

This response was submitted to the consultation held by the Nuffield Council on Bioethics on the Forensic use of bioinformation: ethical issues during 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?

It may be good enough for generating indexes of likely candidates for further investigation. I would be extremely reluctant to rely on it as a sole means of identification.

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?

I think that a conviction in a court of appropriate jurisdiction should be a pre requisite for the police to keep any records. Further, should the conviction be overturned by some higher court, then any records obtained as result of the lower court's conviction should be permanently removed.

- 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. They should only retain data in accordance with the regulations set out in the rehabilitation of offenders act.

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

No. Children must be allowed to make mistakes as part of growing up, without suffering a lifelong penalty for stupidity. Many will grow to be good wholesome citizens and they should not be saddled with a criminal record in perpetuity.

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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? 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?

No, anyone not convicted of any offence should not have their information stored on police accessible computers. Some believe that there is no smoke without fire, and the very presence of a police record signifies guilt.

- 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?

The NDNAD needs to have independent oversight. The police of themselves cannot be trusted to behave responsibly. (There is a recent case, in Nottinghamshire, where two police officers have been jailed for passing information to criminals. Another, more benign case, where officers from Portsmouth (I think) used the PNC to obtain driver information for a prize draw operated by BP, who were publishing registration numbers at random. The police were checking these numbers on the PNC and offering to share the prize money with the vehicle owner.)

With respect to others obtaining access to the data, as it is a restricted form of DNA that is encoded, it cannot be of much use in medical research, therefore, there would be no value in the information. Unless of course, there is more stored than is being disclosed, in which case the independent oversight committee should review requests for non identifiable information only.

- 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?

Only those with a relevant need to know should have access.

No other uses should be permitted as this creates an entry point that can be subverted for other purposes.

- 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?

Data transfers between agencies should be disallowed, unless there is a need to know which can be substantiated.

Data transfers to other countries should be strictly monitored and certain countries should be prohibited from receiving data. Countries such as those with poor human rights records and those enabling repressive legislation or who do not have data protection legislation.

4. Ethical issues

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- 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?

There is no need to research familial connections at all. Either the police have someone in mind to prosecute for an offence or they do not. I fail to see any connection with anyone's blood relatives as relevant, more relevance would be their friends and acquaintances which would not show up in a familial search.

I consider anything that attaches me to the criminal behaviour of anyone else to be an intrusion into my 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?

The police have been found to be biased in their treatment of ethnic groups, particularly young black males. A DNA database will enhance their ability to continue with their biased behaviour.

- 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?

No. This is a massive betrayal of trust on behalf of the police. People have agreed to help them and are then penalised by them by having their details permanently recorded.

The police quite often engineer "consent" by way of coercion and bullying. Legislation requiring the presence of an appropriate adult when a minor is questioned would not be required if they dealt with people honestly, truthfully and fairly.

Consent to retention of personal data voluntarily donated should be solely at the sufferance of the person making the donation. As such, permission to retain it should be with the continued permission of the subject and not a once only decision made in difficult circumstances.

Volunteers should be able to withdraw their consent at any time. Data should also be removed from backup systems too. This should be verifiable by an independent body.

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- 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 premise of innocence until proven guilty must be maintained. There is absolutely no reason whatsoever for the police to be involved in the birth of a child.

Judging everyone to be a potential criminal from birth is a despicable thing to do. Even countries where human rights abuse is rife have not done this. I wonder who the government is trying to free and from what when I read of their proposals for their own country.

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?

It must be made clear that only a small amount of DNA is actually used and that it is statistical sampling that is used to produce the profile. I, for one, would be extremely dubious about the value of DNA having discovered this fact from finding out about this study.

Particular care needs to be made when describing the examination of new technologies, such as DNA Boost, where statistical manipulation has been made to the sample prior to it being compared for a match. Tampering with a sample, whatever its good intention, is precisely that, tampering with evidence.

Finding familial samples or other close matches should be properly described, as irrelevant. For they do not represent the sample being examined nor does having a criminal relative make me a criminal.

- 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?

There should always be independent corroborative evidence beyond any scientific evidence no matter how it is derived.

A DNA match should never suffice to prove guilt when examined alone. It could, conversely, be used to prove innocence. The onus must always lie with the prosecution to prove beyond reasonable doubt, DNA may be a contributor in establishing that level of proof, but it can never replace it.

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6. Other issues

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

What will happen when Life Assurance/Insurance companies want access to DNA data?

What will happen when it is made available to third parties?

What happens when foreign nationals are included, will requests from their governments be fulfilled?

What about countries such as China or others with dubious human rights regimes?

What about data maliciously entered or modified.

Will it be illegal for anyone to make use of unlawfully obtained data, with substantial penalties for so doing?

Will heavy compensation be awarded to those whose privacy is breached?

Will those who release data be punished?

Why does ACPO have any input on this? After all they are an organisation representing Chief Police Officers only, effectively a trade union.

Who will authorise other uses to which the data may be put.

What procedures will be available to people to have their data reviewed?