



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

Ken Macdonald
Head of ICO Regions
Information Commissioner's Office -
Scotland

All correspondence c/o:
Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh, EH99 1SP
Tel: 0131 348 5195
justicecommittee@parliament.scot

By e-mail

26 April 2019

Dear Mr Macdonald

Police Scotland's interim vulnerable persons database

I write regarding recent correspondence that the Justice Committee received from Police Scotland and the Open Rights Group. This correspondence provided conflicting views on whether Police Scotland's interim vulnerable persons database complies with data protection legislation. Both letters are attached for reference.

In its letter of 8 April, Police Scotland state that "... the iVPD complies with relevant data protection legislation". However, in its letter of 16 April, the Open Rights Group refer to a Freedom of Information (FOI) request that it submitted in February 2019 to Police Scotland for information regarding the interim vulnerable persons database. Following the FOI reply, the Open Rights Group maintain that there are still some continuing concerns and considers that it is premature to refer to the iVPD as being in "compliance with relevant data protection legislation".

In its response to the FOI request, Police Scotland confirmed that there had not been any official communication from the Information Commissioner's Office in relation to the iVPD.

Given the conflicting statements on whether the iVPD complies with relevant data protection legislation, I would appreciate your views on the following:

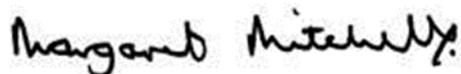
- whether the iVPD satisfies the General Data Protection Regulation (GDPR)
- whether Police Scotland's DPIA sufficiently covers the issue of consent
- whether consent is retrospective

- whether Police Scotland is required to review its existing consents and consent mechanisms to ensure that they meet the GDPR standard
- whether Police Scotland is required to contact all of the individuals whose details are stored on the iVPD to inform them of their right to give consent to their details being shared with third parties as well as their right to withdraw that consent
- whether Police Scotland adequately publicise these rights and have made it sufficiently easy for individuals to contact them to withdraw their consent
- whether Police Scotland have put the necessary arrangements in place to inform people that their details are stored on its iVPD and that they are able to request access to that data, and
- whether Police Scotland have put suitable arrangements in place to ensure that people are aware of their right to object, either verbally or in writing.

Finally, the GDPR indicates that an organisation must be clear about its purposes for processing personal data and that this should be recorded as part of its documentation obligations. In its response to the FOI request, Police Scotland indicate that the iVPD contains 487,887 individual entries under the “No Concern / Not Applicable” category. I would appreciate your view on Police Scotland storing personal data under this category.

I look forward to your response.

Best wishes

A handwritten signature in black ink that reads "Margaret Mitchell". The signature is written in a cursive, slightly slanted style.

Margaret Mitchell MSP
Convener, Justice Committee

Encl.

Letter from Police Scotland

Date: 8 April 2019

Your Ref:

Our Ref: 1109/0319

Margaret Mitchell MSP
Convener Justice Committee
Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh
EH99 1SP

Gillian MacDonald
ACC Chief Constable
Tulliallan Castle
FK10 4BE
01259 733163
ACCCrimeandProtection@scotland.pnn.police.uk

Dear Convener

POLICE SCOTLAND'S INTERIM VULNERABLE PERSONS DATABASE

I refer to your letter of 15 March 2019, and previous correspondence with the Justice Committee regarding Police Scotland's Interim Vulnerable Persons Database (iVPD). With regard to the specific questions asked in your most recent letter, I trust the following information will be helpful.

iVPD Weeding and Retention

A Weeding & Retention Policy for the iVPD was approved in January 2018; this ensures that personal information is not kept longer than necessary in compliance with data protection legislation. The associated technical solution was fully implemented on 4 February 2019, when weeding of the iVPD commenced. I can confirm the iVPD complies with relevant data protection legislation.

Information Sharing

Police Scotland relies on a number of lawful bases for sharing personal information, which are compliant with the new legislation. These include provisions within the Police and Fire Reform (Scotland) Act 2012, which outline the purpose of policing in Scotland as being, inter alia, 'to improve the safety and wellbeing of persons, localities and communities'.

