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Reference: 107-2008

Date: 11 December 2008

Dear Mr Mery,

## **FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 – REQUEST**

### **REQUEST DETAILS**

I refer to your correspondence dated 1 December 2008, in which you requested the following information under the Freedom of Information (Scotland) Act 2002:

I would appreciate, if in accordance with the FOIA, you can provide me by email the following information concerning the removal of DNA records by the Scottish Police Services Authority:

1) The detailed process that is followed to remove the DNA records of an individual whose DNA was sampled by a Scottish police force (either because the lawful retention period expired or the chief of the police force decided to delete the DNA records for any other reason). I expect the process to describe the several steps required to ensure that the DNA samples are physically destroyed and the DNA profile deleted from the databases to which it has been uploaded: which actions are performed by which roles in which department, how is this verified, how is this communicated, etc.

If there are two distinct processes in respect of ensuring deletion of DNA profiles from the Scottish DNA Database and the National DNA Database, I'd be looking to receive both.

2) For each calendar year since 2002, how many DNA profiles were contributed to the NDNAD of a/ individuals that were arrested by Scottish police forces, b/ individuals that volunteered their DNA samples to a Scottish police force, and c/ crime scenes in Scotland.

3) For each calendar year since 2002, how many DNA profiles contributed by the Scottish Police Services Authority were deleted from the NDNAD of a/ individuals, and b/ crime scenes.

### **RESPONSE**

1) The Scottish Police Services Authority (SPSA) was established as a non departmental public body (NDPB) on 1 April 2007 by the Police, Public Order and Criminal Justice (Scotland) Act 2006. The purpose of the SPSA is to provide expert policing and support services to Scotland's eight police forces and criminal justice community. Forensic Services make an essential contribution to the investigative and criminal justice processes and it is this service that manages The Scottish DNA Database (SDNAD).

Scottish DNA Data and samples relative to an arrested individual are retained, used and removed under the terms of Sections 18, 18A, 19 and 20 of The Criminal Procedure (Scotland) Act 1995.

Individual DNA data may only be retained for as long as the case for which samples were taken is active and a conviction is obtained. Any case resulting in a disposal other than a conviction requires DNA data to be removed from the SDNAD and also the National DNA Database (NDNAD). This retention procedure however alters if the subject has been arrested for a relevant sexual or violent crime. Such samples may be retained for a period of 3 years following a decision by the Crown to abandon formally commenced proceedings, or if court proceedings result in other than a finding of guilt. The three year period may be extended for periods not exceeding 2 years on application to a court (Relevant Sexual or Violent offences are defined in Section 48 of the Crime and Punishment (Scotland) Act 1997)

Each DNA sample is allocated a unique reference number (URN) which correlates with a unique case number for the offence for which the sample was taken. Both numbers are entered on the Criminal History System (CHS) by police staff. This correlation allows the respective force Records Office to monitor the progress and disposal of each case. Once a court disposal is known force Record Office staff mark the individuals CHS record with the result. If a conviction is obtained a "DNAC" flag is entered on the CHS system indicating a convicted DNA sample for the case. Police staff also inform SDNAD staff who insert a similar flag onto the SDNAD, this action activates database software which identifies any additional samples which may be held for the subject and database staff mark such samples for removal. The system also alerts staff should any future samples for the subject be received and in such cases these samples will not be processed.

Should a case not result in a conviction force Records Office staff instructs the Administration Section of the SDNAD to remove the DNA data held in connection with the case. This instruction can be received via email or on a printed list delivered by courier service. On receipt of an instruction to remove DNA data, database administration staff enter an electronic flag onto the individual record, this information is thereafter stored on the system until the last day of each month at which time all demographic and profile data of flagged samples are automatically removed in bulk.

