



Professor Paul Wiles
Commissioner for the Retention and Use of Biometric Material
Office of the Biometrics Commissioner
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Dear Professor Wiles,

BIOMETRICS COMMISSIONER'S ANNUAL REPORT

I am writing to respond to the Annual Report on the Retention and Use of Biometric Material, and to the further report on national security related issues, provided by your predecessor, Alastair MacGregor QC, and published on 11 March and 26 May respectively. These reports provide the Government and public with a valuable analysis of how this legislation is being implemented.

I welcome the finding at paragraph 251 of the Annual Report that the overwhelming bulk of DNA profiles and fingerprints have been retained or deleted in accordance with the legislation. I now write to respond formally on behalf of the Government to the observations in the report.

Applications under S63G of the Police and Criminal Evidence Act 1984 (PACE)

When a person without previous convictions is arrested for, but not charged with, an offence, their fingerprints and DNA profile must normally be destroyed once the investigation of that offence is complete. However, under S63G of PACE, if that offence is a 'qualifying' offence, chief officers of police may apply to you for consent to retain the fingerprints and profile for three years.

List of Qualifying Offences

Your predecessor suggested that it would be useful to revisit the list of qualifying offences, and that consideration should be given to adding offences to the list relating to the possession of offensive weapons and importation of Class A drugs and their possession with intent to supply. We now intend to lay a Statutory Instrument before Parliament to add further offences to the qualifying offences list before the end of this year.

Convictions outside England and Wales

At present, if a person is arrested and has DNA and fingerprints taken, no further action is taken in relation to the arrest offence, and the person has a conviction outside England and Wales, the law requires that the person be re-arrested and re-sampled, rather than the DNA profile and fingerprints taken for the arrest offence being retained, and that the power to retain applies only if that conviction is for an offence equivalent to a qualifying offence in England and Wales.

Your predecessor recommended that the law be changed to avoid the need for re-sampling, and to allow retention of DNA and fingerprints taken in England and Wales on the basis of convictions elsewhere. We agree, and have included these changes in the Policing and Crime Bill which is currently before Parliament.

Section 63G applications

Your predecessor noted that the number of applications from forces for extended retention under section 63G has been fairly small (209 up till 31 August 2015, of which all but 15 were from the Metropolitan Police). He stated that as and when the law is reviewed, it may be worth looking at whether the evidence supports the option of automatic retention of biometrics from those arrested for qualifying offences but not charged or convicted for a limited period of some months, rather than requiring forces to make applications. We agree this should be considered as part of the Post Implementation Review (PIR) of the legislation, which must be completed by May 2017, five years from the date when the Protection of Freedoms Act received Royal Assent

National Security Determinations (NSD) and Related Matters

Your predecessor reviewed the issues his Annual Report highlights in this area, and provided a further report, which was published on 26 May. This found that handling and other delays had led to a situation where the statutory retention period expired in a number of cases before the NSD process was completed, and material which might otherwise have been retained on national security grounds had to be deleted (although it was not in fact deleted promptly). I was of course concerned by his findings. But I was reassured that he kept these issues under close and active review, and by the conclusion of his further report that proper steps have been and are being taken to remedy the problems, to minimise the risk of their recurrence, and to mitigate their adverse consequences.

The law and the Government's policy in this area are clear. Their implementation is an operational matter for the police, who I understand have worked quickly to identify the causes of the problems and to put in place a comprehensive plan to address them, keeping your predecessor and my officials closely updated. I am pleased to have been given assurances to this effect by the Metropolitan Police.

I am sure you will keep these important issues under close review over the remainder of 2016, and may wish to return to them in your first annual report.

The Destruction and/or Deletion of Biometric Material

Samples

Your predecessor stated that he had found no reason to suspect that significant numbers of samples have been retained for longer than the law permits. However he recommended

that clearer guidance should be issued as to the proper application of the provision allowing exceptional retention of samples under the Criminal Procedure and Investigations Act. The Government has agreed with the National Police Chiefs' Council (NPCC) to set up a working group on PoFA implementation whose first meeting was held on 21 July. This group will draft guidance for forces, which will be issued by the DNA and Fingerprint Strategy Board Chair.

Police National Computer (PNC) Issues

When an individual is arrested, their DNA and fingerprints are usually taken and a record is added to the PNC. The PNC records the status of a case as it passes through the criminal justice system (e.g. whether no further action is being taken against the individual or whether the subject is being prosecuted through the courts etc.). Entries made on the PNC define the status of the case and allow its software to calculate the point at which a person's DNA and fingerprints must be deleted to comply with the law (if at all).

Your predecessor stated that some of the PNC related issues he identified in his first report have been resolved, but others have not and some new issues have emerged. He concluded that the overwhelming bulk of DNA profiles and fingerprints are being retained or deleted appropriately, but that more could be done to resolve the outstanding issues and more guidance should be issued to forces. Guidance will be issued under the process described above.

Early Deletion Process

Early deletion allows for applications to be made for deletion of a person's DNA profile and fingerprints where they are legally held but continued retention could still reasonably be regarded as disproportionate. Your predecessor considered that the circumstances under which an individual can apply for early deletion are too limited. We will consider this issue when the law is subject to the PIR described above. .

The Use to Which Biometric Material Is Being Put

Unlawful matches

Your predecessor noted that a certain number of matches occur to records which should have been deleted. Guidance was issued which describes the checks that should be carried out to detect unlawful matches. Some forces are communicating the matches to investigating officers with caveats such as that they are for intelligence purposes only. Your predecessor considered that this is contrary to the legal provision that such measures should not be used for investigation and advised that further guidance should be issued. As stated above, the Government has agreed a process with the NPCC on how guidance will be issued to forces in future.

The need for an arrest

Guidance issued during PoFA implementation states that forces can retain biometrics while they are investigating a match without arresting the individual concerned. Your predecessor considered this is at odds with PACE. Guidance will be issued to forces on these issues under the process described above.

Other Matters

Fingerprint Governance Arrangements

Your predecessor criticised fingerprint governance arrangements. These have been reformed by expanding the remit of the DNA Strategy Board to cover fingerprints from March 2016. The NPCC lead on fingerprints chairs the Fingerprint Governance Group which reviews operational issues and reports to the new combined DNA and Fingerprint Strategy Board. The remit of the DNA Ethics Group has also been expanded to cover fingerprints.

Custody Photographs and Facial Recognition Technology

Your predecessor expressed concern about the lack of progress on this issue. The Custody Image Review will be published in due course.

Conclusion

I express my thanks to your predecessor for his comprehensive reports and for the work over his term of office which has commanded general support among stakeholders and commentators. I look forward to the scrutiny of biometric issues which you will provide. I will be placing a copy of this response in the House Library and publishing it on the gov.uk website.

A handwritten signature in black ink, appearing to read 'Brandon', with a long horizontal flourish extending to the right.

Brandon Lewis MP