Police Scotland's arrived at position, based on extensive legal review and advice, is that information sharing with non-statutory partners should be predicated on consent. This works in practice by Police Scotland Divisional Concern Hubs assessing and sharing relevant, necessary, justifiable and proportionate information with partners to enable appropriate interventions and support in compliance with statutory requirements and national guidance.

Police Scotland's approach to the collection and sharing of information with partner agencies, including 3rd sector, was fully documented and submitted to the Information Commissioner's Office (ICO) by way of a Data Protection Impact Assessment (DPIA). This position was also shared with the Scottish Government;

both of whom Police Scotland maintains regular dialogue with, as well as other criminal justice partners.

Following feedback and discussion with the ICO regarding the processes outlined in the DPIA, and a visit to the Edinburgh Division Concern Hub by staff from the ICO, Police Scotland is content the current force policy, i.e. sharing of information with non-statutory partners on the basis of consent, remains the most appropriate way of ensuring compliance with the new legislation and protecting the rights of the individuals concerned. That said, Police Scotland continues to work closely with central and local government departments, inspecting authorities and other partners to identify and consider what options could be explored / developed (such as amendment(s) to the Victims & Witnesses (S) Act 2014, revised information sharing arrangements, commissioned based approaches to service / support) relative to individuals assessed as being on a pathway to harm, but who fall below thresholds for child or adult protection measures.

All individuals have the right to be informed about the collection and use of their personal data. This means that on attending an incident where police are required to record personal information on the iVPD, officers must inform the member of the public that information from the incident will be recorded and assessed on police systems and that Police Scotland may share relevant information with appropriate statutory agencies, who work in partnership with us to help keep people safe.

Individuals are also informed that, with their consent, their information can be shared with local 3rd sector support and advocacy services. In order to do this, Police Scotland is required to record an individual's explicit consent for this sharing to take place. If a person consents, Police Scotland will pass their name, address, date of birth, other relevant information and details of the incident to the 3rd sector organisation(s) concerned.

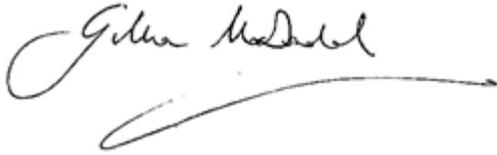
Individuals also have the right to withdraw consent at any time in relation to the sharing of their personal information with 3rd sector support and advocacy services. Police Scotland shares information as soon as reasonably practicable, therefore individuals have a limited time in which to withdraw their consent before this will have taken place. This does not, however affect an individual's right to withdraw consent at any time. The process for withdrawal of consent can be completed via web access and submission of a form noting such of withdrawal, or via direct contact and a request being made of a police officer or member of police staff.

Also available is a dedicated telephone number, with an answer machine facility, where individuals can leave a message informing withdrawal of their consent. The form is thereafter completed by an officer. Where consent is provided for sharing of information with a 3rd partner or advocacy agency, the individual will be provided with a withdrawal information card which will provide the above details regarding the withdrawal process.

The publication of privacy notices is a mandatory requirement under the new data protection legislation; members of the public are advised that Police Scotland's privacy notices are available to view on the Police Scotland website. This provides individuals with ready access to clear and understandable material which sets out how their personal information is processed.

Finally, Police Scotland's overall compliance with the provisions of the new data protection legislation is monitored through the work of the Data Protection Reform Project Board, by Police Scotland's Data Protection Officer and regular interaction with the ICO. Reports on progress have been submitted to the Scottish Police Authority and are available on the SPA's website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gillian MacDonald', with a long, sweeping horizontal flourish extending to the right.

Gillian MacDonald
Assistant Chief Constable

Letter from the Open Rights Group

16 April 2019

Open Rights Group submission to Justice Committee on Police Scotland's interim Vulnerable Person's Database

Open Rights Group are grateful for the opportunity to provide evidence to the Justice Committee on the Committee's recent correspondence with Police Scotland's interim Vulnerable Person's Database (iVPD). Open Rights Group have been concerned about the iVPD since it was first reported on by the BBC on 26 September 2017¹. It appeared at the time as a well meaning attempt to seek early intervention but it was undermined by the lack of clear weeding and retention guidelines, and without a clear data collection practice that had led to the collection and retention of irrelevant or Not Applicable information. These concerns have remained throughout Open Rights Group's consideration of the issues.

