

Our Ref: IM-FOI-2022-1102  
Date: 13<sup>th</sup> June 2022



## **FREEDOM OF INFORMATION (SCOTLAND) ACT 2002**

I refer to your recent request for information which has been handled in accordance with the Freedom of Information (Scotland) Act 2002.

For ease of reference, your request is replicated below together with the response.

### **Please could you confirm if the force is using live and/or retrospective facial recognition technology, or is planning to in the next 12 months?**

Following a clarification request you confirmed that by retrospective facial recognition technology you meant that which compares still images of faces of unknown people against a reference image database in order to identify them after an event.

Consistent with all UK police services, Police Scotland utilises facial matching technology provided through the Police National Database (PND). These images of persons charged with, or convicted of a common law crime or statutory offence in Scotland are uploaded onto the PND, so that other UK forces can search the database to help identify and prosecute criminals. In the event of an acquittal, these records are removed from the PND by Police Scotland.

There are no other developed plans to introduce facial matching, 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.

### **If you are using facial recognition, which supplier(s) have you contracted with?**

I have taken this question to refer to retrospective facial recognition and to the facial matching technology within the Police National Database described above.

The Police National Database is not owned by Police Scotland and therefore we have no contracts with suppliers. As such, 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.

You may wish to contact the Home Office who are responsible for PND. I have included a link to their Freedom of Information request page in order to be of assistance.

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<https://www.gov.uk/make-a-freedom-of-information-request>

**Please share copies of your policy, standard operating procedure and DPIA along with any other related documentation.**

As noted above, we have no developed plans to introduce retrospective facial recognition beyond what is available as part of the Police National Database (PND). My answer below is therefore specifically in regards to what is in use currently.

In regards to DPIA held in regards to retrospective facial recognition I must advise that Police Scotland do not hold such a document. As such, 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.

In regards to the other documents requested 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:

- (a) states that it holds the information,
- (b) states that it is claiming an exemption,
- (c) specifies the exemption in question and
- (d) 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**

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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.

Should you require any further assistance please contact Information Management quoting the reference number given.

If you are dissatisfied with the way in which Police Scotland has dealt with your request, you are entitled, in the first instance, to request a review of our actions and decisions.

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Your request must specify the matter which gives rise to your dissatisfaction and it must be submitted within 40 working days of receiving this response - either by email to [foi@scotland.pnn.police.uk](mailto:foi@scotland.pnn.police.uk) or by post to Information Management (Disclosure), Police Scotland, Clyde Gateway, 2 French Street, Dalmarnock, G40 4EH.

If you remain dissatisfied following the outcome of that review, you are thereafter entitled to apply to the Office of the Scottish Information Commissioner within six months for a decision. You can apply [online](#), by email to [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info) or by post to Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Should you wish to appeal against the Office of the Scottish Information Commissioner's decision, there is an appeal to the Court of Session on a point of law only.

As part of our commitment to demonstrate openness and transparency in respect of the information we hold, an anonymised version of this response will be posted to the Police Scotland Freedom of Information [Disclosure Log](#) in seven days' time.