

Andrew Hendry  
Chief Digital Information Officer  
Police Scotland  
Digital Evidence Sharing Capability PS SRO

14 December 2023

cc Assistant Chief Constable Bex Smith  
cc Martyn Evans, Chair of Scottish Police Authority

Dear Andrew,

**Digital Evidence Sharing Capability (DESC)**

On 22 April 2023, I served an [Information Notice](#) on Police Scotland under section 16 (2) of the Scottish Biometrics Commissioner Act 2020. My purpose in doing so was to ascertain whether Police Scotland are complying with the data protection elements of my statutory Code of Practice which took legal effect in Scotland after being approved by the Parliament and Scottish Ministers on 16 November 2022.

At this juncture, I also sought advice from the UK Information Commissioner (ICO) on whether the use of hyperscale cloud infrastructure provided by U.S. companies which involves biometric or genetic data is compliant with law enforcement-specific data protection rules, and specifically section 73 relating to international transfers, having regard to the potential implications of the U.S. Clarifying Lawful Overseas Use of Data Act 2018 (Cloud Act).

Police Scotland subsequently responded to the Information Notice providing the requested information. On 5 October 2023, I again wrote to Police Scotland. The purpose of that [letter](#) was threefold. Firstly, it set out my concerns about the potential risks that arise from sensitive biometric data being ingested by Police Scotland to the current Scottish Government DESC pilot in Dundee. Secondly, by setting out those concerns in writing, I hoped to assist DESC partners with post-pilot evaluation. Thirdly, setting out my juristic concerns on this matter publicly was prudent in terms of facilitating full and frank discussion between us prior to Police Scotland completing its self-assessment return relative to compliance with the statutory Code of Practice in Scotland.

As you know, assessing compliance with UK Data Protection Law is solely and properly a matter for the UK Information Commissioner (ICO). On 11 December I had an in-person meeting with the UK Information Commissioner John Edwards at Queen Elizabeth House in Edinburgh. From our discussions, the UK ICO is unlikely to opine that the uploading of biometric data to DESC by Police Scotland conflicts with UK data protection law. This is because Article 3 of the agreement between the U.S. and UK Government's on access to electronic data under the U.S. Cloud Act requires each party to the agreement to ensure that its domestic laws do not frustrate or impair the operation of the agreement.

Having regard to that determination by UKG and the ICO, and to the spirit of reciprocity in international and UK cooperation, it is also therefore my determination that the uploading of biometric data to DESC by Police Scotland is consistent with [Principle 10 of the Scottish Code of Practice](#) which requires biometric data to be protected from unauthorised access and unauthorised disclosure in accordance with UK GDPR and the UK Data Protection Act 2018.

I am also grateful for the opportunity to attend the workshop on DESC on 15 December 2023, as this will afford us the opportunity for further discussion prior to the completion of my compliance assessment on the Code of Practice over the winter.

Yours sincerely,

*Brian Plastow*

**Dr Brian Plastow**  
**Scottish Biometrics Commissioner**