Facial Recognition Inquiry

I refer to your letter of 4 October 2019 regarding the above and welcome the opportunity to provide information relating to that contained within my previous correspondence of 12 September to update the Justice Sub-Committee on how Police Scotland makes use of such technology.

The Bichard enquiry, instigated following the Soham murders in 2002, called for fundamental changes and improvements to police information management structures and capabilities, particularly in relation to how the police service shared information.

In response, the Police National Database (PND) was developed and is managed by the Home Office (HO). PND went live in Scotland in 2011 as an intelligence data-sharing system; it is predominantly a repository for copies of records which are held locally by UK forces. The basic function of PND is to assist law enforcement agencies with the prevention and detection of crime.

Prior to its creation in 2011, the then Association of Chief Police Officers (Scotland), which represented all legacy Scottish Police Forces, elected to have the entire data set of the Scottish Criminal History System (CHS), including criminal record images and intelligence held on the Scottish Intelligence Database (SID), extracted and uploaded onto PND. The facial matching functionality within PND was added on 28 March 2014.

It is important to note that data held by Police Scotland is weeded from PND in line with Police Scotland’s weeding and retention policy (the CHS weeding and retention policy is publicly available via the internet). Weeding occurs during automatic upload/updates to PND of data from SID and CHS (including images).

The HO has indicated that no privacy impact was conducted on PND after 2013, with the facial matching facility added in 2014. A code of practice on the operation and use of PND was published in March 2010, this includes consideration around data protection and management of information, lawfulness, accountability and security of information held on PND.

To avoid conflation with other aspects of facial recognition it should be clear that Police Scotland are not currently using, trialling or testing any live time facial recognition software.

In 2015, Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS) carried out an audit and assurance review on the use of the facial search functionality on
PND. HMICS determined that UK law enforcement agencies were making proportionate and necessary use of this facility.

Were such technology to be considered for future use, Police Scotland is cognisant of recent judgements on the use of Live Facial Recognition software; (R (ex.p. Edward Bridges) –v- Chief Constable of South Wales Police, Secretary of State for the Home Department, Information Commissioner and Surveillance Camera Commissioner [2019] EWHC 2341 (Admin.) (4th September 2019). In this case the use of Live Facial Recognition was found by the Court to have:

“... struck a fair balance and not to have been disproportionate. It had been deployed in an open and transparent way with very significant public engagement”.

Furthermore the evaluation of Live Facial Recognition trials in London and Wales (above finding) by the Biometrics and Forensics Ethics Group concluded that there had been a “lack of independent oversight and governance of the use of live facial recognition” in these trials and recommended that, pending the development of a legislative framework, police trials should comply with the “usual standards of experimental trials, including rigorous and ethical scientific design”. The Biometrics and Forensics Ethics Group intimated a number of ethical principles could be used to inform such deployments and frame policy-making.

Fundamentally, opportunities exist to use new technologies, such as facial recognition, to enhance Police and Law enforcement capabilities. Police Scotland has an existing capability to carry out retrospective facial matching for the prevention and detection of crime through PND. Police Scotland’s position remains, as per our previous correspondence; we have no current plans to introduce Live Facial Recognition software or any other new biometric technology.

Prior to considering the use of a new technology, such as Live Facial Recognition, Police Scotland is aware of our obligation under the General Data Protection Regulations and the Data Protection Act 2018. Furthermore we recognise that we would be obliged to implement appropriate technical and organisational measures to demonstrate that we have considered and integrated data protection principles prior to the use of such technology.

In addition, Police Scotland takes cognisance of the Information Commissioner’s Office (ICO) investigation and opinion into the use of Live Facial Recognition pilots conducted by South Wales Police and the Metropolitan Police Service published on 31 October 2019. ICO has opined that a statutory, or non-statutory, code of practice governing the use of Live Facial Recognition for law enforcement purposes should be considered.

Technological advancements and associated offending have presented significant challenges to policing and police and law enforcement agencies must be able to scope and embrace such advances to help prevent and detect crime and safeguard the most vulnerable in our communities. The prevalence of online offending and the growth of digital evidence has increased exponentially over recent years. It is therefore incumbent on Police Scotland to explore the use of all available investigative techniques, including the use of facial recognition technology.
To ensure Police Scotland operates efficiently and effectively it is vital that we continue to explore, scrutinise and adapt by embracing new technologies (including facial recognition) and, subject to regulatory parameters, invest for the long term.

Police Scotland welcomes the proposals to establish a Scottish Biometrics Commissioner and underpinning Code of Practice. At this time await the decision on the Bill currently before Parliament before proceeding with any proposed use of such biometric technology.

I trust the foregoing is of assistance and provides reassurance to you and members of the Justice Sub-Committee on Policing.

Gillian MacDonal
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