Dear colleagues,

Thank you for meeting with us at such short notice. We discussed questions on 3 interrelated topics around the DESC programme that had been raised with us – I have summarised our thinking at present below.

**International transfers for the purpose of system/tech support**

We understand that technical support for DESC may at times be provided by teams in a third country without a UK adequacy decision.
Our initial view is that:

- if technical support staff in a third country access personal data on DESC this would constitute an international transfer under data protection law.
- This processing would fall under Part 3 of the Data Protection Act 2018 (DPA 2018).
- These transfers would be unlikely to meet the conditions for a compliant transfer set out in s73-76 DPA 2018.

In order to avoid a potential infringement of data protection law we strongly recommend ensuring that personal data remains in the UK by seeking out UK based tech support. If 24 hours support is required and a ‘follow the sun’ approach is necessary to deliver that, it may be that technical questions could be answered by support teams based in third countries without these teams accessing and processing any personal data.

As discussed we are currently seeking a view on whether the processing for the purpose of tech support may fall under UK GDPR as supplemented by DPA18. However we must emphasise that at this stage we do not have a formal view. We intend to come to you in writing with a formalised view as soon as possible – which may differ from the statement above. If this is the case we will detail why.

**The US CLOUD Act**

We understand that your contracted processor Axon will use Microsoft as a sub processor. Microsoft is an American company and subject to requests through US CLOUD Act.

You have raised an interesting question regarding the potential transfer of personal data by Microsoft to a US law enforcement agency under a warrant granted under the CLOUD Act would constitute an international transfer under Part 3 DPA 2018. Although we do not think that it is the intention of the legislation, the drafting may lead to such a transfer being, in principle, possible.

In any event, partners involved in the DESC project must be assured they are meeting all their obligations under data protection law including those set out in S59, S64 and S66 of the DPA 2018.

Again, this comes with the caveat this is our initial view only. We intend to come to you in writing with a formalised view as soon as possible – which may differ from the statement above. If this is the case we will detail why.

**Variability of the contract with Microsoft / EDPS paper**

We understand that you have concerns that there is no contract in place between Axon and Microsoft and that Microsoft may vary the service provided without your agreement as a controller. We would expect Police Scotland / the Scottish Police Authority/ COPFS to take all reasonable steps to ensure compliance with s59 DPA 2018 and to mitigate and safeguard against any risks that Microsoft (as sub processor) may vary the terms of the contract without Police Scotland / SPA/ COPF’s agreement.

Please keep us updated on:
• Whether you decide to progress with the pilot in January
• If you do decide to move ahead with the pilot the actions that you have taken in relation to our advice above.

Any questions do let us know.

Regards,

S38(1)(b)

---Original Appointment---
From: Davie, Lindsey <S30(c) spa.police.uk>
Sent: 07 December 2022 12:58
To: Davie, Lindsey; Stewart, Alice; Armstrong, Damian; S38(1)(b)
Subject: Meeting with ICO re DESC/Cloud issues
When: 07 December 2022 15:00-16:00 (UTC+00:00) Dublin, Edinburgh, Lisbon, London.
Where: Microsoft Teams Meeting

External: This email originated outside the ICO.
If you are unable to attend could you please forward to a representative. Thanks

Microsoft Teams meeting
Join on your computer, mobile app or room device
Click here to join the meeting
Meeting ID: S30(c)
Passcode: S30(c)
Download Teams | Join on the web
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Dear Kerry and Alice,

Thank you for the meeting regarding DESC yesterday, we appreciate you continuing to keep us updated. Below is a summary of points from the meeting, as we have understood them, do let us know if anything is incorrect. We have also included the advice we provided yesterday on compliance with section 37 DPA 2018 which you should consider before progressing with the pilot and action as appropriate. We also had a couple of questions/points that would be helpful if you could clarify – these are set out at the end of the email.

Summary of meeting
- The DESC pilot will be on 24th January 2022 in Dundee City. This will involve the processing of personal data.
- There will be no international transfers involved in the provision of technical support. Where it is necessary for technical support to have access to personal data in DESC this will take place in the UK only. Phone calls to indicate there is a technical issue may be routed through the US/another country – phone support in countries other than the UK will not however involve access to personal data.
- Police Scotland will be providing SRO with documentation, including a DPIA. This is not provided under s65 DPA 2018, ie you have assessed that here are no residual high risks that cannot be mitigated. The documentation is being supplied for our information. We will review the documentation and, if appropriate, provide feedback.
- You stated that you are assured as the controller that you are meeting all obligations under data protection law including those set out in S59, S64 and S66 of the DPA 2018.
- You informed us on the call that members of the public can upload information from their devices into DESC. It is not an open portal, access is only gained through a link which would be provided to the individual by an investigating officer. The link allows an individual to upload evidence they believe is relevant to the crime. The officer can then either accept or decline the information that is uploaded. If the officer views the information and sees it obviously not relevant, ie holiday photos uploaded by mistake, the officer can decline. This is then put into a deletion queue for 7 days before being deleted. If the information viewed is relevant the officer can accept and the information is ingested into DESC. If, for example, a video is uploaded that is 20 minutes long but the relevant evidence is only 2 minutes, the officer can clip the information that will then be shared with other partners as the case progresses, however the other 18 minutes is retained.
We discussed that it was likely that members of the public would upload irrelevant and relevant personal data via the link, including their own personal data and personal data relating to others some of which could be sensitive data. There is also a risk that if most of the information is relevant that officers would accept the submission. We advised that given the retention requirements set out in the Code of Practice made under Section 164 of the Criminal Justice and Licensing (Scotland) Act 2010 there is a risk of excessive processing and infringement of the data minimisation (s37 DPA 2018) principle. **You should review your DPIA and ensure that you can mitigate this risk and that put in place measures and mitigations to comply with the data minimisation principles (s37 DPA 2018)**

