



UCD Centre for Digital Policy  
Ionad um Bheartas Digiteach UCD



OLLSCOIL NA  
GAILLIMHE  
UNIVERSITY  
OF GALWAY

Digital Rights Ireland



Helen Dixon,  
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By email

Cc James Lawless TD, Oireachtas Joint Committee on Justice Chair  
Leo Varadkar TD, leader of Fine Gael  
Micheál Martin TD, leader of Fianna Fáil  
Eamon Ryan TD, leader of The Green Party

13 April, 2023

### **Policing Facial Recognition Technology in Ireland**

Dear Commissioner,

We write further to our 23 March discussion with the office of the Data Protection Commissioner (DPC) about the Department of Justice's purported and ongoing plans to enable An Garda Síochána's use of Facial Recognition Technology (FRT).<sup>1</sup> We recognise the Irish government's statutory obligation<sup>2</sup> to formally consult with the DPC in relation to the uptake of FRT *prior* to uptake or use. We understand the Government has not yet formally consulted with your office. We recognise also that this statutory obligation applies to any amendments of existing bills or legislation permitting use, for example the Garda Síochána (Recording Devices) Bill 2022.

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<sup>1</sup> See recently Minister for Justice Simon Harris' indication that he wants to pave the way for the introduction of the technology by amending Garda Síochána (Recording Devices) Bill. <https://www.irishtimes.com/crime-law/2023/04/06/oireachtas-committee-wants-to-scrutinise-use-of-facial-recognition-technology-by-gardai/>

<sup>2</sup> Article 84(12) of the Data Protection Act 2018. 'Where there is a proposal for a legislative measure for which a Minister of the Government is responsible that relates to the processing of personal data, the relevant Minister shall consult with the Commission during the process of the preparation of the legislative measure'. See <https://www.irishstatutebook.ie/eli/2018/act/7/section/84/enacted/en/html>

Should the Government proceed with their plans to use or legislate use of FRT, including their statutory obligations to formally consult with your office, we are pleased to share recent and guiding research from the Centre for Technology and Democracy, at the University of Cambridge ([Nuff et al, 2022](#)) that may be of interest to your office.<sup>3</sup> This study outlines factors for consideration in assessing policing use of FRT. These factors were formulated in relation to United Kingdom human rights and data protection law. However, they have application in jurisdictions such as Ireland which are subject to international human rights treaty obligations and the data protection principles in the EU GDPR. We have therefore shared adapted relevant excerpts here for application in the Irish context.

#### **Clear objective criteria**

- Are there clear, objective, and limited criteria concerning third-party access to the data collected or retained, including with regard to what data can be shared, with whom it can be shared, and for what specific purpose it can be shared?

#### **Necessary in a democratic society**

- Has An Garda Síochána identified less intrusive alternative measures and proven that FRT is strictly necessary compared to these measures using scientifically verifiable evidence?
- Has An Garda Síochána shown that FRT does not disproportionately limit the human rights of affected persons, including those who are misidentified or impacted by unwarranted intrusions?
- Has An Garda Síochána pre-established minimum thresholds to be met for the FRT system's accuracy (precision, false positive rate, true positive rate) to inform the legal test of strict necessity for personal data processing?

#### **Data protection standards**

- Has An Garda Síochána carried out and published a data protection impact assessment and appropriate policy document for sensitive data processing?
- Beyond social media or website publishing, has An Garda Síochána used other means to inform potential data subjects or most people in their jurisdiction in advance about when, where, why, and how FRT will be (or is currently being) used and how they can exercise their individual rights?
- Are there clear measures to ensure data subjects can exercise their individual rights including the rights to rectification, erasure, and object with clear justifications if exemptions apply?
- Has An Garda Síochána published their procurement contracts and data-sharing agreements with other parties?

#### **Consultation**

- Via direct consultation, has An Garda Síochána proactively considered views of the public, especially marginalized communities, on the particular type of FRT and justified a disregard of the views if relevant?

