

**From:** [Jacob Harris](#)  
**To:** [Angela Balakrishnan](#); [Debora Biasutti](#)  
**Subject:** FW: **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases  
**Date:** 13 December 2022 15:37:00  
**Attachments:** [20221213 Draft Commissioner Slides V5.pptx](#)

---

Slightly amended slides.



**Jacob Harris**

**Private Secretary to the Information  
Commissioner**

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Wilmslow, Cheshire SK9 5AF  
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or you can call us to make a verbal request relating  
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1113.*

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**From:** Elizabeth Baxter <Elizabeth.Baxter@ico.org.uk>

**Sent:** 13 December 2022 15:36

**To:** [REDACTED]; Izy Jude  
<Isabel.Jude@ico.org.uk>; Anthony Luhman <Anthony.Luhman@ico.org.uk>; Sally Anne Poole  
<SallyAnne.Poole@ico.org.uk>

**Cc:** [FOIA s.40\(2\) - Personal data that doesn't fall under s.40\(1\)](#); Jacob Harris <jacob.harris@ico.org.uk>; Tom  
Parkman <Tom.Parkman@ico.org.uk>; Anthony Luhman <Anthony.Luhman@ico.org.uk>

**Subject:** RE: **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases

Please find attached the amended slides as requested.

Thanks



**Elizabeth Baxter** (She/her)

**Head of High Priority Inquiries**

Information Commissioner's Office, Wycliffe  
House, Water Lane, Wilmslow, Cheshire SK9  
5AF

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**From:** [REDACTED]  
**Sent:** 13 December 2022 15:06  
**To:** Izy Jude <[Isabel.Jude@ico.org.uk](mailto:Isabel.Jude@ico.org.uk)>; Elizabeth Baxter <[Elizabeth.Baxter@ico.org.uk](mailto:Elizabeth.Baxter@ico.org.uk)>; [REDACTED]  
[REDACTED] Anthony Luhman <[Anthony.Luhman@ico.org.uk](mailto:Anthony.Luhman@ico.org.uk)>; Sally Anne Poole <[SallyAnne.Poole@ico.org.uk](mailto:SallyAnne.Poole@ico.org.uk)>  
**Cc:** [REDACTED] <FOIA s.40(2) - Personal data that doesn't fall under s.40(1)>; Jacob Harris <[jacob.harris@ico.org.uk](mailto:jacob.harris@ico.org.uk)>; Tom Parkman <[Tom.Parkman@ico.org.uk](mailto:Tom.Parkman@ico.org.uk)>  
**Subject:** RE: **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases

Thanks Izy – I'll get this added to the box.

Kind regards



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**From:** Izy Jude <[Isabel.Jude@ico.org.uk](mailto:Isabel.Jude@ico.org.uk)>  
**Sent:** 13 December 2022 15:02  
**To:** Elizabeth Baxter <[Elizabeth.Baxter@ico.org.uk](mailto:Elizabeth.Baxter@ico.org.uk)>; [REDACTED]  
[REDACTED] Anthony Luhman <[Anthony.Luhman@ico.org.uk](mailto:Anthony.Luhman@ico.org.uk)>; Sally Anne Poole <[SallyAnne.Poole@ico.org.uk](mailto:SallyAnne.Poole@ico.org.uk)>  
**Cc:** [REDACTED] <FOIA s.40(2) - Personal data that doesn't fall under s.40(1)>; Jacob Harris <[jacob.harris@ico.org.uk](mailto:jacob.harris@ico.org.uk)>; Tom Parkman <[Tom.Parkman@ico.org.uk](mailto:Tom.Parkman@ico.org.uk)>  
**Subject:** RE: **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases

Hi [REDACTED]

With many thanks for your patience, please see attached the slide pack ahead of the Commissioner briefing on Friday.

Thanks,  
Izy

Izy Jude (she/her)

Private Secretary to Stephen Bonner, Deputy Commissioner –  
Regulatory Supervision

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

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**From:** Izy Jude

**Sent:** 13 December 2022 13:48

**To:** Elizabeth Baxter <[Elizabeth.Baxter@ico.org.uk](mailto:Elizabeth.Baxter@ico.org.uk)>; [REDACTED]  
[REDACTED] Anthony Luhman <[Anthony.Luhman@ico.org.uk](mailto:Anthony.Luhman@ico.org.uk)>;  
Sally Anne Poole <[SallyAnne.Poole@ico.org.uk](mailto:SallyAnne.Poole@ico.org.uk)>

**Cc:** [FOIA s.40\(2\) - Personal data that doesn't fall under s.40\(1\)](#); Jacob Harris <[jacob.harris@ico.org.uk](mailto:jacob.harris@ico.org.uk)>; Tom  
Parkman <[Tom.Parkman@ico.org.uk](mailto:Tom.Parkman@ico.org.uk)>

**Subject:** RE: **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases

[REDACTED] – we've got this now, I'll be in touch with you to confirm when you can expect the slides following Stephen's review. Sincere apologies that the deadline has been missed on this occasion!

