

Sarah Cremin

From: Public Accounts Committee
To: Cronan M. Goodman
Subject: RE: PAC queries on operation of CCTV

From: Cronan M. Goodman [<mailto:CMGoodman@justice.ie>]
Sent: 11 June 2019 18:37
To: Public Accounts Committee
Subject: PAC queries on operation of CCTV

Hi Éilis,

As you may recall, the PAC last year asked a number of questions in relation to CCTV of this Department, the local authorities via CCMA and An Garda Síochána and suggested that we consult one another in that regard.

The Department's response issued to the PAC on 20 December, 2018 and An Garda Síochána issued its response directly to the PAC on 31 October, 2018 (copies of both are attached for ease of reference).

The CCMA response as shared with the Department is now also attached for the Committee's convenience.

Regards,

Crónan

Crónan Goodman

Private Secretary to the Secretary General | Office of the Secretary General

An Roinn Dlí agus Cirt agus Comhionannais

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Cumann Lucht Bainistíochta Contae agus Cathrach
County and City Management Association

CCMA response to PAC request for
information Ref: PAC32-I-1001 relating to
CCTV use

October 2018

Introduction

There are 35 Garda CCTV schemes in operation throughout the State comprising in excess of 500 cameras. The primary role of these CCTVs is crime prevention and detection (Department of Justice and Equality)¹. These are supplemented by CCTVs operated by local authorities. A distinction should be made between local authority CCTV which is utilised for the purposes of exercising law enforcement powers and community-based CCTV schemes that are typically operated for the purposes of securing public order and safety in public places.

Local authorities have law enforcement functions that enable them to operate CCTV within their jurisdiction. Typically, local authorities use these technologies to assist in detection and prosecution of litter and waste offences. The objective is to assist the local authorities to do their job as prescribed under legislation and enable them to exercise their own powers to prosecute, most commonly through fines.

However, many local authorities have also become involved in operating community-based CCTV for the purpose of securing public order and safety in public places, often referred to as 'Community CCTV' schemes (although there is no requirement to have community involvement in the schemes). In most cases, the cameras are placed in or around areas or properties owned or managed by the local authority. The local authorities have no enforcement role where CCTV is used to secure public safety, this role falls to An Garda Síochána.

The legislative basis for operating these community-based CCTV systems is section 38 (3)(c) of the Garda Síochána Act 2005, as amended. This enables the Garda Commissioner to authorise the installation and operation of CCTV for the sole or primary purpose of securing public order and safety in public places by facilitating the deterrence, prevention, detection and prosecution of offences to persons who meet the established criteria and whose application for authorisation in respect of a specified area within the administrative area of a local authority has been approved by the local authority after consulting with the joint policing committee for that administrative area.

Many of the schemes operated by local authorities have been grant funded by the Department of Justice and Equality (DJE). The funding was administered by Pobal for the Department of Justice, Equality and Law Reform (DJELR) between 2005 and 2013. The recent funding is administered directly by the DJE and aims "to support local communities who wish to install and maintain CCTV security systems in their area, with the aim of increasing public safety and to deter illegal or anti-social behaviour" (Department of Justice and Equality)². While there is no specific enforcement role for local authorities, their authority to process the data is permitted under Article 6 1(d) & (e) of EU GDPR where data is processed in the 'public interest', 'legitimate interest' of the controller, or 'vital interest' of the data subject.

¹ Department of Justice and Equality <http://www.justice.ie/en/JELR/Pages/Community-Based-CCTV>. Accessed 12/9/2018.

² *ibid.*

Community based-CCTV for the purpose of securing public safety must comply with the following conditions under section 38 of the Garda Síochána Act 2005, as amended, and the Garda Síochána (CCTV) Order 2006:

- The scheme must be approved by the local joint policing committee;
- The local authority must agree to act as Data Controller;
- The applicant must receive an authorisation from the Garda Commissioner under section 38 of the Garda Síochána Act 2005.

As Data Controllers, the local authority must comply with GDPR and Data Protection legislation which allows it to grant limited access to CCTV footage in line with procedures set out under data protection legislation.

Supply of CCTV Images to An Garda Síochána

At present, the stance of the Office of the Data Protection Commissioner (ODPC) in relation to the supply of CCTV images to An Garda Síochána is as follows:

“the ODPC recommends that requests for copies of CCTV footage should only be acceded to where a formal written (or fax) request is provided to the data controller stating that An Garda Síochána is investigating a criminal matter. For practical purposes, and to expedite a request speedily in urgent situations, a verbal request may be sufficient to allow for the release of the footage sought. However, any such verbal request must be followed up with a formal written request. It is recommended that a log of all An Garda Síochána requests is maintained by data controllers and processors. ... **In general, An Garda Síochána making a request to simply view footage on the premises of a data controller or processor would not raise any specific concerns from a data protection perspective** (ODPC, original emphasis)³

Typically, the view of the general public has been that An Garda Síochána had greater access than that outlined above, and in practice many existing projects provided live feeds into Garda Stations for the purpose of crime prevention. Research carried out in 2012 on four Community CCTV schemes in Ireland (three rural and one urban) concluded that there was strong support for CCTV in the community and suggested that members of the community feel safer in areas with CCTV coverage (Donnelly, 2012)⁴ based on a belief that An Garda Síochána have extensive or easy access to CCTV footage.

