From:	Brian.Plastow@biometricscommissioner.scot
To:	Kenneth Macdonald; Jenny Brotchie
Cc:	Diego.Quiroz@biometricscommissioner.scot; Cheryl.Glen@biometricscommissioner.scot; Joanna.Milne@biometricscommissioner.scot
Subject:	DESC
Date:	30 September 2023 13:23:59

External: This email originated outside the ICO.
Hi Ken/Jenny, just to make you aware that I am going to write formally to Police Scotland, probably in the next two or three weeks, setting out in full my concerns about them ingesting biometric data to DESC. When I do, it will be an 'open letter' that will be copied to the ICO and others and will be published on our website for reasons of transparency.

My purpose in doing so will be to let Police Scotland Chief Officers (and others) see the full rationale behind why I think that it is almost inevitable that (regardless of any ICO view on compatibility with UK data protection law) they run the risk of being found in breach of Principle ten of the Scottish Code of Practice when we look at this formally over the winter.

The two primary concerns are of course data sovereignty and data security. In other words, I am currently not satisfied that Police Scotland data is adequately protected from unauthorised access or unauthorised disclosure. A major concern (in terms of the Code) is that a third-party contractor (Axon or Microsoft) could surrender Police Scotland data to a foreign jurisdiction without either the knowledge or consent of Police Scotland (regardless of whether that surrender may be lawful under the terms of any U.S. and UK agreement under the U.S. Cloud Act). The second major concern is that Microsoft Cloud platforms (including Azure) have quite a poor track record of data leaks and hacks emanating from hostile states like Russia and China. As recently as July, this has resulted in sensitive data (including U.S. Government data) being successfully hacked from the Cloud.

It would of course be helpful to know if there is any update on what the ICO has concluded (if anything) either specifically on DESC, or more generally on the uploading of sensitive biometric and other sensitive (Part 3)law enforcement data to the U.S. Cloud.

Kindest regards

Brian

From:	Brian.Plastow@biometricscommissioner.scot
To:	Kenneth Macdonald; Jenny Brotchie
Cc:	Diego.Quiroz@biometricscommissioner.scot; Cheryl.Glen@biometricscommissioner.scot; Joanna.Milne@biometricscommissioner.scot
Subject:	Media re DESC
Date:	21 August 2023 07:35:06
Attachments:	image001.png

External: This email originated outside the ICO.
Morning Ken/Jenny: just in case you have not seen this coverage already. The article is not completely accurate on roles and responsibilities:

https://www.sundaypost.com/fp/data-protection-police-scotland/

Perhaps we can discuss further at our meeting this week. It may be that soon we could arrive at a joint ICO/SBC decision on this one. I am certain in my own mind that DESC does not comply with the Code of Practice in Scotland because the data is not protected from unauthorised access. Any arguments to the contrary are undermined by the fact that data could be accessed (under US law) without the knowledge or consent of Police Scotland.

I had asked Police Scotland whether they could retain the encryption keys to the data. However, apparently this is not possible and is not what was agreed with the Scottish Government people who ran the tender (whoever they are!).

However, I am holding off on making a formal determination until I know the ICO position on whether the provisions of the US Cloud Act (in this case) come into conflict with UK data protection law.

Kindest regards

Brian.

Dr Brian Plastow
Scottish Biometrics Commissioner
Bridgeside House
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Edinburgh
EH7 4NL
Safeguarding our biometric future

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From:	Hannah Silk
To:	Hannah Silk
Subject:	FW: DESC
Date:	19 April 2024 10:19:08
Attachments:	image004.png

From: Brian.Plastow@biometricscommissioner.scot <Brian.Plastow@biometricscommissioner.scot>
Sent: Thursday, October 26, 2023 4:49 PM
To: Kenneth Macdonald <Kenneth.Macdonald@ico.org.uk>; Jenny Brotchie <Jenny.Brotchie@ico.org.uk>
Cc: Diego.Quiroz@biometricscommissioner.scot; Cheryl.Glen@biometricscommissioner.scot; Joanna.Milne@biometricscommissioner.scot
Subject: DESC

External: This email originated outside the ICO.

Hi Ken/Jenny, hope you are both well.

In a meeting with Police Scotland today about DESC, a Temporary Deputy Chief Constable stated:

Police Scotland had received a communication (from the ICO) to the effect that the ICO was confirming that using a U.S. Cloud hosting solution for processing sensitive law enforcement data including biometric was 'legal' under Part 3 of the Data Protection Act 2018. He stated that the ICO stated however that it being legal was conditional on 'adequate data protection measures being in place'.

Are you able to confirm whether the ICO has yet reached a decision on any of this and specifically:

a. Has the ICO given such advice formally to Police Scotland?
b. If so, was this generic advice or specific to DESC?
c. Does Police Scotland not retaining the data encryption keys constitute 'adequate protection measures' under DP law.

It is perhaps worthy of note that when using the U.S. Cloud, the Home Office Biometrics Programme (in contrast to Police Scotland) do retain the encryption keys.

The argument that Police Scotland (and Scottish Government) seem to be rehearsing is that the risks to data sovereignty (and security) through activation of the provisions of the U.S. Cloud Act are low. Therefore, they plan to simply tolerate the risk that biometric data (and other sensitive law enforcement data) could be accessed and acquired by a foreign state without their knowledge or consent.

If you are still not able to share anything, then please just say. We (SBC) don't

need to decide on compliance with the Code until early in the New Year and my preference would be for SBC to take the same line as the ICO since the relevant principle in the Scottish Code is framed almost entirely around compliance with Part 3, DPA.

Kindest regards

Brian.

Scottish Biometrics Commissioner
Coimiseanair Biometrics na h-Alba

Dr Brian Plastow
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99 McDonald Road
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Safeguarding our biometric future

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