

# LICENSING COMMITTEE

Tuesday, 15 November 2016 at 6.30 p.m.

Council Chamber, 1st Floor, Town Hall, 5 Clove Crescent, London  
E14 2BG.

The meeting is open to the public to attend.

<u>Members:</u>	<u>Ward Represented</u>
<b>Chair:</b> Councillor Rajib Ahmed	Lansbury;
<b>Vice-Chair:</b> Councillor Peter Golds	Island Gardens;
Councillor Khales Uddin Ahmed	Bromley North;
Councillor Amina Ali	Bow East;
Councillor Sirajul Islam	Bethnal Green;
Councillor Mahub Alam	St Dunstan's;
Councillor Shah Alam	Mile End;
Councillor Dave Chesterton	Blackwall & Cubitt Town;
Councillor Suluk Ahmed	Spitalfields & Banglatown;
Councillor Denise Jones	St Katharine's & Wapping;
Councillor Harun Miah	Shadwell;
Councillor Md. Maium Miah	Canary Wharf;
Councillor Joshua Peck	Bow West;
Councillor Candida Ronald	Blackwall & Cubitt Town;
Councillor Vacancy	

[The quorum for this body is 3 Members]

**Contact for further enquiries:**

Antoinette Duhaney, Democratic Services,  
1st Floor, Town Hall, Mulberry Place, 5 Clove Crescent, E14 2BG  
Tel: 020 7364 4120  
E-mail: [antoinette.duhaney@towerhamlets.gov.uk](mailto:antoinette.duhaney@towerhamlets.gov.uk)  
Web: <http://www.towerhamlets.gov.uk/committee>

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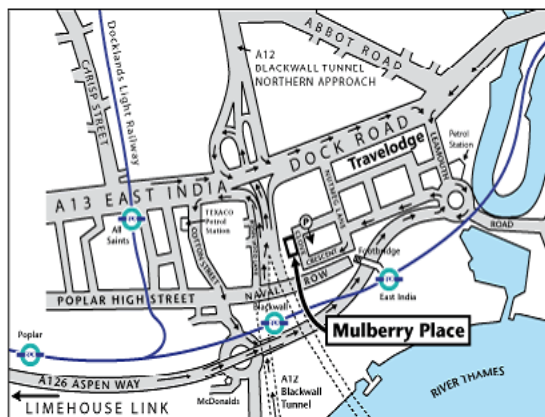
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## **APOLOGIES FOR ABSENCE**

### **1. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST (Pages 1 - 4)**

To note any declarations of interest made by Members, including those restricting Members from voting on the questions detailed in Section 106 of the Local Government Finance Act, 1992. See attached note from the Monitoring Officer.

	<b>PAGE NUMBER</b>	<b>WARD(S) AFFECTED</b>
<b>2. RULES OF PROCEDURE - LICENCES FOR SEXUAL ENTERTAINMENT VENUES</b>		

**5 - 8**

To note the rules of procedure relating to determinations of licenses for sexual entertainment venues.

### **3. ITEMS FOR CONSIDERATION**

<b>3.1</b>	<b>Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for renewal of a Sexual Entertainment Venue Licence for The Nags Head, 17-19 Whitechapel Road, E1 1DU</b>	<b>9 - 50</b>	<b>Whitechapel</b>
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<b>3.2</b>	<b>Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for renewal of a Sexual Entertainment Venue Licence for White Swan (Majingos), 556 Commercial Road, E14 7JD</b>	<b>51 - 84</b>	<b>Shadwell</b>
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<b>3.3</b>	<b>Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for renewal of a Sexual Entertainment Venue Licence for Metropolis, 234 Cambridge Heath Road, E2 9NN</b>	<b>85 - 90</b>	<b>St Peter's</b>
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<b>3.4</b>	<b>Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for renewal of a Sexual Entertainment Venue Licence for Whites Gentleman's Club, 32 - 38 Leman Street, E1 8EW</b>	<b>91 - 114</b>	<b>Whitechapel</b>
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### **Next Meeting of the Licensing Committee**

Tuesday, 13 December 2016 at 7.00 p.m. to be held in The Council Chamber, 1st Floor, Town Hall, Mulberry Place, 5 Clove Crescent, London, E14 2BG

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# Agenda Item 1

## **DECLARATIONS OF INTERESTS - NOTE FROM THE MONITORING OFFICER**

This note is for guidance only. For further details please consult the Members' Code of Conduct at Part 5.1 of the Council's Constitution.

Please note that the question of whether a Member has an interest in any matter, and whether or not that interest is a Disclosable Pecuniary Interest, is for that Member to decide. Advice is available from officers as listed below but they cannot make the decision for the Member. If in doubt as to the nature of an interest it is advisable to seek advice **prior** to attending a meeting.

### **Interests and Disclosable Pecuniary Interests (DPIs)**

You have an interest in any business of the authority where that business relates to or is likely to affect any of the persons, bodies or matters listed in section 4.1 (a) of the Code of Conduct; and might reasonably be regarded as affecting the well-being or financial position of yourself, a member of your family or a person with whom you have a close association, to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected.

You must notify the Monitoring Officer in writing of any such interest, for inclusion in the Register of Members' Interests which is available for public inspection and on the Council's Website.

Once you have recorded an interest in the Register, you are not then required to declare that interest at each meeting where the business is discussed, unless the interest is a Disclosable Pecuniary Interest (DPI).

A DPI is defined in Regulations as a pecuniary interest of any of the descriptions listed at **Appendix A** overleaf. Please note that a Member's DPIs include his/her own relevant interests and also those of his/her spouse or civil partner; or a person with whom the Member is living as husband and wife; or a person with whom the Member is living as if they were civil partners; if the Member is aware that that other person has the interest.

### **Effect of a Disclosable Pecuniary Interest on participation at meetings**

Where you have a DPI in any business of the Council you must, unless you have obtained a dispensation from the authority's Monitoring Officer following consideration by the Dispensations Sub-Committee of the Standards Advisory Committee:-

- not seek to improperly influence a decision about that business; and
- not exercise executive functions in relation to that business.

If you are present at a meeting where that business is discussed, you must:-

- Disclose to the meeting the existence and nature of the interest at the start of the meeting or when the interest becomes apparent, if later; and
- Leave the room (including any public viewing area) for the duration of consideration and decision on the item and not seek to influence the debate or decision

When declaring a DPI, Members should specify the nature of the interest and the agenda item to which the interest relates. This procedure is designed to assist the public's understanding of the meeting and to enable a full record to be made in the minutes of the meeting.

Where you have a DPI in any business of the authority which is not included in the Member's register of interests and you attend a meeting of the authority at which the business is considered, in addition to disclosing the interest to that meeting, you must also within 28 days notify the Monitoring Officer of the interest for inclusion in the Register.

### **Further advice**

For further advice please contact:-

Melanie Clay, Corporate Director of Law, Probity & Governance & Monitoring Officer,  
Telephone Number: 020 7364 4800

## APPENDIX A: Definition of a Disclosable Pecuniary Interest

(Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, Reg 2 and Schedule)

Subject	Prescribed description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a member, or towards the election expenses of the Member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to the Member's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

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**TOWER HAMLETS**



**LICENSING COMMITTEE**

**RULES OF PROCEDURE**

**GOVERNING APPLICATIONS FOR**

**SEX ESTABLISHMENT LICENCES**

**UNDER SECTION 2 OF AND SCHEDULE 3 TO**

**THE LOCAL GOVERNMENT (MISCELLANEOUS**

**PROVISIONS) ACT 1982**

## **1. Interpretation**

- 1.1 These Procedures describe the way in which hearings will be conducted under section 2 of and schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 as amended.

## **2. Composition of the Licensing Committee**

- 2.1 The Licensing Committee will consist of fifteen (15) members and no business shall be transacted unless at least three (3) members of the Licensing Committee are present and able to form a properly constituted Licensing Committee. The Chair shall have a second or casting vote.

## **3. Procedure**

- 3.1 The hearing shall take place in public save that the Licensing Committee may exclude the public from all or part of a hearing where it considers that, on balance, it is in the public interest to do so. The parties and any person representing them may be excluded in the same way as another member of the public. Any person so excluded may, before the end of the hearing, submit to the Licensing Committee in writing, any information which, they would have been entitled to give orally had they not been required to leave. Where there are a number of items on the agenda, the adjournment of that item for a short period, whilst another item is heard, may allow this process to be carried out effectively.
- 3.2 The Chair will begin by asking the parties to identify themselves and confirm whether or not they are represented.
- 3.3 The Licensing Committee should always satisfy itself that sufficient notice of the hearing has been given to all parties and if not satisfied, then the Licensing Committee should take such steps as it thinks fit to deal with that issue before reaching its determination and this could include adjourning that application to a later date.
- 3.4 The Chair will explain how the proceedings will be conducted, and indicate any time limits that will be imposed on the parties. In setting time limits, the Licensing Committee will take into account the importance of ensuring that all parties receive a fair hearing, and the importance of ensuring that all applications are determined expeditiously and without undue delay. Further the Licensing Committee should allow each party an equal amount of time.
- 3.6 If a party considers that any time limit is not sufficient then they should address the Licensing Committee and which will determine accordingly.
- 3.7 If any party has informed the Authority that they will not be attending or be represented at the hearing or any party does not give notice that they will not be attending but fails to attend and is not represented, the Licensing Committee may proceed in their absence or adjourn the hearing.

- 3.8 If the Licensing Committee adjourns the hearing it should specify the date, time and place to which the hearing has been adjourned.
- 3.9 If the Licensing Committee holds the hearing in the absence of a party, it will consider at the hearing the application or objection given by that party.
- 3.10 The Chair will invite an Officer of the Licensing Section to present the report by briefly summarising the application and the number and type of the representations as set out in the papers circulated. The Officer will also advise of any discussions held with the parties; any amendments made to the application; any objections withdrawn; and any agreed conditions that the Licensing Committee is being asked to consider. The Officer shall not give any opinion on the application or ask the Committee to make an inference based on such an opinion.
- 3.11 Members of the Licensing Committee can then ask questions of clarification of the Licensing Officer or seek legal advice from the Legal Adviser to the Licensing Committee if they require in respect of matters raised during the presentation by the Licensing Officer.
- 3.12 The Legal Adviser to the Licensing Committee will then give any relevant legal advice that the Licensing Committee need to take into consideration.
- 3.13 The Chair will then ask the applicant or their representative, if present, to state their case. This should avoid repetition of material already available to the Licensing Committee in the Officer's report or otherwise, and include any reasons why an exception should be made to the Sex Establishment Licensing Policy, where appropriate; address, where appropriate, the matters stated in the Sex Establishment Licensing Policy that the Licensing Committee will take into account when considering applications; and respond to the written objections received. The submission may be followed by the evidence of any person who is giving supporting evidence on behalf of the applicant or who has made a representation in favour of the application.
- 3.14 The application is to be presented within any time limit that has been set.
- 3.15 Where an applicant is unrepresented and having difficulty in presenting their application then the Legal Adviser to the Licensing Committee may ask questions of the applicant so that the relevant points are addressed and clarified for the Licensing Committee.
- 3.16 The objectors (or their representative) will be invited to question the applicant.
- 3.16 Members of the Licensing Committee may ask questions of the applicant and/ or their representative as well as any other person who has spoken in support of the application. Members can also ask questions of any other person present for the applicant who they consider can assist.
- 3.17 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.

- 3.18 The Chair will then ask objectors against the application to state their case within any time limit that has been set. The objectors should not repeat what is already set out in their objections. In stating their case, the objectors should provide clarification on any points previously requested by the Council. The submission may be followed by the evidence of any person who is giving supporting evidence.
- 3.19 The applicant (or their representative) will be invited to question the objectors.
- 3.19 Members of the Licensing Committee may then ask questions of the objectors and any other person who has spoken given evidence in support. Members can also ask questions of any other person present who they consider can assist.
- 3.20 The Legal Adviser to the Licensing Committee may ask questions for the purpose of clarifying points for the Licensing Committee.
- 3.21 Petitions will be considered but Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.
- 3.22 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.
- 3.23 The objectors (or their representative) will then be permitted to “Sum Up”.
- 3.24 The applicant (or their representative) will then be permitted to “Sum Up”.
- 3.25 The Licensing Committee will consider its decision in private save that the Legal Adviser and Democratic Services Officer will remain with them.
- 3.26 The Licensing Committee will normally return to open session to announce its decision but where they consider it appropriate for the determination to be given at a later time then the Chair will advise the parties present that the decision will not be announced then but that the determination will take place later and that written notification will be dispatched to all parties advising them of the determination.

#### **4. Exclusions**

- 4.1 In addition to any exclusion under paragraph 3.1 above, The Licensing Committee may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit the person to return; or allow them to return only on such conditions as Licensing Committee may specify.
- 4.2 Any person so excluded may, before the end of the hearing, submit to the Authority in writing, any information which, they would have been entitled to give orally had they not been required to leave.



# Agenda Item 3.1

Committee :	Date	Classification
<b>Licensing Committee</b>	<b>15<sup>th</sup> November 2016</b>	<b>Unrestricted</b>

Report of : <b>David Tolley Head of Consumer and Business Relations</b>	Title: <b>Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for a renewal of a Sexual Entertainment Venue Licence for the Nags Head, 17-19 Whitechapel Road, London E1 1DU</b>
Originating Officer: <b>Andrew Heron Licensing Officer</b>	Ward affected: <b>Spitalfields and Banglatown</b>

## 1.0 Summary

Applicant: **Karpal Singh, Shamsheer Singh and  
Manpal Singh**  
Name and  
Address of Premises: **The Nags Head  
17-19 Whitechapel Road  
London  
E1 1DU**

Licence sought: **Local Government (Miscellaneous  
Provisions) Act 1982 (as amended)  
Application for a renewal of a Sexual  
Entertainment Venue Licence**

## 2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and additional information then adjudicate accordingly.

**LOCAL GOVERNMENT 2000 (Section 97)**  
**LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT**

Brief description of "background paper"

Tick if copy supplied for  
register

If not supplied, name and telephone  
number of holder

File Only

Andrew Heron  
020 7364 2665

### 3.0 Background

3.1 This report is an addendum to a previous report made by for a renewal of a Sexual Entertainment Venue licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by reg. 47 (4), Provisions of Services Regulations 2009 'the service regulations') and the Policing and Crime Act 2009 for the Nags Head, 17-19 Whitechapel Road, London, E1 1DU.

3.2 A licence from the Council is required for the use of a premise as a sex Establishment. A sexual entertainment venue is any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

Relevant entertainment means:

- any live performance; or
- any live display of nudity;  
which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

3.3 The premises is currently granted a Sexual Entertainment Venue Licence under the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

3.4 The application was first heard by the Tower Hamlets Licensing Sub Committee on 7<sup>th</sup> September 2016.

3.5 Members have previously been provided with comprehensive documents relating to the renewal application, including:

1. Copies of existing licences, both Sexual Entertainment and Licensing Act and the LBTH Standard Conditions list
2. A copy of the application for renewal
3. Maps of the premises, vicinity and locality and layout plan of the premises
4. A compliance visit checklist
5. Photographs of the premises
6. Code of Conduct for Performers, Code of Conduct for Customers (House Rules) and the Dancers' Welfare Policy
7. The relevant Ward Profile
8. A copy of the site notice
9. A copy of the press advert
10. Any relevant representations
11. A Copy of the LBTH SEV Policy

3.6 Additional information has come to light regarding the premises which Members may wish to consider whilst making their decision on the renewal application.

