



OFFICE OF THE BIOMETRICS
AND SURVEILLANCE
CAMERA COMMISSIONER

Application to the Biometrics and Surveillance Camera Commissioner under s63G PACE

Explanatory Notes for Police on How to Complete Biometric Retention Application

BC2 – Version 5 – Updated June 2024

We recommend that you take time to read these explanatory notes as they will help you to complete the application form (BC1) correctly.

Your application may be returned to you or not approved by the Biometrics and Surveillance Camera Commissioner if the BC1 or any supporting documents have not been prepared correctly.

Application to the Biometrics and Surveillance Camera Commissioner under s63G PACE.

Notes for Completion

Preface

This guide is designed to assist applicants and chief officers in completing an application to the Biometrics and Surveillance Camera Commissioner to retain DNA and / or fingerprint records which may be retained under the powers given by s63G PACE.

The guide should be read in conjunction with the following guidance documents:

- National DNA Database Strategy Board Guidance, *'Applications to the Biometrics Commissioner under PACE'*¹.
- Office of the Biometrics and Surveillance Commissioner Guidance, *Principles for Assessing Applications for Biometric Retention*².

We hope that the guide will answer most of your questions. If you require further advice or guidance, please contact the Office of the Biometrics and Surveillance Commissioner (OBSCC).

Office of the Biometrics and Surveillance Camera Commissioner
PO Box 72256
London
SW1P 9DU

Email: casework@obsc.org.uk

¹ [Applications to the Biometrics Commissioner under PACE \(accessible version\) - GOV.UK \(www.gov.uk\)](#)

² [Principles for assessing applications for biometric retention - GOV.UK \(www.gov.uk\)](#)

Explanatory Notes for Completion

The application form is available in Microsoft Word format for online submissions with expandable entry fields. There is no imposed character / word limit for applications. Please contact the OBSCC if you do not have the latest BC1 (revised in June 2024).

Deadlines for Applications

All s63G applications to the Biometrics and Surveillance Camera Commissioner should be made by chief officers of Police as soon as possible and in any event within 28 days of a “No Further Action” (NFA) decision being made against the qualifying offence. In the absence of a reasonable explanation for the delay, an application may be rejected by the Commissioner if it is submitted more than 28 days after the NFA date.

If there is a long period between the time the biometrics were taken and the date of the NFA decision being made (for example more than two years), forces should consider the value of making an application, if there will be very little of the total three-year retention period that would remain. If applications are made for such cases, the Commissioner will want to know whether any further allegations have been made against the subject of the application during the period before the NFA decision was made, which may impact on the proportionality of the proposed retention.

Notifying Subjects

Chief officers should usually notify the Subject of the application and of the reasons for it at the same time as submitting the application to the OBSCC. They should do so using the standard notification letter.

It will often be convenient for the chief officer simply to reproduce the information which is set out in the relevant sections of the BC1 into the notification letter. It is important that Subjects are given adequate information in their notification letter about why the application is being made against them and what biometrics the police are seeking to retain (specify DNA profile and/or fingerprints), to enable them the opportunity to make a fair representation, should they wish to do so. There is no requirement to send the Subject police documentation or to refer to it in the notification letter.

The chief officer should include with the notification letter to the Subject the following documents which explain the statutory basis for applications of this type:

- Applications for Biometric Retention: What You Should Know
- Biometrics Commissioner’s Principles for Assessing Applications for Biometric Retention.
- BC3 Representations Form

Please insert the Police URN into the BC3 before sending it to the subject.

Preliminary Applications

It is for the chief officer to form a judgement on the information that should be disclosed to the Subject in the notification letter. It should be noted, however, that the

Commissioner will only attach weight to reasons or information relied on by a chief officer if he is satisfied that the Subject has been notified of them in at least general terms in the BC3.

If there are concerns regarding the disclosure of information to a Subject (for example sensitive intelligence or victim statements that are not to be shared with a Subject, or previous allegations made to the police that they are not aware of), chief officers may submit a completed BC1 to the OBSCC in advance of notifying a Subject. This is called a **Preliminary Application**.

