



Cataloguing the Innocent

The differing approach of police forces to the innocent profiles on the National DNA database¹

Key findings

- Between 4th December 2008 and 1st January 2010 **Cumbria Constabulary collected 4,668 DNA profiles, of which 1,319 (28%) were from people later found to be innocent. They removed just 12 (0.9%) of these innocent profiles.**
- Between 4th December 2008 and 1st January 2010 **Strathclyde Police collected 19,197 DNA profiles, of which 6,856 (36%) were from people later found to be innocent. They later removed all of these innocent profiles.**
- **Cumbria and Strathclyde were the only police forces in Britain that answered our Freedom of Information request.** The remaining 49 forces in England, Scotland and Wales claimed that to do so would exceed the allowed time limit for answering an FOI request.
- The European Court ruled in December 2008 that it was unlawful to store indefinitely DNA samples from people who were later cleared. The very poor response to our FOI and Cumbria's low rate of deletion demonstrates that **the government and police are currently unable to comply with the ECHR ruling and delete innocent profiles without prompting.**

¹ *Cataloguing the Innocent* is the first research note by Big Brother Watch, a non-partisan grassroots campaign fighting intrusions on our privacy and liberty.

Big Brother Watch has already released several full-length reports into topics varying from council controlled CCTV cameras to microchips in bins. These are available at <http://bigbrotherwatch.typepad.com/home/research.html/>.

This note was written by Big Brother Watch Campaign Director Dylan Sharpe.

Introduction

On 4th December 2008 the European Court of Human Rights ruled that keeping the DNA profiles of two men from Sheffield - who had previously been cleared of criminal charges - on the British police DNA database was a breach of their human rights. Reacting to the court's decision, Jacqui Smith - then Home Secretary - said that "the existing law will remain in place while we carefully consider the judgement." In the Crime and Security Bill, the Government has proposed placing a cap of 6 years on the retention of the DNA of innocent people if there is no further police interest in the person involved.

Earlier this year the Conservatives released figures which exposed the massive discrepancy in how police forces in England and Wales respond to requests to remove DNA profiles. Although there are an estimated one million innocent people on the national DNA database, it is not known how many innocent profiles are being added by each police force and how many of those are being removed without being prompted. *Cataloguing the Innocent* is a summary of our efforts to collate data on how many innocent profiles are being added by police forces in the UK and why the current system in use makes it almost impossible for England and Wales to comply with the European Court ruling requiring that they be removed.

To arrange broadcast interviews or discuss the research, please contact:

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A tale of two systems

For this research note it was our intention to compile a league table of those police forces that take the highest percentage of innocent DNA profiles in comparison with total profiles taken; and compare and contrast the percentage of those innocent profiles that are subsequently deleted. Before starting the research we conducted informal discussions with a number of police FOI officers, who suggested to us that this request was achievable. However, out of the 51 police forces in England, Wales and Scotland, only two were able to answer our request. The excuse provided by almost every force that declined to answer was that the DNA database and Police National Computer (PNC) – which logs the arrest record and is then updated depending on acquittal/charge – are not linked and therefore each record would need to be cross-referenced between two systems.

Every person arrested in England, Scotland and Wales for a recordable offence has their fingerprints, palm prints, mug-shot photographs and limited nominal data taken and entered onto a local database. This data is synchronised with the "arrest record" on the Police National Computer (PNC) or on the Scottish Criminal History System (CHS).

At present, DNA samples are also taken from anybody arrested for a recordable offence, these are then added to the National DNA database. DNA samples are taken and processed immediately after a person is arrested. The trouble starts because whether or not an individual is subsequently convicted of the offence takes place much further along in the judicial process, and no amendment is made to the DNA database to reflect the outcome of the case.

All but two of all the Police Forces in the United Kingdom were unable to answer our freedom of information request. A typical response looked similar to this one received from Dorset Police:

Following receipt of your request searches were conducted within CID (Criminal Investigation Division) to locate information relevant to your request. However our searches indicate that, if we do hold the information that you require, it will be held within individual crime records and not in a centrally retrievable format.

To establish if an individual had their DNA taken but were not convicted would involve a manual check of each individual crime record, and if there is no conviction there could be a multitude of reasons for the outcome and depends on the circumstances of each case.

Therefore the cost of providing you with the information to Questions 1 and 2 is above the amount to which we are legally required to respond.

Or this response from Humberside Police:

We write to advise you that the cost of providing you with the information requested is above the amount to which we are legally required to respond i.e. the cost of locating and retrieving the information exceeds the "appropriate level" as stated in the Freedom of Information (Fees and Appropriate Limit) Regulations 2004.

Within the timescales that you specified - 4 December 2008 and the 1 January 2010, there were 8741 DNA samples taken. Each one of these would have to be checked against the Police National Computer. I have confirmed with the Information owner within the force that an average time of 5 minutes to check each case would equate to over 728 hours of work to comply with your request.

Responses

▪ Cumbria Constabulary (Area covered = 6,768 km² - 10th highest in UK)

*“Between 4 December 2008 and 1 January 2010 a total of **1319** detained persons had their DNA taken and the custody record was subsequently closed as no further action. Of these, **12** DNA samples were destroyed. I can inform you that there were **4668** DNA profiles taken in the time period specified.”*

- Percentage of total DNA profiles taken in specified period from innocent people: **28.25%**
- Percentage of those innocent profiles removed: **0.9%**

▪ Strathclyde Police (Area covered = 13,624 km² - 3rd highest in UK)

*“The total number of people who had a (Criminal Justice) DNA sample taken and were subsequently not convicted, between 04 December 2008 and 1 January 2010, was **6,856**; their profiles were then removed from the Database. During this period **19,197** DNA criminal justice samples were taken.”*

- Percentage of total DNA profiles taken in specified period from innocent people: **35.71%**
- Percentage of those innocent profiles removed: **100%**

Conclusions

Working from the figures above it is not unreasonable to suggest that anything from a quarter to more than a third of all DNA profiles taken by the police are from people who are later found to be innocent. The Scottish system - whereby the DNA profiles of those not convicted of an offence are only retained when charges relating to violent crime or a sexual offence had been brought - gives police forces in Scotland the remit to delete innocent DNA profiles from the database at regular intervals. By contrast, Cumbria Constabulary in England deletes less than 1% of the innocent profiles it collects.

Both Cumbria's poor rates of deletion, and the failure of 49 police forces to answer our request, are a direct consequence of the system used in England and Wales. Because the DNA database and Police National Computer are not linked, there is no means for retrospectively removing DNA profiles when the person in question has been found innocent. The reality of this situation is that it would be extremely hard, and require a significant institutional change, for police forces in England and Wales to abide by the judgement of the European Court.

The Original FOI

Freedom of Information Request pertaining to DNA profiles

Dear Sir/Madam,

I am writing to obtain information about the number of DNA profiles obtained by X Police from people who were not convicted of any crime in the period 4th December 2008 – 1st January 2010.

To outline my query as clearly as possible, I am requesting:

1. The total number of people not convicted of any crime, who had their DNA taken by X Police in the period 4th December 2008 – 1st January 2010.
2. The total number of DNA profiles taken by X Police in the same period, 4 December 2008 – 1 January 2010?

If, in the period specified, the DNA profile was subsequently destroyed for whatever reason, please do distinguish the number of individuals concerned from the total figure.

My preferred format to receive this information is electronically, but if that is not possible I will gladly accept hard copies. I understand that under the Freedom of Information Act, I am entitled to a response within 20 working days. I would be grateful if you could confirm in writing that you have received this request as soon as possible.