The press release for the current funding round states that “An Garda Síochána have reviewed the effectiveness of CCTV systems and indicated that it utilises CCTV in almost every criminal investigation, during major public events and sporting occasions, in the investigation of road traffic incidents and in many other areas requiring police action. community-based CCTV systems have

³ <https://www.dataprotection.ie/docs/Data-Protection-CCTV/242.htm> Accessed 14/9/18.

⁴ <https://arrow.dit.ie/cgi/viewcontent.cgi?article=1053&context=aaschssldis> Accessed 14/9/2018.

⁴ Donnelly, A., To CCTV or not? An examination of Community-based CCTV in Ireland. DIT, Dublin

therefore proven to be of significant assistance in the prevention and detection of crime throughout the State.” (April 2018)⁵

However, local authorities are unclear whether live feeds into Garda stations can be permitted with new schemes or whether existing schemes will need to be revised accordingly. In addition, there is also a belief that existing CCTV schemes that operate independently of local authorities may not be able to continue operating unless Local Authorities assume the role of Data Controllers for these projects. Whether assuming responsibility for new projects or updating older schemes, there are a range of operational difficulties that local authorities have identified to the DJE officials relating to changes that may need to be made to older schemes. Of particular concern is the additional resources that may be required such as staff to monitor and facilitate access to data, secure facilities to host equipment, broadband to operate equipment remotely or maintenance and updating equipment.

Engagement between the DJE and the LGMA relating to these issues is currently taking place. To date there has been agreement that the Code of Practice for funding would be updated to address some of these issues. Department officials also notified the CCMA that current funding could be used to upgrade existing projects so that they were compliant with all data protection requirements. The ODPC is at present visiting local authorities as a follow up to the audit they conducted in July 2018 and it is expected that guidance will emerge from these inspections which can inform the revised Code of Practice.

It is within this context that the CCMA will respond to the following two information requests submitted by the Public Accounts Committee (PAC):

1. Breakdown by LA on the operation of a CCTV monitoring agreement in place.
2. A note on the model that is in place citing examples of where there is successful operation and best practice.

⁵ [Room/Releases/Minister_Flanagan_encourages_communities_to_apply_for_CCTV_funding.html](#) Accessed 14/9/2018.

CCMA Response:

1. Breakdown by LA on the operation of a CCTV monitoring agreement in place.

Methodology

The LGMA contacted each local authority requesting data to assist in the response to the PAC information request. Responses received were very diverse and as a consequence, difficult to compile into a comprehensive response. A follow-on request was issued to local authorities seeking the data that had been supplied to the ODPC in response to a Data Protection Audit the office had undertaken in July 2018. This meant data submitted was in a standardised format and eliminated the need for local authorities to generate new or additional data. This data was reconciled to the list of schemes funded either by Pobal on behalf of the DJELR, or directly by the DJE.

The data enabled the LGMA to determine:

- How many local authorities are operating CCTVs in their area;
- The purpose of the CCTV (i.e., law enforcement or securing public safety);
- How many have been funded under the CCTV grant schemes operated by Pobal in the past;
- How many have secured funding under the Community CCTV Scheme currently operated by the DJE.

Profile of CCTV operations in local authorities in September 2018

Four categories are identified in Table 1. These relate to the number of local authorities operating:

- i. CCTVs for the purposes of exercising its *law enforcement* powers;
- ii. Community based CCTV to secure *public order* and *safety* in public places – not funded by Pobal or DJE;
- iii. Community based CCTV to secure *public order* and *safety* in public places – funded under CCTV grant schemes operated by Pobal or DJE;
- iv. *No* CCTV of any type.

Table 1 below illustrates that there are 28 local authorities that operate CCTV for the purposes of exercising its law enforcement role. There are only 3 local authorities that do not operate CCTV for law enforcement (Galway City Council, Louth County Council and Laois County Council).

There are 22 local authorities operating community-based CCTV to secure public safety that have been funded under one of the CCTV grant schemes, 20 of which also operate CCTV for law enforcement and 2 that do not (Galway City Council and Louth County Council). There are also 6 local authorities that operate community-based CCTV to secure public safety, that have not been funded under the CCTV grant schemes (Dun Laoghaire Rathdown County Council, Galway County Council, Mayo County Council, Roscommon County Council, Westmeath County Council and Offaly County Council).

There is one local authority that does not operate CCTV of any kind, Laois County Council.

Table 1: 2018 Summary of CCTV operation in 31 local authorities

Type of CCTV operation	Number of local authorities
Operating CCTV for law enforcement	28
Operating community-based CCTV to secure public safety	6
Operating community-based CCTV to secure public safety (DJE/Pobal CCTV grant scheme funded)	22
Operating no CCTV	1

Table 2: Local Authorities operating CCTV, September 2018

Local Authority	CCTV for the purpose of exercising law enforcement powers	Community-based CCTV for securing public safety	
		<i>Operated by Local Authority without DJE/Pobal CCTV grant funding</i>	<i>Grant funded under the DJE/Pobal CCTV Scheme</i>
Cavan County Council	Yes		Yes
Clare County Council	Yes		Yes
Cork County Council	Yes		Yes
Cork City Council*	Yes		Yes
Donegal County Council	Yes		Yes
Dublin City Council	Yes		Yes
Fingal County Council	Yes		Yes
Kerry County Council	Yes		Yes
Kildare County Council	Yes		Yes
Leitrim County Council	Yes		Yes
Limerick City and County Council	Yes		Yes
Longford County Council	Yes		Yes
Meath County Council	Yes		Yes
Monaghan County Council	Yes		Yes
Sligo County Council	Yes		Yes
South Dublin County Council	Yes		Yes
Tipperary County Council	Yes		Yes
Waterford City & County Council	Yes		Yes
Wexford County Council	Yes		Yes
Carlow County Council	Yes		
Dun Laoghaire Rathdown County Council	Yes	Yes	
Galway County Council	Yes	Yes	
Kilkenny County Council	Yes		
Mayo County Council	Yes	Yes	