If making a Preliminary Application, a fully completed BC1 accompanied by the proposed notification letter should be submitted as usual to the OBSCC for consideration within the 28 day application period. The OBSCC will consider the level of disclosure required and advise the chief officer accordingly if the application can be accepted for consideration.

Following receipt of the Commissioner's response to the Preliminary Application, it will be a matter for the chief officer to determine whether they wish to proceed with the application. If the chief officer does wish to proceed with the application (either in its original or in an amended form) they have 14 days to resubmit the application with any revisions required by the Commissioner and to send a notification letter to the Subject.

In the case of a Preliminary Application, there is no need to notify the Subject when initially submitting the application. A notification letter should only be sent after the OBSCC has confirmed that the application can be submitted to the Commissioner (see below for further details).

Holding applications

As outlined above, all applications made to the Commissioner under section 63G PACE should be made within 28 days of the decision to take no further action (NFA) against a Subject who has been arrested for a qualifying offence.

In some cases, however:

1. The Subject may have been charged with a non-qualifying offence and therefore their biometrics can be held until the charge is determined at court. If the Subject is found guilty of that charge at trial, their biometrics can be retained indefinitely (if the subject is over 18).
2. The Subject may have been arrested and there is an ongoing investigation into a non-qualifying offence, therefore their biometrics can be held under S63E of PACE until the investigation is concluded.

In either of these circumstances, chief officers may choose to make a holding application whilst the outcome of the investigation/proceedings relating to the non-qualifying offence is pending. This will prevent chief officers from losing the opportunity to make a s63G application once the 28 day NFA window for the qualifying offence has passed whilst biometric material can still be lawfully retained held.

Holding applications require chief officers to write to the Subject informing them that such an application *may* be made in due course once the outcome of the charge or ongoing investigation for the non-qualifying offence is known. Provided that the Subject has been notified of a potential application within 28 days of the NFA to the qualifying offence, the Commissioner will be content to accept a later s63G

application. Pro-forma letters are available so police forces can notify the subject of such applications.

The Commissioner should be informed of the potential application and a copy of the notifying letter should be sent to this office.

General advice when considering submitting s63G applications

In all applications, chief officers should have particular regard to the following factors:

- (i) the nature, circumstances and seriousness of the alleged offence in connection with which the Subject was arrested;
- (ii) the grounds for suspicion in respect of the Subject (including any previous complaints and/or arrests);
- (iii) the reasons why the Subject has not been charged;
- (iv) the strength of any reasons for believing that retention may assist in the prevention or detection of crime;
- (v) the nature and seriousness of the crime or crimes which that retention may assist in preventing or detecting;
- (vi) the age and other characteristics of the Subject; and
- (vii) any representations previously made by the Subject (or their appropriate adult) as regards those or any other matters.

These factors are not exhaustive and chief officers should include any and all factors they deem relevant to the application.

Submitting an Application

Applications to the Biometrics and Surveillance Camera Commissioner should be submitted by email to: casework@obscc.org.uk

If a force wishes to make an application by post, they should email our office to inform us that they intend to do this. The application can be posted to:

Office of the Biometrics and Surveillance Commissioner
PO Box 72256
London
SW1P 9DU

GUIDANCE ON HOW TO COMPLETE THE BC1

Section 1: Application Information

Police URN	Enter the police unique reference number for the application. This reference should also be entered onto the BC3 Representations Form.
PNCID	Insert PNCID.

Application Date	Insert the date on which the application is submitted. All dates in the form should be shown as numbers in the format dd/mm/yyyy.
In Time Application	Chief officers have 28 days following the No Further Action (NFA) decision being made against the qualifying offence to make an application to the Commissioner. If the application is to be submitted within 28 days of the NFA date, select “yes”. If the application is being made after the 28 day deadline has elapsed, select “No” and give reasons for the delay.
Linked s63G applications	If two or more applications are made regarding different subjects who are involved in the same alleged offence, forces should select “yes”. This will ensure that the linked cases are processed together

Section 2: Point of Contact

Please specify the police force contact for the application, and give direct dial telephone numbers and email addresses. Do not give general departmental contact details.

