Home Office

HOME SECRETARY
2 Marsham Street, London SW1P 4DF
www.homeoffice.gov.uk

Christopher Graham
Information Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane, Wilmslow
Cheshire
SK9 5AF

19 FEB 2010

Dear Mr Graham

HOME OFFICE PROPOSALS FOR THE RETENTION OF DNA PROFILES

Thank you for your letter of 15 February with which you enclosed a paper on your views of the Government's proposals in the Crime and Security Bill relating to the retention of DNA profiles.

As Home Secretary, I am responsible for making a judgment which strikes the right balance between protecting an individual's privacy and protecting the public from harm. Our proposals are designed to do just that. They represent a balanced approach between privacy and public protection.

Our research suggests that we would expect most of the benefits of DNA retention to occur in the first two or three years following an initial arrest. But there are still benefits to be gained from retention beyond that point, to six years and possibly significantly longer. If there is still a greater risk of offending within that time period, I could not justify a murder or rape case not being brought to justice because an offender had had his DNA removed earlier. Our approach ensures that DNA profiles are only retained where evidence indicates it will have an added value.

In your paper you recognise the value of DNA profiles to policing and state that you believe that a justification can be made for the retention of DNA profiles of individuals arrested but not convicted in "clearly defined and limited circumstances". This is exactly what our proposals seek to do.

I am also pleased that you welcome the fact that our proposals remain evidence based; this is not an exact science but our proposals are indeed informed by the best evidence available to us. I will address your points in turn.

Arrest to Arrest Data

You are concerned that our use of arrest-to-arrest data as a measure of offending risk is 'likely to be distorted by factors that have little, if anything, to do with the guilt of an individual', and say that your opinion is informed by the 'latest views of Professors Soothill and Francis'. We are aware of the valuable work on offending which Keith Soothill and Brian Francis have produced, and indeed their work and advice informed the analysis on which we have based our proposals. In the reviews you present, they describe our work as 'a good job on the limited data available', adding that 'the analysis team have been careful to identify the strengths and weaknesses of their analysis'. These are limitations which we have never attempted to deny, whilst arguing that, nevertheless, the evidence we have produced is the best available anywhere for the purpose.

However, in relation to their assertion that the police are more likely to re-arrest those who have already been arrested because they are now on the Police National Computer (PNC), I would say this. In support of this statement, Professors Soothill and Francis cite a single study of police behaviour in the United States which was published in 1964. They claim that they have 'no reason to suppose that such an effect is limited to the US', but present no evidence that such behaviour occurs in this country, let alone that it might persist fully three years after an initial arrest (which is what their argument would imply, based on actual PNC data).

I cannot, therefore, accept the accusation that the police base their decisions for arrest on the fact that someone has previously been arrested. The law around powers of arrest is very clear, as it should be, since depriving someone of their liberty is a very significant step .The fact that every officer is responsible for using his or her powers based on discretion and in accordance with the law is at the heart of our approach to policing in this country.

Proposals for 16 and 17 year olds

On the proposed 6 year retention period for 16-17 year olds arrested for but not convicted of serious crime, I see no inconsistency here. I am aware that there is no clear evidence for a differential regime for children, but this is where I have to balance the research evidence with my wider responsibilities as Home Secretary. So I have decided that, for younger children and those arrested for less serious crime, a shorter retention period is appropriate, given the particular protections appropriate for children in view of their needs and position in society, to which the ECtHR judgment referred.

Level of intrusion

I agree with you that the ECtHR judgment requires us to strike the right balance between the benefit to the public in preventing crime and the interference with people's private life. But it seems to me axiomatic that any judgment of where that balance lies should include at least some analysis of the level of intrusion that is in fact undergone by people whose DNA profiles are retained on the DNA Database. For a number of reasons, it seems to me that the level of impact on such people – unless they are subsequently implicated in a crime – is modest. I am mindful of the fact that, under the proposals in the Crime and Security Bill, a person's DNA sample will be destroyed as soon as a profile is derived from it – and it is clear from the ECtHR's judgment that the level of interference caused by the retention of DNA profiles is less than that caused by the retention of DNA samples. Moreover, a person's DNA profile can be accessed and used only for very limited statutory purposes. Being on the DNA database does not stigmatise a person in any public way, and cannot affect his or her employment prospects. Nor does it place him or her on a list of "usual suspects" which the police can use in future investigations.

Proposals for deletion

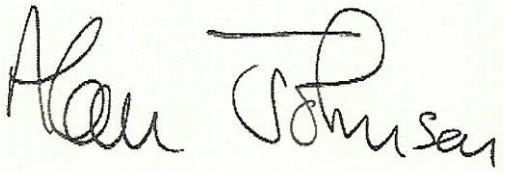
Our proposals for automatic deletion after set retention periods provide a workable system and clarity for both the police and individuals on the database, backed by statutory rules for the deletion of profiles ahead of those periods in clearly defined circumstances. I think that is a preferable approach to case by case consideration by the courts.

As I said at Second Reading of the Crime and Security Bill, I remain committed to end any postcode lottery in decisions to delete profiles. Decisions on removal of records from the DNA database ahead of the normal retention period are, and will remain, an operational decision for chief officers. But we intend to put in place a more centralised process for considering such applications in order to increase the consistency across police forces in such cases. We are working with ACPO to develop guidance on the new Early Deletion Procedure, in particular to improve the consistency of the operation of the procedure.

I can also confirm that the effect of new section 64ZI(5) of PACE, as inserted by the Crime and Security Bill, is to place a proactive duty on Chief Constables to delete profiles immediately in certain circumstances, for example if the arrest was unlawful or based on mistaken identity. Our proposals as a package mark a very significant change to the current system of indefinite retention, and provide significant safeguards.

I am not persuaded that a further appeal mechanism beyond the avenue of judicial review is appropriate, given that the legislation will provide specific criteria for retention and removal against which such a review would be able to consider an application.

In summary, I believe that our DNA retention proposals are supported by the best evidence available to us at this time and represent an appropriate balance between protecting individual privacy and protecting the public.



ALAN JOHNSON