#### 4.0 **Covert Test Purchase**

4.1 On Friday 30<sup>th</sup> September 2016, a covert test purchase took place at the Nags Head, 17-19 Whitechapel Road, London E1 1DU by the Metropolitan Police. Copies of the statements of the undercover Officers are attached as **Appendix 1 – Exempt Material**

4.2 **Exempt Material – See Report Addendum**

#### 5.0 **CCTV**

5.1 The premises was written to in order to request that their CCTV was retained in line with the LBTH Standard Conditions. The first letter was sent on 17<sup>th</sup> October 2016. This was hand-delivered to the premises and sent via email to the Applicant's legal representative. A second on 18<sup>th</sup> October 2016 via email to the Applicant's legal representative. A third letter was sent on 20<sup>th</sup> October 2016 and hand-delivered to the premises and sent via email to the Applicant's legal representative. Copies of all three letters are available in **Appendix 2**.

5.2 Copies of correspondence between the Licensing Authority and the Legal representative are available in **Appendix 3**.

5.3 The premises has stated that it is unable to provide the recordings as requested by the Council because of their duties under the Data Protection Act 1998 (Correspondence dated 21<sup>st</sup> October 2016 found in Appendix 3). Legal advice provided to the Council is that provision of these CCTV recordings does not breach the requirements of the Data Protection Act 1998. This is detailed in our letter to the premises dated 20<sup>th</sup> October 2016 found in appendix 3.

#### 6.0 **Legal Comments**

6.1 The Council may refuse an application for the grant or renewal of a licence on one or more of the grounds specified below (Sch 3 para 12(1) LGMPA ('the Act'), as amended by reg 47 (4), Provision of Services Regulations 2009):

6.2 The mandatory grounds for refusal are as follows:

- (a) the applicant is under the age of 18;
- (b) that the applicant is for the time being disqualified from holding a licence;
- (c) that the person is a person other than a body corporate, who is not resident in the U.K. or was not resident in the U.K. throughout the six months preceding the date of the application;

- (d) that the applicant is a body corporate which is not incorporated in the U.K; or
- (e) that the applicant has been refused a sex establishment licence for the premises within the twelve months preceding the date of the application and the refusal has not been reversed on appeal.

6.3 The Committee has discretion to refuse the application if any of the following grounds for refusal apply under para. 12(3) of Schedule 3 of the Act.

The discretionary grounds for refusal are as follows:

- (a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted, renewed or transferred, the business to which it relates would be managed by or carried on for the benefit of a person other than the applicant who would have been refused a licence if they had applied themselves;
- (c) the number of sex establishments exceeds the number or is equal to the number which the council consider is appropriate for that locality; or
- (d) the grant or renewal of licence would be inappropriate because of:
  - i. the character of the relevant locality;
  - ii. the use to which the premises in the vicinity are put; or
  - iii. the layout, character or condition of the premises, vehicle, vessel or stall.

(In relation to premises, 'the relevant locality' means the locality where the premises are situated).

6.4 There is a right of appeal to the Magistrates' Court, as set out in para. 27 of Schedule 3 of the Act. An appeal against the decision of a Magistrates' Court may be brought to the Crown Court. In addition, the decision of the Committee may be appealed on established public law principles.

6.5 The Committee should only consider those comments within the letters of objection or made orally at the hearing which are relevant to the mandatory or discretionary grounds for refusal. Comments contained within the letters of objection or orally at the hearing which relate to moral grounds, for example, must not be considered by the Committee.

6.6 The Council's legal officer will give advice at the Hearing.

## 7.0 Finance Comments

7.1 There are no financial implications arising from this report. The cost arising from the licensing of Sexual Entertainment Venues is met from existing budgets.

## 8.0 Appendices

- Appendix 1** Copies of statements of undercover Metropolitan Police Officers – **Exempt Material**
- Appendix 2** CCTV Request Letters dated 17<sup>th</sup>, 18<sup>th</sup> and 20<sup>th</sup> October 2016
- Appendix 3** Copies of correspondence between the Licensing Authority and the Applicant's legal representative

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## **Report Addendum and Appendix 1**

The Report Addendum and Appendix 1 are exempt material - pursuant to paragraph 1 (information relating to any individual) paragraph 2 (information likely to reveal the identity of an individual) and paragraph 7 (information relating to any action taken or to be taken in connection with investigation or prosecution of crime) of Part 1 of Schedule 12A to the Local Government Act 1972.

This material is subject to a public interest test.

The factors in favour of disclosure are that there is a clear public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of the issues, and more effective public participation in decision making.

The factors to be weighed against such disclosure is the need to ensure that the public interest in law enforcement and the prosecution of offenders, and that the local area is adequately protected from illegal practices, is maintained. Such public interests are safeguarded by the role the Council plays on behalf of the public in bringing cases to court.

The public interest in withholding the material outweighs the public interest in disclosing it in order to preserve the anonymity of individuals and so as not to prejudice any investigation or prosecution of a crime.

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# Appendix 2

**Communities, Localities & Culture**  
Safer Communities

The Nags Head Public House  
17-19 Whitechapel Road  
London  
E1 1DU

Environmental Health and Trading Standards  
**David Tolley**

Licensing Section  
Admin Support Services  
John Onslow House  
1 Ewart Place  
London E3 5EQ

17<sup>th</sup> October 2016

Tel [REDACTED]  
Fax **020 7364 0863**

My reference: TSS/LIC/SEV  
Your reference:

Enquiries to **Andrew Heron**  
Email [REDACTED]

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

Dear Mr Karpal Singh, Mr Shamsheer Singh and Mr Manpal Singh,

**Local Governmental (Miscellaneous Provisions) Act 1982 as amended  
by the Policing and Crime Act 2009**

As you are aware, Condition 12 of the Tower Hamlets Standards Conditions on your licence state:

*Without prejudice to condition 13 below CCTV shall be installed to cover the inside and the outside of the Premises, covering all public areas, including private performance areas and booths, entrances and exits, but excluding the interior of toilets. All cameras must be maintained in working order. All cameras shall continually record whilst the Premises are open to the public and the recorded images shall be kept available for a minimum of 31 days. Recorded images shall be made available to an authorised officer together with facilities for viewing. The recordings for the preceding 2 days shall be made available immediately upon request. Recordings outside this period shall be made available on 24 hours' notice;*

Please retain and provide us with copies of all CCTV recordings from **Wednesday 28<sup>th</sup> September to Monday 10<sup>th</sup> October 2016**. Please make sure that recordings are viewable by date and time.

Please also provide copies of staff logs for these dates, including security, management and dancers in line with conditions 28 and 29:

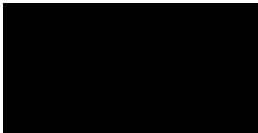
*The Licensee shall keep a record of each performer, including their proper name and any aliases, and their residential address. With each record the*

*Licensee shall keep a copy of a photographic form of identity and proof of address of the performer. With each record the Licensee shall keep a clear copy of an authorised document demonstrating that each Performer and each member of the staff is entitled to work within the UK. A clear copy of this record shall be kept on the Premises at all times and be made immediately available for inspection by authorised officers;*

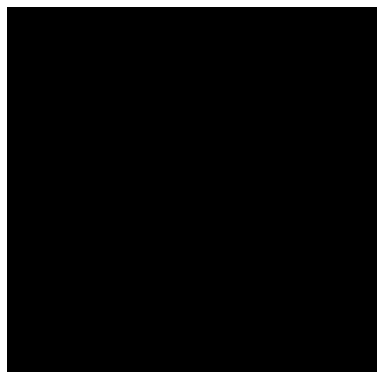
*On days when sexual entertainment is provided, the Licensee or their representative shall keep a record of those performers working at the Premises on that day in a daily record. The daily record shall be retained securely for at least 31 days and shall be made immediately available for inspection by authorised officers;*

We will be coming to collect these recordings on **Wednesday 19<sup>th</sup> October 2016.**

Yours sincerely,



**Andrew Heron  
Licensing Officer**



**Communities, Localities & Culture**  
Safer Communities

The Nags Head Public House  
17-19 Whitechapel Road  
London  
E1 1DU

Environmental Health and Trading Standards  
**David Tolley**

Licensing Section  
Admin Support Services  
John Onslow House  
1 Ewart Place  
London E3 5EQ

18<sup>th</sup> October 2016

Tel [REDACTED]  
Fax **020 7364 0863**

My reference: TSS/LIC/SEV  
Your reference:

Enquiries to **Andrew Heron**  
Email [REDACTED]

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

Dear Mr Karpal Singh, Mr Shamsheer Singh and Mr Manpal Singh,

**Local Governmental (Miscellaneous Provisions) Act 1982 as amended  
by the Policing and Crime Act 2009**

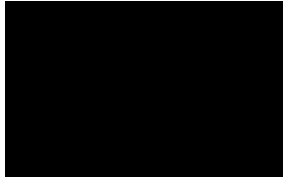
I write further to this Licensing Authority's letter to you dated 17<sup>th</sup> October 2016, requesting the provision of certain records and CCTV recordings pursuant to conditions 12, 28 and 29 of your Sexual Entertainment Venue Licence under the above legislation.

This Licensing Authority requires you to provide these records/recordings in connection with an investigation relating to breaches of conditions related to your above mentioned Licence.

In respect of our request to retain and provide us with copies of all CCTV recordings from Wednesday 28<sup>th</sup> September to Monday 10<sup>th</sup> October 2016 I understand that this maybe be time consuming to produce in by Wednesday 19<sup>th</sup> October 2016.

Taking this in to consideration we are willing to accept recordings for your busy times (i.e. Thursday and Friday). Therefore please provide recordings for 29<sup>th</sup> and 30<sup>th</sup> September, and 6<sup>th</sup> and 7<sup>th</sup> October 2016 for us to collect on **Wednesday 19<sup>th</sup> October 2016**. The remaining recordings for 28<sup>th</sup> September 2016, 1-5<sup>th</sup> and 9<sup>th</sup>/10<sup>th</sup> October 2016 can be sent to us within **7 days of this letter**.

Yours sincerely,



**Andrew Heron  
Licensing Officer**

**Communities, Localities & Culture**  
Safer Communities

The Nags Head Public House  
17-19 Whitechapel Road  
London  
E1 1DU

Environmental Health and Trading Standards  
**David Tolley**

Licensing Section  
Admin Support Services  
John Onslow House  
1 Ewart Place  
London E3 5EQ

20<sup>th</sup> October 2016

Tel [REDACTED]  
Fax **020 7364 0863**

My reference: TSS/LIC/SEV  
Your reference:

Enquiries to **Andrew Heron**  
Email [REDACTED]

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

Dear Mr Karpal Singh, Mr Shamsheer Singh and Mr Manpal Singh,

**Local Governmental (Miscellaneous Provisions) Act 1982 as amended  
by the Policing and Crime Act 2009**

I am writing further to the response to our letter dated 18<sup>th</sup> October 2016 from your Solicitor Julian Skeens Partner, TLT Solicitors LLP.

I understand your solicitors have advised you to refuse our request for copies of CCTV recordings on the basis that the 'request is unlawful and if you complied with it you would contravene the Data Protection Act 1998', and that the footage was data that would identify individuals and amount to 'sensitive' data, such that you 'would have to seek and obtain the permission of all those individuals captured on the CCTV' which would be involve disproportionate effort and indeed be 'impossible'.

We are surprised and disappointed that your solicitor's has advised you in these terms. Refusal to comply with the conditions of your Sex Establishment Licence means that you are committing a criminal offence. It is also absolutely clear that in those circumstances the Data Protection Act 1998 does not operate to prevent you discharging your obligation to comply with your Licence.

As you will be aware, you are authorised by this authority to operate as a Sexual Entertainment Venue by a Licence issued pursuant to the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, paragraph 8, which states:

*'the appropriate authority may grant to any applicant, and from time to time renew, a licence under this Schedule for the use of any premises, vehicle, vessel or stall specified in it for a sex establishment on such terms and conditions and subject to such restrictions as may be so specified.'*

As stated in our letter dated 18<sup>th</sup> October 2016, condition 12 of your Licence stipulates as follows:

*'All cameras shall continually record whilst the Premises are open to the public and the recorded images shall be kept available for a minimum of 31 days. Recorded images shall be made available to an authorised officer together with facilities for viewing. The recordings for the preceding 2 days shall be made available immediately upon request. Recordings outside this period shall be made available on 24 hours' notice.'*

For reference the term 'authorised officer' is defined to include 'officers of the Borough Council'.

Paragraph 6(1) of Schedule 3 provides: *'no person shall in any area in which this Schedule is in force use any premises... as a sex establishment except under and in accordance with the terms of a licence granted under this Schedule by the appropriate authority.'*

Paragraph 20 of the same schedule further provides:

**'20.—**

*(1) A person who—*

*(a) knowingly uses, or knowingly causes or permits the use of, any premises, vehicle, vessel or stall contrary to paragraph 6 above; or  
[...]*

*(c) being the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence; or*

*(d) being the servant or agent of the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence, shall be guilty of an offence.'*

Paragraph 26(1) provides:

*'Where an offence under this Schedule committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence.'*

It follows from the above that you are required to comply with Condition 12 and to provide the requested recordings upon 24 hours' notice.

You were expressly reminded of the contents of Condition 12 in the letter requesting the CCTV footage. You are not permitted knowingly to continue to use the premises as a sex establishment unless you comply with the condition, and furthermore are committing an offence by knowingly contravening the requirements of this condition.

As regards to the Data Protection Act 1998 ('DPA'), this does not prevent you from complying with this authority's request. There are multiple provisions which make this abundantly clear. In particular:

- (i) You are authorised by paragraph 1(a) of Schedule 1 and paragraphs 1(2)(b) and 3 of Schedule 2 to obtain and to process data [which by section 1(1) includes disclosure, dissemination, transmission or making it available] where they are '*required to supply it... under any enactment*', and/or '*The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract*' (schedule 2, para 3). Condition 12 requires the CCTV data to be obtained under the 1982 Act, and imposes such a legal obligation. Furthermore, by paragraph 3 of Schedule 2, the data subject is not required to be informed of the information prescribed in paragraph 2 where (a) '*the provision of that information would involve a disproportionate effort*' (as claimed applies here) or (b) '*the recording of the information to be contained in the data by, or the disclosure of the data by, the data controller is necessary for compliance with any legal obligation which the data controller is subject, other than an obligation imposed by contract*'.
- (ii) By paragraph 10 of Schedule 3 to the Act and articles 1 and 2 of the Data Protection (Processing of Sensitive Personal Data) Order 2000/417, the processing of sensitive data is authorised without the explicit consent of the data subject, among others, where necessary '*in the substantial public interest*' for (1) the prevention or detection of any unlawful act or failure to act; or (2) the protection of the public from dishonesty, malpractice, improper conduct, unfitness or incompetence, or mismanagement in the provision of services; and must necessarily be carried out without the explicit consent of the data subject so as not to prejudice those purposes or the discharge of the public functions concerned. Those conditions apply here, since there is a substantial public interest in ensuring that the premises are lawfully and properly run; the footage is required in order to check whether management of the premises was lawful and proper; and obtaining the explicit consent of all the individuals concerned would, as acknowledge by your solicitor, be so difficult as to frustrate the discharge of the authority's functions and the detection or investigation of such unlawful conduct as may have occurred. Further and in any event, the condition in paragraph 6 of Schedule 3 is met to authorise processing of any



sensitive data without explicit consent of the data subjects, insofar as the footage is required in connection with prospective legal proceedings concerning alleged unlawful or improper conduct that is subject to investigation.

- (iii) By section 10(2)(a) of the DPA, the data subject has no right to prevent processing where required under an enactment.
- (iv) The DPA expressly allows data such as CCTV to be collected and processed for the prevention and detection of crime, disclosed for that purpose, and in such circumstances the data subject has no right to be informed about or to consent to the processing of the data where, as here, that would frustrate the investigation (by section 27 and s.29, subsections (1), (2) and (3) of the 1998 Act).
- (v) Furthermore, by section 27 and s.31(1) and (2)(a)(iii) where, as here, the data is processed for the purpose of discharging statutory regulatory functions to protect the public against 'dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity' (including in this case you and your employees and performers), the subject information provisions (i.e. including the section 7 right of the data subject to be informed) are disapplied where this would, as here, prejudice the statutory functions.