Offaly County Council	Yes	Yes	
Roscommon County Council	Yes	Yes	
Westmeath County Council	Yes	Yes	
Wicklow County Council	Yes		Yes**
Galway City Council			Yes
Louth County Council			Yes
Laois County Council⁶			
Total	28	6	22

* Cork City Council ODPC return variance.

** Wicklow County Council had no CCTV scheme for securing public safety in operation when replying to ODPC survey but have since secured funding from DJE to begin operating a Community CCTV scheme.

Exercising Law Enforcement Powers

Of the 28 local authorities operating CCTV for the purpose of exercising law enforcement powers, the statutory provisions most often cited that confer the law enforcement function to local authorities are the Litter Pollution Act (1997) and Waste Management Act (1996). CCTVs are used predominantly to deter, detect or prosecute persons in relation to waste management and litter pollution offences.

Securing Public Order and Safety in Public Places

Six local authorities operate community-based CCTV for the purpose of securing public order and safety in public places but have not been funded under the CCTV grant schemes. There are an additional 22 local authorities identified in Table 2 that operate community-based CCTV for the purpose of securing public order and safety in public places that have been funded under one of the Pobal or DJE CCTV grant schemes.

Housing, roads and community sections are most likely to use this technology. Cameras tend to be installed in areas such as piers, harbours, car parks, housing estate common areas as well as public areas in and around public buildings and civic amenities (i.e., parks and cemeteries). Their primary purpose is to deter or address anti-social behaviour, enforcements of Parks and Open Spaces Bye-Laws and the promotion of public safety. Local authorities are permitted to process data from community-based CCTVs in order to perform tasks carried out in the public interest or in the exercise of official authority vested in the data controller [Article 6(1)(e) of the General Data Protection Regulations, 2016].

Funding CCTV

As detailed in Table 3 below, 22 local authorities were funded by Pobal in funding rounds between 2005 and 2013. Of the local authorities funded in the past, one no longer operates community-based CCTV schemes, Kilkenny County Council. Five of the local authorities previously funded, reapplied for funding in the current round of funding (Kerry County Council, Leitrim County Council, Limerick City and County Council, Sligo County Council and Wexford County Council).

⁶ There are CCTV schemes operating in Laois, but the local authority is not involved with the schemes.

While Wicklow County Council had no community-based CCTV for the purpose of securing public safety in operation when completing the ODPC survey, they have since secured funding from the DJE so are now classified as having community-based CCTV operating in their local authority area.

Table 3: Funding for local authority community-based CCTV schemes

Local Authority	Community based CCTV for the purposes of securing public order and safety in public places	Funded by Pobal 2005-2013	Current application for funding to Dept Justice & Equality
Kerry County Council	Yes	Yes	Yes
Leitrim County Council	Yes	Yes	Yes
Limerick City and County Council	Yes	Yes	Yes
Sligo County Council	Yes	Yes	Yes
Wexford County Council	Yes	Yes	Yes
Cavan County Council	Yes	Yes	
Clare County Council	Yes	Yes	
Cork City Council	Yes	Yes	
Cork County Council	Yes	Yes	
Donegal County Council	Yes	Yes	
Dublin City Council	Yes	Yes	
Fingal County Council	Yes	Yes	
Galway City Council	Yes	Yes	
Kildare County Council	Yes	Yes	
Longford County Council	Yes	Yes	
Louth County Council	Yes	Yes	
Meath County Council	Yes	Yes	
Monaghan County Council	Yes	Yes	
South Dublin County Council	Yes	Yes	
Tipperary County Council	Yes	Yes	
Waterford City & County Council	Yes	Yes	
Wicklow County Council	Yes*		Yes
Dun Laoghaire Rathdown County Council	Yes		
Galway County Council	Yes		
Mayo County Council	Yes		
Offaly County Council	Yes		
Roscommon County Council	Yes		
Westmeath County Council	Yes		
Kilkenny County Council	No	Yes	
Carlow County Council	No		
Laois County Council	No		
Total Yes	28	22	6

* Wicklow County Council have secured funding to begin operating a Community CCTV scheme.

2. A note on the model that is in place citing examples of where there is successful operation and best practice.

While there are often significant differences in how community-based CCTV schemes operate, the legislation requires all schemes to comply with the requirements that:

- An application is made to the to the Garda Commissioner for approval to operate each Community CCTV scheme.
- The local authority operates as the data controller and manages the personal data in compliance with data protection and GDPR.
- Joint Policing Committees (JPC) have endorsed the schemes.

To date, Kerry County Council, Leitrim County Council, Sligo County Council, Wexford County Council, Wicklow County Councils and Limerick City and County Council have been approved for new scheme under the current funding programme, so they are all adhering to these requirements. While some of the existing schemes may contain some or all of these features, the older schemes tend to vary in terms of how they are configured.