Thanks,  
Izy

Izy Jude (she/her)

Private Secretary to Stephen Bonner, Deputy Commissioner –  
Regulatory Supervision

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9  
5AF

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**From:** Elizabeth Baxter <[Elizabeth.Baxter@ico.org.uk](mailto:Elizabeth.Baxter@ico.org.uk)>

**Sent:** 13 December 2022 13:43

**To:** [REDACTED] Anthony Luhman  
<[Anthony.Luhman@ico.org.uk](mailto:Anthony.Luhman@ico.org.uk)>; Sally Anne Poole <[SallyAnne.Poole@ico.org.uk](mailto:SallyAnne.Poole@ico.org.uk)>

**Cc:** [FOIA s.40\(2\) - Personal data that doesn't fall under s.40\(1\)](#) Jacob Harris <[jacob.harris@ico.org.uk](mailto:jacob.harris@ico.org.uk)>; Tom  
Parkman <[Tom.Parkman@ico.org.uk](mailto:Tom.Parkman@ico.org.uk)>; Izy Jude <[Isabel.Jude@ico.org.uk](mailto:Isabel.Jude@ico.org.uk)>

**Subject:** RE: **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases

Hi [REDACTED], Stephen Bonner now has the presentation and I will send it over with his approval.

Thanks



**Elizabeth Baxter** (She/her)

**Head of High Priority Inquiries**

Information Commissioner's Office, Wycliffe  
House, Water Lane, Wilmslow, Cheshire SK9  
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**From:** [REDACTED]  
**Sent:** 13 December 2022 13:42  
**To:** Elizabeth Baxter <[Elizabeth.Baxter@ico.org.uk](mailto:Elizabeth.Baxter@ico.org.uk)>; [REDACTED]  
[REDACTED] Anthony Luhman <[Anthony.Luhman@ico.org.uk](mailto:Anthony.Luhman@ico.org.uk)>;  
Sally Anne Poole <[SallyAnne.Poole@ico.org.uk](mailto:SallyAnne.Poole@ico.org.uk)>  
**Cc:** FOIA s.40(2) - Personal data that doesn't fall under s.40(1) Jacob Harris <[jacob.harris@ico.org.uk](mailto:jacob.harris@ico.org.uk)>; Tom  
Parkman <[Tom.Parkman@ico.org.uk](mailto:Tom.Parkman@ico.org.uk)>; Izy Jude <[Isabel.Jude@ico.org.uk](mailto:Isabel.Jude@ico.org.uk)>  
**Subject:** RE: **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases

Hello,

Many thanks for this update, it is much appreciated. I'll pull the box hold accordingly.

Kind regards



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[REDACTED]  
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**From:** Elizabeth Baxter <[Elizabeth.Baxter@ico.org.uk](mailto:Elizabeth.Baxter@ico.org.uk)>  
**Sent:** 13 December 2022 12:58  
**To:** [REDACTED] Anthony Luhman <[Anthony.Luhman@ico.org.uk](mailto:Anthony.Luhman@ico.org.uk)>; Sally Anne Poole <[SallyAnne.Poole@ico.org.uk](mailto:SallyAnne.Poole@ico.org.uk)>  
**Cc:** FOIA s.40(2) - Personal data that doesn't fall under s.40(1) Jacob Harris <[jacob.harris@ico.org.uk](mailto:jacob.harris@ico.org.uk)>; Tom  
Parkman <[Tom.Parkman@ico.org.uk](mailto:Tom.Parkman@ico.org.uk)>; Izy Jude <[Isabel.Jude@ico.org.uk](mailto:Isabel.Jude@ico.org.uk)>  
**Subject:** RE: **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases

Hi [REDACTED]

Will be providing Stephen Bonner with the draft today and hoping to have it to you tomorrow, subject to his feedback.

Many thanks

**Elizabeth Baxter** (She/her)  
**Head of High Priority Inquiries**

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**From:** [REDACTED]

**Sent:** 13 December 2022 12:41

**To:** [REDACTED] Anthony Luhman <[Anthony.Luhman@ico.org.uk](mailto:Anthony.Luhman@ico.org.uk)>; Elizabeth Baxter <[Elizabeth.Baxter@ico.org.uk](mailto:Elizabeth.Baxter@ico.org.uk)>; Sally Anne Poole <[SallyAnne.Poole@ico.org.uk](mailto:SallyAnne.Poole@ico.org.uk)>

**Cc:** FOIA s.40(2) - Personal data that doesn't fall under s.40(1) Jacob Harris <[jacob.harris@ico.org.uk](mailto:jacob.harris@ico.org.uk)>; Tom Parkman <[Tom.Parkman@ico.org.uk](mailto:Tom.Parkman@ico.org.uk)>; Izy Jude <[Isabel.Jude@ico.org.uk](mailto:Isabel.Jude@ico.org.uk)>

**Subject:** RE: **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases

Hi All,

I hope you are well.

I am in the process of finalising the Tuesday Commissioner box. Further to my email below please could you provide an ETA on this briefing?