Open Rights Group wrote to Police Scotland under the Freedom of Information (Scotland) Act to request information in February 2018, attached as annex 1 regarding:

- The number of entries currently on the iVPD.
- The categories the entries fall under.
- The statutory basis for the iVPD
- Privacy Impact Assessments carried out on the iVPD.
- Official communication from the ICO.

May 2018 - Freedom of Information Request

In the May 2018 response Police Scotland confirmed that there were currently 913,122 unique nominals recorded on the iVPD. The entries that make up these nominals include expected categories such as Child Concern, Domestic Abuse and Youth Offending, but also contained information categories as "No concern / Not applicable".

This category raised concerns for Open Rights Group as there is a strong requirement under data protection standards for data controllers, Police Scotland in this case, to only collect, process, and retain information that is "adequate, relevant, and limited to what is necessary", known as data minimisation². A category of information that is by definition Not Applicable would suggest a failure to adhere to that principle. It was vital to Open Rights Group that this category was removed entirely as a data collection field, and the data contained assessed for its relevance and re-allocated if the information is relevant and necessary for the task.

Further, the request revealed that Police Scotland had not received any official communication from the Information Commissioner's Office about the iVPD. While the ICO may have been informally advising Police Scotland about the compliance with data protection law as it was reported, it is a source of concern that despite the lack of an active weeding and retention policy, a privacy impact assessment, and the collection of information that is of "No Concern / Not Applicable" that the ICO had not made an official notice to Police Scotland.

February 2019 - Freedom of Information Request

Open Rights Group noted correspondence between the Justice Committee and Police Scotland on the iVPD over the course of several months. The most pertinent update from Police Scotland is from a letter dated 12 December 2018 from Police Scotland to the Convenor which stated that a weeding upgrade will go live on 4 February 2019. A recent letter from 8 April 2019 confirmed that a weeding and retention operation began on 4 February 2019. The letter stated that the iVPD now “complies with relevant data protection legislation”³.

Open Rights Group submitted a new request under the Freedom of Information (Scotland) Act 2002 to confirm these changes. The request was made for information regarding the iVPD as of 13 February 2019, 9 days after the weeding and retention operation began:

- The number of unique entries on the iVPD?
- A breakdown of the categories, and numbers in each category.
- A copy of the weeding and retention policy.
- Any official communication received from the Information Commissioner’s Office.
- A copy of the Privacy Impact Assessment of the iVPD?

The response from Police Scotland, Annex 2, was received on 5 April 2019. The information provided was accurate as of 28 February 2019, 24 days after the weeding and retention operation began.

The response confirmed that there were 723,282 unique nominals recorded on the iVPD. A reduction of 189,840. This is a welcome development to see the weeding and retention operation beginning. However, Open Rights Group maintains that there are still some continuing concerns and feel it is premature to refer to the iVPD as being in “compliance with relevant data protection legislation”.

No Concern / Not Applicable - the second largest category

Due to the recording facility Police Scotland use the category breakdown includes recording multiple incidents, so there may be two entries in two categories relating to the same incident, meaning the total number, when broken down by category rises to 2,062,572.

The same categories from the 2018 freedom of information request remained, Child Concern was the highest category, but amongst the other categories the leading category by some distance is “No Concern / Not Applicable” with 487,887. That there are any entries in No Concern / Not Applicable is of concern to Open Rights Group. As stated before, by definition these entries do not conform with the standard of data minimisation. This does not strike Open Rights Group as a system in compliance with data protection legislation.

The existence of a weeding and deletion policy is encouraging. With retention periods corresponding to different categories the retention periods would appear to yield closely to retaining data for only as long as is strictly necessary. However, further questions are raised with the compliance of data protection legislation in

Police Scotland's response to the request for access to the data privacy impact assessment.

