



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

6 November 2019

Dear Ms Mitchell,

Thank you for your letter dated 10 October 2019, in which you sought British Transport Police's (BTP's) response to the evidence given by Prof. Wiles, Mr. Rice, Dr. Macdonald and others in relation to the operations of BTP in Scotland in light of the Scottish Biometrics Commissioner Bill. Further, BTP's understating of the legislative framework on which the BTP in Scotland relies to collect, use, share, retain and dispose of biometric data.

Legislative framework

Chapter 1 of the Protection of Freedoms Act 2012 makes provision in respect of the destruction, retention, and use of fingerprints, footwear impressions and DNA profiles and samples. This Act is the framework against which BTP develops and implements policy in relation to profiles taken during the course of a criminal investigation in England and Wales.

The equivalent legislation in Scotland is contained in sections 18 to 20 of the Criminal Procedure (Scotland) Act 1995. DNA profile retention periods defined by the Protection of Freedoms Act 2012 and the Criminal Procedure (Scotland) Act 1995 are fully understood by BTP and incorporated into operating procedures.

BTP operates across England, Scotland and Wales. When BTP arrests a suspect and takes biometrics in Scotland, these are processed centrally by the Force, in England. Whilst biometrics taken in Scotland are processed in England and placed on national systems, they remain subject to Scottish law.

The determination of legislative treatment is based upon where the sample is taken. BTP relies on Scottish law to collect, use, share, retain and dispose of biometric data in all cases where biometric data are taken in Scotland.

British Transport Police

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Response to evidence

In considering the evidence provided to the Parliament's Justice Committee in relation to the operations of BTP in Scotland, the Force's response and clarification can be summarised within three principles:

- 1) BTP agrees with the statement of Prof. Wiles, that biometric materials collected in Scotland and their retention, use, storage or disposal should be done in accordance with the provisions of this Bill and Scottish law, irrespective of where in the UK the subsequent use, retention or disposal takes place. In line with current practice, the determining factor should be the geographical boundary within which the sample has been taken. Biometric data should continue to be shared across territorial boundaries where a legitimate law enforcement purpose exists.
- 2) Whilst the legislative ownership and treatment of biometric data is the geographical source, accountability must remain with the processing agency. For instance, a public complaint in relation to the use of biometric data by BTP would be referred to BTP. Similarly, a complaint regarding Police Scotland would be referred to Police Scotland. The Scottish Biometrics Commissioner will have a role in signposting between relevant agencies, providing clarity for the public whilst promoting professional accountability. In relation to biometric data collected under the EU's Passenger Name Record Directive, BTP supports the continuation of existing processes. However, as the Force does not have jurisdiction at airports and there is no international rail link to Scotland, it is not clear how this would apply in relation to the evidence given.
- 3) BTP remains committed to having regard for any legislative variance and welcomes the development of a Code of Practice under the Bill. As a Force responsible for policing the railway in England, Scotland and Wales, a consistent approach is essential to the efficient and effective policing of the rail network across territorial boundaries. BTP would encourage the alignment, where legislation allows, of practices in Scotland and England & Wales in relation to the handling of biometric data. Where developing a Code of Practice specific to Scotland and under oversight of the Scottish Biometrics Commissioner, BTP is keen to contribute at a practitioner level to assist.

Through the Bill, the Scottish Government seeks the provision of governance for police use of second-generation biometrics such as facial and voice recognition. Although the introduction of guidance in Scotland may create disparity, the extended scope of a Scottish Biometrics Commissioner would be welcomed by BTP as we continue to mature our approach to the use of second-generation biometrics. Whilst

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BTP do not currently use facial or voice recognition, we are keen to develop such technologies in a proportionate, legal, transparent and ethical manner. Therefore, oversight by the Scottish Biometrics Commissioner would provide clarity and guidance to the development of police practice in this area, supporting the Force in our ambition to exploit this data to more effectively reduce harm to the public.

Further, in response to the suggestion of Dr. Macdonald to add BTP to the list of consultees set out in the Bill, in relation to the Code of Practice, this would be welcomed by the Force.

Yours sincerely

A handwritten signature in black ink, appearing to read "Paul Crowther".

Paul Crowther OBE
Chief Constable