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Justice Sub-Committee on Policing
Scottish Parliament
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15 April 2020

Dear Convener,

JUSTICE SUB-COMMITTEE ON POLICING REPORT : FACIAL RECOGNITION : HOW POLICING IN SCOTLAND MAKES USE OF THIS TECHNOLOGY

Thank you for sending me a copy of the Sub-Committee's report on police use of facial recognition technology. I have carefully considered the Committee's recommendations and attach in Annex A, my response to the recommendations addressed to the Scottish Government.

While we support Police Scotland in using technology to keep our communities safe, facial recognition technology raises a number of ethical, data protection and human rights considerations. I have noted the strength of feeling in the responses to the Committee and in the Committee's report around ensuring public engagement on the use of this technology before it is deployed; robust testing of the technology; and justifying its use. I therefore recognise that assurances are required in order to secure public trust and support for any future use of the technology. I also note that legal and regulatory provisions must be sufficient to ensure accountability and transparency.

Of course, these matters are not solely for the Scottish Government, as the Committee has recognised in making its full range of recommendations. The Scottish Government stands ready to work with Police Scotland, the Scottish Police Authority and others (including Her Majesty's Inspectorate of Constabulary in Scotland, the new Scottish Biometrics Commissioner and the UK Information Commissioner) to develop an approach to the use of facial recognition technology which is effective, proportionate and ethical.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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I am happy to discuss these important issues in more detail with the Committee should it decide that a meeting would be desirable.

Yours sincerely,



HUMZA YOUSAF

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ANNEX A

Recommendation	Scottish Government Response
<p>The Cabinet Secretary for Justice must ensure that there is a robust legal and regulatory basis for the use of live facial recognition technology in Scotland. This would provide legitimacy for the police service and assurance for the public. The Sub-Committee requests clarification of the Government's plans, and whether this would include a consultation on public consent for the use of this technology.</p>	<p>It is for Police Scotland to be satisfied that they would be acting lawfully should they decide to deploy Live Facial Recognition (LFR). Should Police Scotland assess the position as requiring a change in the law, then the Scottish Government would consider any proposal from Police Scotland. It is noted that Police Scotland have not yet made any firm proposal to deploy or trial LFR.</p> <p>The Scottish Government recognises the importance of securing public confidence in police use of LFR. Regulatory and oversight arrangements in respect of LFR involve a number of organisations such as the UK Information Commissioner; Her Majesty's Inspectorate of Constabulary in Scotland; and the new Scottish Biometrics Commissioner. The Scottish Government is satisfied that there would appear to be sufficient arrangements in existence for the effective oversight of any proposed or future police operational use of LFR.</p> <p>The Scottish Government will consider in due course whether it would be appropriate to undertake a consultation on public consent - or whether this would be a matter for Police Scotland. The Scottish Government observes that before any such consultation could take place, it would be important for those taking forward the consultation to be clear about the ethical, data protection and human rights issues arising from the use of LFR, as well as the added value to policing of LFR - so that the consultation paper can provide sufficient information to consultees to enable informed responses.</p> <p>A number of measures have recently been taken forward by the Scottish Government to inform the position on ethics and human rights - such as progressing the setting up of the Emerging Technologies Independent Advisory</p>

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	<p>Group; and facilitating the creation of a new Scottish Biometrics Commissioner and associated independent advisory group.</p>
<p>The Scottish Government should confirm whether it will legislate to enable Police Scotland to take, retain, use and share photographic images.</p>	<p>It should be noted that there is already a specific statutory power in paragraph 1(j) of Schedule 2 of the Police and Fire Reform (S) Act 2012 that allows a police custody and security officer to take a photograph of a person held in custody. The Scottish Government has already committed to undertaking a review of retention periods - including for photographic images - once the new Scottish Biometrics Commissioner is in post.</p> <p>The new Scottish Biometrics Commissioner will have a role to play in identifying any necessary changes in the law, as part of the Commissioner's general function to review the law, policy and practice in relation to biometric data (including LFR). It will be important to ensure a co-ordinated approach to any review of law, policy or practice by the Scottish Government, the Commissioner or other oversight bodies to avoid duplication of effort and to ensure that views on the need for any changes are taken on board.</p>
<p>The Scottish Government should address the lack of regulation over the use of facial recognition technology by private companies, and by the wider public sector, and the data they share with the police service.</p>	<p>Data protection in general is a reserved matter, and therefore the powers of the Scottish Parliament are limited in this area. The Information Commissioner's Office (ICO) has a role in regulating the collection and use of personal data by private companies and the wider public sector across the UK. The ICO can provide responses to queries about data protection from the public - and is the body with whom complaints about privacy and data protection can be raised in respect of private or public sector sectors' collection or use of that data. Anyone using facial recognition technology must ensure that they comply with the relevant laws, including the Human Rights Act 1998, and the Data Protection Act 2018.</p>