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Privacy
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14 March 2014

Hon Jack Dempsey MP
Minister for Police, Fire and Emergency Services

Mr Graham Quirk
The Lord Mayor
Brisbane City Council

Dear Minister, Lord Mayor

Re: CCTV Extensions and Access from iPads on the Beat

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

We refer to multiple media reports today to the effect that the Council's City Safe CCTV network is being upgraded and expanded, and that police officers will be able to view live CCTV footage from cameras on their iPads or smartphones while working their beat.

The APF acknowledges that, subject to a considerable set of qualifications, CCTV and access to live footage can make a highly valuable contribution to public safety.

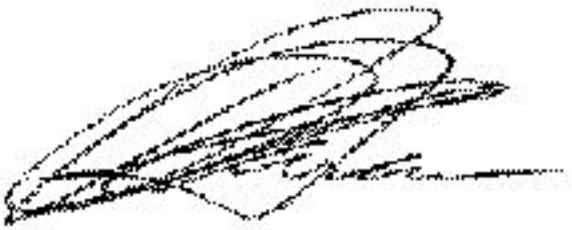
However, CCTV schemes are typically over-sold, and most do not fulfil their intended purpose.

For these reasons, and because most CCTV schemes represent inappropriate intrusions into the interests of members of the public, APF established a set of principles for the evaluation of potentially privacy-invasive schemes generally, and of CCTV schemes in particular. Copies are attached.

Would you please advise the extent to which these upgrades and extensions to City Safe have respected the Principles expressed in those documents. Which public interest advocacy organisations have you involved in the evaluation?

Thank you for your consideration.

Yours sincerely



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Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby and Elizabeth Evatt, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies http://www.privacy.org.au/Papers/
- Resources http://www.privacy.org.au/Resources/
- Media http://www.privacy.org.au/Media/
- Current Board Members http://www.privacy.org.au/About/Contacts.html
- Patron and Advisory Panel http://www.privacy.org.au/About/AdvisoryPanel.html

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) http://www.privacy.org.au/About/Formation.html
- Credit Reporting (1988-90) http://www.privacy.org.au/Campaigns/CreditRpting/
- The Access Card (2006-07) http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-) http://www.privacy.org.au/Campaigns/Media/

APF's Meta-Principles for Privacy Protection

APF has worked on a wide variety of issues over more than a quarter-century. Its Policy Statements and its Submissions reflect the following set of ground rules, or meta-principles, which APF submits must be generally applied.

1. Evaluation

All proposals that have the potential to harm privacy must be subjected to prior evaluation against appropriate privacy principles.

2. Consultation

All evaluation processes must feature consultation processes with the affected public and their representative and advocacy organisations.

3. Transparency

Sufficient information must be disclosed in advance to enable meaningful and consultative evaluation processes to take place.

4. Justification

All privacy-intrusive aspects must be demonstrated to be necessary pre-conditions for the achievement of specific positive outcomes.

5. Proportionality

The benefits arising from all privacy-intrusive aspects must be demonstrated to be commensurate with their financial and other costs, and the risks that they give rise to.

6. Mitigation

Where privacy-intrusiveness cannot be avoided, mitigating measures must be conceived, implemented and sustained, in order to minimise the harm caused.

7. Controls

All privacy-intrusive aspects must be subject to controls, to ensure that practices reflect policies and procedures. Breaches must be subject to sanctions, and the sanctions must be applied.

8. Audit

All privacy-intrusive aspects and their associated justification, proportionality, transparency, mitigation measures and controls must be subject to review, periodically and when warranted.

APF Policy Statement re Visual Surveillance, incl. CCTV

Revision of 6 January 2010

This document supersedes the version of 14 October 2009

The Scope of This Policy Statement

The scope of this Policy Statement is Visual Surveillance, such as that conducted using Closed-Circuit Television (CCTV).

The term is used here to encompass **the capture and/or projection of images and video**, whether or not with audio, whether or not the images and/or audio are recorded, whether or not they are subsequently disclosed and/or published, and whether the image-resolution is high- or low-quality.

