



OFFICE OF THE BIOMETRICS
AND SURVEILLANCE
CAMERA COMMISSIONER

Application to the Biometrics and Surveillance Camera Commissioner under s.63G PACE

Explanatory Notes for Police on How to Complete Biometric Retention Application

BC2 – Revised Version 3.1 – June 2021

We recommend that you take time to read these explanatory notes as they will help you to complete the application form (Form BC1) correctly.

Your application may be returned to you or not approved by the Biometrics and Surveillance Camera Commissioner if Form BC1 or any supporting documents have not been prepared correctly.

Application to the Biometrics and Surveillance Camera Commissioner under s.63G PACE.

Notes for Completion

Preface

This guide is designed to assist chief officers in completing an application to the Biometrics and Surveillance Camera Commissioner to retain DNA and / or fingerprint records which may be retained under the powers given by s.63G PACE.

The guide should be read in conjunction with the following guidance documents:

- National DNA Database Strategy Board Guidance, *'Applications to the Biometrics Commissioner under PACE'*.
- Office of the Biometrics and Surveillance Commissioner Guidance, *Principles for Assessing Applications for Biometric Retention*.

We hope that the guide will answer most of your questions. If you require further advice or guidance, please contact the Office of the Biometrics and Surveillance Commissioner (OBSCC).

Office of the Biometrics and Surveillance Camera Commissioner

PO Box 72256

London

SW1P 9DU

Email: casework@obscc.org.uk

Phone: 020 7035 6963

Explanatory Notes for Completion

The application form is available in Microsoft Word format for online submissions with expandable entry fields. There is no imposed character / word limit for applications. Please contact the OBSCC if you do not have the latest application form (revised in March 2020).

Deadlines for Applications

All applications to the Biometrics and Surveillance Camera Commissioner should be made by chief officers of Police as soon as possible and in any event within 28 days of recording the Subject as “No Further Action” on the PNC. In the absence of a reasonable explanation for the delay, an application may be rejected by the Commissioner if it is submitted more than 28 days after the NFA date.

Some investigations are taking a considerable time to reach the point at which an NFA decision is taken. We have recently received some applications that by the time the Commissioner made a decision, very little of the total three-year retention period would remain. Chief officers should consider whether it is in the interests of justice that such late applications should be made without compelling reasons.

If such a late application is made, the Commissioner will want to know whether any further allegations have been made against the subject of the application during the period before the NFA decision was made.

Notifying Subjects

Chief officers should usually notify the Subject of the application and of the reasons for it at the same time as submitting the application to the OBSCC. They should do so using the standard form notification letter.

It will often be convenient for the chief officer simply to reproduce the information which is set out in the relevant sections of the application form into the notification letter. There is no requirement to send the Subject police documentation or to refer to it in the notification letter.

The chief officer should include with the notification letter the following documents which explain the statutory basis for applications of this type:

- Applications for Biometric Retention: What You Should Know
- Biometrics Commissioner’s Principles for Assessing Applications for Biometric Retention.
- BC3 Representations Form

Please insert the Police URN into the BC3 Form before sending to the subject.

Preliminary Applications

It is for the chief officer to form a judgement on the information that should be disclosed to the Subject in the notification letter. It should be noted, however, that the Commissioner will only attach weight to reasons or information relied on by a chief officer if he is satisfied that the subject has been notified of them in at least general terms.

If there are concerns regarding the disclosure of information to a subject (for example sensitive intelligence or victim statements that are not to be shared with a subject), chief officers may submit a completed application form to the OBSCC in advance of notifying a Subject. This is called a **Preliminary Application**.

If making a Preliminary Application, a fully completed application form accompanied by the proposed notification letter should be submitted to the OBSCC for consideration within the 28 day application period. The OBSCC will consider the level of disclosure required and advise the chief officer accordingly if the application can be accepted for consideration.

Following receipt of the Biometrics and Surveillance Camera Commissioner's response to the Preliminary Application, it will be a matter for the chief officer to determine whether they wish to proceed with the application. If the chief officer does wish to proceed with the application (either in its original or in an amended form) they will have 14 days to resubmit the application to the OBSCC and to send an appropriate notification letter to the Subject.

In the case of a Preliminary Application, there is no need to notify the Subject when submitting the application. A notification letter should only be sent after the OBSCC has confirmed that the application can be submitted to the Commissioner (see below for further details).

Holding applications

As outlined above, all applications made to the Commissioner under section 63G Police and Criminal Evidence Act should be made within 28 days of the decision to take no further action (NFA) against a subject who has been arrested for a qualifying offence.

In some cases, however:

1. The arrestee may have been charged with a non-qualifying offence and therefore their biometrics can be held until the charge is determined at court. If the subject is found guilty of that charge at trial, their biometrics can be retained indefinitely (if the subject is over 18).
2. The subject may have been arrested and subject to an ongoing investigation into a non-qualifying offence and therefore their biometrics can be held under S63E of PACE until the investigation is concluded.

