

MINUTES of MEETING of the MIDLOTHIAN COUNCIL GENERAL PURPOSES

COMMITTEE held in the Council Chambers, Midlothian House, Buccleuch Street, Dalkeith on Tuesday 30 September 2014 at 2.00pm.

Present:- Councillors Coventry (Chair), Bennett, Bryant, Johnstone, Milligan, Montgomery, Pottinger, Rosie, Russell, and Wallace.

Apologies for Absence:- Councillors Baxter, Beattie, Constable, Imrie, Muirhead, Thompson and de Vink.

1 Declarations of Interest

Councillors Bennett and Montgomery declared an interest in Item 5(a) in that they knew the Applicant and indicated that they would not take part in the relative Hearing.

2 Minutes

The Minutes of Meeting of 19 August 2014 were approved as a correct record on the motion of Councillor Pottinger, seconded by Councillor Rosie.

3 Civic Government (Scotland) Act 1982

(a) Procedure for Disposing of Applications

There was submitted report, dated 16 September 2014, by the Director, Resources, concerning the procedure for disposing of applications for licences, in terms of the Civic Government (Scotland) Act 1982.

Decision

To note the report.

(b) Procedure for Considering Requests for Suspension of Licences

There was submitted report, dated 4 September 2014, by the Director, Resources, concerning the procedure for considering requests for suspension of licences, in terms of the Civic Government (Scotland) Act 1982.

Decision

To note the report.

(c) CCTV in Hire Cars

With reference to paragraph 4(b)(iii) of the Minutes of 1 April 2014, there was submitted report, dated 23 September 2014, by the Director, Resources, concerning the implementation of a policy to permit the introduction installation of CCTV in Hire Cars.

Appended to the report was information relating to the execution of a Privacy Impact Assessment (PIA) and a Draft Policy statement.

In his report, the Director , *inter alia*, (i) confirmed that discussions had taken place with the Information Commissioner and guidance obtained ; (ii) discussed the factors relating to the PIA; (iii) confirmed that (1) the introduction of CCTV in Hire Cars was supported by the Trade; and (2) the Policy was being introduced for reasons of public safety; and (iv) requested authority to proceed with the implementation of a Scheme to provide, *inter alia*, that :-

- (1) footage or images must be securely stored at all time and never downloaded to portable devices such as memory sticks or CDs;
- (2) images or audio recording captured by CCTV must be retained for no longer than 31 days;
- (3) a sign indicating that a CCTV / Audio recorder is in use and the contact number of the licence holder, must be clearly displayed;
- (4) Passengers must be advised by the driver that a CCTV / Audio recorder is in use;
- (5) Police, Licensing Officers and Insurance Investigators must request permission, in writing, to view footage or images / listen to audio recording; and
- (6) only those who are the subject of a recording are permitted to view footage or images or listen to audio recordings.

During the course of discussion, with reference to (2) above, Members indicated a preference for a longer period of retention of recordings if this were possible; and note a view expressed by the Inspector that there may be technical reasons to prevent this.

Decision

To remit to the Director, Resources, in consultation with the Chair, to implement the Policy, as shown in **Appendix I** hereto, taking into account, if possible, the views expressed by Members concerning the retention of recordings.

(Action – Legal and Secretariat Manager)

4 Public Holidays

There was submitted report, dated 4 September 2014, by the Director, Resources, concerning the Public Holidays and Statutory Public Holiday / Festival dates from 2015 to 2019.

Decision

- (a) To note the report; and
- (b) To approve the public holiday dates for 2015 to 2019; and
- (c) To note the statutory public holidays / festival dates, both as shown in **Appendix II** hereto.

(Action Legal and Secretariat Manager)

5 Exclusion of Members of the Public

In view of the nature of the business to be transacted, the Committee agreed that the public be excluded from the Meeting during discussion of the undernoted items, as contained in the Addendum hereto, as there might be disclosed exempt information as defined in paragraphs 3, 12 and 14 of Part 1 of Schedule 7A to the Local Government (Scotland) Act 1973.