Many thanks,

[REDACTED]

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**From:** [REDACTED]

**Sent:** 01 December 2022 16:43

**To:** [REDACTED] Anthony Luhman <[Anthony.Luhman@ico.org.uk](mailto:Anthony.Luhman@ico.org.uk)>; Elizabeth Baxter <[Elizabeth.Baxter@ico.org.uk](mailto:Elizabeth.Baxter@ico.org.uk)>; Sally Anne Poole <[SallyAnne.Poole@ico.org.uk](mailto:SallyAnne.Poole@ico.org.uk)>

**Cc:** [REDACTED] Jacob Harris <[jacob.harris@ico.org.uk](mailto:jacob.harris@ico.org.uk)>; Tom Parkman <[Tom.Parkman@ico.org.uk](mailto:Tom.Parkman@ico.org.uk)>; Izy Jude <[Isabel.Jude@ico.org.uk](mailto:Isabel.Jude@ico.org.uk)>

**Subject:** RE: **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases



Hi All,

Further to my email below I understand that an extension has been requested – I believe you are now aiming to submit this for the **Tuesday 13 December box** (midday deadline for submissions). I have added a hold to the box accordingly. If this deadline needs to be adjusted I would be grateful if you could let me know.

Kind regards



[Redacted] - Personal data that doesn't fall b

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**From** [Redacted]

**Sent:** 16 November 2022 17:20

**To:** Anthony Luhman <[Anthony.Luhman@ico.org.uk](mailto:Anthony.Luhman@ico.org.uk)>; Elizabeth Baxter

<[Elizabeth.Baxter@ico.org.uk](mailto:Elizabeth.Baxter@ico.org.uk)>; Sally Anne Poole <[SallyAnne.Poole@ico.org.uk](mailto:SallyAnne.Poole@ico.org.uk)>

**Cc:** [Redacted] Jacob Harris <[jacob.harris@ico.org.uk](mailto:jacob.harris@ico.org.uk)>; Tom

Parkman <[Tom.Parkman@ico.org.uk](mailto:Tom.Parkman@ico.org.uk)>; Izy Jude <[Isabel.Jude@ico.org.uk](mailto:Isabel.Jude@ico.org.uk)>

**Subject:** **\*\*BRIEFING REQUEST\*\*** JE007 Commissioner briefing required - HPI Cases

Hi All,

I hope you are well.

### **Why I'm emailing:**

You are receiving this email because we require a briefing from you. The briefing is intended to provide the Commissioner with a greater awareness of 6 HPI cases. This is not for a specific event or speech, but rather for general wider awareness.

[@Kemal Ulgen](#) will schedule a meeting with the Commissioner for this verbal briefing taking into account the deadline listed below. The verbal briefing should last around 45 minutes, with a likelihood that the Commissioner will raise questions.

### **What do we need:**

I would be grateful if you could prepare a bespoke verbal briefing for the Commissioner on the following six HPI cases: [Redacted]

[Redacted] **Kegon,** [Redacted]

We do not require a lengthy written briefing for this – ideally POC’s preference is for a PowerPoint presentation (to be received in advance of the verbal update) – the detail can then be discussed at the verbal update meeting.

Please can the briefing cover the following key points for each case:

- Overview and background of the case
- Progress of the case and key outcomes thus far
- Next steps
- Any likely/potential wider impacts of the case
- Timelines
- Likely completion/close down date

I have attached a briefing template for completeness, however as mentioned previously the preference is for a PowerPoint presentation. As part of your briefing please can you ensure to define acronyms on the first occasion you use them, even if they appear to be obvious to your team.

POC is happy to schedule a **scoping call** to discuss what is needed for this briefing. If you would like to proceed with a call please email [REDACTED] and we will schedule this.

**By when:**

Please can the **final** briefing (PowerPoint presentation) be emailed to [REDACTED] by **midday on Thursday 01 December 2022.**

Please can you ensure your briefing is signed off by your ET member under ways of working *prior* to sending to [REDACTED].

Many thanks in advance for your assistance with this. If you have any questions or would appreciate talking through your intended submission just let me know.

Kind regards,

[REDACTED]



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[REDACTED]

[REDACTED]

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# Focused investigation into Facewatch and their use of facial recognition technology in the retail sector

ICO25 Priority: Empowering responsible innovation, & Promoting openness, transparency and accountability

---

## Progress to date:

- Assessment Notice issued 2019
- LFR Opinion issued 2021
- Compliance assessment complete 2022
- External Counsel advice received 2022
- Enquiries ongoing relating to the watchlist. Latest response October 2022
- Considerable improvements implemented by the DC during the investigation

## Options:

**1. Stop** - Close immediately communicating already identified recommendations

**2. Start** - **FOIA s.31 - Law enforcement**

**3. Continue** - Continue engagement with Facewatch to ensure that identified recommendations for improved compliance are implemented

**Recommendation:** Option 1

**Completion:** by 9 January 2023



Presenter notes from slide:

Nest step options

While there remains some concerns about the watchlist issue, considerable improvements have been made during the course of our investigation. External figures regarding upsurge in retail crime and violence, with evidence of FW's substantial impact, significantly improve FW necessity argument. **FOIA s.42 - Legal professional privilege**. **FOIA s.44 - Prohibition on disclosure**. [REDACTED] dramatically improving necessity, proportionality, fairness of processing. In addition, FW have much improved their transparency information. **FOIA s.42 - Legal professional privilege**. [REDACTED]

Facewatch have been cooperative throughout and made considerable changes to their processes and the development of the product.