Some of this is because technologies were older and consequently, there were much more limited options for locating monitoring equipment within local authority offices. In other cases, the schemes predate much of the legislation relating to data protection so systems evolved to effectively respond to the needs of the community and best practice was relied on for the treatment of personal data. However, these standards may not be compliant with current GDPR.

An example of this is Limerick City and County Council (LCCC) where CCTV has been effectively operating in the county since 1998, predating relevant Acts⁷. The operation of CCTV in conjunction with the community is identified as a key social inclusion measure, enhancing the CCTV monitoring capability of local communities, and a key objective under the JPC Strategic Plan 2016-2021.

In addition to the existing 229 cameras, LCCC recently completed a pilot project to install 44 Smart CCTV cameras in 23 different locations in 14 towns across the county. As part of this project all 14 towns secured a CCTV system and hub, with all hubs connected to the Moyross Community and Enterprise Centre (MCEC) for monitoring by trained CCTV operators. LCCC has also been approved for funding under the current DJE scheme enabling an expansion of the Smart CCTV scheme to other towns in Limerick. LCCC act as Data Controllers for the integrated CCTV systems and have a Service Level Agreement with MCEC who act as Data Processors for the MCEC site and Limerick Enterprise Development Partnership. While cited as being very effective schemes by LCCC, it is unclear whether the processing role of MCEC is permissible under current GDPR or Data Protection legislation.

County Tipperary Joint Policing Committee explored the issue of community-based CCTV in depth and published a very comprehensive *Policy Paper on CCTV Provision in Public Places*⁸ (2017). It takes

⁷ Limerick City and County Council response to the LGMA request for information for PAC response.

⁸ County Tipperary Joint Policing Committee, 2017. *A Policy Paper on CCTV Provision in Public Places*.

a view that the Local Authorities have a very limited role as Data Controllers and suggest An Garda Síochána assume either a Joint Data Controller role or in some cases the role of Data Controller where local authorities have no enforcement of public order role. In addition, it argues that the community should finance the maintenance and upkeep of schemes. From this perspective they outline set of guiding principles for the provision of CCTV systems (see Appendix 1).

The role of An Garda Síochána is currently detailed in legislation but the Tipperary JPC policy paper suggests a change in their role so they can act as Data Controller, even when CCTV is used for maintenance of public order and safety:

“This Policy Paper addresses development of publicly-funded CCTV systems for purposes including assistance in the maintenance of public order and safety; assistance in the prevention, detection and investigation of offences; assistance in the prosecution of offenders.

Consequently, such systems should, if technically feasible, be linked back to and based at a garda station (this may not always be possible due to transmission restrictions). Members of An Garda Síochána should have access to the CCTV infrastructure for the purposes of supervising and controlling its operation and retrieving information or data recorded by it.

For the purposes the Data Protection Acts, 1988 & 2003, An Garda Síochána should undertake to act as the Data Controller for these CCTV systems. The use of a public CCTV system must be governed by a strict Code of Practice designed to protect the public’s interest and ensure that images and information collected is used properly and in accordance with the Data Protection Act.” (ibid, p. 10)

While local authorities have often provided the additional funding for community-based CCTV schemes, the paper argues that the community should assume a key role in on-going maintenance and funding:

“where the proposer of a CCTV scheme is a community-based organisation and in order to ensure continued support and engagement from the community to the system post installation, it will be that community-based organisation’s responsibility to secure the necessary finances (e.g. through fund-raising) to cover the maintenance and operation costs.” (ibid, p. 11)

Tipperary make a strong case for revision of the Code of Practice issued by the DJE as their view is that local authorities should not act as Data Controllers for community-based CCTV, only for CCTV for enforcement purposes or as Joint Data Controllers in limited cases. Their recommendation is that:

“An Gardai Síochána and Local authorities, in partnership with the communities they serve, will continue to have a key role in the identification of the need for cctv. The construction and maintenance of the CCTV infrastructure is best delegated to the local authorities who are best placed to construct public infrastructure. However, the issue of Data Controller for

CCTV is very different to the responsibilities around construction and maintenance. The role of data controller is clearly defined in GDPR and DPA as a responsibility that requires a legal entity to have a purpose and means, i.e., a legal basis to be controller.

The majority of public CCTV cameras erected in Tipperary are provided for the purpose of surveillance and crime prevention, and in this regard it is clear from the above analysis that the data controller must be An Garda Síochaná. Where cameras are erected for litter control only, the data controller should be the local authority. Where, the purpose involves both crime and litter control, for example, it may be prudent to have both the Gardaí and local authority act as 'joint controllers'.

Finally, where the CCTV control unit is located within a local authority building, community building or by a private contractor, it may be possible for the local authority/community/contractor to act as data processor for the data controller (An Gardaí) – but this would require a data processing agreement and protocol between the data controller and the processor.”⁹

In summary, CCTV plays an important role in both law enforcement and securing public order and safety. There are 27 local authorities operating CCTV for law enforcement purposes and 27 local authorities operating community-based CCTV for the purposes of securing public safety. Twenty-one local authorities have accessed funding under the Pobal or DJE Community CCTV funding schemes.

There are, however, some applications for funding with the DJE, that have not been approved yet. In addition, there is a view that other local authorities are deferring making an application until more clarity emerges around the responsibilities of the Data Controller and the ability of An Garda Síochaná to access data in order to assist with crime prevention and detection.

