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FREEDOM OF INFORMATION REQUEST REFERENCE NUMBER: 205/2022

Thank you for your request for information regarding PNC retention, which has now been considered.

Applicant Questions:

1. Do you have any plans to change the 100 year old retention rule in connection with data held on the Police National Computer names index?
2. I understand that police forces have the power to record convictions for recordable offences in accordance with regulation 3(1)(a) of The National Police Records (Recordable Offences) Regulations 2000, as well as fingerprints and DNA in respect of the same under section 63I of the Police and Criminal Evidence Act 1984 indefinitely in accordance with your NPCC policy.

However, I also understand that police forces interpret "conviction" to also include a finding of guilt which results in an order for conditional or absolute discharge disposal. This seems inconsistent with the definition of the effect of a conditional and absolute discharge under section 82(a)-(b) of the Sentencing Act 2020, which provides that such discharges are not convictions, except for the purposes of the proceedings in questions, or further proceedings as a result of a breach of a conditional discharge. Furthermore, such an interpretation is also inconsistent with section 65B of the Police and Criminal Evidence Act 1984, which does not expressly include a reference to a conviction which results in an order for conditional or absolute discharge.

In that regard, what allows police forces to retain conviction information and biometric material in relation to a data subject who has been conditionally or absolutely discharged for 100 years if they have not technically been convicted in accordance with the definition under section 65B of the Police and Criminal Evidence Act 1984 and section 82(a)-(b) of the Sentencing Act 2020 except for the proceedings in question or further proceedings resulting in a breach of a conditional discharge?

NPCC Response:

The NPCC does not hold recorded information captured by your questions.



Outside of the Freedom of Information Act and as a gesture of goodwill, my colleagues have provided answers to your questions below from their knowledge.

1. There is a NPCC review ongoing, which is consulting with a wide range of stakeholders including The ICO, The Home Office, MOJ, the biometrics and Children's commissioner and other key stakeholders. A report in relation to this will be published at the appropriate time.
2. In accordance with ss.79(2) and 80(2), they state that absolute and conditional discharges are available to a court where there has been a conviction:

Section 79 (absolute discharges):

(2) An order for absolute discharge is available to a court dealing with an offender for an offence where—

- (a) the offender is convicted by or before the court, and
- (b) the offence is not one in relation to which a mandatory sentence requirement applies (see section 399).

Section 80 (conditional discharges):

(2) An order for conditional discharge is available to a court dealing with an offender for an offence where—

- (a) the offender is convicted by or before the court, and
- (b) the offence is not one in relation to which a mandatory sentence requirement applies (see section 399).

Therefore, considering this (and other) legislation:

1. Absolute and conditional discharges are orders made by a court on conviction.
2. The power to record conviction data in national records is derived from s.27(4) PACE, which states 'The Secretary of State may by regulations make provision for recording in national police records convictions for such offences as are specified in the regulations'. The National Police Records (Recordable Offences) Regulations 2000 were created for this purpose and Reg 3(1)(a) stipulates that convictions may be recorded in national police records. The convictions for which absolute and conditional discharges are issued are court convictions and therefore fall within the ambit of information which can be recorded in national police records.
3. The retention of the underlying conviction is permissible under Art 10 UK GDPR (for a comprehensive register of convictions), and upheld in Chief Constable of Humberside Police and others v Information Commissioner (Secretary of State for the Home Department intervening) [2009] EWCA Civ 1079, and confirmed recently in R(QSA and Others) v NPCC and SSHD [2021] EWHC 272 (Admin).
4. The retention of the biometrics is governed by PACE (as amended by PoFA).

Yours sincerely

Fiona Greenlees

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COMPLAINT RIGHTS

Internal Review

If you are dissatisfied with the response you have been provided with, in compliance with the Freedom of Information legislation, you can lodge a complaint with NPCC to have the decision reviewed within 20 working days of the date of this response. The handling of your request will be looked at by someone independent of the original decision, and a fresh response provided.

It would be helpful, if requesting a review, for you to articulate in detail the reasons you are not satisfied with this reply.

If you would like to request a review, please write or send an email to NPCC Freedom of Information, c/o PO Box 481, Fareham, Hampshire, PO14 9FS.

If, after lodging a complaint with NPCC, you are still unhappy with the outcome, you may make an application to the Information Commissioner at the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.



Annex A

Legislation – Section 16

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.