

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 to January 2007. The views expressed are solely those of the respondent(s) and not those of the Council.

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## List of questions

### 1. The interpretation of bioinformation

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

From my layman's knowledge, it would appear to be a valuable tool for such use.

### 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?

It seems to make sense to take DNA from suspects charged with an offence, for potential use in a trial. My problem is with the current practise of taking and retaining samples of volunteers and others not charged with an offence.

- 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?

No

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

No.

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### 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?

No

- b. Should criminal justice and elimination samples also be kept indefinitely?

Criminal Justice yes, elimination, no

- c. How should the discretion of Chief Constables to remove profiles and samples from the NDNAD be exercised and overseen?

There should be an independent appeal process. The police default position is always going to be to keep the sample.

- d. Is the ethical oversight of the NDNAD adequate?

No

- e. What, if any, research on NDNAD profiles or samples should be permitted?

The problem with this is that this government, or a future one, will have overwhelming pressure to datamine this commercially-valuable material. At some point a government under financial pressure will want to sell this data wholesale for commercial purposes. The lesson of the Icelandic DNA database is instructive on this, even if it is on a small scale. There will probably be other uses this material can be used for which we currently cannot envisage. If individual citizens have no say in what happens to their own DNA then that sets a very unhealthy precedent.

- f. Who should be involved in the oversight of such databases and granting permission to use forensic DNA profiles or samples for research?

A group independent of government but answerable to the Courts and/or Parliament.

- g. 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?

There is going to be massive pressure to share this material with different groups covering the spectrum of medical/criminal justice/social services/commercial etc. If the current government attitude is anything to go by then it will be virtual carte blanche for access. From the utterings of Prime Minister Blair he wants every British subject's DNA on this database for uses to be determined by the government alone. It will be crucial to have strong legal guidelines in place because, if wide access is given, then it will be impossible to restrict access at a later date. That is why a group independent of the government of the day is vital to oversee it and decide on access.

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- h. 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?

This is going to be one of the most important questions in this matter, which is why government (which always has its own short-term political agenda) should be kept at arm's length as far as possible. It is going to be very difficult to frame something that will be sufficiently independent to view matters objectively yet have sufficient powers. Perhaps something like the current NICE committee overseeing new drugs is a starting point.

#### 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?

It may be that this will have to be decided in a court of law. On balance, I feel it is an intrusion.

- 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?

As most DNA samples are currently taken from offenders/victims it's inevitable that there will be bias. Only those who come in contact with the police will be on the database. Coupled with pressures on police to racially profile potential terrorists/criminals, that bias will continue. It has to be guarded against and given due weight

- c. Is it acceptable that volunteers (such as victims, witnesses, mass screen volunteers) also have their profiles retained on the NDNAD?

No

- d. Should consent be irrevocable for individuals who agree initially to the retention of samples voluntarily given to the police?

No

- e. Are the provisions for obtaining consent appropriate? Should volunteers be able to withdraw their consent at a later stage?

No and yes

- f. 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?

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No. I have no doubt this is the ultimate aim of government. Indeed, this government barely attempts to conceal it. It would be a massive change in the relationship of UK government to UK citizens. Once implemented, it then becomes inevitable that pressures for other uses for the database would mount. As only a tiny fraction of such data would ever be used in criminal offences (the original excuse for introducing it) the pressure would then be on to find other uses for such valuable information, gathered and held at great cost. Privacy and individual rights would already be dead in the water because it is compulsory to be on the database. As each new use for the data is approved it would become easier and easier to further erode whatever freedoms were left.

- g. Would the establishment of such a population-wide forensic database be proportionate to the needs of law enforcement?

No

- h. What are the arguments for and against an extension of the database?

See above. The pressure to massively exploit this database and abuse personal liberty go hand in hand.

## **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?

As a result of recent mistrials that process is probably underway. But it will always be very difficult to make sure that everyone involved in the legal process is up to speed with the latest scientific methods, particularly when the experts themselves are often divided. That has always been a problem and should be something that judges in particular are trained in, so they can advise juries on what weight to give evidence, particularly DNA evidence..

- b. How much other evidence should be required before a defendant can be convicted in a case with a declared DNA match?

There should be some other corroboration required before conviction.

- c. Should a DNA match ever be taken to be sufficient to prove guilt in the absence of other evidence?

No.

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## **6. Other issues**

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

The DNA database poses serious and significant questions for society, particularly over traditional concepts of civil liberty. As the potential of computer systems and databases continue to grow exponentially governments will always see advantages in gathering more information on its citizens. That can be for good or ill. This DNA database is simply one major system that is currently being introduced by this government. Other major systems will cover things like NHS records, passports, tax etc. This or future governments will find it irresistible to aggregate this information, again for good or ill. Quite possibly in ways that we cannot currently envisage, using technology yet to be developed.

If the DNA database is used to develop commercial drugs, for example, does that mean that people lose all rights to their own DNA? Will commercial companies be able to copyright/exploit someone's DNA? There is already the example of Henrietta Lacks, an American who died of cancer in the 1950s but who, without her consent, had a commercial line of cancer cells cultured from the tumour that killed her. It has been held in the US that commercial exploitation in this manner, without consent or payment, is legal.

A UK government, under inevitable short term pressures over security/crime/finance etc will inevitably see this and other databases as a goldmine to be exploited for every possible gain, political, financial and otherwise.