In either of these circumstances, chief officers may choose to make a holding application whilst the outcome of the investigation/proceedings relating to the non-qualifying offence is pending. This will prevent chief officers from losing the opportunity to make an application once the 28 day NFA window for the qualifying offence has passed whilst biometric material can still be legally held.

Holding applications require chief officers to write to the subject informing him or her that such an application may be made in due course once the outcome of the charge or

ongoing investigation is known. Provided that the subject has been notified of a potential application within 28 days of the NFA to the qualifying offence, the Commissioner will be content to accept a later section 63G application. The OBSCC will provide pro-forma letters to police forces so that they can notify the subject of such application.

The Commissioner should be informed of the potential application and a copy of the notifying letter should be sent to this office.

General advice when considering submitting biometric retention application

In all applications, chief officers should have particular regard to the following factors:

- (i) the nature, circumstances and seriousness of the alleged offence in connection with which the Subject was arrested;
- (ii) the grounds for suspicion in respect of the Subject (including any previous complaints and/or arrests);
- (iii) the reasons why the Subject has not been charged;
- (iv) the strength of any reasons for believing that retention may assist in the prevention or detection of crime;
- (v) the nature and seriousness of the crime or crimes which that retention may assist in preventing or detecting;
- (vi) the age and other characteristics of the Subject; and
- (vii) any representations previously made by the Subject as regards those or any other matters.

These factors are not exhaustive and chief officers should include any and all factors they deem relevant to the application.

Submitting an Application

Applications to the Biometrics and Surveillance Camera Commissioner can be submitted by post or by email to:

Office of the Biometrics and Surveillance Commissioner
PO Box 72256
London
SW1P 9DU

From March 2020, we encourage applications to be made by email where possible.

Email: casework@obscc.org.uk

Section 1: Application Information

Police URN Enter the police unique reference number for the application. This reference should also be entered onto the BC3 Representations Form.

PNCID Insert PNCID.

Application Date	<p>Insert the date on which the application is submitted.</p> <p>All dates in the form should be shown as numbers in the format dd/mm/yyyy.</p>
In Time Application	<p>Chief officers have 28 days following the No Further Action (NFA) marker being placed on the PNC to make an application to the Commissioner.</p> <p>If the application is to be submitted within 28 days of the NFA date, select “yes” and proceed directly to Section 2.</p> <p>If the application is being made after the 28 day deadline has elapsed, select “No”.</p>
Reasons for late application	<p>Full reasons must be given as to why an application is being made after the specified deadline period of 28 days.</p> <p>These reasons must be exceptional. Routine staff absence is not an acceptable reason for late submission.</p> <p>Failure to provide valid reasons for late submission may result in the application for retention being refused.</p>

Section 2: Point of Contact

Please specify the police force contact for the application.

Please ensure direct dial telephone extension numbers and personal business email addresses are provided. Do not give general departmental contact details.

Chief officers should nominate a member of their staff to act as a single point of contact for applications to the Biometrics and Surveillance Camera Commissioner. Please note that any queries regarding a submitted application will be directed to the member of staff nominated in this section of the application form.

Section 3: Biometrics

Date Biometrics taken	<p>Enter the dates for both fingerprints and DNA samples taken from the subject. If biometrics are already held in connection with a previous arrest, enter the date of arrest for the qualifying offence to which this application refers.</p>
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Section 4: Preliminary Application

If the Chief officer intends to include information in the BC1 application form, that will not be disclosed to a subject (for example sensitive intelligence or victim statements that cannot be shared with a subject) select “yes”.

Section 5: Subject Notification

In the case of a **Preliminary Application** to the Commissioner, Chief officer's should only send a notification letter to a subject after getting approval from the Office of the Biometrics Commissioner

Date Notified	<p>If notification was served on the subject in person, state the date of service.</p> <p>If notification was sent by post, state the date of postage plus 2 working days.</p> <p><i>E.g. If the notification letter was posted on Friday 1st July, the notification date would be Tuesday 5th July.</i></p> <p>If no notification was served – please state reasons (e.g. Subject untraceable)</p>
Method	<p>Select method of Service. Postal service should be by First Class post.</p>
Deadline	<p>State the deadline date for the Subject's representations to be received by the Commissioner. The time period for representations is 28 days from the notification date (see above).</p> <p><i>E.g. If the notification letter was posted on Friday 1st July, the notification date would be Tuesday 5th July. The deadline for representations would be 28 days from the 5th of July and therefore Tuesday 2nd August.</i></p>
Notification Letter Attached	<p>All application forms <u>must</u> be accompanied by a copy of the notification letter that was sent or that the Chief Officer proposes to send to the subject of the application.</p>

Section 6: Chief officer's Declaration

Please select the relevant options. If both Fingerprints and a DNA profile are to be retained, tick both boxes.

