

The Information Commissioner's Response to the Department for Transport's Consultation on the draft Traffic Signs Regulations and General Directions 2015

The Information Commissioner (the Commissioner) has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) and the Privacy and Electronic Communications Regulations (PECR).

The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Commissioner welcomes the opportunity to respond to this consultation. He has discussed his information rights concerns about the inadequacy of current signs warning of cameras with the Department and is pleased to see this issue being taken seriously. We have confined our response to Question 12, which asks for views about signs relating to enforcement cameras, because this is the question that is relevant to our main information rights responsibilities mentioned above. We have not responded to those questions that fall outside of our regulatory remit.

Question 12 answer:

In your view, are revised signs indicating the operator of enforcement cameras necessary.

Yes No -**YES**

Please explain your choice here:

The foreword to the consultation document points out that Great Britain has the best signing system in the world. Our country also has some of the world's most widespread use of surveillance cameras on its road network. Although current Traffic Signs Regulations and General

Directions (TSRGD) do recognise the need to advise road users of the use of cameras, the content of these signs has not kept pace with the legal duties that those bodies operating them must comply with. The Commissioner welcomes the Secretary of State's recognition of the issue and the willingness to consult on signs that may help remedy the situation.

The use of surveillance cameras is intrusive, as recognised by the Department's consultation on their use for parking enforcement, and is likely to engage concerns about their deployment. [Consultation on local authority parking, December 2013. ICO response: http://ico.org.uk/about_us/consultations/~media/documents/consultation_responses/ico-response-local-authority-parking-consultation-20140203.pdf]

It is important that those operating surveillance cameras can discharge their legal obligations to ensure that those under surveillance are not just aware that it is happening but, importantly, are also aware of who is monitoring them. The current prescribed road signs indicating the presence of cameras do not permit the details of who is undertaking the surveillance to be included. The proposals to allow the operator concerned to include their details would remedy this defect and assist organisations to comply with the legal duties set out below.

The DPA requires that personal data is processed fairly and lawfully (first data protection principle). Complying with this enforceable requirement means that when personal data is collected the person affected has an understanding of who is collecting their details and how these will be used. This is usually provided to them in some form of notice.

Understanding who is collecting information about you is a cornerstone of data protection law as without this knowledge it is impossible to exercise other rights, such as subject access, or ensure that other legal safeguards are in place by holding the organisation to account. Road users face particular difficulties in understanding who may be collecting information about them because it will not always be clear which public authority is involved in surveillance at a particular point on the road network; even a simple journey can cross a number of local authority boundaries and road users may be unclear whose area they are in at a particular point. Prominent signs making this and the use of cameras clear, at least on the boundaries of the area under surveillance, are therefore all the more important.

The Commissioner accepts that any signs on the road network may not be able to convey all the information that should be included in other contexts because the content of signs must not affect the safety of road users. However, as a bare minimum, the Commissioner would expect

signs to make it clear that surveillance cameras are in use and who is the operating authority. This enables individuals affected to take up any concerns with those responsible. The need for clear, prominent signs showing the details of the body responsible for conducting the surveillance is also stressed in section nine of the ICO's CCTV code of practice:

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/ICO_CCTVFINAL_2301.ashx

This code is currently under revision but the revised code will continue to emphasise the need for signs including details of the relevant body.

In addition to complying with data protection law, public authorities have responsibilities under human rights legislation. This includes ensuring that there is respect for an individual's private and family life, his home and correspondence (Article Eight European Convention on Human Rights). Any interference with this right needs to be in accordance with the law, necessary in democratic society and must be proportionate. Failure to have signs showing the authority who is undertaking the surveillance may call into question whether this is in accordance with the law. Providing information about the existence of surveillance and who is undertaking it may assist with demonstrating the proportionality of the measures deployed.

These Article Eight duties do not just apply to those involved in surveillance; the Secretary of State must also address these when performing his own functions, including when deciding on the designation and approval of road signs. Ensuring that there are approved signs to allow public authorities to also discharge their Article Eight obligations would be consistent with the Secretary of State's own Convention duties.

As well as the data protection and human rights concerns, the Protection of Freedoms Act 2012 made provision for the Secretary of State to issue a code of practice relating to the use of surveillance cameras. Certain relevant authorities in England and Wales, including local authorities and police forces, must have regard to this code in the conduct of their functions. Guiding Principle Three of this code requires that there must be as much transparency in the use of a surveillance camera system as possible, including a published contact point. The code makes clear that this means ensuring that people in public places should normally be aware that they are being monitored, who is undertaking the activity and the purpose for which it is used. Ensuring approved road signs can include the name of the authority undertaking the surveillance would help to address this legal duty.

The consultation document makes reference to the possibility of traffic authorities placing notices containing information under the existing

planning regime. The Commissioner's experience is that local authorities are unaware of this possibility and rely heavily on using prescribed road signs, arguing that the lack of prescription of an appropriate sign prevents them from providing the necessary fair processing information. Having a national approved traffic sign will help ensure some basic but essential information can be conveyed in a consistent, clear and prominent format recognisable to all road users. The principles of better regulation would suggest that having a single generic solution may avoid the regulated having to develop their own bespoke and potentially inadequate solutions to comply with the law.

One of the objectives of the current consultation is to reduce sign clutter. It is difficult to understand how this objective would be achieved by leaving in place the current inadequate prescribed signs which need to be supplemented by bespoke signs designed and displayed by each authority under permissions in the planning regime: having the details of the organisation responsible as part of the authorised road sign should reduce the resulting overall sign clutter, not increase it.

The Commissioner believes it is important that prescribed road signs allow the bodies concerned to provide the necessary information to comply with their DPA and other legal duties. If this opportunity is not taken this will not only fail to help resolve current compliance concerns about the inadequacy of information provided to road users, but may result in inadequate and more confusing measures being deployed with the possibility of an increase in overall sign clutter. The Commissioner is happy to follow up the initial helpful contact with the Department if this would clarify his concerns further and achieve a solution that addresses the requirements of law and secures the rights of road users at the same time as meeting the Secretary of State's road sign obligations and objectives.

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