failed driving test. It might also be useful for security purposes where vandalism might be possible although it is less clear how useful it would be in those circumstances.

The DSA might also find CCTV footage helpful in certain instances, for example it could protect the examiner from unfounded charges relating to his or her behaviour during the test. It can also help to ensure that the correct test procedure is followed and can be evidence should a pupil claim this has not been the case. In addition it might act as a deterrent in cases where failed pupils become abusive or aggressive.

If DSA does decide to allow cars equipped with CCTV to keep recording during tests then this raises fair processing issues for examiners. The Data Protection Act is clear that if you process personal information then you must, in most circumstances, give a notice to the data subject which explains who you are, why you are processing their personal data, and includes any other information which will ensure that the processing is fair.

As the cars used for driving tests belong to driving instructors it would usually be the responsibility of each individual instructor to issue fair processing notices. However it would be impractical to expect all driving instructors to issue fair processing notices to all the DSA examiners in their local area. Because of this the DSA would need to make it clear to examiners that they might be filmed during tests. It would be the responsibility of the driving instructor to ensure that the pupil was aware they were being recorded. As there is no legal requirement for an examiner to allow filming consent would be required. This should be evidenced in writing and it should be possible for

examiners to revoke their consent if they wish to do so. It would only be necessary for examiners to consent as a general principle, it would not be necessary for an examiner to give consent for filming before every test.

It would be for the driving instructor to ensure that they met all of the other obligations required for compliance with all eight principles of the Data Protection Act

In general the most likely cause of difficulties would be the subject access request. If an examiner wanted to access his own footage he would need to do this by making a direct request to the driving instructor in question, or possibly, to the data protection officer of a school if the cars were not owner operated. In effect this would mean that the examiners would need to keep accurate contact details for the owners of the cars in each examination they have presided over.

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