Work is underway between local authorities and the DJE through dialogue and the ODPC through inspections, that will assist to address these issues. It is envisaged that a position will emerge over the following months.

⁹ Letter of submission to LGMA in response to request for data for PAC response.

6. Guiding Principles in the provision of CCTV systems

The principles outlined below address issues relating to privacy, fairness, public confidence and support, managerial efficiency and effectiveness, and police involvement in public area CCTV schemes.

These principles should not inhibit the design of schemes to meet local needs and circumstances. Indeed, they actively encourage adaptation to particular circumstances in areas and communities. However, they do suppose that there are certain values that require universal consideration. Whenever any of these are not complied with, then justification for such exceptions will need to be made.

6.1 Integrated approaches to crime prevention

The implementation of CCTV should be part of an integrated, multi-agency approach to crime control and community safety.

6.2 The Ownership of Schemes and its Accompanying Responsibilities

The ownership of public-area CCTV schemes must be clear and publicly known so as to ensure appropriate public accountability. This Policy Paper deals with development of publicly-funded CCTV systems, the primary purpose for which is public safety and order and crime prevention.

In order to ensure clarity of roles, a clear Memorandum of Understanding (MoU) should be drawn up between all parties to a proposed CCTV system.

Essentially the MOU will capture the responsibilities and undertakings of each of the organisations involved and the salient points will include:

- That the non-Garda organisation(s) will provide funding for all installation costs including the cameras, mountings, planning permission, signage, monitoring equipment in the station, etc.
- That the non-Garda organisation(s) will also provide ongoing funding for maintenance including insurance (see S8.5 for further detail).

Garda management for their part will undertake to monitor, record and operate the system in accordance with Garda Policy and Code of Practice. Reference in the MoU would also include the fact that the system may not be monitored on a 24 hour basis (subject to the exigencies of the service, etc).

An undertaking will also be included regarding the Garda District Officer acting as Data Controller (see S8.4).

6.3 Community Consultation

When considering setting up or significantly expanding a public area CCTV scheme, the relevant concerns of all parties potentially affected by the scheme should be taken into account from the outset through a local community consultation process. Consultation will help to ensure that schemes meet local needs and circumstances, and that the operation of the scheme has the support of those affected by it.

6.4 Setting Clear Objectives

Clear objectives should be set by the proposer to guide the design, implementation, management and outcomes of the public-area CCTV scheme. An articulated statement of objectives will provide a basis for effective monitoring and evaluation of the scheme, and help to ensure that the use of CCTV is consistent with overall crime prevention objectives.

The decision to implement CCTV in a public space/area will, generally, be based on the considered potential of the CCTV system to realise some or all of the following objectives:

- provide an effective means by which to deter, prevent and reduce crime and anti-social behaviour in the monitored area, (particularly street crime, e.g. vandalism and graffiti) via an increased fear of detection and apprehension on the part of offenders;
- improve the public's general feeling of safety and security in regard to the area being monitored;
- assist emergency services when attending/investigating an incident;
- provide accurate identification of events and gather evidence for detection and prosecution of persons who may have been involved in a crime;
- support the management of public areas which are essential to the social and economic well-being of a town/village.

6.5 An Garda Síochána Involvement in Public Area CCTV Schemes

An Garda Síochána must be closely involved in all aspects of any proposed CCTV system, and critically from the initial assessment and planning phase, including risk analysis and evaluation. The Memorandum of Understanding (see S6.2) will set out the role of An Garda Síochána.

6.6 Managing and Operating Schemes

Schemes should be open and accountable and operate with due regard for the privacy and data protection rights of individuals and the community.

6.7 Evaluation

Effective evaluation of schemes is essential in order to identify whether their formal objectives are being achieved.

6.8 Complaints

Schemes should have procedures for dealing with complaints which are publicly accountable, impartial and fair.

6.9 Monitoring and Auditing

Audit is needed to provide an account of the operation of a scheme, by testing its compliance against relevant policy, legislation and procedures, and to be used as the basis for recommendations for improved practice (pp. 6-8).

An Garda Síochána

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CONFIDENTIAL

Ms. Margaret Falsey
Committee Secretariat
Committee of Public Accounts
Leinster House
Dublin 2

RE: Operation of CCTV

Dear Ms. Falsey,

I refer to your correspondence of 3 June 2018 in relation to the operation of CCTV by local authorities.

An Garda Síochána is committed to the development of innovative policies aimed at enhancing its quality of service to the public and improving the quality of life of the community.

In the drive to reduce the incidence of crime, anti-social behaviour, public disorder, vandalism and the general fear of crime, An Garda Síochána are in favour of CCTV systems as an aid to policing.

The provision of funding for community-based CCTV is not a matter for An Garda Síochána, however, funding for Community schemes has, in the past, been provided by the Department of Justice and Equality, through the offices of An Pobal. More recently, funding has been provided by Local Authorities and Town Councils, in addition to partnership arrangements with local Community groups.

In April, 2017, the Department of Justice & Equality launched a new community based CCTV scheme, aimed at increasing public safety and deterring public disorder and other anti-social behaviours. This new grant-aid scheme to assist community groups in the establishment of community-based CCTV systems, provides that eligible community groups can apply for grant-aid of up to 60% of the

total capital cost of a proposed CCTV system, up to a maximum grant of €40,000. Upon approval of the grant, the applicant will receive an up-front payment of 50% of the grant with the balance to be paid when the system is fully operational.

