

Simon Harris TD,  
Department of Justice,  
51 St. Stephen's Green,  
Dublin 2,  
D02 HK52

January 30, 2023

Dear Minister,

1. In advance of the Second Stage Debate on the Garda Síochána (Recording Devices) Bill 2022 this week, the Irish Council for Civil Liberties (ICCL) wishes to set out our main areas of concerns regarding this important legislation and identify steps that we believe are necessary to ensure that the proposed Bill is compliant with human rights standards. While the Bill proposes to provide much needed clarity and certainty regarding aspects of police surveillance activity, it also proposes to expand the ability of gardaí, including civilian and reserve gardaí, to monitor people's behaviour in public spaces. This will impact people's rights to privacy, data protection, freedom of expression, freedom of assembly, and will engage protections against non-discrimination.
2. In particular, we are concerned about the potential impact of proposals to enable gardaí to routinely collect, retain, store and search vast amounts of personal data of members of the public by way of:
  - a. Using hugely controversial and dangerous Facial Recognition Technology (FRT) in a manner yet to be fully detailed;
  - b. Secretly tracking vehicles and, thereby people, by way of Automatic Number Plate Recognition (ANPR) for up to three months without judicial approval, searching databases of ANPR data and sharing this data with other bodies;
  - c. Accessing a live-feed for third-party CCTV for up to 72 hours, without judicial approval;
  - d. Proposals to introduce Body Worn Cameras by members of An Garda Síochána;
  - e. Providing a broad open-ended definition for use of *any* "recording device" that can record sights or sounds, without any requirement for a garda to seek and obtain prior authorisation from a member with a higher rank before using it. These devices include but are not limited to:
    - i. Drones,
    - ii. Body-worn cameras,
    - iii. Animal-worn cameras,

- iv. Mobile phones, and
- v. Camcorders.

3. We note that some of the most intrusive measures proposed in this bill - use of Facial Recognition Technology, by way of an amendment that is yet to be published, and the use of ANPR to secretly track vehicles - were not in the General Scheme of the Bill<sup>1</sup> and not subjected to pre-legislative scrutiny by the Joint Committee on Justice.<sup>2</sup> There is a heightened need for detailed and careful consideration of these provisions as the legislation progresses through the Oireachtas.
4. We also highlight that it is necessary for this Bill to be fully in line with the EU Directive 2016/680 (the Law Enforcement Directive, LED) as transposed into Irish law in Part 5 of the Data Protection Act, 2018.<sup>3</sup> ICCL believes that due to the lack of effective safeguards contained in the Bill and the high degree of discretion left to as-yet-unwritten Codes of Practice with regard to many of proposed categories of surveillance, there is a risk this legislation is not in line with the LED.

#### **A. Facial Recognition Technology**

5. ICCL believes that FRT has no place in Irish policing because:
  - a. ICCL believes that FRT presents a deeply flawed but powerful and overreaching generalised surveillance technology that is beset by issues of privacy, bias, accuracy, transparency and fairness;<sup>4</sup>

---

<sup>1</sup> Minister Humphreys publishes General Scheme of Garda Síochána (Digital Recording) Bill, Department of Justice, June 2021, <https://www.gov.ie/en/press-release/a88e2-minister-humphreys-publishes-general-scheme-of-garda-siochana-digital-recording-bill/>

<sup>2</sup> Report on Pre-Legislative Scrutiny of the General Scheme of the Garda Síochána (Digital Recording) Bill, Joint Committee on Justice, December 2021, [https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint\\_committee\\_on\\_justice/reports/2021/2021-12-17\\_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-garda-siochana-digital-recording-bill\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_justice/reports/2021/2021-12-17_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-garda-siochana-digital-recording-bill_en.pdf)

