

Humza Yousaf MSP
Cabinet Secretary for Justice
T4.02
The Scottish Parliament
Edinburgh
EH99 1SP

26 September 2019

Dear Humza,

We are writing as civil society organisations working across Scotland and the United Kingdom on issues of human rights and the impact of technology on fundamental rights.

The use of biometrics in law enforcement is a well-established practice since the development of fingerprinting in the late 19th century. Biometrics now extends to but is not limited to DNA, facial search, gait, iris recognition, speech recognition, facial recognition. While useful in preventing, detecting and prosecuting crime, the capturing and storing and searching of biometric identifiers violates individual and group privacy. There is a need to ensure that the use of biometrics identifiers occurs within a governance framework that strikes a balance between public security and fundamental rights to privacy and data protection. It should also be acknowledged that other rights are engaged where this technology is used in public spaces, including the freedom of association and assembly, and freedom of expression.

We are supportive of the Scottish Government's legislation to create a Scottish Biometrics Commissioner. However, the scope of the Biometrics Commissioner is too narrow. Limiting the competencies of the regulator to law enforcement does not reflect the realities of the way biometrics are used in society.

The debate about the proportionate and ethical use of biometrics is occurring in multiple sectors and the focus on the collection, retention, use and deletion of biometrics solely in law enforcement is blind to the realities of the use of biometrics today. Biometrics are being used in the fields of health and social care, immigration and asylum¹, even education as was seen with the use of facial recognition in Swedish schools². Each of these applications raise separate questions of rights, morals and ethics.

The recent case, widely reported in the media, of the private property developer Argent using facial recognition in their Coal Drop's Yard site is not an outlier, nor is it a specifically London issue. Glasgow City Council has a CCTV system which has 70 cameras³ allowing for

¹ <http://www.aboutimmigration.co.uk/uks-immigration-asylum-biometric-system.html>

² <https://thenextweb.com/eu/2019/08/27/facial-recognition-in-schools-leads-to-swedens-first-gdpr-fine/>

³

<https://www.whatdotheyknow.com/request/532992/response/1321203/attach/html/3/TSR%20FOI%206862688%20Response%20Letter.docx.html>

the matching of any person of interest with an uploaded photo, which then maps the location of that individual in real time. The European Union has committed to bring forward legislation covering facial recognition by companies and public authorities, in the process acknowledging that biometrics is about more than just policing.⁴

This is an opportunity for Scotland to lead the governance of biometrics. Scotland deserves modern, effective institutions that are in a position to respond to today's challenges and remain in a position to meet tomorrows. To achieve this, the scope of the Biometrics Commissioner should incorporate the present and future applications of biometrics in our society. We call on you to expand the scope of the proposed Scottish Biometrics Commissioner to any use of biometrics by public authorities and private actors on the general public.

Open Rights Group
Amnesty International UK
Big Brother Watch

⁴ https://www.ft.com/content/90ce2dce-c413-11e9-a8e9-296ca66511c9?utm_source=angellist