



Home Office

**Protection of Freedoms Act 2012 -
Consultation on:
Guidance on early deletion of DNA and
fingerprint records**

June 2013

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About this consultation

Topic of this consultation

The Protection of Freedoms Act 2012 requires the National DNA Database (NDNAD) Strategy Board to produce guidance for police Chief Constables on processing applications from individuals for early deletion of their DNA and fingerprint records.

Scope of this consultation

This paper sets out the Strategy Board's intended approach to this guidance – in particular who should use the early deletion process and the standard for a Chief Constable's decision to delete records.

Geographical scope

The guidance is for Chief Constables of police forces in England and Wales. Scotland and Northern Ireland have their own provisions on DNA and fingerprint retention.

To

Members of the public; police forces; legal profession, interest groups.

Duration

The consultation starts on 18 June 2013 and ends on 29 July 2013

Enquiries

Home Office
Early Deletion Guidance Consultation
Police Transparency Unit
6th floor, Fry Building
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London , SW1P 4DF

How to respond

You can respond online at: **www.gov.uk**
email: **DNAConsultation2@homeoffice.gsi.gov.uk**
Or send written comments to the above address.

Please contact the Home Office at the address above if you require information in any other format such as braille, large font or audio.

After the consultation

Consultation responses will help inform the development of the NDNAD Strategy Board's final guidance, to be published on commencement of the Protection of Freedoms Act in October 2013.

Getting to this stage

Previously requests from individuals for removal of DNA and fingerprint records have been processed through the exceptional case procedure. The Early Deletion process as outlined in this guidance will replace that process.

Introduction

The Coalition Agreement sets out a commitment to reform the retention of DNA and fingerprints. The Government wants to protect the civil liberties of innocent citizens, whilst giving police the powers they need to identify suspects and solve crime using DNA and fingerprints.

Police powers to take and retain DNA and fingerprint samples are set out in the Police and Criminal Evidence Act 1984 (“PACE”). Changes to PACE are being implemented through provisions in the Protection of Freedoms Act 2012 (“PoFA”). PoFA sets out how long an individual’s DNA and fingerprints can be retained, depending on their conviction and arrest history.

However a Chief Constable of police has discretion to delete an individual’s DNA and fingerprints before the legal retention period has expired (‘early deletion’). PoFA requires the National DNA Database (NDNAD) Strategy Board, which governs the operation of the Database, to issue guidance for Chief Constables on exercising this discretion.

A draft of the early deletion guidance is published alongside this consultation document.

The purpose of the early deletion process is to allow Chief Constables to remove from the databases the DNA profiles and fingerprints of individuals who are clearly not linked to any crime, despite the law allowing them to be retained. The law is based on automatic retention for higher risks groups – but there will always be individual exceptions to these groupings.

The early deletion process and guidance will replace the ‘Exceptional Case Procedure’, the existing mechanism by which individuals can apply to police Chief Constables to have legally retained material destroyed. ACPO guidance on the Exceptional Case Procedure is at:

<http://www.acpo.police.uk/documents/PoliceCertificates/SubjectAccess/Retention%20of%20Records06.pdf>

This consultation seeks views on how the early deletion application process should work, so that it is fair to innocent individuals looking to have their DNA and fingerprints removed from the databases, without compromising the police’s ability to tackle crime.

The results of this consultation will be passed to the NDNAD Strategy Board to inform their final guidance, to come into effect in October 2013 when the PoFA’s DNA and fingerprint provisions commence. More information on the PoFA is at: **www.gov.uk/government/policies/helping-the-police-fight-crime-more-effectively/supporting-pages/national-dna-database**

The Draft Guidance

The guidance sets out the process and criteria for deletion for Chief Constables ('Chief Officers') considering applications from individuals for early deletion of legally retained DNA and fingerprint records. It aims to ensure consistency in police forces' approaches in dealing with early deletion applications. Whilst there is no obligation to delete any legally retained material, Chief Constables must have regard to this guidance when making their decision.

The guidance will be provided to members of the public making an application and will be published on **www.gov.uk**

Some of the key issues arising from this guidance are set out below.

What material is deleted

The early deletion process as described in this guidance includes deletion of an individual's DNA sample (if still held – samples are destroyed automatically within 6 months), DNA profile and fingerprints – but not Police National Computer (PNC) records, photographs or other material which is subject to different retention rules.

Who can apply

The guidance sets out who can apply: individuals with DNA and fingerprints retained in cases where they have been arrested and charged but not convicted of a serious offence, and those retained due to a Penalty Notice for Disorder (PND). The vast majority of individuals who might previously have used this process (those arrested but not convicted of minor offences) will have their DNA and fingerprints deleted automatically under the PoFA, so there is no need for them to apply.

Individuals with a conviction cannot apply, as this would put Chief Constables in a position where they would be overruling standing convictions. Individuals must appeal against the conviction itself if new evidence emerges: **<https://www.gov.uk/appeal-against-sentence-conviction/magistrates-court-verdict>**

Where the investigation into an individual or court proceedings against them are ongoing, an individual cannot apply because the full circumstances of their case might not yet be known.

