**DATA PROTECTION ACT 1998**

**SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER**

**ENFORCEMENT NOTICE**

**DATED 23 July 2012**

To: Southampton City Council

Of: Civic Centre
Southampton
SO14 7LT

1. Southampton City Council is the data controller, as defined in section 1(1) of the Data Protection Act 1998 (the "Act"), in respect of the processing of personal data carried on by the Council and is referred to in this notice as the "data controller". Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.

2. The Act came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the "1984 Act"). By virtue of section 6(1) of the Act, the office of Data Protection Registrar originally established by section 3(1)(a) of the 1984 Act became known as the Data Protection Commissioner. From 30 January 2001, by virtue of section 18(1) of the Freedom of Information Act 2000, the Data Protection Commissioner became known instead as the Information Commissioner (the "Commissioner").

3. The Commissioner has considered the data controller's policy (effective from 26 August 2009) that all licensed taxis and private hire vehicles have to be fitted with a CCTV system that features an audio recording facility that is in permanent operation (the "policy"). The policy results in the recording of all driver and passenger conversations (including mobile telephone calls) that take place in taxis and private hire vehicles licensed by Southampton City Council whenever they are in use and regardless of whether the use is personal or private.

4. The Commissioner has considered a report on the data protection and related issues arising out of this policy, in addition to correspondence entered into with the data controller concerning their policy. The Commissioner is mindful of the relevant advice he has provided in his Codes of Practice on CCTV, Employment Practices and Privacy Notices. In the light of these the Commissioner has considered the data controller's compliance with the provisions of the Act. The relevant provisions of the Act are the First Data Protection Principle.

5. The First Data Protection Principle provides, at Part I of Schedule 1 to the Act, that:

   a. *"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—*

   b. *at least one of the conditions in Schedule 2 is met, and*

   c. *in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.*

6. The Commissioner is of the view that the data controller has contravened the First Data Protection Principle in that they are processing personal data unfairly and unlawfully. The Commissioner considers that the data controller is also processing sensitive personal data as defined by section 2 of the Act. Further, he considers that none of the conditions for processing in Schedules 2 and 3 to the Act have been met contrary to the requirements of the First Data Protection Principle.

7. The data controller has given no satisfactory explanation to the Commissioner for its policy that all licensed taxis and private hire vehicles have to be fitted with a CCTV system that features an audio recording facility that is in permanent operation.

8. The Commissioner considered, as he is required to do under section 40(2) of the Act when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner has taken the view that, in the event of the data controller failing to address the Commissioner's concerns about the policy, damage or distress to licensed taxi and private hire vehicle drivers and passengers may result. Although the recorded information may only be accessed in limited circumstances, the Commissioner is concerned that it could be used for purposes (albeit legitimate) other than those originally

intended. The Commissioner is also of the view that where personal data is recorded and stored for any period of time there is always the risk that it could be subject to unauthorised or unlawful access, disclosure or other processing that results in distress or even damage to individuals, notwithstanding any security measures that may have been taken by the data controller. Finally, the simple knowledge that a conversation will be recorded including when the vehicle is being used privately might cause distress to an individual, whether they are a passenger or a driver, who feels obliged to alter their behaviour in circumstances when they would otherwise expect a degree of privacy. In particular, in the case of taxi and private hire vehicle drivers there will be extensive recording of their conversations. Given the nature of their working environment and the fact that recording is not limited to situations where the vehicle is in commercial use this may include numerous conversations of a private nature such as on a mobile telephone. The potential exists for information recorded to be used to affect licensing decisions about them.

9. The Commissioner has further taken account of the effect of the incorporation in English law of the European Convention on Human Rights ("ECHR"), by virtue of the Human Rights Act 1998, in deciding whether or not to serve an Enforcement Notice. In particular, the Commissioner is mindful of the provisions of Article 8 of the ECHR in that drivers of taxi or private hire vehicles and their passengers have the right to respect for private and family life, home and correspondence which has been unlawfully interfered with by the processing referred to in paragraph 3 above. A breach of Article 8 will also contravene the lawful processing requirement of the First Data Protection Principle.

**In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of his powers under section 40 of the Act, he requires that by 1 November 2012 the data controller shall:**

(1) Erase any personal data in the audio recordings referred to in paragraph 3 of this notice that has already been obtained as a result of the policy and which is still held by the data controller; and

(2) Refrain from recording any such personal data in future.

**Right of Appeal**

There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 1.

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Notice is served. If the Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated the 23rd day of July 2012

Signed:

David Smith
Deputy Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

**ANNEX 1**

## THE DATA PROTECTION ACT 1998 (PART V, SECTION 40)

## RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice or an information notice has been served a right of appeal to the First-tier Tribunal (General Regulatory Chamber) (the "Tribunal") against the notice.

2. If you decide to appeal and if the Tribunal considers:

   a) that the notice against which the appeal is brought is not in accordance with the law; or

   b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

   the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

   GRC & GRP Tribunals
   PO Box 9300
   Arnhem House
   31 Waterloo Way
   Leicester
   LE1 8DJ

   a) The notice of appeal should be served on the Tribunal within 28 days of the date on which notice of the Commissioner's decision was served on or given to you.

   b) If your notice of appeal is late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

   c) If you send your notice of appeal by post to the Tribunal, either in a registered letter or by the recorded delivery

service, it will be treated as having been served on the Tribunal on the date on which it is received for dispatch by the Post Office.

4. The notice of appeal should state:

a) your name and address;
b) the decision which you are disputing and the date on which the notice relating to such decision was served on or given to you;
c) the grounds of your appeal;
d) whether you consider that you are likely to wish a hearing to be held by the Tribunal or not;
e) if you have exceeded the 28 day time limit mentioned above the special circumstances which you consider justify the acceptance of your notice of appeal by the Tribunal; and
f) an address for service of notices and other documents on you.

In addition, a notice of appeal may include a request for an early hearing of the appeal and the reasons for that request.

5. By virtue of section 40(7), an enforcement notice may not require any of the provisions of the notice to be complied with before the end of the period in which an appeal can be brought and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

However, section 40(7) does not apply where the notice contains a statement that the Commissioner considers that the notice should be complied with as a matter of urgency.

Section 48(3) provides that where an enforcement notice contains a statement that the notice should be complied with as a matter of urgency then, whether or not you intend to appeal against the notice, you may appeal against –

(a) the Commissioner's decision to include the statement in the notice, or
(b) the effect of the inclusion of the statement as respects any part of the notice.

6. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

7. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 Statutory Instrument 2009 No. 1976 (L.20).