

Your Ref:

Our Ref: IM-FOI-2014-1149

Martin McGartland

E-mail: request-215082-
xxxxxxxx@xxxxxxxxxxxxxxxxxxx



Sir Stephen House QPM
Chief Constable

FOI Central Processing Unit
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xxx@xxxxxxxx.xxx.xxxxxx.xx

Dear Mr McGartland

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002
SUBJECT: DNA

I refer to your email dated 3 June 2014 regarding the above which has been handled in accordance with the Freedom of Information (Scotland) Act 2002 (FOISA).

Prior to responding, I would ask that you note that the Scottish DNA Database is located in Dundee. When a suspect is arrested the police have the right to take a DNA sample, usually a mouth swab. This is known as a criminal justice (CJ) sample. All samples are analysed and the profiles stored on the Scottish database as well as being sent to the National DNA Database, set up in 1995 and based in Birmingham.

In general terms I can advise that Police Scotland utilise Standard Operating procedure (SOPs). SOPs combine guidance, information and instruction for officers and staff; however, not every eventuality is covered. While there is an expectation that staff will follow the prescribed procedures, it is recognised that every eventuality cannot be covered and accordingly, officers will require to exercise their professional judgement and common sense. Any subsequent analysis of actions will be judged on the grounds of reasonableness in the

light of all the facts and circumstances rather than solely on non-compliance with the relevant SOPs.

Police Scotland has a SOP entitled DNA Sampling and Retention and I have attached a copy of this. Furthermore, the policy relating to DNA is included within the Police Scotland Criminal Justice Policy and this can be accessed using the link provided below:

<http://www.scotland.police.uk/assets/pdf/151934/151938/criminal-justicepolicy?view=Standard>

1. Police Scotland policies and practices concerning DNA, DNA entered onto the National DNA Database (NDNAD).

In Scotland the taking and retention of DNA is legislative rather than policy driven and Police Scotland act in compliance with the Criminal Procedure (Scotland) Act 1995, as amended, accordingly I would refer you to this legislation which can be accessed at:

<http://www.legislation.gov.uk/ukpga/1995/46/contents>

Police officers within Police Scotland use the DNA Sampling and Retention SOP which guides with the practical processing of taking a DNA sample within a custody suite through to being passed to Forensic Services for analysis and population of the extracted profile onto the Scottish DNA Database (SDNAD).

On entry to the SDNAD all profiles are searched against outstanding crime scenes held on the SDNAD.

All profiles of arrestees are shared with the NDNAD where they are available for searching and comparison against outstanding crime scenes from English and Welsh Police Forces.

Any crime scene profiles that do not match against a profile on the SDNAD are exported to the NDNAD for searching against individual's profile from England and Wales.

2. National policies and practices concerning DNA, DNA entered onto the National DNA Database (NDNAD).

Firstly, I would refer to the response provided for question 1 and in particular that SDNAD shares information with the NDNAD to ensure all outstanding crime scenes are searched against all available profiles within the UK. The sharing of DNA information is also governed by the Criminal Procedure (Scotland) Act 1995.

Although DNA taken by Police Scotland is placed onto the NDNAD it is still governed by the retention rules of the SDNAD rather than the governing legislation of the NDNAD, namely the Protection of Freedoms Act 2010. When

a DNA profile is removed from the SDNAD it is also removed from the NDNAD.

The NDNAD is managed by the Home Office and governed by the NDNAD Strategy Board under the opuses of the Home Office.

3. Both Police Scotland and National polices, practices concerning when there has been a match and or a close match identified from the DNA and or crime stain on National DNA Database (NDNAD).

Matches between a crime scene profile and an individual's profile will be identified by Scottish Police Authority Forensic Services. They will communicate this information in the form of an intelligence report to Police Scotland. This report will include a likelihood ratio of the crime scene matching the individual identified, for example, 1 in 1,000,000,000. The SDNAD only reports direct matches however should a criminal justice(CJ) profile of lower quality (SGM) match a partial crime scene profile, the likelihood ratio may be reduced to 1 in 1,000,000.

