

Biometrics and Forensics Ethics Group

Notes of the 14th meeting held on 3 December 2020, via videoconference.

1 Welcome and introductions

- 1.1 Mark Watson-Gandy, Chair, welcomed all to the 14th meeting of the Biometrics and Forensics Ethics Group (BFEG) – see annex A for attendees and apologies.

2 Notes of the last meeting, action log and matters arising

- 2.1 The minutes of the September meeting had been circulated. Members were asked to send any corrections to the secretariat.

Action 1: Members to inform the secretariat of any amendments to the September minutes.

- 2.2 A review of open actions from previous meetings can be found in annex B. All other actions were complete.

3 Chair's update

- 3.1 The Chair had attended the Forensic Information Databases Strategy Board meeting in September and an update from this meeting would be covered in item 4. The Chair highlighted the following issues from the meeting:

- DNA processing had faced an increase in lost samples, delays and errors as a result of the pandemic.
- The UK had expanded its network of connections via Prum, however it was noted that not all UK police forces were actively following up on matches.
- The Forensic Capability Network (FCN) were developing a forensic science ethics framework and were in the process of seeking funding for a collaboration with a University.

- 3.2 The Chair sought an update from the Biometric Commissioner's Office - the current Biometric Commissioner's term would end on the 15th of December. The Commissioner would be publishing an interim update report on issues that have arisen since the last annual report prior to the end of his term.

- 3.3 The Chair sought an update on the recruitment of the new joint Biometrics and Surveillance Camera Commissioner, and was informed by Policy the process was in the final stages and an announcement was expected in the near future.

4 FIND Strategy Board update,

4.1 The main points of the update from the Forensic Information Databases (FIND) Strategy Board were:

- The new IT platform (NDNAD2) for the National DNA Database went live on the 23rd of November, there had been a number of issues as would be expected with the implantation of a new, complex system, and support was in place. The core part of the project had now been delivered, including automation of DNA comparison and there would be further releases in the future. The new system relied on those submitting to use a correct subject heading on email and format and FINDS were working with forces to embed this in processes, however benefits in speed of results had already been seen.
- The UK was exchanging DNA data with 11 member states following the additions of Latvia and Sweden. The number of matches varied month on month with 85 matches in August and significantly more in September and October. It was not clear whether exchanges would be able to continue after the UK left the EU at the end of the year, however the IT mechanisms were in place to end this exchange if necessary.
- The UK fingerprint exchange went live on 5th October 2020 with Germany. The FIND strategy board would consider a process solution to enable searching of fingerprints received from the EU against IDENT1 (the National Fingerprint Database).

Update on familial DNA process

- 4.2 At the June 2020 meeting the BFEG were presented with a proposal to release, subject to initial assessment, familial DNA matches with profiles on the NDNAD to a Forensic Service Provider (FSP) for comparison of the complete set of DNA markers. FINDS were asked to share the draft update to the familial DNA policy document with the BFEG (June 2020, Action 4).
- 4.3 The draft policy had been circulated to members which included the wording that would be added into the existing familial DNA policy.
- 4.4 In order for profiles to be released an FSP would need to send FINDS the Strategy Board authorisation reference for the familial search, a case number and a file containing the barcodes and a secondary identifying number, and confirmation that the release was suitable for the intended comparison. FINDS would assess the application and return it to the FSP if not suitable.
- 4.5 The BFEG was asked whether the policy update met the requirements.
- 4.6 The FINDS representative was asked whether releases would be registered or logged for audit. In response it was noted that this was not detailed in the policy but would be good practice. The request would contain all the relevant information and

FINDS would consider how best to store this, such as with the familial searches request.

- 4.7 Clarification was sought from the FINDS representative on whether comparison of profiles for familial DNA would be looking for similarity in the additional loci or whether the FSPs would use software to provide a statistical evaluation of the additional loci.
- 4.8 The BFEG members were informed that FINDS were not involved in the comparison of the additional markers as this would be carried out by the FSP, however the provision by FINDS of the additional loci information would allow the FSP to eliminate false positives from comparison of the *SGMplus* loci set alone.
- 4.9 It was explained that there were a number of FSPs performing familial comparisons and each had their own algorithms for this.
- 4.10 A risk was highlighted by a BFEG member that there was no oversight of the algorithms used by the FSPs - how accurate these were, and how many false positives they may generate. The representative from FINDS commented that there had been some previous work to assess the feasibility of a centralised algorithm, but this hadn't yet been progressed. The BFEG member offered to raise this issue with other relevant groups.

Action 2: BFEG member to raise with relevant groups the lack of oversight of familial DNA search algorithms used by Forensic Service Providers.

