

Rt Hon Mike Penning MP
Minister for Policing, Fire, Criminal Justice and Victims
Home Office
2 Marsham Street
London SW19 4DF

By email

28 April 2016

Dear Mr Penning

REVIEW OF THE IMPACT AND OPERATION OF THE SURVEILLANCE CAMERA CODE OF PRACTICE

Thank you for your letter of 22nd March 2016 in response to the review into ‘The Impact and Operation of the Surveillance Camera Code of Practice’.

The review involved consultation with a wide spectrum of surveillance camera communities including – manufacturers, designers, integrators, end users and civil liberty groups. Many of those involved have been asking how the review was received by government. I have therefore made arrangements to publish your response. I will also be publishing this reply as there are points of clarity regarding my recommendations and your reply that are important to recognise.

You say that ‘you are not convinced’ that granting me any powers of enforcement or sanction will improve compliance with the code. I find this confusing as I did not request any powers of enforcement or sanction in the Review. In fact on page 14 of the document I say:

“The absence of any official powers has not impacted on my role. The ability to use soft levers of power, akin to the HMIC and OSC, are not to be understated. That said, we are still in a period of austerity and so maybe another punitive measure is the wrong approach.”

I believe that the government’s approach of light touch and incremental regulation is the right approach and I have emphasised this throughout the report. Despite many calls for more ‘teeth’ via a sanction power, I have resisted for reasons outlined within the report.

At recommendation two I ask government to make the publication of a number of documents such as the self-assessment tool and annual reviews mandatory for all relevant authorities. This links to principle three in the code which refers to relevant authorities being open and transparent and aligns to the government commitment to greater transparency by public authorities. Then in recommendation three I go on to say that if this

mandatory requirement is not complied with, then the government should consider giving me limited powers of enforcement and sanction. This is merely a future contingency for consideration should adherence to the code be less than enthusiastic.

I would urge greater consideration be given to recommendation two. To amend the code would require consultation with the statutory consultees and thereafter laying in both Houses. Yet the benefits, to reflect the tools that have since been developed to promote transparency, surely outweigh the effort? This approach would enhance and support the government approach to regulating public space surveillance whilst maintaining the light touch and incremental philosophy.

In fact, I am disappointed that apart from recommendation three, there was no comment on any of the other recommendations. All the recommendations are framed so that no change is required to primary legislation but those that require a legislative change can all be done via statutory instrument.

Further, you say the Information Commissioner (ICO) already has powers to enforce the Surveillance Camera Code of Practice – this is not right. The Protection of Freedoms Act 2012 gives no statutory role to the Information Commissioner in relation to the Surveillance Camera Code of Practice. I am therefore concerned that you may be placing some factual inaccuracies on the record by stating he already has powers to enforce the Surveillance Camera Code of Practice. The Information Commissioner does have powers in relation to the Data Protection Act 1998, and some elements of the Surveillance Camera Code of Practice do reflect data protection legislation.

For this reason, I have worked with the ICO to agree and publish a memorandum of understanding which sets out our respective roles and responsibilities; this rightly refers any potential data protection breaches to the ICO. I intend to review the memorandum of understanding with the ICO to ensure it remains relevant. Such a review could form part of my National Surveillance Camera Strategy development, and I will consult your officials to ensure the Home Office is fully sighted on any amendments which the ICO and I consider necessary.

As you say additional regulation causes confusion and this is borne out in the review. There are currently two codes of practice – one presided over by me and one by the ICO. I would like your help and support to streamline the codes into one document as set out at recommendation nine. I believe this will go a long way to removing any confusion amongst organisations around which code to follow.

It would also be useful if your officials could respond to the recommendations in the review more fully so I can understand where we can work together to drive forward relevant recommendations and on what timescales. It is equally as important for the public to understand how this important issue is progressing.

I understand that there will be post legislative scrutiny of the Protection of Freedoms Act next year. However, in the government response to consultation on the Surveillance Camera Code of Practice they committed to reviewing the impact and operation including the extent of the list of relevant authorities and so on in 2015 which is what I have done.

My reading of the guidance is that a post legislative scrutiny memorandum is due to be submitted (i.e. published by government as a Command Paper) within 3-5 years of Royal Assent. This is not an absolute requirement for all primary legislation, and the five years is not an absolute deadline. That said, it would appear reasonable to assume that a department might be in correspondence with its Select Committee to agree timescales for publication. This could then inform a timeline for undertaking the actual review work. My

team would be happy to work with your officials to agree the post legislative scrutiny timetable.

Lastly, you mention the National Surveillance Camera Strategy. Work is now well underway and I plan to go out for consultation on it in the autumn and publish the strategy by the end of the year. Some of the recommendations in the review will be included in this work but not all. I see this strategy as being crucial to bring the many different and disparate parts of the sector in to one strategy. Your support, endorsement and commitment to this will go a long way to driving this work forward. It would be useful to discuss the strategy with you when you are less busy to ensure that it aligns with government policy on surveillance cameras and their use.

Thank you for your broad endorsement of the National Surveillance Camera Strategy and I look forward to working with you and your officials to further promulgate the code.

Your sincerely

A handwritten signature in black ink, appearing to read 'Tony Porter'. The signature is stylized and cursive, with the first name 'Tony' written in a larger, more prominent script than the last name 'Porter'.

Tony Porter
Surveillance Camera Commissioner