Should the NDNAD identify a match between a Police Scotland crime scene and an individual from England or Wales held on the NDNAD they will communicate this in the same way to Police Scotland. However while the SDNAD will only report direct matches the NDNAD will report the number of matching alleles should the crime scene be of partial detail.

Should the NDNAD identify a match between an English or Welsh Police Force's crime scene and a Scottish individual they will communicate this to the relevant force.

4. Police Scotland review policy concerning undetected cold cases when DNA has been recovered in serious crime cases (including attempted murder) how Durham Constabulary deal with such cases, how Police Scotland ensure each case has undergone a suitable review/s.

All undetected crime scene stained are retained on the SDNAD and NDNAD until resolved regardless of the seriousness of the offence. There is collaborative working between the Cold Case Review Team under Forensic Services, Homicide Governance Unit under Police Scotland and Cold Case Review Team under Crown Office and Procurator Fiscal Service who continually review undetected cold cases. From a DNA perspective the teams will look at evidence where a DNA sample was not able to be extracted at the time and where new technologies can be used to attain a sample that can be extracted into a profile which can be uploaded to the SDNAD.

In relation to your request for information pertaining to Durham Constabulary I can advise you that Police Scotland does not hold any relevant information. In terms of Section 17 of the Act, this letter represents a formal notice that information is not held and I would suggest that you contact Durham Constabulary to obtain this information.

5. Are there any circumstances when DNA samples, for whatever reason/s, are not uploaded by Police Scotland to NDNAD, including those which relate to serious crime (including attempted murder).

All crime scene profiles are loaded to the SDNAD. The only exception is if a sufficient quality profile could not be extracted from the crime scene sample. Forensic Services follow the guidelines provided by the NDNAD as to what is deemed sufficient quality to load for comparison purposes. Without a set standard, low quality submissions would present many possible matches. Sufficient quality samples would have enough detail to ensure an extremely high likelihood that the crime scene profile matches one individual.

Crime scenes are only uploaded to the NDNAD if a match is unobtainable from the SDNAD. Should a crime scene profile gain a satisfactory match against an individual on the SDNAD, the information will be communicated and the crime scene profile removed from further searching.

6. Regards 5 above, how many times during past 10 years have Police Scotland not been able (for whatever reason/s) to upload a DNA sample connected to serious crime (including attempted murder, murder) onto the NDNAD. Please also explain reason/s for why any sample/s were not uploaded.

Your request for information has now been considered and I can advise you that Police Scotland does not hold any of the information requested by you. In terms of Section 17 of the Act, this letter represents a formal notice that information is not held.

By way of information, figures are not retained on how many samples were not suitable for loading to the SDNAD or NDNAD. As stated in the previous questions, all crime scene profiles are loaded if they meet the necessary criteria.

7. How often do Police Scotland check NDNAD against DNA sample/s they hold concerning serious crime (including attempted murder) when DNA has been recovered and when such case/s remain unsolved.

As outlined above all outstanding/unmatched/unresolved crime scene profiles are loaded onto the NDNAD and will remain there until a match is found.

I trust that the information available is of assistance and should you require any further assistance concerning this matter please contact me on 0141 435 1262 quoting the reference number given.

If you are not satisfied with the way in which your request has been dealt with, you are entitled in the first instance and within 40 working days of receiving this letter to request a review of the decision made by the Force. Should you wish to do so, contact details are; Police Service of Scotland, FOI Central Processing Unit, 173 Pitt Street, Glasgow, G2 4JS. (Or email xxx@xxxxxxxxx.xxx.xxxxxx.xx)

Once informed of the Review decision, if you are still not satisfied, then you are entitled to apply to the Scottish Information Commissioner within six months for a decision. Contact details are; 'Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS', telephone 01334 464610.

Yours sincerely

Lorna Grieve
Information Management
Freedom of Information