- 4.11 The policy wording was agreed however the BFEG wished to note:
 - the lack of oversight of the algorithms used by the FSPs
 - that the new method should ensure increased efficiency and a reduction in false positives
 - that a review of the number of false positives resulting from the use of the additional markers should be considered. This would need to be by geographical area as searches were restricted to geographical areas.

Update on Vulnerable Persons' DNA Database (VPDD) process

- 4.12 At the June 2020 meeting the BFEG was presented with a proposal to allow searching of the VPDD against DNA profiles sourced from unidentified body/part(s), and certain crime scene profiles.
- 4.13 When the individual (or their responsible adult) consented for their DNA profile to be present on the VPDD, the consent did not detail that their DNA profile could be regularly searched against unidentified body/part(s) or crime scene DNA profiles.
- 4.14 Following a request by the BFEG at the June 2020 meeting to update the VPDD consent form to reflect the change in process, FINDS had provided the updated consent form and VPDD policy to members for comment.

- 4.15 Clarification was sought as to whether the form would be used to obtain retrospective consent from those already on the database and it was confirmed that this would not be the case, searches would only be made against newly taken samples, unless a police force requested a specific search.
- 4.16 Confirmation was sought that, if requested, a sample could be removed from the VPDD and this request could not be overruled, and this was confirmed by the FINDS representatives.
- 4.17 As a more general comment the BFEG observed that section A of the VPDD consent form was very dense and hard to read, with complex terms such as 'result derived from my sample'. The BFEG would recommend rewording the form into plain English and increasing the font size.
- 4.18 The representative from FINDS noted that the only change made in relation to the proposed policy change was to part b of the consent form. This was understood by BFEG members however there was concern that meaningful consent could not be given as the form was hard to read and understand. A BFEG member also observed that the suitability of the form for obtaining consent, even once reworded, should be reviewed from a legal perspective.
- 4.19 The BFEG agreed with FINDS proposed additions to the VPDD consent form, however there was agreement that the wording of the form needed to be reviewed.

Action 4: FINDS to identify the correct forum for a review of the wording of section A of the DNA sample consent forms (including VPDD consent form) and secretariat to follow up on a review of this form.

- 4.20 The representative from FINDS also provided an update for the BFEG on action 1 from the previous meeting regarding the decision-making process for sharing and deleting suspect's DNA and fingerprint data with Prüm member states. The representative had liaised with the International Criminality Unit and the UK International Crime Bureau and provided the following information:
- There was a blanket agreement to share anonymised suspect data with Prüm member states, but demographic data was only shared when it would be lawful to do so, on a case-by-case basis.
 - If a verified match was identified with shared anonymised biometric data then before demographic data was shared it would be confirmed that the data was lawfully held in the UK for a policing purpose.
 - Demographic data would be shared with EU member states for intelligence purposes only.
 - If the suspect was convicted the UK would ask for the shared biometric data to be deleted (including photographs).
 - As data from a suspect not convicted in the UK would be held in the UK temporarily for a policing purpose the demographic data would be released with the caveat that the EU MS would be informed if the status of the data

changed. If the status changed the member state would be informed and requested to delete the data.

5 Home Office policy update and Custody Leaflet

5.1 The main points of the update from the policy sponsor were:

- The Court of Appeal ruled on the case of Bridges v South Wales Police (SWP). The Home Office was working with the College of Policing on national guidance to address questions that were raised in the judgement and would then assess whether this guidance needed to be included in the Surveillance Camera Code of Practice for consistency.
- The Surveillance Camera Commissioner would be publishing independent guidance on use of live facial recognition technology, which would be consistent with the approach being taken in the national guidance.
- On the public sector equality duty issues highlighted in the judgement this was noted to be a matter for policing as a whole to consider and work was underway with Cardiff University to develop an approach, however this had been on hold as a result of COVID restrictions. The Home Office Biometrics Programme was also working on face matching algorithm procurement, primarily for Home Office users, however policing had been invited to be involved in that work.
- The Ada Lovelace Institute had been looking at governance of biometric data and had an audience with ministers in October. Their report was expected to be published in spring and the Home Office would look to engage with this work.
- Following the concerns raised by the Biometrics Commissioner about the failure to take biometric samples from persons under voluntary attendance, new legislation was in development to require a person to attend a police station at a specified time and date to have a photograph and DNA and fingerprints taken. The bill was planned to be introduced in mid-January.
- With regard to the recommendations from the Information Commissioner's Office on the recovery of data from victim and witness's mobile phones and a lack of consistency between forces on the legal basis for collection of this data, the Home Office was seeking to address this and other issues with new legislation.
- West Midlands Police have put forward a proposal for the establishment of a new, national data ethics institute, and rounds of stakeholder discussions were taking place in February.
- The Centre for Data Ethics and Innovation had published their review of algorithmic bias in which there was a specific recommendation for the Home Office and recommendations for wider stakeholders and regulators. The recommendations were being reviewed. It was noted that the CDEI were

working on a draft governance framework and testing this with Police Scotland. The CDEI had also established a 'public attitudes to data and AI' network that had been attended by the Home Office.

