

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?*

Yes it is sufficient at the moment however a dogmatic approach of " we have a DNA match" so there is no chance that the accused is not guilty must be guarded against.

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?*
- b. *Should police expenditure on bioinformation collection and analysis be given priority over other budgetary demands?*
- 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?*
- d. *Is it acceptable for bioinformation to be taken from minors and for their DNA profiles to be put on the NDNAD?*

a)

The police should be able to take (i.e. the power to take) off anyone they suspect to have committed the crime they are investigating. They should be allowed to take it as soon as they feel they need to (so at an early stage of the investigation if needed)

I believe that they should be allowed to glean as much information as possible and as genetics / DNA matching become more sophisticated so the amount of information passed should be increased. E.g. if the DNA sample says that the suspect is a woman the police need to know so that they don't waste valuable time looking for a man.

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b)

This should be an operational decision and I don't feel qualified to answer

c)

I feel that the collection criteria at the moment is fine HOWEVER you should be allowed if you are not convicted of a crime or just a witness / suspect and never charged to have your DNA evidence removed. Once convicted your DNA evidence should stay on the register for a time proportionate to the crime you were convicted for. A rule of thumb might be for it to be on the database for as long as the maximum possible sentence for that crime.

d)

Yes – so long as the time is as c) above

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?*
- 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?*
- 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?*
- 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?*

a)

Not without their permission. If someone is happy to have their data on the register then they should be allowed to have it left there. Otherwise it should be removed for volunteers / suspects as soon as the case is closed.

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Management of the NDNAD should be overseen by an independent body akin to the Data Protection Commissioner

b)

Access to the NDNAD should be allowed for research purposes but only for statistical research – a bit like the national census. Identification of individuals should not be allowed.

c)

Access should be limited to the police / security services. It should not be allowed for non-criminal purposes,

d)

No data should be shared with other countries unless they have equally strict data (DNA?) protection legislation.

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?*
- 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?*
- 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?*
- 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?*

a)

I would consider the familial searching to be an invasion of privacy

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b)

Young males do commit on average more crimes so their representation is to be expected

c)

No – people who have given their DNA to help the police should be given the right to have it removed. Indeed I would say that unless they **explicitly** state that they don't it should be removed once they have been eliminated for the enquiry. At any time thereafter they should be allowed to have their data removed from the NDNAD

d)

It would be the most equitable system but we are not living in a police state and is not proportionate to the needs of detecting crime. It would change the balance of power of the citizen from one of free citizen to one of possible suspect.

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?*

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)

A well balanced – independent lecture could be given **before** the trial starts (in which DNA evidence might be used) giving the jury the advantages **and** the disadvantages / limitations of DNA style evidence

b)

As DNA matching gets better I can see a time when it **could** be the only evidence. However questions like how the evidence got to the scene of the crime need to be carefully looked at otherwise it opens the possibility evidence being planted

6. **Other issues**

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

No.

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