

**Joint Committee on Justice Pre-legislative scrutiny of the General Scheme of the
Garda Síochána (Recording Devices) (Amendment) Bill 2023
13 February 2024**

I thank the committee for the invitation to contribute to your deliberations on the general scheme of the Garda Síochána (Recording Devices) (Amendment) Bill 2023. I am one of the Deputy Commissioners at the Data Protection Commission (DPC), with responsibility for the DPC's Supervision functions with regard to the Public Sector. Also in attendance is Mr Andrew Carroll, Assistant Commissioner, from the DPC's Supervision section, with responsibility for matters pertaining to law enforcement.

This Bill will provide the legal basis for the processing of personal data by An Garda Síochána for the purposes of biometric identification by way of facial recognition.

The DPC acknowledges the potential of facial recognition technology to benefit the work of An Garda Síochána. However, as the use of this technology presents serious risks to the individual's right to data protection, the legislation must implement the necessary restrictions, limitations and safeguards to ensure that any deployment of facial recognition technology by An Garda Síochána is strictly necessary and proportionate, and respects the requirements of data protection law and the fundamental rights of individuals.

Directive (EU) 2016/680, the Law Enforcement Directive, sets out that legislation should be clear and precise, and its application foreseeable to those subject to it, and specify the objectives of processing, the personal data to be processed and the purposes of the processing. The statutory code of practice envisaged in the Bill will be an essential element in meeting these requirements of EU law by setting out the specific details of how biometric identification and facial recognition technology may be used by An Garda Síochána. Head 4 of the Bill specifically links compliance with the code of practice to the strict necessity and proportionality of the use of biometric identification, highlighting its importance in this context.

Head 4 provides that An Garda Síochána can use any images or video to which they lawfully have access, which offers little clarity as to what is actually intended. A concern would be that large existing public databases of facial images could be brought within the scope of biometric identification without specific safeguards to prevent this. The inclusion of such databases would represent a serious and disproportionate intrusion upon the rights and freedoms of affected persons.

Facial recognition technology does not provide definitive results but relies on the probabilistic comparison of facial images, with an inherent underlying margin for error, and risk of inbuilt bias. These factors can significantly impact the reliability and accuracy of the technology, and indicate a high level of risk for affected data subjects.

Consequently, it will be necessary for a Data Protection Impact Assessment (DPIA) to be carried out prior to the introduction of the technology. The DPC recommends publication of the DPIA in the interests of transparency.

Biometric identification also constitutes a form of automated individual decision-making, permitted under the Directive only subject to the right to obtain human intervention. The Bill provides that the results of biometric identification must be verified by a member of Garda personnel. The efficacy of this safeguard will depend upon the expertise of relevant Garda personnel in the operation of the system, and their ability to effectively challenge its results. The code of practice should provide detail on this key safeguard, as well as all oversight mechanisms governing the use of biometric identification.

I hope these comments will be of assistance to the committee and I am very happy to answer any questions members may have, and to speak to any of the issues raised in our written submission.