- The Government Digital Service had published an updated data ethics framework and was looking to establish a community to develop this work and deliver ethics training for data scientists.

- 5.2 Members of the BFEG queried whether the proposal for a new national data ethics institute could lead to fragmentation of the ethics landscape with multiple groups providing advice or whether the national institute would take precedent over policing committees.
- 5.3 It was noted that there was further discussion to be had around the provision of data ethics advice and this was something the BFEG would like to consider.
- 5.4 The proposal for the national data ethics institute would be circulated to members and comments on it would be welcomed.

Action 5: Members to provide comment on the West Midlands Police Commissioner's proposal for a National Ethics Institute.

- 5.5 A member of the BFEG also asked what movement there had been towards legislation for facial recognition. The guidance being developed by the College of Policing, together with the National Police Chiefs' Council would deal specifically with LFR in terms of the recommendations highlighted by the Bridges case. There was then a bigger question on the powers that policing had to use novel biometric technologies and discussions with ministers were ongoing on this and the BFEG would be kept informed of developments.

Custody Images Leaflet

- 5.6 The BFEG has previously recommended that policy produce a leaflet for arrestees that explained the process of retaining custody images, people's rights and how to request deletion of images held on police systems.
- 5.7 A draft leaflet had been produced in discussion with operational policing contacts and any additional feedback from BFEG members was welcomed before this leaflet was sent for formal agreement at senior NPCC level.
- 5.8 The draft leaflet had been circulated to members and initial comments had been received by the secretariat.
- 5.9 Improvements to the leaflet were identified:
- Increase the readability, in line with previous BFEG advice on the custody information leaflet on DNA sample. The leaflet should be understandable to a wide range of people and appropriate to the intended audience.
 - Clarity over tattoo images, the leaflet mentioned face and tattoos but wasn't clear if deletion of tattoo images was covered.
 - Clarity over the College of Policing offence categories used.

- More detail on the clear evidence that would support retention of images, and the exceptional reasons for retaining an image with examples. Also, explain whether arrestees would be given a justification if a decision was made to retain their image so that this was transparent.
- Provide more examples.

5.10 A member of the BFEG volunteered to collate members' comments and feed these back to policy.

Action 6: Comments on the draft custody images leaflet to be collated and fed back to Policy.

6 BFEG principles

6.1 At the September meeting the BFEG agreed to update the BFEG Ethical Principles to explicitly record the consideration of people with protected characteristics as part of the role of the BFEG.

6.2 Following circulation of a draft update, comments were received from members and a final principles document had been circulated via email for agreement. Following minor corrections agreement was now sought to publish the updated principles.

6.3 A member asked if there could be a reference to collection of evidence, including discussions with the affected groups, to demonstrate that procedures should respect the dignity of individuals and groups (principle 2).

6.4 It was noted that this was a valid requirement, however the aim of the principles document was to be high level rather than procedural and detail was not included on how the governing principles would be implemented.

6.5 Publication of the updated principles was agreed.

Action 7: Secretariat to publish the updated principles on the BFEG website.

7 HO Biometrics Ethics Working Group (HOB EWG) update

7.1 Members heard an update from the chair of the HOB EWG. The main points were:

- The Working Group had met once since the last BFEG meeting for an update on the HOB programme and discussion of future projects requiring ethical advice.
- The HOB EWG had received a presentation on the HOB's Face Bias Algorithm review and identified some ethical considerations such as determining an acceptable level of bias in algorithms, review of the training sets used for the algorithms, and the risk of individuals being disadvantaged as a result of inherent bias within the algorithm. The HOB EWG had recommended this project be presented to the BFEG for a wider range of ethical considerations (see item 8).

8 Algorithm Bias Review

- 8.1 The Home Office Biometrics Programme representative provided the BFEG with an overview of the Algorithm Bias Review. The main points were:
- The HOB project had gathered information from business areas within the Home Office that were using face algorithms. Using the data gathered the project would identify some practical responses to support those uses. An output from the project was expected to be a playbook for business areas to refer to.
 - The playbook would provide guidance on use of face matching algorithms from assessing requirements, through procurement, testing, implementation and performance review.
 - The BFEG was asked to assist in the development of the playbook and provide ethical considerations.
- 8.2 It was noted that in the initial data gathered, data on race and ethnicity were not generally available. The HOB representative explained there could be data protection issues, for example ethnicity data should not be captured if it was not part of an application process. However, in order to understand the algorithms and identify potential bias against specific groups of people, it would be important to understand the value of capturing this information and this would be explored in the development of the playbook.
- 8.3 The BFEG was supportive of the project and the proposed playbook. It was highlighted by a member that it would be important to consider when it was acceptable to use a system where the bias in the algorithm is unknown.
- 8.4 It was agreed the playbook should cover the entire life cycle of an algorithm. It was noted the algorithm could be changed or modified during its life cycle, and bias could be introduced during that process.

