LEDS Open Space:

Custody Images – Part II

v1.0

26 February 2019

Discussion Document

This Document has been written with the aim of stimulating discussion on management of custody images, particularly within the context of the introduction of the Law Enforcement Data Service (LEDS). It is not intended to be viewed as current Home Office policy. It is to be circulated to and viewed only by members of the LEDS Open Space.

Purpose

The purpose of this paper is to outline a plan for addressing outstanding issues in relation to police use of custody images.

This paper will be discussed in the LEDS Open Space on 26 February 2019. The aim is to provide further information in due course, picking up any concerns raised at the meeting and future developments.

Summary

The Home Office committed during a discussion on custody images in Workshop 3 in December 2018 to come back to the Open Space in Workshop 4 with a road map and timeline. This paper outlines Home Office plans to review the ongoing issues and concerns from civil society and the Information Commissioner's Office (ICO) in relation to police use of custody images.

We are considering starting work on the review of the 2017 Custody Image Review (CIR) currently scheduled for 2020. We intend this review to be conducted in collaboration with the National Police Chiefs Council (NPCC) and the Association of Police & Crime Commissioners (APCC).

To do that we will consult with the LEDS & HOB Open Space (the Open Space), as well as the Biometrics & Forensics Ethics Group (BFEG), the Law Enforcement Facial Images and New Biometric Modalities Oversight & Advisory Board (the Face Board), and the Independent Digital Ethics Panel for Policing (IDEPP).

It is proposed that the scope should include areas of the CIR that have drawn particular interest from stakeholders including the pre-existing custody image stores and establishing a sustainable and implementable custody images policy. These areas will be informed by consultation with civil society and regulators, discussions with the Open Space, BFEG and Face Board, and are detailed further within this paper.

Key outcomes of the discussion on this paper

1. Open Space members are comfortable with the draft scope for work, including its stated objectives, and proposed consultation methodology.
2. Open Space members are able to feed in their views on the proposed areas of focus that will shape the scope of work.

Custody Images – Part II

Background

1. The Open Space held an initial discussion on custody images at Workshop 3 in December 2018. The Home Office used this discussion to ensure Open Space members were clear on custody images policy challenges, including the way custody images are stored in local custody systems and in the Police National Database. The Home Office answered Open Space members' questions on the technical structures underpinning these systems and the policy objectives.

Timeline

2. The 2017 Custody Image Review (CIR) committed the Home Office to review again the custody image retention regime "in 2020." Due to ongoing concerns raised by members of the Open Space and delays to the delivery of LEDS, we are proposing to start work on that review earlier.

3. This is still subject to other priorities, but Open Space discussions will inform the timetable.

4. We are aiming to have the scope of the work, outlined in further detail in Paragraphs 7 and 8, determined by the end of March 2019. Included in this scope will be a view from NLEDP and HOB Programmes that their architecture will be able to accommodate the outcome of the review.

Ownership and membership

5. Home Office Data & Identity (HODI) incorporates the policy team for LEDS and supports the Home Office Biometrics (HOB) Programme. It will own the delivery of this review. It is anticipated that the review will incorporate the expertise of both teams.

6. To address prior challenges seen in the implementation of the CIR, we propose that the review team includes representatives from Home Office Digital, Data and Technology, as well as both the National Police Chiefs Council (NPCC) and the Association of Police & Crime Commissioners (APCC); and that the review is jointly-owned between the Home Office and these organisations.

Scope

7. Although the Home Office is committed within the CIR to review only the retention regime for custody images, we are proposing to go further and include:

    A. Review the retention regime for custody images, including recent court decisions;

    B. Review the implementation of the CIR retention regime by operational partners; and

    C. Review the pre-existing custody image store in the Police National Database (PND) and, where possible, local systems.

8. The review will seek to consolidate policy regarding custody image retention, assess the local (and national) technological implementation of this policy by policing and identify an appropriate resolution for legacy data.

Consultation and challenge

9. We propose that this work makes use of four channels for steer, consultation and challenge:

    - The LEDS & HOB Open Space (the Open Space);

    - The Biometrics & Forensics Ethics Group – LEDS & HOB Sub-Group (BFEG);

    - The Law Enforcement Facial Images and New Biometric Modalities Oversight & Advisory Board (the Face Board); and

    - The Independent Digital Ethics Panel for Policing (IDEPP).

