



OFFICE OF THE BIOMETRICS
AND SURVEILLANCE
CAMERA COMMISSIONER

HM Chief Inspector Andy Cooke

5 October 2023

Dear Andy,

Use of police powers to retain the biometrics of people arrested for serious offences

One of my statutory functions¹ is to keep under review the retention and use by the police of DNA samples, DNA profiles and fingerprints for national security or other specified policing purposes in the investigation or prevention of crime.

The Power

Parliament has provided chief police officers with a power² to retain DNA and fingerprints of those individuals who have been arrested for certain qualifying offences (essentially domestic abuse, sexual offences, burglary and violence) but against whom no prosecution could be brought. The reasons for not being able to proceed to a prosecution are implicit within the legislation and usually arise where there is a close relationship between the suspect and the complainant, where the offence is of a sexual nature and therefore there is little independent witness evidence available, or where there has been intimidation or a fear of engaging with the prosecution process. All applications must come to my office and allow the suspect to make formal representations against retention. If approved, the application authorises the biometric material to be retained by the police for three years.

The Effect of the Power

Having dealt with many such applications during the course of my appointment, it seems to me that the broad effect of retention is threefold:

1. To assist the police with the prompt investigation of any subsequent offences particularly where the suspect has come to police attention on more than one occasion;
2. To provide a deterrent to the subject who knows that their DNA and fingerprints will be checked against crime scenes without the need for further arrest; and
3. To provide some positive outcome/reassurance for complainants where they are concerned about future offending by the subject but the decision on prosecution has not met the evidential test in the instant case.

The Use of the Power

If a successful s.63G application is made against a subject, this enables the police to identify the subject should they go on to commit a crime in future and leave their biometric data at the crime scene. One force recently informed me about a case where a subject had gone on to commit further offences and they were identified as a result of leaving their DNA on a face mask at the crime scene. As the subject's biometrics were held under the s.63G provision, the subject was then easily identified. Such a case

¹ s.21(1) of the Protection of Freedoms Act 2012

² s.63G Police and Criminal Evidence Act 1984

shows the value in the police making s.63G applications. In recent years, whilst the number of s.63G applications submitted each year has steadily been rising, and throughout my tenure as the Biometrics Commissioner, I have remained concerned that the provisions are not being fully utilised by all police forces. There are 9 forces that have never made an application, despite the provisions being available for 10 years. There are a further 9 forces that have only made single digit applications and these range from over 4 years ago to over 8 years ago. The vast majority of applications are only made by a handful of forces with the Metropolitan Police Service making the most proactive use of the power. So far for 2023, they have submitted almost 70% of the applications that I have considered. Other notable forces regularly making applications include the Yorkshire and Humber forces. The table below shows the latest data on the number of s.63G applications that have been submitted by forces:

Number of s.63G applications to the Biometrics Commissioner by force (ending 30 September 2023)					
Force	Applications received in April 2023 - September 2023	Total applications since 31 October 2013	Force	Applications received in April 2023 - September 2023	Total applications since 31 October 2013
Avon & Somerset	0	10	Lincolnshire	0	1
Bedfordshire	1	10	Merseyside	0	0
Cambridgeshire	0	16	Metropolitan Police Service	59	617
Cheshire Constabulary	0	0	Norfolk	0	1
City of London Police	0	0	North Wales	0	4
Cleveland	2	14	North Yorkshire	2	7
Cumbria	0	2	Northamptonshire	2	4
Derbyshire	0	1	Northumbria	0	24
Devon & Cornwall	0	37	Nottinghamshire	0	2
Dorset	0	9	Staffordshire	0	0
Durham	0	5	South Wales	1	34
Dyfed-Powys	0	0	South Yorkshire	6	25
Essex	1	50	Suffolk Police	2	2
Gloucestershire	0	5	Surrey Police	0	0
Greater Manchester	0	3	Sussex Police	0	0
Gwent	0	5	Thames Valley	2	36
Hampshire	0	10	Warwickshire	0	7
Hertfordshire	0	13	West Mercia	0	6
Humberside	2	27	West Midlands	0	0
Kent	0	31	West Yorkshire	1	95
Lancashire	0	0	Wiltshire	0	3
Leicestershire	3	5	TOTAL	84	1121

*Forces who have made applications in the past 6 months have been highlighted in green. Forces who have never made an application have been highlighted in grey.

