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Mr Christopher Graham
Information Commissioner
The Office of the Information Commissioner,
Water Lane,
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Wilmslow, Cheshire SK9 5AF   7th June 2011

Dear Mr. Graham,

Complaint: Royston ANPR "ring of steel"

We are writing on behalf of a number of people who have complained to No CCTV, Privacy International and Big Brother Watch with regard to the installation of a "ring of steel" of Automatic Number Plate Recognition (ANPR) cameras around the town of Royston in Hertfordshire. We believe this project is unlawful.

The cameras are being funded by Hertfordshire Constabulary, North Hertfordshire District Council and Royston's Business Improvement District Royston First. The installation of such a "ring of steel" in Hertfordshire is cause for particular concern as the Chief Constable of Hertfordshire Constabulary was until recently the Association of Chief Police Officers (ACPO) national lead on ANPR. You will be aware of concerns that have been raised in many quarters about ACPO's lack of accountability and the opaque relationships between the organisation and revenue sources that operate within the ambit of its policies. ACPO's strong and continued support for ANPR has no legal basis or authority.

We refer to your response to Privacy International's ANPR complaint of 5th September 2008 confirming that data collected by ANPR cameras is personal data. ACPO's 'ANPR Strategy for the Police Service – 2010-2013' also states:

> "Whilst a Vehicle Registration Mark (VRM) alone does not identify a particular individual, ANPR data will be treated as 'personal data' as defined in Article 2 of the European Directive 95/46/EC.;"
> ['ACPO in their 'ANPR Strategy for the Police Service – 2010-2013', p6]

Consequently this data falls within the remit of the Data Protection Principles in Schedule 1 of the Data Protection Act.

The use of ANPR by the police in the UK has not been as the result of any Parliamentary debate, Act of Parliament or even a Statutory Instrument. It is extraordinary that such a large and extensive network has been constructed in this way by ACPO (an unaccountable body as acknowledged at the Home Affairs Select Committee Inquiry on Policing, 27th July 2010). With this in mind we turn first to the lawfulness of ANPR.

Lawfulness

Your response to Privacy International of 5th February 2010 states:

> We have been provided with evidence from a number local police forces on the use of ANPR data and this indicates that ANPR can be a very useful tool in preventing and detecting a wide range of crimes; ranging from its use in the routine detection of motoring offences, through to the investigation of some very serious crimes and prevention of terrorism. We also understand that a national system can enable the police to analyse patterns of vehicle movements across force boundaries and can help with the identification and interception of people planning to commit acts of terrorism.

However the Data Protection Act is underpinned by the requirement that data processing must be lawful.

The ICO's 'Data Protection Act 1998 Legal Guidance' document contains a definition of lawfulness that states:

> "The natural meaning of unlawful has been broadly described by the Courts as "something which is contrary to some law or enactment or is done without lawful justification or excuse". (R v R [1991] 4All ER 481)."
> ['Lawfulness', p27 Data Protection Act 1998 Legal Guidance]

In 'The specified purposes' section below we shall show that the specified purposes for the Royston ANPR cameras do not meet the "lawful justification or excuse" requirement of lawfulness. Further as mentioned above, the police ANPR network (of which the Royston cameras are a part) is not covered by any specific Primary or Secondary legislation.

There have been many questions raised over the legality of the use of ANPR by the police. In the 2004 report 'Driving crime down' the then Home Secretary David Blunkett wrote that experience gained in an ANPR pilot "is likely to lead to the introduction of ANPR enabling legislation as soon as Parliamentary time allows", yet no such legislation has ever emerged.

Arguably the appropriate time for an ANPR legal framework was before the creation of a country wide network. The Privacy International complaint to you resulted in a stronger focus on access and retention issues, but management of such a system should not be dependent on reactive processes.

Calls for such a legal framework have in recent years been presented as little more than a tidying up exercise to make the expanding network legal, but there must be doubt as to the validity of a framework after the event and the introduction of retrospective legislation.