In light of this Officer from this Authority will visit your premises on Friday 21<sup>st</sup> October 2016 at 16:00 hours to collect the CCTV recordings for 29<sup>th</sup> and 30<sup>th</sup> September, and 6<sup>th</sup> and 7<sup>th</sup> October, please make sure that someone is present to provide these CCTV recordings to these Officers. Following this would be required to provide the remaining CCTV recordings, as previously requested, which must be either received by us or made available for collection by 25<sup>th</sup> October 2016.

Failure to comply with this authority's requests as stated above will be considered a contumacious refusal to comply with the licensing condition and this authority reserves the right to take enforcement action including seeking revocation of the Licence and prosecution for the non-compliance to date.

I look forward to prompt confirmation that the requested footage has been securely retained and will be made available in accordance with the timescale requested.

Yours sincerely,



**Andrew Heron**  
**Licensing Officer**

Cc Julian Skeens Partner, TLT Solicitors LLP, via email

# Appendix 3

## Andrew Heron

---

**From:** Andrew Heron  
**Sent:** 17 October 2016 11:37  
**To:** [REDACTED]  
**Subject:** The Nags Head - 17-19 Whitechapel Road, E1 1DU  
**Attachments:** CCTV Retention Letter Nags Head.pdf

Dear Mr Elford,

I have tried to contact your client's by telephone this morning, but the telephone number we have for them appears to no longer be in service.

Please find attached a letter which will be hand-delivered to your client this afternoon. We will be returning to the premises on Wednesday afternoon to collect the CCTV recordings.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House  
1 Ewart Place  
London E3 5EQ

[REDACTED]  
Fax: 020 7364 6935  
[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

## Andrew Heron

---

**From:** Andrew Heron  
**Sent:** 17 October 2016 11:46  
**To:** 'Luke Elford'  
**Subject:** RE: The Nags Head - 17-19 Whitechapel Road, E1 1DU [TLT-TLT.FID3967044]

Dear Luke,

You are aware that the LBTH Standard Conditions allow us to request CCTV footage. All SEV premises within the Borough have been asked to retain it for the same date.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House  
1 Ewart Place  
London E3 5EQ

Fax: 020 7364 6935  
[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

---

**From:** Luke Elford [REDACTED]  
**Sent:** 17 October 2016 11:39  
**To:** Andrew Heron  
**Cc:** Julian Skeens  
**Subject:** RE: The Nags Head - 17-19 Whitechapel Road, E1 1DU [TLT-TLT.FID3967044]

Hi Andrew

Thanks for your email and I'll pass it on to Manpal.

May we ask what the CCTV is required in connection with please? Has there been an incident that we need to be aware of?

Kind regards

Luke Elford  
Solicitor

[REDACTED]

## Andrew Heron

---

**From:** Luke Elford [REDACTED]  
**Sent:** 18 October 2016 15:54  
**To:** Andrew Heron  
**Cc:** Julian Skeens  
**Subject:** RE: The Nags Head - 17-19 Whitechapel Road, E1 1DU [TLT-TLT.FID3967044]  
**Attachments:** RE The Nags Head - 17-19 Whitechapel Road, E1 1DU

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Andrew

Thank you for this.

A letter on behalf of our client is being typed up as we speak and will be with you today.

Kind regards

Luke Elford  
Solicitor

[REDACTED]

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## Andrew Heron

---

**From:** Andrew Heron  
**Sent:** 18 October 2016 15:46  
**To:** [REDACTED]  
**Subject:** RE: The Nags Head - 17-19 Whitechapel Road, E1 1DU  
**Attachments:** CCTV Retention Letter Nags Head2.pdf  
**Importance:** High

Dear Mr Elford,

Please see the attached follow up letter.

Please acknowledge receipt of this letter and confirm that recordings will be available for collection tomorrow.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House  
1 Ewart Place  
London E3 5EQ

[REDACTED]  
Fax: 020 7364 6935  
[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

---

**From:** Andrew Heron  
**Sent:** 17 October 2016 11:37  
**To:** [REDACTED]  
**Subject:** The Nags Head - 17-19 Whitechapel Road, E1 1DU

Dear Mr Elford,

I have tried to contact your client's by telephone this morning, but the telephone number we have for them appears to no longer be in service.

Please find attached a letter which will be hand-delivered to your client this afternoon. We will be returning to the premises on Wednesday afternoon to collect the CCTV recordings.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House

## Andrew Heron

---

**From:** Luke Elford <[REDACTED]>  
**Sent:** 18 October 2016 16:15  
**To:** Andrew Heron  
**Cc:** Julian Skeens  
**Subject:** Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]  
**Attachments:** Nags Head - Letter to LBTH 18 10 16.PDF  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Andrew

Please find attached our letter of today's date.

We're afraid that, pending appropriate justification from the council to enable us to consider the position under The Data Protection Act 1998, the footage will not be provided at this time.

Kind regards

Luke Elford  
Solicitor  
for TLT LLP

[REDACTED]

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 DX 431 London Chancery Lane

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Our ref 303L/JS21/KB01/099147/000008  
 Your ref



Andrew Heron  
 Licensing Section  
 Admin Support Services  
 John Onslow House  
 1 Ewart Place  
 London E3 5EQ

**By email only: [Andrew.heron@towerhamlets.gov.uk](mailto:Andrew.heron@towerhamlets.gov.uk)**

Direct tel	[REDACTED]	Date	18 October 2016
Direct fax	+44 (0)333 006 0011	Email	[REDACTED]

Dear Mr Heron

**The Nags Head Public House, 17-19 Whitechapel Road E1 1DU**

We have been passed copies of your letters dated 17 and 18 October 2016 under your reference TSS/LIC/SEV requesting copies of all CCTV recordings at the Nags Head from Wednesday 28 September to Monday 10 October 2016, albeit in two tranches.

We have advised our clients that your request is unlawful and if they complied with it they would contravene the Data Protection Act 1998.

The Data Protection Act 1998 regulates the holding and processing of personal information that relates to living individuals and which is contained in or related to the images captured using CCTV. Our clients are data controllers and data managers for the CCTV which identifies individuals. Not only will the data identify the individuals the identification is particularly sensitive in view of the nature of the entertainment which is provided.

At the very least our client's would have seek and obtain the permission of all those individuals captured on the CCTV. Not only is this task disproportionate but will prove impossible given the number of customers who have visited the premises.

We have advised our client that in these circumstances it would be unlawful for them to release copies of the CCTV unless you can show just cause and having considered any justification we think it highly unlikely that your council will be able to meet that criteria. If you disagree then doubtless you will be kind enough to provide justification for the request.

You are aware that we act for the licensees and owners of the club and should be grateful if in future all communication is directed via us.





Yours sincerely

JP

**Julian Skeens**  
**Partner**  
for TLT LLP

## Andrew Heron

---

**From:** Tom Lewis  
**Sent:** 20 October 2016 15:05  
**To:** 'Luke Elford'  
**Cc:** Andrew Heron; [REDACTED]  
**Subject:** RE: Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]  
**Attachments:** CCTV Retention Letter Nags Head3.pdf  
**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Mr Elford,

Please find attached letter, which is being hand delivered to the above premises shortly. This is in response to your colleague Julian Skeens letter to this Licensing Authority dated 18<sup>th</sup> October 2016.

I trust in light of this letter you will be advising your clients to comply with our request to provide this Licensing Authority with copies of the CCTV recordings as indicated in this and our previous letter dated 18<sup>th</sup> October 2016.

Kind regards

Tom Lewis MCIEH | Team Leader | Licensing & Safety Team | Environmental Health and Trading Standards

[London Borough of Tower Hamlets](#) | John Onslow House, 1 Ewart Place, London E3 5EQ

 [REDACTED] |  020 7364 6901 | General Enquiries: 020 7364 5008



---

**From:** Luke Elford [REDACTED]  
**Sent:** 18 October 2016 16:15  
**To:** Andrew Heron  
**Cc:** Julian Skeens  
**Subject:** Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]

Dear Andrew

Please find attached our letter of today's date.

We're afraid that, pending appropriate justification from the council to enable us to consider the position under The Data Protection Act 1998, the footage will not be provided at this time.

Kind regards

Luke Elford  
Solicitor  
for TLT LLP  
[REDACTED]

## Andrew Heron

---

**From:** Luke Elford [REDACTED]  
**Sent:** 20 October 2016 15:09  
**To:** Tom Lewis  
**Cc:** Andrew Heron; Julian Skeens  
**Subject:** RE: Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]  
**Attachments:** RE Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Tom

Thank you for the letter.

Please confirm whether similar letters are being sent to all of the SEV premises in LBTH, all of whom we understand refused your initial request for CCTV footage.

Many thanks.

Kind regards

Luke Elford  
Solicitor  
for TLT LLP

[REDACTED]

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## Andrew Heron

---

**From:** Tom Lewis  
**Sent:** 20 October 2016 15:25  
**To:** 'Luke Elford'  
**Cc:** Andrew Heron; Julian Skeens  
**Subject:** RE: Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Mr Elford,

As I'm sure you can appreciate we cannot discuss matters relating to other premises where you are not their legal representative.

Kind regards

Tom Lewis MCIEH | Team Leader | Licensing & Safety Team | Environmental Health and Trading Standards

[London Borough of Tower Hamlets](#) | John Onslow House, 1 Ewart Place, London E3 5EQ

 [REDACTED] |  020 7364 6901 | General Enquiries: 020 7364 5008



---

**From:** Luke Elford [REDACTED]  
**Sent:** 20 October 2016 15:09  
**To:** Tom Lewis  
**Cc:** Andrew Heron; Julian Skeens  
**Subject:** RE: Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]

Dear Tom

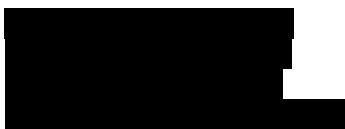
Thank you for the letter.

Please confirm whether similar letters are being sent to all of the SEV premises in LBTH, all of whom we understand refused your initial request for CCTV footage.

Many thanks.

Kind regards

Luke Elford  
Solicitor  
for TLT LLP



## Andrew Heron

---

**From:** Luke Elford <[REDACTED]>  
**Sent:** 20 October 2016 15:49  
**To:** Tom Lewis  
**Cc:** Andrew Heron; Julian Skeens  
**Subject:** RE: Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]  
**Attachments:** RE Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Tom

Appreciate the sentiment, but it goes to whether all premises are being treated equally in terms of your request.

We have enquired of the representatives direct, but as you will see from Andrew's email that kind of stance wasn't taken a couple of days ago.

Kind regards

Luke Elford  
Solicitor  
for TLT LLP

[REDACTED]

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## Andrew Heron

---

**From:** Luke Elford <[REDACTED]>  
**Sent:** 21 October 2016 15:17  
**To:** Tom Lewis  
**Cc:** Andrew Heron; Julian Skeens  
**Subject:** Re: Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]

Dear Tom

We write further to previous correspondence regarding the above.

You will shortly be receiving a joint letter on behalf of The Nags Head, The White Swan/Majingos and Whites Gentleman's Club. That letter makes our respective clients position clear, but for the avoidance of doubt The Nags Head will be unable to comply with your request to release footage today.

Kindly confirm whether you still intend to visit the premises regardless.

Kind regards

Luke Elford  
Solicitor  
for TLT LLP

[REDACTED]  
[REDACTED]  
[REDACTED]

---

**From:** Tom Lewis  
**Sent:** Thursday, 20 October 2016 15:05  
**To:** Luke Elford  
**Cc:** Andrew Heron; Julian Skeens  
**Subject:** RE: Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]

Dear Mr Elford,

Please find attached letter, which is being hand delivered to the above premises shortly. This is in response to your colleague Julian Skeens letter to this Licensing Authority dated 18<sup>th</sup> October 2016.

I trust in light of this letter you will be advising your clients to comply with our request to provide this Licensing Authority with copies of the CCTV recordings as indicated in this and our previous letter dated 18<sup>th</sup> October 2016.

Kind regards

Tom Lewis MCIEH | Team Leader | Licensing & Safety Team | Environmental Health and Trading Standards

[London Borough of Tower Hamlets](#) | John Onslow House, 1 Ewart Place, London E3 5EQ

 [REDACTED] |  020 7364 6901 | General Enquiries: 020 7364 5008



**Andrew Heron**

---

**From:** Andrew Heron  
**Sent:** 21 October 2016 15:31  
**To:** 'Luke Elford'; Tom Lewis  
**Cc:** Julian Skeens  
**Subject:** RE: Our client - Nags Head Ltd - The Nags Head 17 to 19 Whitechapel Road, London E1 1DN - Request for CCTV footage [TLT-TLT.FID3967044]

Dear Mr Elford,

Thank you for your email.

I can confirm that we will not be attending your client's venue this evening as you have confirmed that management are unable to comply with our request.

Can you please advise when this joint letter will arrive?

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## Andrew Heron

---

**From:** Marcus Lavell [REDACTED]  
**Sent:** 21 October 2016 15:44  
**To:** Tom Lewis  
**Cc:** Andrew Heron; Julian Skeens; 'Luke Elford'; 'David Dadds'  
**Subject:** CCTV Retention Letter and request for disclosure of data.  
**Attachments:** Joint Letter to LBTH.pdf

Dear Sirs

Please find attached joint letter sent on behalf of 3 SEV licensed premises operating within London Borough of Tower Hamlets.

The content of the letter is self explanatory but for the avoidance of doubt, CCTV data will not be released by the operators named within the letter should officers attend the relevant premises later today.

Should you have any questions please contact the relevant legal representative as detailed in the signature page of the letter.

Kind regards

**Marcus Lavell**  
**Barrister**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



**GL** | Gregg Latchams Solicitors

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JOINT LETTER TO LONDON BOROUGH OF TOWER HAMLETS ON BEHALF OF:

The White Swan/Majingos

The Nag's Head

Whites Gentleman's Club

Dear Mr Heron

**Introduction**

1. This letter is sent on behalf of The Nags Head Public House, Whites Gentleman's Club and the White Swan. (For ease, these parties will be referred to throughout as "**Our Client**").
2. We write further to your most recent letter to of 20 October 2016.
3. We regret to inform you that the letter has compounded our concerns that the Council has failed to properly consider the application of the Data Protection Act 1998 ("**the 1998**"). In those circumstances, our client is unable to release the CCTV footage at this point in time.
4. As you will understand, as the data controller of the CCTV footage in question, our client has legal obligations to the data subjects whose images are captured in the CCTV footage. It is only correct therefore that when considering the Council's request for that data, as a responsible data controller, our client should consider their position. Based on your letter of 20 October 2016, our client's concerns remain, namely that the disclosure of the information would contravene the 1998 Act. Our client does not wish to open himself up to claims under the 1998 Act from those data subjects.
5. We would like to emphasise at the outset that it is, and always has been, our client's intention to co-operate with the Council. Moreover, our client fully understands his duties and responsibilities under the licence, and of course will take all reasonable efforts to comply with those duties. However our client cannot be expected to

unlawfully contravene the rights of third parties, which would be the effect of the Council's position.

### **Overview Of The Data Protection Act 1998**

6. As you are aware, section 4(4) of the 1998 Act places all Data Controllers under a duty to comply with the Eight Principles of Data Protection.
7. It is relevant to have regard in particular, to the first and sixth Principle, which provide respectively that:
  - (1) Data shall be processed fairly and lawfully; and
  - (2) Personal data shall be processed in accordance with the rights of data subjects under this Act.
8. For the avoidance of any doubt, we reserve our position in respect of the other principles.
9. It is not in dispute the data in question constitutes 'sensitive data', in which case additional obligations apply under the 1998 Act.