The focus is on visual surveillance **conducted in a systematic manner**, as is generally the case with its use by organisations. The scope is not intended to encompass casual use of cameras by individuals, which gives rise to privacy concerns that are of a different nature and gravity from institutionalised uses.

The focus is on **data that represents images and any associated sound**. Structured and textual data deriving from such images, including meta-data describing them, are also a source of considerable privacy concern, and must be subject to data protection provisions.

The Principles enunciated below also have broader application, to surveillance conducted using **any part of the electromagnetic spectrum** including that outside the human-visible range, such as infra-red, ultra-violet and X-rays.

The Principles

Visual surveillance may have potential in particular circumstances to protect important human values. On the other hand, visual surveillance is highly privacy-intrusive. It has a chilling effect on human behaviour generally.

Moreover, unless it is well-designed and well-managed, visual surveillance may have little or no chilling effect on criminal or anti-social behaviour. Studies have created serious doubts about the effectiveness of visual surveillance as a technique for crime prevention, for crime detection, for criminal investigation and for criminal prosecution.

Wherever visual surveillance is applied, all of the following conditions must be fulfilled.

1. Justification

Because visual surveillance is highly privacy-invasive, a Privacy Impact Assessment (PIA) must be conducted before a scheme is commenced or significantly changed. A PIA involves publication of a clear explanation, demonstrating that it is expected on reasonable grounds to have positive benefits sufficient to justify its intrusiveness, followed by public consultation.

The explanation must be based on evidence and systemic reasoning, and not merely rely on assertions.

The justification must make clear what less privacy-invasive alternatives have been considered, and why they are inadequate.

2. Proportionality

The benefits identified in the justification for using visual surveillance must outweigh the negative impacts on privacy.

Visual surveillance must be no more intensive (e.g. the number of cameras), and no more extensive (e.g. across a large area) than the analysis justifies.

3. Openness

The conduct of visual surveillance **in any open space** (whether it is public or is commonly used by members of the public) must be disclosed to the public, and clearly notified to individuals who enter that space. This applies to both the fact that visual surveillance is undertaken and the nature and extent of the surveillance. Any exceptions to this must be treated as covert surveillance (see below).

Before visual surveillance is conducted **in any space in which a reasonable expectation of privacy exists** (including private premises, and toilets and change-rooms in open facilities), it must be the subject of formal, specific and bounded legal authority, exercised by a judicial institution that makes its judgements in a manner demonstrably independently of the organisation that seeks to conduct the surveillance. It must also be disclosed to the public, and clearly notified to individuals who enter that space. This applies to both the fact that visual surveillance is undertaken and the nature and extent of visual surveillance. Any exceptions to this must be treated as covert surveillance (see below).

Before **covert visual surveillance** is undertaken, it must be the subject of formal, specific and bounded legal authority, exercised by a judicial institution that makes its judgements in a manner demonstrably independently of the organisation that seeks to conduct the surveillance.

Where a recording is made, and the images and/or video are such as to identify any individual, the data must be treated as **personal data**, and must be subject to data protection laws, including access by the data subject, complaint handling, and redress.

4. Access Security

Access to images and video, both live and recorded, must be tightly controlled.~~, and a~~

Any security breaches must be acted upon promptly and effectively.

5. Controlled Use

The purposes must be clearly defined for which the images and video, both live and recorded, may be used by the organisation that collects it.

Use for any other purpose must be precluded, and must be subject to sanctions and enforcement.

The material may of course be used under legal authority.

6. Controlled Disclosure

The purposes must be clearly defined for which the images and video, both live and recorded, may be disclosed to other parties.

Disclosure for any other purpose must be precluded, and must be subject to sanctions and enforcement.

This provision applies to all parties, including law enforcement and national security agencies.

The material may of course be disclosed under legal authority, such as a search warrant.

7. Controlled Publication

Any publication of material must be justified, and must be the minimum necessary to achieve the aim. This applies with particular force to the publication of images of 'innocent bystanders' and of witnesses to an event.

