

**PAPER FOR LEGISLATIVE COUNCIL
PANEL ON SECURITY**

Installation of CCTV systems in public places

INTRODUCTION

This paper provides information on the views of the Privacy Commissioner's Office ("the PCO") on the application of the Personal Data (Privacy) Ordinance in relation to a proposal by the Police to install closed-circuit television ("CCTV") systems in public places.

BACKGROUND

2. Recently, the Police revealed its plan to install CCTV cameras in various public places aiming at assisting crowd management and crime prevention. The plan is to introduce as a pilot scheme the installation of CCTV cameras in the Lan Kwai Fong area of Central District by mid 2002.

3. The announcement attracted considerable concerns from various sectors of the community and Members of the LegCo. There are particular concerns about the apparent lack of regulation on the use of CCTV cameras, the retention and use of videotaped records and the potential intrusion to privacy in places to which the public have largely free and unrestricted access.

APPLICATION OF THE PERSONAL DATA (PRIVACY) ORDINANCE

4. The Personal Data (Privacy) Ordinance ("the Ordinance") regulates the collection, retention, security and use of personal data. To come within the scope of the Ordinance, data (or recorded information) must (a) relate directly or indirectly to a living individual; and (b) allow the identity of the individual to be directly or indirectly ascertained from that data, and (c) be capable of access or processing¹.

5. Not all CCTV systems have a recording function. There are systems in which images of individuals passing in front of a camera are shown in real time on a monitor so that no records of the images are captured on videotapes. In

¹ Paraphrased definition of personal data from section 2 of the Ordinance

this circumstance, no data is recorded and part (c) of the “personal data” definition would not be satisfied. Accordingly, the Ordinance may not apply.

6. In addition to the above consideration, two threshold issues need to be considered in relation to the application of the Ordinance to CCTV systems. They are:

- a) **Are videotaped records “personal data”?** A videotape record created by the CCTV system intended by the Police will clearly meet part (a) and (c) of the “personal data” definition, but is it necessarily the case that the identity of an individual can be ascertained from the tape? Arguably, this is unlikely if the CCTV system is only used for crowd control purpose and the system is configured in such a way that no distinguishable images of individuals are captured. However, if the system is such that a remote control of the camera can cause zooming on a particular individual to record the image from which the identity of that individual can be ascertained, then the videotaped record containing the visual image will amount to personal data of that individual.
- b) **Are videotaped records “collected”?** The Ordinance provides no definition on the meaning of “collect” as applied to personal data. However, the Hong Kong Court of Appeal decision of *Eastweek Publisher Limited v. The Privacy Commissioner for Personal Data (CACV 331/1999)* is relevant. The meaning of the term “collect” is made clear in the following statement from the judgment of Ribeiro J.A. in the *Eastweek* case, which statement was repeated almost word for word in the judgment of Godfrey VP:

"It is ... of the essence of an act of personal data collection that the data user must thereby be compiling information about an identified person or about a person whom the data user intends to or seeks to identify."

The significance of the decision is that for collection of personal data to arise, the mere physical acquisition of such data is not sufficient. An additional requirement needs to be satisfied in that the collecting party must be compiling information about an individual whom the collector has identified or intends to or seeks to identify. Applying this interpretation to the CCTV system intended by the Police, it would appear that the videotaping of crowd movement would not constitute an act of “collection” of personal data, given that there is no compilation of information about any individuals. However, it will be an act of “collection” of personal data if the videotaping is targeted at a particular individual whom the Police intends to or seeks to identify and there is a prior intention of Police using the information thereby compiled about the individual for law enforcement purposes. Should this be the case

then the videotaped records would be both “personal data” and “collected”, and therefore subject to the requirements of the Ordinance.

THE PCO’S RESPONSE TO THE MATTER

7. Following the announcement of the CCTV installation plan made by the Police, the PCO took the initiative to write to the Commissioner of Police seeking further information regarding the plan. Subsequently, the Police advised that the plan has been a part of the Police’s public safety and security management system for the purpose of sustaining Hong Kong as one of the world’s safest and most stable societies. The deployment of CCTV systems in the pilot scheme at Lan Kwai Fong will serve the primary purpose of enhancing and facilitating public safety and crowd management. In brief, the pilot system configuration will consist of nine outdoor cameras with a central monitoring point in Central Police Station. The features will include remote camera control functions to allow zooming and tilt operations and round the clock recording capabilities.