### **First Data Protection Principle**

10. Schedule 1 sets out the 8 Data Protection principles. Paragraph 1 of schedule 1 is clear that in respect of the first principle:

“..."

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

11. In this regard you assert that both limbs of paragraph 1 are met i.e. that at least one condition in Schedule 2 and Schedule 3 is satisfied. We disagree for reasons set out below.

*Schedule 1, paragraph 1(a)*

12. At paragraph (i) of your letter (on page 3) you purport to rely on the condition in "...paragraphs 1(2)(b) and 3 of Schedule 2..." Schedule 2 does not contain a paragraph 1(2)(b) hence we assume your reliance on this is an error. Accordingly we will not address it further.
13. Paragraph 3 provides as material:

"3. The processing is necessary for compliance with any legal obligation to which the data controller is subject..."
14. In this regard you seek to rely on the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, as imposing a legal obligation.
15. Your letter specifically seeks to rely on, paragraph 20(1) of Schedule 3 as the provision which purportedly imposes an obligation on our client to comply with condition 12 of the licence. This reliance is misconceived.
16. Both paragraphs 20(1)(c) and (1)(d) expressly refer to non-compliance with a condition of the licence, 'without reasonable excuse' – in short, if there is a reasonable excuse, then there is no legal obligation under the 1982 Act. In that regard, our client has a more than reasonable excuse for not complying with condition 12, in that compliance with the condition would amount to a contravention of the legal obligations contained in the 1998 Act. We do not accept therefore that paragraph 20(1) imposes a legal obligation on our client to disclose the CCTV footage. Paragraph 20(1) cannot be read so as to compel our client to break the law.
17. You also assert that "...by paragraph 3 of Schedule 2, the data subject is not required to be informed of the information...where ...it would involve a disproportionate effort..." Paragraph 3 of Schedule 2 is set out above. The terms of the provision are very clear.



- there is no reference to the ‘disproportionate effort’ as you assert or otherwise. Your argument under this head is therefore misguided.

18. Accordingly, contrary to s4 and schedule 1 of the 1998 Act, paragraph 1(a) of Schedule 1 of the 1998 Act has not been satisfied, because none of the conditions in Schedule 2 have been met.

*Schedule 3*

19. As none of the conditions in Schedule 2 have been met, it is not necessary to address your position in respect of Schedule 3. However, for the sake of completeness, we do so.
20. At page 3 sub-paragraph (ii) you purport to rely on paragraphs 6 and 10 of schedule 3 as a reason why the data in this case can be lawfully disclosed to the Council. With respect, we disagree.
21. Paragraph 6 states as material:  
The processing—  
(a)is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),..”
22. You state for the first time that the data is required in connection with prospective legal proceedings. You have not raised this in either of your previous two letters. You do not indicate what prospective legal proceedings you are referring to or the basis of the same. It is not permissible to rely on paragraph 6 as a fishing expedition. A generic assertion that paragraph 6 applies is not sufficient. Accordingly in the absence of any reasons or information as to what the prospective legal proceedings would relate to, we do not accept that paragraph 6 is engaged.
23. Paragraph 10 of paragraph 3 provides as follows:  
“The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.”

24. Pursuant to this provision, the Secretary of State made the following order: the Data Protection (Processing of Sensitive Personal Data) Order 2000 (SI 2000/417). The Schedule to the Order specifies ten such circumstances in which if sensitive data is processed, then paragraph 1(b) of Schedule 1 will have been satisfied.

25. You seek to rely on paragraphs 1 and 2 of the Order, which provide as material:

1

- (1) The processing—
  - (a) is in the substantial public interest;
  - (b) is necessary for the purposes of the prevention or detection of any unlawful act; and
  - (c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice those purposes.
- (2) In this paragraph, “act” includes a failure to act.

2

- The processing—
- (a) is in the substantial public interest;
  - (b) is necessary for the discharge of any function which is designed for protecting members of the public against—
    - (i) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person, or
    - (ii) mismanagement in the administration of, or failures in services provided by, any body or association; and
  - (c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the discharge of that function.

26. You state in your letter:

“...obtaining the explicit consent of all the individuals concerned would...be so difficult as to frustrate the discharge of the authority’s functions...”

27. Irrespective of the factual merits of your assertion, we do not agree that this satisfies the Order. Your interpretation of paragraph 1 of the schedule to the Order is a misreading of the material provisions. Paragraph 1(c) provides that the processing “*must necessarily*” be carried out without obtaining the explicit consent of the individuals, as otherwise it would prejudice the prevention or detection of any unlawful act. In short, this provision is concerned with situations whereby seeking consent would effectively amount to ‘tipping off’ the data subject, which could therefore undermine the prevention or detection of the unlawful act. It is emphatically **not** concerned with administrative difficulties in obtaining consent. Accordingly your reliance on this provision is misguided.

28. With regard to paragraph 2, you have failed to specify which of the sub-paragraphs you seek to rely upon. Your letter merely asserts:
- “...the footage is required in order to check whether, management of the premises was lawful and proper...”
29. This is plainly not sufficient to engage paragraph 2 of the Order. Without prejudice to this position, the same considerations apply as with respect to paragraph 1 of the Order: the processing “*must necessarily*” be carried out without the explicit consent of the data subject so as not to prejudice the discharge of the function: this is not the case here. Your letter does not establish why obtaining explicit consent would prejudice the discharge of the Council’s function.
30. Accordingly, nor are any of the conditions in Schedule 3 satisfied. On the Council’s own case therefore, provision of the CCTV footage would breach the first data protection principle.

#### **Miscellaneous**

31. We do not understand your reliance on section 10(2)(a) of the DPA (see page 4, (iii) of your letter). Section 10 is concerned with circumstances in which the data subject writes to the data controller, requesting the data control to cease the processing of their data. Please explain why this section is relevant.
32. You also purport to rely on s27 and s29(1) – (3) (see page 4, (iv)). Once more, you merely assert reliance on these sections without any explanation as to how and why they apply. Your letter seems to assume that you can rely on s27 and s29 to exempt compliance with all the data protection principles. In this regard you are incorrect. We note that those provisions, if they apply, only exempt the data from the first data protection principle. The remaining data protection principles still have to be satisfied. Your letter fails to address this.
33. Furthermore, the information has to be held for the purposes of crime prevention or detection: in this instance the CCTV footage is held for a number of purposes.



34. You then purport to rely on s31(1) and (2)(a)(iii) of the 1998 Act. S 31(2)(a)(iii) provides as material:

(2) Subsection (1) applies to any relevant function which is designed—

(a) for protecting members of the public against—

...

(iii) dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity.

35. You state that this provision applies to "...you and your employees and performers..." With respect, once more, this demonstrates that you have misunderstood the purpose of section 31. It is important to note the ICO's Guidance which provides:

**Organisations that may rely on section 31**

The exemption is not available to all organisations and only applies to the core regulatory activities of bodies which perform appropriate public regulatory functions, primarily watchdogs.

36. Accordingly, section 31 is not designed for the current situation and therefore does not apply.

**Information Commissioner's Office Data Protection Code of Practice Guidelines (2015)**

37. Section 5.2.2 of the ICO (2015) guidelines provides as material:

"...Disclosure of information from surveillance systems must be controlled and consistent with the purpose(s) for which the system was established..."

38. The Guidance also cautions against wide disclosure on the grounds "...it may be unfair to the individuals concerned..." The Guidance also considers that it may be necessary to consider the need for obscuring out images, before disclosing any footage. It is clear from the ICO's guidance that access to, and the disclosure of, CCTV images and the disclosure of images to third parties should be restricted and carefully controlled to ensure the rights of individuals are protected

## **Conclusion**

39. In short, your letter demonstrates to us that the Council has fundamentally misunderstood the rights and obligations of third parties under the 1998 Act. In those circumstances, we can have no confidence on the Council's assertion that provision of the CCTV footage would not contravene the 1998 Act.
40. It is also clear that in making this request of our client, the Council has had no regard to the ICO's guidance. This is also concerning.
41. It therefore remains our client's position that the Council's request would lead to a breach of the 1998 Act, and in those circumstances, regretfully, he finds himself unable to comply with the request.
42. Our client needs to be satisfied that the provision of extensive sensitive personal information to the Council is in accordance with the DPA 1998 generally, and in particular, with the rights of the data subjects in question. This is, we believe, in keeping with what is to be expected from a responsible and professional holder of a licence.
43. However, we would reiterate that our client wishes to make all reasonable efforts to comply with the request from the Council without breaching the DPA 1998, and this continues to be his position. To that end, we are content to meet with the Council to discuss this matter, with a view to seeking a means of resolving.
44. Finally, with respect to the reference in your letter to invoking enforcement action, given that our client has valid reasons for not complying with the Council's request, we trust that no such steps will be taken. In the event that such steps are taken, we expect the Council to follow the necessary processes and procedure. We draw to your attention that in the event that any such steps are taken, they will be defended vigorously by our client.



Yours sincerely

[Redacted signature]

Marcus Lavell

**Barrister – Gregg Latchams Solicitors**

**For and on behalf of The White Swan/Majingos**

[Redacted signature]

Julian Skeens

**Partner – TLT LLP**

**For and on behalf of The Nags Head**

[Redacted signature]

David Dadds

**Partner – Dadds LLP**

**For and on behalf of Whites Gentleman's Club**

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# Agenda Item 3.2

Committee :	Date	Classification
<b>Licensing Committee</b>	<b>15<sup>th</sup> November 2016</b>	<b>Unrestricted</b>

Report of : <b>David Tolley</b> <b>Head of Consumer and Business Relations</b>	Title: <b>Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for a renewal of a Sexual Entertainment Venue Licence for the White Swan/Majingos, 556 Commercial Road, London, E14 7JD</b>
Originating Officer: <b>Andrew Heron</b> <b>Licensing Officer</b>	Ward affected: <b>Shadwell</b>

## 1.0 Summary

Applicant: **David Turner**  
Name and  
Address of Premises: **White Swan/Majingos**  
**556 Commercial Road**  
**London**  
**E14 7JD**

Licence sought: **Local Government (Miscellaneous Provisions) Act 1982 (as amended)**  
**Application for a renewal of a Sexual Entertainment Venue Licence**

## 2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and additional information then adjudicate accordingly.

### LOCAL GOVERNMENT 2000 (Section 97) LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File Only

Andrew Heron  
020 7364 2665

### 3.0 Background

3.1 This report is an addendum to a previous report made by for a renewal of a Sexual Entertainment Venue licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by reg. 47 (4), Provisions of Services Regulations 2009 'the service regulations') and the Policing and Crime Act 2009 for the White Swan/Majingos – 556 Commercial Road, London, E14 7JD.

3.2 A licence from the Council is required for the use of a premise as a sex Establishment. A sexual entertainment venue is any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

Relevant entertainment means:

- any live performance; or
- any live display of nudity;  
which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

3.3 The premises is currently granted a Sexual Entertainment Venue Licence under the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

3.4 The application was first heard by the Tower Hamlets Licensing Sub Committee on 7<sup>th</sup> September 2016.

3.5 Members have previously been provided with comprehensive documents relating to the renewal application, including:

1. Copies of existing licences, both Sexual Entertainment and Licensing Act and the LBTH Standard Conditions list
2. A copy of the application for renewal
3. Maps of the premises, vicinity and locality and layout plan of the premises
4. A compliance visit checklist
5. Photographs of the premises
6. Code of Conduct for Performers, Code of Conduct for Customers (House Rules) and the Dancers' Welfare Policy
7. The relevant Ward Profile
8. A copy of the site notice
9. A copy of the press advert
10. Any relevant representations
11. A Copy of the LBTH SEV Policy

3.6 Additional information has come to light regarding the premises which Members may wish to consider whilst making their decision on the renewal application.

#### 4.0 Covert Test Purchase

4.1 On Friday 30<sup>th</sup> September and Thursday 6<sup>th</sup> October 2016, covert test purchases took place at Majingos, 556 Commercial by the Metropolitan Police. Copies of the statements of the undercover Officers are attached as **Appendix 1 – Exempt Material**.

#### 4.2 Exempt Material - See Report Addendum

#### 5.0 CCTV

5.1 The premises was written to in order to request that their CCTV was retained in line with the LBTH Standard Conditions. The first letter was sent on 17<sup>th</sup> October 2016. This was hand-delivered to the premises and sent via email to the Applicant's legal representative. A second on 18<sup>th</sup> October 2016 via email to the Applicant's legal representative. A third letter was sent on 20<sup>th</sup> October 2016 and hand-delivered to the premises and sent via email to the Applicant's legal representative. Copies of all three letters are available in **Appendix 2**.

5.2 Copies of correspondence between the Licensing Authority and the Legal representative are available in **Appendix 3**.

5.3 The premises has stated that it is unable to provide the recordings as requested by the Council because of their duties under the Data Protection Act 1998 (Correspondence dated 21<sup>st</sup> October 2016 found in Appendix 3). Legal advice provided to the Council is that provision of these CCTV recordings does not breach the requirements of the Data Protection Act 1998. This is detailed in our letter to the premises dated 20<sup>th</sup> October 2016 found in appendix 3.

5.4 The premises has since informed us that they have had an electrical power surge that has effectively wiped all previous recordings. However the premises has since advised the Council in their letter dated 21<sup>st</sup> October 2016 that due to a power surge on 13<sup>th</sup> October 2016 all data stored on their CCTV units up until this date was lost. They advised that they are willing to provide the Council with their two CCTV units if we wish to have them analysed to try to retrieve the recordings. Although they have stated this would require the premises to purchase new CCTV units and considerable expense. The Council has decided not taken these units for any such analysis. Please note that this correspondence refers to an additional letter from 'UK Power Networks', however, at the time this report was published, that additional correspondence had not been forthcoming from the licence holder's legal representative.

## 6.0 Legal Comments

- 6.1 The Council may refuse an application for the grant or renewal of a licence on one or more of the grounds specified below (Sch 3 para 12(1) LGMPA ('the Act'), as amended by reg 47 (4), Provision of Services Regulations 2009):
- 6.2 The mandatory grounds for refusal are as follows:
- (a) the applicant is under the age of 18;
  - (b) that the applicant is for the time being disqualified from holding a licence;
  - (c) that the person is a person other than a body corporate, who is not resident in the U.K. or was not resident in the U.K. throughout the six months preceding the date of the application;
  - (d) that the applicant is a body corporate which is not incorporated in the U.K; or
  - (e) that the applicant has been refused a sex establishment licence for the premises within the twelve months preceding the date of the application and the refusal has not been reversed on appeal.
- 6.3 The Committee has discretion to refuse the application if any of the following grounds for refusal apply under para. 12(3) of Schedule 3 of the Act.

The discretionary grounds for refusal are as follows:

- (a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted, renewed or transferred, the business to which it relates would be managed by or carried on for the benefit of a person other than the applicant who would have been refused a licence if they had applied themselves;
- (c) the number of sex establishments exceeds the number or is equal to the number which the council consider is appropriate for that locality; or
- (d) the grant or renewal of licence would be inappropriate because of:
  - i. the character of the relevant locality;
  - ii. the use to which the premises in the vicinity are put; or
  - iii. the layout, character or condition of the premises, vehicle, vessel or stall.

(In relation to premises, 'the relevant locality' means the locality where the premises are situated).

- 6.4 There is a right of appeal to the Magistrates' Court, as set out in para. 27 of Schedule 3 of the Act. An appeal against the decision of a Magistrates' Court may be brought to the Crown Court. In addition, the decision of the Committee may be appealed on established public law principles.