## **FOIA s.44 - Prohibition on disclosure**

### **FOIA s 44 - Prohibition on disclosure**

[REDACTED] It would be useful to see how PACE is incorporated into training, subscriber procedure, system controls and auditing.


Next steps options

1. Stop : Cease investigation immediately, communicating already identified recommendations. Facewatch have made considerable improvements to their compliance during the investigation. **FOIA s.42 - Legal professional privilege**. [REDACTED]

[REDACTED] We are satisfied that taking regulatory action is not necessary in this case. We can therefore bring the investigation to a satisfactory outcome by closing this down with advice for the organisation.

2. Start: **FOIA s.31 - Law enforcement**

[REDACTED]



3. Continue: Continue with longer term engagement with Facewatch to ensure our recommendations for improved compliance are implemented, such as around their auditing procedures.

Recommendation: Option 1.

Rationale – We believe that significant improvements have already been made to Facewatch's compliance during our investigation. We therefore understand that it is likely Facewatch would take on board any final advice we provide on closing our investigation. Using our capacity to undertake further work looking at this one entity would not help us to further understand this technology area or further assist in changing the impact on the individuals affected. We would recommend that this investigation is closed.

Completion: 31 December 2022

## **KEGON 3- Focused investigation into Facewatch and their use of facial recognition technology in the retail sector**

April 2019	ICO receives a DPIA from Facewatch into the DPIA team. The processing is not 'prior' so the DPIA team are unable to take on the case. Following discussion at the Surveillance TCG the case is passed to HPI and the initiation of a HPI investigation is approved by James DJ.
June 2019	An Assessment Notice is issued to Facewatch.
July 2019	Assessment Notice visit to Facewatch offices in London.
Feb 2020	HPI recommend that the case should proceed to an Assessment Notice and hold a meeting with Legal. <b>FOIA s.42 - Legal professional privilege</b>
March 2020	Kegon 3 paused – HPI staff seconded to Operation Kepler.
June 2021	Opinion published.
Feb 2022	Following legal advice, the ICO send a 'compliance assessment' to Facewatch, inviting them to provide further evidence as to their compliance.
March 2022	Facewatch send a bundle of documents to the ICO in response to our compliance assessment.
May 2022	Danielle Best and HPI hold introductory conversation about the case.

### **FOIA s.31 - Law enforcement**

considerable improvements have been made during the course of our investigation. External figures regarding upsurge in retail crime and violence, with evidence of FW's substantial impact, significantly improve FW necessity argument **FOIA s.42 - Legal professional privilege**

**FOIA s.41 - Prohibition on disclosure** dramatically improving necessity, proportionality, fairness of processing. In addition, FW have much improved their transparency information. **FOIA s.42 - Legal professional privilege**



- Considerably improved signage and intention to update ISA accordingly.
- Hard copies of privacy policy in store / QR on signage.
- Improvements to privacy policy inclusive of transparency information regarding alerts/ watchlist.
- Reduced retention/ changes to alerts

- **FOIA s.44 - Prohibition on disclosure** [REDACTED]
- **FOIA s.44 - Prohibition on disclosure** [REDACTED]
- Employed DPO a former senior police officer, Head of Criminal Justice, and Director of Intelligence
- Updated DPIA and LIA Legitimate interest assessment
- Initiated training programme
- **FOIA s.44 - Prohibition on disclosure** [REDACTED]

Facewatch have been cooperative throughout and made considerable changes to their processes and the development of the product.

**FOIA s.44 - Prohibition on disclosure** [REDACTED]

**FOIA s.44 - Prohibition on disclosure** [REDACTED]

It would be useful to see how PACE is incorporated into training, subscriber procedure, system controls and auditing.

Next steps options

1. Stop : Cease investigation immediately, communicating already identified recommendations. Facewatch have made considerable improvements to their compliance during the investigation.

**FOIA s.42 - Legal professional privilege** [REDACTED]



**FOIA s.42 - Legal professional privilege**

[REDACTED] We are satisfied that taking regulatory action is not necessary in this case. We can therefore bring the investigation to a satisfactory outcome by closing this down with advice for the organisation.

2. Start: [REDACTED]

**FOIA s.31 - Law enforcement**

3. Continue: Continue with longer term engagement with Facewatch to ensure our recommendations for improved compliance are implemented, such as around their auditing procedures.

Recommendation: Option 1.

Rationale – We believe that significant improvements have already been made to Facewatch's compliance during our investigation. We therefore understand that it is likely Facewatch would take on board any final advice we provide on closing our investigation. Using our capacity to undertake further work looking at this one entity would not help us to further understand this technology area or further assist in changing the impact on the individuals affected. We would recommend that this investigation is closed.

Completion: 9 January 2023

[REDACTED]

**From:** [Jacob Harris](#)  
**To:** [John Edwards](#); [Anthony Luhman](#); [Elizabeth Baxter](#); [SallyAnne Poole](#); [Stephen Bonner](#); [Debora Biasutti](#); [Angela Balakrishnan](#)  
**Cc:** [Tom Parkman](#); [Jacob Harris](#); [Izy Jude](#); [REDACTED]; [Mariam Boakye-Dankwa](#)  
**Subject:** HPI Commissioner Update Notes/Actions  
**Date:** 03 January 2023 13:37:00  
**Attachments:** [20221216-HPI Commisioner Update.docx](#)

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Good afternoon All,

Please find attached the notes and actions from the HPI Commissioner Update meeting held on 16<sup>th</sup> Dec 22.

