

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 31

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?

SGM Plus is reliable enough to narrow down the number of suspects, but it should not be seen as a technique to pinpoint the perpetrator of a crime. During a trial SGM Plus can be used as supporting evidence but not as the sole evidence for associating the suspect with the crime.

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?

The police should be able to take samples from all suspects who are identified during the police investigation in an effort to reduce the number of suspects for further investigation. The police should also be able to take samples from volunteers during mass screenings for elimination purposes should other lines of enquiry draw blanks, in this case there should be enough fingerprint or DNA evidence collected from the scene of the crime or crimes to warrant a mass screening. Given that there are no biologically distinct races and the uncertainty regarding the perception of ethnic appearance, police should not be able to request further characteristics from DNA analysts.

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

No.

- 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?

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The current criteria are not proportionate to the aims as the criteria will lead to the databases having the bioinformation of non-criminals exceeding the amount of bioinformation of criminals, thus increasing the likelihood of errant matches, this excess of information will also slow down all searches of the databases. England and Wales should follow the lead of the Scottish Parliament which rejected a proposal to allow the police to store all DNA taken on arrest permanently and agreed that DNA could only be retained from people not charged or acquitted in specific circumstances, with the police having to apply to a Sheriff (obviously the English and Welsh equivalent would be used in England and Wales) for any extension.

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

It is acceptable if the minor is a suspect for a crime. If the minor is found guilty of the crime then their DNA profile should be put on the NDNAD, otherwise their bioinformation must be destroyed.

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 not proportionate for bioinformation from either suspects or volunteers to be kept on forensic databases indefinitely. As noted in my answer to question (2c) only in specific circumstances should bioinformation from suspects be retained and police must apply for extensions. The samples and bioinformation from criminal justice and elimination samples should be retained for as long as the case for which they were collected needs them unless the samples match the samples from another case (in which case the sample should be retained for as long as whichever case needs it the longest) or if, as in Scotland, specific circumstances apply. Any elimination sample that eliminates a person from a case should be destroyed as soon as practical (unless it matches a sample from another case). With regard to the removal of profiles and samples it should not be up to the applicant to demonstrate that their case is exceptional, instead the Chief Constables must give good reason why a profile or sample should not be removed, otherwise the profile or sample should be removed.

- 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?

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I do not know enough to answer the questions regarding oversight of the NDNAD. Regarding research on profiles and samples, any research should be restricted to that which will help criminal investigation.

- 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?

Since the NDNAD and IDENT1 databases were developed to help with criminal investigations they should not be used for non-criminal investigations.

- 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?

As we have yet to put in place adequate safeguards in our own country it is presumptuous to talk about transferring data to other countries. At present no transfers should take place, and only after safeguards have been put in place in both countries should agencies be allowed to utilise another country's bioinformation database. However no bioinformation contained on a database should be transferred, the bioinformation should remain in storage in the country and with the agency that collected the bioinformation, instead the agency wishing to use another country's database should send samples (and perhaps a representative to act as an overseer) to that other country and agencies of that other country carry out the search (under the gaze of the overseer if needs be).

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?

Familial searching relies on familial relationships being as stated, as it is possible that familial relationships may not be as stated (for example the biological father of a child may not be who the family thinks is the father) such searches do not have a sound footing. Without that solid foundation familial searching is an unsound 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?

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By removing the profiles of volunteers and suspects who have not been charged or have been acquitted from forensic databases the potential for bias will be reduced, as the profiles left will be the profiles of the guilty, those currently on trial, and those still under investigation.

- 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?

It is not acceptable that volunteers have their profiles retained on the NDNAD unless the volunteer first gives written consent that their profile may be retained. Such consent should not be irrevocable, volunteers should always be able to withdraw their consent at a later stage.

- 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?

It would not be more equitable to collect DNA from everyone at birth rather than only those who come into contact with the criminal justice system, and it certainly would not be proportionate to the needs of law enforcement. Most crimes are committed by those who have already come into contact with the criminal justice system, those who reach their twenties or thirties without committing any crime are less likely to commit any crime in the future than those who by their twenties or thirties have come into contact with the criminal justice system. By adding the profiles of people who are unlikely to commit crime you make the identification of the criminal more difficult because the larger a database becomes the more difficult it is to search and the more likely that false matches will occur, it is like adding more hay before searching for a needle in a haystack.

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?

At the very least legal professionals should be taught statistical analysis methods, and possibly pass an examination on the subject, before they are allowed to partake in a trial where forensic bioinformation forms part of the evidence. I do not know if support is available for jury members, but if support is possible then jury members should be given some instruction on statistical analysis before the trial begins.

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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?

A DNA match should never be taken as sufficient proof of guilt in the absence of other evidence, there must be other evidence available, with a DNA match (if it exists) being used to support that evidence. Extreme caution should be exercised in cases where other evidence is used to support a DNA match if a DNA match is the main piece of evidence.

6. Other issues

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

Given that during 2004-05 the Home Office reported that DNA evidence proved to be of use in 0.8 per cent of all crimes recorded, and that for many recorded crimes DNA is of little relevance, it should be emphasised that DNA profiling and the NDNAD is not the panacea for crime detection that some politicians claim. Therefore increasing the size of the NDNAD to include the profiles of everyone or to retain the profiles of volunteers, etc., indefinitely, will not only be unlikely to help crime detection and be ethically suspect, but also to be a huge waste of money.