Decision

- (a) Private Hire Car Drivers' Licences – applications (2) – To refuse to grant the applications as the Applicants were not considered to be a fit and proper persons to be the holders of licences; and
- (b) Private Hire Car Driver's Licence – Request for Suspension – (i) to note that the Licence had been suspended with immediate effect in view of the public safety implications; and (ii) To agree that the licence be re-instated.

The Meeting terminated at 3.00pm.

APPENDIX I

(relative to paragraph 3(c))

POLICY FOR CCTV IN HIRE CARS

The aim of this policy is to allow for the safe installation and use of CCTV systems in taxis and private hire cars licensed by Midlothian Council's Licensing Authority. In allowing the installation and use of CCTV, the Licensing Authority recognises that such systems can be used to prevent and detect crime, reduce the fear of crime and enhance the safety of taxi and private hire car drivers, as well as their passengers. However, this policy also seeks to ensure that the installation and operation of CCTV systems do not compromise the safety of either drivers or passengers or unreasonably interfere with the privacy of members of the public. For the purposes of this policy, a CCTV system will include any electronic recording device attached to the inside of a taxi or private hire car having the technical capability to capture and retain visual images from inside or external to the vehicle.

This policy does not place a mandatory requirement on the licensed operators of taxis and private hire cars to install CCTV systems in their vehicles. Any CCTV system to be fitted in a taxi or private hire car must, as a minimum, meet the requirements of this policy. Only CCTV systems meeting these requirements can be installed into licensed taxis and private hire cars. Where an operator wishes to install and use a CCTV system, it will be a condition of the taxi or private hire car licence that the requirements of this policy are complied with. Failure to comply with the requirements of this policy could lead to a complaint being made to the Licensing and Regulatory Committee in order to consider the possible suspension of the licence.

THE DATA CONTROLLER

The Information Commissioner defines a "data controller" as the body which has legal responsibility under the Data Protection Act 1998 for all matters concerning the use of personal data. For the purpose of the installation and operation of a CCTV system in taxis and private hire cars, the "data controller" will be the holder of the taxi or private hire car licence and not the driver. The licence holder, as data controller, will therefore be responsible for ensuring compliance with the requirements of this policy and with all relevant data protection legislation, including the Data Protection Act 1998. The data controller is legally responsible for the use of all images including breaches of legislation.

THIRD PARTY DATA PROCESSOR

Where a service provider is used for the remote storage of CCTV data they will act as a 'data processor'. A data processor, in relation to personal data, means any person (other than an employee of the data controller) who processes data on behalf of the data controller, in response to specific instructions. The data controller retains full responsibility for the actions of the data processor.

There must be a formal written contract between the data controller and the data processor. The contract must contain provisions covering security arrangements, retention/deletion instructions, access requests and termination arrangements. A copy of the contract must be provided to an authorised officer of the Licensing Authority, or to the Police, on reasonable request.

GENERAL REQUIREMENTS – INSTALLATION AND OPERATION

CCTV systems must not be used to record conversations between members of the public as this is highly intrusive and unlikely to be justified except in very exceptional circumstances. Wherever possible, the CCTV system should not have any sound recording facility. However, if the system comes equipped with a sound recording facility then this functionality should be disabled and only capable of being utilised in the following limited circumstances:-

Audio recording will only be justified where the recording is triggered due to a specific threat to driver or passenger safety, e.g. a 'panic button' is utilised and must be subject to the following safeguards:-
a) Where this audio recording facility is utilised a reset function must be installed which automatically disables audio recording and returns the system to normal default operation after a specified time period has elapsed.

All equipment must comply with any legislative requirements in respect of Motor Vehicle Construction and Use Regulations. All equipment must meet any and all requirements as regards safety, technical acceptability and operational/data integrity.

All equipment must be designed, constructed and installed in such a way and in such materials as to present no danger to passengers or to the driver, including impact with the equipment in the event of a collision or danger from the electrical integrity being breached through vandalism, misuse, or wear and tear. In particular, the camera(s) must be fitted safely and securely in such a way that it does not adversely encroach into the passenger area and must not impact on the safety of the driver, passenger or other road users. All equipment must be installed as prescribed by the equipment and/or vehicle manufacturer installation instructions by a qualified auto-electrician.

