

This response was submitted to the consultation held by the Nuffield Council on Bioethics on *The Forensic use of bioinformation: ethical issues* between November 2006 and January 2007. The views expressed are solely those of the respondent(s) and not those of the Council.

Anon 25

List of questions

1. The interpretation of bioinformation

- a. In your view, is the SGM Plus® system, which uses ten STR markers, sufficiently reliable for use in ascertaining the identity of suspects in criminal investigations and/or criminal trials?

I don't feel sufficiently qualified to state a view

2. Sampling powers

- a. From whom should the police be able to take fingerprints and DNA samples? At what stages in criminal investigations and for what purposes? Should the police be able to request further information from DNA analysts, such as physical characteristics or ethnic inferences?

Without reservation at the charge or criminal caution stage: sufficient checks and balances have played their part to ensure fairness and necessity. As a serving police officer I find it useful to take DNA, fingerprints and photographs at the arrest stage; it reduces the admin burden later in the investigation and provides a useful interlude in which to engage with suspects outside of the formal interview process to elicit intelligence about local crime and local criminals. I can say that in 15 years I can count on the fingers of one hand the number of persons I have arrested that had nothing to do with the crime in question, but it does trouble me that persons found to have nothing to do with the crime alleged still have their samples retained. In terms of elimination samples I was surprised and shocked when the government changed the law to retain these samples indefinitely. I am not against retaining DNA data, the technology seems very robust to me, but this seems like a back-door way of creating a national database. Why not just come out and create one? Be honest about it. In the meantime if people are asked to provide their DNA for elimination, it should be destroyed once it they are eliminated.

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- b. Should police expenditure on bioinformation collection and analysis be given priority over other budgetary demands?

This is a matter for individual Chief Constables to decide.

- c. Do you consider the current criteria for the collection of bioinformation to be proportionate to the aims of preventing, investigating, detecting and prosecuting criminal offences? In particular: is the retention of bioinformation from those who are not convicted of an offence proportionate to the needs of law enforcement?

Just because you are not convicted doesn't mean you didn't do it. The charge stage is a suitable juncture. Chief Constables should be instructed to give their staff discretion to NOT take a sample if they feel that to do so would be disproportionate. See above.

- d. Is it acceptable for bioinformation to be taken from minors and for their DNA profiles to be put on the NDNAD?

Yes.

3. The management of the NDNAD

- a. Is it proportionate for bioinformation from i) suspects and ii) volunteers to be kept on forensic databases indefinitely? Should criminal justice and elimination samples also be kept indefinitely? How should the discretion of Chief Constables to remove profiles and samples from the NDNAD be exercised and overseen?

It is proportionate for CJ samples to be kept indefinitely.

It is NOT proportionate for elimination samples to be kept indefinitely.

Chief Officers should give discretion to custody sergeants NOT to take samples if they believe it to be inappropriate. The role has been significantly professionalised in recent years and is now an attractive career option in my force. Give these professionals some trust to make the right decision. Let the right of appeal be through the Information Commissioner.

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- b. Is the ethical oversight of the NDNAD adequate? What, if any, research on NDNAD profiles or samples should be permitted? Who should be involved in the oversight of such databases and granting permission to use forensic DNA profiles or samples for research?

I don't have a great problem with the database being used for research providing the researchers have no access to personal data. The DNA should be blind save for the relevant criteria being investigated.

- c. Who should have access to information on the NDNAD and IDENT1 databases and how should bioinformation be protected from unauthorised uses and users? Should forensic databases ever be made available for non-criminal investigations, such as parental searches, or the identification of missing or deceased persons?

It should be available to the Criminal Justice system and Coroners. It must certainly NOT be made available to other governmental bodies or quasi-autonomous non-governmental organisations. The thought of the local authority, DWP, CSA and so on having access to this data fills me with dread and will only lead to greater difficulties in obtaining the data. An interesting parallel, it seems to me, is the recent decision to allow children created from donated sperm to identify their fathers. What happened? Sperm donation plummeted.

- d. What issues are raised by the transfer of bioinformation between agencies and countries? How should such transfers be facilitated and what safeguards should be in place for the storage and use of transferred data?

The agencies within Great Britain having proper access to the data will only be able to do so through the database holder and I am content that the checks will be robust. Samples should only be sent abroad on the order of a High Court Judge, and only then to countries that can demonstrate the same strict controls that the UK has.

4. Ethical issues

- a. Is the use of DNA profiles in 'familial searching' inquiries proportionate to the needs of criminal investigations? Do you consider the use of familial searching may be an unwarranted invasion of family privacy?

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This should be restricted to Serious Arrestable Offences, but within that ambit it is a useful and necessary investigation technique.

- b. Certain groups, such as ethnic minorities and young males, are disproportionately represented on forensic databases. Is this potential for bias within these databases acceptable?

Unfortunately, until such time as young men and those from ethnic minorities commit less crime they will be over-represented. The database is only biased in that it contains data from criminals. Don't commit crime if you don't want to provide a sample.

- c. Is it acceptable that volunteers (such as victims, witnesses, mass screen volunteers) also have their profiles retained on the NDNAD? Should consent be irrevocable for individuals who agree initially to the retention of samples voluntarily given to the police? Are the provisions for obtaining consent appropriate? Should volunteers be able to withdraw their consent at a later stage?

No. When there is no direct suspicion, the sample should be used for elimination purposes in that case only.

- d. Would the collection of DNA from everyone at birth be more equitable than collecting samples from only those who come into contact with the criminal justice system? Would the establishment of such a population-wide forensic database be proportionate to the needs of law enforcement? What are the arguments for and against an extension of the database?

Yes it would. The danger, however, is mission-creep. If the CSA, for example, can make a case to a suitably minded government in the future after the creation of a national database, then the access will grow and grow. The database should only exist for the prevention and detection of crime and the identification of otherwise unidentifiable deceased or incapacitated persons.

5. The evidential value of bioinformation

- a. What should be done to ensure that police, legal professionals, witnesses and jury members have sufficient understanding of any forensic bioinformation relevant to their participation in the criminal justice system?

I'm afraid that this can only be done with the help of expert witnesses. There is no other way currently.

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- b. How much other evidence should be required before a defendant can be convicted in a case with a declared DNA match? Should a DNA match ever be taken to be sufficient to prove guilt in the absence of other evidence?

Each case should be considered on its own merits. It is impossible to make a prescriptive judgement in this area. Trust our judges, juries and magistrates.

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6. Other issues

- a. Are there any other issues, within our terms of reference, which we should consider?