

# London Mayor says using facial recognition technology raises ‘real concerns’ about legal framework

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*The legality of the use of facial recognition software in the CCTV systems at the King’s Cross development site has been questioned by Sadiq Khan, the Mayor of London, in a letter sent to the development owner. Khan sent the letter to Robert Evans, the chief executive of the King’s Cross development, after the Information Commissioner raised concerns that facial recognition technology should only be used in a way that is ‘necessary and proportionate’. In his letter, Khan asks for more information on how the technology is being used and for reassurance that MPs and the Information Commissioner’s Office (ICO) are being informed and liaised with to ensure the use is legal. Practitioners from Doughty Street and Pannone Corporate say the Mayor is asking the right questions, raising concerns over the fact that questions vastly outweigh the answers provided by the current legal framework.*

## **Who is watching and why?**

Facial recognition technology measures distinguishable features on individuals’ faces to identify them. On 12 August 2019, the owners of the King’s Cross site confirmed that they were using facial recognition software around the 67-acre, 50-building site ‘in the interest of public safety and to ensure that everyone who visits has the best possible experience’. This admission made the King’s Cross site one of the first landowners or property companies in Britain to acknowledge deploying the software.

## **Concerns over privacy**

Facial recognition technology raises concerns over human rights as it captures images of people without their consent, and the ICO further questioned who was responsible for overseeing the use of CCTV.

Patricia Jones, consultant at Pannone Corporate, calls facial recognition a ‘high priority area for the ICO’ because it ‘involves the processing of personal data; the biometric data of a large number of people is captured and screened against a database to identify people of interest’ which has significant data protection and privacy implications.

The key concerns of regulators, courts and watchdogs alike, Stephen Cragg QC, barrister at Doughty Street, says, is ‘whether the use of the technology complies with data protection laws and whether it is compatible

with rights to respect for private life as protected by Article 8 of the European Convention of Human Rights (ECHR)'.

### **Answering the concerns**

Jones highlights that the ICO will soon have an answer on the legality of using facial recognition technology by both private companies and the police once the judgment to *R (Bridges) v Chief Constable of South Wales Police* is given. Thus far, Jones says 'the ICO has indicated that once judgment in this case is given it will report on the findings of its investigation and set out what action needs to be taken. This will also have implications for private companies'.

In the case *R v South Wales Police*, Cragg explains the issues the judgment will answer will include:

'...whether the use of facial recognition is 'in accordance with the law' for the purposes of Article 8 of ECHR—judgment is expected in the autumn. In *R v South Wales Police*, the Information Commissioner also made submissions to the effect that she was doubtful whether the blanket and indiscriminate collection and retention of biometric data of thousands of members of the public would be strictly necessary as required by the [Data Protection Act 2018](#).'

As the law currently stands, Jones says, the ICO has the power to fine companies up to 4% of their worldwide annual turnover, and, as the use of facial recognition technology in public spaces by private companies is a 'focus' of the ICO's, Jones recommends that 'private companies using [facial recognition technology] or considering its use must ensure that they meet their data protection compliance obligations'.

### **The Mayor's letter**

In response to the concerns raised by the ICO, Khan has written to the owners of the King's Cross development, expressing that 'there are real concerns about the legal framework for the use of [facial recognition technology] in the UK'. Khan explains that he has called on the government to 'legislate in order to provide certainty about how exactly the technology can legally be used in the UK' and has asked for 'more information about exactly how this technology is being used' and 'reassurance that you have been liaising with government ministers and the Information Commissioner's Office to ensure its use is fully compliant with the law as it stands'.

Khan's request for more information on how facial recognition technology is being used on the King's Cross site implies that that the information is not currently available, Cragg points out, which is troubling especially in the light that 'at present there is no legal framework which specifically deals with the use of the software'.

Indeed, in July 2019, the Parliamentary Science and Technology Committee released a [report](#) on biometrics and forensics and has called for a moratorium on the use of facial recognition 'and no further trials should take place until a legislative framework has been introduced and guidance on trial protocols, and an oversight and evaluation system, has been established'. Furthermore, the Committee raised concern that despite a lack of a legal basis for trials of facial recognition technology, the 'government, however, seems to not realise or to concede that there is a problem'.

Cragg therefore concludes that the Mayor is asking the right questions and raises another one—what is the database being used against which images are checked?

*Written by Samantha Gilbert.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*

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