

LETTER SENT BY E-MAIL ONLY

John Finnie MSP
Convener
Justice Sub-Committee on Policing
The Scottish Parliament
EDINBURGH
EH99 1SP

7 April 2020

CO/031/2020

Dear John

Justice Sub-Committee on Policing: Report on Facial Recognition Technology

Thank you for the opportunity to respond to the Justice Sub Committee on Policing report on Facial Recognition Technology, published in February 2020. The Authority welcomes the report and has considered the issues raised therein.

The report highlights the need for a public debate on the use of live facial recognition technology by the police service before any introduction of this technology by Police Scotland takes place. The Scottish Police Authority would welcome such a debate and, indeed, given our legal responsibilities to support and promote continuous improvement in policing, would seek to have a leading role in any public debate that takes place.

The Authority has also supported the establishment of the Scottish Biometrics Commissioner and, given the Bill has recently been approved by the Scottish Parliament, we would expect any proposed use of facial recognition technology to be planned for, and implemented, with reference to the code of practice and full engagement with the Commissioner when appointed.

However, as the committee is aware, there are no current plans to introduce the use of facial recognition software, nor any other new biometric technology and no live setting facial recognition has been trialled, tested or piloted by Police Scotland. Given the Authority must provide oversight of the content, progress, pace and impact of transformational change in policing it is appropriate that we consider this issue in this wider context of oversight of change.

The report contained a number of recommendations specific to the Authority and Annex A attached addresses each of these in turn.

I trust this is helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Crichton', with a large, stylized flourish extending upwards and to the right.

DAVID CRICHTON
Vice Chair

Enc. Annex A: SPA Facial Recognition Recommendations.

ANNEX A: SPA FACIAL RECOGNITION RECOMMENDATIONS
APRIL 2020

Source Ref. No.	Recommendation	Commentary
278	<ul style="list-style-type: none"> The Policing 2026 strategy should be updated to include details of the type of technology to be introduced, and the necessity and parameters of its use. The strategy's equality and human rights impact assessment (EqHRIA) should also be reviewed by the Scottish Police Authority to ensure that it is suitably robust. 	<p>On 25 March 2020, the Scottish Police Authority approved a revised joint strategic police plan which refreshes the Policing 2026 Strategy. This plan was subject to public consultation between January and March 2020 and commits to ensuring that the use of technology is ethical and proportionate and that new technologies will be implemented in consultation with the public. The plan was sent to the Cabinet Secretary for Justice for his endorsement and will thereafter be laid in Parliament. The identification of specific technologies and their potential tactical application will be considered for inclusion in the three year implementation plan and delivered through the relevant annual policing plan. Scrutiny of these will take place through established SPA structures with impact assessments forming part of that scrutiny.</p>
278	<ul style="list-style-type: none"> The Scottish Police Authority must ensure that comprehensive human rights, equalities, community impact, data protection and security assessments are carried out. 	<p>The SPA agrees that in scrutinising proposals for the adoption of any new technology for a policing purpose they would require Police Scotland to carry out the full range of relevant impact assessments. These would, of course, consider privacy, human rights and ethical issues. The SPA will consider convening external stakeholder and focus groups, seeking expert opinion and commissioning independent academic research or other analysis in support of a human rights approach to decision making.</p>
278	<ul style="list-style-type: none"> Similar assessments are also required prior to introducing any other technologies within Policing 2026, especially where there is a risk of collateral intrusion into areas of personal privacy and human rights. Any such assessments should be made publicly available. 	<p>The SPA agrees with this recommendation and expects appropriate assessments to be carried out prior to introducing any new technologies for a policing purpose. The SPA would seek to publish any such assessments in order to assist public understanding of, and confidence in, the decision making process. There may, however, be occasions where for operational security reasons full assessments cannot be made publicly available.</p>

278	<ul style="list-style-type: none"> The Scottish Police Authority must review the legal challenges to the use of live facial recognition technology by police forces in England and Wales, and consider how to mitigate the risk of similar legal challenges in Scotland. 	<p>At the appropriate point in time, i.e. where a proposal to use facial recognition technology is presented to the SPA, due diligence will be undertaken in terms of assessing the operational, legal, human rights, equalities and ethical issues that have been raised in other jurisdictions where the technology is in use.</p>
278	<ul style="list-style-type: none"> The Sub-Committee has not received sufficient evidence of the necessity to introduce live facial recognition technology, or that it is possible to use it in a proportionate way. Its use on people who attend legitimate and legal pursuits, such as peaceful protests, concerts or sporting events, is not necessary or proportionate. The Scottish Police Authority should assess the necessity, proportionality and parameters of its use. 	<p>No case for the use of live facial recognition technology has been presented to the SPA by Police Scotland.</p>
278	<ul style="list-style-type: none"> Police Scotland and the Scottish Police Authority must clarify how they will ensure that data protection requirements will be met for the use of live facial recognition technology. This should include confirmation of whether a data protection impact assessment detailing the risks and how these are to be mitigated would be a necessary requirement. 	<p>The SPA would, of course, ensure data protection requirements were fully met by any proposal for the use of live facial recognition technology as part of the scrutiny process. Data protection issues are discussed at the Police Scotland Data Protection Reform Group of which the SPA is a member.</p>
278	<ul style="list-style-type: none"> The Scottish Police Authority should take account of the UK Biometrics and Forensics Ethics Group's framework of ethical principles when considering Police Scotland's proposal to introduce the use of live facial recognition technology. 	<p>The SPA agrees that the wider ethical principles described should be amongst the considerations taken into account in any decision making process, however, Police Scotland have not presented a proposal to introduce live facial recognition technology to the SPA.</p>

285	<ul style="list-style-type: none"> • The Scottish Police Authority should carry out a review of Police Scotland’s use of retrospective facial recognition technology. This should include their use of the UK Police National Database and the legal basis for uploading photographs to that database. It should also include consideration of the consequences of their access to and use of any images of innocent people held illegally on that Database. The review should take a human rights based approach to this assessment. 	<p>The SPA does not agree that expending resource on such a review would represent best value as the findings of the previous HMICS work in this area remain valid. The source system for images for Policing in Scotland is the Scottish Criminal History System. A robust weeding and retention policy, previously commended by both the Courts and the Office of the Information Commissioner, is applied to this system. Those rules are transposed to any data shared with the Police National Database. The targeting of any individual using facial recognition would, by necessity, be subject to a risk assessment in terms of legality. Furthermore, the Data Protection legislation requires that checks are performed before any data provided by a third party (such as PND data from other Forces) is used by a data controller. Accordingly a robust legal framework for managing this issue already exists.</p>
289	<p>The Sub-Committee asks the Scottish Police Authority to review Police Scotland’s plans to access and use Glasgow City Council’s Suspect Search technology. This should include consideration of whether all the necessary impact assessments have been undertaken and safeguards met.</p>	<p>The Suspect Search Facility is still undergoing development by Glasgow City Council and is not available to Police Scotland. Our understanding is that the technology does not use facial recognition; rather it scans existing CCTV images to track potential persons of interest on the basis of height, colour of clothing etc. It is a standalone system which does not communicate with any Police Scotland or other external databases. Once the system is developed, if Police Scotland plan to access and use the system, then SPA scrutiny will include all necessary impact assessments and safeguards.</p>