



Information Commissioner's Office

The Information Commissioner's Submission to the Home Affairs Committee's Call for Evidence on the New Landscape of Policing

Introduction

1. The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA). He is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.
2. The Commissioner welcomes the opportunity to respond to this call for evidence. This response will focus on issues that have transparency, data protection and privacy implications.

Executive Summary

3. The Commissioner considers that the review of the policing landscape provides an opportunity to clarify the roles of all policing bodies, to improve the governance of national level policing systems and to ensure that the whole policing system is fully transparent with clear lines of accountability. The Commissioner is keen to see that important national functions performed at present by the Association of Chief Police Officers (ACPO) and the National Police Improvement Agency (NPIA) are maintained in the new policing framework and that any proposed changes maintain or improve information rights outcomes for individuals. The Commissioner welcomes the government's announcement that ACPO will be brought under the FOIA and considers that this should be extended to include HM Inspectorate of Constabulary (HMIC) and the National Crime Agency (NCA).

• What progress has the Government made so far, and what further steps should it take, in driving:

c) Greater collaboration between forces and other partners, from both the private and the public sectors?

4. There has been an increased interest in collaboration between forces including proposals to share Data Protection and Freedom of Information functions. The Commissioner's view is that responsibility for compliance with the DPA and the FOIA will always fall to the chief officer in his legal capacity as a data controller and as a public authority. However, this does not prevent collaboration if the appropriate measures and necessary legal safeguards are put in place. These include considerations such as adequate security, contracts (data processing agreements), retention schedules and appropriate administrative arrangements.
5. The Commissioner would be concerned if collaborative arrangements led to worse information rights outcomes for individuals, such as resulting in delays in handling subject access requests or individuals not receiving the information they are entitled to. To avoid this, any proposed collaborative arrangements should be thoroughly planned and their impact assessed prior to implementation to ensure that the level of service to individuals will be maintained or improved.

• Which bodies should take on the functions of the National Policing Improvement Agency when it is phased out?

6. The Information Commissioner's Office (ICO) has liaised with the NPIA on important national issues. They perform a vital role in providing professional expertise and creating national standards of good governance. An example of this has been the NPIA's work on governance arrangements for the National ANPR Data Centre (NADC). ANPR is a powerful surveillance technology that is used to collect information about vehicles as individuals go about their daily lives. The NPIA was key to developing a consistent approach to retention periods for ANPR data and implementing a weeding process to ensure that forces had the technical capability to delete ANPR records in line with retention guidelines.
7. The Commissioner would be concerned if phasing out the NPIA resulted in any loss of professional expertise or less consistency on issues of national importance.

• What advantages/disadvantages would the new National Crime Agency, as proposed by the Government in Policing in the 21st Century, have over the existing Serious Organised Crime Agency?

8. If the Serious Organised Crime Agency's (SOCA) functions are transferred to the NCA the Commissioner trusts that the NCA will engage with his office to implement any outstanding recommendations outlined in the Commissioner's report to the European Union Committee on 'Money laundering: data protection for suspicious activity reports'. These recommendations focus on the ELMER database and particularly the retention and deletion of suspicious activity reports.

• In addition to its principal focus on tackling organised crime, what other functions should the proposed new National Crime Agency undertake on behalf of police forces?

9. The Commissioner considers that the governance of national level policing systems could be improved and the NCA could potentially take on a national governance role.
10. The Commissioner supports the government's aim of simplifying national policing arrangements to improve, rationalise and bring coherence to national level policing issues. The Commissioner also welcomes the Home Secretary's statement that the large scale devolution in power to local forces will be matched with a stronger, more streamlined approach to those issues that require national coordination. It is important to clarify which bodies are responsible for national level policing systems so that there is clear accountability for ensuring that information held on those systems complies with the law. The Commissioner's view is that information rights compliance would be greatly assisted by a clear national framework that achieves consistency of approach and clarity of responsibilities.
11. The Commissioner recognises the challenges surrounding the relationships that underpin policing, in particular the relationship at a national level between central government, local forces, the professional leadership of the service and those responsible for its local accountability. As a regulator that deals with government, local police forces, police authorities and various national policing agencies and bodies, we recognise that the current arrangements could be improved.

12. The complex connections and interrelationships across police forces and national policing bodies is particularly apparent when it comes to the governance of, and accountability for, the police collection, storage and use of people's information. The picture becomes even more complex when we take into account the wider information sharing that takes place within 'the public protection network', for example, with the CRB, ISA and other parts of the criminal justice system.
13. Rapid advances in technology have resulted in vast amounts of personal data being collected and processed by the police at local and national level. This information is held in the Police National Computer, the new Police National Database and other national level policing databases such as the National DNA Database and the NADC. At present, responsibilities are fragmented across police forces and various national bodies (ACPO, ACRO, NPIA and various wider bodies such as the National DNA Database Strategy Board, National CCTV Strategy Board). At a basic level it is often challenging to identify who the data controllers are for the personal information held within those databases and very often all 43 forces are data controllers in common. This is further compounded by decisions as to funding, functionality and operational use being influenced by others such as the government, NPIA and various ACPO committees.
14. There is a danger that the fast pace of development can lead to lack of clarity about who is accountable for such databases. This can be evident, for example, in setting access procedures, retention periods and overseeing quality and security of the data. There is also a risk of a lack of transparency because the public may have little awareness of such systems, especially when information such as vehicle movements or CCTV images may have been obtained from third parties who collected the information for different purposes and hold it for much shorter periods. It is important that the development of such national systems should be subject to the fullest scrutiny and debate, with clear lines of responsibility and control.
15. These complex inter-relationships in local and national policing and connections between various databases pose significant challenges in terms of information governance. They also raise significant data protection and privacy concerns, especially with the large-scale collection of

information about people who go about their lawful day to day business, for example through the NADC.