Review of forces who have not made a recent s.63G application

My office has recently conducted a review in which all forces that had not made an application since the beginning of this year were asked for the rationale behind the decision not to make any applications for retention. 28 forces were contacted, 15 replied. The table at the end of this letter shows which forces they were. While it was disappointing that only around half of these forces replied (leaving an incomplete picture of what factors are creating this disparity), of those that did reply the two main reasons provided for not making s.63G applications are the lack of resources and

a lack of understanding of the application process. Some forces noted that they do not have the funding for a dedicated team, while others mentioned the difficulty of finding time to complete applications given other priorities. My office has regularly offered support to forces to help them understand the application process, including putting forces in touch with those forces who regularly complete s.63G applications but we have very limited ability to address the issues highlighted around resourcing.

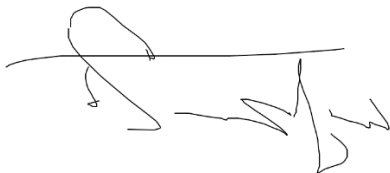
HMICFRS Involvement

I am leaving my position on 31st October 2023 and at present there is no certainty as to who my successor will be and what work they will be carrying out. You will also be aware that the Data Protection and Digital Information (No2) Bill abolishes the office of Commissioner for the Retention and Use of Biometrics and will transfer responsibility for s.63G applications to the Investigatory Powers Commissioner. Royal Assent is expected around Spring 2024. Given this situation, it is on the one hand very timely that policing partners consider the current and potential contribution of this statutory in tackling what are some of the highest priority crime types of our time while, on the other, it is entirely possible that there will be no inspection regime of s.63G provisions following my departure.

Earlier this year, I wrote to the Secretary of State for Justice about my concerns regarding the s.63G provisions not being fully utilised by all police forces (I am still waiting for a reply) and I believe the issues engaged would also be of interest to HMICFRS, either as part of the PEEL inspection programme or a thematic review of forces. Given that HMICFRS has the role of independently assessing the effectiveness and efficiency of police forces in the public interest, this may be an area that you may wish to consider, particularly in the absence of any other body being able to undertake such a review. I do believe that an assessment of s.63G provisions would help to raise the profile of the power with forces and to assist chief officers' applications for resourcing within their force areas, both for the purposes of crime prevention and investigation.

Throughout my time as Biometrics Commissioner, I have highlighted to forces that the s.63G provisions should be seen as a tool that can support the police both as an investigative and preventative tool. If the current statutory elements (such as time limits) are in need of revision in order to make this a more potent and practical power for policing, then the evidence base from each police force would be a necessary starting point and I would be very interested to hear your views on whether an assessment of the police use of s.63G provisions would be considered by HMICFRS, or indeed whether there is another more natural home for such assessment before I depart.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Fraser Sampson', written over a horizontal line.

Professor Fraser Sampson
Biometrics and Surveillance Camera Commissioner

Force	Response to OBSCC review of forces who have not made a s63G application in 2023
Cheshire Constabulary	Response received
Cambridgeshire	Response received
Cumbria	Response received
Dorset	Response received
Greater Manchester	Response received
Gwent	Response received
Norfolk	Response received
North Wales	Response received
Northamptonshire	Response received
Staffordshire	Response received
Surrey Police	Response received
Sussex Police	Response received
Warwickshire	Response received
West Midlands	Response received
Wiltshire	Response received (via previous communication in June 2023)
City of London Police	No reply
Gloucestershire	No reply
Kent	No reply
Lancashire	No reply
Lincolnshire	No reply
Merseyside	No reply
Nottinghamshire	No reply
South Wales	No reply
West Mercia	No reply
Avon & Somerset	Email bounced back - SPOC yet to be identified
Derbyshire	Email bounced back - SPOC yet to be identified
Durham	Email bounced back - SPOC yet to be identified
Dyfed-Powys	Email bounced back - SPOC yet to be identified

*The forces shaded in grey have never made a s63G application