Chief officers should nominate a member of their staff to act as a single point of contact for applications to the Biometrics and Surveillance Camera Commissioner. Any queries regarding a submitted application will be directed to the member of staff nominated in this section of the application form.

Section 3: Biometrics

Date Biometrics taken	Enter the dates for both fingerprints and DNA samples taken from the Subject. If biometrics are already held in connection with a previous arrest, enter the date of arrest for the qualifying offence to which this application refers.
S63G Biometric Retention End Date	This is the date which the biometrics can be held until if the s63G application is approved. The date should also be recorded in the subject notification letter. The date is 3 years from the date that the biometrics are taken e.g. if the biometrics were taken on 01/01/2024, the s63G retention end date would be 01/01/2027.

Section 4: Arrest Details

Date of Arrest	Enter date when the Subject was arrested for the qualifying offence to which this s63G application refers
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NFA Date	Specify the date that decision was made to NFA the qualifying offence (not the date it was recorded on PNC).
No Previous Convictions	Biometric records may be held indefinitely if a person has been convicted of any recordable offence. Convictions include cautions, reprimands and warnings. In such cases, an application to the Commissioner is not necessary.

Section 5: Preliminary Application

If the chief officer intends to include information in the BC1 that will not be disclosed to the Subject (for example sensitive intelligence or victim statements that cannot be shared with them) select “yes”.

Section 6: Subject Notification

Date Notified	<p>If the notification letter was served on the Subject in person, or if it was sent to them by email, state the date it was served or emailed.</p> <p>If notification was sent by post, state the date of postage plus 2 working days. If no notification was served – please state reasons (e.g. Subject untraceable)</p> <p>In the case of a Preliminary Application, chief officers should <u>only</u> send a notification letter to a Subject once they have received approval from the OBSCC</p>
Method	Select method of notification. Postal service should be by First Class.
Deadline for subject representations	State the deadline date for the Subject’s representations (or those of their appropriate adult) to be received by the Commissioner. The time period for representations is 28 days from the notification date (see above).
Notification Letter Attached	All application forms <u>must</u> be accompanied by a copy of the notification letter that was sent or that the chief officer proposes to send to the Subject of the application. If a preliminary application is being made, then please select “proposed”
Appropriate adult	<p><u>If the Subject is under 18, an appropriate adult must be notified</u> about the application and their details need to be provided here, so that we can let them know the outcome of application.</p> <p>If the Subject is over 18 and required an appropriate adult for their police interview, forces should consider whether an appropriate adult should be informed about the application, so that they can support the Subject as necessary. <u>Unlike for</u></p>

	<u>juveniles, it is not mandatory for forces to seek/identify an appropriate adult for subjects aged over 18.</u>
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Section 7: Chief officer’s Declaration

Please select the relevant options. If both Fingerprints and a DNA profile are to be retained, tick both boxes.

Chief officers must choose whether to apply under s63G(2) (a), (b) and/or (c) OR s63G(3) grounds. An application should not be made on both s63G(2) and s63G(3).

The declaration should be ‘wet’ or electronically signed and dated by the applying chief officer. A chief officer is defined as anyone holding a rank above that of Chief Superintendent within the police service of England and Wales (ACC (Commander in the Met) or above.

Section 8: Subject Details

Title	E.g. Mr, Mrs, Miss, Ms (please specify).
First Names	State all given names including middle names.
Surname	State Subject’s current surname. If the Subject is known to have used other names, please give details of these under “ Aliases ”.
Sex	Select if the Subject is male or female.
Date of Birth	Enter date of birth.
Address	State permanent residential address, or specify if an address is not known or the Subject is of no fixed abode.
Aliases	State full alias names and date(s) of birth. Surnames should be given in block capitals.
Nationality	State Subject’s nationality / nationalities. If the subject is a foreign national, please include when they arrived in the UK, their current immigration status and whether any information is known about possible contact with the police internationally

Section 9: Details of allegations

During the BC1 update in June 2024, a box grid was included, to act as a prompt to ensure the relevant details about the alleged offence are provided. Forces should use this box grid for all future applications.