16. The Commissioner is also concerned about the lack of strategic management of, and accountability for, developments which engage wider surveillance concerns such as CCTV and ANPR. For example, the ICO sits as an observer on the relevant ACPO national working groups but they are looking at issues from a police perspective and there does not appear to be sufficient consideration of wider societal implications such as balancing public security and individual civil liberties.
17. It is important that there is clear accountability and leadership at a national level for the national policing databases so that they are managed in a more coherent and consistent way. This includes, for example, agreeing and setting national standards and coordinating responses to subject access requests.
18. The Commissioner considers that there is a strong case for the establishment of an independent statutory criminal records body responsible for the central collection and administering of criminal records. This would ensure clear governance and consistency of approach in the collection, retention, use and disclosure of criminal record information. Its governance arrangements would provide an opportunity to ensure it reflects a wider variety of societal interests. The present arrangements have evolved over time in a piecemeal fashion and now involve a variety of parties from individual chief officers to the NPJA and the ACPO Criminal Records Office. Despite best efforts the current arrangements do not represent an appropriate and modern approach to criminal record keeping.
19. The Commissioner appreciates that the Government wants to reduce bureaucratic burdens on local forces and reduce the guidance they receive from Whitehall. However, local autonomy can lead to inconsistencies when dealing with national databases. For example, chief officers decide whether to remove people's details from the PNC and the National DNA Database; and local forces have their own policies concerning access to ANPR databases. Although ACPO and NPJA have worked closely with the ICO to set and maintain national standards, ensuring these are in place and adhered to in practice is an ongoing challenge for all concerned.

20. The Commissioner recognises that good ideas for tackling crime often occur at local level but there needs to be greater recognition that these local initiatives (e.g. CCTV, ANPR, headcams, crime mapping) often develop rapidly and piecemeal into national programmes without the appropriate governance being put in place. As more information is held on a national basis and can be used in more sophisticated ways, there is concern about the effects on individual privacy, how this is assessed before developments are rolled out and whether sufficient safeguards are in place to protect personal information.
21. The use of covert cameras in Birmingham highlights the problems that arise in relation to accountability and transparency when local police forces come up with an initiative (to introduce ANPR cameras for counter terrorism purposes), use national counter terrorism funds to finance it but inform communities that it is for crime reduction and community safety benefits. This resulted in confusion over responsibilities, transparency and a consequent reduction in public confidence and trust.
22. The lawful and proportionate acquisition, use and disclosure of personal information for policing purposes and the drive towards greater transparency in policing activities are issues of fundamental importance both to individuals and society. It is vital that any changes to policing resulting from these proposals enhances information rights and does not undermine them.

● **What should be the governance and accountability arrangements for the proposed new National Crime Agency?**

23. The Commissioner supports the view outlined in the 'Policing in the 21st Century' consultation paper that there will need to be clear, robust governance and accountability arrangements for the NCA. Transparency is vital in ensuring that a body is accountable and the Commissioner considers that the proposed NCA should be subject to the FOIA. If the NCA proactively publishes information from the outset, and on an ongoing basis, this will lead to a more transparent body that is accountable to the public and whose functions are properly understood.
24. At present SOCA is exempt from the FOIA. It appears that the proposed NCA will have a much wider remit than SOCA and the Commissioner considers it would be a backward and

unnecessary step if the whole agency had a blanket exemption from Freedom of Information legislation by designating the NCA under section 23(3). This would be compounded if, for example, the NCA is responsible for some of the functions currently carried out by the NPIA and the UKBA who are subject to the FOIA. The Commissioner acknowledges that some NCA information will need to be withheld from the public for national security reasons. However, the Commissioner considers that the exemptions under section 23 and 24 will be sufficient to give the necessary protection. Other exemptions, such as those provided by sections 30, 31 and 36, may well also be applicable.

25. The Home Office's consultation document stated that the Chief Constable for the NCA will be responsible for strengthening the UK's border policing arrangements to enhance UK national security, improve immigration controls and improve the response to organised crime. The Government also proposes to create a National Border Police Command that would come under the NCA. It is not clear whether this would include assuming responsibility for the information systems which underpin these border control activities such as those employed in relation to immigration control and passenger screening. It is important that such responsibilities are clearly defined.

● Where in the proposed new landscape would the Child Exploitation and Online Protection Centre best sit?

26. It would not be appropriate for the Commissioner to comment on this issue.

● What should be the role of ACPO in the new landscape?

27. The ICO works closely with ACPO on a wide range of policing issues and enjoys a cooperative working relationship. With the NPIA, ACPO provide a national contact which allows the ICO to constructively engage with the police on important information rights issues at a national level.
28. The Commissioner notes the Home Office's proposal that in future ACPO will focus on professional leadership. It has been suggested that ACPO will have a key role in advising Government, the Police and Crime Commissioners and police forces on strategy, best practice and operational matters but

that strategic policy will be set locally by the Commissioners and nationally by the government.

29. It is not yet clear where functions currently undertaken within the framework of ACPO will sit in future. For example, the ACPO Criminal Records Office exerts coordinating influence over record keeping on the PNC, undertakes national functions such as providing subject access responses, promotes compliance with the FOIA through the Central Referral Unit, provides certain conviction certificates, develops national policy guidance and discharges the UK's international responsibilities in relation to criminal record exchange. These important functions need to be taken into account if consideration is to be given to changing ACPO's role.
30. The Commissioner welcomes the government's announcement that ACPO will be brought under the FOIA. It is important that there are transparency requirements across all those bodies that are involved in the proposed policing framework.

March 2011