| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-0560  Responded to: 23rd March 2023 |
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Your recent request for information is replicated below, together with our response.

**I would like to know if your police force has used facial recognition software in the last year, when and for what reasons.**

Following a clarification request you confirmed that by facial recognition software you meant:

## I'd like deployment records for both live and retrospective facial recognition software in 2022 and January and February 2023, any plans for use in 2023 and the policy regarding its use.

I am going to break your request down into live and retrospective facial recognitions separately.

## Live Facial Recognition

Police Scotland is not presently using, trialling or testing live facial recognition technology. However, we are keeping a watching brief on the trialling of technology elsewhere.

As technology advances and we all spend more time online we can see that the need to embrace new ways of working and harness technology need to be considered. We are committed to our duty to keep people safe, and this may necessitate us moving with the times and looking to technology to help us to do so in the future.

We recognise the valid concerns about the use of new technology and have developed a governance framework to balance requirements to comply with data protection and privacy regulations, whilst ensuring that we maximise our capabilities to tackle crime and protect the public and ensure legitimacy of the police service.

Prior to any facial recognition technology being implemented, we would carry out consultation and engagement. This would include taking advice and guidance on ethical, human rights and civil liberties considerations.

We are working with the Scottish Biometrics Commissioner and are fully supportive of the introduction of a Code of Practice, and the guidance this would provide in futureproofing policing and the use of new technologies.

In regards to deployments and policy, in terms of Section 17 of the Freedom of Information (Scotland) Act 2002, this represents a notice that the information requested is not held by Police Scotland.

## Retrospective Facial Recognition

In common with all other UK police forces, we use facial matching technology provided through the Police National Database (PND). The database is proven technology and an extremely useful tool in helping officers to identify those who commit crimes.

There are no other developed plans to introduce facial search/recognition, however this is currently under review. Better use of data and technology of this type can drive efficiency and add value. As an organisation which places human rights at the heart of all we do, we want our use of data and new technology to be ethical, transparent and in line with our values. Our draft data ethics strategy and framework presented to the Scottish Police Authority in May, will help ensure a consistent approach to decision making and internal and external scrutiny.

We recognise the valid concerns about the use of new technology and have developed a governance framework to balance requirements to comply with data protection and privacy regulations, whilst ensuring that we maximise our capabilities to tackle crime and protect the public and ensure legitimacy of the police service.

Prior to any facial recognition technology being implemented, we would carry out consultation and engagement. This would include taking advice and guidance on ethical, human rights and civil liberties considerations.

We are working with the Scottish Biometrics Commissioner and are fully supportive of the introduction of a Code of Practice, and the guidance this would provide in futureproofing policing and the use of new technologies.

In regards to the deployment of this software, Police Scotland began using Facial Search in April 2014 which is when the facility was introduced within PND.

In regards to policy in terms of section 16 of the Freedom of Information (Scotland) Act 2002, I am refusing to provide you with the information requested.

Section 16 requires Police Scotland when refusing to provide such information because it is exempt, to provide you with a notice which:

* states that it holds the information,
* states that it is claiming an exemption,
* specifies the exemption in question and
* states, if that would not be otherwise apparent, why the exemption applies.

I can confirm that Police Scotland holds the information that you have requested.

The exemptions that I consider to be applicable to the information requested by you are:

Section 31(1) – National Security and Defence

Section 35(1)(a)&(b) – Law Enforcement

Section 39(1) – Health, safety and the environment

## Section 31(1) – National Security and Defence

If the information is disclosed it may assist terrorist organisations to identify, with some accuracy, the capabilities of retrospective facial recognition/facial matching used by Police Scotland. This would provide them with a tactical advantage when planning or perpetrating their terrorist plans and activities allowing them to cause the maximum impact of destruction and disruption.

The security of the United Kingdom is of paramount importance and Police Scotland will not disclose further details of such information if it would impact on National Security.

This is a non-absolute exemption and requires the application of the public interest test.

## 35(1)(a)&(b) – Law Enforcement

The request information, if disclosed, could be used to try and work out how likely detection is likely when retrospective facial recognition/facial matching is deployed. Those with criminal intent would then be in a position to more accurately estimate the chances of being detected or make efforts to evade such detection. Disclosure could have a negative effect on national security should the release of information be used and manipulated by criminal fraternities to try and evade detection or to better plan their activities.

This is a non-absolute exemption and requires the application of the public interest test.

## 39(1) – Health, safety and the environment

The disclosure of the information requested may have the potential to increase the number of crimes being committed or efforts made by those involved to avoid detection. Any increase in crime presents a risk to operational police officers and members of the public and the potential to present a risk to an individual’s personal safety.

This is a non-absolute exemption and requires the application of the public interest test.

## Public Interest Test

As you will be aware, the exemptions listed above are non-absolute and require the application of the Public Interest Test. I would suggest that public accountability would favour disclosure, given that the information concerns the efficient and effective use of resources by the Service. Likewise, disclosure of the information would also inform the public debate on the issue of retrospective facial recognition and in particular facial matching in regards to the Police National Database.

Furthermore, the applicability of the exemptions listed above, the need to ensure the effective conduct of the service in relation to prevention and detection of crime and, the public safety considerations involved in the delivery of operational policing clearly favour non-disclosure of the information requested.

It is important to note that the UK does face a serious and sustained threat from violent extremists and this threat is greater in scale and ambition than any terrorist threats in the past. The police service has a duty to promote the safety of all individuals and will not reveal any information that might jeopardise this goal. To provide specific details of retrospective facial recognition/facial matching is likely to place individuals at serious and increased risk and present opportunities for criminals to attempt to evade detection.

On balance I would contend that the public interest in disclosing the information is outweighed by that in maintaining the exemptions listed, as, it is doubtful if it can ever be in the public interest to disclose information which would jeopardise the delivery of policing and the safety of individuals and prejudice the prevention or detection of crime.

If you require any further assistance please contact us quoting the reference above.

You can request a review of this response within the next 40 working days by [email](mailto:foi@scotland.police.uk) or by letter (Information Management - FOI, Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH). Requests must include the reason for your dissatisfaction.

If you remain dissatisfied following our review response, you can appeal to the Office of the Scottish Information Commissioner (OSIC) within 6 months - [online](http://www.itspublicknowledge.info/Appeal), by [email](mailto:enquiries@itspublicknowledge.info) or by letter (OSIC, Kinburn Castle, Doubledykes Road, St Andrews, KY16 9DS).

Following an OSIC appeal, you can appeal to the Court of Session on a point of law only.

This response will be added to our [Disclosure Log](http://www.scotland.police.uk/access-to-information/freedom-of-information/disclosure-log) in seven days' time.

Every effort has been taken to ensure our response is as accessible as possible. If you require this response to be provided in an alternative format, please let us know.