Furthermore simply introducing legislation at this point will not address any of the issues surrounding ANPR.

The Surveillance Commissioner's 2005-2006 Annual Report stated:

> "The unanimous view of the Commissioners is that the existing legislation is not apt to deal with the fundamental problems to which the deployment of ANPR cameras gives rise. This is probably because the current technology, or at least its very extensive use, had not been envisaged when the legislation was framed. The Commissioners are of the view that legislation is likely to be required to establish a satisfactory framework to allow for the latest technological advances. The position is complicated by the fact that the current technology can be used in a variety of different ways and at different levels of effectiveness. I am accordingly urging upon the Home Secretary the desirability of promoting such enabling legislation as may be needed."
> ['Annual Report of the Surveillance Commissioner', for 2005-2006, p19]

Even the Association of Chief Police Officers (ACPO) has called for a legal framework for ANPR. In the ACPO 'ANPR Strategy for the Police Service – 2010-2013' under the heading 'Priorities for strategic change' they list:

> "To encourage Government to establish an effective legal basis for the police use of ANPR technology and for the sharing of data and assets between parties for law enforcement purposes;"
> ['ANPR Strategy for the Police Service – 2010-2013', p12]

This contrasts with the previous view of ACPO, who when asked for details of the statutory powers / Act(s) of Parliament under which ANPR cameras are installed and used as a "core policing tool", simply stated that ANPR "does not require any legislation or statutory powers" to effectively conduct nationwide vehicle surveillance [see Freedom of Information request - 'Details of statutory powers relating to ANPR', on the WhatDoTheyKnow website, 2009].

We also note that Minutes of a 26th July 2010 ICO Management Board Meeting state:

> "The Commissioner will meet shortly with a Home Office Minister to discuss CCTV regulation and automatic number plate recognition (ANPR). The coalition has said it wished to further regulate CCTV and introduce a statutory basis for ANPR systems."
> [Minutes , Management Board Monday 26th July 2010 , p4]

Many thought that a statutory basis for ANPR would be contained in the Protection of Freedoms Bill now making its way through Parliament but in reality the Bill merely inserts ANPR cameras along with CCTV into the definition of surveillance cameras. This amounts to no more than a confirmation of the current situation which the aforementioned voices have stated requires legislation.

The proposed code of practice that is to be introduced by the Protection of Freedoms Bill will not be legally enforceable and as the Law Society told the Public Bill Committee on Tuesday 22nd March: "There is a very limited opportunity for parliamentary scrutiny of those codes, and it seems to us that there ought to be a proper debate about where the

balance should be and what those codes should contain."

Based upon the legal fog surrounding the police use of ANPR cameras we submit that the technology does not meet the lawfulness requirement that underpins the Act on the grounds that:

- ANPR has no statutory framework
- if a statutory framework were introduced now this could not have the effect of legalising previous use of ANPR as legislation cannot be applied retrospectively
- the specified purposes for the Royston ANPR cameras do not meet the "lawful justification or excuse" requirement of lawfulness (see 'The specified purpose' below)
- even with a statutory framework and/or a "lawful justification or excuse" the use of ANPR would still be unlawful as it constitutes a major assault on our common law foundations and the Rule of Law

In your response to Privacy International of 5th February 2010 you stated that the 2009 Court of Appeal decision relating to police retention of minor offences (Chief Constable of Humberside Police & Ors v Information Commissioner & Anor [2009] EWCA Civ 1079) underlined that you must "give appropriate consideration to a data controllers views on the necessity and value of information when judging whether this is held in compliance with the Data Protection Principles". The 2009 case heavily relied upon the statutory framework and "suitable specific safeguards" that were deemed to underpin the Police National Computer (PNC). ANPR cameras have no such statutory framework and as we argue that the data was gathered unlawfully it seems inappropriate to draw upon the 2009 case. We are in fact surprised that no appeal was lodged against the 2009 Court of Appeal Judgment as it seems to suggest that the Data Protection Act only applies to the police to the extent that the police themselves assert that it does, in other words that the police are above the law.