A hard copy of monthly removed samples is simultaneously produced which is used by laboratory assistants to locate stored second mouth swab samples within their freezer coordinates, remove such samples from the freezer and dispose of them. To achieve a standardised approach to this important aspect of data management, SDNAD administration staff act as a one point of contact for instructing the removal of Scottish DNA Data from the National system, this is undertaken by sending a copy of monthly removed samples via the police email network system to the NDNAD Service Delivery Team who in turn remove all profiles and data as shown on the list from the NDNAD.

2) The following numbers of Criminal Justice Profiles were loaded to the SDNAD during the calendar years shown:

<b>Year</b>	<b>Numbers of Criminal Justice Profiles Loaded</b>
2002	38,930
2003	39,047
2004	42,646
2005	48,073
2006	53,537
2007	47,287

Volunteer DNA Database (VDNAD) profiles were not exported to the NDNAD until NDNAD systems were in place to ensure each profile would be held and removed according to Scottish Legislation which differs from England and Wales by allowing volunteers to withdraw their permission for voluntary retention.

The first export of Scottish Volunteer profiles was undertaken in March 2007 at which time all profiles which had been previously profiled were sent. Total VDNAD exports for 2007 and 2008 are shown below:

<b>Year</b>	<b>Total VDNAD Exports</b>
2007	1,302
2008	702 (to 30:11:08)

The vast majority of Scottish crime scene profiles loaded to the SDNAD are matched on the local database and only unmatched crime scene profiles are exported to Birmingham. Statistics relative to the total numbers exported have only been maintained since 2005 and the totals for unmatched crime scene profiles sent during these 3 calendar years are as follows:

<b>Year</b>	<b>Totals for Unmatched Crime Scene Profiles</b>
2005	2,319
2006	2,315
2007	1,814

3) Scottish DNA Criminal Justice (CJ) sample deletions from the SDNAD/NDNAD average approximately 2,000 samples each month. As previously mentioned the bulk of such removals will have been instructed by the force submitting the original sample, however they will also include a number of replicate profiles identified by SDNAD staff following notification of a convicted case.

Hard copy monthly profile removal sheets are retained for 1 year and thereafter weeded. Following a software upgrade, electronic data of sample removal totals have been retained only since 2003 therefore the year commencing 2002 is not available. Figures including the current year are shown below:

<b>Year</b>	<b>Total Electronic Data of Sample Removals</b>
2003	19,362
2004	19,280
2005	29,760
2006	31,207
2007	26,401
2008	17,225 (to 30:11:08)

Scene of crime profile removal is undertaken when an outstanding crime scene is matched with a CJ sample loaded to the database. On such occasions, an intelligence report is issued to the force in question identifying the source of their crime scene profile; the matched crime scene profile is thereafter removed from the SDNAD. All such removals are also identified to the NDNAD via the Police network email system to allow NDNAD staff to remove the profile in question. The total number of such requests sent during the calendar years in question is as follows:

<b>Year</b>	<b>Total Matched Crime Scene Removals</b>
2002	392
2003	494
2004	525
2005	600
2006	640
2007	647

I trust you will find this information to be in order, however if you are not satisfied with the way in which your request has been dealt with, you are entitled, in the first instance, to request a review of the decision made by SPSA. Should you wish to request such a review, please write to the Corporate Service Compliance Manager within 40 days of receiving this letter. If, after having been informed of the review panel's decision, you are still not satisfied, you are then entitled to apply to the Scottish Information Commissioner for a decision. Contact details are Office of the Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS, telephone 01334 464 610.

Yours faithfully,

SPSA Compliance Department

**From:** "Campbell, Pat" <pat.campbell@spsa.pnn.police.uk>  
**Subject:** RE: FREEDOM OF INFORMATION REQUEST  
**Date:** 5 January 2009 12:41:42 GMT  
**To:** "David Mery" <dmery@acm.org>  
**Return-Receipt-To:** "Campbell, Pat" <pat.campbell@spsa.pnn.police.uk>  
**Disposition-Notification-To:** "Campbell, Pat" <pat.campbell@spsa.pnn.police.uk>

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Dear Mr Mery

The SDNAD is an automated system and profiles are electronically removed, as previously identified a printed list of removals is produced at the start of each month which is sent by email to the NDNAD. This list includes some replicate samples which although removed locally are not on the national system; there is no apparent advantage in manually editing this list which would prove time consuming with no operational benefit to either facility.

