

**Briefing Note for the
Information Commissioner
in relation to Project 28 on
behalf of the Metropolitan
Police Service**



5 February 2007

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METROPOLITAN POLICE SERVICE (“MPS”)

BRIEFING NOTE FOR THE INFORMATION COMMISSIONER IN RELATION TO THE PROCESSING OF DATA DERIVING FROM THE TRANSPORT FOR LONDON (“TFL”) CONGESTION CHARGING CAMERA NETWORK FOR THE PURPOSES OF THE SAFEGUARDING OF NATIONAL SECURITY

1 Background

- 1.1 The MPS is charged with the safeguarding of London from certain breaches of national security including but not limited to terrorism. It also has a number of national and international functions relating to the safeguarding of national security. Whilst the MPS is very successful at preventing terrorism and certain other breaches of national security it is not infallible and terrorist incidents have occurred in the recent past.
- 1.2 The MPS is continually looking for new sources of intelligence which will assist it to safeguard the areas of national security for which it is responsible including the prevention of terrorism. [REDACTED]
[REDACTED] the MPS had been looking to develop systems to assist with the protection of London generally and key sites in particular.
- 1.3 During the late 1990’s through to 2003 the MPS, along with the Home Office and other police services, developed the computer systems and software that would permit it to review data collected by ANPR cameras [REDACTED]
[REDACTED] As a result of these developments it became clear that access to such data was required for the safeguarding of national security and the MPS looked to establish a network of cameras in central London near to high risk sites.
- 1.4 The costs of introducing this system were considerable but the MPS started to introduce cameras [REDACTED]
However following the launch of the Congestion Charging System in Central London in 2003 the MPS became aware that it could use the system of TfL Congestion Charging Cameras and the associated camera network (the **Cameras**) for the same purposes and that the data collected by the Cameras would be a vital tool to the safeguarding of national security [REDACTED] as the Cameras covered the majority of high risk areas that had been identified in central London.
- 1.5 Following initial discussions the MPS now request and TfL provide information on a regular basis from the Cameras. This information relates to individual matters under a protocol which examines each request on a case by case basis. However requests for information are required almost immediately due to TfL’s policy to destroy all personal data deriving from the Camera (the **Camera Data**) within twenty-four hours of collection if it is no longer required e.g. the registered keeper of the vehicle entering the Congestion Charging Zone (or his agent) have paid or are exempt from the charges. It therefore became clear that for this information to be of use for the purposes of national security either TfL would need to keep the information for longer or the information would need to be passed to the MPS in bulk for analysis and storage.

1.6 The MPS then commenced discussions with TfL to see if TfL would transfer the Camera Data in bulk to the MPS. This raised a number of data protection considerations as the majority of the information collected by the Cameras was considered to be personal data within the definition of the Data Protection Act 1998 (the 1998 Act).

1.7 TfL agreed to the transfer provided that a legal basis for the transfer of the Camera Data could be established and the resulting processing of the personal data could be undertaken in accordance with the 1998 Act. It was soon established that TfL had the legal power to transfer the Camera Data provided that it was only used for the purposes of safeguarding national security and that the concerns in relation to the compliance with the 1998 Act could be overcome.

1.8 [REDACTED]

1.9 [REDACTED] TfL agreed [REDACTED] but confirmed that it expected the MPS to obtain a Certificate under Section 28 of the 1998 Act before any data would be transferred. TfL required the Certificate as it would be granted by a Cabinet Minister and would provide conclusive evidence that the exemption was required for the purposes of safeguarding national security.

1.10 [REDACTED]

2 Technical Information

2.1 [REDACTED]

2.2 Once the data are received by the MPS it will be directed into a secure server which can be accessed only by those parts of the MPS undertaking the safeguarding of national security [REDACTED]

2.3 The MPS is also establishing internal procedures to ensure that once the Camera Data are collected and are being processed they cannot be diverted into other areas operated by the MPS.

2.4 In due course the MPS would like to be able to use the Camera Data for the purposes of the prevention and detection of crime and the apprehension of offenders and the Home Office has indicated that it may amend the law to allow this to occur. The MPS has guaranteed to TfL that it shall not use the Camera Data for these purposes until the change in the law occurs.

3 The Application for the Certificate

3.1 The application for a Certificate under Section 28 of the 1998 Act was made in August 2004 to the Home Secretary to permit both the MPS and TfL to process the Camera Data for the purposes of the safeguarding of national security.

3.2 [REDACTED]

3.3 Between the submission of the Certificate and June 2006 the MPS and the Home Office exchanged correspondence on this matter. This culminated in a letter from Tony McNulty the Minister of State responsible for policing turning down the application for the Certificate.

4 MPS Response and Further Action

4.1 On the provision of further information from the MPS, the Home Office reconsidered its position and following a meeting between the Commissioner of Police of the Metropolis (the **MPS Commissioner**) and the Home Secretary to discuss matters directly, the Home Office reopened the application and at a series of meetings between November 2006 and January 2007 the MPS, TfL and the Home Office agreed a position.

4.2 The policy team at the Home Office has agreed that a submission should be made to the Home Secretary to approve and sign a Certificate on the terms similar to those requested by the MPS. [REDACTED]

4.3 [REDACTED]

4.4 The purpose of this Briefing Note, which has been requested by the MPS Commissioner for the Information Commissioner, is to provide the Information Commissioner with information on the background to the application and to raise various points for consideration.

5 The Exemptions Requested from Compliance with the 1998 Act

5.1 The MPS and TfL have requested various exemptions from compliance with the 1998 Act. These have been requested because it will not be possible to comply with the requirements of the 1998 Act due to the underlying activities involved rather than a reluctance to comply.