The specified purpose

Principle two of the Act states:

> "Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes."

At a March 2010 North Hertfordshire District Council Royston and District Committee meeting Inspector Andy Piper of Hertfordshire constabulary told the Committee that ANPR cameras were for: "the prevention and detection of crime, public disorder, terrorism and to remove from public roads both unsafe vehicles and unsafe drivers" and that: "The camera system was intended to be one of the tools making Hertfordshire safer".

Sergeant Jon Vine of Hertfordshire constabulary told the same Royston and District Committee meeting that ANPR cameras "acted as an extra 'set of eyes' 24 hours a day". Sergeant Vine also told the Committee that "the message being passed on through the media was that the ANPR cameras were in situ to target criminals, ensuring that Royston was in safe hands".

A 25th March 2011 local newspaper report 'Hidden cameras on all routes in' stated that:

> "The cameras, which record the number plate details of every vehicle, will be used to "make Royston the safest town in Hertfordshire", say town bosses."

ANPR cameras were originally operated by the DVLA staff to catch motorists driving without road tax (see the Department of Transport 'DVLA Tax Evasion Cameras ' case study for details of Stingray cameras used in London in 2001).

The 2004 Home Office report 'Driving crime down - Denying criminals the use of the road' stated that:

> "ANPR has uses in a range of areas, including tackling volume crime, serious & organised crime, counterterrorism, and in intelligence gathering. It has also proven a great asset in tackling the 'underclass' of vehicles that are incorrectly registered, untaxed and uninsured."
> ['Driving crime down', Home Secretary's Introduction, p1]

In their 'ANPR Strategy for the Police Service 2007/2010' ACPO stated:

> "A number of key milestones have been identified within constituent projects for ANPR with an intention that these will support the embedding of ANPR into **core police business** be[by] March 2010 "
> ['ANPR Strategy for the Police Service 2007/2010', p5 , emphasis added]

The ACPO 'ANPR Strategy for the Police Service – 2010-2013' states that:

> "The strategic intent of this ANPR strategy is to: 'target criminals through their use of the roads'"
> ['ANPR Strategy for the Police Service – 2010-2013', p6]

The Spring/Summer 2010 Newsletter of Royston First, the Business Improvement District that has part funded the Royston ANPR cameras states:

> "Automatic Number Plate Recognition has over the past couple of years become the policeman's technology of choice when it comes to crime prevention and detection. "

The ANPR Back Office Facility (BOF) database for Hertfordshire Constabulary is operated by Northgate Public Services (a division of Northgate Information Services Ltd), who in their promotional brochure 'Automatic Number Plate Recognition - Putting intelligence into action' state:

> "Most police forces currently use ANPR to target specific vehicles on their hotlist. They are stopping vehicles they know they are looking for.
>
> Our view is that where forces focus only on these hits, they are losing the potential intelligence value that exists in the 98% of reads that don't match the hotlist."
> [''Automatic Number Plate Recognition - Putting intelligence into action', p2]

The involvement of Northgate Public Services raises serious questions as to the purpose of ANPR as Northgate appear to be suggesting that ANPR should be used as a data mining tool (for more details see the 'Data Retention' section below).

In the previous Government's response to the Joseph Rowntree Reform Trust's 'Database state' report it was confirmed that local police force BOF databases can be used alongside "querying tools", the Government response states:

> "The type of analysis available includes Simple Search; Vehicle Pattern Analysis Matching (Live and Historical); Location Time Analysis; Geographical Profiling; Convoy Analysis; Sequential Pattern Analysis; and Colour Make Model Analysis."

