The Police Federation of England and Wales

Proposed amendment to Data (Use and Access) Bill

Executive Summary

1. In May 2023 the Police Federation of England and Wales proposed an amendment to the then Data Protection and Digital Information (No 2) Bill, designed to facilitate the transfer of personal data between police forces and the Crown Prosecution Service (CPS) prior to charging decisions. That Bill fell away as a result of the General Election, but the Data (Use and Access) Bill has now replaced this and makes its way through the legislative process.

2. The identified issues within the existing data protection legislation are:

   - The problem which we identified was an extremely burdensome, and potentially unnecessary, redaction exercise in relation to case-files. In a situation where the police are preparing a case-file for submission to the CPS for a charging decision, the existing data protection legislation requires the police to spend huge amounts of time and resources (a) going through the information which has been gathered by investigating officers in order to identify every single item of personal data contained within that information, (b) deciding whether it is necessary (or in many cases strictly necessary) for the CPS to consider each item of personal data when making its charging decision, and (c) redacting every item of personal data which does not meet this test. The redaction exercise is potentially unnecessary in the case of any given case-file because the CPS only decides to charge in approximately 75% of cases.

   - The simple, practical solution we proposed is for the police to carry out the redaction exercise in relation to any given case-file only after the CPS has decided to charge. In the 25% of cases where the CPS decides not to charge the unredacted file could simply be deleted by the CPS or placed in secure storage. Where the CPS decides to charge, the case-file could be returned to the police to carry out the redaction exercise before there is any risk of the file being disclosed to any person or body other than the CPS. The Federation estimated (very conservatively) that adopting this solution would result in a saving of over £5.6M per annum. But more importantly it would free up the officers currently engaged on the redaction of case-files to spend significantly more time on frontline policing duties and be visible on our streets. The real cost savings therefore for the British public go far further than identifiable pounds, as what price can be placed upon having more Officers working within their communities. This amendment would now enhance the government committees made under the Neighbourhood Policing Guarantee

3. Despite all efforts made the previous government quietly refused to support our proposal, even though it acknowledged across the Home Office and the Ministry of Justice that there was a very real problem in the operation of the existing data protection legislation as it applies to police forces, and that the redaction exercise the police are required to carry out is extremely burdensome and potentially unnecessary.

4. The Home Office legal team raised two objections to the proposed annex. The Federation will refer to these two objections as the "Need to redact anyway objection", and the "Further down the line objection". Neither presents a real objection to the Federation's proposed amendment.

5. Need to redact anyway - Whilst it is true that personal data protected by the data protection legislation can sometimes also be protected by Article 8 ECHR, that is by no means always the case. The second reason why not all personal data protected by the data protection legislation is also protected by Article 8 ECHR is that there is a threshold of seriousness under Article 8 which does not apply to the data protection legislation. These considerations demonstrate that it is the data protection legislation, rather than Article 8 ECHR, which requires the very burdensome redaction exercise.

6. Further down the line objection - The short answer to this objection is that under the Federation's proposal if a decision is made by the CPS not to charge, the unredacted file can simply be deleted or placed in secure storage by the CPS. It will not go any further down the line. It will only go further down the line if a decision is made to charge, in which case the file will be redacted in the same way as present. Where a decision is to charge a redacted file will then be presented to the CPS by the Police.

7. On Friday 29th November the PFEW draft clause to the bill was formally tabled in the House of Lords by Baroness Morgan of Cotes and co signed by Lord Thomas of Cwmgiedd. It was debated on 16th December 2024 and it was not supported by the Government and the same disappointing response was provided. The government is working to resolve this and just needs more time! That is not good enough we say and the time for action is now.

8. Under the existing framework, officers face time-consuming requirements to redact case material at the pre-charge stage before it reaches the Crown Prosecution Service. Ultimately, these cases may not even get charged. In what business would it be practical or economically viable to put in 100% productivity to get 75% return. The current law places a burden on officer's time and prevents them from getting out onto the streets and keeping our communities safe. Supporting the draft clause proposed by the PFEW would relive the administrative strain and help achieve a key government manifesto pledge of taking back our streets at no additional cost to policing budgets as well as improving overall policing efficiency.

9. The Data (Use and Access) Bill is now at committee stage in the House of Commons and PFEW urgently need the assistance of MPs across the house to support this amendment and table if formally. So that it can be debated within the Commons and hopefully voted upon for inclusion within the Bill. If this opportunity is missed, then it is difficult to see how this matter will be resolved and Policing and the public will continue to suffer.