The CCTV system must not weaken the structure or any component part of the vehicle or interfere with the integrity of the manufacturer's original equipment.

All equipment must be installed in such a manner so as not to increase the risk of injury and/or discomfort to the driver and/or passengers. For example, temporary fixing methods such as suction cups will not be permitted, or lighting, such as infra-red, which emits at such a level that may cause distraction or nuisance to the driver and/or passengers.

All equipment must be protected from the elements, secure from tampering and located such as to have the minimum intrusion into any passenger or driver area or impact on the luggage carrying capacity of the vehicle.

It is contrary to the Motor Vehicle (Construction and Use) Regulations 1986 for equipment to obscure the view of the road through the windscreen.

Equipment must not obscure or interfere with the operation of any of the vehicle's standard and/or mandatory equipment, i.e. not mounted on or adjacent to air bags/air curtains or within proximity of other supplementary safety systems which may cause degradation in performance or functionality of such safety systems.

Viewing screens within the vehicle for the purposes of viewing captured images will not be permitted. All wiring must be fused as set out in the manufacture's technical specification and be appropriately routed.

The location of the camera(s) installed within the vehicle must be for the purpose of providing a safer environment for the benefit of the taxi or private hire car driver and passengers, and not for any other purpose.

All equipment must be checked regularly and maintained to operational standards, including any repairs after damage.

All system components requiring calibration in situ should be easily accessible.

AUTOMOTIVE ELECTROMAGNETIC COMPATIBILITY REQUIREMENTS (EMC)

CCTV equipment must not interfere with any other safety, control, electrical, computer, navigation, satellite, or radio system in the vehicle. Any electrical equipment such as an in-vehicle CCTV system fitted after the vehicle has been manufactured and registered, is deemed to be an Electronic Sub Assembly (ESA) under the European Community Automotive Electromagnetic Compatibility Directive and therefore must meet with requirements specified in that Directive.

CCTV equipment should be e-marked or CE-marked. If CE marked confirmation by the equipment manufacturer as being non-immunity related and suitable for use in motor vehicles is required. Activation of the equipment may be via a number and combination of options, such as - door switches, time delay, drivers' panic button or in the case of incident/event recorder, predetermined G-Force parameters set on one or more axis (i.e. braking, acceleration, lateral forces) and configured to record for a short period of time before the event, during the event and a short period following the event.

SECURITY OF IMAGES

All Images captured by the CCTV system must remain secure at all times.

The captured images must be protected using encryption software which is designed to guard against the compromise of the stored data, for example, in the event of the vehicle or equipment being stolen. It is recommended by the Information Commissioner that the data controller ensures that any encryption software used meets or exceeds the current FIPS 140-2 standard or equivalent. System protection access codes will also be required to ensure permanent security.

RETENTION OF CCTV IMAGES

The CCTV equipment selected for installation must have the capability of retaining images either:

- within its own hard drive;
- using a fully secured and appropriately encrypted detachable mass storage device, for example, a compact flash solid state card;
- or where a service provider is providing storage facilities, transferred in real time using fully secured and appropriately encrypted GPRS GSM telephone) signalling to a secure server within the service provider's monitoring centre.

Images must not be downloaded onto any kind of portable media device (e.g. CDs or memory sticks) for the purpose of general storage outside the vehicle.

The CCTV system must include an automatic overwriting function, so that images are only retained within the installed storage device for a maximum period of 31 days from the date of capture.

Where a service provider is used to store images on a secure server, the specified retention period must also only be for a maximum period of 31 days from the date of capture. Where applicable, these provisions shall also apply to audio recordings.

USE OF INFORMATION RECORDED USING CCTV

Any images and any audio recording should only be used for the purposes described in this policy. Requests may be made to the data controller by Authorised Officers of the Licensing Authority, the Police or other statutory law enforcement agencies, insurance companies / brokers / loss adjusters or exceptionally other appropriate bodies, to view captured images, or obtain audio recordings if applicable. The licence holder, as data controller, is responsible for responding to these requests. Police, Authorised Officers of the Licensing Authority or other law enforcement agencies should produce a standard template request form, setting out the reasons why the disclosure is required. Alternatively a signed statement may be accepted.