> ['Government response to the Joseph Rowntree Reform Trust report: "Database state"', December 2009, p40]

To summarise, the purposes put forward for the ANPR "ring of steel" around Royston are:

- The prevention and detection of crime, public disorder, terrorism and to remove from public roads both unsafe vehicles and unsafe drivers
- Making Hertfordshire safer
- An extra set of eyes 24 hours a day … in situ to target criminals, ensuring Royston is in safe hands
- Making Royston the safest town in Hertfordshire
- Data mining as promoted by Northgate Public Services

The purposes put forward for the Royston ANPR "ring of steel" are vague at best and furthermore it seems that Hertfordshire Constabulary along with other forces believe that they can simply state objectives without any evidence that the objectives are attainable. This is an absurdity.

The fact that the stated purposes of ANPR are not backed up by evidence that they are attainable must surely further undermine Hertfordshire Constabulary's compliance with principle two of the Act.

There is in fact little evidence that ANPR can achieve the results claimed by the police. A 2006 report from the Australian Queensland Parliament inquiry into ANPR found that:

> "Despite what appears to be promising efficiency gains from the use of ANPR-assisted enforcement compared to traditional enforcement approaches, the committee and others have noted a lack of rigorous evaluations in Australia or overseas demonstrating the effectiveness of ANPR technology in reducing road crash rates. In the absence of solid evidence of its benefits, it seems that agencies have implemented the technology based on operational imperatives and the need for action, without first establishing its cost and benefits, or identifying best practice approaches to its use."
> [Queensland Parliament,Parliamentary Travelsafe Committee, 'Report on the Inquiry into Automatic Number Plate Recognition Technology', September 2006 , p12]

A December 2009 thesis by Alina Haines of the University of Huddersfield in collaboration

with West Yorkshire Police, states that:

> "There is a paucity of research examining how the police have embraced this new surveillance technology, or whether ANPR is effective in reducing crime and fear of crime."

> ['The Role of Automatic Number Plate Recognition Surveillance within Policing and Public Reassurance', Alina Haines, 2009, p18]

Much of the doubt over ANPR's effectiveness is due to serious questions over the validity of the data upon which the systems rely, such as the Driver and Vehicle Licensing Agency (DVLA) database. The 2004 report 'Driving crime down - Denying criminals the use of the road' found that:

> "• PNC and local databases were found to be around 80% accurate compared to around 40% for DVLA
> • Accuracy of DVLA databases declined over the study period"
> ['Driving crime down', p98]

Hertfordshire Constabulary also tacitly acknowledge that there are issues with the accuracy of reading the number plate of moving vehicles. In a report entitled 'Constabulary Response to Police Authority Topic Group on Automatic Number Plate Recognition' presented to a Hertfordshire Police Authority Scrutiny Committee on 19th March 2010 they outline plans to evaluate ANPR reads from stationery vehicles in the hope of increasing the likelihood of "interception", the report states that Hertfordshire are involved in assisting with :

> "Evaluating taking ANPR reads from garage forecourts and supermarket car parks to see if this could improve the effectiveness of ANPR intercept operations and the use of ANPR in investigations. This work is testing whether having a vehicle stationery in a known location for a number of minutes allows an increased likelihood of interception, as well as giving more time for proper intelligence research to be carried out before the interception takes place. "
> ['Constabulary Response to Police Authority Topic Group on Automatic Number Plate Recognition', p5]

In the 2009 NPIA document 'Practice Advice on the Management and Use of Automatic Number Plate Recognition' under the heading 'The Second Principle (The Specified Purpose)' it states:

> "Personal data gathered (by the police) using ANPR technology should only be obtained for a specified purpose which has been registered and it shall not be used for any other purpose (see 3.2. Police Information). If it is not relevant for a specified and lawful purpose, the data must not be retained. The reason for retaining ANPR data must be documented in case of any future investigation by the Information Commissioner."
> ['Practice Advice on the Management and Use of Automatic Number Plate Recognition', p19]

The standard reason given for mass video surveillance by the police or local authorities is

the prevention or detection of crime, but this catch-all is not specific and we submit cannot be what was intended by the drafters of principle two of the Act.

