



Scottish Biometrics
Commissioner
Coimiseanair
Biometrics na h-Alba

ASSURANCE REVIEW OF THE ACQUISITION, USE AND RETENTION OF IMAGES AND PHOTOGRAPHS FOR CRIMINAL JUSTICE AND POLICE PURPOSES

THE SCOTTISH BIOMETRICS COMMISSIONER

Terms of Reference

Version 1.0 - July 2023



Safeguarding our biometric future



Document Control

Title	Assurance review of the acquisition, use and retention of images and photographs for criminal justice and police purposes
Prepared by	Diego Quiroz
Reviewed by	Dr Brian Plastow
Version	1.0
Amendments	
Date	July 2023



About the Scottish Biometrics Commissioner

The Scottish Biometrics Commissioner is established under the [Scottish Biometrics Commissioner Act 2020](#). The Commissioner's general function is to support and promote the adoption of lawful, effective and ethical practices in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes by:

- [The Police Service of Scotland](#) (Police Scotland)
- [Scottish Police Authority](#) (SPA)
- [Police Investigations and Review Commissioner](#) (PIRC)

The Commissioner has wide ranging general powers and may do anything which appears to the Commissioner to be necessary or expedient for the purposes of, or in connection with, the performance of the Commissioner's functions, or to be otherwise conducive to the performance of those functions¹.

Our Values

As a values-led organisation, we will conduct our activities in a way that is Independent, Transparent, Proportionate and Accountable.

Independent

We will always act independently and publish impartial and objective review reports. Our professional advice will be informed and unbiased. The Scottish Biometrics Commissioner is a juristic person, appointed by Her Majesty the Queen on the nomination of the Scottish Parliament and is independent of Scottish Government.

Transparent

We will be open about what we do and give reasons for our decisions. We will publish our reports and findings and will not restrict information unless deemed necessary to protect the identity of data subjects, or due to wider public interest considerations.

Proportionate

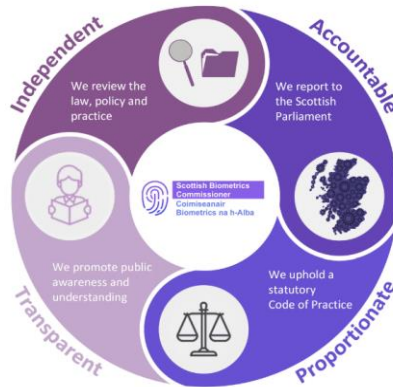
We will ensure that our activity is proportionate and does not exceed what is necessary to achieve our statutory purpose. We will minimise the burden of any review activity on Police Scotland, the Scottish Police Authority, and the Police Investigations and Review Commissioner. We will ensure that the way that we do what we do is necessary, effective and efficient.

¹ Scottish Biometrics Commissioner Act 2020, [Section 4](#)



Accountable

We will be accountable for what we do to the Scottish Parliament and will submit ourselves to whatever scrutiny is appropriate to our function. We will promote equality, diversity, and human rights in everything that we do.



Our Power to Work with Others

[Section 3](#) of the Scottish Biometrics Commissioner Act 2020 confers a power on the Commissioner in the exercise of his functions to work, assist and consult with other named bodies. This includes amongst others, Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner.

Background

Images, including facial photographs are the most common biometric data used for the investigation and prevention of crime in Scotland. Police Scotland, the PIRC and the SPA hold a variety of images which can be broken down into the following categories:

Police Scotland

There are many systems which Police Scotland operate which contain images. There are also UK wide policing and multi-agency systems which give Police Scotland access to images. Additionally, the public and other agencies provide images to Police Scotland which they use and/or share with other systems.

Examples of systems operated by Police Scotland containing images include the Scottish Criminal History System (CHS), the Scottish Intelligence Database (SID), the Unified Force Intelligence system (UNIFI) crime and productions system and the PRONTO system. The PRONTO system is where officers can take images of a victim of crime and evidential images e.g. from mobile phones; private CCTV; body worn cameras; drones; ring door bells; dash-cams; warrants and victim injury photographs.



Examples of UK systems containing images which Police Scotland can access includes the Police National Database (PND); Video Identification Parades Electronic Records (VIPER); the Child Abuse Images Database (CAID); UK Missing Persons Database; Violent and Sexual Offender Register (VISOR); DVLA images via PRONTO; the Fixated Persons Database and Automatic Number Plate Recognition (ANPR) Images (if the driver's image is captured).

