



Consultation on enhanced oversight of biometric data for justice and community safety purposes

RESPONDENT INFORMATION FORM

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- Individual
 Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

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We will share your response internally with other Scottish Government policy teams

who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

Question 1

Do you believe a statutory Code of Practice covering the acquisition, use, retention and disposal of biometric data for justice and community safety purposes is required?

Please tick:

Yes

Please expand on the reasons for your answer.

The Code of Practice is needed to provide more detailed guidance to practitioners and maintain public trust. Also, it is needed to implement rights such as the right to information.

Question 2

Do you believe the proposed statutory Code of Practice is being applied to the correct individuals/agencies?

Please tick:

Yes

Please expand on the reasons for your answer.

Although more controls are probably needed for other bodies which collect biometric data (e.g. genetic information collected by researchers, the NHS, or commercial companies), the starting point for the Code to apply to bodies involved in the criminal justice system is probably correct.

Question 3

Do you believe the general principles outlined in the statutory Code of Practice are the right ones?

Please tick:

Yes

Please expand on the reasons for your answer.

Question 4

Do you believe the statutory Code of Practice covers all relevant issues which require consideration when decisions are being taken about the acquisition, use, retention and disposal of biometric data?

Please tick:

No

Please expand on the reasons for your answer.

There is no mention of the use by the relevant agencies of DNA stored elsewhere e.g. access by the police to medical data (including babies' blood spots) or commercial data (e.g. results of genetic ancestry tests). This needs to be included as it is a potential use of biometrics by the bodies covered by the Code. (See Section 8 of the report 'Establishing Best Practice for Forensic DNA Databases': <http://dnapolicyinitiative.org/report/>).

The statement on page 13 (para 47) stating that "policies should be in place around the weeding and disposal of this data" (including when data is no longer required for the purpose for which it was collected) is too vague. Recommendation 6 of the Independent Advisory Group on the Use of Biometric Data in Scotland was that "There should be a presumption of deletion of biometric data after the expiry of prescribed minimum retention periods". The Code appears to fall short of implementing this. (See also Section 1.2.3 of the report 'Establishing Best Practice for Forensic DNA Databases': <http://dnapolicyinitiative.org/report/>).

Apart from in the case of children and young people (see response to Q8, below), there is no consideration of the need for further oversight of police decisions to collect biometrics. (See Section 1.1 of the report Establishing Best Practice for Forensic DNA Databases: <http://dnapolicyinitiative.org/report/>).

Para 51 of the Code of Practice rightly requires validation mechanisms. However, it should be clarified how this role relates to the role of the Forensic Regulator.

Question 5

Do you believe a Scottish Biometrics Commissioner is required? Please tick:

Yes

Please expand on the reasons for your answer.

There is currently a gap in the protections in Scotland, which is covered by the Biometrics Commissioner in England.

Question 6

Do you believe the Commissioner's statutory remit extends to the correct individuals/agencies?

Please tick:

Yes

Please expand on the reasons for your answer.
See response to Q2.

Question 7

Do you believe the proposed general functions of the Scottish Biometrics Commissioner are the right ones?

Please tick:

Yes

Please expand on the reasons for your answer.

Question 9

Do you have any views on the appointment and accountability arrangements for the Commissioner?

Please tick:

Yes

Please expand on the reasons for your answer.

Being responsible to the Scottish Parliament may gain more trust than being responsible to the Scottish Government.

Question 8

Do you believe the proposed approach to the acquisition of biometric data from children and young people in the justice system is the right one?

Please tick:

Don't know

Please expand on the reasons for your answer.

These are important improvements but further consideration needs to be given to the retention of data in such circumstances (see response to Q4).