In 2001 following an investigation of video surveillance activities by the Royal Canadian Mounted Police (RCMP) in Kelowna, British Colombia, George Radwanski, then Privacy Commissioner of Canada in a letter of finding to the Information and Privacy Commissioner of British Columbia articulated this point when he wrote:

> "the broad mandate to prevent or deter crime clearly does not give police authorities unlimited power to violate the rights of Canadians. They cannot, for instance, compile detailed dossiers on citizens "just in case." They cannot force people at random to identify themselves on the street. They cannot enter and search homes at will, without proper authorization.
>
> It is equally clear, in my view, that police forces cannot invoke crime prevention or deterrence to justify monitoring and recording on film the activities of large numbers of the general public.
>
> In the normal course of law enforcement, cause (reasonable grounds) is a basic precondition for the collection and retention of personal information. In the case of video surveillance, information is recorded regardless of the existence of specific cause. By recording continuously, as opposed to recording only selective incidents related to law enforcement activities, the RCMP was unnecessarily collecting information on thousands of innocent citizens engaged in activities irrelevant to the mandate of the RCMP."
> [Letter of finding to David Loukidelis, Information and Privacy Commissioner of British Columbia from Privacy Commissioner of Canada, George Radwanski, 4th October 2001]

We submit that Hertfordshire Constabulary along with other police forces in the UK are using ANPR personal data beyond "one or more specified and lawful purposes". We submit that the purposes put forward for the Royston ANPR "ring of steel" are neither specific nor supported by evidence that they are actually achievable, and consequently do not meet the requirements of principle 2 of the Act.

Data Retention

Data retention is outlined in principle five of the Act which states:

> "Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes".

ANPR data retention has been a controversial issue for many years and we submit that Hertfordshire police along with other police forces are keeping data for longer than is necessary.

At a Hertfordshire Police Authority Scrutiny Committee on 19th March 2010 a report was submitted to the Committee entitled 'Final report of the Topic Group on Automatic Number Plate Recognition (ANPR) Technology use within Hertfordshire Constabulary' , the report states:

> "Currently number plate pictures are held for 2 years. Car pictures are held for 90 days. "Hits" information on text and number pictures are held for 5 years and car pictures are held for 2 years."
> ['Final report of the Topic Group on Automatic Number Plate Recognition (ANPR) Technology use within Hertfordshire Constabulary' , p9]

This contradicts the retention periods set out in your response to Privacy International.

A further report entitled 'Constabulary Response to Police Authority Topic Group on Automatic Number Plate Recognition' was presented to the same 19th March 2010 Scrutiny Committee meeting. The report highlighted problems with the ANPR BOF system, it states:

> "There has been an issue around the inability of the current national BOF 2.2 system to automatically weed data that is two years old, in line with the national policy."
> ['Constabulary Response to Police Authority Topic Group on Automatic Number Plate Recognition', p3]

The report goes on to point out that the National Policing Improvement Agency (NPIA) had made a tool available "which allows weeding to take place in a cost effective manner and the Constabulary is currently using this tool to catch up with its outstanding weeding", and further that the weeding tool is an integral part of BOF 2.3, which was due to be installed in January 2011. BOF 2.3 was developed by Northgate Public Services in conjunction with the NPIA.

The Hertfordshire Constabulary report reveals that little regard to appropriate data retention or privacy was designed into the ANPR BOF system. Instead the focus has been placed on the ability to mine the data collected.

