

## **College of Policing NB Review Meeting Notes**

DM – College associate – Former SIO

VT – Operational SIO in Met Police

### **Intros**

VT advised that the review was to understand the circumstances in relation to the Nicola Bulley case and consider from there what wider learnings could be achieved for policing.

This review is being completed on behalf of the college and the Lancashire Police Commissioner. They would recommend that the ICO would be able to review any aspects of the report they are due to publish concerning them prior to the publication which is set to take place in October.

### **In the case of Nicola Bulley, were any attempts made by the Force to directly contact the ICO prior to the release of NB's personal information for guidance?**

Confirmed that it is not normally the case that an organisation would seek out input as part of a decision making process. We have previously engaged quite heavily with police forces but following the implementation of the Data Protection Act 2018 and UK GDPR organisations have the DPO in place to aid in the key decision making process, and our role is typically to support the DPO more generally.

It would also be challenging for us to opine in specific situations, we wouldn't have the full context to able to provide a comprehensive view and we may fetter our capacity to act as a regulator.

### **Asked how the NB matter was raised within the ICO for consideration.**

We took interest in the matter following media reports linked to the disclosure of vulnerability factors. Our commissioner wanted to understand more about what had happened and how the decision had been taken to release this sensitive information. As we had a pre-existing relationship with the force's DPO following our Commissioner's statement the DPO proactively reached out to us to advise that they would be happy to share more information about the circumstances that led to the disclosure.

Due to the rapidly evolving circumstances it was essential that the ICO acted quickly to review the details and make a decision on whether we were going to investigate the matter further. Following receipt of information, in writing and during a meeting with the force a subgroup was pulled together in the ICO which included representatives from our police teams, Legal and comms and investigations to review the circumstances and make a decision on what would be the best course of action. This recommendation was taken to the Commissioner so he could make the final decision on what would be the best course of action.

### **What are the procedures currently in place & available for Forces, should they need to contact the ICO for guidance in time critical, dynamic investigations?**

It is not usually the case that the force would contact us in the midst of a time critical decision making situation, this is where the force needs to be able to rely on their in house expertise, namely their DPO. We would be able to provide general advice for forces to consider but they need to understand and be fully accountable for their decisions.

**In the case of NB, the Force contacted their own Force legal department but were unable to contact their DPO, prior to the release of PI. If a Force were to find themselves in a similar position, what would the advice of the ICO be to all forces? ie 'out of hours'.**

It may not always be possible for the force to maintain contact with the DPO, especially when matters are occurring 'out of hours'. It may be the force can rely on others who work in the data protection team for advice. However bringing in the DPO into the discussion early, prior to critical decision stages will help to make sure that data protection is actively considered throughout the whole process.

If the force thinks it's advisable to have a member of its Comms team present at a Gold Group, then it would seem reasonable to also make arrangements for somebody from the DPO team to attend and advise.

There should also be consideration for whether you could have champions embedded within operational teams that could be relied upon for initial guidance, particularly in time critical situations. If those individuals have expert knowledge of the operation and data protection they could act as a sounding board.

**In your blog post-finding, 'If it is important the public know something sensitive about a missing person, then the law provides ways information can be shared'. Can you expand on this?**

The Data Protection Act 2018 and UK GDPR are risk based frameworks to guide how personal information should be processed. It sets out that there has to be a lawful basis for processing someone's personal information, it is for the organisation to define how that processing is lawful such as a legal obligation for the organisation to process data or on the basis of a public task.

It's not data protection law which provides the means for something to be lawful, our blog isn't saying that it's DP which provides the ways information can be shared, but that data protection isn't an impediment when it is important that something is shared.

Our message is that data protection legislation is an enabler to the effective sharing of information whilst ensuring the relevant safeguards are in place.

**In relation to 'proportionate', your blog states 'The law specifically sets a higher standard for sharing information about someone's health, for instance'. Can you be more specific about this – what is the standard?**

In data protection legislation health data is classed as special category data. This is because it is recognised that there is a greater risk of harm to the individual when processing information of this nature. As such it is managed slightly separately to standard forms of personal data such as names and addresses and there is a greater burden on the organisation to demonstrate that they have considered the risks for handling this information.

For example, in the case of 'regular' personal data, it may be sufficient to show that the processing is 'necessary' for a purpose, where as with special category data, the requirement is 'strictly necessary' which is a higher bar and relates to the specific purpose rather than a wider purpose; questions of necessity, reasonableness, and proportionality will play a part.

**Does the ICO have any view about the use of the word 'vulnerabilities'? Would medical factors have been a preferred option? Would the ICO even provide any suggestions to Forces about suitable phrasing?**

Data protection legislation does not provide a view on the use of the word vulnerability and this wasn't a factor that was considered as part of our review and decision making process in this instance.

However we do recognise that the term vulnerability is such a broad term that it could lead to a wide range of assumptions which a narrower term such as medical factors is unlikely to have done. It wouldn't be for the ICO to provide specific guidance of phrasing however we recognise that as part of considering disclosure of sensitive information relating to an individual there needs to be careful thought about how to approach this. We would suggest that the comms team and the DPO would jointly advise on a matter like this. Both are likely to be aware of the connotations attached to certain words or phrases and how they might land.

**In your blog you detail that you will be in a position to share further information on the ICO's decision not to enforce legal action, following the inquest. Is there greater information you can now give, in relation to this decision?**

Please see below the update to our blog following on from the inquest:

'Update following the conclusion of the inquest into Nicola Bulley's death

27.06.23 - The Data Protection Act 2018, which sets out how personal or sensitive information about individuals should be used by organisations, only applies to information relating to a living person, and so information shared by police after her death would not be covered by the law.

Our thoughts remain with NB's family and friends.'

This was one of the main factors in our decision to not take this matter any further. There was an underlying question as to whether we would, in the end, have any jurisdiction. We are mindful to note however that it was right for Lancashire Police to work on the basis that Nicola was alive at the time of disclosure and we would urge all forces to consider data protection as part of their decision making process.

**Since the NB case, has any general advice from the ICO been sent out to Forces that we may not be sighted on?**

We haven't issued any additional guidance otherwise than the publication of our blog following the NB case. We were conscious about not releasing any further information prior to the conclusion of the inquest, we wanted to be respectful to the family and everything they were going through and we were also aware of the review being undertaken by the College. We do feel there would be great value in developing guidance in this area but we would need to work alongside college and the sector to make sure the guidance was fit for purpose. We would also be happy to explore the potential for co-badged guidance and we don't feel it has to be too onerous, we want it to be something that's practical and useful for forces to adopt.

VT advised that whilst it is unlikely that they will be able to instigate guidance as part of the review they would be able to provide a recommendation that further guidance in this area developed alongside the ICO would be useful.

**DM asked how the force would work through a circumstance where they do not know whether something is a criminal matter or not as they will need to navigate across UK GDPR and the DPA 2018.**

This is a tricky situation for police forces and their DPOs as often they will not know which regime they're operating under until possibly after the event. We wouldn't suggest that the force needs to go through the technical legislative hoops during a time critical scenario to work out which regime they are operating under. Instead we would expect the force to consider the situation, the risk factors and use that to justify the necessary and proportionate disclosure in a given situation. Early inclusion of the data protection professional will be key to ensuring the right people are part of that decision making process and we would suggest recording your justification too.