6.5 The Committee should only consider those comments within the letters of objection or made orally at the hearing which are relevant to the mandatory or discretionary grounds for refusal. Comments contained within the letters of objection or orally at the hearing which relate to moral grounds, for example, must not be considered by the Committee.

6.6 The Council's legal officer will give advice at the Hearing.

## 7.0 Finance Comments

7.1 There are no financial implications arising from this report. The cost arising from the licensing of Sexual Entertainment Venues is met from existing budgets.

## 8.0 Appendices

**Appendix 1** Copies of statements of undercover Metropolitan Police Officers – **Exempt Material**

**Appendix 2** CCTV Request Letters dated 17<sup>th</sup>, 18<sup>th</sup> and 20<sup>th</sup> October 2016

**Appendix 3** Copies of correspondence between the Licensing Authority and the Applicant's legal representative

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## **Report Addendum and Appendix 1**

The Report Addendum and Appendix 1 are exempt material - pursuant to paragraph 1 (information relating to any individual) paragraph 2 (information likely to reveal the identity of an individual) and paragraph 7 (information relating to any action taken or to be taken in connection with investigation or prosecution of crime) of Part 1 of Schedule 12A to the Local Government Act 1972.

This material is subject to a public interest test.

The factors in favour of disclosure are that there is a clear public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of the issues, and more effective public participation in decision making.

The factors to be weighed against such disclosure is the need to ensure that the public interest in law enforcement and the prosecution of offenders, and that the local area is adequately protected from illegal practices, is maintained. Such public interests are safeguarded by the role the Council plays on behalf of the public in bringing cases to court.

The public interest in withholding the material outweighs the public interest in disclosing it in order to preserve the anonymity of individuals and so as not to prejudice any investigation or prosecution of a crime.

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TOWER HAMLETS



2009-2010  
Positive engagement of black people  
2009-2010  
Preventing and tackling child poverty  
2008-2009  
A line of 7 previous  
National Awards



INVESTOR IN PEOPLE

**Communities, Localities & Culture**  
**Safer Communities**

**Environmental Health and Trading Standards**  
**David Tolley**

David Tunmer  
The White Swan  
556 Commercial Road  
London  
E14 7JD

Licensing Section  
Admin Support Services  
John Onslow House  
1 Ewart Place  
London E3 5EQ

17<sup>th</sup> October 2016

My reference: TSS/LIC/SEV  
Your reference:

ts.gov.uk

Dear Mr Tunmer,

**Local Governmental (Miscellaneous Provisions) Act 1982 as amended  
by the Policing and Crime Act 2009**

As you are aware, Condition 12 of the Tower Hamlets Standards Conditions on your licence state:

*Without prejudice to condition 13 below CCTV shall be installed to cover the inside and the outside of the Premises, covering all public areas, including private performance areas and booths, entrances and exits, but excluding the interior of toilets. All cameras must be maintained in working order. All cameras shall continually record whilst the Premises are open to the public and the recorded images shall be kept available for a minimum of 31 days. Recorded images shall be made available to an authorised officer together with facilities for viewing. The recordings for the preceding 2 days shall be made available immediately upon request. Recordings outside this period shall be made available on 24 hours' notice;*

Please retain and provide us with copies of all CCTV recordings from **Wednesday 28<sup>th</sup> September to Monday 10<sup>th</sup> October 2016**. Please make sure that recordings are viewable by date and time.

Please also provide copies of staff logs for these dates, including security, management and dancers in line with conditions 28 and 29:

*The Licensee shall keep a record of each performer, including their proper name and any aliases, and their residential address. With each record the*

*Licensee shall keep a copy of a photographic form of identity and proof of address of the performer. With each record the Licensee shall keep a clear copy of an authorised document demonstrating that each Performer and each member of the staff is entitled to work within the UK. A clear copy of this record shall be kept on the Premises at all times and be made immediately available for inspection by authorised officers;*

*On days when sexual entertainment is provided, the Licensee or their representative shall keep a record of those performers working at the Premises on that day in a daily record. The daily record shall be retained securely for at least 31 days and shall be made immediately available for inspection by authorised officers;*

**We will be coming to collect these recordings on Wednesday 19<sup>th</sup> October 2016.**

Yours sincerely,



**Andrew Heron  
Licensing Officer**

Yours sincerely,



**Andrew Heron  
Licensing Officer**



2008-2010  
Facilitating engagement of elderly people  
2009-2010  
Preventing and tackling child poverty  
2003-2009  
A winner of 7 previous  
Beacon Awards



**Communities, Localities & Culture**  
**Safer Communities**

**Environmental Health and Trading Standards**  
**David Tolley**

David Tunmer  
The White Swan  
556 Commercial Road  
London  
E14 7JD

Licensing Section  
Admin Support Services  
John Onslow House  
1 Ewart Place  
London E3 5EQ

Tel 020 7494 2900  
Fax 020 7494 1111  
Enquire to Admin@london.gov.uk  
Email a.drew@london.gov.uk

18<sup>th</sup> October 2016

My reference: TSS/LIC/SEV  
Your reference:

[www.to](http://www.towerhamlets.gov.uk)

Dear Mr Tunmer,

**Local Governmental (Miscellaneous Provisions) Act 1982 as amended  
by the Policing and Crime Act 2009**

I write further to this Licensing Authority's letter to you dated 17<sup>th</sup> October 2016, requesting the provision of certain records and CCTV recordings pursuant to conditions 12, 28 and 29 of your Sexual Entertainment Venue Licence under the above legislation.

This Licensing Authority requires you to provide these records/recordings in connection with an investigation relating to breaches of conditions related to your above mentioned Licence.

In respect of our request to retain and provide us with copies of all CCTV recordings from Wednesday 28<sup>th</sup> September to Monday 10<sup>th</sup> October 2016 I understand that this may be time consuming to produce in by Wednesday 19<sup>th</sup> October 2016.

Taking this in to consideration we are willing to accept recordings for your busy times (i.e. Thursday and Friday). Therefore please provide recordings for 29<sup>th</sup> and 30<sup>th</sup> September, and 6<sup>th</sup> and 7<sup>th</sup> October 2016 for us to collect on **Wednesday 19<sup>th</sup> October 2016**. The remaining recordings for 28<sup>th</sup> September 2016, 1-5<sup>th</sup> and 9<sup>th</sup>/10<sup>th</sup> October 2016 can be sent to us within 7 days of this letter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Heron'.

**Andrew Heron  
Licensing Officer**



2009-2010  
Active engagement of older people  
2009-2010  
Awarding and tackling child poverty  
2007-2009  
Winner of 7 previous  
Beacon Awards



**Communities, Localities & Culture  
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1 Ewart Place  
London E3 5EQ

20<sup>th</sup> October 2016

Tel 020 731 2505  
Fax 020 731 2505  
Enquire 020 731 2505  
Email a

My reference: TSS/LIC/SEV  
Your reference:

www.to

Dear Mr Tunmer,

**Local Governmental (Miscellaneous Provisions) Act 1982 as amended  
by the Policing and Crime Act 2009**

I am writing further to the response to our letter dated 18<sup>th</sup> October 2016 from your Solicitor Marcus Greggs, Latchams Solicitors.

I understand your solicitors have advised you to refuse our request for copies of CCTV recordings on citing issues pursuant to contravening the Data Protection Act 1998.

We are surprised and disappointed that your solicitor's has advised you in these terms. Refusal to comply with the conditions of your Sex Establishment Licence means that you are committing a criminal offence. It is also absolutely clear that in those circumstances the Data Protection Act 1998 does not operate to prevent you discharging your obligation to comply with your Licence.

As you will be aware, you are authorised by this authority to operate as a Sexual Entertainment Venue by a Licence issued pursuant to the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, paragraph 8, which states:

*'the appropriate authority may grant to any applicant, and from time to time renew, a licence under this Schedule for the use of any premises, vehicle, vessel or stall specified in it for a sex establishment on such*

*terms and conditions and subject to such restrictions as may be so specified'.*

As stated in our letter dated 18<sup>th</sup> October 2016, condition 12 of your Licence stipulates as follows:

*'All cameras shall continually record whilst the Premises are open to the public and the recorded images shall be kept available for a minimum of 31 days. Recorded images shall be made available to an authorised officer together with facilities for viewing. The recordings for the preceding 2 days shall be made available immediately upon request. Recordings outside this period shall be made available on 24 hours' notice.'*

For reference the term 'authorised officer' is defined to include 'officers of the Borough Council'.

Paragraph 6(1) of Schedule 3 provides: *'no person shall in any area in which this Schedule is in force use any premises... as a sex establishment except under and in accordance with the terms of a licence granted under this Schedule by the appropriate authority.'*

Paragraph 20 of the same schedule further provides:

*'20.—*

*(1) A person who—*

*(a) knowingly uses, or knowingly causes or permits the use of, any premises, vehicle, vessel or stall contrary to paragraph 6 above; or*

*[...]*

*(c) being the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence; or*

*(d) being the servant or agent of the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence, shall be guilty of an offence.'*

Paragraph 26(1) provides:

*'Where an offence under this Schedule committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence.'*



It follows from the above that you are required to comply with Condition 12 and to provide the requested recordings upon 24 hours' notice.

You were expressly reminded of the contents of Condition 12 in the letter requesting the CCTV footage. You are not permitted knowingly to continue to use the premises as a sex establishment unless you comply with the condition, and furthermore are committing an offence by knowingly contravening the requirements of this condition.

As regards to the Data Protection Act 1998 ('DPA'), this does not prevent you from complying with this authority's request. There are multiple provisions which make this abundantly clear. In particular:

- (i) You are authorised by paragraph 1(a) of Schedule 1 and paragraphs 1(2)(b) and 3 of Schedule 2 to obtain and to process data [which by section 1(1) includes disclosure, dissemination, transmission or making it available] where they are *'required to supply it... under any enactment'*, and/or *'The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract'* (schedule 2, para 3). Condition 12 requires the CCTV data to be obtained under the 1982 Act, and imposes such a legal obligation. Furthermore, by paragraph 3 of Schedule 2, the data subject is not required to be informed of the information prescribed in paragraph 2 where (a) *'the provision of that information would involve a disproportionate effort'* (as claimed applies here) or (b) *'the recording of the information to be contained in the data by, or the disclosure of the data by, the data controller is necessary for compliance with any legal obligation which the data controller is subject, other than an obligation imposed by contract'*.
- (ii) By paragraph 10 of Schedule 3 to the Act and articles 1 and 2 of the Data Protection (Processing of Sensitive Personal Data) Order 2000/417, the processing of sensitive data is authorised without the explicit consent of the data subject, among others, where necessary *'in the substantial public interest'* for (1) the prevention or detection of any unlawful act or failure to act; or (2) the protection of the public from dishonesty, malpractice, improper conduct, unfitness or incompetence, or mismanagement in the provision of services; and must necessarily be carried out without the explicit consent of the data subject so as not to prejudice those purposes or the discharge of the public functions concerned. Those conditions apply here, since there is a substantial public interest in ensuring that the premises are lawfully and properly run; the footage is required in order to check whether management of the premises was lawful and proper; and obtaining the explicit consent of all the individuals concerned would, as acknowledge by your solicitor, be so difficult as to frustrate the discharge of the authority's functions and the detection or investigation of such unlawful conduct as may have occurred. Further and in any event, the condition in paragraph 6 of Schedule 3 is met to authorise processing of any

sensitive data without explicit consent of the data subjects, insofar as the footage is required in connection with prospective legal proceedings concerning alleged unlawful or improper conduct that is subject to investigation.

- (iii) By section 10(2)(a) of the DPA, the data subject has no right to prevent processing where required under an enactment.
- (iv) The DPA expressly allows data such as CCTV to be collected and processed for the prevention and detection of crime, disclosed for that purpose, and in such circumstances the data subject has no right to be informed about or to consent to the processing of the data where, as here, that would frustrate the investigation (by section 27 and s.29, subsections (1), (2) and (3) of the 1998 Act).
- (v) Furthermore, by section 27 and s.31(1) and (2)(a)(iii) where, as here, the data is processed for the purpose of discharging statutory regulatory functions to protect the public against 'dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity' (including in this case you and your employees and performers), the subject information provisions (i.e. including the section 7 right of the data subject to be informed) are disapplied where this would, as here, prejudice the statutory functions.

In light of this an Officer from this Authority will visit your premises on Friday 21<sup>st</sup> October 2016 at 16:00 hours to collect the CCTV recordings for 29<sup>th</sup> and 30<sup>th</sup> September, and 6<sup>th</sup> and 7<sup>th</sup> October, please make sure that someone is present to provide these CCTV recordings to these Officers. Following this would be required to provide the remaining CCTV recordings, as previously requested, which must be either received by us or made available for collection by 25<sup>th</sup> October 2016.

Failure to comply with this authority's requests as stated above will be considered a contumacious refusal to comply with the licensing condition and this authority reserves the right to take enforcement action including seeking revocation of the Licence and prosecution for the non-compliance to date.

I look forward to prompt confirmation that the requested footage has been securely retained and will be made available in accordance with the timescale requested.

Yours sincerely,



**Andrew Heron**  
**Licensing Officer**

Cc Marcus Greggs, Latchams Solicitors, via email

# Appendix 3

**Andrew Heron**

---

**From:** Andrew Heron  
**Sent:** 17 October 2016 11:40  
**To:** [REDACTED]  
**Cc:** 'David Tunmer'  
**Subject:** White Swan - 556 Commercial Road,  
**Attachments:** CCTV Retention Letter White Swan.pdf

Dear Mr Lavell,

Please find attached copy correspondence which is to be shortly delivered by hand to your client in relation to their CCTV.

I cannot find a number to contact Mr Turner directly.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House  
1 Ewart Place  
London E3 5EQ  
Tel: [REDACTED]  
Fax: 020 7364 6935  
[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

**Andrew Heron**

---

**From:** Marcus Lavell [REDACTED]  
**Sent:** 17 October 2016 17:43  
**To:** Andrew Heron  
**Cc:** 'David Tunmer'  
**Subject:** RE: White Swan - 556 Commercial Road,

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Andrew

I am taking instructions on this matter and will revert tomorrow.

Kind regards

**Marcus Lavell**  
**Barrister**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



**GL** | Gregg  
Latchams  
Solicitors

7 Queen Square, Bristol BS1 4JE  
Tel: +44 (0)117 906 9400 Fax: +44 (0)117 906 9401

Milner House, 14 Manchester Square, London W1U 3PP  
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DX: 7845 Bristol



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---

**From:** Andrew Heron [REDACTED]  
**Sent:** 17 October 2016 11:40  
**To:** Marcus Lavell

Cc: 'David Tunmer'  
Subject: White Swan - 556 Commercial Road,

Dear Mr Lavell,

Please find attached copy correspondence which is to be shortly delivered by hand to your client in relation to their CCTV.

I cannot find a number to contact Mr Tunmer directly.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

.....  
Working Together for a Better Tower Hamlets  
Web site : <http://www.towerhamlets.gov.uk>

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Web site : <http://www.towerhamlets.gov.uk>

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**Andrew Heron**

---

**From:** Andrew Heron  
**Sent:** 18 October 2016 15:47  
**To:** [REDACTED]  
**Cc:** 'David Tunmer'  
**Subject:** RE: White Swan - 556 Commercial Road,  
**Attachments:** CCTV Retention Letter White Swan2.pdf  
  
**Importance:** High

Dear Mr Lavell,

Please see the attached follow up letter.

Please acknowledge receipt of this letter and confirm that recordings will be available for collection tomorrow.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

---

**From:** Andrew Heron  
**Sent:** 17 October 2016 11:40  
**To:** [REDACTED]  
**Cc:** 'David Tunmer'  
**Subject:** White Swan - 556 Commercial Road,

Dear Mr Lavell,

Please find attached copy correspondence which is to be shortly delivered by hand to your client in relation to their CCTV.

