

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 3

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 know. I have heard that other forces / countries use significantly more loci so I would be concerned that 10 is inadequate and might lead to 'false positive' matches, but don't have enough information to comment.

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?

Police should be able, as now, to take fingerprints / DNA samples on arrest. However, these samples should be destroyed if a conviction is not obtained. Samples should only be taken to support current investigations and should not be retained after that investigation is finished; however, if a person is convicted then I have fewer problems with the concept of their DNA sample / data being retained.

Retaining innocent people's DNA data in a database and then later trawling through it for suspects is dangerous in the light of false positive matches.

Police should not have powers to forcibly DNA sample segments of the population (e.g. all men in a particular village where a rape occurred)

I have no problems with the police getting further information from DNA analysts re: race or physical characteristics as long as that information is appropriately qualified (e.g. "There is a 80% chance that this person suffers from <whatever> illness / looks like <whatever>")

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

I don't have enough information on their other budgetary demands to comment. It would be necessary to evaluate how effective their bioinformation collection / analysis is at helping to catch criminals to answer that question.

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- 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?

Answered above, but in a nutshell – no. It is being used to set up a DNA database by stealth, particularly now that ANY offence is an arrestable offence. Retention of DNA data for those who are not convicted is entirely inappropriate.

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

I consider it acceptable on the same basis as for adults, e.g. only for those convicted of a crime.

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?

Convicted criminals' data should be kept indefinitely. Suspects and volunteers' data should only be kept during the active investigation of whatever crime required the DNA samples to be taken. Once that investigation becomes dormant, I would prefer that data to then be mothballed off the main database, to be reactivated if any new evidence comes to light that might re-open the investigation.

I do not know anything about the CC's discretion to remove profiles / sample data, but think (if it is not already) that it should be centralised and managed via application to the Home Secretary.

- 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 know enough about the oversight of the database to comment. I think that research is not inappropriate as long as appropriate provisions are made to maintain the anonymity of the subjects, e.g. the data is only reported in aggregate.

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- 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?

The only people who should have access to the data are those who are responsible for adding DNA profiles or searching the database. It should be a criminal offence to search the database without good cause (e.g. curiosity to see if a friend or neighbour's profile is listed).

Since DNA data is so strongly associated with criminal activity in this country, I do not think it would be appropriate to use it for any other purpose. Even in using it to identify a body, there may be associated stigma that a match being made implies that the person was in some way involved in criminal activities.

- 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?

I see no problem with it as long as the foreign database is as secure (and has the same safeguards) as the UK one. There may be issues if a profile is removed from the UK database and the foreign database is not notified to remove it (or has no obligation to do so).

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?

If I understand the question correctly, this refers to using similarities in DNA to identify the probability that a suspect is a member of the same family as a profile on the main database. I don't know how accurate such methods are, so it is difficult to comment.

- 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?

It is difficult to see how it could be otherwise – certain populations commit crime disproportionate to their demographic representation and so will be disproportionately represented in the database. This is more likely to be a problem for using the profiles for research than for straight DNA matches, surely?

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- 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?

As mentioned previously, no. Consent should be irrevocable but the samples / profile data must be destroyed once the investigation is complete / becomes dormant.

I do not know enough about the provisions for obtaining consent to comment.

- 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?

Absolutely not! I am not a criminal and do not deserve to be treated like one. While it may assist in crime detection, there is a risk that it will be used in fishing expeditions. The probability of false matches will increase as the DNA database increases in size.

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 can't comment because I don't know what is currently done.

- 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?

DNA data should only be used as corroborating evidence. If it is used in a fishing expedition, i.e. "We know he committed this crime because there is this DNA match" without any other evidence then I don't think that should be considered sufficient evidence of guilt. There is currently nothing stopping people raking through dustbins for intimate items and using them to contaminate a crime scene with someone else's DNA, for example.

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6. Other issues

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

I have answered these questions from the perspective of a layman with a scientific background but little in-depth knowledge of the technology and methods behind the current DNA database.