

Your DNA

What to do



Obtaining information from the police

Sometimes it is helpful to obtain more information from the police before making a request for destruction. You do not have to do this but it might provide information to support your request for destruction.

You can write to the police station where you were taken on arrest for a copy of your custody record and the transcript or tape of your interview. Under the Police and Criminal Evidence Act 1984, Code C paragraph 2.4A and 2.5, when a detainee leaves police detention, they (or the appropriate adult who attended the police station interview with a child) should be given on request a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after release, but in practice the police will normally provide a copy later than 12 months after release provided they still have it. You should ask for both the custody record and the interview transcript or tape from your police interview.

You can also find out what information is held on you by the police by making a 'subject access request' under section 7 of the Data Protection Act 1998. There is a charge of £10, and the police are entitled to ask for documentary evidence of identity. Police forces have a form you should complete to ask for information about yourself, which you can find on their website. You should make the request to the force that arrested you, which may not be where you live now. The Metropolitan Police's form is here: http://www.met.police.uk/information/request_forms.htm. It should be possible to obtain a copy of the custody record and interview transcript this way as well, provided you make clear on the form that you would like a copy. The police have 40 days to comply with a request like this.

Making the request for destruction

If you are one of the 850 000 innocent people whose fingerprints and DNA have been retained by the police, you may wish to write to your local Chief Constable and request that your fingerprints and DNA samples be destroyed. If you have written previously and had your request rejected, you might want to consider writing again in light of the *S and Marper* judgment. However, there is still no guarantee that the Chief Constable will grant your request. It is quite likely that police forces will try to delay making decisions until the government decides what to do about the law. If you are refused this time, you can always request again later. **Bear in mind that the guidance advises the police always to refuse a first request. You should therefore write back once you have received a first letter of refusal, insisting that they reconsider removing your records and explaining why your case is exceptional.**

Your DNA

What to do



You can find who your local Chief Constable is, and what address to send the letter to by using this link: <http://www.police.uk/forces.htm>. You should write to the police force that took your DNA, which may not be where you live now. If your DNA was taken in the Metropolitan Police Area, you should write to:

SCD12 – AC Private Office and Business Services
Metropolitan Police
Room 1114 Tower Block
New Scotland Yard
10 Broadway
London
SW1H 0BG

You should read the “exceptional cases” policy before you write to the police, so you know how they say they will deal with your letter. The policy is here (see **appendix two** of this link): http://www.homeoffice.gov.uk/documents/Bichard_Step_Model_Retention.pdf?view=Binary

When you write to the police, you should enclose photocopies of **two** different official documents which between them provide sufficient information to prove your **full name, date of birth, current home address** and **signature** (ie passport, driving licence, utility bill, bank statements (these last two should be dated within the last 3 months). If you don't provide this, the police will write and ask for it, but it speeds things up to provide it from the outset.

Some ideas about how to write your letter follow later in this document.

In addition, we understand that in some letters of refusal, the police have sent wording along the lines of the following:

“The Police Service has been informed that our procedures must remain unaltered until a decision is made and communicated. I believe the Government plan to issue an action plan within two or three months. I'm sure that this will be reported on by the media and until we receive further instructions surrounding the Government's position, I will be **unable to** delete your sample at this time.”

Since the legislation provides the police with a choice about whether or not a sample should be deleted, we believe that the above wording constitutes an unlawful approach. Therefore, if you have received similar wording to the above and the police have refused to delete your DNA on the grounds that they are 'unable to', we would advise that you may have grounds to seek a judicial review of the decision. Please note that a judicial review must be commenced within three months of the decision being made (i.e. within three months of the date on the letter informing you that the police procedures must remain unaltered). You should therefore see a solicitor urgently.

Your DNA

What to do



Sample letter to police if you have not been convicted of any offence

YOUR ADDRESS

ADDRESS OF POLICE

DATE

Dear Chief Constable,

I am writing to request that you destroy my DNA sample and profile, my fingerprints, photographs, Police National Computer Record and all other information taken and retained as a result of my arrest on **[insert date]**.

The circumstances of my arrest were: -

- what was the date and time of arrest?
- what was the place of arrest?
- what were the details of the incident?
- at what stage were the proceedings dropped?

My case is exceptional for the following reasons:

- were you mistakenly identified?
- did it emerge that in fact no crime had taken place?
- was someone else arrested/convicted of the offence?
- did the police officers interviewing you say that they were satisfied you were innocent or something similar?
- was the offence a minor one?
- was DNA at all relevant to the offence for which you were arrested?
- were you in fact the victim of a crime, rather than the perpetrator?
- any other reasons why your case is exceptional?

