

BIG BROTHER WATCH



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24 July 2024

Rt Hon Yvette Cooper MP,
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Rt Hon Peter Kyle MP
Secretary of State for Science, Innovation and Technology
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By email only.

Dear Secretaries of State,

Congratulations on your recent re-election to Parliament and appointment as Home Secretary and Secretary of State for Science, Innovation and Technology respectively. We are writing to you as human rights, racial justice and civil liberties groups with common concern about the growing use of facial recognition surveillance by police forces and private companies across the UK.

As organisations with a high-level of expertise in this area, we would like to invite you to meet with us to discuss the need for proper regulation of biometric surveillance in the UK.

Facial recognition surveillance is deeply intrusive, often subjecting many thousands of innocent people to biometric identity checks without justification. Uses of the technology have resulted in racial discrimination, misidentifications, privacy and data breaches, and a significant chilling effect on freedom of expression and assembly. The context in which you begin your new role is one in which South Wales Police was found to have deployed live facial recognition surveillance unlawfully (*Bridges v SWP*) and the Metropolitan Police Service ('MPS') is also facing a judicial

review brought by a Black victim of live facial recognition misidentification.¹ Other victims of live facial recognition harassment and errors are initiating legal action in the retail context.²

In recent years, parliamentarians across parties in Westminster³, members of the Senedd,⁴ rights and equalities groups and technology experts across the globe have called for a stop to the use of this technology.⁵ The only detailed inquiry into the use of live facial recognition by a parliamentary committee called for a stop to its use.⁶ The Equality and Human Rights Commission (EHRC) called for the UK Government to suspend LFR in 2020,⁷ raising concerns in its submission to the UN Human Rights Committee that,

“the legal framework authorising and regulating the use of AFR [automated facial recognition technology] is insufficient – it is based solely on common law powers and has no express statutory basis”.

The EHRC also raised,

“concerns as to whether it [LFR] complies with the requirement that any interference with privacy rights under Article 17 ICCPR is both necessary and proportionate”

and warned that such “big data” policing “may also infringe upon privacy rights and result in self-censorship, with a consequent chilling effect on freedom of expression and association”. No laws in the UK mention facial recognition, and the use of this technology has never even been debated by MPs.

Despite widespread concern and a lack of legal basis, the previous government heralded facial recognition technology, both live and retrospective, as a sticking-plaster solution to broader problems within the criminal justice system. Law enforcement use of other forms of biometric data, such as DNA and fingerprints, is subject to strict regulation via primary legislation. Facial

1 BBC, 'I was misidentified as a shoplifter by facial recognition tech,' <https://www.bbc.co.uk/news/technology-69055945>

2 The Times, 'Innocent woman branded a shoplifter by facial recognition software,' 26 May 2024, <https://www.thetimes.com/uk/crime/article/innocent-woman-branded-a-shoplifter-by-facial-recognition-software-vtcq8jvhk>

3 MPs and peers call for 'immediate stop' to live facial recognition surveillance – Jamie Grierson, the Guardian, 6th October 2023: <https://www.theguardian.com/technology/2023/oct/06/mps-and-peers-call-for-immediate-stop-to-live-facial-recognition-surveillance>

4 Police 'ramp up' surveillance as thousands scanned 'just for being out with their families at Christmas' – Chris Haines, Wales Online, 21st December 2023: <https://www.walesonline.co.uk/news/wales-news/police-ramp-up-surveillance-thousands-28328901>

5 Over 180 Rights Groups and Tech Experts Call for UK and Worldwide Halt to Facial Recognition Surveillance - Josiah Mortimer, Byline Times, 27th September 2023: <https://bylinetimes.com/2023/09/27/over-180-rights-groups-and-tech-experts-call-for-uk-and-worldwide-halt-to-facial-recognition-surveillance/>

6 The work of the Biometrics Commissioner and the Forensic Science Regulator: Nineteenth Report of Session 2017–19, Science and Technology Committee, 18th July 2019, HC 1970: <https://www.publications.parliament.uk/pa/cm201719/cmselect/cmsctech/1970/197003>

7 Civil and political rights in Great Britain – Equality and Human Rights Commission, March 2020: <https://www.equalityhumanrights.com/sites/default/files/2021/civil-and-political-rights-in-great-britain-march-2020.pdf>, p.89

biometrics are arguably even more sensitive and vulnerable to misuse than DNA and fingerprints, given the ability to obtain this sensitive data remotely and without an individual's awareness, consent or compliance, via photographs or CCTV footage. As the Council of Europe's guidelines on facial recognition acknowledge:

“Integrating facial recognition technologies into existing surveillance systems poses a serious risk to the rights to privacy and protection of personal data, as well as to other fundamental rights, since use of these technologies does not always require the awareness or co-operation of the individuals whose biometric data are processed in this way.”⁸

Like other forms of biometrics, police use of facial biometrics must be subject to democratic scrutiny and be afforded serious, meaningful protection via legislation.

Governments across the democratic world are legislating to ban and significantly restrict the use of facial recognition surveillance, for both law enforcement and private companies – but successive Conservative governments have left the UK behind. The EU's AI Act will introduce an almost total ban on the use of live facial recognition, with law enforcement exceptions for only the most serious crimes and on the condition of prior judicial approval for each deployment.⁹ In the US, multiple states have banned law enforcement from using the technology entirely,¹⁰ and the Vice President singled out the technology as one of particular concern when attending the UK's AI Safety Summit late last year.¹¹ The UK risks becoming an outlier in the democratic world, instead following the approach of countries like Russia¹² and China,¹³ which have heavily invested in this technology to the detriment of their citizens' rights and freedoms.

The previous government's failure to introduce a legal framework to limit and regulate live facial recognition surveillance has left police forces and the public in an uncertain and precarious position. We welcome the announcement in the King's Speech of the Government's plans to introduce AI legislation and, as per the EU's AI Act, this would be the perfect opportunity to address this issue. As Labour begins to address the flaws in the UK's broken criminal justice system and the regulation of AI, we would welcome the opportunity to discuss the need to take

8 Guidelines on facial recognition (2021) – Council of Europe: <https://edoc.coe.int/en/artificial-intelligence/9753-guidelines-on-facial-recognition.html#>, p.5

9 Artificial Intelligence Act: deal on comprehensive rules for trustworthy AI – European Parliament, 9th December 2023: <https://www.europarl.europa.eu/news/en/press-room/20231206IPR15699/artificial-intelligence-act-deal-on-comprehensive-rules-for-trustworthy-ai>

10 Montana law restricting facial recognition use by police, public agencies takes effect – Chris Burt, Biometrics Update, 5th July 2023; San Francisco is first US city to ban facial recognition – BBC News, 15th May 2019: <https://www.bbc.co.uk/news/technology-48276660>;

11 Remarks by Vice President Harris on the Future of Artificial Intelligence – The White House, 1 November 2023: <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/11/01/remarks-by-vice-president-harris-on-the-future-of-artificial-intelligence-london-united-kingdom/>

12 Glukhin v. Russia, European Court of Human Rights, <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-7694109-10618091%22%5D%7D>]

13 NPR, How China is Using Facial Recognition Technology, 16 December 2019, <https://www.npr.org/2019/12/16/788597818/how-china-is-using-facial-recognition-technology>

action and learn from our European partners in regulating the use of biometric surveillance in the UK more broadly.

We look forward to hearing from you.

Yours sincerely,

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Yasha Maccanico, Researcher at Statewatch

Jim Killock, Executive Director of Open Rights Group

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