I have sent this to those who attended, POs and Comms. However please feel free to forward this to any additional teams/team members who require or benefit from visibility.

Any questions please just let me know.

Many thanks

Jacob



Jacob Harris

Private Secretary to the Information  
Commissioner

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# HPI Commissioner Update – Meeting Notes

Friday 16 December 2022

**Attendees:** JE John Edwards SB Stephen Bonner  
MBD Mariam Boakye-Dankwa EB Elizabeth Baxter  
SP Sally-Anne Pool AL Anthony Luhman  
TP Tom Parkman JH Jacob Harris (Notes)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 3. Op KEGON 3

- SB presented an overview of Op KEGON 3 and the progress that had been made to date. He also highlighted that since the involvement of the ICO Facewatch had cooperated and made multiple changes in their operations.

- JE inquired about how Facewatch’s systems worked and what safeguards there were in place.
- AL and SB provided an overview of Facewatch’s operations, stating that; [REDACTED]  
[REDACTED]  
[REDACTED] SB also highlighted that there are now notices in stores stating data is being captured.
- **FOIA s.44 - Prohibition on disclosure** [REDACTED]  
However she emphasised that this investigation was only looking at one specific organisation, **FOIA s.31 - Law enforcement** [REDACTED].
- JE stated that he was concerned that if we step away from this investigation it may send a message to the organisation, and its competitors, that they can now continue at pace. Additionally he wants to be clear on what has changed since the ICO started the investigation, what the technical standards are and what safeguards are now in place, especially around false positives and individuals being denied service.

**ACTION:** HPI Team to provide further details to JE on what has changed and improved since ICO involvement.

**ACTION:** HPI Team to provide further details to JE on the system’s technical details and safeguarding standards now in place.

**ACTION:** HPI Team to provide JE with a list of detailed options for possible next steps and the associated resources/timescales needed for these, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## 5. Closing Remarks

† [REDACTED]  
[REDACTED]

- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**ACTION:** POC and HPI to schedule a meeting with JE in mid- to late-January to provide further updates on Op KEGON 3 [REDACTED] as requested.

**From:** [REDACTED]  
**To:** [Kirsty Keogh](#); [Debora Biasutti](#); [Lisa Tiohe](#); [REDACTED]; [Emily Keaney](#); [Sarah Delahunty](#); [Adrian Price](#); [REDACTED]; [Izy Jude](#); [Stephen Bonner](#); [Jacob Harris](#)  
**Subject:** HPI Monthly Investigation Review - comprehensive version  
**Date:** 20 January 2023 09:02:48  
**Attachments:** [Investigation Review December 2022 Comprehensive.pptx](#)  
[image001.jpg](#)

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## Standard email text – HPI MIR comprehensive version

Hi all,

Please attached the HPI Monthly Investigations Review comprehensive version, for your information

**Handling instructions** – the Monthly Investigations Review is an internal only document and is shared with specific ICO teams. Please do not share this report or any of the content outside of the ICO. Where this report has been sent to a team email, please feel free to share between individual team members. If you wish to share it with ICO colleagues outside of your immediate team, please contact the HPI team first for approval.

The HPI team will produce the Monthly Investigations Review (MIR) every month to provide progress updates on the key investigations being undertaken by the team. HPI's Investigations often involves co-ordinating with colleagues across the ICO and can also be of relevance to work undertaken by other teams. With that in mind, we are sharing a copy of the latest MIR to keep colleagues apprised of key information and progress with each of these investigations.

If you have any questions about any of the investigations, please direct these queries to the HPI team inbox in the first instance: [REDACTED]

Logo



[REDACTED]  
[REDACTED]  
Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
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# Operation Kegan 3 – updates and current position

## The use of facial recognition technology in the private sector for the purpose of crime detection and prevention.

The investigation was completed by means of an Assessment Notice in 2019. An Opinion of the use of LFR technology was published in 2021, and the ICO presented it's compliance assessment to Facewatch in 2022.

### Key updates since last report

- Enquiries were sent to Facewatch on 21 September 2022 after a decision was taken that issuing an Information Notice was unnecessary.
- A response was received from Facewatch on 23 September 2022.
- **FOIA s.42 - Legal professional privilege**
- **FOIA s.42 - Legal professional privilege**
- A full 'start to finish' review of the inquiry has been actioned, and a summary of key findings and evidence is to be produced to assist with the decision-making on next steps.

### Next steps

- Full evidence review taking place.
- **FOIA s.42 - Legal professional privilege**

### Strengths, Weaknesses, Opportunities and Threats (SWOT)

#### STRENGTHS

- Case conclusions are strongly aligned with the Commissioner's Opinion
- The recently published Ryder review into the use of biometric technologies (Ada Lovelace Institute) calls for a moratorium on the use of FRT until new laws are instated.