Applications for community-based CCTV projects are provided for under Section 38 (3) (c) Garda Síochána Act 2005, under which the Local Authority fulfils the role of Data Controller.

Legislation:

Section 38, Garda Síochána Act, 2005, as amended, provides the criteria and conditions governing the operation of CCTV schemes in a public place, which includes that all CCTV schemes operating in public areas are required to be authorised, in writing, by the Garda Commissioner.

Under Section 38(1) Garda Síochána Act, 2005, as amended, the Garda Commissioner may authorise the installation and operation of CCTV for the sole or primary purpose of securing public order and safety in public places by facilitating the deterrence, prevention, detection and prosecution of offences.

Under Section 38(2) of the Act, the Garda Commissioner shall specify the areas within which, based on the information available to him or her, the installation and operation of CCTV is warranted for the purpose specified in subsection (1).

Under Section 38(3), of the Act, authorisation may be given to any or all of the following:

- members of the Garda Síochána;
- persons who meet the established criteria and who are retained under a contract with the Garda Commissioner;
- persons who meet the established criteria and whose application for authorisation in respect of a specified area within the administrative area of a local authority has been approved by the local authority after consulting with the joint policing committee for that administrative area.

Statutory Instrument No. 289/2006 – Garda Síochána (CCTV) Order, 2006, provides that the application for a community based CCTV scheme includes an undertaking by the Local Authority concerned that it will act as a data controller in respect of the CCTV for the purposes of the Data Protection Acts 1988 and 2003.

Currently, An Garda Síochána is satisfied with the legislation, which has since been amended by Garda Síochána (Policing Authority and Miscellaneous Provisions) Act 2015. The committee will also be aware of an audit being conducted by the Office of the Data Protection Commissioner. In the view of the transporting of the General Data Protection Regulation into national legislation, which came into effect on the 25th May 2018, An Garda Síochána has a small Working Group in place to examine the role and responsibility of An Garda Síochána (Community Engagement and Public Safety) in the managing and monitoring of CCTV Schemes authorised by the Commissioner.

CCTV Advisory Committee:

To advise on all aspects of CCTV operated for the purpose of increasing public safety and reducing the risk of anti-social and criminal activity, the Garda Commissioner established the CCTV Advisory Committee.

The Advisory Committee is chaired by Chief Superintendent, Community Engagement and Public Safety and comprises:

- (i) Chief Superintendent, D.M.R. South Central
- (ii) Chief Superintendent, Meath
- (iii) Superintendent, Telecommunications
- (iv) Superintendent, Human Resource Development
- (iv) Representative from the Department of Justice & Equality (Garda Division)

Other, appropriate, persons may be invited to attend meetings by the Chairperson, as required.

This Committee meets every quarter to examine applications (for both new schemes and/or proposed extensions to re-existing schemes) received for CCTV projects; to place them in appropriate categories; and to make recommendations, insofar as prioritisation, in accordance with the objective criteria provided for under the Garda Síochána Act, 2005, as amended, and relevant Garda Policy for the Operation and use of CCTV Schemes.

Community CCTV Schemes:

The schemes listed below are examples where the Local Authority acts as Data Controller and authorisation has been provided in accordance with Section 38, Garda Síochána Act, 2005.

Arklow, County Wicklow	Ballyspillane, Killarney, Kerry
Courtown/Riverchapel, Gorey, Wexford	Gorey Town Park & Showgrounds, Wexford
Killarney Outer Ring, Kerry	Killarney Town Centre, Kerry
Newcastle West, Limerick	Rathkeale, Limerick
Askeaton, Limerick	Castleconnell, Limerick
Abbeyfeale, Limerick	Kilmallock, Limerick
Patrickswell, Limerick	Adare, Limerick
Pallasgreen, Limerick	Caherconlish, Limerick
Croom, Limerick	Foynes, Limerick
Murroe, Limerick	Cappamore Limerick
Wexford Town	Roscommon Town
Monaghan Town	Carrick-on-Shannon, Leitrim
Longford Town, Longford	Tullow, Carlow
Cranmore, Sligo Town	

Yours sincerely,



DERMOT MANN
CHIEF SUPERINTENDENT
COMMISSIONER'S OFFICE

31st October 2018

An Roinn Dlí agus Cirt
agus Comhionannais
Department of Justice
and Equality



Oifig an Ard-Rúnaí | Office of the Secretary General

Mr. Pat Fannin
Committee Secretariat
Committee of Public Accounts
Leinster House
Dublin 2
D02 XR20

Your ref: PAC32-I-1002 and PAC32-I-954

20 December, 2018

Re: Request for information in relation to community CCTV schemes

Dear Mr. Fannin,

I refer to correspondence of 3 July 2018 requesting information for the Committee of Public Accounts in relation to a number of points concerning CCTV schemes. Prior to responding to your letter and in keeping with the Committee's request, we have consulted with An Garda Síochána and the County and City Management Association (CCMA) and the Local Government Management Agency (LGMA).

Types of CCTV

For the avoidance of confusion, we would first note that CCTV systems installed for the purposes of crime prevention and as aids to policing in areas to which the general public routinely have access, such as town centres, fall into two distinct but complementary categories, namely Garda CCTV systems and community-based CCTV systems. The legal basis for both these categories is section 38 of the Garda Síochána Act 2005, as amended ("the Act"), which deals with CCTV for the purpose of securing public order and safety in public places. What we commonly refer to as "community CCTV" is CCTV authorised under section 38(3)(c) of the Act, to which An Garda Síochána have appropriate access.

