



Human
Genetics
Commission

The forensic use of DNA and the National DNA Database

Consultation Questions



Introduction

The Human Genetics Commission is now seeking further views on the National DNA Database ('NDNAD') and on the issues highlighted by the Citizens' Inquiry, and we welcome comments on these in any form. More specifically, we would be grateful for considered responses to any or all of the questions that follow. The selection of these questions was guided by the outcome of the Citizens' Inquiry and by consideration of other relevant evidence. The responses will inform the development of the HGC's own conclusions and advice to Government.

Given the complexity and interrelatedness of the issues, it is unsurprising that among the Inquiry's findings, whilst some secured unanimous agreement of participants, many had both adherents and detractors. We did not expect the participants to reach a clear consensus on the answer to each question they addressed and their division reinforces, for us, the difficulty of the issues. Nevertheless, the HGC has drawn some clear messages from the Inquiry, including that:

- there is a need for more public information about the NDNAD; more specifically, information should be given routinely at the point at which samples are taken, and more information should be given to juries in criminal trials where DNA evidence is relied upon;
- there is a need for independent and transparent oversight of the NDNAD and of the use of information it contains – for the sake of public confidence this should not be left wholly in the hands of the police;
- there is a need to review the arguments for retention of DNA samples (as opposed to profiles derived from them) and the uses that may be made of these samples;
- there is a need to review arrangements for the collection and retention of volunteer samples (especially in the light of evidence of their likely value outside the investigation during which they were obtained);
- there is a need to consider the justification for retaining samples/profiles for long periods of time and this justification should be based on an analysis of relevant evidence (comparisons between Scottish and English approaches consistently favour the Scottish);
- there is a need to address concerns about the potential of the NDNAD to give rise to unfair discriminatory treatment of certain groups.

In other areas, the Inquiry has stimulated a range of interesting insights or suggestions, for example:

- one argument against an universal database identified in the Inquiry was its likely cost if the database were to be used solely for the purposes of solving crime; it is interesting (perhaps surprising) that there was not unanimous opposition to an universal database and an implicit acknowledgement that it could have potentially beneficial collateral uses;



- there appears to have been a high level of confidence in forensic science, but concern about how scientists might be co-opted by one side in adversarial criminal proceedings, and some suspicion of the police;
- there was a recognition that the existence of a DNA database could overcome instances of non-co-operation in the investigation of violent crime (where an investigation might be hampered, for example, by the intimidation of witnesses).

We have set out below ten principal questions, each of which organises a set of related issues relevant to the NDNAD. It would be especially helpful if respondents could indicate the main arguments that have led to their comments and any evidence that supports their conclusions (or how such evidence might be obtained).

Selected sources of additional information and guidance for respondents are included at Appendices 1 and 2 respectively.

Consultation Questions

1. What information should be given to people when a DNA sample is taken following their arrest?

For example:

- Should they be informed about the possible use of DNA evidence in criminal proceedings?
- Should the information be contained in an accessible written leaflet and/or supported by clear verbal explanation?
- Who should give the information?
- Should the giving of information be independently witnessed?

2. In what way should the National DNA Database be populated?

For example:

- Should samples be collected systematically, according to published and specified criteria (such as having been arrested on suspicion of committing a recordable offence)?
- Should only samples collected by the police be used to populate the database or are there other sources from which samples might be used?
- Should the police, the forensic science service providers, or another person or body decide which profiles are recorded on the database?



3. What, if any, profiles, other than those relating to individuals convicted of a criminal offence, should be retained indefinitely (or for periods of many years) on the NDNAD?

For example:

- Should volunteer profiles be routinely retained (subject to volunteers' consent)?
- Should the same database include scene-of-crime officers or other investigating officers or members of the police force?
- Should retention times be relative to utility of retaining them (*e.g.* for as long as a police officer is involved in scene of crime investigations but no longer?)
- Should there be separate arrangements for the retention of DNA profiles from children?

4. In what circumstances, and for what reasons, should DNA (as opposed to the numerical profile derived from it) be retained from individuals whose profiles are recorded on the database?

For example:

- For quality control purposes?
- In case there is a need or desire to extract additional information (such as eye colour or hair colour) from the sample?

5. What evidence would be required to demonstrate the 'forensic utility' of the NDNAD (*i.e.* its value as a tool in the identification and prosecution of criminals)?

For example:

- Identifying suspects more quickly or economically than other investigative techniques would have made possible?
- Identifying suspects where other investigative techniques would not have been able to do so?
- Cost-effectiveness in detecting all crimes against persons and property, or being especially effective in relation to serious or violent crime?
- Demonstrating effectiveness in securing convictions of suspects identified using the NDNAD?



6. What will be the likely social impact of maintaining the database at current levels or expanding it substantially?

For example:

- Will expansion lead to an increase in stigmatisation and alienation of groups within society or, alternatively, might it reduce this?
- Does the database affect willingness of individuals or groups to co-operate with the police?

7. What governance arrangements are necessary to secure confidence in the acceptable and appropriate management and use of the NDNAD?

For example:

- Is it important that the NDNAD is overseen by an independent body? How should this body be constituted?
- Would there be advantages of providing for the regulation of the NDNAD through legislation?