Northgate Public Services describe their BOF 2.3 "enhancement" as 'Northgate BOF 2.3 Advanced Data Miner ' in their brochure 'The ANPR Intelligence Dividend - Northgate BOF 2.3 Advanced Data Miner ', the brochure states:

> "Northgate's Advanced Data Miner enhancement for BOF 2.3 allows users (not just analysts) to access the 2% of reads that result in hits, but more importantly, to access the 98% that offer intelligent leads. A senior investigating officer on a major crime will be very interested in that 98% because they will be able to say "don't tell me what I now, tell me what I don't know" ."
> ['The ANPR Intelligence Dividend - Northgate BOF 2.3 Advanced Data Miner ', p1]

In Canada, where more robust privacy laws exist, ANPR data is retained for much shorter periods and stored on isolated databases rather than the system used by the police in the UK which combines powerful local force databases (BOF) that may be used alongside querying or data mining tools, and a centralised database (NADC). In 2003 the Information and Privacy Commissioner (IPC) of Ontario published a privacy investigation report into the use of mobile ANPR, known in Canada as Mobile Licence Plate Recognition (MLPR) technology. The report looked at a three-month MLPR pilot project using a video camera system mounted on the top of a police car (the "street sweeper") that scans the licence

plate numbers of parked cars and compares them to a "hot list" of stolen vehicles.

The report, which found that the system did comply with Ontario's Municipal Freedom of Information and Protection of Privacy Act, states:

> "The hard drive in the street sweeper's onboard computer has the capacity to retain approximately 72 hours worth of scanned licence plate numbers. Consequently, whenever the parking enforcement unit officer scans a licence plate number, this new scan overwrites any existing scan that is 72 hours old. In other words, the MLPR system is configured to automatically destroy all scanned licence plate numbers on the hard drive after 72 hours."
> ['Privacy Investigation: The Toronto Police Service's use of Mobile Licence Plate Recognition Technology ']

The fact that Toronto police are able to operate their system with a retention period of just 72 hours reinforces serious concerns about whether Hertfordshire Constabulary's ANPR data is kept for longer than is necessary.

We submit that the data retention period of personal data collected by Hertfordshire Constabulary using ANPR of at least two years and their disregard for even maintaining that retention period means that they do not comply with principle five of the Act and arguably principle seven (principle seven of the Act was certainly breached by Hertfordshire Constabulary in 2008 when they lost a memory stick containing ANPR data).

The data retention issues outlined above exist at both the national (NADC) level and the local (BOF) level. Addressing one of these alone will not suffice.

Fair processing obligations and signage

The first principle of the Act requires personal data to be processed fairly and lawfully. Part of fair processing is the requirement to notify people that they are being filmed. Section 29(1) of the Data Protection Act exempts personal data processing from the first data protection principle when such processing is for the prevention, detection or resolution of crime. However we shall argue below that ANPR data should not be exempted from the first data protection principle and so is bound by the fair processing requirement.

ACPO have stated in the 'ACPO Data Protection Manual of Guidance' that police will ensure that ad hoc 'fair processing notices' are provided as and when required "on signs for overt Automated Number Place Recognition (ANPR) systems" (p21, 'ACPO Data Protection Manual of Guidance', Version 3.0, 2010).

However in the October 2004 ACPO document 'E.C.H.R., Data Protection & RIPA Guidance Relating to the Police use of A.N.P.R.' it states with regard to the Data Protection Act:

> "The Act does not specify where the signs are to be placed in relation to the camera site. Indeed nothing in the Act would prevent the signs being displayed at or even after the camera site."
> ['E.C.H.R., Data Protection & RIPA Guidance Relating to the Police use of A.N.P.R.', p7]

This interpretation of the Act is expanded upon in the 2009 NPIA document 'Practice Advice on the Management and Use of Automatic Number Plate Recognition', which states:

> "The use of information signs where ANPR cameras are deployed, or where ANPR vehicles are patrolling, should always be considered. This may include permanent signage throughout a force area."
> ['Practice Advice on the Management and Use of Automatic Number Plate Recognition', p19]

In a report presented to a Hertfordshire Police Authority Scrutiny Committee in March 2010 entitled 'Final report of the Topic Group on Automatic Number Plate Recognition (ANPR) Technology use within Hertfordshire Constabulary' Hertfordshire police explain how they have used signage of operations to "boost ANPR profile", the report states:

