

March 2021

**Biometrics and Surveillance Camera Commissioner consultation response to the Transport for London consultation on the use of in-vehicle CCTV in taxis (black cabs) and private hire vehicles (including minicabs) in London.**

1. The Biometrics and Surveillance Camera Commissioner welcomes the opportunity to provide input into this consultation on the use of in-vehicle CCTV in taxis (black cabs) and private hire vehicles (including minicabs) in London. His predecessor, Tony Porter, worked with the Department for Transport in development of the guidance on statutory taxi and PHV standards issued in July 2020. The consultation response on that statutory guidance can be accessed [here](#).
2. Further to the comments already made by Mr Porter, the Commissioner would like to add or emphasise the following points:
3. The law requires relevant authorities to have regard to [the Surveillance Camera Code of Practice \(SC Code\)](#) when exercising any of the functions to which it relates. The onus of demonstrating how, when and to what effect relevant authorities have had regard to the contents of the SC Code rests primarily with those authorities, both as a specific issue and as part of their general accountability to the communities they serve for the exercise of all their functions.
4. Public authorities that operate surveillance camera systems should be able to demonstrate that the contents of the SC Code have been properly and appropriately taken into account at all relevant stages of the design, procurement, operation and review processes. Any areas of concern should be considered within the relevant body's arrangements for identifying and managing risk.
5. Paragraph 1.15 of the SC Code stipulates that "*any proposed imposition of a blanket requirement to attach surveillance camera conditions as part of the conditions attached to a licence or certificate is likely to give rise to concerns about the proportionality of such an approach and will require an appropriately strong justification and must be kept under regular review*". The Commissioner would therefore not expect widespread mandatory installation of CCTV in taxis without well evidenced justifications.
6. There are undoubtedly benefits from using CCTV in the ways under consultation. It can, for example, increase the safety and security of individuals and the extent to which they *feel* safe and secure which is subtly but importantly different; it can also deter criminal activity, and where crimes are committed, any captured footage can become vital evidence in ongoing investigations and prosecutions. However, the use of surveillance camera systems must always be proportionate, lawful, ethical and transparent. This means that, for example, if one of the express purposes for using such systems is to provide evidence for potential prosecution, one would expect the images to be of a quality, accessibility and reliability that is consistent with that stated purpose.

7. Much of the legal and societal concern surrounding the increased use of surveillance camera systems and enhanced capabilities arises from the levels of intrusion (actual or perceived) from the use of those systems and the consonant interference with the individual rights of citizens. While identifying and achieving a fair balance of intrusion and interference depends substantially on facts and context in particular cases, the general principles arise from enshrined human rights and legitimate expectations. This can include, but is not limited to, data protection and rights to respect for a private life, but also encompasses other fundamental rights, such as freedom of expression and association.
8. Any interference with the fundamental rights and freedoms of the individual by a relevant body needs to have a clear lawful basis and a stated purpose. That purpose will generally need to be congruent with the output of the interference. For example, if the recording of images is principally to produce material that might be used as evidence in legal proceedings then the quality, accessibility and reliability ought to be consistent with that purpose. The potential impact on the individual must also be balanced against the wider public interests to be achieved by that interference.
9. In this context, it is not so much the *technology* that has the potential to be intrusive but rather the *uses* to which that technological capability may be put by operators. Paragraph 3.2.2 of the SC Code states “*there is a strong presumption that a surveillance camera system must not be used to record conversations as this is highly intrusive and unlikely to be justified*”.
10. Use of audio recording is considered a ‘high risk’ to individuals’ specific rights and freedoms under not only data protection law but also wider human rights such as respect for private correspondence and freedom of speech. A Data Protection Impact Assessment (DPIA) must be carried out before any system is installed and then kept under regular review ([the DPIA on the Commissioner’s website](#) is specific to surveillance cameras and was developed in conjunction with the Information Commissioner’s Office) but also the particular issues of the likely interference with wider freedoms must also be taken into account (for example the recording of telephone calls made while under taxi cab surveillance).
11. While capable of adding corroborative layer of public/private protection and accuracy in its output, audio recording is particularly intrusive. It is interesting that even some of the broader attempts to define ‘biometric data’ do not always expressly include a person’s voice (for example the Scottish Biometrics Commissioner Act 2020, s.34(2)). Notwithstanding its statutory definition, in their processing of recorded aural personal data, the relevant person is required to take appropriate mitigating actions to minimise the risk of the loss or misuse of that data captured by surveillance camera systems.
12. A particular challenge when considering the introduction of *enhanced* technical capability (for example by adding audio capability to an existing surveillance camera system) is for the operator to assure themselves that other potentially less intrusive solutions exist that can achieve the same aim, as well as the effect that each aspect of the camera system may have on individuals, and whether the use of the new enhanced system is a proportionate response to the problem identified.
13. Achieving a fair balance calls for the exercise of discretion by the decision-maker and each situation will depend heavily on the individual circumstances and the specific context in which the surveillance camera systems are to be developed and used.

14. Furthermore, before deploying a surveillance camera system, operators should be able to satisfy themselves that the system does not involve or produce unacceptable bias on any inappropriate ground or characteristic of the individuals whose images might reasonably be expected to be captured by it. This would clearly require clear evidence from the designer/developer and an undertaking to keep this area under regular review.
15. An individual can rightly expect that public bodies using surveillance camera systems in public places have ensured that their use is both necessary and proportionate and that appropriate safeguards (including clear, accessible and regularly reviewed policies) are in place.
16. The Commissioner's Third-Party Certification Scheme allows operators of surveillance camera systems to demonstrate that they comply with the principles in the SC Code. His Secure by Default Self-Certification Scheme allows manufacturers of surveillance camera devices and components to clearly demonstrate that their products meet minimum requirements to ensure that they are secure by default and secure by design.