



Home Office

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05 JUN 2018

Dear Paul,

BIOMETRICS COMMISSIONER'S ANNUAL REPORT

I have been asked to reply to your letter of 26 March to the Home Secretary about your Annual Report on the Retention and Use of Biometric Material. I am very grateful for the report, which provides valuable analysis and assurance on how the police are using sensitive biometric material.

I welcome your finding (Chapter 3, Paragraph 24) that current police use largely complies with the legislation, and the police are working hard to ensure their processes follow its requirements. You note, however, a number of new challenges identified since your last report, in particular highlighting the over-use of the Criminal Procedure and Investigations Act (CPIA) exemption.

The use of second generation biometrics

You comment that the 'use of these second generation biometrics is not currently governed by any specific legislation and only by regulations drawn up by the police themselves such as the Management of Police Information principles (MOPI) drawn up by the College of Policing'.

We are planning improvements to the governance of police use of custody images, facial recognition technology and new biometric modalities, which we have discussed. At this stage, we are planning to create a Board including the regulators with an interest in facial recognition systems (namely yourself, the Surveillance Camera Commissioner, Forensic Science Regulator and the Information Commissioner) as well as police representatives. This would have the advantages for policing of allowing for high-level and co-ordinated representation of police operational interests; simplifying interaction with the regulators; and reducing duplication of effort by different forces.

It should also provide you and the other regulators with greater assurance that policing are engaging with their guidance, and simplify interaction with forces. It can help ensure the wider public perspective is systematically considered via formal channels.

The report says (Chapter 8, Paragraph 9) that 'whether these changes [from the Custody Image Review] are sufficient in the face of a potential legal review remains to be seen'. It is worth noting that we expect the new platform being delivered by the National Law Enforcement Data Programme (NLEDP) to enable a considerably more flexible approach to automatic deletion than is possible now.

Legal compliance issues

At Chapter 3 (Paragraph 28) the report says 'the issues that remain outstanding concern the drafting and updating of guidance to police forces on the meaning and correct application of PoFA. These were discussed at length in my last Annual Report and in my predecessor's last two Annual Reports but still remain to be dealt with. They are as follows in order of priority:

- Guidance on the use of 'Under Investigation' markers on the PNC following a match against the national DNA and fingerprint databases without a corresponding arrest;
- Guidance on re-taking fingerprints and DNA samples from an arrested person;
- Guidance on the application of the Criminal Procedure and Investigations Act (1996) (CPIA) exception in respect of DNA samples; and,
- Matters arising as a consequence of wrongful arrests and mistaken identity.'

The Home Office is taking this matter to the Forensic Information National Database Strategy Board (FINDS-SB). I have also asked officials to consider how to expedite updates to guidance as a matter of routine.

CPIA Exemption

At Chapter 6 (Paragraph 2) the report argues that the overuse of the CPIA exemption 'would undermine the central element of PoFA on DNA sample retention'. Officials are also raising this with the FINDS-SB with the aim of covering it in further guidance to Forces.

Fingerprints/Footwear impressions

At Chapter 2 (Paragraph 1) the report states that fingerprints and footwear have been added to the remit of the FINDS-SB. At Chapter 3 (Para 14) the report states 'that there is not an agreed national policy or even approach being applied to the retention of footwear impressions by all police forces in England and Wales'.

We have not been able to add footwear impressions to the remit, but are exploring other ways of improving their governance.

The meaning of indefinite (biometric) retention

At Chapter 3 (Paragraph 9) of your report you say that 'the Biometrics and Forensics Ethics Group (BFEG) has recommended to the Home Office that 'indefinite retention' should in practice mean retention until the person reaches 100 years of age'. Officials are discussions with policing colleagues on how best to take this issue forward.

MOD access to police fingerprints database

While the issue you identify at Chapter 3 (paragraphs 64 to 76) of the report is an operational matter for the police and MOD, I am hopeful that agreement can be reached on the governance arrangements covering activity which is operationally useful in protecting the public and the armed forces from a risk of terrorism and which, as you note, seems to be in the public interest.

Other future challenges

Your report concludes by describing four challenges that you see will arise as a result of new technologies. These are: the development of second generation biometrics; the development of new, multi user platforms and the searching of biometric data between organisations which may be subject to different legislative and governance regimes; the emergence of second generation algorithms and machines learning (and the Black Box Problem); and the development of sociometrics.

I have addressed some of the specific challenges you identified above, particularly in respect of the development of second generation biometrics. It is also worth noting that the Home Office Biometrics Programme carries out Privacy Impact Assessments for all of their areas.

I agree that these new technologies can bring both benefits and risks. This requires balancing the more effective prevention and detection of crime and protection of the public from terrorism, against the ethical, privacy and proportionality considerations that must go alongside the deployment of any new biometrics technology. The Home Office will be publishing a Biometrics Strategy in June which will highlight our commitment to building public trust in our use of biometric technologies. The new Data Protection Bill and the General Data Protection Regulation will also strengthen requirements to consider privacy implications when using new technologies, and mandate the use of Data Protection Impact Assessments.

Thank you for this comprehensive and carefully considered report. I hope I have shown in this response that we are addressing the issues you have raised. I will be placing a copy of this response in the Commons and Lords Libraries and publishing it on the gov.uk website.



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