8. On the basis of this information, it is the preliminary view of the PCO, having regard to the definition of “personal data” together with the *Eastweek* decision, that the use of CCTV systems in the manner intended by the Police is a matter subject to the regulation of the Ordinance. Accordingly, it is an obligation on the part of Police to comply with all the data protection principles of the Ordinance.

9. An important aspect of the Ordinance is the requirement that relates to the “collection” principle. This requires that personal data shall be collected for a lawful purpose directly related to a function of the data user, that the collection of the data is necessary and that the data are collected by means that are lawful and fair in the circumstances of the case. In the context of the CCTV monitoring scheme, it is therefore prudent for the Police to give due assessment to this particular requirement of the Ordinance. It is to be noted that the Ordinance does not provide for exemptions in respect of collection of personal data although exemptions to use the data are allowed for certain limited purposes.

10. Furthermore, in considering implementing the CCTV monitoring scheme, the Police must introduce measures that are designed to balance the benefits of the scheme to the public against their privacy right to be free of unwarranted intrusion into their daily lives. In this respect, the PCO considers the following aspects significant in the course of implementation:

- a) **Establish purpose of the CCTV scheme.** It is essential that the purpose(s) of implementing the CCTV monitoring scheme is carefully assessed. This is because the Ordinance requires data users to have a legitimate purpose of collection of personal data, which must be met in

order to demonstrate that there is a legitimate basis for using the data, for example, for crime prevention and detection. Even then, consideration should be given to restrict the CCTV monitoring to periods when there is demonstrably a higher likelihood of crime being committed or detected in the area under monitoring.

- b) **Design privacy protective measures.** Under the Ordinance, data users have obligations with respect to the notice, access, use, retention, security and disposal of personal data collected. In the context of CCTV systems, these would cover matters ranging from the siting of the cameras to the handling of videotaped records created by the system. For example, cameras should be sited in such a way that they only monitor those spaces that have been identified as requiring CCTV monitoring. Signs should be prominently displayed at the perimeter of the monitoring areas so that the public are notified that they are entering a zone which is covered by CCTV monitoring.

- c) **Control on the retention and use of videotaped records.** It is important that access to, and disclosure of, personal data recorded on videotape is restricted to authorized personnel and carefully controlled. Any personal data collected by way of CCTV monitoring may only be used for the stated purposes set out to protect public safety or to detect or deter criminal activity and should not be retained or used for any other purposes. There should be a process in place to appropriately respond to any inadvertent disclosures of information of videotaped records. In addition, there should be written policies on the retention of videotaped records. Recorded information on tapes should be routinely erased according to a pre-determined standard schedule unless such information is required for evidential purposes.

- d) **Check and balance mechanism.** In order to address the privacy and data protection matters relating to the use of CCTV system, it is necessary to implement stringent internal procedures and guidelines with regard to operating procedures, security and training requirements to personnel handling CCTV equipment and videotaped records. The procedures should include a requirement to subject the activities in handling videotaped records to periodic reviews and audits. To achieve this, it would be appropriate for the Police to develop an administrative code of practice to provide specific guidance and clear standards that must be followed to ensure compliance with the requirements of the Ordinance. The code of practice has the dual purpose of assisting users of the CCTV systems to understand their legal obligations while also reassuring the public about the data protection safeguards that have been put in place.

CONCLUSION

11. In Hong Kong, the use of CCTV systems for purposes of ensuring security of premises, for example, by privately owned buildings, shopping arcades, etc. is a common practice. There seems to be a traditional public support in this respect. As regards the use of CCTV systems by Police to monitor ordinary and lawful public activities for general law enforcement purposes, the concerns remain whether there is sufficient justification to protect public interest and the adequacy of safeguards to ensure privacy interest of individuals is not compromised. Public confidence in this respect has to be earned and maintained, and to achieve this, there need to be some tighter control over the deployment and use of the CCTV systems. In limited and defined circumstances, CCTV monitoring may be appropriate to protect public safety and detect or deter criminal activity.

12. The PCO has been in dialogue with the Police regarding the proposal of installing CCTV systems in public places. In this regard, the PCO will continue the discussion with the Police and offer any assistance that may become necessary in addressing privacy and data protection matters relating to the proposal.