Wherever possible, images of 'innocent bystanders' and of witnesses must be anonymised. The same principle applies to all other forms of information that may identify an individual, such as images showing number plates.

8. Cyclical Destruction

Any recordings that are made as a result of visual surveillance must be retained only for a brief period.

A defined program must be in place to ensure destruction of recordings.

Failure to destroy recordings in compliance with the program must be subject to sanctions and enforcement.

The material may of course be retained where a legal requirement exists to do so. However, the terms of the legal authority must be subject to Principles 1 and 2 (Justification and Proportionality).

9. Review

All aspects of a visual surveillance program must be reviewed, both periodically and as circumstances warrant, in order to establish whether these Principles are being complied with, and a review report prepared.

Where the review identifies problems, corrective action must be taken.

To ensure that this Principle is honoured, authority for visual surveillance must be subject to a sunset clause.

The sunset clause must include the requirement that a comprehensive review report be input to the re-authorisation process.

Review reports must be made publicly available, or at least sufficient information from them must be made publicly available, in order to enable informed public debate.

10. Withdrawal

A visual surveillance scheme and associated infrastructure must be de-commissioned and removed where it has demonstrably not fulfilled its objectives, where resources necessary to enable its objectives to be fulfilled are not available, or where an alternative with superior effectiveness and/or a superior privacy trade-off is available.

Some Resources

- **Guidelines**

EDPS (2009) 'Video-Surveillance Guidelines, **Consultation Draft**', European Data Protection Supervisor, 7 July 2009

ICO (2008) 'CCTV Code of Practice' Information Commissioner's Office, UK, 2008

NSW (2000) 'CCTV in Public Places' NSW Government Policy Statement and Guidelines, 2000, and the Review, 2001

NZPC (2009) 'Privacy and CCTV: A guide to the Privacy Act for businesses, agencies and organisations' New Zealand Privacy Commissioner, October 2009

OPCC (2006) 'Guidelines for the Use of Video Surveillance of Public Places by Police and Law Enforcement Authorities', Office of the Privacy Commissioner of Canada, March 2006

'Standards' – BSI guidelines, BS 7958:1999

- **Evaluations**

BBC (2008) 'CCTV boom 'failing to cut crime'', BBC News, 6 May 2008

CITRIS (2008) 'CITRIS Report: The San Francisco Community Safety Camera Program', University of California, Berkeley, 17 December 2008

Webster C.W.R. (2009) 'CCTV policy in the UK: reconsidering the evidence base' Surveillance & Society 6, 1 (March 2009) 10-22

Wells H., Allard T. & Wilson P. (2006) 'Crime and CCTV in Australia: Understanding the Relationship' Centre for Applied Psychology and Criminology, Bond University, 2006 – short media report in Kerin L. (2008) 'Doubts raised over using CCTV cameras', ABC News, 7 May 2008

Welsh B.C. & Farrington D.P. (2004) 'Evidence-based Crime Prevention: The Effectiveness of CCTV' Crime Prevention and Community Safety: An International Journal (2004) 6, 21–33; doi:10.1057/palgrave.cpcs.8140184

Whitehead T. (2009) 'CCTV only effective at cutting car crime' The [London] Daily Telegraph, 18 May 2009

- **Resources**

CofE (2007a) 'Opinion on Video Surveillance in Public Places by Public Authorities and the Protection of Human Rights' European Commission for Democracy through Law (Venice Commission), Study no. 404/2007, 16-17 March 2007

CofE (2007b) 'Opinion on Video Surveillance by Private Operators in the Public and Private Spheres and by Public Authorities in the Private Sphere and Human Rights Protection' European Commission for Democracy through Law (Venice Commission), Study no. 430/2007, 1-2 June 2007

EU Article 29 Committee (2004) 'Opinion 4/2004 on the Processing of Personal Data by means of Video Surveillance' Article 29 Data Protection Working Party , Document 11750/02/EN WP 89, 11 February 2004

Urbaneye (2004) The Urbaneye Working Papers Series, Centre of Technology and Society, Technical University of Berlin, August 2004

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