In the response Police Scotland admit that there is no data privacy impact assessment (DPIA) for the iVPD. While a DPIA is not mandatory for all processing operations. It is mandatory for processing that is likely to result in a high risk to individuals⁴. Considering the previous reporting from the BBC on the "shock" that some had felt at being added to the iVPD without their knowledge, it would seem appropriate and at a minimum good practice for Police Scotland to produce a DPIA for the iVPD. It is concerning that there is not a DPIA to hand. It also raises questions as to what the status of the DPIA that the ICO make reference to in the letter of 7 December to the Convenor.

Finally, the continued lack of action from the ICO in any official capacity is perplexing. This is a situation that is clearly requiring some attention to be paid, a large number of individuals in Scotland have had their personal data added to a database shared with public authorities across Scotland without their knowledge, and until recently without any way of systematically removing individuals that were no longer of relevance, some of which were of no relevance to begin with. It would have been expected that Police Scotland's lack of action on this area would have merited consideration from the Information Commissioner's Office, or even a letter setting out the expected actions for Police Scotland to take.

The merits of the iVPD system lie in creating better links between important services and those who need them. These links are of no use if they are done without proper communication, and clear safeguards against creating a large unwieldy database. Open Rights Group understands what Police Scotland were trying to achieve and that the database was never supposed to be as permanent as it has become. However, it was clearly an oversight to begin building a database without clear policies in place, and meaning that the iVPD was in breach of data protection laws. The current actions suggest a path towards compliance but Open Rights Group would disagree with the suggestion that iVPD is now in compliance with relevant data protection legislation.

Matthew Rice,
Open Rights Group

¹ More than 400,000 Scots labelled 'vulnerable' on police database, 26 September 2017, <http://www.bbc.co.uk/news/uk-scotland-41335762> .

² Information Commissioner's Office, Principle (c) : Data minimisation, <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/principles/data-minimisation/>

³ Letter from Police Scotland to The Convenor, 8 April 2019, https://www.parliament.scot/S5_JusticeCommittee/General%20Documents/20190407PStoMMiVPD.pdf

⁴ Information Commissioner's Office, Data Protection Impact Assessments, <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-impact-assessments/>

ANNEXE 1 – POLICE SCOTLAND RESPONSE TO OPEN RIGHTS GROUP FREEDOM OF INFORMATION REQUEST FROM MAY 2018

OFFICIAL

Our Ref: IM-FOI-2018-0521

Date: 22 May 2018



FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response.

I am writing to request from you information relating to the interim Vulnerable Person's Database (iVPD). Specifically:

**- The number of individual entries currently on the Database
CLARIFICATIONS - I would like to receive the unique nominals, and a
breakdown of the categories those nominals would be part of.**

I can confirm as of 10 May 2018 there were 913,122 unique nominals recorded on the interim Vulnerable Persons Database (iVPD).

Categories

iVPD is an incident based Database that allows officers to record concerns that may be a risk to a person's current or future wellbeing. Concerns are recorded under the following categories:

- Child Concern
- Domestic Abuse
- Adult concern/Domestic Abuse
- Adult Concern
- Youth Offending
- No concern/Not applicable
- Not Known

Police Scotland has a weeding and retention policy for iVPD with the technical development of the associated ICT solution underway. Once live the number of unique nominals on the database will significantly reduce.

- The statutory basis for Police Scotland to operate the interim Vulnerable Person's Database.

The main purpose of policing as defined in the Police and Fire Reform (Scotland) Act 2012 is to enable the police to improve the safety and wellbeing of people and communities across Scotland. When we identify individuals who are or are

perceived to be experiencing adverse circumstances which may impact on their current or future wellbeing we work with our partners to ensure that those individuals get the support they need from the appropriate agency. The iVPD is designed to assist Police Scotland to recognise and record a range of concerns regarding individuals and to ensure that opportunities for early intervention and prevention are maximised. The identification of concerns at an early stage better enables Police Scotland and partners to promote, support and safeguard the wellbeing of individuals and communities and to help keep people safe. It provides an opportunity to provide support at an earlier stage where appropriate to do so and take preventative action to stop low level concerns developing into crisis situations.

- Policies relating to the interim Vulnerable Person's Database, in particular:

Weeding and retention policies.