I cannot find a number to contact Mr Turner directly.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section

## Andrew Heron

---

**From:** Tom Lewis  
**Sent:** 20 October 2016 15:16  
**To:** [REDACTED]  
**Cc:** Andrew Heron  
**Subject:** The White Swan, 556 Commercial Road, London E14 7JD  
**Attachments:** CCTV Retention Letter White Swan3.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Mr Lavell,

Further to our letter to your clients dated 18<sup>th</sup> October 2016 requesting copies of CCTV recordings from the above premises, and your telephone conversation with Mohshin Ali, Licensing Officer, please find attached letter, which will be hand delivered to the above premises shortly.

I trust in light of this letter you will be advising your clients to comply with our request to provide this Licensing Authority with copies of the CCTV recordings as indicated in this and our previous letter dated 18<sup>th</sup> October 2016.

Kind regards

Tom Lewis MCIEH | Team Leader | Licensing & Safety Team | Environmental Health and Trading Standards

London Borough of Tower Hamlets | John Onslow House, 1 Ewart Place, London E3 5EQ

 [REDACTED] |  020 7364 6901 | General Enquiries: 020 7364 5008



**Andrew Heron**

---

**From:** Marcus Lavell [REDACTED]  
**Sent:** 21 October 2016 15:44  
**To:** Tom Lewis  
**Cc:** Andrew Heron; Julian Skeens; 'Luke Elford'; 'David Dadds'  
**Subject:** CCTV Retention Letter and request for disclosure of data.  
**Attachments:** Joint Letter to LBTH.pdf

Dear Sirs

Please find attached joint letter sent on behalf of 3 SEV licensed premises operating within London Borough of Tower Hamlets.

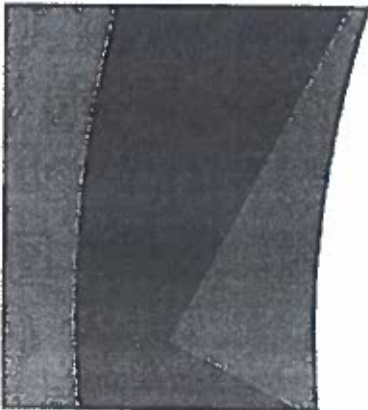
The content of the letter is self explanatory but for the avoidance of doubt, CCTV data will not be released by the operators named within the letter should officers attend the relevant premises later today.

Should you have any questions please contact the relevant legal representative as detailed in the signature page of the letter.

Kind regards

**Marcus Lavell**  
**Barrister**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



**GL** | Gregg  
Latchams  
Solicitors

7 Queen Square, Bristol BS1 4JE  
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DX. 7845 Bristol



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**JOINT LETTER TO LONDON BOROUGH OF TOWER HAMLETS ON BEHALF OF:**

**The White Swan/Majingos**

**The Nag's Head**

**Whites Gentleman's Club**

**Dear Mr Heron**

**Introduction**

1. **This letter is sent on behalf of The Nags Head Public House, Whites Gentleman's Club and the White Swan. (For ease, these parties will be referred to throughout as "Our Client").**
2. **We write further to your most recent letter to of 20 October 2016.**
3. **We regret to inform you that the letter has compounded our concerns that the Council has failed to properly consider the application of the Data Protection Act 1998 ("the 1998"). In those circumstances, our client is unable to release the CCTV footage at this point in time.**
4. **As you will understand, as the data controller of the CCTV footage in question, our client has legal obligations to the data subjects whose images are captured in the CCTV footage. It is only correct therefore that when considering the Council's request for that data, as a responsible data controller, our client should consider their position. Based on your letter of 20 October 2016, our client's concerns remain, namely that the disclosure of the information would contravene the 1998 Act. Our client does not wish to open himself up to claims under the 1998 Act from those data subjects.**
5. **We would like to emphasise at the outset that it is, and always has been, our client's intention to co-operate with the Council. Moreover, our client fully understands his duties and responsibilities under the licence, and of course will take all reasonable efforts to comply with those duties. However our client cannot be expected to**

unlawfully contravene the rights of third parties, which would be the effect of the Council's position.

### **Overview Of The Data Protection Act 1998**

6. As you are aware, section 4(4) of the 1998 Act places all Data Controllers under a duty to comply with the Eight Principles of Data Protection.
7. It is relevant to have regard in particular, to the first and sixth Principle, which provide respectively that:
  - (1) Data shall be processed fairly and lawfully; and
  - (2) Personal data shall be processed in accordance with the rights of data subjects under this Act.
8. For the avoidance of any doubt, we reserve our position in respect of the other principles.
9. It is not in dispute the data in question constitutes 'sensitive data', in which case additional obligations apply under the 1998 Act.

### **First Data Protection Principle**

10. Schedule 1 sets out the 8 Data Protection principles. Paragraph 1 of schedule 1 is clear that in respect of the first principle:

“...  
1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—  
(a) at least one of the conditions in Schedule 2 is met, and  
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

11. In this regard you assert that both limbs of paragraph 1 are met i.e. that at least one condition in Schedule 2 and Schedule 3 is satisfied. We disagree for reasons set out below.

*Schedule 1, paragraph 1(a)*

12. At paragraph (i) of your letter (on page 3) you purport to rely on the condition in "...paragraphs 1(2)(b) and 3 of Schedule 2..." Schedule 2 does not contain a paragraph 1(2)(b) hence we assume your reliance on this is an error. Accordingly we will not address it further.
13. Paragraph 3 provides as material:

"3. The processing is necessary for compliance with any legal obligation to which the data controller is subject..."
14. In this regard you seek to rely on the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, as imposing a legal obligation.
15. Your letter specifically seeks to rely on, paragraph 20(1) of Schedule 3 as the provision which purportedly imposes an obligation on our client to comply with condition 12 of the licence. This reliance is misconceived.
16. Both paragraphs 20(1)(c) and (1)(d) expressly refer to non-compliance with a condition of the licence, 'without reasonable excuse' – in short, if there is a reasonable excuse, then there is no legal obligation under the 1982 Act. In that regard, our client has a more than reasonable excuse for not complying with condition 12, in that compliance with the condition would amount to a contravention of the legal obligations contained in the 1998 Act. We do not accept therefore that paragraph 20(1) imposes a legal obligation on our client to disclose the CCTV footage. Paragraph 20(1) cannot be read so as to compel our client to break the law.
17. You also assert that "...by paragraph 3 of Schedule 2, the data subject is not required to be informed of the information...where ...it would involve a disproportionate effort..." Paragraph 3 of Schedule 2 is set out above. The terms of the provision are very clear.

- there is no reference to the 'disproportionate effort' as you assert or otherwise. Your argument under this head is therefore misguided.

18. Accordingly, contrary to s4 and schedule 1 of the 1998 Act, paragraph 1(a) of Schedule 1 of the 1998 Act has not been satisfied, because none of the conditions in Schedule 2 have been met.

*Schedule 3*

19. As none of the conditions in Schedule 2 have been met, it is not necessary to address your position in respect of Schedule 3. However, for the sake of completeness, we do so.

20. At page 3 sub-paragraph (ii) you purport to rely on paragraphs 6 and 10 of schedule 3 as a reason why the data in this case can be lawfully disclosed to the Council. With respect, we disagree.

21. Paragraph 6 states as material:

The processing—

(a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),..”

22. You state for the first time that the data is required in connection with prospective legal proceedings. You have not raised this in either of your previous two letters. You do not indicate what prospective legal proceedings you are referring to or the basis of the same. It is not permissible to rely on paragraph 6 as a fishing expedition. A generic assertion that paragraph 6 applies is not sufficient. Accordingly in the absence of any reasons or information as to what the prospective legal proceedings would relate to, we do not accept that paragraph 6 is engaged.

23. Paragraph 10 of paragraph 3 provides as follows:

“The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.”

24. Pursuant to this provision, the Secretary of State made the following order: the Data Protection (Processing of Sensitive Personal Data) Order 2000 (SI 2000/417). The Schedule to the Order specifies ten such circumstances in which if sensitive data is processed, then paragraph 1(b) of Schedule 1 will have been satisfied.

25. You seek to rely on paragraphs 1 and 2 of the Order, which provide as material:

1

- (1) The processing—
  - (a) is in the substantial public interest;
  - (b) is necessary for the purposes of the prevention or detection of any unlawful act; and
  - (c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice those purposes.
- (2) In this paragraph, "act" includes a failure to act.

2

- The processing—
- (a) is in the substantial public interest;
  - (b) is necessary for the discharge of any function which is designed for protecting members of the public against—
    - (i) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person, or
    - (ii) mismanagement in the administration of, or failures in services provided by, any body or association; and
  - (c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the discharge of that function.

26. You state in your letter:

"...obtaining the explicit consent of all the individuals concerned would...be so difficult as to frustrate the discharge of the authority's functions..."

27. Irrespective of the factual merits of your assertion, we do not agree that this satisfies the Order. Your interpretation of paragraph 1 of the schedule to the Order is a misreading of the material provisions. Paragraph 1(c) provides that the processing "*must necessarily*" be carried out without obtaining the explicit consent of the individuals, as otherwise it would prejudice the prevention or detection of any unlawful act. In short, this provision is concerned with situations whereby seeking consent would effectively amount to 'tipping off' the data subject, which could therefore undermine the prevention or detection of the unlawful act. It is emphatically not concerned with administrative difficulties in obtaining consent. Accordingly your reliance on this provision is misguided.

28. With regard to paragraph 2, you have failed to specify which of the sub-paragraphs you seek to rely upon. Your letter merely asserts:  
“...the footage is required in order to check whether, management of the premises was lawful and proper...”
29. This is plainly not sufficient to engage paragraph 2 of the Order. Without prejudice to this position, the same considerations apply as with respect to paragraph 1 of the Order: the processing “*must necessarily*” be carried out without the explicit consent of the data subject so as not to prejudice the discharge of the function: this is not the case here. Your letter does not establish why obtaining explicit consent would prejudice the discharge of the Council’s function.
30. Accordingly, nor are any of the conditions in Schedule 3 satisfied. On the Council’s own case therefore, provision of the CCTV footage would breach the first data protection principle.

#### Miscellaneous

31. We do not understand your reliance on section 10(2)(a) of the DPA (see page 4, (iii) of your letter). Section 10 is concerned with circumstances in which the data subject writes to the data controller, requesting the data control to cease the processing of their data. Please explain why this section is relevant.
32. You also purport to rely on s27 and s29(1) – (3) (see page 4, (iv)). Once more, you merely assert reliance on these sections without any explanation as to how and why they apply. Your letter seems to assume that you can rely on s27 and s29 to exempt compliance with all the data protection principles. In this regard you are incorrect. We note that those provisions, if they apply, only exempt the data from the first data protection principle. The remaining data protection principles still have to be satisfied. Your letter fails to address this.
33. Furthermore, the information has to be held for the purposes of crime prevention or detection: in this instance the CCTV footage is held for a number of purposes.

34. You then purport to rely on s31(1) and (2)(a)(iii) of the 1998 Act. S 31(2)(a)(iii) provides as material:

(2) Subsection (1) applies to any relevant function which is designed—

(a) for protecting members of the public against—

...

(iii) dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity.

35. You state that this provision applies to "...you and your employees and performers..." With respect, once more, this demonstrates that you have misunderstood the purpose of section 31. It is important to note the ICO's Guidance which provides:

**Organisations that may rely on section 31**

The exemption is not available to all organisations and only applies to the core regulatory activities of bodies which perform appropriate public regulatory functions, primarily watchdogs.

36. Accordingly, section 31 is not designed for the current situation and therefore does not apply.

**Information Commissioner's Office Data Protection Code of Practice Guidelines (2015)**

37. Section 5.2.2 of the ICO (2015) guidelines provides as material:

"...Disclosure of information from surveillance systems must be controlled and consistent with the purpose(s) for which the system was established..."

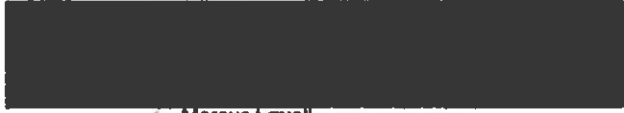
38. The Guidance also cautions against wide disclosure on the grounds "...it may be unfair to the individuals concerned..." The Guidance also considers that it may be necessary to consider the need for obscuring out images, before disclosing any footage. It is clear from the ICO's guidance that access to, and the disclosure of, CCTV images and the disclosure of images to third parties should be restricted and carefully controlled to ensure the rights of individuals are protected

## **Conclusion**

39. In short, your letter demonstrates to us that the Council has fundamentally misunderstood the rights and obligations of third parties under the 1998 Act. In those circumstances, we can have no confidence on the Council's assertion that provision of the CCTV footage would not contravene the 1998 Act.
40. It is also clear that in making this request of our client, the Council has had no regard to the ICO's guidance. This is also concerning.
41. It therefore remains our client's position that the Council's request would lead to a breach of the 1998 Act, and in those circumstances, regretfully, he finds himself unable to comply with the request.
42. Our client needs to be satisfied that the provision of extensive sensitive personal information to the Council is in accordance with the DPA 1998 generally, and in particular, with the rights of the data subjects in question. This is, we believe, in keeping with what is to be expected from a responsible and professional holder of a licence.
43. However, we would reiterate that our client wishes to make all reasonable efforts to comply with the request from the Council without breaching the DPA 1998, and this continues to be his position. To that end, we are content to meet with the Council to discuss this matter, with a view to seeking a means of resolving.
44. Finally, with respect to the reference in your letter to invoking enforcement action, given that our client has valid reasons for not complying with the Council's request, we trust that no such steps will be taken. In the event that such steps are taken, we expect the Council to follow the necessary processes and procedure. We draw to your attention that in the event that any such steps are taken, they will be defended vigorously by our client.



Yours sincerely



Marcua Lavell

Barrister - Gregg Latchems Solicitors

For and on behalf of The White Swan/Majingos



Julian Skeens

Partner -- TLT LLP

For and on behalf of The Nags Head



David Dadds

Partner - Dadds LLP

For and on behalf of Whites Gentleman's Club

Your ref: TSS/LIC/SEV  
Our ref: PBH/ML/ANA3/2

**Andrew Heron**  
**Licensing Section**  
**Admin Support Services**  
**John Onslow House**  
**1 Ewart Place**  
**London, E3 5EQ**

21 October 2016

Dear Mr Heron

**Data Protection Act 1998 - Request for Disclosure of Personal Data**

1. As you know, I represent Mr David Tunmer, holder of SEV Licence number 19573 relating to The White Swan/Majingos, 556 Commercial Road (the Premises). I am in receipt of your letters dated 17, 18 and 20 of October 2016.
2. Your letter requests that 2 forms of information be released by my client to the Council; CCTV recordings and written staff logs. The range of data requested is from 28 September to 10 October 2016, Inclusive.
3. My client's legal position on this point has been addressed in detail in the joint letter sent earlier today. However, it would be appropriate in all the circumstances to inform you of the following. Due to a power surge on 13 October 2016, my client's CCTV system was damaged, resulting in the loss of stored data up until that point.
4. The premises has been subject to 3 power disruptions throughout October 2016 as detailed in the attached letter from UK Power Networks. The fuse referred to in the letter is the main fuse through which electricity passes to the commercial unit in which my client operates. These disruptions have led to my client's premises losing all power until engineers from UK Power Networks have been able to attend and restore power. UK Power Networks have informed my client that works to the main supply under the road outside will be required to resolve the issue.
5. As a result of the most recent power disruption, my client's 3 CCTV data recorders were interrupted mid-operation and ceased to work. My client called in a specialist from A Matter of Security LTD (AMOS) who attended the Premises on 14 October 2016. The specialist was able to reboot 2 of the recorders but all data had been lost.