<sup>3</sup> The general principles include, but are not limited to, gardaí having to ensure that whenever they process personal data for law enforcement purposes, the data must be: processed fairly and lawfully; be collected for one or more specified, explicit and legitimate purpose and not be processed in manner incompatible with such purposes; be adequate, relevant and not excessive in relation to the purposes; be accurate, kept up to date if necessary, and every reasonable step must be taken to ensure (with due regard to the purpose they were collected) inaccurate data are rectified or erased; be kept in a form that permits the identification of a data subject for no longer than is necessary for the purposes for which the data are collected, and; be processed in a manner that ensures appropriate security of the data against unauthorised or unlawful processing and accidental loss damage or destruction, see Part 5 of the Data Protection Act 2018, <https://www.irishstatutebook.ie/eli/2018/act/7/enacted/en/html>

<sup>4</sup> Buolamwini, J. and Gebru, T., Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification, Proceedings of Machine Learning Research 81:1–15, 2018,

- b. FRT could allow for disproportionate mass surveillance;
  - c. There is no evidence to demonstrate the usefulness of FRT for policing;
  - d. Such use may run afoul of pending EU law (the AI Act) and Ireland risks having to unpick a domestic law after an EU law is passed, incurring significant and unnecessary cost;
  - e. An Garda Síochána has been criticised by the Data Protection Commission for not applying data protection law with regard to existing surveillance technologies. These structural problems must be addressed before any consideration should be given to deploying powerful new surveillance technologies.<sup>5</sup>
6. In a briefing with Department of Justice officials last year, ICCL was told that it intended to draft an amendment for this bill to: 1) allow for Garda use of FRT retrospectively against legally held footage, subject to approval by a Chief Superintendent and 2) allow for Garda use of live FRT in special circumstances, subject to approval from a judge. ICCL, and other experts, subsequently wrote to Minister McEntee on November 22, 2022 to raise our concerns about these plans.<sup>6</sup> We previously wrote to Cabinet on these issues in June 2022.<sup>7</sup> Our concerns included, but were not limited to:
- a. At the time of our briefing, the Department of Justice had not yet formally consulted the Office of the Data Protection Commissioner;
  - b. Community groups at risk from the technologies' established accuracy and bias problems had not been contacted or consulted;
  - c. We were particularly concerned to hear members of An Garda Síochána deny the significant and robust scientific evidence demonstrating accuracy and bias concerns - in research,<sup>8</sup> development,<sup>9</sup> deployment,<sup>10</sup> and decision-making. The risks for vulnerable

---

<http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>; see also Koebler, J., Detroit Police Chief: Facial Recognition Software Misidentifies 96% of the Time, Vice, June 29, 2020,

[https://www.vice.com/en/article/dyzykz/detroit-police-chief-facial-recognition-software-misidentifies-96-of-the-time?utm\\_content=1593453617&utm\\_medium=social&utm\\_source=VICE\\_twitter](https://www.vice.com/en/article/dyzykz/detroit-police-chief-facial-recognition-software-misidentifies-96-of-the-time?utm_content=1593453617&utm_medium=social&utm_source=VICE_twitter) and Manthorpe, R., 81% of 'suspects' flagged by Met's police facial recognition technology innocent, independent report says, Sky News, July 14, 2019, <https://news.sky.com/story/met-polices-facial-recognition-tech-has-81-error-rate-independent-report-says-117559>

<sup>5</sup> DPC Ireland 2018 - 2020 Regulatory Activity Under GDPR, June 2020, page 63-72. Accessible here:

<https://www.dataprotection.ie/sites/default/files/uploads/2020-06/DPC%20Ireland%202018-2020%20Regulatory%20Activity%20Under.pdf>

<sup>6</sup> <https://digitalpolicy.ie/today-in-the-irish-times-facial-recognition-technology-inappropriate-for-policing/>

<sup>7</sup> <https://digitalpolicy.ie/expert-letter-to-cabinet-members-policing-frt/>

<sup>8</sup> Abeba Birhane, 'The unseen Black faces of AI algorithms' (2002) 610 Nature 7932,