10. It is our proposal that, unlike BFEG and IDEPP, the Open Space provides a formal channel to consult with its individual members (rather than seek an 'Open Space position'). This is in line with the principles upon which the Open Space has and continues to operate.

Question 1) a): *Are Open Space members comfortable with the proposed draft scope of work?*

Question 1) b): *Are Open Space members comfortable with the avenues available for themselves and other interested stakeholders to feed into the review?*

Proposed areas of focus

11. There are a number of key issues which will form the basis of the work. We have begun to outline these below according to the scope proposed in Paragraph 7. We are seeking Open Space member's feedback on the relevant issues.

A. Review and propose recommendations regarding the retention regime for custody images.

Issue 1: *The principles implemented in RMC must remain at the heart of the custody image retention regime and, where appropriate, more explicitly reflected.*

12. RMC ruled it unlawful to retain custody images without making a distinction between those who are convicted and those who are not. The CIR implements this ruling by recommending a presumption in favour of deletion is linked to:

    12.1. Whether a conviction was achieved or not;

    12.2. The type of offence; and

    12.3. The age of the individual at the time the custody image was taken.

13. These principles remain the starting point for any updated custody image retention regime policy.

14. We additionally are considering whether to further areas of the RMC merit consideration, for example:

14.1. Chief Constables' discretionary powers to not delete custody images for which the RMC ruling recommends a strong presumption towards deletion (ie. custody images taken of individuals under the age of 18 for an offence for which they were either not convicted or convicted of a non-recordable offence); and/or

14.2. Amending the application requirement for individuals to have their custody image considered under the deletion regime.

Issue 2: *The retention regime for custody images must strike an appropriate balance between the use of custody images as biometrics and as intelligence.*

15. Custody images are currently used within policing in two very distinct ways – as a searchable biometric requiring the use of a probabilistic algorithm with officers verifying matches made by the system and, in an analogue form requiring only an officer's recognition, as a briefing or reference tool to assist police in identifying persons of interest (e.g. wanted suspects).

16. Any updated retention regime for custody images must recognise the difference between these uses.

B. Review and propose recommendations regarding the implementation of this retention regime by operational partners.

Issue 3: *Any updated custody image policy should seek to address challenges created from the locally mastered / nationally replicated model for custody images.*

17. Custody images are currently maintained (mastered) in local systems by police forces. The images in these local systems are in many, but not all, cases pushed to a central custody image store in the PND via an 'updategram'. This means the PND custody image store is capable of being a nationally-held replicated store of locally mastered data.

18. Any updated custody image policy must seek to address this issue to ensure that there is a nationally-recognised approach to retention for custody images across UK policing.

19. This remains a complex technical issue but potential ways for resolving this include:

19.1. Ensuring that any automatic review and, where appropriate, deletion regime applied to a national custody image store is connected into locally-held stores – either by automatically pushing a deletion demand to the local system or generating a deletion notice and recommendation for the local system to follow suit.

19.2. Using the recently updated Management of Police Information (MoPI) guidance to drive a consistent retention regime across all custody image stores (whether national or local).

19.3. Changing the mastered-replicated relationship between national and local systems by mandating that the national custody image store is the mastered data source and local custody stores must draw down from this national system.

19.4. Abolishing local custody stores and requiring all forces to utilise a single, nationally-held, custody image store.

<u>C. Review and propose recommendations to address the existing custody image store in the PND and, where possible, local systems.</u>

Issue 4: *'Custody images' as a workstream should be considered within programme timescales.*

20. The review should consider whether or not policy and technical work to address legacy data should be treated as a distinct strand of work and potentially accelerated separately to avoid potential delays from Programme re-planning.

Issue 5: *All options for 'dealing' with the legacy custody image store should be fully assessed, including costings.*

21. In light of the dependency on LEDS architecture required to create the technological environment to match conviction outcome to custody image, alternative means of addressing stored legacy custody images should be considered, including costs.

22. This should include implications, timescales and full costs for options, including but not limited to:

    22.1. Pre-determined plan of building LEDS architecture, importing legacy custody image store and attaching conviction outcomes to each custody image to allow the running of an automatic rule.

    22.2. Attaching conviction outcome to custody image manually and image-by-image.

    22.3. Mass deletion of any custody image store (national or local) which cannot transparently demonstrate compliance with RMC ruling.

Question 2: *What amendments would Open Space members like to see to the proposed areas of focus that will shape the review's scope?*