7 Queen Square, Bristol BS1 4JE  
Tel. +44 (0)117 906 9400 Fax: +44 (0)117 906 9401

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DX 7845 Bristol



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The remaining recorder would not operate and the specialist concluded that the unit had been damaged beyond repair, subsequently disposing of the unit.

6. Currently the premises is operating with the existing 2 recording units and therefore ordered a replacement that arrived today. Please note that a replacement was ordered immediately upon discovery that the damaged unit could not be repaired. AMOS informed my client on 17 October that AMOS's supplier could not provide a replacement for 3-4 weeks. As a result, a member of my client's staff sourced an alternative device.
7. The above incident makes it impossible for my client to provide either an opportunity for officers to view the requested images or to provide copies of said images. My client is aware that the police have the facility to extract images from faulty recording devices and so would be prepared to provide the remaining 2 recorders to them for such purposes. This would require my client to purchase 2 further units at notable expense and so if this is required by the Council we would ask that you confirm forthwith, else the units will continue to be used to record new images as required by the SEV Licence.
8. Regardless of the above, my client's position on the release of data following your request remains as set out in the above joint letter.
9. Should you wish to discuss this matter please contact Marcus Lavell on 0117 9069452.

Yours sincerely



Marcus Lavell  
Barrister  
Gregg Latchams Limited

**Tei:** 0117 9069452  
**Fax:** 0117 9069420  
**Email:** marcus.lavell@gregglatchams.com

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# Agenda Item 3.3

Committee :	Date	Classification
<b>Licensing Committee</b>	<b>15<sup>th</sup> November 2016</b>	<b>Unrestricted</b>

Report of : <b>David Tolley Head of Consumer and Business Relations</b>	Title: <b>Local Government (Miscellaneous Provisions) Act 1982 (as amended) Application for a Renewal of a Sexual Entertainment Venue Licence for Metropolis, 234 Cambridge Heath Road, London E2 9NN</b>
Originating Officer: <b>Andrew Heron Licensing Officer</b>	Ward affected: <b>St. Peter's</b>

## 1.0 Summary

Applicant: **Steven Victor Martin, Victor Martin and  
Melanie Jane Graham**  
Name and  
Address of Premises: **Metropolis  
234 Cambridge Heath Road  
London  
E2 9NN**

Licence sought: **Local Government (Miscellaneous  
Provisions) Act 1982 (as amended)  
Application for a renewal of a Sexual  
Entertainment Venue Licence**

## 2.0 Recommendations

2.1 That the Licensing Committee considers the application and additional information then adjudicate accordingly.

### LOCAL GOVERNMENT 2000 (Section 97) LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for  
register

If not supplied, name and telephone  
number of holder

File Only

Andrew Heron  
020 7364 2665

### 3.0 Background

3.1 This report is an addendum to a previous report made by for a renewal of a Sexual Entertainment Venue licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by reg. 47 (4), Provisions of Services Regulations 2009 'the service regulations') and the Policing and Crime Act 2009 for Metropolis, 234 Cambridge Heath Road, London, E2 9NN.

3.2 A licence from the Council is required for the use of a premise as a sex Establishment. A sexual entertainment venue is any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

Relevant entertainment means:

- any live performance; or
- any live display of nudity;  
which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

3.3 The premises is currently granted a Sexual Entertainment Venue Licence under the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

3.4 Members have previously been provided with comprehensive documents relating to the renewal application, including:

1. Copies of existing licences, both Sexual Entertainment and Licensing Act and the LBTH Standard Conditions list
2. A copy of the application for renewal
3. Maps of the premises, vicinity and locality and layout plan of the premises
4. A compliance visit checklist
5. Photographs of the premises
6. Code of Conduct for Performers, Code of Conduct for Customers (House Rules) and the Dancers' Welfare Policy
7. The relevant Ward Profile
8. A copy of the site notice
9. A copy of the press advert
10. Any relevant representations
11. A Copy of the LBTH SEV Policy

3.6 Additional information has come to light regarding the premises which Members may wish to consider whilst making their decision on the renewal application.

#### 4.0 Covert Test Purchase

4.1 On Thursday 6<sup>th</sup> October 2016 a covert test purchase took place at Metropolis, 234 Cambridge Heath Road, London, E2 9NN by the Metropolitan Police. Copies of the statements of the undercover Officers are attached as **Appendix 1 – Exempt Material**

#### 4.1 Exempt Material – See Report Addendum

#### 5.0 Legal Comments

5.1 The Council may refuse an application for the grant or renewal of a licence on one or more of the grounds specified below (Sch 3 para 12(1) LGMPA ('the Act'), as amended by reg 47 (4), Provision of Services Regulations 2009):

5.2 The mandatory grounds for refusal are as follows:

- (a) the applicant is under the age of 18;
- (b) that the applicant is for the time being disqualified from holding a licence;
- (c) that the person is a person other than a body corporate, who is not resident in the U.K. or was not resident in the U.K. throughout the six months preceding the date of the application;
- (d) that the applicant is a body corporate which is not incorporated in the U.K; or
- (e) that the applicant has been refused a sex establishment licence for the premises within the twelve months preceding the date of the application and the refusal has not been reversed on appeal.

5.3 The Committee has discretion to refuse the application if any of the following grounds for refusal apply under para. 12(3) of Schedule 3 of the Act.

The discretionary grounds for refusal are as follows:

- (a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted, renewed or transferred, the business to which it relates would be managed by or carried on for the benefit of a person other than the applicant who would have been refused a licence if they had applied themselves;
- (c) the number of sex establishments exceeds the number or is equal to the number which the council consider is appropriate for that locality; or
- (d) the grant or renewal of licence would be inappropriate because of:
  - i. the character of the relevant locality;
  - ii. the use to which the premises in the vicinity are put; or
  - iii. the layout, character or condition of the premises, vehicle, vessel or stall.

(In relation to premises, 'the relevant locality' means the locality where the premises are situated).

- 5.4 There is a right of appeal to the Magistrates' Court, as set out in para. 27 of Schedule 3 of the Act. An appeal against the decision of a Magistrates' Court may be brought to the Crown Court. In addition, the decision of the Committee may be appealed on established public law principles.
- 5.5 The Committee should only consider those comments within the letters of objection or made orally at the hearing which are relevant to the mandatory or discretionary grounds for refusal. Comments contained within the letters of objection or orally at the hearing which relate to moral grounds, for example, must not be considered by the Committee.
- 5.6 The Council's legal officer will give advice at the Hearing.

#### 6.0 **Finance Comments**

- 6.1 There are no financial implications arising from this report. The cost arising from the licensing of Sexual Entertainment Venues is met from existing budgets.

#### 7.0 **Appendices**

- Appendix 1**      Copies of statements of undercover Metropolitan Police Officers – **Exempt Material**



## **Report Addendum and Appendix 1**

The Report Addendum and Appendix 1 are exempt material - pursuant to paragraph 1 (information relating to any individual) paragraph 2 (information likely to reveal the identity of an individual) and paragraph 7 (information relating to any action taken or to be taken in connection with investigation or prosecution of crime) of Part 1 of Schedule 12A to the Local Government Act 1972.

This material is subject to a public interest test.

The factors in favour of disclosure are that there is a clear public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of the issues, and more effective public participation in decision making.

The factors to be weighed against such disclosure is the need to ensure that the public interest in law enforcement and the prosecution of offenders, and that the local area is adequately protected from illegal practices, is maintained. Such public interests are safeguarded by the role the Council plays on behalf of the public in bringing cases to court.

The public interest in withholding the material outweighs the public interest in disclosing it in order to preserve the anonymity of individuals and so as not to prejudice any investigation or prosecution of a crime.

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# Agenda Item 3.4

Committee :	Date	Classification	Report No.	Agenda Item No.
<b>Licensing Committee</b>		<b>Unclassified</b>		

Report of : <b>David Tolley</b> <b>Head of Consumer and Business Relations</b>	Title: <b>Local Government (Miscellaneous Provisions) Act 1982 (as amended)</b> <b>Application for a renewal of a Sexual Entertainment Venue Licence for Whites Gentleman's Club, 32 - 38 Leman Street, London E1 8EW</b>
Originating Officer: <b>Andrew Heron</b> <b>Licensing Officer</b>	Ward affected: <b>Whitechapel</b>

## 1.0 Summary

Applicant: **Whites Venues Ltd.**  
Name and **Whites Gentleman's Club**  
Address of Premises: **32-38 Leman Street**  
**London**  
**E1 8EW**

Licence sought: **Local Government (Miscellaneous Provisions) Act 1982 (as amended)**  
**Application for a renewal of a Sexual Entertainment Venue Licence**

## 2.0 Recommendations

- 2.1 That the Licensing Committee considers the application and additional information then adjudicate accordingly.

**LOCAL GOVERNMENT 2000 (Section 97)**  
**LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT**

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File Only

Andrew Heron  
020 7364 2665

### 3.0 Background

3.1 This report is an addendum to a previous report made by for a renewal of a Sexual Entertainment Venue licence under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by reg. 47 (4), Provisions of Services Regulations 2009 'the service regulations') and the Policing and Crime Act 2009 for Whites Gentleman's Club, 32-38 Leman Street, London, E1 8EW.

3.2 A licence from the Council is required for the use of a premise as a sex Establishment. A sexual entertainment venue is any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

Relevant entertainment means:

- any live performance; or
- any live display of nudity;  
which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

3.3 The premises is currently granted a Sexual Entertainment Venue Licence under the Local Government (Miscellaneous Provisions) Act 1982 (as amended).

3.4 The application was first heard by the Tower Hamlets Licensing Sub Committee on 5<sup>th</sup> September 2016.

3.5 Members have previously been provided with comprehensive documents relating to the renewal application, including:

1. Copies of existing licences, both Sexual Entertainment and Licensing Act and the LBTH Standard Conditions list
2. A copy of the application for renewal
3. Maps of the premises, vicinity and locality and layout plan of the premises
4. A compliance visit checklist
5. Photographs of the premises
6. Code of Conduct for Performers, Code of Conduct for Customers (House Rules) and the Dancers' Welfare Policy
7. The relevant Ward Profile
8. A copy of the site notice
9. A copy of the press advert
10. Any relevant representations
11. A Copy of the LBTH SEV Policy

3.6 Additional information has come to light regarding the premises which Members may wish to consider whilst making their decision on the renewal application.

#### 4.0 **Covert Test Purchase**

4.1 On Thursday 29<sup>th</sup> September 2016 a covert test purchase took place at Whites Gentleman's Club, 32 - 38 Leman Street, London E1 8EW by the Metropolitan Police. Copies of the statements of the undercover Officers are attached as **Appendix 1 – Exempt Material**

4.2 **Exempt Material – See Report Addendum**

#### 5.0 **CCTV**

5.1 The premises was written to in order to request that their CCTV was retained in line with the LBTH Standard Conditions. The first letter was sent on 17<sup>th</sup> October 2016. This was hand-delivered to the premises and sent via email to the Applicant's legal representative. A second on 18<sup>th</sup> October 2016 via email to the Applicant's legal representative. A third letter was sent on 20<sup>th</sup> October 2016 and hand-delivered to the premises and sent via email to the Applicant's legal representative. Copies of all three letters are available in **Appendix 2**.

5.2 Copies of correspondence between the Licensing Authority and the Legal representative are available in **Appendix 3**.

5.3 The premises has stated that it is unable to provide the recordings as requested by the Council because of their duties under the Data Protection Act 1998 (Correspondence dated 21<sup>st</sup> October 2016 found in Appendix 3). Legal advice provided to the Council is that provision of these CCTV recordings does not breach the requirements of the Data Protection Act 1998. This is detailed in our letter to the premises dated 20<sup>th</sup> October 2016 found in **Appendix 3**.

#### 6.0 **Legal Comments**

6.1 The Council may refuse an application for the grant or renewal of a licence on one or more of the grounds specified below (Sch 3 para 12(1) LGMPA ('the Act'), as amended by reg 47 (4), Provision of Services Regulations 2009):

6.2 The mandatory grounds for refusal are as follows:

- (a) the applicant is under the age of 18;
- (b) that the applicant is for the time being disqualified from holding a licence;
- (c) that the person is a person other than a body corporate, who is not resident in the U.K. or was not resident in the U.K. throughout the six months preceding the date of the application;
- (d) that the applicant is a body corporate which is not incorporated in the U.K; or

- (e) that the applicant has been refused a sex establishment licence for the premises within the twelve months preceding the date of the application and the refusal has not been reversed on appeal.

6.3 The Committee has discretion to refuse the application if any of the following grounds for refusal apply under para. 12(3) of Schedule 3 of the Act.

The discretionary grounds for refusal are as follows:

- (a) the applicant is unsuitable to hold a licence by reason of having been convicted of an offence or for any other reason;
- (b) that if the licence were to be granted, renewed or transferred, the business to which it relates would be managed by or carried on for the benefit of a person other than the applicant who would have been refused a licence if they had applied themselves;
- (c) the number of sex establishments exceeds the number or is equal to the number which the council consider is appropriate for that locality; or
- (d) the grant or renewal of licence would be inappropriate because of:
  - i. the character of the relevant locality;
  - ii. the use to which the premises in the vicinity are put; or
  - iii. the layout, character or condition of the premises, vehicle, vessel or stall.

(In relation to premises, 'the relevant locality' means the locality where the premises are situated).

6.4 There is a right of appeal to the Magistrates' Court, as set out in para. 27 of Schedule 3 of the Act. An appeal against the decision of a Magistrates' Court may be brought to the Crown Court. In addition, the decision of the Committee may be appealed on established public law principles.

6.5 The Committee should only consider those comments within the letters of objection or made orally at the hearing which are relevant to the mandatory or discretionary grounds for refusal. Comments contained within the letters of objection or orally at the hearing which relate to moral grounds, for example, must not be considered by the Committee.

6.6 The Council's legal officer will give advice at the Hearing.

## 7.0 Finance Comments

7.1 There are no financial implications arising from this report. The cost arising from the licensing of Sexual Entertainment Venues is met from existing budgets.

## 8.0 Appendices

- Appendix 1** Copies of statements of undercover Metropolitan Police Officers – **Exempt Material**
- Appendix 2** CCTV Request Letters dated 17<sup>th</sup>, 18<sup>th</sup> and 20<sup>th</sup> October 2016
- Appendix 3** Copies of correspondence between the Licensing Authority and the Applicant's legal representative

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## **Report Addendum and Appendix 1**

The Report Addendum and Appendix 1 are exempt material - pursuant to paragraph 1 (information relating to any individual) paragraph 2 (information likely to reveal the identity of an individual) and paragraph 7 (information relating to any action taken or to be taken in connection with investigation or prosecution of crime) of Part 1 of Schedule 12A to the Local Government Act 1972.

This material is subject to a public interest test.

The factors in favour of disclosure are that there is a clear public interest in disclosure to promote transparency and accountability of public authorities, greater public awareness and understanding of the issues, and more effective public participation in decision making.

The factors to be weighed against such disclosure is the need to ensure that the public interest in law enforcement and the prosecution of offenders, and that the local area is adequately protected from illegal practices, is maintained. Such public interests are safeguarded by the role the Council plays on behalf of the public in bringing cases to court.

The public interest in withholding the material outweighs the public interest in disclosing it in order to preserve the anonymity of individuals and so as not to prejudice any investigation or prosecution of a crime.