<https://www.nature.com/articles/d41586-022-03050-7>

<sup>9</sup> Joy Buolamwini and Timit Gebru, 'Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification' (2018) 81 Proceedings of Machine Learning Research 81 <  
<http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>>

<sup>10</sup> A recent audit testing three British police deployments, for example, found that all three FRT deployments failed to meet minimum ethical and legal standards. Evani Radiya-Dixit, A Sociotechnical Audit: Assessing Police Use of Facial Recognition (Cambridge: Minderoo Centre for Technology and Democracy, 2022), <https://www.repository.cam.ac.uk/handle/1810/342533>

groups, particularly darker skin toned individuals, were not only unacknowledged, we were told that accuracy was not a concern;

- d. We did not receive clear answers regarding how this technology would be independently tested, assessed, evaluated or audited before decisions are made about whether it satisfies legal and ethical criteria;
  - e. The technology is increasingly being banned or suspended around the world for policing.<sup>11</sup>
7. Yet, the Garda Commissioner recently gave a media interview, stating that the intention is for the use of FRT with body-worn cameras<sup>12</sup>. Such a proposal would directly contradict previous Government assurances on the scope of the proposed legislation and open far wider concerns about both the proposed use of FRT and the proposed use of Garda body worn cameras. We have sought clarification from the Department and await a reply.

## **B. Automated Number Plate Recognition (ANPR)**

8. ANPR is a powerful surveillance tool. ANPR cameras indiscriminately scan the number plates of every car which passes by an ANPR camera. They generally capture the time and date of each scan, the vehicle's GPS coordinates, and pictures of the car, while some versions can also capture images of a vehicle's occupants. The current use of ANPR by the gardaí is opaque but media reports indicate that An Garda Síochána has invested heavily in the technology in recent years, spending almost €2 million on ANPR infrastructure in 2020, 600% more than 2019.<sup>13</sup>
9. Sections 17 and 18 of this bill provide for gardaí to carry out secret surveillance of certain vehicles and, as a consequence, people, by monitoring their movements using Automatic Number Plate Recognition. This is hugely intrusive and unacceptable in a bill which is not supposed to be designed for covert surveillance. We are also concerned about the Bill's lack of safeguards regarding the collection, retention, disclosure and searches of ANPR data.

## **C. Live-Feed CCTV**

---

<sup>11</sup> In Belgium, Luxembourg, and Morocco, for example, FRT is banned or greatly restricted. In the US, cities that have banned police use of FRT include Boston, Oakland, Portland, and San Francisco. See also Facial Recognition Laws in the United States. See #ProjectPanoptic, Internet Freedom Foundation, <https://internetfreedom.in/facial-recognition-laws-in-the-united-states-projectpanoptic/>. See also, Team AI regulation, Suspension of Buenos Aires' Facial Recognition System (10 June 2022), <https://ai-regulation.com/suspension-of-buenos-aires-facial-recognition-system/>

<sup>12</sup> RTE's News At One, 24, January, 2023, <https://www.rte.ie/radio/radio1/news-at-one/programmes/2023/0124/1351562-news-at-one-tuesday-24-january-2023/>

<sup>13</sup> Finnan, S., Gardaí Spend on Tech to Check Licence Plates Up 600 Percent, 20 January, 2021, <https://www.dublininquirer.com/2021/01/20/gardai-spend-on-tech-to-check-licence-plates-up-600-percent>

