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To:  
Parish, Town and Community Councils in England and Wales

Dear Council

### **The operation of surveillance camera systems, the Protection of Freedoms Act 2012 and disclosure**

You will be aware that as a relevant authority as set out in the Protection of Freedoms Act 2012 (PoFA)<sup>1</sup> you, as a local authorities, are required by section 31(1) of that Act to have regard to the Surveillance Camera Code of Practice issued by the Home Secretary (the SC Code)<sup>2</sup> in respect of surveillance camera systems you operate in public places. Sometimes in the context of surveillance camera systems those legal responsibilities become lost or confused with the separate legal responsibilities which arise in the context of processing personal data under the Data Protection Act 2018.

Section 29(6) of PoFA provides a clear definition as to what amounts to being a surveillance camera system which falls within the provisions of the Act. Typically, but not exclusively, those statutory requirements extend to CCTV, body worn cameras, automatic number plate recognition cameras and mobile camera systems.

I thought it important that I write to you to in connection with matters of disclosure of non-compliance with PoFA and the SC Code. I would recommend that you bring the content of this letter to the attention of your proper officer (i.e. the clerk or chief executive) so that they may fully consider and advise on whether any further action is warranted by the council.

Discussions have recently taken place between my office and the Crown Prosecution Service (CPS) in respect of the disclosure considerations which may arise from Section 33(4) PoFA. The CPS determine that where any evidence is to be adduced in to judicial proceedings which is derived from a surveillance camera system to which the Act applies, any failure on the part of the relevant authority to comply with Section 33(1) PoFA and the SC Code in respect of that system should be disclosed to a CPS prosecutor so that the CPS may apply a disclosure test pursuant to the provisions of the Criminal Procedure and Investigations Act 1996. As a result the CPS is reminding their prosecutors to seek clarity from police officers on this point wherever images are presented to them as part of a prosecution file. The CPS Disclosure Manual will be updated accordingly in due course.

The police are of course the primary focus of disclosure considerations in these matters, and in that regard I have written to Chief Officers to remind them as to their obligations and to highlight the renewed CPS commitment.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2012/9/part/2/chapter/1/enacted>

<sup>2</sup> <https://www.gov.uk/government/publications/surveillance-camera-code-of-practice>

However, in addition to those judicial procedures into which you as a local authority adduce images and evidence derived from your surveillance camera systems and in connection with your own judicial cases, I am aware that frequently local authorities share images with the police. Some of those images may from time to time go on to form part of a police prosecution case. It is therefore important that the police are made aware from the outset if the surveillance camera system which obtained the image or images being shared with them was a system operated in accordance with Section 31(1) PoFA and the SC Code. If that system was not compliant then the police must be made aware of this so they may in turn disclose this matter to a CPS prosecutor should the images form part of a prosecution case or indeed other judicial proceedings.

It is becoming increasingly evident to me that as the technological nature and use of overt surveillance cameras in public places by the police and local authorities continues to evolve then so does the need for the public, and indeed the police and local authorities to remain both informed and confident as to the legitimacy of those endeavours. In the context of PoFA I am therefore considering what more I can meaningfully do to ensure that the public interest remains best served in that regard.

I thought it helpful to inform you of two recommendations which I recently made to assist police forces ensure they maintained high standards, both of which have been accepted by every Chief Officer in England and Wales. I am simply sharing them with you for any value they may be to you in continuing to discharge your statutory responsibilities arising from PoFA and the SC Code.

They are as follows;

- It is recommended that all Chief Officers in England and Wales identify a Senior Responsible Officer (SRO) to deliver a corporate approach to their responsibilities arising from PoFA. The SRO should have strategic responsibility for the integrity and efficacy of the processes in place within the police force which ensure compliance with Section 33 of PoFA in support of the Chief Officer, and in respect of all relevant surveillance camera systems operated by the force.
- It is recommended that Chief Officers conduct a review of all surveillance camera systems operated by them to establish whether or not those systems fall within the remit of Section 29(6) PoFA. The advice of force legal advisors may be required in some circumstances. Where systems are so identified there should be processes in place that enable Chief Officers to discharge their responsibilities effectively under the PoFA in respect of all of those systems. Such processes should also keep the development, procurement and operation of future systems under review so as to determine and address the inherent legal responsibilities associated with their operation appropriately. The force SRO should lead this work

Finally, albeit not a requirement of the PoFA, you may be aware that last year I completed a series of national workshops with local authorities in which I urged all authorities to appoint an SRO, such is the importance of the subject.

I trust that you find this to be helpful and if you have any queries regarding this please don't hesitate to contact my office – [scc@sccommissioner.gsi.gov.uk](mailto:scc@sccommissioner.gsi.gov.uk).

Kind regards



Surveillance Camera Commissioner England & Wales