



Baroness Hamwee
House of Lords
SW1A 0PW

4 December 2017

Dear Sally,

Data Protection Bill: Law enforcement processing

In Committee, Lord Young of Cookham undertook to reflect further on your amendment 137A which sought to include Police and Crime Commissioners (PCCs) in the list of competent authorities in Schedule 7 to the Bill (Official Report, 15 November 2017, col. 2058).

The functions and powers of PCCs are set out in the Police Reform and Social Responsibility Act 2011 which clearly provide PCCs with a strategic role in the governance of their local police force. In particular, under the terms of the 2011 Act, PCCs must:

- secure an efficient and effective police for their area;
- appoint the Chief Constable, hold them to account for running the force, and if necessary dismiss them;
- set the police and crime objectives for their area through a police and crime plan;
- set the force budget and determine the precept;
- contribute to the national and international policing capabilities set out by the Home Secretary; and
- bring together community safety and criminal justice partners, to make sure local priorities are joined up.

Whilst a PCC would undoubtedly hold personal data in pursuance of these supervisory functions, including in relation to the staffing of the PCC's office, any processing of such data would not generally be for law enforcement purposes. It is the case that PCCs have community safety and crime prevention functions under Chapter 3 of Part 1 of the 2011 Act, and you rightly point out that the definition of law enforcement purposes includes the prevention of criminal offences, but here again their role is a strategic one and any processing of personal data for such purposes will, in practice, be *de minimis*. Moreover, the extent that a PCC's office is accessing individual cases provided by their force, they

could well be processing the data as a processor rather than as a controller, or in execution of their oversight role. For example, PCCs have the strategic lead to contract and deliver victim support services in their area; however they have no data controller responsibilities for victims' personal data.

As Lord Young indicated in the debate in Committee, our approach in Schedule 7 is to list all the principal law enforcement and offender management agencies and other office holders and organisations which have operational law enforcement functions in support of their primary functions. It is not intended to be an exhaustive list, that is why we have include the catch-all provision in clause 28(1)(b). To the extent that PCCs do process personal data as a controller for a law enforcement purpose they will do so under the provisions of Part 3 by virtue of clause 28(1)(b). Against this background, we remain of the view that it would not be appropriate to include PCCs in the list of competent authorities in Schedule 7.

I also undertook to further consider amendment 137 which sought to replicate in Part 3 of the Bill the provisions in clause 96 which provides for a right to information about decision-making (Official Report, 15 November 2017, column 2074). Specifically, clause 96 would enable a data subject to obtain, on request, knowledge of the reasoning underlying the processing of their personal data. On reflection, having considered this carefully, we are of the opinion that sufficient data subject rights are already in place in Part 3 to enable the data subject to challenge the reasoning of any decisions by a controller which affect them.

Where a significant decision is based solely on automated processing, clause 48 places a duty on the controller to notify the data subject and confers a right on the data subject to request that the controller reconsider the decision or take a new decision that is not based solely on automated processing. In other cases, clause 42 requires the controller to inform the data subject, subject to certain proportionate restrictions to protect the law enforcement purposes, of the processing including the legal basis in specific cases. The data subject can then apply to the controller exercising their right of access under clause 43 for further information about the processing of their personal data and a copy of their personal data, again subject to proportionate restrictions. Given these provisions, we consider that the existing rights in Part 3 are sufficient to enable a data subject to access information about processing related to them and to use such information as the basis to challenge any decisions, including through the usual complaints procedure.

I am copying this letter to Lord Stevenson of Balmacara, Lord Kennedy of Southwark, Lord Clement-Jones, Lord Paddick, Lord Ashton of Hyde and Lord Young of Cookham; I am also placing a copy in the library of the House.



Baroness Williams of Trafford