



Paul Wiles  
Commissioner for the Retention and Use of Biometric Material  
Office of the Biometrics Commissioner  
PO Box 72256  
London  
SW1P 9DU

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Dear Paul,

### **BIOMETRICS COMMISSIONER'S ANNUAL REPORT**

I am writing to respond to your Annual Report on the Retention and Use of Biometric Material. Your report provides the Government and public with valuable analysis and assurance on the use the police are making of sensitive biometric material.

As you know, there is a statutory requirement to lay your Report before Parliament. Unfortunately it was not possible to arrange a slot for laying and publication before Parliament rose for the summer recess, and it will not be possible to publish your Report and this response until Parliament returns. However, I am writing now as I understand you wish to see this response as soon as possible to inform your work.

I welcome your finding (paragraphs 62-63) that current police use largely complies with the legislation, and the police have worked hard to ensure their processes follow its requirements. You note, however, that those tasked with implementing the legislation have faced a series of challenges.

#### Current police use of biometrics

I was concerned that you find (paragraph 27) that error rates in force handling of DNA samples are unacceptably high. Forces use a 'sampling kit' which consists of a bag containing a tube, a swab and a card to be completed with the person's details such as name which are all marked with barcodes. The swab is rubbed against the inside of the cheek thus collecting cells and then inserted in the tube. The person's details are added to the card, and the card and tube are inserted in the bag and sealed. The bag is sent to the forensic provider to be processed to produce a DNA profile.

Errors may occur if the force puts two samples in the same tube, puts the wrong person's personal details in the bag, or loses the sample. This type of error is detected by comparing the barcodes. I note that the Forensic Information Databases Service (formerly the National DNA Database Delivery Unit) is doing further work on this issue. I have asked them to provide me with a report when this has been completed.

You note that progress has been made in agreeing guidance to forces on matters of legal interpretation and technical implementation, and that the Chair of the National DNA and Fingerprint Databases Strategy Board issued guidance on the treatment of unlawful matches was issued on 28 February 2017. You recommend that guidance must be issued more quickly in future. I agree that guidance should be issued more quickly than in the past and expect this to be done now that responsibilities have been agreed.

You go on to say (paragraphs 77-86) that the majority of Police National Computer (PNC) issues have now been resolved, but there remain issues with delays in updating PNC and with the use of some markers on records. You urge that guidance be issued to alert forces to the risks relating to biometric retention if PNC records are not administered in a timely and correct manner.

The National Police Chiefs' Council will shortly be issuing a letter to forces reminding them of the existing requirements around updating PNC. In September, they will issue new operational guidance for all forces setting out how PNC should be used.

#### Retention of biometrics on national security grounds

You recommend (paragraphs 207-213) that we update the statutory guidance on making National Security Determinations (NSDs), which we are required to issue by the Protection of Freedoms Act (PoFA), to give police a period of grace before they must delete the biometrics of a person of national security interest who is arrested under PACE powers but is not then charged (and who does not have a qualifying previous conviction). Home Office officials are discussing this recommendation with policing representatives.

You also highlight (paragraph 214) an issue around how police are required to treat multiple biometrics records relating to the same individual. I welcome your intention to discuss this with officials in the Office of Security and Counter-Terrorism (OSCT) to see if a practical solution can be found.

#### Deletion of biometrics

You refer (paragraphs 248-250) to the fact that PoFA requires the National DNA Database Strategy Board to issue guidance to forces about circumstances in which people whose biometrics are legally held can apply for deletion. You note that such guidance has been issued, but the circumstances under which such deletion will be made are limited. You state that it is up to Parliament to decide whether the new guidelines give expression to this provision of PoFA.

The guidance states that persons given a caution (where the law permits indefinite retention of biometrics), or who have been charged with but not convicted of a serious offence (where the law permits retention for three years) may apply to the Chief Officer of the force which took the biometrics for deletion. Circumstances where the Chief Officer may agree deletion are listed in the guidance.

Under the regime in effect before PoFA, people who were arrested for a recordable offence could have their biometrics retained indefinitely regardless of whether they were convicted. Many people without convictions applied for deletion and the likelihood of obtaining this varied considerably from force to force. In order to avoid such a postcode lottery, PoFA provided that the Strategy Board should issue guidance which would be binding on forces. However, PoFA also introduced a new retention regime under which, in broad terms, those arrested but not convicted have their biometrics deleted, though retention for a time limited period is permitted in some circumstances. The new retention regime is much more widely supported than the previous regime by the public and across the political spectrum, so there is less need than previously for guidance on early deletion of legally held biometrics. For this reason, I do not see any reason at present for changes to the guidance on early deletion.

### International exchange of biometrics

You point out (paragraph 254) that there is a published Home Office policy for the exchange of DNA profiles but not for fingerprints. You consider this is untenable, and hope that now fingerprints have been brought within the remit of the Strategy Board, the issue can be addressed.

You state (paragraph 284) that it was understood that guidance on offences for which foreign offences can be recorded on PNC would be published shortly after publication of your predecessor's 2015 report, but this has not been done.

You are concerned (paragraph 295) that proper governance arrangements are put in place for transfer under the Prum exchange mechanism.

Governance of the Prum exchange mechanism has been developed further. The Prum Delivery Group has been set up to ensure that required national legislation and policy is in place before exchange begins. You and the Information Commissioner are represented on it. I have asked officials to raise the other issues with the Strategy Board.

### Custody Images

You are concerned (paragraphs 300-306) that the proposals in the Custody Image Review for deletion of images involve a high level of force discretion, which may result in high compliance costs and a postcode lottery. You consider that the governance of images needs to be much more developed and to contain an independent element.

In broad terms, the Review recommends that an individual not convicted of the offence in relation to which their custody image was taken may apply for it to be deleted. There should be a presumption that police will remove it from their databases unless retention is necessary for a policing purpose, and there is an exceptional reason for it to be retained. I consider this strikes a reasonable balance between privacy and public protection. The College of Policing has published National Retention Assessment Criteria which should assist in ensuring consistency across forces. We worked closely with the police when developing the Review's recommendations, and are continuing to work with them and the College of Policing on implementation.

### Other future challenges

You conclude by commenting on the issues of governance, oversight and assurance in biometrics generally. You note that 'all of us leave records of our activities across public and private databases and in public spaces which, if analysed holistically, provide multiple ways of checking identity, modelling the patterns of our social behaviour, collecting or inferring our attitudes and recording our activities, movements and decisions'. The private sector is increasingly developing such 'big data' techniques and you note there is scope for the state to do so, which has both benefits and risks. I agree that there are significant and complex issues here about the relationship between the citizen and the state. The Home Office will be publishing a Biometrics Strategy which addresses these issues.

### Conclusion

Thank you for this comprehensive and carefully considered report. I hope I have shown in this response that we are addressing the issues you have raised. 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 'Susan', is centered on the page. The signature is fluid and cursive, with a large initial 'S'.

**Baroness Williams of Trafford**