

Chief Constable Surrey Police
Information Access Team
PO Box 101
Guildford
Surrey
GU1 9PE

By email only to: DataProtection@surrey.pnn.police.uk

3 December 2021

Dear Kelly Thornton,

Case Reference Number: INV/0283/2020

I write to inform you that the ICO has now completed its investigation into Surrey Police's **FOIA s.44 - Prohibition on disclosure**

In summary, it is my understanding that Surrey Police **FOIA s.44 - Prohibition on disclosure**

This case has been considered under Part 3 of the Data Protection Act 2018 (the DPA 2018) due to the nature of the processing involved.

For more information about our powers under the data protection legislation please see the attached leaflet.

- ICO Enforcement leaflet - GDPR and DPA 2018

Our consideration of this case

I have investigated whether Surrey Police has complied with the requirements of data protection legislation.

In the course of my investigation I have noted that:

FOIA s.44 - Prohibition on disclosure

- There was no contract in place between Clearview and Surrey Police.
- Surrey Police's Data Protection Officer (DPO) was not involved in the decision to **FOIA s.44 - Prohibition on disclosure**
- A Data Protection Impact Assessment (DPIA) was not completed prior to **FOIA s.44 - Prohibition on disclosure** As such, potential data protection compliance concerns were not identified, assessed, or properly considered, prior to the processing taking place.
- A lawful basis for processing was not identified prior to the processing taking place.

FOIA s.44 - Prohibition on disclosure

The processing ceased in January 2020, and to the Commissioner's knowledge, Surrey Police have not used Clearview's services since.

We have considered the remedial steps taken by Surrey Police in light of this incident. In particular:

- A report was produced and provided to senior management **FOIA s.44 - Prohibition on disclosure**

[REDACTED]

After careful consideration and based on the information provided, we have decided to issue Surrey Police with a reprimand in accordance with Schedule 13 (2) (c) of the DPA 2018.

Details of reprimand

The reprimand has been issued in respect of the following processing operations that have infringed the DPA 2018:

- Section 35 which states 'The first data protection principle is that the processing of personal data for any of the law enforcement purposes must

be lawful and fair.'

- Section 63 which states 'Each controller and each processor must co-operate, on request, with the Commissioner in the performance of the Commissioner's tasks.'
- Section 64 which states 'Where a type of processing is likely to result in a high risk to the rights and freedoms of individuals, the controller must, prior to the processing, carry out a data protection impact assessment.'
- Section 71 which sets out the tasks which the controller should entrust the Data Protection Officer with.

From the information provided to the ICO it is of particular concern that:

- **FOIA s.44 - Prohibition on disclosure** without a contract in place **FOIA s.44 - P**
[REDACTED]
- A lawful basis was not identified prior to processing.
- The DPO was not aware **FOIA s.44 - Prohibition on disclosure** by the controller and so was not involved in any of the decision making associated **FOIA s.44 - Prohibition on d**
[REDACTED] processing that occurred.
- A DPIA was not completed prior to processing being undertaken.
- From the information provided by Surrey Police, it does not appear that the incident response has been sufficient for a matter of this gravity. In particular, Surrey Police did not set out any further remedial measures to the ICO as would be expected other than a report that was provided to senior leaders.
- Surrey Police's cooperation with the ICO in response to our enquiries is considered to be poor and could be improved. In particular, responses provided to the ICO often gave minimal detail and meant the ICO had to ask further questions in order to clarify the circumstances in this case.

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The Commissioner recommends that Surrey Police could take certain steps to improve compliance with DPA 2018. In particular:

1. Conducting a full review of the circumstances of this incident and put in place measures to prevent similar future instances occurring.
2. Ensure that a clear process and policy is in place to ensure DPO involvement occurs at the earliest opportunity in relation to processing and handling of personal data. This should be clearly and regularly communicated to employees.

Whilst the above measures are suggestions, I would like to point out that if further information relating to this subject comes to light, or if any further incidents or complaints are reported to us, we will revisit this matter and further formal regulatory action may be considered as a result.

Within three months of the date of this letter, we would ask that Surrey Police provide the ICO with details of any steps it has taken to address the above points. If you have any questions or are unable to meet this deadline, please let me know as soon as possible.

We would also recommend that Surrey Police communicate the nature of this reprimand to the National Police Chief's Council.

Further information about compliance with the data protection legislation which is relevant to this case can be found at the following links:

[https://ico.org.uk/for-organisations/guide-to-data-protection/
Guide to Law Enforcement Processing | ICO](https://ico.org.uk/for-organisations/guide-to-data-protection/Guide-to-Law-Enforcement-Processing-ICO)

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Therefore, we may publish the outcome of this investigation to publicise our regulatory authority and new powers under the GDPR. We will publish information in accordance with our Communicating Regulatory and Enforcement Activity Policy, which is available online at the following link:

https://ico.org.uk/media/about-the-ico/policiesandprocedures/1890/ico_enforcement_communications_policy.pdf

Please let us know if you have any concerns about this.

Thank you for your co-operation and assistance during the course of our investigation.

We now consider the matter closed.

Yours sincerely,

FOIA s.40(2) - Personal data that doesn't fall under s.40(1)

Team Manager
Investigations
Information Commissioner's Office

Authorised by Stephen Eckersley
Director of Investigations

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