

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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Question 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?

Although I have a very limited understanding of the science behind this process, the literature that I have read suggests that this system is currently acceptable. However, if the DNA database continues to grow, this should be re-assessed as the likelihood of a match on non-genetic grounds must increase as the number of samples increases.

Question 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?

One must consider why the police would take DNA samples and fingerprints. In the final analysis, it is because there is a widely held view that people who show evidence of criminality tend to persist with that criminality in a variety of forms. Thus, taking samples and fingerprints may, under this analysis lead to other unsolved crimes being solved, thereby improving clear up rates (and in some cases leading to people who are anti-social being removed from society for a period of time). However, I am not aware that there is any empirical evidence in support of this view. My view is that since a person is innocent until proven guilty, the police should not be able to use DNA samples or fingerprints for purposes unconnected with the crime that is being investigated until the person from whom they have taken those samples has been convicted of that crime. If he/she is not convicted, those samples must be destroyed.

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

That is a matter for individual Chief Constables to decide upon.

- 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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No it is not (see my comments above). The information contained in my DNA is mine, not the State's. Access to that information by the State is a privilege, not a right. For the State to force me through the law to give up that information, there should be sufficient evidence (e.g. through conviction following trial of a serious offence) that the use of that information is likely to yield enough benefit to society at large to outweigh the infringement of personal liberty that such sampling entails.

I do believe that at the moment there is no process for balancing out any real (or notional) social benefits from DNA sampling with the infringement of personal liberty that this sampling and storage entails. I consider myself a law abiding citizen but I am totally opposed to the surveillance by stealth culture that is developing in this country.

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

Yes, if they have been convicted of a serious offence.

Question 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?

Chief Constables should not have that discretion. If these databases are to remain, they should be managed by bodies entirely independent of the police force. Any Chief Constable will take decisions which will be skewed by the culture of the organisation within which he or she operates. He will naturally seek to maintain the advantage that the database offers, whilst worrying less about the rights of the individual. Data from suspects and volunteers should be destroyed once a conviction in relation to the crime being investigated has been achieved, or in any event within say 5 years of the date of sampling.

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 have no view on the ethical oversight, but research should only be permitted with the explicit consent of sample donors. Oversight should be undertaken by a body whose primary concern is the rights of the individual, not the State, and whose role is to balance the demands of the State as described above.

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 noncriminal investigations, such as parental/familial searches, and the identification of missing or deceased persons?

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The only people who have access should be those who work for the body I have outlined in the previous answer. They should not be used for parental or familial searches, but I have no problem with them being used for the identification of deceased persons where it is not possible for them to be identified in any other way.

d. What issues are raised by the transfer of bioinformation between different 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 concerns me a great deal. If the database was composed solely of those convicted of serious crimes, I would have less of a problem. However, I would be very concerned about the generalised use of DNA information passing between countries with different attitudes towards the protection of this information and the uses towards which it can be put. My concern relates to the way in which it might become commonplace to have bioinformation stored for many or all citizens. At what point does the push for all citizens to have bioinformation stored? (The Prime Ministers recent comments to the effect that we should all be on the database are relevant here). The uses to which such a database could be put have real implications for the rights of the individual.

Question 4: Ethical Issues

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

Yes, I do consider this to be an unwarranted invasion of privacy. It is another example of something which, in a limited sense, is a good idea being extended way beyond that good idea because it is technically possible to do so.

b. Certain groups such as some ethnic minorities and young males are disproportionately represented on forensic databases. Is this potential for bias within the database acceptable in law enforcement?

The only way to eliminate this bias is to collect samples upon conviction rather than arrest. It is not acceptable for this bias to continue.

c. Is it acceptable that volunteers (such as victims, witnesses, mass screen volunteers) can 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 I mentioned earlier, I do not consider it acceptable for volunteer samples to be retained indefinitely. They should be destroyed following a conviction for the crime being investigated or within 5 years, whichever comes first.

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?

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This is the beginning of my worst nightmare. Universal surveillance goes against everything that should flourish in a truly democratic society and gives the State the upper hand for ever. Members of society submit to legislation (i.e. give up some freedoms) for the greater good and because society cannot function unless we do so. I cannot conceive of a greater good so large that it would justify such a fundamental reversal of the individual and the States roles.

Such a database is entirely disproportionate to the needs of law enforcement.

Question 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?

Hard to know. They should certainly understand the limitations of the system as well as its benefits.

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 sufficient to prove guilt in the absence of other evidence?

No it should not. What if a forensically aware criminal collected DNA material from an innocent party and planted it at a crime scene to divert suspicion? There has to be a body of evidence that corroborates the DNA material.