Examples of access (to other agency systems) include Police Scotland control rooms having access to, and sometimes storing public space surveillance images, and intelligence access to other agency databases.

Examples of ingesting data to other systems includes images on Digital Evidence Sharing Capability (DESC) service, as well as several other systems. There are also manual systems holding images including 'open source' images taken from the internet by intelligence officers and passed to officers to assist with an enquiry.

This biometrics data is held on a range of primary and secondary databases or legacy systems. It is important to note that a particular image may also feature on multiple databases either physically or perhaps in digital format on a Personal Digital Assistant (PDA) network such as PRONTO.

PIRC

- Images supplied by Police Scotland and the SPA, i.e. locus injury and post-mortem photographs.
- Images and photographs sent in by members of the public, mainly as complaints.
- Images taken by the PIRC staff for investigation purposes, i.e. locus and injury photos.

In addition to still images and photographs, the PIRC also store CCTV footage, body worn video and mobile phone footage. The CCTV can be acquired from public space CCTV, police custody CCTV and private CCTV from both businesses and private residences. Most of this material whether it be photos or video are stored electronically on discs and servers.

SPA

- Images from crime scenes, including images of fingerprints left at the scene of a crime and reference images from fingerprint collection as part of casework.
- Image/photo of a hand of an individual to compare with finger/palm prints (rarely).
- Photos of productions to record aspects of an examination, for example images of serious injuries, deceased persons, or body parts taken by a scenes of crime officer as part of a forensic crime scene examination.

The vast majority of the work of the SPA does not involve images/photos but there may be occasions where such images/photos are surrendered as part of a submission.



Data volume example

On 31 March 2022 there were 640,410 images relating to 374,405 people within the Police Scotland Criminal History System (CHS). This data is replicated in the UK PND system so there were also 640,410 Scottish images relating to 374,405 people on PND. However, this number reflects only custody episodes when an arrested person is brought into police custody and charged with an offence. In 2018 the Independent Advisory Group (IAG) on Biometric Data in Scotland reported that Police Scotland held more than one million custody images on retention. Today, we can estimate that the number will be significantly higher.

The law

Primary legislation in Scotland is silent on acquisition and retention periods of images and photographs by Police Scotland. The absence of legislation giving explicit authority to the police to take custody episode photographs is at variance with specific legislative authority in other parts of the UK. This legislative discrepancy has been highlighted previously by the IAG on the Use of Biometrics in 2018 and HMICS in 2016.

In 2022, The SCB [Code of Practice](#) established a presumption of deletion for biometric data (in circumstances where the subject has no previous convictions) following the expiry of the relevant retention periods as prescribed or permitted in law. If a biometric data type has no retention period prescribed in law, the Code of Practice requires Police Scotland, the SPA and the PIRC to apply the same retention period as for other types of biometric data, such as DNA and fingerprints in the corresponding case in question.

In the event of acquittal, the records and images of those individuals are removed from CHS and PND by Police Scotland, once notified of non-conviction or absolute discharge by the Crown Office and Procurator Fiscal Service (COPFS). There is an exception permitted for certain sexual and violent offences as defined in [Section 48](#) of the Crime and Punishment (Scotland) Act 1997 of three years. If a child is referred to the Children's Hearings system, images are destroyed.² Police Scotland voluntarily applies similar policy to the retention and weeding of photographs on CHS as exists in primary Scottish legislation for fingerprints and DNA.

[The Criminal Procedure \(Scotland\) Act 1995](#) authorises the police to take from persons who have been arrested, their fingerprints and DNA. It has been custom and practice for arrested persons in Scotland to be photographed for more than 100 years. [Section 87\(4\)](#) of the Sexual Offences Act 2003 provides that the police during the Sexual Offender Notification Requirements could photograph any part of the offender's body.

All Registered Sex Offenders must be photographed a minimum of every 12 months or sooner if their appearance changes.

[The Police Public Order and Criminal Justice \(Scotland\) Act 2006](#) as amended by [The Police and Fire Reform \(Scotland\) Act 2012](#) gives the PIRC powers to conduct investigations where directed by COPFS or when requested to do so by the Chief Constable or the Scottish Police Authority. In addition, the

² As a general rule, but there are exemptions to the destruction.



Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 provide additional powers to deal with referrals by the Chief Constable or the SPA.