The Scottish removal stats shown for the years below have been previously identified. However 2008 has been updated to include removals during December.

**2006** - 31,207  
**2007** - 26,401  
**2008** - 19,171

I hope this serves to answer your question.

Regards

Pat

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**From:** David Mery [mailto:dmery@acm.org]  
**Sent:** 23 December 2008 13:37  
**To:** Campbell, Pat  
**Subject:** Re: FREEDOM OF INFORMATION REQUEST

Dear Mr Campbell,

Thank you for this additional information. I agree and appreciate that you have provided me with great assistance. In view of my better understanding of the situation, one last question: since in answer to my question 3/a/ you provided me with the data for profiles before eliminating the replicates, do you have available (in an easily automated way) the number of DNA profiles you requested to be taken off the NDNAD? If so could you provide these to me for the calendar years 2006, 2007 and 2008.

Best wishes for the festive season.

br -d

On 23 Dec 2008, at 22:13, Campbell, Pat wrote:

Dear Mr Mery,

Due to non conviction court findings, cases which do not proceed, non court disposal options etc. more than half of all profiles loaded to the Scottish DNA Database require subsequent removal in order to comply with the terms of the Criminal Procedure (Scotland) Act 1995.

The aim is to hold only one convicted profile for each person on the database, however we are

required to accept what police forces choose to send therefore have no control of the numbers of samples held for each individual until the time a convicted sample is achieved.

As previously articulated it is possible to identify how many persons have replicate samples on the database however the number of samples held for each person can only be calculated by examining individual records, SPSA is therefore unable to supply an exact replicate percentage figure as to do so would however would take a member of staff more than 5 days or 40 hours to provide this information. This would take the cost above £600 and as such is exempt from disclosure under section 12 of the Freedom of Information (Scotland) Act. It is however agreed that it would be in excess of 13%.

The figure of 30% has been calculated by you and SPSA is unable to supply figures to question the calculation. You are correct in the assumption that the replication rate has not previously been estimated nor do we currently have software in place to provide an exact estimation.

We have a duty to assist under Section 15 of the Act, which I believe we have done comprehensively.

I hope this serves to further clarify your request.

Regards

Pat

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**From:** David Mery [<mailto:dmery@acm.org>]  
**Sent:** 20 December 2008 02:18  
**To:** Campbell, Pat  
**Subject:** Re: FREEDOM OF INFORMATION REQUEST

Dear Mr Campbell,

It is a correct assumption that I am content with the Crime Scene figure. I am, however, still not clear about the CJ profiles figures.

You wrote: "In terms of your additional query regarding CJ removals you made the assumption that the Scottish replication rate is similar to that of England and Wales, which may be correct however what was requested were the figures for sample removals which will also include replicate samples."

As per my previous email, there seems to be some consistency only if the Scottish replication rate is as high as 30%. Is that really the case?

You wrote: "SPSA removals from the NDNAD account for a higher percentage of national removals simply because Scottish legislation requires the removal of all samples which are not convicted. It is understood that unconvicted samples in England and Wales are not removed unless an Exceptional Case for removal is accepted by the police. Therefore percentage wise SPSA will request a far higher percentage of removals than England and Wales."

This is something I always understood to be the case and not something I queried.

You wrote: "The figures quoted for Scottish removals are correct."

I expect both the SPSA and NPIA figures to be correct and the current apparent inconsistency of these data to be due to some hidden assumptions or just plain misunderstanding on my part. This is why I am requesting your assistance to make sense of this.

