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30 December 2021

Dr Brian Plastow  
Scottish Biometrics Commissioner  
Bridgeside House  
99 McDonald Road  
Edinburgh EH7 4NL

**Our ref: N/A**

Dear Dr Plastow,

Thank you for including British Transport Police (BTP) within your consultation on your proposed Code of Practice on the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes in Scotland.

In answer to your primary question, your code has been well considered by our staff within the relevant functions of BTP and I can confirm that we would indeed be generally content with the suggested approach should the Order under Section 104 of the Scotland Act be agreed.

BTP are committed to operating in a manner that promotes and protects public confidence and trust in the use of biometric data. Our Scientific Support Unit (SSU) is already compliant with relevant ISO Standards and UKAS accredited for its DNA screening laboratory functions, Fingerprint Bureau and Fingerprinting enhancement laboratory functions. With the full support of our Chief Officer Group, we have extensive work in progress to ensure our Scenes of Crime, CCTV and Digital Forensic Unit functions also achieve ISO compliance and UKAS accreditation. We are committed to complying with the Forensic Science Regulatory (FSR) for England and Wales' FSR's Code of Practice and Conduct and willing to commit to adhering to your Code of Practice too. BTP seeks to operate to the same high standards you advocate within your Code and I expect you will see very good compliance by BTP in Scotland.

Fundamentally, I agree with the principle that BTP should be included in oversight arrangements of your office for the conduct of our policing functions in Scotland.

I will outline below in brief four specific areas that I would be very grateful for your consideration.

## **Potential for collaboration with the Home Office Biometrics and Surveillance Camera Commissioner (BSCC)**

When determining your methods for monitoring and reporting on BTP's compliance with the Code, I would be grateful for consideration of a coordinated approach with the BSCC for England and Wales to inspection. I was pleased to see the BSCC on your list of additional consultees you considered appropriate.

Whilst a legislative measure, such as the Consequential Provisions Order concerning your relationship with the Information Commissioner would not seem necessary, a memorandum of understanding between your office and the BSCC as to how you will work together in the exercise of your functions in respect of BTP and other UK-Wide policing bodies operating in Scotland appears a benefit and efficiency for all parties.

## **Biometric Databases**

Simply to ensure your awareness of BTP's processes: DNA samples obtained from suspects by BTP in Scotland are processed in England to the standard of DNS17 and added direct to the National DNA Database (NDNAD). However, all of our detained persons are processed through Police Scotland custody suites. When a new subject record is uploaded to Criminal History System (CHS) via the Police Scotland custody system, and no previous convictions or pending cases exist for that subject, then the CHS system marks it for tracking just as it would for a Police Scotland case. A not guilty outcome results in automatic deletion of a custody image. If there are also fingerprint and DNA records on PNC (recordable crime), then our BTP Scotland Crime and Justice Unit (CaJU) are informed by a CHS system administrator and cause the necessary PNC and NDNAD deletions.

## **Biometrics in the Criminal Justice Process**

As you have highlighted in Part 4 of your Code, the Criminal Procedure (Scotland) Act 1995 is the primary Scottish legislation allowing the retention of fingerprints and other samples from a person arrested by police. The powers you have referenced, such as the ability to apply to the Sheriff Court for a two-year extension to the retention of samples taken under Section 18A from persons suspected of sexual and violent offences, are preserved for the Chief Constable of the Police Service of Scotland.

Circumstances where this presents a challenge to BTP will be infrequent, but our inability to apply independently for the retention of biometric samples taken from a person arrested by BTP for an offence on the railway in Scotland is regrettable and places an unnecessarily burden upon our Police Scotland colleagues to support us. We do not seek legislative remedy from you via this consultation, but simply observe that the same responsibilities have been given to our Chief Constable, the Chief Constable of the Ministry of Defence Police and the Director General of the NCA as to our Police Scotland counterpart but with less power to discharge those responsibilities as we may see fit.

## **Process for adopting new biometric technologies**

The clarity of Appendix D and the process you have laid out for the adoption of new biometric technologies is very welcome. However, it does not provide a pathway for BTP to adopt a new biometric technology independently of Police Scotland. Whilst I and the British Transport Police Authority maybe able to access internal governance mechanisms of Police Scotland and the Scottish Police Authority (SPA), this is not ideal. I would be grateful for you giving due consideration to the potential to permit BTP to act independently in this regard to avoid unnecessary delays in the adoption of appropriate potential new technology where there is a demonstrable benefit to the safety and security of the rail network.

To reassure you, every effort will always be made to engage early and constructively with Police Scotland, but inevitably time, financial constraints and planning cycles are such that we cannot always proceed to adopt new technologies in partnership and achieve the same voracity or pace.

BTP are working with multiple police and rail industry partners to explore innovative CCTV and passive data technologies to safeguard vulnerable individuals and improve public safety. Our current pilot projects in England and Wales are being developed with external scrutiny from independent advisory groups and stakeholders in line with relevant guidance and legislation.

Should we have a viable, useful capability in England and Wales, it would be good for BTP to be able to independently proceed and subject this to your appropriate scrutiny and seek to adopt as early as possible for the benefit of people in Scotland. It would be even better for us to be able to consider locations on the railway in Scotland for such pilot projects to develop and/or test new biometric technologies. I would be grateful for you considering how BTP can be supported with the principle of encouraging scientific and technological advancement by a suitable governance process.

My comments and concerns expressed above do not, however, prevent me from committing BTP to adhere to the 12 Guiding Principles and Ethical Considerations set out in your Code. I appreciate the clarity of your Code and am grateful for the early sharing of the associated 42 Quality Indicators, which have enabled me to gain assurance of BTP's ability and preparedness to comply.

I would be very grateful if you are able to keep me updated on the progress of the Order under Section 104 of the Scotland Act. There are internal arrangements that will need to be made within BTP, with a cost and time implication, and I seek to initiate with as much notice as possible.

Yours sincerely,



Charlie Doyle

Assistant Chief Constable, Public Contact & Specialist Crime

British Transport Police

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