



Home Office

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*Dear Paul,*

## **BIOMETRICS COMMISSIONER'S ANNUAL REPORT**

Thank you for your letter to the Home Secretary of 29 March covering your Annual Report on the Retention and Use of Biometric Material. I am grateful for the report, which provides valuable analysis on how the police are using sensitive biometric material.

I am pleased to note that you can confirm, as in past years, that police retention of DNA samples, DNA profiles and fingerprints is overall in line with the requirements of the Protection of Freedoms Act (PoFA) 2012, while there are some points where processes can be improved. This year the Government has been working to improve governance and oversight arrangements of biometrics in particular new emerging biometrics. This includes setting up the Law Enforcement Facial Images and New Biometrics Oversight and Advisory Board to improve coordination between relevant parties on top of existing arrangements for fingerprints and DNA for which you have statutory responsibilities.

This Government response details the work we are doing to address the issues you have raised.

### New legislation for new biometrics

You argue in chapter 2 that there is a need for new legislation so that a balance between public safety and privacy in relation to new biometrics can be more clearly stated and debated in Parliament.

The Government welcomes the recent debates on this, inside and outside Parliament, which are necessary and right in a democratic society. It is also right that the police have to act in accordance with the law, and South Wales Police currently await judgment in the judicial review of their trials of automatic facial recognition, in which we have been supporting them. We committed in the Biometrics Strategy 2018 to develop options to simplify and extend the governance and oversight arrangement of biometrics and will update Parliament shortly on this work.

#### Custody images

I note your comments about the public's lack of awareness of their right under the terms of the Custody Image Review 2017 to apply for deletion of their images, and that the police are also not consistently aware of the need to review retention of images as stated in the Review. In a letter to the Chair of the Commons Science and Technology Committee, I reaffirmed our commitment to deliver a more efficient system for reviewing and automatically deleting custody images. We are working on a technology and business change plan, but the complexity of the project means we cannot commit to an absolute date for this. In the meantime, I have asked officials to work with the police to determine how manual deletion might be enhanced. The police have also committed to providing more information to those taken into custody about their right to request the deletion of their custody images.

#### New biometrics databases

You state that it is urgent that access rules are developed for new biometrics databases which involve hosting different agencies' data (for example police and immigration fingerprints) on the same platform, and also that many of the same issues arise with large data sets as with biometrics. The issue of access rules is being addressed through the work on biometrics governance mentioned above, and through the Home Office Biometrics Programme.

#### Voluntary interviews and reform of bail

You state that increased use of voluntary interviews rather than arrest has led to a reduction in the taking of biometrics and the potential effect of reducing the utility of national biometric databases. The Forensic Information Databases Service is researching the causes and scale of reduced taking of biometrics and will report on this to the FINDS Strategy Board in July.

You also state that reforms to bail in 2017 with the aim of reducing long periods spent on bail have resulted in the problem being moved to persons 'released under investigation', large backlogs of cases and some illegal retention of biometrics.

The use of the bail and the expeditious resolution of investigations remains an operational matter for the police, and forces retain the freedom to both impose bail and to put in place other necessary procedures to manage 'released under investigation' cases. The Home Office continues to monitor the impact of reforms through the cross criminal justice Pre-Charge Bail implementation

board, and the NPCC have produced clear guidance on how RUI and bail cases should be managed effectively.

### Qualifying Offences

As you note, the Government has committed to lay a Statutory Instrument (SI) before Parliament to add further offences to the list of serious 'qualifying' offences for which greater powers to retain biometrics exist. We now plan to lay the SI in mid-November 2019 for commencement in mid-January 2020, subject to parliamentary time being available.

### National security

Thank you for your ongoing role in reviewing National Security Determinations, and the important contribution this makes to ensuring the fair and proportionate operation of the biometric retention regime in national security cases. Your case-by-case independent oversight in this sensitive area provides an important safeguard, and increases public confidence that the powers are being properly used, in addition to your oversight of the wider system.

I welcome your support for the changes to biometric retention powers in the Counter-Terrorism and Border Security Act 2019, which will update and strengthen the police's ability to use biometric data in a proportionate way in support of terrorism investigations. I am happy to support your suggestions for how these changes should be implemented, and the Home Office will reflect these in revised statutory guidance which will be published on commencement of the provisions later this year. This will firstly emphasise that chief officers should consider specifying an interim review when authorising an NSD for a period exceeding two years, if they are not satisfied that the necessity case for the longer period is fully made out. And secondly it will address the issue of 'pre-emptive NSDs' by making clear that, in the small number of residual cases where this will not be resolved by the new three-year automatic retention provided by the Act, deletion need not be immediate but rather must occur within a reasonable period, which may include sufficient time to process an NSD.

The Home Office will of course consult you on the text of the draft guidance before its publication, in line with the statutory requirement to do so. I note your concern at the MOD searching of police fingerprint databases, and your frustration that this has not been addressed more promptly. While I am of the view that this activity is clearly in the public interest, given the benefits to UK armed forces and military operations, I agree that the legal position and the applicable governance should be clarified. Home Office officials have been supporting the police and MOD to better understand the legal picture and to develop options, and as you note progress has been made which I hope will now quickly resolve the matter.

## Conclusion

Thank you for this comprehensive and carefully considered report. I hope I have shown in this response that we are addressing the issues you have raised. I will be placing a copy of this response in the Commons and Lords Libraries and publishing it on the gov.uk website.

A handwritten signature in black ink, appearing to read 'Susan', with a large, stylized initial 'S'.

**Baroness Williams of Trafford**