

## Case study

# Information Commissioner's Office: Enforcement regarding audio recording in taxis

The Information Commissioner's Office (ICO) is an independent body set up to uphold information rights in the public interest. The Commissioner is responsible for administering the provisions of the Data Protection Act 1998 and the Freedom of Information Act 2000. The ICO gives guidance to citizens and organisations, rules on eligible complaints and takes appropriate action when the law is broken.

In August 2009, Southampton City Council adopted a policy that required all licensed taxis and private hire vehicles to be fitted with CCTV systems featuring permanently activated audio recording facilities. The policy meant that all driver or passenger conversations, including those on mobile phones, taking place in any taxi or private hire vehicle licensed by the council, would be recorded, regardless of whether the conversation was personal and intended to be private. The recording would take place even when the vehicle was being used privately by the driver, for example to take their family on holiday.

The Information Commissioner considered the data protection implications of this policy and decided that the audio recording of the conversations of both the drivers and their passengers was unfair and unlawful and therefore in breach of the Data Protection Act 1998. This decision was based on the view that the policy could result in damage or distress being caused to the individuals concerned. The main reason for this view was that the information could be accessed illegally or wrongfully disclosed, but the simple knowledge that a conversation was being recorded could also cause distress, particularly where the vehicle was being used privately.

A major factor in coming to this conclusion was consideration of Article 8 of the ECHR, the right to respect for private life. The Commissioner took the view that the permanent audio recording of all conversations in licensed vehicles constituted an unlawful interference with that right. The Information Commissioner issued an

enforcement notice to Southampton City Council to the effect that no further audio recordings should take place from 1 November 2012. He also required that any recordings obtained prior to this date should be erased.

Southampton City Council appealed against the enforcement notice, on the basis that the interference with the Article 8 right was justified in the interests of public safety and the prevention of crime and the protection of others. The Tribunal upheld the Commissioner's position saying 'in our judgment the Council's policy, in so far as it requires continuous blanket audio-recording of everything said in taxis, was disproportionate when the extent of the interference with the right of privacy is weighed against the marginal benefits to the legitimate social aims of increasing public safety and reducing crime in relation to taxis which are likely to result from it'.

The Tribunal concluded that the policy was not justified under Article 8(2) and accordingly that it contravened the first data protection principle. The Tribunal also noted the argument that the Council's policy could result in people 'self-censoring' their conversations which could engage Article 10 of the ECHR which protects freedom of expression.