

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?

No, Balding (1999) suggests using 11 STR markers and the FBI use 13. We should use as many as possible.

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?

The police should only be able to take DNA samples if someone has been cautioned or they have reason to suspect the person was involved in a crime. DNA samples should only be taken once the police have sufficient evidence to charge the person. The police should be able to request further evidence from the DNA analysts from the crime scene DNA samples if they have no other leads.

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

No, police expenditure should be prioritised towards training more police and increasing wages.

- 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 recent developments that enable police to take and keep DNA samples from anybody they stop, whether they are charged for an offence or not, is totally disproportionate to the aims of providing justice to society. DNA information should not be retained if the person is not convicted.

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

No. Only if the minor is charged with an offence should the police be able to take a DNA profile and only if the minor is convicted should they be able to keep the DNA profile.

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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, it is not proportionate for either i) suspects or ii) volunteers bioinformation be kept indefinitely, nor should criminal justice and elimination samples be kept indefinitely. Volunteers and unconvicted suspects should be asked whether they want the bioinformation removed from the database after the case has been closed.

- 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?

No, the ethical oversight does not seem to take into account the human rights of the person. The information is being treated as data without consideration to whom the bioinformation belongs to. A committee that includes representatives from the police, from human right organisations and ethical organisations should determine whether certain research should be permitted on the DNA profiles.

- 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?

Police detectives should have access to the information on the NDNAD and this information should be used for the identification of missing or deceased persons but only used for parental searches if it is a criminal investigation. Parental DNA tests in non-criminal investigations could be carried out by companies.

- 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?

The British government should be able to ensure that the bioinformation is not being kept by the foreign government, if the person is not convicted for the offence and data should only be shared with foreign governments if the person is a suspect in a criminal case.

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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?

No, 'familial searching' is an unnecessary 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?

No, this bias can put certain groups or minorities under greater suspicion.

- 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, any volunteer should have an automatic right to withdraw their bioinformation from the database if unconvicted when the case closes. Keeping this type of data, increases the chance of 'innocent' matches and automatically increases the risk of suspicion against someone who was in the vicinity of a crime scene even if they were there several days before the crime.

- 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?

Yes, the collection of DNA of everyone at birth would be more equitable, but it would NOT be proportionate to the needs of law enforcement. There are in my view absolutely no arguments for the extension of the database. Civil liberties and human rights are central to the democratic process.

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?

Education must be improved so that all strands of society have a better understanding of forensic bioinformation. Courses on DNA forensics and the necessary statistical tests used should be provided to police, legal professionals, witnesses and jury members so that they can make informed decisions in a court of law.

- 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?

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A DNA match should never be taken alone as evidence of guilt. Proof that the person was present at the time of the crime and motive for the crime should be prerequisites.

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6. Other issues

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

Citizens should be able to know at any one time, the bioinformation that is being kept on them and the reason why this bioinformation is being kept.