Offence for which	The Subject must have been arrested for a qualifying offence under s65A(2) of PACE. The name of the offence and the
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<p>Subject arrested</p>	<p>specific legislation under which the Subject was arrested needs to be entered here (for example Rape, Section 1 of the Sexual Offences Act 2003). Also, please enter the CJS code.</p>
<p>Detailed Account of Incident Leading to Arrest for which Biometric Retention is Sought</p>	<p>Provide a statement which outlines the alleged offence for which this application is being made and the circumstances surrounding it.</p> <p>If the application is made under s63G(2) it will be necessary to demonstrate that the alleged victim was, at the time of the offence:</p> <ul style="list-style-type: none"> - aged under 18 years, - a vulnerable adult or - associated with the Subject <p>Please give full details of how the victim(s) meet the criteria of s63G(2) if applicable.</p> <p>The following information should be included in this section</p> <ul style="list-style-type: none"> - the age/gender of the alleged victim. Are there any special characteristics relating to them? - the age of the Subject. Are there any special characteristics relating to them? - whether the victim and Subject are known to each other – if yes, how? - the date/time of when the alleged offence happened (including if on multiple occasions) and where? - what are the allegations made and what were the circumstances surrounding the alleged offence? - is there any evidence which suggests the subject committed the offence such as forensics, CCTV, mobile phone footage/messages? - were there any eyewitness accounts? - How was the subject arrested? - Are there any significant points to raise from the police investigations and/or police interviews that were carried out? <p><u>The above list is not exhaustive, so forces should add any other information which they feel would strengthen their application.</u></p> <p>When filling in this section, please avoid using initial abbreviations to refer to the individuals in the case eg “AH met GK on this date”, as it can be difficult to follow. Please either use either their full name or suitable titles such as “Victim 1” or “Witness 2”.</p>

Reasons for NFA	<p>Give details of the reasons why it was decided not to charge the Subject.</p> <p>Reference should be made to any relevant documents included with the application.</p>
Other Arrests / Contact	<p>Please give brief details of any other arrests / relevant contact with UK police in chronological order with dates and how the case was concluded eg NFA, community resolution. Please state clearly if the alleged victim involved is the same as the primary complainant mentioned above or they are different alleged victims. The subject should be aware of previous allegations that have been made against them so that they can make a fair representation.</p> <p>If the Subject is not a UK national or hasn't been in the UK for a long period, please state if any checks been carried out as to whether the subject has been involved in any criminality abroad</p>

Section 10: Reasons for Application

Detailed reasons should be given to support the application for retention of a DNA profile and/or Fingerprint records.

If applying under s63G(2), chief officers should refer to the victim criteria set out under that section. Please note that satisfaction of the victim criteria will not alone be sufficient to warrant an approval of the retention of a Subject's biometrics.

The reasons given in the application should show that, in the case in question, there are compelling reasons to believe that the retention of the material at issue may assist in the prevention or detection of crime, that such retention would be proportionate, and that the reasons for so believing are more compelling than those which could be put forward in respect of most individuals arrested for, but not charged with, a qualifying offence.

The reasons provided should be supported by references to any documentary evidence or supporting material.

When outlining the reasons for an application, it is important that the case presented should fairly and accurately reflect the supporting documentary evidence from the investigation. The Biometrics and Surveillance Camera Commissioner relies on the content of the application form and summary of the investigation provided by chief officers, and should be presented with the case both for and against the retention of the biometrics. If there is any information which may weaken the case for retention of the biometric material, it should be included in section 10 of the BC1.

Section 11: Relevant Documents Attached

Indicate the documents that are to be attached to the application. A copy of any documents that have been referenced in the BC1 must be included.

END