Data sharing agreements with other bodies (public or private).

Memorandum of Understanding relating to iVPD with other bodies (public or private).

A list of, rather than access to, other relevant policies for iVPD would be appreciated.

- Weeding and Retention
- Data sharing agreements with other bodies (public or private).
- Memorandum of Understanding

I can confirm there is a Weeding and Retention policy for iVPD. There are no Data Sharing agreements or Memorandum of Understandings specifically for the iVPD system.

- A list of rather than access to other relevant policies for iVPD:

The following policy relates specifically to the iVPD system:

- iVPD Rules, Conventions and Data input standards

- Training material for operating and access to the Vulnerable Person's Database.

There are four on line training packages as follows:

- Search and View Module
- Create and Update Module
- Vulnerability Module
- Domestic Abuse Questions Module

There are two half day courses:

- Supervisors Module
- Public Protection Unit Module

- Privacy Impact Assessments carried out on the interim Vulnerable Person's Database.

No Privacy Impact Assessments have been completed relating to iVPD. The iVPD project was initiated in 2013 with a full governance structure that oversaw the rollout of the new database.

- Any official communication from the Information Commissioner's Office in relation to the iVPD.

I can confirm that there has been no official communication from the Information Commissioners Office in relation to iVPD, therefore section 17 of the above act applies, notice that information is not held.

Should you require any further assistance please contact Information Management - Edinburgh on 0131 311 3901 quoting the reference number given.

If you are dissatisfied with the way in which Police Scotland has dealt with your request, you are entitled, in the first instance, to request a review of our actions and decisions. Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to foi@scotland.pnn.police.uk or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision.

You can apply online, by email to enquiries@itspublicknowledge.info or by post to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Office of the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information Disclosure Log in seven days' time.

ANNEXE 2 – POLICE SCOTLAND RESPONSE TO OPEN RIGHTS GROUP
FREEDOM OF INFORMATION REQUEST FROM FEBRUARY 2019

Our Ref: IM-FOI-2019-0413

Date: 5 April 2019

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response.

How many unique nominals are currently (as of 13 February 2019) on the interim Vulnerable Person's Database?

As at 28 February 2019 there are 723,282 unique nominals recorded on the interim Vulnerable Person's Database.

A breakdown of the categories, and numbers in each category.

Incident Nominal Vulnerable Person Type	Count
Adult Concern	396 017
Domestic Abuse	285 760
Child Concern	736 818
Adult Concern\Domestic Abuse	26 969
No Concern\Not Applicable	487 887
Youth Offending	128 987
Hate Concern	0
Not Known	134
Total Incident Nominals	2 062 572

All statistics are provisional and should be treated as management information.

All data have been extracted from Police Scotland internal systems and are correct as at 28th February 2019.

1 - Incident nominals are unique nominals per incident. As a consequence if a nominal appears on multiple incidents, they will be counted per incident they appear within.

I would like to request a copy of the weeding and retention policy. In particular information on:

- **Length of time an entry should remain on iVPD before assessing whether it should be deleted or weeded?**
- **Type of category of crime or offence that should remain on iVPD?**

Please see the attached document named Appendix 1, which provides the retention rules in place for iVPD.

Any official communication received from the Information Commissioner's Office relating to:

- **The operation of the iVPD**
- **The weeding and retention policy of the iVPD**
- **The responsibility in relation to the iVPD under the Data Protection Act 2018.**

In terms of Section 17 of the Act, this letter represents a formal notice that information is not held.

A copy of the Privacy Impact Assessment of the iVPD?

Police Scotland does not have a DPIA specific to iVPD therefore in terms of Section 17 of the Act, this letter represents a formal notice that information is not held.

Should you require any further assistance please contact Information Management - Edinburgh on 0131 311 3901 quoting the reference number given.

If you are dissatisfied with the way in which Police Scotland has dealt with your request, you are entitled, in the first instance, to request a review of our actions and decisions.

Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to foi@scotland.pnn.police.uk or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision.

You can apply online, by email to enquiries@itspublicknowledge.info or by post to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Office of the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information Disclosure Log in seven days' time.