You wrote: "Additionally, Association of Chief Police Officers Scotland (ACPOS) policy on mouth swabbing arrested persons is to continue to swab until a convicted profile has been obtained therefore forces are free to send as many or as few as they choose, which could result in a replication rate in excess of 13%."

Can it be as high as 30%? Anything less and the SPSA is requesting (according to SPSA data) more DNA profile removals from the NDNAD than are removed for all other than England and Wales forces (according to NPIA data).

You wrote: "The SDNAD is capable of identifying how many individuals have replicate samples on the database at any given time but how many samples are held for each nominal can only be obtained by examining individual records."

I assume you meant "not capable". Are you saying that the Scottish replication rate has never been estimated and cannot be estimated without a manual review of all records - which would obviously be too costly in the context of this FOI request?

It would seem from your email that the replication rate is the one reason you find may explain this discrepancy. Is that correct?

Your assistance is very much appreciated.

br -d

On 19 Dec 2008, at 14:00, Campbell, Pat wrote:

Dear Mr Mery,

From your last correspondence, the assumption is made that you are content with the Crime Scene figures.

### **Criminal Justice (CJ) Profiles**

In terms of your additional query regarding CJ removals you made the assumption that the Scottish replication rate is similar to that of England and Wales, which may be correct however what was requested were the figures for sample removals which will also include replicate samples. SPSA removals from the NDNAD account for a higher percentage of national removals simply because Scottish legislation requires the removal of all samples which are not convicted. It is understood that unconvicted samples in England and Wales are not removed unless an Exceptional Case for removal is accepted by the police. Therefore percentage wise SPSA will request a far higher percentage of removals than England and Wales. The figures quoted for Scottish removals are correct.

Additionally, Association of Chief Police Officers Scotland (ACPOS) policy on mouth swabbing arrested persons is to continue to swab until a convicted profile has been obtained therefore forces are free to send as many or as few as they choose, which could result in a replication rate in excess of 13%.

The SDNAD is capable of identifying how many individuals have replicate samples on the database at any given time but how many samples are held for each nominal can only be obtained by examining individual records.

I hope this has provided the required clarity.

Regards

Pat

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**From:** David Mery [<mailto:dmery@acm.org>]

**Sent:** 19 December 2008 08:05

**To:** Campbell, Pat

**Subject:** Re: FREEDOM OF INFORMATION REQUEST

Dear Mr Campbell,

Thank you for your explanations, I appreciate your help, but I'm still confused.

1. For crime scenes, the data is consistent.

Here's extracted data from the two data sets, it is consistent. The SPSA figures are the "Totals for Unmatched Crime Scene Profiles" from your response. The NDNAD figures are the "Crime Scene profile removals for other forces (i.e., non England and Wales)" from the NPIA response mentioned.

Year: 2005 \* SPSA: 600 \* NDNAD: 719

Year: 2006 \* SPSA: 640 \* NDNAD: 1,315

Year: 2007 \* SPSA: 647 \* NDNAD: 984

2. For CJ profiles, I am still confused.

I now understand that the data in the first table of answer 3) in your response include replicates and that these are eliminated before requests for removal from the NDNAD are sent. I had not taken this into account earlier. (I assume that you also ensure that no replicate profiles are loaded onto the NDNAD as when profiles are removed, all the profiles associated to an individual must of course be removed.)

Below are extracted figures from the two data sets. The SPSA figures are the "Total Electronic Data of Sample Removals" from your response. The figure in brackets is your original figure reduced by 13% - I am making the assumption that your replication rate will be similar to that quoted for England and Wales forces NDNAD data. The NDNAD figures are the "Subject profile removals for other forces (i.e., non England and Wales)" from the NPIA response mentioned.