All requests should only be accepted where they are in writing, and specify the reasons why disclosure is required.

Under the Data Protection Act 1998, members of the public may also make a request for the disclosure of images, but only where they have been the subject of a recording. This is known as a 'subject access request'.

Such requests must only be accepted where they are in writing and include sufficient proofs of identity (which may include a photograph to confirm they are in fact the person in the recording). Data controllers are also entitled to charge a fee for a subject access request (currently a maximum of £10) as published in the Information Commissioner's CCTV Code of Practice.

SIGNAGE

All taxis and private hire cars with CCTV must display signage within the vehicle to indicate that CCTV is in operation. The driver must also verbally bring to the attention of the passengers that CCTV equipment is in operation within the vehicle.

The signage must be displayed in such positions so as to minimise obstruction of vision and to make it as visible as possible to passengers, before and after entering the vehicle.

In the limited circumstance where audio recording is justified, signs must make it very clear that audio recording is being or may be carried out and this must also be verbally brought to the attention of the passengers.

CONTACT DETAILS

The name and the contact telephone number of the licence holder, as data controller must be included on the sign.

SIGNAGE FOR EXTERNAL FACING CCTV SYSTEMS

Where a CCTV system is installed within the vehicle in order to record incidents *outside of* the vehicle, it will not be practical to display a sign. Instead, when the CCTV is activated in response to an incident, the driver of the vehicle must inform the person(s) recorded that their personal data was captured - as soon as practicable after the incident.

They should also be informed of the purpose for which the device has been installed, being driver and passenger safety.

APPENDIX II

(relative to paragraph 4)

PUBLIC HOLIDAYS 2015-2019

2015

Thursday	1 January	New Year's Day
Friday	2 January	Public Holiday
Friday	3 April	Good Friday
Monday	6 April	Easter Monday
Monday	20 April	Spring Holiday: Public Holiday
Monday	4 May	May Day: Public Holiday
Monday	18 May	Victoria Day: Public Holiday
Monday	21 September	Autumn Holiday: Public Holiday
Monday	30 November	St Andrew's Day
Friday	25 December	Christmas Day
Saturday	26 December	Boxing Day

2016

Friday	1 January	New Year's Day
Monday	4 January	Public Holiday
Friday	25 March	Good Friday
Monday	28 March	Easter Monday
Monday	18 April	Spring Holiday: Public Holiday
Monday	2 May	May Day: Public Holiday
Monday	23 May	Victoria Day: Public Holiday
Monday	19 September	Autumn Holiday: Public Holiday
Monday	5 December	St Andrew's Day
Sunday	25 December	Christmas Day
Monday	26 December	Boxing Day

2017

Monday	2 January	New Year Public Holiday
Tuesday	3 January	Public Holiday
Monday	10 April	Spring Holiday: Public Holiday
Friday	14 April	Good Friday
Monday	17 April	Easter Monday
Monday	1 May	May Day: Public Holiday
Monday	22 May	Victoria Day: Public Holiday
Monday	18 September	Autumn Holiday: Public Holiday
Thursday	4 December	St Andrew's Day
Monday	25 December	Christmas Day
Tuesday	26 December	Boxing Day

2018

Monday	1 January	New Year's Day
Tuesday	2 January	Public Holiday
Friday	30 March	Good Friday
Monday	2 April	Easter Monday
Monday	16 April	Spring Public Holiday
Monday	7 May	May Day Public Holiday
Monday	21 May	Victoria Day Public Holiday
Monday	17 September	Autumn Public Holiday
Monday	3 December	St Andrew's Day
Tuesday	25 December	Christmas Day
Wednesday	26 December	Boxing Day

2019

Tuesday	1 January	New Year's Day
Wednesday	2 January	Public Holiday
Monday	15 April	Spring Public Holiday
Friday	19 April	Good Friday
Monday	22 April	Easter Monday
Monday	6 May	May Day Public Holiday
Monday	20 May	Victoria Day Public Holiday
Monday	16 September	Autumn Public Holiday
Monday	2 December	St Andrew's Day
Wednesday	25 December	Christmas Day
Thursday	26 December	Boxing Day