10. The bill provides for live-feed CCTV access for AGS in respect of local authority cameras (Section 26) and third-party CCTV (Section 35). We are concerned there are not sufficient safeguards around these. We consider that any authorisation for live-feed CCTV access for AGS must be subject to the consideration of a Data Protection Impact Assessment, and a regular review of the need for live-feed access. The timing of those reviews must be based on the purposes of the operation.
11. A live-feed access arrangement for up to five years, in the case of local authority CCTV, must include an explicit requirement for a regular needs assessment of the live-feed access. This bill has not put forward a detailed and well-reasoned justification for the five-year timeframe. Five years could be a grossly disproportionate length of time for the purpose and objective of the initial authorisation for live-feed access. Similarly, live-feed access in respect of third-party CCTV for up to 72 hours, subject to approval from a superintendent, is problematic. This bill has also not put forward a well-reasoned justification for the 72-hour timeframe. ICCL recommends that this provision be either removed or amended to require judicial authorisation to grant such access. Only in circumstances where an urgency test is met should internal approval be allowed

#### **D. Body-worn cameras**

12. ICCL has previously set out in detail why body-worn cameras should not become part of Irish policing, consistently debunking the seven justifications which have been used by the State to bring in the invasive and unnecessary cameras.<sup>14</sup> ICCL believes body-worn cameras pose a risk to privacy, data protection, freedom of expression and freedom of assembly. We do not believe their introduction is proportionate or necessary in an Irish context to achieve legitimate aims.
13. At this point, if the Government intends to proceed with the introduction of Body-Worn Cameras, ICCL recommends that a pilot project is used to test its efficacy in an Irish context. Such a pilot should include robust mechanisms of operational and scientific review, with clear criteria set out that must be met before wider roll-out of this technology can be initiated.

#### **E. Use of 'recording devices' and safeguards**

14. The definition of "recording device" gives too broad a discretion to gardaí to use any/all manner of devices or systems with sight or sound recording capabilities. This is deeply problematic as different devices pose different risks to people's fundamental rights. The nature and scale of the risks should dictate what steps must be taken to mitigate those risks. A device's capabilities also play a significant role in determining the legal basis for its use.

---

<sup>14</sup> In ICCL's submission to the Department of Justice and Equality in 2019 on body-worn cameras, ICCL debunked seven justifications which have been used by the State to bring in the use of the invasive and unnecessary cameras, <https://www.iccl.ie/wp-content/uploads/2019/10/ICCL-Body-Worn-Cameras-DoJ-submission.pdf>

15. For example, drones pose several privacy risks in relation to the processing of data carried out by the equipment on a drone. The difficulty of not being able to view drones from the ground poses specific transparency risks as it may be difficult, if not impossible, to ascertain (i) what data processing equipment is on the drone; (ii) what purpose the data is being collected for and (iii) who is collecting the data. Drones also provide the opportunity for the collection of a wide variety of information for long periods of time across large areas.

16. Furthermore, the Bill is missing provisions to ensure that:

- a. A Garda member operating a recording device must be identifiable as a garda. If a non-uniformed guard fails to indicate they are using a device, this could amount to covert surveillance;
- b. A Garda member must seek and obtain authorisation to use a device from a member of higher rank before using it;
- c. Each Garda member who uses a recording device must have sufficient data protection training, or be suitably qualified, before using a recording device; and
- d. Pilot schemes are carried out for each type of “device” prior to their deployment, to provide proof of their effectiveness for a specified purpose and facilitate a human rights impact assessment, a privacy impact assessment and a Data Protection Impact Assessment.

17. We appreciate that, in light of recent assaults against gardaí, as acting Minister for Justice, you may feel an impulse to quickly roll out this law but we call on you not to rush this legislation through the Oireachtas and ensure there is robust debate about these intrusive measures. There are significant issues of human rights law and EU law at stake. We urge you to reconsider the proposals to enable Garda use of FRT and the secret tracking of vehicles through use of ANPR technology. We urge you to ensure that body-worn cameras are not rolled out until and unless a pilot scheme demonstrates their efficacy for law enforcement in Ireland. Finally, ICCL believes that many of the provisions in the Bill need to include more detail and safeguards if they are to be in compliance with the EU Law Enforcement Directive.

Yours sincerely,



Liam Herrick,  
Executive Director,  
Irish Council for Civil Liberties