To date it has not been established how many images, or where, are currently held for criminal justice and police purposes in Scotland. This assurance review is a high-level strategic report that will clarify and provide a baseline, for the first time, on this issue in Scotland.

Legal basis for review

The assurance review will be conducted under the provisions of [Sections 2\(6\)\(b\)](#) and [3\(f\)](#) of the Scottish Biometrics Commissioners Act 2020. The ensuing report will be laid before the Scottish Parliament by the Commissioner under [Section 20\(2\)](#) of the Act.

Aims

In this complex scenario, the strategic aim of this review is to provide a clear picture of the current landscape on the use of images, including photographs. This assurance review will answer:

1. What is the statutory and policy framework that underpins the acquisition, use and retention of images and photographs for policing and criminal justice in Scotland?
2. Where possible, determine how many images of all types are currently held for policing and criminal justice purposes in Scotland.³
3. Describe the name and purpose of the various images and photographs' databases, including primary, secondary, or legacy systems for policing and criminal justice in Scotland such as former force custody or case management systems.
4. Assess how effectively Police Scotland, the SPA Forensic Services and the PIRC exercise governance and assurance arrangements in place around weeding and retention of images, including where images are transferred to other criminal justice partners and UK databases.
5. Consider what evidence exists to support the value of capturing images and photographs e.g. in terms of crime scene to criminal justice sample match rates.
6. Highlight best practice and explore any challenges in the use of biometric data by Police Scotland, the SPA and the PIRC.

Methodology and scope

A number of qualitative and quantitative methods will be used to answer the key aims of this review. The review will start by determining the relevant legislation and policies on images, including photographs used for criminal justice purposes in Scotland. This section will cover existing frameworks, available procedures

³ SBC is aware that in the case of images held manually, or in systems without automated searching capabilities, there will be no automated means of knowing how many images are held



and standard operating procedures relating to images and photographs. We will examine each of the key six areas highlighted above by a combination of quantitative means and semi-structured interviews, which allow for exploration within a predetermined thematic framework.

This framework will be based on the SBC [National Assessment Framework](#) and our Code of Practice. We will explore the question of the value and purpose of holding this type of biometric data and invite the organisations to provide a data snapshot, where possible, of the volume of data held on images and photographs. We will also conduct a small number of qualitative interviews to identify current practices and governance around collection, use, transfer to other criminal justice partners and deletion of data.

This review will provide a wide strategic assessment and baseline study on the existing landscape of images and photographs in Scotland. This will inform decision-makers, criminal justice partners and our community, of current volumes; where they are stored; how they are used and how they support law enforcement agencies in Scotland. We hope this review will also improve the current levels of awareness, knowledge and practices related to images and photographs used for criminal justice and police purposes in Scotland.

The scope of this assurance review will extend to:

- Police Scotland
- Scottish Police Authority
- Police Investigation and Review Commissioner

Exclusions from Scope

Biometric data given voluntarily by employees for general employment purposes or where responsibility for regulatory oversight is already vested in another UK Commissioner, including covert surveillance, will not be covered by this review.

Resource plan

This is a high level strategic and mainly desk-based review with a few qualitative interviews. It is envisaged therefore, that the review will be conducted by the SBC Operations Manager with the support of single points of contact within each organisation for the provision of requested information. This review will also feed into and draw from the compliance assessments on the Code of Practice which will run in parallel - this with the intention of minimising any impact on Police Scotland, the SPA and the PIRC. This process will begin October 2023 and be finalised February 2024.



Timeline

The indicative timescale for the necessary activity is as follows:

Key areas	Oct 2023	Nov 2023	Dec 2023	Jan 2024	Feb 2024	Mar 2024
Law and policy review of images and photographs in Scotland including internal SOP, procedures, etc. for each organisation						
Developing, drafting and conducting semi-structured interviews with expert staff members and transcriptions of same						
Analysis of evidence (external and internal)						
Writing up report						
Factual accuracy check and sending to publishers (formatting process)						
Submission of report to the Scottish Parliament						

Intended outcome and reporting

The intended outcome is to provide assurance to the Scottish Parliament around the lawful, effective and ethical use of images used for criminal justice and police purposes in Scotland. A report of the assurance review will be submitted to the Scottish Parliament in March 2024. The report will include key findings, a data volume and any recommendations, if made. There will also be a media release at the same time as publication.

Further information

Further information on this proposed assurance review may be obtained from Diego Quiroz, Operations Manager, SBC at Diego.Quiroz@biometricscommissioner.scot