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<sup>3</sup> Evani Radiya-Dixit (2022) A Sociotechnical Audit: Assessing Police Use of Facial Recognition, Centre for Technology and Democracy, at the University of Cambridge. <https://www.mctd.ac.uk/wp-content/uploads/2022/10/MCTD-FacialRecognition-Report-WEB-1.pdf>. An updated version of this paper has been accepted at the 2023 FAccT conference.

- Are there transparent, proactive consultations with civil society and independent experts on the particular type of FRT?
- Are An Garda Síochána required to consider the advice from consultations and transparently explain the outcomes, including providing a justification if the advice is not followed?
- Are there clear, proactive processes for the public, especially marginalized communities, to influence if and how FRT is implemented?
- Are all FRT materials accessible to people with disabilities and provided in immigrant languages?

#### **Demographic impacts, including marginalised groups**

- Has An Garda Síochána carried out and published an equality impact assessment?
- If the technology is deployed, will An Garda Síochána publish the demographic makeup of the population where FRT is used?
- For each deployment, will An Garda Síochána publish the demographic data for arrests, stop and searches, and other outcomes resulting from the use of FRT?
- Will An Garda Síochána evaluate and publish the demographic makeup of the training dataset to ensure the dataset is representative of the population where it is to be used?
- Will An Garda Síochána evaluate and publish FRT's performance across demographic groups, in different conditions that match FRT's operational use, to ensure FRT performs well and similarly across the population?

#### **Expression and assembly impacts**

- Has An Garda Síochána assessed FRT's potential "chilling effect" on the rights to freedom of expression and assembly to inform the legal test of "necessary in a democratic society"?
- Does An Garda Síochána preclude using FRT to identify those peacefully participating in an assembly?

#### **Independent evaluation and safeguards**

- Will An Garda Síochána ensure that independent auditors will have access to training dataset and model to audit dataset and model?
- Are there safeguards precluding the use of FRT with an unsuitable low-quality probe or image?
- Will performance tests be carried out for (precision, false positive rate, true positive rate) and similarly across demographic groups?

#### **Technical training for officers**

- Is training for the particular type of FRT mandated for An Garda Síochána officers using the technology?
- Are there clear standards for technical training on using FRT, data protection training, and training on risks including differential treatment, function creep, and unwarranted intrusions?

### **Vetting the technology**

- Will there be a documented non-operational research trial of FRT with informed consent from participants before the operational use of FRT for policing?

### **Oversight and redress**

- Are there clear measures for An Garda Síochána to document cases of harm resulting from the use of FRT such as differential treatment, function creep, or unwarranted intrusions?
- Does An Garda Síochána have a whistleblower protection policy to protect persons who reveal FRT misuse?
- Is there a clear redress mechanism (beyond judicial review and usual complaint procedures) for harmed individuals and groups to participate in an investigation into An Garda Síochána use of FRT?
- Are there clear measures to ensure that the redress mechanism is procedurally fair?
- Is regular oversight from an ethics committee mandated throughout the life of the FRT project?
- Are there clear processes for the committee to influence if and how FRT is implemented, including the power of veto for the FRT project?
- Is the committee an independent body from An Garda Síochána organisations with members having non-policing backgrounds and with safeguards to ensure the committee's sustainability even without political support?
- Is the committee diverse in terms of demographic makeup and independent expertise in human rights, equality, and data protection?
- Are detailed meeting minutes published, including briefing papers, discussions, and conclusions?

### **Handling of biometric data**

- In addition to the helpful points from [Nuff et al](#) we would all ask if An Garda Síochána have established a proposed legal basis for the acquisition of biometric data used for FRT policing? We would have concerns in particular if the data was acquired, for example, from databases used to establish the public services card or passports. Some letter authors have previously written to the Oireachtas expressing our concerns in relation to the [processing of biometric data for public services](#).

Your sincerely,

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