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# Appendix 2

**Communities, Localities & Culture**  
Safer Communities

Whites Venues Limited  
Whites Gentleman's Club  
32-38 Leman Street  
London  
W1 8EW

Environmental Health and Trading Standards  
**David Tolley**

Licensing Section  
Admin Support Services  
John Onslow House  
1 Ewart Place  
London E3 5EQ

Tel

F

17<sup>th</sup> October 2016

My reference: TSS/LIC/SEV  
Your reference:

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

Dear Sirs,

**Local Governmental (Miscellaneous Provisions) Act 1982 as amended  
by the Policing and Crime Act 2009**

As you are aware, Condition 12 of the Tower Hamlets Standards Conditions on your licence state:

*Without prejudice to condition 13 below CCTV shall be installed to cover the inside and the outside of the Premises, covering all public areas, including private performance areas and booths, entrances and exits, but excluding the interior of toilets. All cameras must be maintained in working order. All cameras shall continually record whilst the Premises are open to the public and the recorded images shall be kept available for a minimum of 31 days. Recorded images shall be made available to an authorised officer together with facilities for viewing. The recordings for the preceding 2 days shall be made available immediately upon request. Recordings outside this period shall be made available on 24 hours' notice;*

Please retain and provide us with copies of all CCTV recordings from **Wednesday 28<sup>th</sup> September to Monday 10<sup>th</sup> October 2016**. Please make sure that recordings are viewable by date and time.

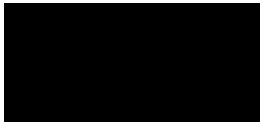
Please also provide copies of staff logs for these dates, including security, management and dancers in line with conditions 28 and 29:

*The Licensee shall keep a record of each performer, including their proper name and any aliases, and their residential address. With each record the Licensee shall keep a copy of a photographic form of identity and proof of address of the performer. With each record the Licensee shall keep a clear copy of an authorised document demonstrating that each Performer and each member of the staff is entitled to work within the UK. A clear copy of this record shall be kept on the Premises at all times and be made immediately available for inspection by authorised officers;*

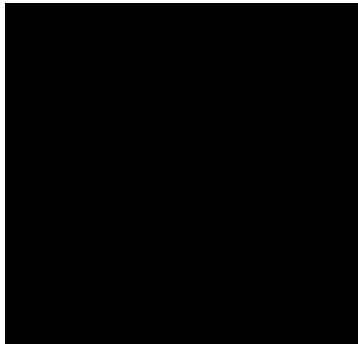
*On days when sexual entertainment is provided, the Licensee or their representative shall keep a record of those performers working at the Premises on that day in a daily record. The daily record shall be retained securely for at least 31 days and shall be made immediately available for inspection by authorised officers;*

We will be coming to collect these recordings on **Wednesday 19<sup>th</sup> October 2016.**

Yours sincerely,



**Andrew Heron  
Licensing Officer**



**Communities, Localities & Culture**  
Safer Communities

Whites Venues Limited  
Whites Gentleman's Club  
32-38 Lemn Street  
London  
W1 8EW

Environmental Health and Trading Standards  
**David Tolley**

Licensing Section  
Admin Support Services  
John Onslow House  
1 Ewart Place  
London E3 5EQ

18<sup>th</sup> October 2016



My reference: TSS/LIC/SEV  
Your reference:

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

Dear Sirs,

**Local Governmental (Miscellaneous Provisions) Act 1982 as amended  
by the Policing and Crime Act 2009**

I write further to this Licensing Authority's letter to you dated 17<sup>th</sup> October 2016, requesting the provision of certain records and CCTV recordings pursuant to conditions 12, 28 and 29 of your Sexual Entertainment Venue Licence under the above legislation.

This Licensing Authority requires you to provide these records/recordings in connection with an investigation relating to breaches of conditions related to your above mentioned Licence.

In respect of our request to retain and provide us with copies of all CCTV recordings from Wednesday 28<sup>th</sup> September to Monday 10<sup>th</sup> October 2016 I understand that this maybe be time consuming to produce in by Wednesday 19<sup>th</sup> October 2016.

Taking this in to consideration we are willing to accept recordings for your busy times (i.e. Thursday and Friday). Therefore please provide recordings for 29<sup>th</sup> and 30<sup>th</sup> September, and 6<sup>th</sup> and 7<sup>th</sup> October 2016 for us to collect on **Wednesday 19<sup>th</sup> October 2016**. The remaining recordings for 28<sup>th</sup> September 2016, 1-5<sup>th</sup> and 9<sup>th</sup>/10<sup>th</sup> October 2016 can be sent to us within **7 days of this letter**.

Yours sincerely,



**Andrew Heron**  
**Licensing Officer**

**Communities, Localities & Culture**  
Safer Communities

Whites Venues Limited  
Whites Gentleman's Club  
32-38 Leman Street  
London  
W1 8EW

Environmental Health and Trading Standards  
**David Tolley**

Licensing Section  
Admin Support Services  
John Onslow House  
1 Ewart Place  
London E3 5EQ

20<sup>th</sup> October 2016



My reference: TSS/LIC/SEV  
Your reference:

[www.towerhamlets.gov.uk](http://www.towerhamlets.gov.uk)

Dear Sirs,

**Local Governmental (Miscellaneous Provisions) Act 1982 as amended  
by the Policing and Crime Act 2009**

I write further to this Licensing Authority's letters to you dated 17<sup>th</sup> and 18<sup>th</sup> October 2016, requesting the provision of certain records and CCTV recordings pursuant to conditions 12, 28 and 29 of your Sexual Entertainment Venue Licence under the above legislation.

Your legal representative has intimated via email correspondence that you require the Authority to be more specific on dates and times required for the CCTV, due to "Data Protection requirements". We have already been more specific on which dates we require in the letter dated 18<sup>th</sup> October and have provided you with additional time to provide the remaining recordings.

A refusal to comply with the conditions of a SEV licence means that you would be committing a criminal offence. It is clear that in these circumstances the Data Protection Act 1998 does not operate to prevent you discharging your obligation to comply with your Licence.

As you should be aware, you are authorised by this Authority to operate as a sexual entertainment venue by a Licence issued pursuant to the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3, paragraph 8, which states:

'the appropriate authority may grant to any applicant, and from time to time renew, a licence under this Schedule for the use of any premises,



vehicle, vessel or stall specified in it for a sex establishment on such terms and conditions and subject to such restrictions as may be so specified’.

Condition 12 of the Licence stipulates as follows:

‘All cameras shall continually record whilst the Premises are open to the public and the recorded images shall be kept available for a minimum of 31 days. Recorded images shall be made available to an authorised officer together with facilities for viewing. The recordings for the preceding 2 days shall be made available immediately upon request. Recordings outside this period shall be made available on 24 hours’ notice.’

The term ‘authorised officer’ is defined to include ‘officers of the Borough Council’.

Paragraph 6(1) of Schedule 3 provides: ‘no person shall in any area in which this Schedule is in force use any premises... as a sex establishment except under and in accordance with the terms of a licence granted under this Schedule by the appropriate authority.’

Paragraph 20 of the same schedule further provides:

**‘20.—**

(1) A person who—

(a) knowingly uses, or knowingly causes or permits the use of, any premises, vehicle, vessel or stall contrary to paragraph 6 above; or [...]

(c) being the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence; or

(d) being the servant or agent of the holder of a licence under this Schedule, without reasonable excuse knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in the licence, shall be guilty of an offence.’

Paragraph 26(1) provides:

‘Where an offence under this Schedule committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of the offence.’

It follows from the above that you are required to comply with Condition 12 and to provide the requested recordings upon 24 hours’ notice.

You were expressly reminded of the contents of Condition 12 in the first letter dated 17<sup>th</sup> October, requesting the CCTV footage. You are not permitted

knowingly to continue to use the premises as a sex establishment unless you comply with the condition, and furthermore are committing an offence by knowingly contravening the requirements of that condition.

As you should already be well aware, the Data Protection Act 1998 ('DPA') does not prevent you from complying with this Authority's request. There are multiple provisions which make this abundantly clear. In particular:

- (i) You are authorised by paragraph 1(a) of Schedule 1 and paragraphs 1(2)(b) and 3 of Schedule 2 to obtain and to process data [which by section 1(1) includes disclosure, dissemination, transmission or making it available] where they are 'required to supply it...under any enactment', and/or 'The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract' (schedule 2, para 3). Condition 12 requires the CCTV data to be obtained under the 1982 Act, and imposes such a legal obligation. Furthermore, by paragraph 3 of Schedule 2, the data subject is not required to be informed of the information prescribed in paragraph 2 where (a) 'the provision of that information would involve a disproportionate effort' (as you claim applies here) or (b) 'the recording of the information to be contained in the data by, or the disclosure of the data by, the data controller is necessary for compliance with any legal obligation which the data controller is subject, other than an obligation imposed by contract'.
- (ii) By paragraph 10 of Schedule 3 to the Act and articles 1 and 2 of the Data Protection (Processing of Sensitive Personal Data) Order 2000/417, the processing of sensitive data is authorised without the explicit consent of the data subject *inter alia* where necessary 'in the substantial public interest' for (1) the prevention or detection of any unlawful act or failure to act; or (2) the protection of the public from dishonesty, malpractice, improper conduct, unfitness or incompetence, or mismanagement in the provision of services; and must necessarily be carried out without the explicit consent of the data subject so as not to prejudice those purposes or the discharge of the public functions concerned. Those conditions apply here, since there is a substantial public interest in ensuring that the premises are lawfully and properly run; the footage is required in order to check whether management of the premises was lawful and proper; and obtaining the explicit consent of all the individuals concerned would as you acknowledge be so difficult as to frustrate the discharge of the authority's functions and the detection or investigation of such unlawful conduct as may have occurred. Further and in any event, the condition in paragraph 6 of Schedule 3 is met to authorise processing of any sensitive data without explicit consent of the data subjects, insofar as the footage is required in connection with prospective legal proceedings concerning alleged unlawful or improper conduct that is subject to investigation. You will appreciate that it would be improper for this authority to provide details about ongoing inquiries.
- (iii) By section 10(2)(a) of the DPA, the data subject has no right to prevent processing where required under an enactment.

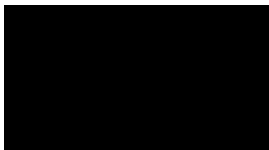
- (iv) The DPA expressly allows data such as CCTV to be collected and processed for the prevention and detection of crime, disclosed for that purpose, and in such circumstances the data subject has no right to be informed about or to consent to the processing of the data where, as here, that would frustrate the investigation (by section 27 and s.29, subsections (1), (2) and (3) of the 1998 Act).
- (v) Furthermore, by section 27 and s.31(1) and (2)(a)(iii) where, as here, the data is processed for the purpose of discharging statutory regulatory functions to protect the public against 'dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity' (including in this case your clients and their employees and performers), the subject information provisions (i.e. including the section 7 right of the data subject to be informed) are disapplied where this would, as here, prejudice the statutory functions.

If you do not comply with this Authority's requests forthwith, it will be considered a contumacious refusal to comply with the licensing condition and this Authority reserves the right to take enforcement action including seeking revocation of the Licence and prosecution for non-compliance.

We will come to the venue around **16:00hrs on Friday 21<sup>st</sup> October** to collect the recordings for 29<sup>th</sup> and 30<sup>th</sup> September, and 6<sup>th</sup> and 7<sup>th</sup> October, please make sure that someone is present. You then have until 25<sup>th</sup> October to provide the remaining recordings requested. If the recordings are not forthcoming, this will be considered as noncompliance by the Authority. Refusal to comply with the conditions of your SEV licence means that you are committing a criminal offence.

I look forward to prompt confirmation that the requested footage has been securely retained and will be made available in accordance with the timescale requested.

Yours sincerely,



**Andrew Heron**  
**Licensing Officer**

# Appendix 3

## Andrew Heron

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**From:** Andrew Heron  
**Sent:** 17 October 2016 11:43  
**To:** [REDACTED]  
**Subject:** White's Gentleman's Club, 32-38 Leman Street, E1  
**Attachments:** CCTV Retention Letter Whites.pdf

Dear Mr Dadds,

Please find attached copy correspondence to your client in relation to their CCTV. The letter will be shortly hand delivered to the premises.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House  
1 Ewart Place  
London E3 5EQ

[REDACTED]  
[REDACTED]  
[REDACTED]

## Andrew Heron

---

**From:** Andrew Heron  
**Sent:** 18 October 2016 15:48  
**To:** [REDACTED]  
**Subject:** RE: White's Gentleman's Club, 32-38 Leman Street, E1  
**Attachments:** CCTV Retention Letter Whites2.pdf  
**Importance:** High

Dear Mr Dadds,

Please see the attached follow up letter.

Please acknowledge receipt of this letter and confirm that recordings will be available for collection tomorrow.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House  
1 Ewart Place  
London E3 5EQ  
Te [REDACTED]  
[REDACTED]  
[REDACTED]

---

**From:** Andrew Heron  
**Sent:** 17 October 2016 11:43  
**To:** [REDACTED]  
**Subject:** White's Gentleman's Club, 32-38 Leman Street, E1

Dear Mr Dadds,

Please find attached copy correspondence to your client in relation to their CCTV. The letter will be shortly hand delivered to the premises.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House  
1 Ewart Place  
London E3 5EQ  
[REDACTED]  
[REDACTED]

## Andrew Heron

---

**From:** Louise Bailey [REDACTED]  
**Sent:** 18 October 2016 16:23  
**To:** Andrew Heron  
**Subject:** Whites Gentleman's Club, 32-38 Leman Street

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Mr Heron,

We acknowledge receipt of your two letters.

We have not as yet been able to contact our client and will now try again later and tomorrow. Providing the CCTV to you tomorrow is not likely to be achieved due to us being unable to get in contact with our client.

Mr Dadds is currently out of office but will continue trying to contact our client.

We would be grateful if you could please be more specific on dates and times required for the CCTV, due to data protection requirements.

We hope to get back to you tomorrow.

Kind regards

**Louise Bailey**  
**Dadds LLP Licensing Solicitors**  
Crescent House, 51 High St, Billericay, Essex CM12 9AX

[REDACTED]  
[REDACTED]  
[REDACTED]  
*Authorised and regulated by the Solicitors Regulation Authority – Registration No 550469*



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This firm does not accept service by way of email of court proceedings, other proceedings or formal notices of any kind on behalf of clients without specific prior written agreement.

## Andrew Heron

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**From:** Andrew Heron  
**Sent:** 20 October 2016 14:13  
**To:** [REDACTED]  
**Subject:** RE: White's Gentleman's Club, 32-38 Leman Street, E1  
**Attachments:** CCTV Retention Letter Whites3.pdf

Dear Mr Dadds,

Further to previous correspondence, please find a third letter that was hand-delivered to the venue earlier today.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House  
1 Ewart Place  
London E3 5EQ  
Tel: [REDACTED]  
[REDACTED]  
[REDACTED]

---

**From:** Andrew Heron  
**Sent:** 18 October 2016 15:48  
**To:** [REDACTED]  
**Subject:** RE: White's Gentleman's Club, 32-38 Leman Street, E1  
**Importance:** High

Dear Mr Dadds,

Please see the attached follow up letter.

Please acknowledge receipt of this letter and confirm that recordings will be available for collection tomorrow.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House  
1 Ewart Place  
London E3 5EQ  
[REDACTED]  
[REDACTED]



[REDACTED]

---

**From:** Andrew Heron  
**Sent:** 17 October 2016 11:43  
**To:** [REDACTED]  
**Subject:** White's Gentleman's Club, 32-38 Leman Street, E1

Dear Mr Dadds,

Please find attached copy correspondence to your client in relation to their CCTV. The letter will be shortly hand delivered to the premises.

Regards,

Andrew Heron  
Licensing Officer

Licensing Section  
London Borough of Tower Hamlets  
John Onslow House  
1 Ewart Place  
London E3 5EQ

[REDACTED]  
[REDACTED]  
[REDACTED]

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