8. What further uses might it be appropriate to make of the genetic information collected for the NDNAD in the future?

For example:

- familial searching (establishing biological family relationships between people whose profiles are recorded)?
- inferring phenotypic traits such as eye colour, stature, ethnicity, health problems?
- linking with other databases (*e.g.* medical records, biobanks, research databases)
- research in behavioural genetics

9. Are there circumstances in which it might be acceptable for information contained on the NDNAD to be shared or linked, perhaps anonymously, with other agencies or databases?

For example:

- Should there be routine sharing of information from the NDNAD with similar databases in other countries or should this be decided, for example, on a case-by-case basis?



- Should the information be shared to guarantee correct identification of the individual giving a sample?
- Should there be arrangements for correlating information in the NDNAD with information in other databases containing genetic information (*e.g.* research biobanks, health records)?

10. Under what conditions or in what circumstances might arguments for an universal DNA database be persuasive?

For example:

- Subject to credible guarantees about the security of the data?
- Subject to agreement by a majority of MPs in Parliament (and SMPs in the Scottish Parliament)?
- If it could be shown that an universal database would increase significantly the rate of identification and conviction of criminals or have a significant effect in deterring individuals from committing crime?
- If it were likely to be effective and useful for general identification purposes (*e.g.* tracing victims of natural disasters)?
- If it would combat apparently discriminatory effects, such as the greater likelihood that individuals from certain ethnic groups will be convicted of a crime, owing to the presence of their profiles on the database?
- If it would mitigate the stigmatisation of those who are recorded on the database?



Appendix 1 – Some selected sources of additional information

Inside Information, balancing interests in the use of personal genetic data (HGC, 2002) available at: www.hgc.gov.uk/Client/document.asp?DocId=131&CAtegorYId=10

Genetic Information and Crime Investigation: Social, Ethical and Public Policy Aspects of the establishment, Expansion and Police Use of The National DNA Database (University of Durham, 2004) available at: www.dur.ac.uk/sass/projects/research/?mode=project&id=30

The National DNA Database Strategy Board Annual Report 2005-2006 (Home Office, 2006) available at: www.homeoffice.gov.uk/documents/DNA-report2005-06.pdf?view=Binary

The Forensic Use of Bioinformation: ethical issues (Nuffield Council on Bioethics, 2007) available at: www.nuffieldbioethics.org/go/ourwork/bioinformationuse/introduction

A Surveillance Society? House of Commons Home Affairs Committee fifth report of session 2007-08 (The Stationary Office Ltd, 2008), available at: www.publications.parliament.uk/pa/cm200708/cmselect/cmhaff/58/58i.pdf

The National DNA Database Ethics Group first Annual Report (Home Office, 2008), available at: http://police.homeoffice.gov.uk/publications/operational-policing/NDNAD_Ethics_Group_Annual_Report



Appendix 2 – Guidance for respondents

We welcome responses from any individual, group or organisation in the United Kingdom.

Form of response

Responses may be brief or lengthy, and may comprise comments on the National DNA Database generally, on the Citizens' Inquiry findings or specific replies to the questions set out above. We especially welcome responses that address the questions set out above as these are likely to be the main issues on which our deliberations will focus. Responses need not address every one of the questions set out, and may relate to only one or two on which the respondent has relevant knowledge or a particular point of view.

As with all consultations, the most helpful responses will be those that set out the reasons, arguments or evidence that have led to or support the respondent's conclusions. Responses that identify significant issues or arguments that have not been adequately addressed here or elsewhere are also very welcome.

How to submit a response

Responses may be submitted in any form but, for convenience and ease of reproduction, we especially welcome responses by email. Responses should be sent

by email to : hgc@dh.gsi.gov.uk

by post to: NDNAD consultation
Human Genetics Commission
Department of Health
6th Floor North
Wellington House
133-155 Waterloo Road
London SE1 8UG

Information about respondents and publication of responses

It is helpful – although not essential – for us to know your name and contact details (email or postal address), and whether you are responding on your own behalf as an individual or on behalf of an organisation. It is also helpful to us if you can indicate the nature of your interest in this consultation.

You should also indicate whether you are content for your response to be made public. **The content of all responses will be made openly available following the consultation unless the respondent has specifically requested that it be kept confidential** and may be subject to requests made under the Freedom of Information Act 2000. Our usual practice is to publish the names of the organisations that have responded but not the names of individual respondents or any responses that contain personally identifying information.



Receiving a copy of the report

If you wish to receive notification when the HGC's final report is published, please include your name and email or postal contact details.

Consultation period

The consultation period will run from 29 July 2008 to 7 November 2008 (a period of just over 14 weeks). All responses received by the HGC before 31 October 2008 will be taken into account by the HGC's NDNAD Working Group in developing its conclusions and recommendations.

Further Information

Further information is available from the HGC. Up-to-date information about the progress of the consultation will be posted on the HGC website.

website: www.hgc.gov.uk

by telephone: [020 7972 4351](tel:02079724351)

by email: hgc@dh.gsi.gov.uk

by post: Human Genetics Commission
Department of Health
6th Floor North
Wellington House
133-155 Waterloo Road
London SE1 8UG