> "The force have branded the "Interceptor" concept to their 2 dedicated patrol teams. Additionally the force have used signage of ANPR Operations, and used a proactive media strategy to boost ANPR profile."
> ['Final report of the Topic Group on Automatic Number Plate Recognition (ANPR) Technology use within Hertfordshire Constabulary', p8]

A 2006 Outlaw.com article on ANPR quotes data protection specialist Dr Chris Pounder who said:

> "as these cameras collect personal data on every car that passes, they are subject to the fair processing obligations under the Data Protection Act. This in turn means that there should be transparency of data collection and drivers and people in cars should thus know that there are cameras in use"
> ['Surveillance chief says number plate cameras could be illegal', Outlaw.com, 29/11/2006]

We submit that Hertfordshire Constabulary have not correctly interpreted the fair processing obligations of the Act and so the ANPR cameras around Royston do not comply with the first principle of the Act.

Necessity test

Schedules 2 and 3 of the Data Protection Act state that the processing of data must be "necessary" for the specified purposes. We submit that it cannot be necessary in a democratic society to create such an extreme form of surveillance as a "ring of steel" of ANPR cameras tracking the movements of every passing vehicle. We also submit that as the Royston ANPR cameras fail this necessity test they therefore cannot rely on the Section 29(1) exemption relating to "the administration of justice".

The Minutes of a March 2010 North Hertfordshire District Council Royston and District Committee meeting note that Sergeant Vine of Hertfordshire Constabulary told the Committee the aim of the ANPR cameras around Royston. The Minutes state:

> "He gave a list of camera sites, assuring Members that the aim was 'no vehicle

could enter or leave Royston without being recorded by a camera'."
[Minutes of Wednesday 17th March 2010 Royston and District Committee]

Neither Seargant Vine nor Committee members or any other Minuted attendees highlighted an unusual level of criminality in Royston that might lead to such drastic action. The main justification offered by Inspector Andy Piper of Hertfordshire Constabulary was that people from other counties might travel through the area, the Minutes state that Inspector Piper declared:

> "The cameras were needed for Royston as it was in a location of importance on the borders of Hertfordshire and Cambridgeshire, with people from those counties and from Bedfordshire also travelling through the area."
> [Minutes of Wednesday 17th March 2010 Royston and District Committee]

It is hard to see how the fact that people from neighbouring counties might travel through an area would mean that it is necessary in a democratic society to record and store details of all such movements and retain personal data in the form of the car photo for between 90 days and five years and the license plate photo in a centralised database for between two and five years.

In the past totalitarian regimes instituted road blocks to check citizens' papers at a series of internal borders. The police use of ANPR as a mass surveillance tool to record the movements of all cars and the justification given by Hertfordshire Constabulary for a ring of cameras around Royston such that "no vehicle could enter or leave Royston without being recorded by a camera" because the town is in "a location of importance on the borders of Hertfordshire and Cambridgeshire" is surely equivalent to an automated checkpoint system that cannot be necessary in a democratic society to meet any of the purposes set out by Hertfordshire Constabulary.

It is hard to see how the police use of ANPR across the UK as a mass surveillance tool that is being championed by Hertfordshire Constabulary whose Chief Constable was until recently the ACPO lead on ANPR, is either "necessary" or "proportionate".

Countries around the world look to the UK as a western democracy with the respect for freedoms that this is meant to represent. To support our contention that Hertfordshire Constabulary's use of ANPR is an extreme form of surveillance that has no place in a supposed beacon of democratic values, we present below the views of privacy experts abroad. We draw your attention in particular to the views expressed in Australia and Canada, two countries that have Common Law legal systems.