Action 7: Members who would like to be involved in the Face Algorithm Playbook to contact the secretariat.

9 Facial Recognition Briefing note

- 9.1 The facial recognition working group (FRWG) had completed the briefing note on the ethical issues arising from public-private collaboration in the use of live facial recognition technology. The final report had been circulated to the BFEG prior to the meeting.
- 9.2 The FRWG chair recorded her thanks to the members of the FRWG group and Home Office Secretariat for their work on the report. The chair also expressed her thanks to two members of the BFEG for their valued contributions.
- 9.3 The BFEG ratified the report for publication.

Action 9: Secretariat to publish the FRWG briefing note on the ethical issues arising from public-private collaboration in the use of live facial recognition technology.

10 Biometrics and Digital Forensics Working Group update

- 10.1 The chair of the working group provided an update to the BFEG. The Working Group held their first meeting on 1st December 2020 with the Home Office Biometrics and Digital Forensics policy team. The group were also presented with the first topic for ethical consideration, concerning obtaining consent from a complainant or witness for law enforcement to examine their digital devices as part of an investigation.
- 10.2 The group would start to prepare ethical considerations for the first topic over the next few weeks, and a catch-up meeting with the Home Office Biometrics and Digital Forensics policy team was planned for January 2021.

11 Data Ethics Advisory Group update

- 11.1 Members heard an update from the Data Ethics Advisory Group, the main points were:
- The group had their first meeting with the Law enforcement portfolio team to discuss their proposed trial.
 - The group highlighted the ethical issues on the proposal with the law enforcement portfolio team.
 - A follow up meeting would be held once the initial data had been gathered.

12 AOB

- 12.1 The next meeting would be held on 9th March 2021.

Annex A – List of attendees and apologies

Present – all via videoconference

- Mark Watson-Gandy - Chair
- Louise Amoore - BFEG Member
- Simon Caney - BFEG Member
- Nina Hallowell - BFEG Member
- Mark Jobling - BFEG Member
- Isabel Nisbet - BFEG Member
- Jennifer Temkin - BFEG Member
- Thomas Sorell - BFEG Member
- Denise Syndercombe Court - BFEG Member
- Richard Guest – BFEG Member
- Charles Raab – BFEG Member
- Julian Huppert – BFEG Member
- Nóra Ni Loideain – BFEG Member
- Peter Waggett - BFEG Member
- Andrew Thomson – FINDS Unit, HO
- Juliette Verdejo - FINDS Unit, HO
- Rebecca Madgwick – Biometrics Commissioner’s Office
- Alex MacDonald – Data and Identity Unit, HO
- Carl Jennings - Data and Identity Unit, HO
- Geoff Keogh - Data and Identity Unit, HO
- Cheryl Sinclair - Data and Identity Unit, HO
- Caitlin Seymour, Data and Identity Unit, HO
- Ben Carson, Data and Identity Unit, HO
- Alison Goodall, Data and Identity Unit, HO (observer)
- Nadine Roache - BFEG Secretariat, HO
- Jennifer Guest - BFEG Secretary, HO

Apologies

- Liz Campbell - BFEG Member
- Adil Akram - BFEG Member

Annex B – review of open actions from previous meeting

March 2020

Action 3: (Complex Datasets working group to produce general guidance on ethical issues in binary classification systems). This work was ongoing.

Action 4: (Complex Datasets working group to share their report on machine-learning use cases) The report had been finalised and sent to the Data Scientists. The secretariat would keep the BFEG informed of any feedback. Action complete.

Action 5: (BFEG to provide advice on the custody images leaflet). The leaflet had been received and circulated to members – see section 5. Action complete.

Action 7: (Secretariat to make amendments to recommendations for 2019/20 annual report and share with BFEG). The Annual report was to be checked with stakeholders before circulating to members for comment - ongoing.

June 2020

Action 4: (FINDS to share the draft policy for the familial DNA proposal with the BFEG) – see section 4. Action complete.

Sept 2020

Action 1: (Information on the decision-making process for sharing and deleting suspect's DNA and fingerprint data with Prüm member states) – see item 4. Action complete.

Action 2: (Update on the revised police guidance and Public Sector Equality Duty proposal with Cardiff University) – see section 5. Action ongoing.

Action 6: (Comments on draft CD WG report). Action complete.

Action 8: (Meeting to agree changes to the BFEG principles) – see section 6. Action complete.

Action 9: (Suggestions on virtual away day activities). Action ongoing.