#### WEAKNESSES

- The case initiated in 2019.
- Legal precedent suggests the courts are open to this technology being used for crime prevention (albeit by the police).
- **FOIA s.42 - Legal professional privilege**

#### OPPORTUNITIES

- **FOIA s.31 - Law enforcement**

#### THREATS

- **FOIA s.31 - Law enforcement**
- **FOIA s.42 - Legal professional privilege**

### Options available on concluding the inquiry

Commissioner briefing scheduled for 31/01/23 to discuss next step options.

### Outputs and progress

- Completed a compliance assessment letter and sent it to Facewatch for their review.
- Reviewed Facewatch's document bundle and created an investigatory update report on its findings.
- Instructed Counsel and received Counsel advice.
- Evidence review and identification of further enquiries.



**From:** [Izy Jude](#)  
**To:** [Stephen Bonner](#)  
**Subject:** FW: Briefing papers OP [REDACTED] & K3  
**Date:** 06 February 2023 10:14:25  
**Attachments:** [REDACTED]  
[FINAL Commissioner Briefing 2023 - Operation Keon 3 Information.docx](#)  
[FINAL Commissioner Briefing 9 Feb 2023 - Operation \[REDACTED\] Keon 3 .pptx](#)

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**Importance:** High

FYI

Izy Jude (she/her)

Private Secretary to Stephen Bonner, Deputy Commissioner –  
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**From:** Sally Anne Poole <[SallyAnne.Poole@ico.org.uk](mailto:SallyAnne.Poole@ico.org.uk)>

**Sent:** 06 February 2023 07:10

**To:** Anthony Luhman <[Anthony.Luhman@ico.org.uk](mailto:Anthony.Luhman@ico.org.uk)>; Izy Jude <[Isabel.Jude@ico.org.uk](mailto:Isabel.Jude@ico.org.uk)>

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**Subject:** Briefing papers OP [REDACTED] & K3

**Importance:** High

Please find attached briefing papers ahead of the scheduled meeting on Thursday 9 Feb. Please let me have any comments by close of play today.

The deadline for the papers to go into John's Tuesday Box is 12 noon tomorrow.

You will note I am still waiting for conformation about the outcome of an OPQ on CCTV which was heard on 2 February.

Sally

Logo



Sally-Anne Poole

Group Manager – High Priority Inquiries &  
Intelligence

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## HPI Briefing – Operation Keron 3

**Date:** February 2023

**Prepared for:** Stephen Bonner and John Edwards – Briefing date 9 February 2023

**Title:** Additional information in response to queries about the progress of **Operation Keron 3**.

**Purpose:** This briefing is intended to respond to questions raised by the Commissioner at a briefing on 16 December 2022 about the progress of and next steps for Operation Keron 3, the investigation into Facewatch's (FW) use of Live Facial Recognition (LRF) in the retail sector.

### Executive Summary

The below bullet points provide a summary of the investigation to date to enable decision-making on next steps. The sections following this executive summary provide further detail on these points, in answer to the Commissioner's specific questions.

#### **What we know:**

- **FOIA s.42 - Legal professional privilege** [Redacted]
- **FOIA s.42 - Legal professional privilege** [Redacted]
- The inquiry has influenced significant improvements to Facewatch's processing activity which has resulted in mitigation of some risks to individuals subject to the processing.
- **FOIA s.31 - Law enforcement** [Redacted]
- Facewatch are expanding their business portfolio.
- Competitors are emerging with similar products.

#### **What we don't know:**

- **FOIA s.31 - Law enforcement** [Redacted]
- **FOIA s.44 - Prohibition on disclosure** [Redacted]
- **FOIA s.31 - Law enforcement** [Redacted]

- How competitor organisations providing similar technology comply with data protection legislation.

**What the ongoing risks is:**

- FW presence is growing/ most likely to continue - **FOIA s.44 - Prohibition on disclosure**  
[REDACTED]
- Relatively novel application of facial recognition. **FOIA s.31 - Law enforcement**  
[REDACTED] Expansion of sector application or new players coming into the market.
- **FOIA s.31 - Law enforcement**  
[REDACTED]
- The use of LRF in the retail sector generally is still unknown.
- Faicetech (Competitor) have a global blue-chip client who are ready to go live and deploy LRF in the UK. (Identity of DC unknown, awaiting DPIA).
- **The Home Office have flagged that LRF in a commercial setting for crime detention/prevention purposes is an area that is high on the Minister's agenda.**
- **Awaiting response from Catherine wheeler to add PQ info 2/2/23 re CCTV**

**Recommended next steps:**

- Close inquiry into Facewatch communicating already identified recommendations for continued improvement.
- **FOIA s.31 - Law enforcement**  
[REDACTED]

Responses to key questions:

**What did the ICO investigation look into?**

- Operation Kegan 3 is a focused investigation into Facewatch's use of LRF in the retail sector and the sharing of a watchlist of potential offenders.
- The scope of the investigation as set out in the Operational Strategy in 2019 was:

*“To determine whether the processing involved in their product is compliant with GDPR/DPA 2018.*

*It is recommended that the investigation is conducted via an Assessment Notice”*

