

By email only to: [REDACTED]

15 June 2021

Dear [REDACTED]

Case reference number: INV/0522/2020 previously RFA0865444

I write to inform you that the Information Commissioner's Office ('ICO') has now completed its investigation into Kings Cross Central General Partner Limited ('KCCGPL') use of Live Facial Recognition ('LFR') technology.

This letter explains the outcome of our investigation and provides details on a package of information on the use of LFR technology that the ICO will shortly make public.

The processing undertaken

The processing undertaken by KCCGPL was for the period May 2016 until March 2018. As such, this processing took place prior to the introduction of the General Data Protection Regulations (the 'GDPR') and the Data Protection Act 2018 (the 'DPA 2018'). At the time, the Data Protection Act 1998 (the 'DPA 1998') was the applicable legislation.

The LFR system consisted of two cameras located at one single point, covering an area where two large station exits merged at a major transportation hub.

It is my understanding that LFR was being used on the Kings Cross Estate:

- to prevent crime and support public safety;
- to identify persons of interest to British Transport Police who may visit the Kings Cross Estate;
- to identify persons of interest to The Metropolitan Police who may visit the Kings Cross Estate.

The site has not used the LFR technology since the processing stopped in 2018, and KCCGPL have since deleted the associated images.

The use of LFR during this period is considered to include the processing of biometric data. From the 25 May 2018, biometric data constituted special category data under Article 9 of the GDPR.

Our consideration of this case

In the course of my investigation of this case, the following concerns regarding KCCGPL's use of LFR technology have been identified:

- fairness, necessity of such processing;
- the proportionality of the use of such systems;
- the transparency of the system use, particularly with the public at large, including whether privacy notices and signage were sufficiently clear about the processing;
- the adherence to data subjects' rights and allowance for individuals to exercise their rights;
- the interaction with and governance of, watchlists supplied by third parties, including law enforcement agencies;
- the absence of a Data Protection Impact Assessment;
- a lack of appropriate governance and / or information sharing agreements with organisations from whom images of individuals for the purpose of identification/facial matching were obtained.

Our findings

As a result of the investigation, the following infringements of Data Protection Act 1998 have been identified:

- **Principle 1** – *personal data processed fairly and lawfully and in particular shall not be processed unless at least one of the conditions in schedule 2 is met. As this case involves sensitive personal data schedule 3 should also be met.*

KCCGPL did not inform data subjects their facial images were being processed using facial recognition which is considered to be more intrusive than using CCTV. The fair processing notices only indicated that CCTV was being recorded, not LRF cameras. Processing would have taken place without the individual's knowledge, showing a lack of consideration in relation to fair processing.

When balancing data subjects rights against KCCGPL legitimate interests the volumes (approximately 6 million) of the facial images processed,

albeit some multiple times, by KCCGPL is disproportionate to the images on the database which was 50 at any one time.

- **Principle 3** – *personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.*
As the annual volume of footfall was estimated to be up to 6 million, the processing of people's faces albeit some multiple times, such processing relating to all facial images captured and comparing them to images held on a database in order to identify a small number of individuals was excessive.
- **Principle 6** – *personal data shall be processed in accordance with the rights of the data subjects.*

The data subjects were unaware their images were being processed in relation to LRF. Signage already in place referred to the usage of CCTV which was not altered to mention LRF. Fair processing notices / Privacy notices were not amended to include the use of LRF. Without any knowledge of the introduction of LRF, data subjects would be unable to exercise their rights in accordance with the data protection legislation in place at the time.

KCCGPL compliance with the Data Protection Act 1998 has been carefully considered in accordance with the ICO's [Regulatory Action Policy](https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf)¹.

In line with this Policy, it has been determined that the use of the Commissioner's formal corrective measures is not appropriate on this occasion.

This is because:

- The processing has ceased;
- The LFR enabled technology has been removed or is otherwise no longer in use.

As such the investigation is to be closed with no further action.

¹ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

The Commissioner's views on the use of LFR in public spaces

The ICO will shortly publish a package of information explaining the Commissioner's views on the use of LFR in public spaces.

We expect that it will be added to our website on 18 June 2021.

The package of information will set out the Commissioner's Opinion on the use of LFR technology in public spaces, including the steps we expect a controller to take in order to demonstrate that any such processing is fair, lawful and proportionate. We strongly encourage KCCGPL to review the information provided, with particular reference to the key requirements for controllers.

Please be aware that the ICO will take controller's adherence to the key requirements into account in relation to any contemporary or planned processing, and that would include any such processing that KCCGPL seeks to undertake in future.

It may also be helpful for you to be aware that anonymised examples of some of the concerns the ICO has identified as a result of both our closed and active investigations into LFR use, will be included in the publication. These are high level thematic descriptions only, and with the exception of matters which are already in the public domain, do not include specific information about individual controllers. Please also be aware that in line with our 'Communicating our Regulatory and Enforcement Activity Policy', we may still confirm the name of controllers we have investigated [or continue to investigate] and provide high level details on the outcome of those investigations².

In the event that KCCGPL plans to reintroduce LFR technology, a Data Protection Impact Assessment (a 'DPIA') is likely to be required in the majority of circumstances where LFR could be deployed. Undertaking a DPIA may also assist in helping to demonstrate the requirements of the accountability obligations set out in data protection law, including taking a data protection by design and default approach when designing and operating LFR systems. In addition to other key requirements, the aforementioned publication will include advice on what the ICO would expect to be included within a DPIA.

² https://ico.org.uk/media/about-the-ico/policies-and-procedures/1890/ico_enforcement_communications_policy.pdf

The package of information, including the Commissioner's Opinion, will be clearly accessible from the landing page of the ICO's website at www.ico.org.uk from the 18th of June, but in the event that you should experience any difficulties in accessing the information, please let me know.

I appreciate that it has been some time since our last correspondence in relation to this matter, but I hope that this information is helpful.

Thank you for your co-operation and assistance during the course of our investigation.

We now consider the matter closed.

Yours sincerely

Ros Steele
Lead Case Officer
Investigations
Information Commissioner's Office
0330 313 1781 direct dial telephone number

Please note that we are often asked for copies of the correspondence we exchange with third parties. We are subject to all of the laws we deal with, including the United Kingdom General Data Protection Regulation, the Data Protection Act 2018 and the Freedom of Information Act 2000. You can read about these on our website (www.ico.org.uk).

The ICO publishes the outcomes of its investigations. Examples of published data sets can be found at this link (<https://ico.org.uk/about-the-ico/our-information/complaints-and-concerns-data-sets/>).

Please say whether you consider any of the information you send us is confidential. You should also say why so that we can take that into consideration. However, please note that we will only withhold information where there is good reason to do so.

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