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21st August 2017

Dear Stephen,

RE: Ethical advice on the Home Office Review of the Use and Retention of Custody Images

In your commissioning letter for the Biometrics & Forensics Ethics Group (BFEG) for 2017 (dated 29th November 2016), you invited the group to consider the ethical issues in relation to the retention and use of custody images taken on arrest, and as recommended separately within the Home Office *Review of the Use and Retention of Custody Images*.

At its meeting in June 2017, the BFEG considered the retention regimes for custody images detailed within the Home Office review and considered the ethical implications.

In their considerations the BFEG took account of the need for the retention regimes within the custody images review to strike the correct balance between the rights of individuals and the operational needs of the police and the criminal justice system. Consideration was also given to the constraints imposed by the use of legacy police information technology (IT) systems lacking automated search or delete functionality used by many police forces.

I summarise the BFEG's position below:

1. There was insufficient published evidence to establish the reviews position that facial images were less intrusive than DNA profiles. The group agreed that there were multiple views in society as to the extent to which facial images were seen as intrusive. It was conceivable that some members of the public would find an image of their face to be more personal than the string of numbers that represents their DNA profile.
2. Members were disappointed by the absence of a public consultation prior to the publication of the Home Office review. It would have been informative and instructive to understand public opinion concerning the system in place for the use and retention of custody images. The group believed that an overview of public opinion would be required prior to the formulation of future policy.
3. The Home Office had not publicised the new retention regimes for custody images and it was likely that there was a general lack of public awareness of the new regime. Those entitled to have their images removed were unlikely to be aware of

the application process. However, if the Home Office publicised the retention regime, and all those entitled to apply did so, this would place an enormous administrative burden on the police. In these respects the retention regime was considered not fit for purpose. In addition, the group believed that the complexity of the removal process, including the requirement for individuals to contact police chief officers in writing, may disproportionately disadvantage certain groups, such as those less likely to engage in the Criminal Justice System and those for whom English was not their first language.

4. Whilst the BFEG was aware that the process was designed with current police IT capability in mind, the group believed that an IT system with the capability to automatically delete custody images was required. Implementation of this approach would reduce costs over the long-term, especially if aligned with current procedures for DNA profiles and fingerprints under the Protection of Freedoms Act.

In light of the BFEG's position, the group made the following recommendations in relation to custody images:

Recommendation 1: A public consultation should be conducted, prior to the next scheduled custody images review, to ascertain the views of the public in relation to the retention and use of custody images.

Recommendation 2: Future IT systems should allow for the centralised storage and automatic deletion of custody images, and the retention regime governing these IT systems should be agreed prior to the development of new technology.

Going forward, the BFEG would value an additional steer on the future work that the Home Office requires the group to undertake in relation to custody images, and the timeframes for this input. For example, would it be useful for the BFEG to consider the ethical issues to input into the next review of the retention regime in 2020, and how could this further consideration relate to a potential public consultation?

Thank you for your time in considering the BFEG's position.

Yours sincerely,



Chris Hughes
Chair, Biometrics & Forensics Ethics Group