Chief officers must choose whether to apply under s.63G(2) OR s.63G(3) grounds. An application should not be made on both s.63G(2) and s.63G(3) grounds.

The declaration should be 'wet' signed and dated by the applying chief officer.

Section 7: Subject Details

Title	<p>E.g. Mr, Mrs, Miss, Ms (please specify).</p>
First Names	<p>State all given names including middle names.</p>
Surname	<p>State Subject's current surname. If the Subject is known to have used other names, please give details of these under "Aliases".</p>

Sex	Select if the Subject is male or female.
Date of Birth	Enter date of birth.
Address	State permanent residential address. If the address is not known or the Subject is of no fixed abode, please give last known address.
Aliases	State full alias names and dates of birth. Surnames should be given in block capitals.
Ethnicity	<p>(1) Choose from IC 6+1 Visual Assessment Ethnicity Codes:</p> <p>1 White – North European 2 White – South European 3 Black 4 Asian 5 Chinese, Japanese, or Other South East Asian 6 Arabic or North African 9 Unknown</p> <p>(2) State IC 16+1 Self Defined Ethnicity Codes if known:</p> <p>Asian or British Asian (A) A1 Indian A2 Pakistani A3 Bangladeshi A9 Any other Asian background</p> <p>Black or Black British (B) B1 Caribbean B2 African B9 Any other Black background</p> <p>Mixed (M) M1 White and Black Caribbean M2 White and Black African M3 White and Asian M9 Any other mixed background</p> <p>Chinese or other Ethnic Group (O) O1 Chinese O9 Any other ethnic group</p> <p>White (W) W1 British W2 Irish</p>
Nationality	State Subject's nationality / nationalities.

Section 8: Arrest Details

Date of Arrest	Enter date of the relevant arrest.
NFA Date	Specify the date that the PNC was updated as NFA.
No Previous Convictions	Biometric records may be held indefinitely if a person has been convicted of any recordable offence. Convictions include cautions, reprimands and warnings. In such cases, an application to the Commissioner is not necessary.
Offence for which Subject arrested	The Subject must have been arrested for a qualifying offence as defined at section 65A(2) of PACE.
Details of alleged Victim(s)	<p>If the application is made under section 63G(2) of PACE it will be necessary to show that the/an alleged victim was, at the time of the offence:</p> <ul style="list-style-type: none">• aged under 18 years,• a vulnerable adult or• associated with the victim <p>Please give full details of how the victim(s) meet the criteria of s.63G(2) if applicable.</p> <p>Chief officers should include any references to relevant documents.</p>
Brief Description of Incident Leading to Arrest	<p>Provide a paragraph or two outlining the offence for which you are making your application and the general details of said offence. This can include if deemed relevant (but not limited to):</p> <ul style="list-style-type: none">- date/time of incident- number of victims and if they were known to the subject- number of times the alleged offence was committed- if there was any biometric evidence left at the scene of the alleged crime, CCTV footage or other evidence- any relevant comments made by the subject or victim during their police interviews- reference to witness statements- state any vulnerabilities the subject or victim(s) may have (eg mental health issues)
Reasons for NFA	<p>Give details of the reasons why it was decided not to charge the Subject.</p> <p>Reference should be made to any relevant documents included with the application.</p>

Other Arrests / Contact Provide details of other arrests / relevant contact with the police in chronological order with dates.

Section 9: Reasons for Application

Detailed reasons should be given to support the application for retention of DNA /Fingerprint records.

If applying under s.63G(2), chief officers should refer to the victim criteria set out under that section. Please note that satisfaction of the victim criteria will not alone be sufficient to warrant an approval of the retention of DNA / fingerprint records.

The reasons given in the application should show that in the case in question there are compelling reasons to believe that the retention of the material at issue may assist in the prevention or detection of crime, that such retention would be proportionate, and that the reasons for so believing are more compelling than those which could be put forward in respect of most individuals arrested for, but not charged with, a qualifying offence.

The reasons provided should be supported by references to any documentary evidence or supporting material.

When outlining the reasons for an application, it is important that the case presented should fairly and accurately reflect the supporting documentary evidence from the investigation. This is paramount since the OBSCC does not have the resources to check each application against corresponding supporting documents and more fundamentally because very few subjects of an application exercise their right to make a separate representation to the Commissioner. The Biometrics and Surveillance Camera Commissioner, therefore, needs to be able to rely on the summary of the investigation provided by chief officers and be presented with the case both for and against the retention of the biometrics.

Section 10: Relevant Documents Attached

Indicate the documents that are to be attached to the application. A copy of any documents that have been referenced in the form must be included.

END