[give enough information so the police can understand what happened – it is not enough simply to say you were mistakenly identified, for example, you need to explain how that happened].

Your DNA

What to do



Include any reasons why you consider your own personal circumstances to be relevant:

- how old were you at the time the DNA was taken?
- how long ago was it?
- have you otherwise got a clean police record?
- how does the police retaining your DNA and Police National Computer Record make you feel? What are your particular concerns (i.e. employment, being stopped in future, visa applications)

Following the European Court of Human Rights judgment of *S and Marper*, I would like my fingerprints, DNA samples and profiles and other information removed from the police databases and destroyed, because in the circumstances of this case, the retention of fingerprints and DNA samples violates my right to respect for private life, under Article 8 of the European Convention on Human Rights.

Because I have not been convicted of any offence I am entitled to be treated as an innocent person. Instead, I am being treated in the same way as a convicted person – my information is being retained indefinitely in the same way as the information of a convicted person.

Please confirm that my information will be deleted and provide a timescale for destruction. If you refuse this request, please explain why.

Yours faithfully

YOUR NAME

Your DNA



LIBERTY
PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

What to do

If the fingerprints and DNA samples

are that of a child:

Write a letter in the format as set out above, making sure only to include those points which are relevant to the situation. Then you might want to include the following points at the end of the letter:

- State that you feel that the child involved has been labelled a criminal for the rest of his or her life when (s)he is entirely innocent (or because the alleged offence is relatively minor).
- The European Court said in *S and Marper* that retention of DNA may be especially harmful in the case of children, given their special situation and the importance of their development and integration in society. The Court said that particular attention should be paid to the protection of juveniles from any detriment that may result from the retention by the authorities of their private data following acquittals of a criminal offence. The Court noted that the policies applied have led to the over-representation in the database of young persons and people from ethnic minorities, who have not been convicted of any crime.
- This labelling of children runs contrary to the *United Nations Guidelines for the Prevention of Juvenile Delinquency* which provide at Article 5 that states should “avoid criminalising and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to others”. Equally, the guidelines states that “labelling” a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour.¹
- The taking and retention of fingerprints and DNA samples might also contravene the following articles of the *UN Convention on Rights of the Child*:
 - right not to be subjected to arbitrary or unlawful interference with his or her privacy;²
 - right, during deprivation of liberty, to be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age;³ and
 - right to privacy during legal proceedings.⁴

¹ Article 5(f)
² Article 16 (1)
³ Article 37 (c) UN Convention on the Rights of the Child
⁴ Article 40 (b) (vii) UN Convention on the Rights of the Child

Your DNA

What to do



If you were convicted or cautioned for a minor offence

It is still worth writing to your local Chief Constable to request that your records be removed. However, current policy is that DNA taken from those convicted or cautioned for an offence will be retained indefinitely, so it is much more difficult to secure the destruction of your DNA. Write a letter in the format as set out above, only using the parts that are relevant to your case.

Explain that:-

- The European Court of Human Rights has decided that the right to respect for private life (Article 8) is engaged by the retention of DNA and fingerprints.
- Given the minor nature of the crime for which you were convicted, your otherwise clean record and the length of time since the conviction, it is a disproportionate interference with your Article 8 rights for the police to retain your DNA and fingerprints.

IN ALL CIRCUMSTANCES

You may wish to seek individual legal advice to help with the destruction of your information, particularly if you write to the police and you are refused.

If you wish to challenge a particular refusal in the courts, you should seek legal advice straight away because the time limit for this type of case is only 3 months from the date of the refusal. If more than 3 months has passed since your request was refused, it is probably better to make a new request rather than try to challenge the old one.

You could also complain to the Information Commissioner about any refusal to destroy your information, which is much cheaper and less risky than court proceedings if you are not eligible for legal aid. It will take much longer though, and may not be as effective.

You can obtain details of solicitors in your area who specialise in public law (judicial review) and/or actions against the police by calling the Community Legal Service on 0845 345 4345.

If you need ongoing advice about DNA retention, you can call Liberty's advice line on 0845 123 2307. The lines are open on Mondays and Thursdays from 6.30-8.30pm, and on Wednesdays from 12.30-2.30pm. We can discuss options with you on the telephone but it is very unlikely that we will be able to take your case on.