| Police Scotland logo | Freedom of Information Response Our reference: FOI 23-0256  Responded to: 27th February 2023 |
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Your recent request for information is replicated below, together with our response.

**• Has Facial Recognition Technology been used by your force in 2022 and/or 2021?**

**• If so, what was the name of the company (or any other entity) which provided the technology?**

**• Does the force have any plans to use Facial Recognition Technology in 2023 and/or 2024?**

In response to a clarification request you confirmed that by facial recognition technology you meant:

## • Overt LFT and OIFR

## • Covert CRFS and COIFR

I have taken this to mean the following:

LFT : Overt Live Facial Recognition

OIFR : Overt Operator Initiated Facial Recognition

CRFS : Covert Real-Time Facial Recognition Surveillance

COIFR : Covert Operator Initiated Facial Recognition Surveillance

I am going to answer your questions in two parts.

## Overt

In regards to Overt Live Facial Recognition and Overt Operator Initiated Facial Recognition Police Scotland is not presently using, trialling or testing these technologies. 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.

## Covert

In regards to Covert Real-Time Facial Recognition Surveillance and Covert Operator Initiated Facial Recognition Surveillance, having considered your request in terms of the Freedom of Information (Scotland) Act 2002, I am refusing to confirm or deny whether the information sought exists or is held by Police Scotland in terms of section 18 of the Act.

Section 18 applies where the following two conditions are met:

- It would be contrary to the public interest to reveal whether the information is held

- If the information was held, it would be exempt from disclosure in terms of one or more of the exemptions set out in sections 28 to 35, 38, 39(1) or 41 of the Act.

In this case if the information requested was held, I consider that it would be exempt from disclosure in terms of the following exemptions:

* Section 31(1) - National Security
* Section 34(1)(b) - Investigations
* Section 35(1)(a)&(b) - Law Enforcement
* Section 39(1) - Health and Safety

## Overall Harm

Confirming or denying whether any information is held relevant to the request would provide insight into the capabilities of Police Scotland in regards to Facial Recognition. It would also allow a picture of capability to be gathered across the United Kingdom, allowing those engaged in criminal or terrorist activity to more accurately identify and exploit any differences in this regard.

Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement.

Any information identifying capabilities of Police Forces could be used to the advantage of terrorists or criminal organisations to establish with some degree of accuracy where they were at risk of detection and to adapt their plans accordingly.

Police Scotland works in partnership with other agencies in order to combat issues such as terrorism and organised crime. Disclosure of the information requested, if held, would seriously undermine this partnership approach, both in the UK and through international cooperation.

Section 2(1) & (2) of the Act provide that information can only be considered exempt in terms of the exemptions set out above to the extent that the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

## Public Interest

The key test when considering where the balance of public interest lies is to establish whether, in all the circumstances of the request, the public interest in confirming or denying the information is held is not outweighed by maintaining the exemption(s).

I can confirm that I have considered the public interest with the view that whilst accountability for public funds and better informing the public debate on a matter of significant concern may favour disclosure, ensuring the integrity of the police response to terrorist and criminal activity and ultimately, keeping people safe from harm is paramount.

Further to the above, referring back to the requirements of section 18, I also consider that it would be contrary to the public interest to reveal whether or not the information requested by you is held by Police Scotland and the considerations, for and against disclosing whether or not the information is held are as follows:

## Factors favouring disclosing whether information is held

Confirmation or denial of whether information is held may aid public debate on the techniques employed by the Police Service as well as other agencies. Additionally the public are entitled to know how public funds are spent and resources distributed within a specific area of policing. In the current climate of cuts and with the call for transparency of public spending this would enable improved public debate.

## Factors against disclosing whether information is held

Such information placed in the public domain, could highlight to those intent on acts of terrorism the scope of capabilities available to Police Scotland as well as help to create a national picture of capacities. Releasing such information would dramatically weaken the effectiveness of policing against organised crime and terrorism. The public entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with any information, no matter how generic or statistical it appears to be.

By its very nature, information relating to the threat of terrorism is highly sensitive in nature. Under FOI(S)A there is a requirement to confirm what information is held. In some cases it is that confirmation, or not, which could disclose facts harmful to the monitoring of potential terrorism and in such cases Police Scotland takes advantage of its ability under FOI(S)A legislation to, where appropriate, neither confirm nor deny that the information requested is or is not held.

## Balance Test

A disclosure under Freedom of Information is a release of information to the world in general.

The Police Service will never disclose information which could undermine the partnership approach to combating terrorist activity across the UK and which could be used to undermine the effectiveness of such operations. Confirming or denying this information exists could lead to the loss of public confidence in Police Scotland’s ability to protect the wellbeing of the community.

The public also entrust the Police Service to make appropriate decisions with regard to their safety and protection and the only way of reducing risk is to be cautious with any information that is released.

In this case, and irrespective of what information is or isn’t held, to merely confirm or deny that information is held would provide information which would assist those intent on causing harm. Any incident that results from confirmation or denial would, by default, affect national security.

No inference should be taken from this response as to whether the information you have requested does or does not exist.

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.