DATA PROTECTION ACT 1998

SUPERVISORY POWERS OF THE INFORMATION COMMISSIONER

ENFORCEMENT NOTICE

DATED 11 June 2013

To: Google Inc.

of: 1600 Ampitheatre Parkway
Mountain View
CA 94043
USA

1. Google Inc. is the data controller, as defined in section 1(1) of the Data Protection Act 1998 (the "Act"), in respect of the processing of personal data carried on by Google Inc. and is referred to in this notice as the "data controller". Section 4(4) of the Act provides that, subject to section 27(1) of the Act, it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.

2. The Act came into force on 1 March 2000 and repealed the Data Protection Act 1984 (the "1984 Act"). By virtue of section 6(1) of the Act, the office of Data Protection Registrar originally established by section 3(1)(a) of the 1984 Act became known as the Data Protection Commissioner. From 30 January 2001, by virtue of section 18(1) of the Freedom of Information Act 2000 the Data Protection Commissioner became known instead as the Information Commissioner (the "Commissioner").

3. On 14 May 2010, the Commissioner became aware that the data controller's Street View vehicles (adapted to collect publicly available Wi-Fi radio signals) had mistakenly collected payload data including email addresses, URLs and passwords relating to thousands of individuals. The data controller had intended to identify Wi-Fi networks and map their approximate location using the vehicle's GPS co-ordinates when the radio signal was

received. The aim was to improve the geographic location database for location-based mobile applications.

4. In view of the remedial action taken by the data controller, the Commissioner decided to accept an undertaking dated 18 November 2010 (the "undertaking") in which the data controller agreed (among other things) to "delete payload data that has been identified as having been collected by Google in the UK, to the extent that Google has no other outstanding legal obligation to retain such data."

5. The data controller wrote to the Commissioner's office on 27 July and 6 September 2012 admitting that they had accidentally retained four discs containing payload data collected in the UK. They were discovered in February 2012 when the data controller uncovered an irregularity in the quarantine disk inventory used to record the hard drives containing payload data. This irregularity had caused the drives to be omitted from the destruction process which the data controller had implemented after providing the undertaking. The Commissioner understands that the discs had been kept in quarantine cages and had not been accessed. However, the payload data should have been deleted.

6. On 5 October 2012, the data controller notified the Commissioner's office that a fifth disc which may contain UK data had been discovered although some of the data held on the disc had not been collected in the UK so it is outside the Commissioner's jurisdiction.

7. The Commissioner has considered a report on the issues arising out of the correspondence referred to in paragraphs 5 and 6 above, in addition to the further correspondence entered into with the data controller concerning this matter. The Commissioner has further considered the data controller's compliance with the provisions of the Act in light of this matter. The relevant provision of the Act is the Fifth Data Protection Principle.

8. The Fifth Data Protection Principle provides, at Part I of Schedule 1 to the Act, that:

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

9. The Commissioner is of the view that, in respect of the retention of payload data collected by Street View vehicles in the UK, the data controller has contravened the Fifth Data Protection Principle

in that they did not erase the payload data referred to in paragraph 5 above.

10. The data controller has given an explanation for their failure to erase the payload data referred to in paragraph 5 above. However, the Commissioner is still concerned that other discs holding payload data may have been overlooked during the destruction process.

11. The Commissioner considered, as he is required to do under section 40(2) of the Act when deciding whether to serve an Enforcement Notice, whether any contravention has caused or is likely to cause any person damage or distress. The Commissioner took the view that the likelihood of distress is self-evident. Individuals whose personal data has been collected by the data controller are likely to suffer worry and anxiety on account of the fact that other discs holding payload data may not have been destroyed.

In view of the matters referred to above the Commissioner hereby gives notice that, in exercise of his powers under section 40 of the Act, he requires that:

(1) Within 35 days of the date of this notice the data controller shall securely destroy any personal data within the meaning of the Data Protection Act 1998 held on vehicle discs and collected in the UK using Street View vehicles (to the extent that the data controller has no other legal obligations to retain such data) and,

(2) If the data controller subsequently discovers a Street View vehicle disk holding personal data and collected in the UK it shall promptly inform the Information Commissioner.

Right of Appeal

There is a right of appeal against this Notice to the First-tier Tribunal (Information Rights), part of the General Regulatory Chamber. Information about appeals is set out in the attached Annex 1.

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Notice is served. If the Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Dated the 11th day of June 2013

Signed: ……....

David Smith
Deputy Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

ANNEX 1

THE DATA PROTECTION ACT 1998
(PART V, SECTION 40)

RIGHTS OF APPEAL AGAINST DECISIONS OF THE COMMISSIONER

1. Section 48 of the Data Protection Act 1998 gives any person upon whom an enforcement notice or an information notice has been served a right of appeal to the First-tier Tribunal (General Regulatory Chamber) (the "Tribunal") against the notice.

2. If you decide to appeal and if the Tribunal considers:

   a) that the notice against which the appeal is brought is not in accordance with the law; or

   b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

   the Tribunal will allow the appeal or substitute such other decision as could have been made by the Commissioner. In any other case the Tribunal will dismiss the appeal.

3. You may bring an appeal by serving a notice of appeal on the Tribunal at the following address:

   GRC & GRP Tribunals
   PO Box 9300
   Arnhem House
   31 Waterloo Way
   Leicester
   LE1 8DJ

   a) The notice of appeal should be served on the Tribunal within 28 days of the date on which notice of the Commissioner's decision was served on or given to you.

   b) If your notice of appeal is late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

   c) If you send your notice of appeal by post to the Tribunal, either in a registered letter or by the recorded delivery service, it will be treated as having been served on the

Tribunal on the date on which it is received for dispatch by the Post Office.

4. The notice of appeal should state:

a) your name and address;
b) the decision which you are disputing and the date on which the notice relating to such decision was served on or given to you;
c) the grounds of your appeal;
d) whether you consider that you are likely to wish a hearing to be held by the Tribunal or not;
e) if you have exceeded the 28 day time limit mentioned above the special circumstances which you consider justify the acceptance of your notice of appeal by the Tribunal; and
f) an address for service of notices and other documents on you.

In addition, a notice of appeal may include a request for an early hearing of the appeal and the reasons for that request.

5. By virtue of section 40(7), an enforcement notice may not require any of the provisions of the notice to be complied with before the end of the period in which an appeal can be brought and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

However, section 40(7) does not apply where the notice contains a statement that the Commissioner considers that the notice should be complied with as a matter of urgency.

Section 48(3) provides that where an enforcement notice contains a statement that the notice should be complied with as a matter of urgency then, whether or not you intend to appeal against the notice, you may appeal against –

(a) the Commissioner's decision to include the statement in the notice, or
(b) the effect of the inclusion of the statement as respects any part of the notice.

6. Before deciding whether or not to appeal you may wish to consult your solicitor or another adviser. At the hearing of an appeal a party may conduct his case himself or may be represented by any person whom he may appoint for that purpose.

7. The statutory provisions concerning appeals to the First-tier Tribunal (General Regulatory Chamber) are contained in sections 48 and 49 of, and Schedule 6 to, the Data Protection Act 1998, and the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 Statutory Instrument 2009 No. 1976 (L.20).