**Chronology**

April 2019	ICO receives a DPIA from Facewatch into the DPIA team. The processing is not 'prior' so the DPIA team are unable to take on the case. Following discussion at the Surveillance TCG the case is passed to HPI and the initiation of a HPI investigation is approved by James DJ.
June 2019	An Assessment Notice is issued to Facewatch.
July 2019	Assessment Notice visit to Facewatch offices in London.
Feb 2020	HPI recommend that the case should proceed to an Enforcement Notice and hold a meeting with Legal. <span style="color: red;">FOIA s.42 - Legal professional</span> [Redacted]
March 2020	Kegon 3 paused – HPI staff seconded to Operation Kepler.
June 2021	Opinion published.
Feb 2022	Following legal advice, the ICO send a 'compliance assessment' to Facewatch, inviting them to provide further evidence as to their compliance.
March 2022	Facewatch send a bundle of documents to the ICO in response to our compliance assessment.
May 2022	External Counsel Advice sought
November 2022	Update received from Facewatch
December 2022	Commissioner briefing. Further information requested.
February 2023	Potential further inquiries identified.

**What have we found to date?**

- Facewatch have made considerable improvements throughout the inquiry.
- External figures regarding upsurge in retail crime and violence, with evidence of Facewatch’s substantial impact, significantly improves FW’s necessity argument. FOIA s.42 - Legal professional privilege

- Necessity of LFR (Issue raised in ICO Compliancy Assessment) has been evidenced by [British Retail Consortium Crime Survey Report 2022](#).
- Case study figures demonstrate effectiveness comparative to traditional methods.
- Facewatch have much improved their transparency information.
- Considerably improved signage and intention to update ISA accordingly.
- Hard copies of privacy policy in store / QR on signage.
- Improvements to privacy policy inclusive of transparency information regarding alerts/watchlist.

• **FOIA s.44 - Prohibition on disclosure**  
[Redacted]

• **FOIA s.44 - Prohibition on disclosure**  
[Redacted]

• **FOIA s.44 - Prohibition on disclosure**  
[Redacted]

• FW state do not hold data on sex/ race etc so subscribers could not use for marketing.

• **FOIA s.44 - Prohibition on**  
[Redacted]

- Employed DPO, a former senior police officer, Head of Criminal Justice, and Director of Intelligence.
- Updated DPIA and LIA Legitimate interest assessment.
- Initiated training programme.



**What are the outstanding concerns?**

- **FOIA s.44 - Prohibition on disclosure**
- [Redacted]
- [Redacted]
- How the Police and Criminal Evidence Act (PACE) is incorporated into training, subscriber procedure, system controls and auditing.
- FW website shows an intention to expand to other sectors.
- Our investigation has focused entirely on the activities of Facewatch. We are not sighted on how other providers and **FOIA s.31 - Law enforcement** comply with information rights legislation.

**What has been the impact of the inquiry?**

- We have been able to influence the development of Facewatch’s product and compliance with Data Protection requirements.
- We have gained sufficient understanding of Facewatch’s processing to be in a position to offer additional compliance advice where we have identified ongoing issues.
- Our engagement with Facewatch has been positive and has remained constructive, allowing us to gain insight into this growing area. This has identified ongoing risks of new players to the market and expanding use of the technology in the sector and beyond

**What are our options for next steps?**

**Option 1 – Close inquiry into Facewatch communicating already identified recommendations for continued improvement.**

<i>Steps to take</i>	<ul style="list-style-type: none"> <li>• Given that the investigation is a review of one organisation’s compliance, write to Facewatch to conclude the investigation with advice to improve compliance but without further detailed enquiries.</li> <li>• Free up HPI resource to invest capacity where it is most needed whilst also working to continue to improve Facewatch’s compliance.</li> </ul>
<i>Rationale</i>	<ul style="list-style-type: none"> <li>• We have sufficient information to determine areas for improvement to Facewatch’s compliance, lessening the need for ongoing enquiries.</li> </ul>
<i>Resource required</i>	<ul style="list-style-type: none"> <li>• 1 HPI Group Manager</li> <li>• 1 HPI Team Manager</li> <li>• 1 HPI Lead Case Officer</li> </ul>

	<ul style="list-style-type: none"> <li>• Communications Officer as required.</li> </ul>
<i>Timescales</i>	<ul style="list-style-type: none"> <li>• Ongoing enquiries/closure letter are already in draft. Subject to external communication requirements closure to be completed by 28 February 2023.</li> </ul>

**Option 2 – Continue engagement with Facewatch to ensure that identified recommendations for improved compliance are implemented.**

<i>Steps to take</i>	<ul style="list-style-type: none"> <li>• Make further enquiries with Facewatch to draw final conclusions on each compliance area.</li> <li>• Review all available evidence in order to decide whether regulatory action is necessary where we find serious failings, or whether the investigation can be concluded informally with advice.</li> </ul>
<i>Rationale</i>	<ul style="list-style-type: none"> <li>• The reviews of the documents provided under the Assessment Notice and following further inquiries highlighted some additional lines of enquiry which could be made should we wish to continue to examine Facewatch’s individual compliance. However this does not assist with understanding how users or other providers comply.</li> </ul>
<i>Resource required</i>	<ul style="list-style-type: none"> <li>• 1 HPI Group Manager</li> <li>• 1 HPI Team Manager</li> <li>• 2 HPI Lead Case Officers</li> <li>• Legal as required</li> <li>• Comm as required</li> </ul>
<i>Timescales</i>	3 months – conclude by end of April 2023