As you will be aware if you have a remaining residual high risk in your DPIA that cannot be mitigated prior consultation with the ICO is required under Section 65 DPA 2018. You cannot go ahead with the processing until you have consulted us.

If your assessment is that this risk can be reduced significantly to allow you to proceed with the processing the risk should be carefully monitored and assessed throughout the pilot.

**Questions / points to clarify**

1. Our understanding is that all material (even that considered ‘manifestly irrelevant’) is retained for the ‘life of a case’. Once the case is completed all information is kept in line with the corresponding retention period which is dependent on the type of crime – and that’s all evidence collected as part of an investigation. Can you let us know what is meant by the ‘life of a case’? Does Police Scotland weed and then destroy irrelevant material/evidence after a case has closed?

2. Does the design of DESC allow for the deletion of information once it has been accepted by the investigating officer?

Regards,

**(she/her)**

Senior Policy Officer – Scotland

Information Commissioner’s Office, Queen Elizabeth House, Sibbald Walk, Edinburgh EH8 8FT.

T. 0330 313 1715  ico.org.uk  twitter.com/iconews

For information about what we do with personal data see our privacy notice at [www.ico.org.uk/privacy-notice](http://www.ico.org.uk/privacy-notice)
Good evening ladies,

I wondered if I might be able to get a call with you tomorrow afternoon? I appreciate short notice but I am keen to discuss with you.

Kind Regards
Kerry

Kerry Harvey
Data Protection Officer

Governance, Audit & Assurance
Police Scotland Headquarters
Tulliallan Castle
Kincardine
FK10 4BE

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Twitter: @policescotland
Facebook: www.facebook.com/policescotland
S38(1)(b)

From: S38(1)(b) <S38(1)(b)@ico.org.uk>
Sent: 10 January 2023 10:46
To: Harvey, Kerry
Subject: RE: DESC [OFFICIAL]

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Morning Kerry,

I feel the year is off to a flying start and apologies for the delay in responding to you, S38(1)(b)

Regarding our advice I have checked in with colleagues internally and we are working to finalise that advice, we also mindful of your time frame however we aren’t able to guarantee providing the advice to you before the 16th January. Do keep us updated as things progress or when decisions are made.

Out of Scope

Regards,
S38(1)(b)

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From: Harvey, Kerry <S30(c) scotland.police.uk>
Sent: 05 January 2023 13:27
To: S38(1)(b) <S30(c) & S38(1)(b)@ico.org.uk>
Subject: DESC [OFFICIAL]

External: This email originated outside the ICO.
OFFICIAL

Happy new year to you. I hope you had a lovely festive period.

I’m writing to you to follow up from the meeting you had with Alice and members of the DESC project team. My understanding from briefing is that a more detailed follow-up communication was going to be sent to us (perhaps penned by your solicitor?).

I haven’t received anything to date.

By way of update to you, the DP working group met yesterday (weekly occurrence for January) and DESC DP artefacts remain the focus with a deadline of 13 January for completion. Thereafter a meeting will take place on 16 with PSOS SIRO where decision will be sought to proceed to Pilot.

Kind Regards
Kerry

Kerry Harvey
Data Protection Officer
Governance, Audit & Assurance
Police Scotland Headquarters
Tulliallan Castle
Kincardine
FK10 4BE

Website: www.scotland.police.uk
Twitter: @policescotland
Facebook: www.facebook.com/policescotland
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Morning Kerry,

I hope you’re well. We’re both available from 2pm – would you like to send a teams invite through? Is this regarding DESC?

Regards,

S38(1)(b)

S38(1)(b) (she/her)
Senior Policy Officer – Scotland

Information Commissioner’s Office, Queen Elizabeth House, Sibbald Walk, Edinburgh EH8 8FT.

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OFFICIAL

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Kind Regards
Kerry

Kerry Harvey
Data Protection Officer

Governance, Audit & Assurance