Year: 2005 \* SPSA: 29,760 (25,891) \* NDNAD: 21,580

Year: 2006 \* SPSA: 31,207 (27,150) \* NDNAD: 21,969

Year: 2007 \* SPSA: 26,401 (22,967) \* NDNAD: 21,265

Even considering a replication rate of 13% in your data, you would end up asking for more removals of CJ profiles from the NDNAD than are actually removed for forces other than England and Wales. If your data has a replication rate of about 30%, more than twice that estimated for England and Wales forces,

then the data gets consistent again, but that seems too much.

I must have misunderstood or missed something else. Your help in figuring this out is much appreciated.

br -d

On 17 Dec 2008, at 13:51, Campbell, Pat wrote:

Dear Mr Mery,

Both sets of figures provided are correct, the National DNA Database do not receive all Crime Scene and Personal CJ profiles developed in Scotland. This is further explained as follows

### 1. Crime Scene Profiles

Scottish crime scene profiles developed in the Scottish forensic laboratories are sent to the Scottish DNA Database and loaded to the system, between 65% and 75% of these profiles record an immediate match and we issue an intelligence report to the respective force. We do not export matched profiles to the NDNAD as to do so would result in an identical match report being issued. We do of course remove such matched Scenes of Crime (SOC) profiles from our system and export the unmatched profiles. Local removals are recorded in our stats as shown in the original response. The removals shown on the response by the National Database are the removals we have instructed from the smaller percentage of previously loaded unmatched SOC profiles. Statistics will therefore always record a lesser number of Scottish SOC profiles removed from the national system particularly as they do not receive in excess of 65% of such profiles.

### 2. Criminal Justice Profiles

Similar to SOC profiles we do not export all Criminal Justice (CJ) profiles developed in Scotland. We have software in place to prevent the export of replicate profiles relative to individuals. Scottish Police mouth swabbing policy is to obtain mouth swabs from arrested persons until a "Convicted" profile has been recorded. This could result in several profiles being held for the same individual. When a conviction has been obtained in a case for which samples were submitted, our IT system identifies any other profiles held for the individual in question and they are removed. These removals are recorded in our stats however as they have never been exported to the national system cannot be shown in theirs.

I hope this has further clarified your request.

Regards

Pat

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**From:** David Mery [<mailto:dmery@acm.org>]  
**Sent:** 15 December 2008 23:04  
**To:** Campbell, Pat  
**Cc:** NPIA Information Desk  
**Subject:** Re: FREEDOM OF INFORMATION REQUEST

Dear Mr Campbell and Ms Thorpe,

I noticed some discrepancy between the information provided by the SPSA (ref 107-2008, p.3, answer 3) and the NPIA (ref 43286, p.4, answer 4) about removals of Scottish DNA profiles from the NDNAD that

I do not understand.

The SPSA FOI response includes tables of the "Total Electronic Data of Sample Removals" and "Total Matched Crime Scene Removals".

The NPIA FOI response includes tables of "Crime Scene profile removals" and "Subject profile removals". Both these tables have an "England & Wales Forces" column and an "Other Forces" column. Other forces obviously includes Scotland forces and probably Northern Ireland ones.

So for the same year, for the equivalent table, the equivalent numbers in the SPSA FOI response should be less or equal than the ones provided by the NPIA. I.e., all the records counted as removed by the SPSA should be included in the records counted as removed for other forces by the NPIA. This is not the case.

One dramatic such example is for 2006, according to SPSA data, 31,207 DNA profiles were removed that year, according to NPIA data, only 21,969 profiles were removed.

I am attaching the two FOI responses below so you can check the one you're not familiar with. I'd appreciate your help in understanding this discrepancy. Hopefully, the reason will be obvious to you and I am just missing or misunderstanding some assumptions.

br -d

On 11 Dec 2008, at 09:57, Campbell, Pat wrote:

Dear Mr Mery,

Please find attached a formal response to your Freedom of Information request dated 1 Dec 08.

Regards

Pat Campbell  
Information Assurance Officer  
Scottish Police Services Authority  
Elphinstone House  
65 West Regent Street  
Glasgow G2 2AF

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