

12 July 2022

IR 01-22-11772

Sonam
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Dear Sonam

Request for Information

Thank you for your Official Information Act 1982 (OIA) request dated 26 April 2022 requesting information about the collection and retention of biometric information and DNA.

My response to each of your questions can be found below.

1. How long these stays in the police central database?

Legislation pertaining to the lawful collection and retention of fingerprints and photos (identifying particulars) of a person in lawful custody or who Police intends to charge by way of summons, is covered by the Policing Act 2008, sections 32, 33, 34 and 34A ([Policing Act 2008 No 72 \(as at 28 October 2021\), Public Act Contents – New Zealand Legislation](#)).

In general terms, biometric information (fingerprints and photos) and DNA profiles can be lawfully retained on their respective databases following a conviction for the matter that triggered their collection, or a conviction for a related matter.

The criteria for the lawful retention of fingerprints and photographs in accordance with the Public Records Act 2005 and defined under in the New Zealand Police Retention and Disposal Schedule Part two –

9.3.1 - Fingerprints and photographs taken at arrest and person convicted are retained for 80 years.

Legislation regarding the lawful collection of DNA samples from suspects is covered by the Criminal Investigations Bodily Samples Act 1995 (CIBSA) ([Criminal Investigations \(Bodily Samples\) Act 1995 No 55 \(as at 28 October 2021\), Public Act Contents – New Zealand Legislation](#)).


Retention and disposal differ for DNA as there are many conditions governing the lawful retention of DNA profiles, and these vary for young persons and adults; the part of the CIBSA legislation the DNA sample was taken under (Part 2B or Part 3); and the offence and conviction/non-conviction outcomes.

The retention or destruction of DNA profiles and information is governed by Sections 24P and 24Q, 26 and 26A, 36, 37, 60, 60A, 61, 61A, 62, and 63 of the CIBSA. In some circumstances DNA profiles are held for 4 or 10 years then destroyed providing the person has no subsequent imprisonable convictions. In other circumstances, such as being convicted of a triggering offence that is defined by the CIBSA as “DNA relevant”, the DNA profile is held indefinitely.

There are differences in the lawful retention period based on whether the person is an adult or youth, the category of DNA sample (Part 2B or Part 2), and the offence conviction outcome.

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Police has processes in place across the fingerprint, photograph and DNA databases and information management systems to ensure that when there is a court outcome or a lawful retention period expires, that personal information is reviewed and either retained or destroyed in accordance with the legislative requirements.

2. *Who maintain this database, nz police or some third party agency?*

Police maintains databases for biometric information which include fingerprints and photographs.

The National DNA Database is managed by the Institute of Environmental Science and Research Ltd (ESR) on behalf of Police.

3. *How police securely store the database from frequent cyber attacks? Can you please provide any info when it was compromised before due to any cyber attack?*

Police and ESR's computer systems are protected by firewalls. The biometric databases are further secured on controlled and limited access internal systems. The biometric databases have not been the subject of cyber-attacks.

4. *What happens to these when the offender gets discharged but convicted? How long does it stays in the database against that person?*

The retention or destruction of fingerprints and photographs is governed by Sections 34 and 34A of the Policing Act 2008. If a person is convicted, their fingerprints and photograph may be lawfully retained. If the person is discharged without conviction under S106 of the Sentencing Act, their fingerprints and photograph may also be lawfully retained (refer S34A, (d)).

Refer to the information supplied for question 1 regarding 'How long does it stay in the database against that person'.

Fingerprints and photographs remain on their biometric databases providing the conditions stipulated in S34A of the Policing Act 2008 are met.

5. *What happens to these when the offender gets discharged without conviction under s106?*

The fingerprints and photograph from a person are retained if there is a court outcome of Discharged without Conviction under S106 of the Sentencing Act. This is because a S106 discharged without conviction court outcome can only occur if there is an admission of guilt or a finding by the court of "guilty". As previously stated, the Policing Act 2008 S34A (d) allows retention of fingerprints and photos in these circumstances. ([Sentencing Act 2002 No 9 \(as at 12 April 2022\), Public Act 106 Discharge without conviction – New Zealand Legislation](#)).

DNA profiles are destroyed if the conviction for the triggering offence is subsequently overturned by the outcome of S106, discharged without conviction.

6. *Does NZ police share these information with other government agency or international agency like interpol etc.?*

The Policing Act 2008 Sections 95A-95F detail how personal information such as fingerprints and photographs may be lawfully disclosed to international Policing agencies, usually as part of a particular investigation. New Zealand Police only share specific individuals' information when requested by an international policing agency, ensuring they comply with New Zealand legislation.

The Mutual Assistance in Criminal Matters Act 1992, Section 31 allows for DNA profile information to be released to an international Policing agency under certain conditions. This information and the conditions governing an individual's DNA information release is given to suspects when the DNA Notice is served to them, prior to the request for their DNA sample.

7. Does NZ police take consent of person before sharing this with other agency?

Police does not inform the person or request their consent before disclosing fingerprint, photo or DNA information and act in compliance with the above stated legislation on information sharing.

If you have any further questions, please contact ministerial.services@police.govt.nz in the first instance.

Yours sincerely



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