## FOIA s.31 - Law enforcement

<i>Steps to take</i>	<ul style="list-style-type: none"> <li>• <span style="background-color: black; color: red; padding: 2px;">A s.31 - Law enforcement</span></li> <li>• <span style="background-color: black; color: red; padding: 2px;">FOIA s.31 - Law enforcement</span></li> </ul>
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	<ul style="list-style-type: none"> <li>• <b>FOIA s.31 - Law enforcement</b></li> </ul>
<i>Rationale</i>	<ul style="list-style-type: none"> <li>• As above, we have sufficient information to determine areas for improvement in Facewatch's compliance, lessening the necessity for further enquiries direct with Facewatch.</li> <li>• <b>FOIA s.31 - Law enforcement</b></li> <li>• Using [redacted] as a guide, we could examine further technology providers as well [redacted] <b>FOIA s.31 - Law enforcement</b> in order to report on the key compliance themes more generally.</li> </ul>
<i>Resource required</i>	<ul style="list-style-type: none"> <li>• 1 HPI Group Manager</li> <li>• 1 HPI Team Manager</li> <li>• 4 HPI Lead Case Officers</li> <li>• Legal as required</li> <li>• Intel as required</li> <li>• Comms as required.</li> </ul>
<i>Timescales</i>	<ul style="list-style-type: none"> <li>• PACE approach to be taken with the aim of making a recommendation for outputs within 6-8 months (Q2 2023/24).</li> </ul>

**Recommendation - Options 1 & 3**

**Comms recommendation**

- The ICO inquiry into Facewatch, and the company itself, has been widely reported by the media and it is in the public domain.
- At a minimum, we recommend publishing a statement or blog about our investigation into Facewatch – what we found, what's changed due to our intervention, and lessons learned, including what still needs to be improved.
- There's also an opportunity to reiterate the key data protection principles from our Opinion to other LFR service providers through our communication channels and stakeholder engagement.
- For businesses in the retail sector that are considering purchasing LFR services, we could provide key data protection considerations they need to make before purchasing or deploying the technology.
- A communications plan will be developed following a decision on the outcome of this investigation.



## **Kegon 3 - Focused investigation into Facewatch and their use of facial recognition technology in the retail sector**

ICO25 Priority: Empowering responsible innovation, & Promoting openness, transparency and accountability

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### **Progress to date:**

- Assessment Notice issued 2019
- LFR Opinion issued 2021
- FW Compliance assessment complete 2022
- External Counsel advice received 2022
- Enquiries ongoing relating to the watchlist. Latest response November 2022
- Further inquiries identified.
- Considerable improvements implemented by the DC during the investigation.

### **Options:**

- 1.** Close inquiry into Facewatch communicating already identified recommendations for continued improvement.
- 2.** Continue engagement with Facewatch to ensure that identified recommendations for improved compliance are implemented.
- 3.** **FOIA s.31 - Law enforcement**

**Recommendation: Option 1 & 3**

**From:** [REDACTED]  
**To:** [Stephen Bonner](#); [Izy Jude](#); [Sally Anne Poole](#); [Maisie Talman](#); [Anthony Luhman](#)  
**Cc:** [Mariam Boakye-Dankwa](#); [Andrew Rimmer](#); [REDACTED]  
**Subject:** Commissioner Update Meeting ([REDACTED] and Kegon 3)  
**Date:** 13 February 2023 09:59:41  
**Attachments:** [image001.jpg](#)  
[20230209-HPI Commisioner Update \[REDACTED\].Kegon3\\_V1.docx](#)

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Morning All,  
PFA the readout from the Commissioner Update Meeting ([REDACTED] and Kegon 3).  
If any changes or amendments are needed, please just let me know.  
Many thanks  
Jacob



Jacob Harris

Private Secretary to the Information  
Commissioner

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1113.*

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# HPI Commissioner Update: [REDACTED] and Keron 3 – Meeting Notes

Thursday 09 February 2023

**Attendees:** JE John Edwards SB Stephen Bonner  
AL Anthony Luhman SP Sally-Anne Pool  
MT Maisie Talman IJ Izy Jude  
JH Jacob Harris (Notes)

## 1. Decisions:

[REDACTED]

[REDACTED]

b. Op Keron 3 will be closed down, **FOIA s.31 - Law enforcement** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

█ [REDACTED]  
[REDACTED]  
[REDACTED]

#### 4. Op Keron 3 update:

- SP provided an updated on outstanding questions following the previous update. SP stated that, aside from BBW, this case had not featured heavily in complaints. Additionally Facewatch had put in place robust processes to minimise false positives, and significant improvements in compliance had been made since ICO engagement.
- SP stated that we did not know much about the wider market, and the recommendation was to cease the investigation into Facewatch FOIA s.31 - Law enforcement [REDACTED]. JE agreed.

#### 5. Resources redeployment:

† [REDACTED]  
[REDACTED]  
[REDACTED]