The Australian Privacy Foundation (AFP) in a 2008 policy statement on ANPR stated:

> "As commonly practised, and as supported by currently available technologies, ANPR represents a gross privacy intrusion, and in some jurisdictions breaches privacy law, in the following ways:
>
> - it involves arbitrary collection of personal data not for a specific, defined purpose to which it is clearly relevant, but opportunistically and for vague purposes
> - it generates a very large database of personal data, containing: registration

data one set – but very probably multiple sets – of:
- o the date and time of sighting
- o the location
- o the direction of movement
- the database can be used to draw inferences and generate suspicions
- the database is a 'honeypot' that attracts attention from many organisations for many purposes, resulting in 'scope creep' the database is impossible to protect against unauthorised access, resulting in leakage of content"

['APF POLICY re Automated Number Plate Recognition (ANPR)', 2008]

In a study carried out by the Paris based consultancy ARETE for DG XV of the European Commission on the data protection issues surrounding on-line services and the information society, Joel R. Reidenberg (Professor of Law, Fordham University School of Law) and Paul M. Schwartz (Professor of Law, Brooklyn Law School) describe the position of the French Commission nationale de l'informatique et des libertés (CNIL):

"The CNIL rejected, for example, a proposed intelligent transport system in part because of the reliance on collecting and tracking data matched by license plate number. The CNIL's position emphasized the right of citizens to travel anonymously on public roads. "
['Data Protection Law and On-line service: Regulatory Responses', European Commission, p32]

In 2001 following an investigation of video surveillance activities by the Royal Canadian Mounted Police (RCMP) in Kelowna, British Colombia, George Radwanski, then Privacy Commissioner of Canada wrote:

"There is no doubt that preventing or deterring crime can be regarded as an operating program or activity of the RCMP in its capacity as Kelowna's police force. But even setting aside for the moment the serious questions that exist about the deterrent effectiveness of video surveillance in public places, it does not follow that monitoring and recording the activities of vast numbers of law-abiding citizens as they go about their day-to-day lives is a legitimate part of any such operating program or activity."

We note that in the ICO 2010 report 'Information Commissioner's Annual Report to the House of Commons' concerns were raised about the use of ANPR "routinely to track and monitor political protestors logged on the 'domestic extremists' database". The concerns expressed in the ICO report echo those of former Canadian Supreme Court Justice Gérard La Forest in a legal opinion to the Canadian Privacy Commissioner in 2002, when he wrote:

"There is reason to believe, moreover, that general video surveillance can be readily abused. There is evidence that it is often used to monitor unconventional (but not criminal) behaviour and to control members of marginalized groups."
[Opinion by Justice Gérard La Forest, to George Radwanski, Privacy Commissioner of Canada, 5th April 2002]

Further, we note that a 21st April NPIA Update states that:

> "For the past two years, the ANPR Programme Team has been working with the Association of Chief Police Officers (ACPO) and the Information Commissioner's Officers (ICO) to ensure that the use of ANPR by the police effectively balances individual privacy rights against operational requirements."
> [NPIA Update, 'Expansion of the latest software boosts policing capability in tackling major crime and terrorism', 21st April 2011]

We hope that your dual role as both advisor and enforcer with regards to Data Protection will not affect your judgement in this case. The police will always look to utilise whatever tools they can but a system that can be used to record law abiding citizens "just in case" they commit a crime represents a major shift change in policing that cannot be deemed acceptable in a democratic society.

Chillingly the 'Royston First' Business Improvement District proudly announced in their newsletter that:

> "Royston will become, as far as we are aware, the first town in the UK to be completely protected by ANPR. For once our comparative isolation in the top corner of Hertfordshire has worked in our favour! "
> [Royston First Spring/Summer 2010 Newsletter]

We hope the ICO will ensure that the Data Protection Act and the principles behind it that must have been intended by Parliament are upheld.

We urge the ICO to address this issue now in relation to one town rather than wait until a point in the foreseeable future when it will relate to many.

Yours sincerely,

Charles Farrier
No CCTV

Simon Davies
Privacy International

Daniel Hamilton
Big Brother Watch