Biometrics Commissioner

The NDNAD Strategy Board may also produce guidance for police forces on applications to the Biometrics Commissioner to retain DNA profiles and fingerprints of individuals arrested but not charged with a serious offence. Individuals in this category who do not believe their material should be retained will have the opportunity to make representations to the Commissioner should the police apply to retain their material. These cases will not be processed through the early deletion procedure.

Grounds for deletion

The guidance gives scenarios where early deletion should be considered. These are exceptional circumstances – the intention is not that Chief Constables should routinely delete material that the law allows them to retain.

Unlawful arrests/sampling

The grounds for deletion include cases where an individual has had DNA and fingerprint samples taken as a result of an unlawful arrest or an arrest based on mistaken identity, or has been unlawfully sampled (for instance if they were not arrested first). Under section 1 of PoFA these samples must be deleted if it appears to the Chief Constable that these circumstances apply. Deletion must occur as soon as the information comes to the Chief Constable's attention. An early deletion application is not necessary – however it is likely this will often be the way the information comes to the attention of the Chief Constable. Under any other circumstances, Chief Constables may apply discretion in deciding whether to grant an application.

Standard of evidence

The guidance is based on, though not limited to, the Chief Constable having substantial evidence that someone has been eliminated as a suspect before agreeing to delete their records. The PoFA does allow automatic retention of material from acquitted individuals in serious offences.

Central co-ordination

A national early deletion unit, run by ACRO (the police Criminal Records Office), will process cases centrally as an administrative function, and collate information on precedents, but will not recommend or make decisions. This continues their current role for applications under the Exceptional Case Procedure.

Questions

About you

The first question asks for some information about you. The purpose of this question is to provide some context on your consultation responses and to enable us to assess the impact of the proposals on different groups of people. By providing this information you are giving your consent for us to process and use this information in accordance with the Data Protection Act 1998. These details are voluntary and will be treated as personal data by the Home Office in compliance with government guidance on holding personal information.

1. Which of the following best describes you or the organisation or sector that you represent?
Please give details in the box below.

- Police force;
- Police and crime commissioner;
- Legal profession;
- Regulatory body, standards body or inspectorate;
- Civil liberties charity / organisation / pressure group;
- Representative body;
- Member of the public
- Other (please specify)
- Prefer not to say

About the draft guidance

2. The guidance says at paragraph 9(iv) that the basis for an early deletion decision will include **‘substantial evidence that an individual is no longer a suspect’**. To what extent do you agree that this standard of evidence should be required? (Select one option a to e):

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

Please give reasons for your answer:

3. The guidance gives a number of scenarios where Chief Constables should consider early deletion. See paragraph 12 for more information on the scenarios.

A - For each of the scenarios listed below, please state whether you think they do, or do not, merit early deletion:

- No crime
- Malicious/false allegation
- Proven alibi
- Unlawful disposal
- Suspect status not clear at the time of arrest
- Judicial recommendation
- Conviction of another person for the offence
- Public interest

Options for each scenario:

Yes – does merit early deletion

No – does not merit early deletion

Don't know

B - Please explain your answers, and specify any further scenarios where you think early deletion should be considered.

4. The guidance gives a definition of **arrest based on mistaken identity** at paragraph 10 (DNA and fingerprints taken as a result **MUST** be deleted):

“Arrest based on mistaken identity refers to circumstances where there was an error such as arresting the wrong “John Smith”, notwithstanding that the arrest may still be lawful. Situations where the evidence against a suspect is ultimately inconclusive will not be seen as arrests based on mistaken identity.”

To what extent do you agree or disagree with this definition? (select one option a to e)

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

Please give reasons for your answer and any alternative definitions:

5. The guidance sets out a process whereby applications are administered by a central national early deletion unit, run by the police Criminal Records Office, which will process applications on behalf of all forces. The unit will not make or recommend decisions on applications.

A - To what extent do you agree or disagree that a central early deletion unit is needed? (select one option a to e)

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

Please give reasons for your answer:

B - To what extent do you agree or disagree that the decision making role on applications should be with Chief Constables? (select one option a to e)

- a) Strongly agree
- b) Tend to agree
- c) Tend to disagree
- d) Strongly disagree
- e) Not sure

Please give reasons for your answer:

Any other comments

6. If you have any other comments you would like us to take into consideration, on any element of the draft guidance that you have not already mentioned, please outline them below:

If you are happy to be contacted should we have queries about any of your responses, please provide your email address. This is optional.

If you provide your email address we may use it to ask you for further information about your response, and we will send you a link to the consultation response when it becomes available.

Providing your contact details is voluntary. Please be assured that they will be treated as personal data by the Home Office in compliance with Government guidance on holding personal information.

Many thanks for your time in completing this survey; we appreciate your feed back. If you have any queries or would like any further information at this stage, please contact the Home Office Police Transparency Unit at **DNAConsultation2@homeoffice.gsi.gov.uk** email address

Next steps

The responses to this consultation will be analysed and used by the NDNAD Strategy Board to inform decisions about any further development necessary before the guidance is published and distributed to forces in October 2013. A response to the consultation will also be published on the www.gov.uk website.

Responses: Confidentiality & Disclaimer

The information you send us may be passed to colleagues within the Home Office, the government or related agencies. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004. If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Personal data

The Department will process any personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

