

The Information Commissioner's response to the consultation on 'Policing in the 21st Century: reconnecting police and the people'

Introduction

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.

The Information Commissioner's Office (ICO) welcomes the opportunity to respond to the above consultation. In this response we shall focus on issues that have transparency, data protection and privacy implications.

Chapter 1: The challenge

The ICO supports and welcomes the Government's aim of making the police more accountable, accessible and transparent to the public. We also welcome 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. The ICO's view is that information rights can best be regulated within a consistent national framework.

The consultation document highlights 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 these challenges and that the current arrangements could be improved.

Chapters 2 and 3: Increasing democratic accountability and removing bureaucratic accountability

Transparency

We welcome the Government's proposals for greater transparency on policing and crime and support plans to provide the public with information on local crime figures; police performance and expenditure of public money. The public has a right to know how their taxes are spent and what is done in their name, especially by key public services, such as the police. This is consistent with the requirements of the FOIA and the proactive publication of information through its publication scheme process. Equally however, concerns about privacy will need to be balanced against decisions about greater transparency.

The consultation outlines how the Government wants the police to be accountable to the public not Whitehall and wants to achieve this with locally elected Commissioners. We agree that transparency is a vital element of ensuring accountability and we welcome the proposal that the Police and Crime Commissioners and their support teams will be subject to the FOIA. It is important that there are transparency requirements across all who are involved in the proposed policing framework ensuring those with particular roles such as ACPO and HMIC are subject to the requirements of the FOIA.

Police organisations can do more to be transparent by publishing more information proactively. Under the FOIA police bodies are required to publish a range of information for the public on a proactive basis. Our monitoring report of the police sector in March 2010 found that nearly 30 per cent (17 police authorities and 8 police forces out of 90 police bodies inspected) were not operating an approved publication scheme as required by the Act. The report found police bodies did not provide some of the information required; in some cases there were considerable delays supplying the information; charges for information were not clear and some websites were poorly maintained. It was disappointing that a significant number of police organisations were making it harder than necessary for citizens to gain access to official information. This was despite the Association of Chief Police Officers (ACPO) and the Association of Police Authorities (APA) putting a great deal of work into helping members meet their FOIA responsibilities.

Our follow up report showed that by the end of June 2010 all but three police authorities were operating an approved publication scheme. There was evidence of a very positive commitment to improve existing publication schemes, backed up by a high level of senior involvement. Local police bodies should continue to build on this progress as part of the Government's drive to improve transparency.

Crime mapping

We also support the drive to provide greater transparency on criminal activity in local areas. The consultation document includes a commitment that, from January 2011, crime data will be published at a level which allows the public to see what is happening on their streets and neighbourhoods. Crime mapping can be an effective means of letting people know what crimes are taking place in their local area and we have advised the Home Office and local forces on how such systems can be designed to take account of privacy risks - particularly when 'point data mapping' risks identifying individuals (especially innocent victims, witnesses or vulnerable offenders) or risks disclosure of sensitive personal information about those individuals if, for example, they have been the victim of a racially motivated crime or a sexual assault. We encourage the use of privacy friendly options that reduce the risks of identifying such individuals such as by merging adjoining postcodes in sparsely populated areas and banding together certain categories of crime. The ICO would be concerned if privacy risks arising from aggregation with other datasets in the public domain were not taken fully into account.

We recognise that there are demands from some quarters for even greater openness, with some people arguing for full disclosure of crime details as soon as possible after the event but it is important that privacy risks are managed carefully, especially as once this information is published on the internet, it is no longer possible to control what happens to it.

Chapter 4: a national framework for efficient local policing

We support the aim to simplify national policing arrangements and to improve, rationalise and bring coherence to the way things are done on national level policing issues. It is important that there is clarity in the governance arrangements and who has responsibility for ensuring that information held on national level systems complies with the law.

National Crime Agency

We support the view that there will need to be clear, revised robust governance and accountability arrangements for the new National Crime Agency (NCA). We think the NCA should be subject to the FOIA. At present SOCA is exempt from the FOIA but it appears that the NCA will have a much wider remit than SOCA and we consider it would be a backward and unnecessary step if the whole agency had a blanket exemption from FOI legislation by designating the NCA under section 23(3). This is particularly the case if, for example,

the NCA is responsible for some of the functions currently carried out by NPIA and UKBA. The ICO acknowledges that some NCA information will need to be withheld from the public for national security reasons. However, we consider 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.

The consultation document states 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 in relation to immigration control and passenger screening. It is important that such responsibilities are clearly defined and rest closest to those who use the information in practice.

Simplifying national arrangements

National police databases

The complex connections and inter-relationships across the police forces and the 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.

Rapid advances in technology have resulted in huge 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 the national level policing databases such as the National DNA Database and the National ANPR Data Centre. At present, responsibilities are fragmented across police forces and the various national bodies (ACPO, ACRO, NPIA and various wider bodies such as the ACPO DNA Database Strategy Board, National CCTV Strategy Board). At a basic level we often find it challenging to work out who are the data controllers 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 Government, NPIA and various ACPO committees.

There is a danger that the fast pace of development can lead to lack of clarity about who is accountable for such databases, for example, in terms of 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.

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 national ANPR database.

We are 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, we sit as observers 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.

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, for example, on agreeing and setting national standards; coordinating responses to subject access requests etc. We think there is a strong case for considering 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 NPIA and the ACPO Criminal Records Office and despite best efforts the current arrangements do not represent an appropriate and modern approach to criminal record keeping.

We appreciate 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 e.g. 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 NPIA have worked closely with us to set and maintain national standards, ensuring these are in place and adhered to in practice is an ongoing challenge for all concerned.

We recognise that good ideas for tackling crime often occur at local level but there needs to be greater recognition that these local initiatives (e.g. footprints, 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.

The use of covert cameras in Birmingham highlights the problems that arise in relation to accountability/transparency when local communities come up with an initiative to deal with local crime (i.e. introduce ANPR cameras), but then use national counter terrorism funds to fund it – resulting in confusion over responsibilities, transparency and a consequent reduction in public confidence and trust.

We also understand that the Government will be looking at the functions of the NPIA and the various "national" policing units that have emerged over time. We work closely with ACPO on a wide range of policing issues and enjoy a cooperative working relationship. We note that in future it is proposed that ACPO will focus on professional leadership and have a key role in advising Government, the 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.

It is not clear where functions currently undertaken within the framework of ACPO will be undertaken 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 and provides certain conviction certificates, develops national policy guidance and

discharges the UK's international responsibilities in relation to criminal record exchange. Lastly, the consultation states that ACPO recognises the need to increase its accountability and although ACPO is not currently covered by FOI it has articulated a desire to be part of the FOI process and we welcome this.

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.

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