A grant-aid scheme is currently offered by the Department of Justice and Equality to assist in the establishment of community CCTV systems. A grant-aid scheme was between 2005 and 2013 administered by Pobal on behalf of the Department of Justice and Equality with the same goal. Community CCTV systems, regardless of how they are funded, complement the separate CCTV systems set up directly by An Garda Síochána

which are prioritised and situated where Garda management believe they are most needed.

The following details, responding to the Committee's requests, relate to community CCTV. CCTV governed under different legal bases, such as CCTV in connection with litter enforcement by local authorities, is not addressed in this letter.

Legislative basis for Community CCTV

Community CCTV is provided for in section 38 of the Garda Síochána Act 2005, as amended, and the Garda Síochána (CCTV) Order 2006. The law requires proposed community CCTV schemes to:

- be approved by the local Joint Policing Committee; and
- have the authorisation of the Garda Commissioner in accordance with Section 38 of the Garda Síochána Act 2005; and
- have the prior support of the relevant local authority, which must act as data controller in respect of the system.

This is the legal basis for all community CCTV schemes, regardless of how they are funded.

Grant-aid scheme operated by Department of Justice and Equality

The Programme for a Partnership Government commits to supporting investment in CCTV systems. In furtherance of that commitment, a grant-aid scheme was launched by the Department of Justice and Equality in April 2017 to assist groups in the establishment of community-based CCTV systems in their local areas. It is intended that the scheme will run for 3 years with funding of €1 million being made available each year. Under the scheme, eligible groups including community groups and local authorities can apply for grant-aid of up to 60% of the total capital cost of a proposed CCTV system, up to a maximum grant of €40,000. Applicants for grant aid under the scheme are not precluded from applying for funding from other sources to assist in making up the balance.

In establishing the grant-aid scheme, the Department consulted broadly, including with the Office of the Data Protection Commissioner, An Garda Síochána, the Office of the Attorney General and the Local Government Management Agency.

There have to date been 27 applications to the scheme and 20 applications have been approved. 4 applications are being assessed and considered. The remaining 3 applications have been returned to the applicants concerned to enable them to supply the information necessary to qualify for grant aid.

Previous grant-aid scheme operated by Pobal on behalf of the Department

Pobal administered a community CCTV grant-aid scheme on behalf of the Department of Justice and Equality between 2005 and 2013.

The Pobal scheme had a two-stage process. Stage 1 was a pre-development grant of up to €5,000 to enable qualifying applicants investigate the need for CCTV in their area and to complete a detailed proposal. Stage 2 was a direct application process for organisations who consider that they could develop and deliver a CCTV Programme immediately. It enabled communities to apply for grant aid funding of up to €100,000 to install a CCTV system in their area.

The main differences between the current grant scheme and the previous scheme as operated by Pobal are as follows:

- administration of the current scheme is carried out directly by the Department of Justice and Equality, whereas the previous scheme was operated by Pobal on behalf of the Department and involved significant overhead and administrative fees;
- the current scheme involves a streamlined one-stage application process;
- the documentation pertaining to the current scheme, including the application form and code of practice, were updated and where possible streamlined as compared to the Pobal scheme, in order to be more user-friendly;
- the current scheme is open for applications at all times; while the previous scheme operated on the basis of rounds with application deadlines;
- the maximum grant available was revised, taking account of factors including the funding available and the cost ranges of CCTV systems; and
- in parallel with the previous scheme, additional matched funding was available from the Department of Community, Rural and Gaeltacht Affairs where a successful application under the Pobal-administered scheme pertained to a RAPID (Revitalising Areas by Planning, Investment and Development) area.

More generally, the Department understands that at least one other separate CCTV grant scheme was offered for a short period by the Department of Environment, Community and Local Government, as it was then, in 2015/2016.

The requirement for local authorities to act as data controller

The requirement for local authorities to act as data controller for community CCTV schemes is not a requirement created by the grant-aid scheme. Rather, this requirement is a statutory one, set out at regulation 4(d) of the Garda Síochána (CCTV) Order 2006.

The Minister for Justice and Equality does not have power to amend the 2006 Order. Rather, under the 2005 Act, as amended, the power to establish the criteria for

community CCTV schemes is a matter for the Policing Authority, by order made with the approval of the Government.

The legal requirement that any proposed community CCTV scheme requires the relevant local authorities to act as data controller has not changed since 2006, and no community CCTV system should be in operation unless the relevant local authority is doing so. This has been made clear at all times by the Department, including to local authorities and An Garda Síochána.

The statutory framework does not place an obligation on local authorities to take part in community CCTV. However, if a local authority decides that it is not prepared to act as data controller for community CCTV, this prevents community CCTV schemes from operating in its functional area.

The current legislative structure can be viewed as an enabling one which empowers local communities and local authorities to establish a community CCTV system, to which Gardaí have appropriate access - provided they meet the statutory requirements, including that their local authority is prepared to assume responsibility as data controller. By contrast, Garda CCTV is set up by An Garda Síochána at locations chosen and prioritised by An Garda Síochána and as such if only Garda CCTV was permitted, it would be only the Gardaí who would decide and prioritise which towns or districts benefited from CCTV.

