

Assistant Chief Constable Bex Smith  
Crime, Public Protection and Local Crime  
Police Scotland  
Tulliallan  
Kincardine  
Fife  
FK10 4BE

22 April 2023

Dear Assistant Chief Constable,

**Digital Evidence Sharing Capability (DESC): Information Notice under section 16 of Scottish Biometrics Commissioner Act 2020**

[The Scottish government's DESC service](#) is aiming to digitally transform how the criminal justice system manages evidence by creating a unified system for prosecutors, courts staff, police officers and defence lawyers to access and manage digital evidence safely and securely. As such, its strategic objectives are to be welcomed.

On 29 November 2022, Police Scotland provided a presentation on the DESC project to my professional advisory group maintained under section 33 of the Scottish Biometrics Commissioner Act 2020. The minutes from that meeting can be viewed on my [website](#).

The presentation by Police Scotland was requested after I had become aware that some of the data sharing proposed within DESC may involve 'biometric data' as defined in [section 34](#) of the Scottish Biometrics Commissioner Act 2020. Up to that point, neither Scottish Government who are funding this £33 million initiative or Police Scotland had thought to engage with my office on the elements of future data sharing involving biometric data.

During the Police Scotland presentation, members of my advisory group sought assurance on questions of data security and data sovereignty given that it was apparent that body-worn video technology provider Axon had been contracted by Scottish Government to deliver DESC, which is to be hosted on Microsoft Azure.

The Police Scotland presentation was delivered and members of the advisory group had asked for the slide pack of DESC to be circulated after the meeting. Police Scotland had indicated that some of the slides may contain information that may be commercially sensitive so would have to consider and revert. The slide pack was never received.

On 5 April 2023, an [article](#) was published in Computer Weekly about DESC suggesting that the pilot had been launched despite 'unresolved major data protection issues'. The article quotes a Scottish Police Authority Data Protection Impact Assessment (DPIA) which expressed concerns that the processing may breach the controls that apply to international transfers as defined in section 73 of the Data Protection Act 2018. Those concerns relate to

the provider, a wholly owned US company and its sub-processor, Microsoft Azure, both of which are subject to invasive legislation that allows US government to access their data.

As you will be aware, the Scottish Biometrics Commissioners statutory [Code of Practice](#) was approved by the Scottish Parliament and took legal effect in Scotland on 16 November 2022. Principle 10 of the Code relates to promoting privacy enhancing technology and provides that the way in which you acquire, retain, use, and destroy biometric data for criminal justice and policing purposes in Scotland must ensure that such data is protected from unauthorised access and unauthorised disclosure in accordance with UK GDPR and the Data Protection Act 2018.

To ensure compliance with the Code of Practice, Police Scotland needs to demonstrate that any use of hyperscale cloud infrastructure which involves biometric data is compliant with law enforcement-specific data protection rules. The best way to achieve this would be to have a hosting platform that is entirely located in the UK, and which meets all the requirements of Part 3 of the Data Protection Act 2018 on processing for law enforcement purposes.

If this is not the case with DESC, then to ensure that public confidence and trust is maintained, Police Scotland needs to explain to citizens what the use of the cloud means for their personal data. This means being open with citizens about what country their data will be stored in and, if the answer to that question is not the UK, to explain the obvious risks of that extremely sensitive data then being accessed either judicially or maliciously.

I am now sufficiently concerned about the potential implications of DESC that in accordance with the provisions of section 16 of the Scottish Biometrics Commissioner Act 2020, I must now **require** Police Scotland to provide me with information so that I can determine whether Police Scotland are complying with the data protection elements of my statutory Code of Practice. In accordance with the provisions of section 16 (2) of the Scottish Biometrics Commissioners Act 2020, the information which I require to be provided to me by Police Scotland is as follows:

1. Has there been any exchanges of 'biometric data' as defined in section 34 of the Scottish Biometrics Commissioner Act 2020 as part of the DESC Pilot since its launch and up to and including the date of this information notice. If so, please give information on what types of biometric data has been exchanged and in what volumes.
2. If biometric data has been exchanged as part of DESC, please confirm whether Police Scotland is complying fully with Part 3 of the UK Data Protection Act 2018 relevant to law enforcement processing, and with Principle 10 of the Scottish Biometrics Commissioner's Code of Practice.
3. If biometric data has been exchanged as part of DESC, please confirm in which country any biometric data shared on the cloud by Police Scotland is hosted.
4. Please also confirm what discussions have taken place with the UK Information Commissioner (ICO) on questions of international transfers and digital sovereignty, and please confirm whether all concerns been resolved to the satisfaction of the ICO.

I require this information to be provided to me by no later than 1700 hours on Wednesday 14 June 2023. The requested information should be provided in writing in the form of a letter bearing the signature of an officer not beneath the rank of Assistant Chief Constable.

Further guidance on my legal powers to gather information in the exercise of my functions can be found in sections 16 and 17 of the Scottish Biometrics Commissioners Act 2020.

Yours sincerely,

*Brian Plastow*

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