

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[®] system, which uses ten STR markers, sufficiently reliable for use in ascertaining the identity of suspects in criminal investigations and/or criminal trials?

In the majority of cases, yes. But in cases where related individuals are both suspects or where only partial profiles are available, then perhaps not.

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?

DNA samples should only be taken from those who are arrested on suspicion of a specific offence for which DNA sampling can determine their guilt (i.e. if blood is found at a crime scene at which they are suspected of being present). They should only be taken for the purposes of proving innocence/guilt in specific cases. This should be done when the suspect is arrested. The police should be able to request information from DNA analysts.

Fingerprints, on the other hand, should be taken from anyone who is arrested and held on file to aid in future investigations.

- 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, the current criteria for DNA sampling and recording is disproportionate to the aims of crime prevention and prosecution as it allows samples to be taken and retained from anyone arrested, even if they are subsequently released without charge. The criteria for collecting and recording fingerprints is however proportionate.

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

Fingerprints of anyone arrested should be taken, however DNA samples should not be taken unless they are suspected on a specific crime for which sampling will prove guilt/innocence (see response to Q2a).

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 to keep information indefinitely, it should be kept only until such time as they have been eliminated from an enquiry, convicted of an offence, or have requested that the information is removed (for volunteers). It should not be at the discretion of anyone that the samples 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?

It is unclear from the consultation paper whether the oversight of the NDNAD is adequate. Research, other than criminal investigation, should not be allowed on samples as permission has not been given by all parties.

- 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?

Forensic databases should never be used for non-criminal investigations as it was not collected for this purpose and permission by all parties has not been given for the data to be used in this way. This would be "spec creep" or "data rape".

- 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?

Any information on UK citizens shared between agencies and countries must be subject to the same data protection measures. If a country does not follow the same measures then the data about UK citizens should not be shared,

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as it could result in information leaking and being used inappropriately. If necessary, the UK police can inform other police forces that a match has been found but not provide people's DNA for other police forces to look for matches. This would not apply to data on foreign citizens.

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 must be used with extreme caution, and only where absolutely necessary to aid an investigation, as its use may imply that the data can be relied upon as evidence against a person who's DNA has not been analyzed. It may also cloud the judgment of the police or CPS (as indeed could ethnic inferencing).

- 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?

If the database is made up entirely of convicted criminals or volunteers, and there is a greater proportion of certain ethnic minorities and young males who make up these groups, then this is an unavoidable and acceptable outcome.

- 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?

If somebody volunteers to have their information retained then it is acceptable to retain it, only until such time as they withdraw their consent. Refusal to give consent should never be used to infer guilt.

- 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?

No, collection of DNA at birth would be even less equitable than collecting from those who come into contact with the criminal justice system, and it would not be proportionate to the needs of law enforcement.

5. The evidential value of bioinformation

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- 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?

People must be told that bioinformation alone is not enough to convict a person, that it is flawed (as indeed are many other forms of evidence, such as witness statements), and that there can be other reasons why a persons' DNA is found at a crime scene. Ideally, the expert who gives testimony that a DNA match has been found, should be asked to state that this is not definitive evidence that the match committed the crime.

- 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?

This will vary on a case by case basis but it must amount to enough evidence to convince judge and jury beyond reasonable doubt. A DNA match alone should not be taken as the only evidence against someone.

6. Other issues

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

Access to information by people outside the police is a real concern. Whenever information is stored in a database, there is a risk that it can be accessed illegally, used inappropriately, or even recorded incorrectly, so these issues should be considered carefully.