



JUDICIARY OF
ENGLAND AND WALES

PRESS SUMMARY

4 September 2019

The QUEEN

on the application of

EDWARD BRIDGES

-and-

CHIEF CONSTABLE OF SOUTH WALES POLICE and others

[2019] EWHC 2341 (Admin)

DIVISIONAL COURT: Lord Justice Haddon-Cave, Mr Justice Swift.

BACKGROUND TO THE CLAIM

Mr Bridges challenged the legality of South Wales Police's use of AFR Locate (a particular application of facial recognition technology) on the grounds that its use was contrary to the requirements of the Human Rights Act 1998, Data Protection legislation (the Data Protection Act 1998 and its successor, the Data Protection Act 2018), and that the decision to implement or use it had not been taken in accordance with the public sector equality duty contained in the Equality Act 2010.

Since April 2017, South Wales Police ("SWP") has undertaken a trial of automatic facial recognition technology with a view to it being rolled out nationally. The trial (which is still in progress) comprises two pilot projects, one of which is known as AFR Locate and the other known as AFR Identify. The current proceedings concern AFR Locate. When AFR Locate is deployed, digital images of faces of members of the public are taken from live CCTV feeds and processed in real time to extract facial biometric information. That information is then compared with facial biometric information of persons on a watchlist. To date, SWP has deployed AFR Locate on some 50 occasions. Watchlists are prepared for the purpose of each deployment. The watchlist is created from images held on databases maintained by SWP as part of its ordinary policing activities. A watchlist might include (for example) persons wanted on warrants, or who are unlawfully at large (having escaped from lawful custody), or who are suspected of having committed crimes. When AFR Locate is deployed, the SWP mounts CCTV cameras on stationary, or mobile police vehicles, or on poles or posts. The SWP also takes steps to inform members of the public that AFR Locate is being used at the event or in the area concerned. AFR Locate is not a form of covert

surveillance (covert surveillance is governed by the Regulation of Investigatory Powers Act 2000).

The judicial review proceedings were brought on a co-operative basis in order to seek the Court's early guidance as regards the legal framework relating to AFR Locate.

JUDGMENT

The Divisional Court refused the application for judicial review on all grounds.

REASONS FOR THE JUDGMENT

The Court concluded that SWP's use of AFR Locate met the requirements of the Human Rights Act. The use of AFR Locate did engage the Article 8 rights of the members of the public whose images were taken and processed [47] - [62]. But those actions were subject to sufficient legal controls, contained in primary legislation (including the Data Protection legislation), statutory codes of practice, and the SWP's own published policies [63] - [97], and were legally justified [98] - [108]. In reaching its conclusion on justification, the Court noted that on each occasion AFR Locate was used, it was deployed for a limited time, and for specific and limited purposes. The Court also noted that, unless the image of a member of the public matched a person on the watchlist, all data and personal data relating to it was deleted immediately after it had been processed.

On the Data Protection claims, the Court concluded that, even though it could not identify members of the public by name (unless they appeared on a watchlist), when SWP collected and processed their images, it was collecting and processing their personal data [110] - [127]. The Court further concluded that this processing of personal data was lawful and met the conditions set out in the legislation, in particular the conditions set out in the Data Protection Act 2018 which apply to law enforcement authorities such as SWP [128] - [141].

The Court was also satisfied that before commencing the trial of AFR Locate, SWP had complied with the requirements of the public sector equality duty [149] - [158].

The Court concluded that the current legal regime is adequate to ensure the appropriate and non-arbitrary use of AFR Locate, and that SWP's use to date of AFR Locate has been consistent with the requirements of the Human Rights Act, and the data protection legislation [159].

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments/>