

Sent: 13 November 2019 08:50
To: Parliament and Government Liaison
Cc: Wixted S (Seán)
Subject: 1364/0919 Police Scotland - duty to comply request for information

Hi Colin

As discussed, the Justice Committee is of the view that Chief Superintendent Scott is to check with Police Scotland's legal services whether there would be any concern if the Scottish Biometrics Commissioner Bill was amended to ensure that there was a requirement to comply rather than just a requirement to "have regard to" the code. The Committee is expecting clarification as a follow-up to the evidence session of 29 October. Please see the relevant extract from the Official Report of the meeting below.

You are to check with Chief Superintendent Scott to clarify whether a legal view has been sought by Police Scotland on the issue of a requirement to comply with a Code of Practice. If it has, it would be appreciated if it could be provided **by Friday 15 November** along with the retention periods information, which was also requested. If legal services have not already received this request, it may be possible to provide an extension until **12 noon on Thursday 21 November**.

If you could please confirm as soon as possible, that would be appreciated.

Evidence session on 29 October 2019 (Official Report 29/10/2019: Col 17)

John Finnie: To clarify, would either of you have any concern if the bill was amended to ensure that there was a requirement to comply rather than just a requirement to "have regard to" the code?

Tom Nelson: If that was the feeling of Parliament, that would be the way to go. From my perspective, I know that I could not stand before my board and say why I had not followed a recommendation from the commissioner.

Detective Chief Superintendent Scott: I would be more comfortable running that terminology past our legal services, so I will reserve judgment on that.

Thanks
Diane Barr
Senior Assistant Clerk Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh, EH99 1SP

Sent: 21 November 2019 07:59

Subject: RE: 1364/0919 Police Scotland - duty to comply request for information
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Good Morning Diane

The response to the Justice Committee's query is as below.

Thanks

Colin

"In relation to the Justice Committee's query as to whether Police Scotland would have any concern about amending the Scottish Biometrics Commissioner bill to ensure there was a 'requirement to comply' with the Code of Practice rather than just a requirement to comply with same, Police Scotland Legal Services have considered this matter and concluded that, as this is a Code of Practice, the correct term which should remain within the Bill is "have regard to" and it therefore should not be amended to read "comply with".

In considering this question, they had regard to a variety of different pieces of legislation; RIPA, RIP(S)A, IPA, the Data Protection Act to name but a view. It is their considered opinion that legislation which has a criminal element contains the words "comply with" whereas legislation that is providing a code of practice, or methodology to be followed, simply contains the words "have regard to" and this, in their opinion, is only right and proper.

The Code of Practice is not yet in place, a task for the Commissioner once appointed after the Bill has been passed. Police Scotland will then be an integral part of the consultation and formation of the Code of Practice in due course."

Colin Johnston
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