

### Public space surveillance in light of the European Convention on Human Rights

Experience in those European countries where the European Convention on Human Rights has already been incorporated into domestic legislation shows that surveillance systems are subject to strict statutory controls. Even allowing for the fact that the European legal system is codified and our own system is based upon the common law, it is likely that the Courts may view the way in which images have been captured to be unlawful. This will lead to evidence being excluded, where there is no statutory or common law right for such material to be gathered to the detriment of the individual's newly established right to privacy in **Article 8** of the Human Rights Act 1998:

#### RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights or freedoms of others.

Therefore, to comply with Article 8 (1), which relates to the privacy of an individual, and Article 8 (2) which gives the exception, a risk/threat assessment must be carried out taking five issues into consideration. Remember any infringement by a public authority of another's rights must be justified. Always consider the following principles enshrined in the mnemonic **PLANS**:

Proportionality	<b>P</b>
Legality	<b>L</b>
Accountability	<b>A</b>
Necessity/Compulsion	<b>N</b>
Subsidiarity	<b>S</b>

#### Proportionality

Is the level of threat or risk to community safety significant in proportion to the number of cameras used, or even the requirement to have a camera system at all? Is the use of the system commensurate to the seriousness of the risks and offences it is in place to protect from? Are the methods employed to monitor as laid out in the Codes of Practice and Procedures? Actions taken whilst operating the system, must be proportional and fair and able to achieve a balance between the needs of society and the rights of the individual, with reference to the act/problem the system is seeking to stop/prevent/mitigate. Therefore, police action must be fair and achieve a balance between the needs of society and the rights of the individual. You must consider all available different options capable of achieving the objective and select the least intrusive. Don't use a sledgehammer to crack a nut!

#### Legality

CCTV operators must be fully aware and signed up to the system Codes of Practice and Procedures, including matters relating to Human Rights, Data Protection, PACE Act 1984, and Criminal Procedures and Investigations Act 1986. All actions must be supported by legislation or stated cases. (Until a 'test case' makes a judgement, consider using: Sec 17 Crime & Disorder Act 1998 for Police and Local Authority. Sec 6 Police Act 1967 for police use for the maintenance of an efficient and effective police area. Sec 163 Criminal Justice and Public order Act 1994 for Local Authority use as it permits CCTV use in its area. Sec 3 Criminal Law Act 1967 for small retailers to use CCTV as a reasonable means to prevent crime. For your legal basis to operate CCTV)

#### Accountability

It must be clear that the monitoring is being carried out for appropriate reasons, and governed by publicly available Codes of Practice and Procedures. All actions must be open to scrutiny and fully recorded/documented. Any alternative options must also be considered and recorded in logs. You must show what factors influenced your decision, including the reasons for not taking action.

#### Necessity/Compulsion

Is public space surveillance by CCTV necessary at all, or are there other methods to increase community safety and prevent and detect crime. Is there a likelihood of another offence being committed in this surveilled location? All surveillance carried out must be 'necessary in a democratic society'. The operator must be able to justify any infringement

of rights, and record them as such.

## Subsidiarity

The means of operation of the CCTV system should cause minimum interference with the privacy and the rights of the individual and will be tested and enforced through devolved UK courts.

All these issues need to be fully considered before setting up public place CCTV. However, the Human Rights Act only affects those acting as a public authority. There is no express definition in the Act but they include:

- Government departments
- Local authorities
- Police, prison, immigration officers
- Public prosecutors
- Courts and tribunals
- Non-departmental public bodies (NDPBs)

## Any person exercising a public function

As far as 'any person exercising a public function' is concerned it must be understood that this role may vary. So, for example, Group 4 is a public authority in relation to its acts when transporting prisoners, but not when offering security services to a supermarket. In some cases it will be difficult to know if a body is a public authority and if so, into which category it falls. Take legal advice.

CCTV operation is not only affected by the Human Rights Act, but also must conform to the requirements of the Data Protection Act 1998. To conduct public space surveillance there must be a legal base in law for operation. CCTV systems that fall within the jurisdiction of the act are those that are dealing with surveillance in '**areas where the public have largely free and unrestricted access.**' Schemes which monitor spaces to which the public have access, such as town centres, may be able to rely on Paragraph 5 (d) of Schedule 2 of DPA 98 as they are exercising a public function of a nature which is conducted in the public interest. *These purposes include prevention and detection of crime, apprehension and prosecuting of offenders or public/employee safety (Sec 29 DPA 98)*

Schemes, which monitor spaces in shops or retail centres to which the public have access may be able to rely on Paragraph 6 (1) of Schedule 2 DPA 98 for their legal basis in law. This is because the CCTV surveillance is necessary for the purposes of the legitimate interests of the data controller or the third party/ies to whom the data (images) are disclosed. For example; CCTV surveillance is operated 1. 'in the substantial public interest' and 2. 'is necessary for the purposes of detection and prevention of crime or any unlawful act.' 'And must be carried out without the explicit consent of the data subject (person) so not to prejudice 1 and/or 2. *(Therefore shopping precincts etc which are not under Police and/or Local Authority surveillance can gather data/images using CCTV, except where the processing is unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject (person).)* Signs must advertise the use of CCTV surveillance.

Users of CCTV schemes in town centres, which are run/operated on behalf of the Police or Local Authority (or partnership of the two, both being the Data Controller and taking a dual responsibility for compliance with the DPA) may be able to rely on Paragraph 7 (1) (b) Schedule 3 DPA 98 for their legal basis in law. This is because CCTV surveillance is necessary for the exercise of its public function. It may be that the use of such information/images by a public authority in order to meet the objectives of the Crime and Disorder Act 1998 would satisfy this criterion. *(Therefore CCTV schemes which are part of a Crime and Disorder Reduction Partnership are permitted. Sec 115 of C&D Act 98 also gives Responsible Authorities the legal basis to exchange data.)*

**Remember the Regulation of Investigatory Powers Act 2000 deals with the covert use of surveillance.**