

# Appendix 2



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



## 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:

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  
Positive 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

18<sup>th</sup> October 2016

Tel 020 7346 2900  
Fax 020 7346 1111  
Enquire 020 7346 1111  
Email a.tolley@towerhamlets.gov.uk

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 2 previous  
Beacon Awards



**Communities, Localities & Culture  
Safer Communities**

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

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 020 73 1 3805  
Fax 020 73 1 3805  
Enquire 1-800-40-4040  
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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.....

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\*\*\*\*\*

Working Together for a Better Tower Hamlets  
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.

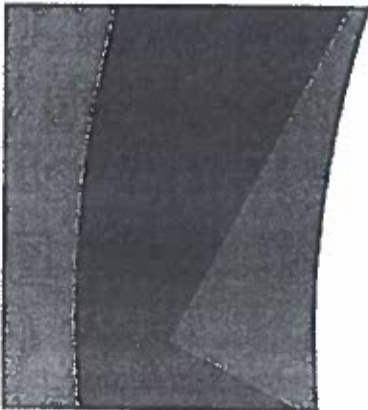
The content of the letter is self explanatory but for the avoidance of doubt, CCTV data will not be released by the operators named within the letter should officers attend the relevant premises later today.

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  
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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**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 Latchems 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

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.

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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**  
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