The Committee may also wish to be aware that on 29 November 2018 the Data Protection Commissioner's Office issued a note¹ confirming that there is a legal basis for community based CCTV and that the General Data Protection Regulation does not introduce new barriers in that regard. In particular, the Office in its note confirmed that:

“Data protection legislation does not stand in the way of the roll-out of Community based CCTV schemes that have been authorised by the Garda Commissioner. Once the local authority in the administrative area concerned is willing to take on and deliver on its responsibilities as a data controller for the schemes concerned, there is no legal impediment under data protection legislation to the scheme commencing.”

The Data Protection Commission also explicitly confirmed that local authorities are not required, as a result of their role as data controller, to monitor CCTV live feeds on a continuous basis.

The Data Protection Commission is currently conducting an audit of the practice, operation and governance of CCTV as part of a wider inquiry into surveillance through the use of technologies for law enforcement purposes. We expect the findings from the

¹ Available on its website www.dataprotection.ie

CCTV module of this process to be of assistance to all concerned and in particular to local authorities.

Local authorities acting as data controller

The Department does not maintain a register of local authorities carrying out the role of data controller or indeed a register of all community CCTV schemes, which is outside its remit. Rather, the information available to the Department on this issue is limited to the undertakings made in relation to community CCTV schemes funded by the Department or by Pobal, on behalf of the Department. Community CCTV schemes may also be established and maintained without funding from the Department.

Nonetheless, based on all the information available including information provided by the LGMA / CCMA, the Department understands that a total of 28 of the 31 local authorities have undertaken the role of data controller for community CCTV schemes within their areas. This total has been calculated as follows:

Community CCTV schemes funded by Pobal

- The Department understands that the 45 CCTV systems funded under the Pobal scheme were approved and established in 22 local authority areas. The relevant local authorities would have been required to supply an undertaking to act as data controller as part of the application process. Bearing in mind the passage of time and in light of the Local Government Reform Act 2014, some applications would have been made by town councils, prior to their dissolution and their functions being assumed by the relevant city or county local authorities.
- On the basis of information available from Pobal, the 22 relevant local authorities² are as follows:
 - Cavan, Clare, Cork City, Cork County, Donegal, Dublin City, Fingal, Galway, Kerry, Kildare, Kilkenny, Leitrim, Limerick, Longford, Louth, Meath, Monaghan, Sligo, Tipperary, South Dublin, Waterford and Wexford County Council.
- It is understood from information provided to the Department by the LGMA / CCMA that the scheme in Kilkenny is no longer in active use.

Community CCTV schemes under the current grant-aid scheme

- In addition to those community CCTV systems funded under the Pobal scheme and continuing in operation, 5 of the local authorities above have again supplied the Department with the necessary undertaking to act as data controller in the context of specific funding applications received under the current grant

² i.e. local authorities which either directly provided the relevant undertaking to Pobal, or who act as successor to a town council which did

scheme. One additional local authority which had not accessed Pobal funding has also done so:

Kerry, Leitrim, Limerick, Sligo, Wexford and Wicklow County Councils.³

Other community CCTV

- Finally, the Department understands from the LGMA / CCMA that a further 6 local authorities have undertaken the role in connection with CCTV for the purpose of securing public order and safety in public places, in schemes funded other than by the Department, namely:

Dun Laoghaire Rathdown, Galway, Mayo, Offaly, Roscommon and Westmeath County Councils.⁴

On the basis of the above information, the Department understands that 28 of the 31 local authorities have undertaken the role of data controller for specific community CCTV schemes, with the local authorities not having agreed to do so being: Carlow, Kilkenny and Laois County Councils.

Concluding note

Notwithstanding the above, the Department continues to actively engage with all relevant parties to provide information on the scheme and to reply to any queries which arise. This continuing engagement is a reflection of the reality, noted by the Minister, that all relevant parties have the same objective – safer and more secure communities.

For example, there has been engagement with the LGMA and CCMA during September 2018, to assist in clarifying questions including on the scope of the grant aid scheme, the legal framework in relation to community CCTV, and so on. There has also been engagement by the Department with the network of Data Protection Officers of all local authorities in October 2018. The Department looks forward to continuing engagement with the LGMA / CCMA in the future.

On the basis of feedback received, the Department is also carrying out a further review of the documentation for the current grant aid scheme, to update and where possible further simplify the form and associated documentation, as well to update the Code of Practice and issue FAQs on the scheme.

Finally, this Department is anxious that the grant scheme is used to the maximum and my officials are available to assist any groups wishing to apply for funding under the scheme.

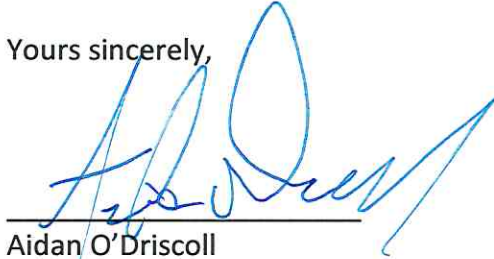
³ This list includes some applications not yet approved and still either awaiting additional documentation or under consideration

⁴ Information provided by the LGMA / CCMA

Equally, local authorities who continue to have questions about the scheme are encouraged to engage with this Department either directly or through their representative associations. The Department has a dedicated email address for queries on the scheme: communitycctv@justice.ie.

I trust this information is of assistance to the Committee in its ongoing work.

Yours sincerely,



Aidan O'Driscoll
Secretary General

cc Josephine Feehily, Chairperson, The Policing Authority