Dear Sirs,

I write in response to your request for information with regard to the preparation of your report on new technologies. I hope that the following information assists.

Over the past year we have engaged in two processes where the use of new technology by the police has been the focus. The first involved the introduction of Digital Triage Devices (colloquially known as cyber kiosks). The second involved a parliamentary consultation on a bill to appoint a new Scottish Biometrics Commissioner. The third is a report by an independent advisory group considering the legal framework in relation to Biometrics that led to the aforementioned bill.

Please find attached three documents. The first is a letter written to the Chair of the Parliamentary sub-committee on policing in relation to Digital Triage devices. This outlines our concerns in relation to the legal framework upon which the use of the devices would rest. Police Scotland undertook trials of using cyber kiosks to search the mobile phones of suspects, witnesses and victims of crimes in Edinburgh and Stirling without undertaking the required governance, scrutiny and impact

assessments. Those members of the public whose phones were seized and searched were not made aware that their phones

were to be searched using cyber kiosks as part of a trial, or the implications, and were not provided with the option of giving

their consent had proposed to begin using the devices until the Parliamentary Sub-committee sought information about the devices, which had never been used in Scotland before. We raised our significant concerns about the use of this technology, citing our concerns that the legal basis for their use was unclear and therefore there were insufficient procedural safeguards in place for them to be considered compliant with human rights law. There followed a lengthy consultation and enquiry process led by the sub-committee and the Commission participated in an external reference group examining the issues raised by the use of the devices. The police sought external legal advice upon which they have determined the legal framework to be clarified.

In the context of freedom of assembly, this technology is potentially limiting. The use of such new technology should be accompanied by public information and clear, accessible guidelines as to its use. This was not the case here and, as such, there was a significant amount of public outcry over the potential for police summarily examining digital devices upon arrest. The absence of an independent body assessing the proportionality of searching digital devices in this way remains of concern to the Commission and other parties. Organisations or individuals engaged in peaceful protest may anticipate being arrested and having their digital devices searched in this manner. The legal basis of consent has been questioned by the UK Information Commissioner, as has the public’s understanding of how this potentially operates. Awareness of this technology without clear understanding of it has elicited broadly negative responses from the public and, while Police Scotland endeavours to increase public understanding of these devices, there is still significant concern about their use without a Code of Practice or a warrant.

The second document contains the Commission’s submission to the Parliamentary consultation on the Scottish Biometric Commissioner’s Bill. Our Chair gave evidence before a parliamentary committee. As explained above, the Commission was involved in the Reference Group that explored the issue and provided human rights analysis for the process. There is currently no Biometrics Commissioner in Scotland and the proposal to create such a body to supervise and regulate the use of biometrics by the Police was welcomed by the majority of people who shared views and responded to the consultation. Our submission notes that we consider that the Bill requires substantial improvement to reflect the analysis and recommendation of the Independent Advisory Group. This is largely to ensure that the bodies using biometrics are effectively accountable. The definition of biometrics in the Bill is designed to anticipate developments in technology as well as those currently available. Such investigative methods as Facial Recognition; Gait analysis present new challenges that warrant scrutiny. Facial Recognition has been the subject of significant legal debate in England and further abroad. It’s efficacy is controversial and therefore organisations seek procedural safeguards to ensure proper use of this technology. Both of these are of particular concern when considering public protest. Historically, throughout the United Kingdom, police have collected large databases of information on people within protest groups in ways that are considered to be in breach of the right to private and family life. Whether these databases are for fingerprints, DNA, facial images or other data, it has now been established that there should be a presumption in favour of deletion of such information unless cause can be shown to retain it. The Commission currently considers a statutory code of practice to be the ideal vehicle to lay down principles governing the retention and use of such data.

We hope that this assists to inform your report. Please do not hesitate to contact us if you wish to discuss any of these matters.

Regards

Tatora

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