5.2 The MPS has applied for exemptions from the following sections and parts of the 1998 Act in relation to 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:

5.2.1 Sections 7(1), 7(8), 10 and 12 of Part II;

5.2.2 Sections 16(1)(c), 16(1)(d), 16(1)(e), 16(1)(f), 17, 21, 22 and 24 of Part III;

5.2.3 Part V which includes Schedule 9;

5.2.4 the following principles of data protection from Schedule 1:

5.2.4.1 the first principle in so far as it relates to fair processing;

5.2.4.2 the second principle;

5.2.4.3 the sixth principle to the extent necessary to be consistent with the exemptions contained in this Certificate; and

5.2.4.4 the eighth principle which includes Schedule 4.

5.3 Following discussions, the Home Office has agreed that all of the exemptions save those relating to Sections 16 to 24 of Part III of the 1998 Act are justified and will be included in the submission and the Certificate submitted to the Home Secretary.

the MPS may need an exemption from the third principle of data protection and this is currently under consideration.

5.4 The MPS on behalf of TfL has applied for exemptions from the following sections and parts of the 1998 Act in relation to 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:

5.4.1 Sections 7(1) and 7(8) of Part II;



- 5.4.2 Sections 16(1)(c), 16(1)(d), 16(1)(e), 16(1)(f), 17, 21, 22 and 24 of Part III;
- 5.4.3 Part V which includes Schedule 9;
- 5.4.4 the following principles of data protection from Schedule 1:
 - 5.4.4.1 the first principle in so far as it relates to fair processing;
 - 5.4.4.2 the second principle;
 - 5.4.4.3 the third principle; and
 - 5.4.4.4 the sixth principle to the extent necessary to be consistent with the exemptions contained in this Certificate.

5.5 Following discussions the Home Office has agreed that all of the exemptions save those relating to Sections 16 to 24 of Part III of the 1998 Act will be included in the submission and the Certificate submitted to the Home Secretary. TfL agreed that it did not need exemptions from Sections 10 and 12 of the 1998 Act.

5.6 Please note that the exemptions in relation to:

5.6.1 Section 7 will be applied in accordance with the principles established during the Information Security Tribunal [REDACTED]

5.6.2 Part V of the 1998 Act will be applied in accordance with the rights of the Information Commissioner granted by Section 51 of the 1998 Act.

5.7 [REDACTED]

5.8 All processing which is not exempt from compliance with the 1998 Act shall be processed in accordance with the requirements of the 1998 Act. Procedures and policies are being drafted to ensure such compliance and the National ANPR Data Centre shall be operated in accordance with the procedures agreed by ACPO which set out the national standards required in relation to compliance with the fourth, fifth and seventh principles of data protection as set out in Schedule 1 to the 1998 Act.

6 The Purpose of the Meeting with the Information Commissioner

6.1 The purpose of the meeting with the Information Commissioner is to:

- 6.1.1 provide him with further information in relation to the project (referred to as project 28);
- 6.1.2 answer any immediate questions that result from this Briefing Note and the further information provided at the meeting;



6.1.3 to discuss a way in which both the MPS and TfL can notify the Information Commissioner that they are processing the Camera Data for the purposes of safeguarding national security without:

6.1.3.1 providing information which may be of use to terrorists or others wishing to breach national security; or

6.1.3.2 being in breach of Sections 16 to 24 of the 1998 Act; and

6.1.4 provide him with further supporting documents including the latest drafts of:

6.1.4.1 the draft Proposal to the Home Secretary requesting the Certificate;

6.1.4.2 the draft Certificate; and

6.1.4.3 the draft Reasons Document to be used to explain the Certificate to the public should a request be made.

6.2 Should the Information Commissioner conclude that it will not be possible to notify him of the processing of the Camera Data for the purposes of safeguarding national security without it resulting in information useful to those wishing to breach national security being disclosed or the MPS or TfL being in breach of Sections 16 to 24 of the 1998 Act, his assistance in forming an exemption from the relevant provisions of the 1998 which is acceptable to by the MPS, TfL, the Home Office and the Information Commissioner himself would be greatly appreciated.

7 General Points

7.1 The MPS, TfL and the Home Office will be happy to answer any questions that the Information Commissioner may have either at or following the meeting.

7.2 Whilst the application for the Certificate has been classified as Restricted in accordance with the Government's Protective Marking System, the justification for the exemptions that have been requested include information that has been classified as Secret, as has this briefing note. Should the Information Commissioner request sight of these documents he can have access to some of the information at the offices of Bircham Dyson Bell. Should he require copies of the information, he is requested to provide evidence of the security procedures in place to keep the relevant information secure.

8 Conclusion

8.1 Having considered this matter carefully with TfL, the Home Office and internally since 2003 the MPS is convinced that the Camera Data are required to safeguard national security in both London and nationwide.

[REDACTED]

8.2 The MPS hopes that the Information Commissioner can support the action that it is taking and looks forward to working with the Information Commissioner to ensure the smooth operation of the Certificate and any issues which the Information Commissioner would like to address.

8.3 The Information Commissioner will be aware that the Home Office is considering legislation to place ANPR data use by policing organisations on a statutory footing and we understand that the Home Office will be providing an update on its position to the Information Commissioner this week.

9 Questions

9.1 Should there be any questions in respect of this Briefing Note, please contact [REDACTED] Bircham Dyson Bell on [REDACTED]

Bircham Dyson Bell LLP
7 February 2007