

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.

Michael Beckett

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?

This would need detailed technological and statistical information, which I do not have, for a reliable answer.

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?

Such data should be taken only in cases when the police already have fingerprints or DNA from the crime scene to confirm the presence of a suspect. It would certainly be in order for crime scene data to be sent for any analysis needed to identify the likely criminal.

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

No. Priority should be given to crime prevention. The most effective form of that is policemen on the beat. This was demonstrated with comprehensive clarity in my area when the Noting Hill rapist was sought by more coppers in the street. Burglaries, assaults, muggings, flashers etc almost completely stopped and car thefts hugely diminished.

- 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 policy would seem to be for anybody suspected of even minor misdemeanour to have samples taken in an effort to build a comprehensive data base of the population. Samples taken from people not subsequently convicted of an indictable offence should be destroyed.

- 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 are guilty of a serious offence.

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?

There should be no discretion. Samples from all but those convicted of serious offences should be destroyed.

- 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 am not clear who is keeping a watch on the NDNAD and therefore how independent and reliable monitoring is. If the taking and keeping of samples follows the rigorous exclusions I have suggested there should be no bar to research on the samples retained if it can help solve or prevent crime. Clearly some safeguards need to be built in to protect even convicts who have served their punishment and are trying to lead honest lives.

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.

- 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 samples were collected for the detection and prevention of crime, they should be used for no other purpose. Protecting unauthorised use is a double problem: one is excluding electronic access by hackers and the like, and the other is the possibility of individuals bending the rules. But unauthorised use is not the only danger. Spreading authorisation is at least as hazardous to individual liberty. In that category comes the understandable desire by government to use information it has paid for in ways other than intended originally. That should be strongly resisted, no matter how apparently benevolent the intention seems. It would also exclude parental searches, though the identification of a dead person would not seem to infringe material freedoms.

- 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?

Biological information should not be transferred overseas except in the most stringently-controlled circumstances. Other countries have different police and judicial systems over which we have no control and rules for keeping data that differ from ours, and hence should not have access to British information. It may be permissible to cooperate in the detection of really serious crimes but very rarely, and then only with a written undertaking from the foreign authorities that all data will be immediately destroyed on the completion of the investigation.

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?

As I said to a previous question, DNA profiles should not be available for any other use. It should be limited even in criminal investigation and should certainly not be available for uses such as familial searching – whatever that is – because such information is inherently an intrusion into privacy so proportionality is irrelevant: restriction is the key.

- 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?

Yes, if it reflects the incidence of serious crime. It is not a potential for bias unless the basis for collection is biased. If it can be shown the judicial system (from police to courts) convict more ethnic minorities or young males than their true responsibility for crimes, that is where bias should be tackled. In the absence of convincing statistically sound data on that the database merely reflects criminality, or should.

- 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?

Victims and witnesses should not even have their DNA taken, much less retained. For mass screening to exclude potential perpetrators, samples should be destroyed as soon as they have been excluded – in other words, even before the criminal is caught.

- 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. The state already has far too great intrusion and control of private existence. If anything its extent of information and correlation should be diminished. Such a comprehensive database of the whole population may indeed be a help to crime detection in some limited circumstances, but the price in the loss of liberty and privacy is too great.

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.

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?

The degree of ignorance about probability and other statistical concepts is so wide – as a glance at any newspaper will immediately show – that no simple answer to this is available. As we have seen from court cases even experts have only a tenuous grasp of DNA probabilities and some of them express the numbers in a way that easily misleads juries. The only suggestion I can make is for an expert in statistics to be available in all such cases to spell out what the numbers really mean, but I doubt that being implemented.

- 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 reverts to the previous question. Not being an expert myself in the mathematics of DNA matching, especially as I understand it is getting more sophisticated, I cannot make an intelligent judgment about the sufficiency of DNA match for identifying an individual. If the degree of certainty would mean that correlation would mean a certainty of 99.99% then it might be considered sufficient but I have a residual degree of unease even then which makes me emotionally feel it would be nice to have other evidence of identity.

6. Other issues

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

Beyond the strict confines of bio-information, it might be useful to see how ethically, efficiently and systematically the police and other authorities now collect, keep and share data on individuals. That might give an insight into the aims and practices of the public sector generally – especially in the light of the report showing us to be the most comprehensively spied-on nation –which might illumine government morality and hence the reliability of undertakings about the use of this new category of personal information.