To: All Chief Constables ACPO and Commissioners of Police for the Metropolitan and the City of London Forces.

Dear Colleagues,

Re: Retention Guidelines – Exceptional Cases

You will be aware that the existing 'Weeding Rules' for the PNC are about to be replaced with a more sophisticated set of Retention Guidelines. The work to develop these Guidelines has been completed against a backdrop of significant events such as the S & Marper case in the House of Lords; the Bichard Inquiry; and more recently the Information Tribunal Judgment.

The Retention Guidelines will incorporate your ongoing discretion to delete certain data in exceptional circumstances. There is a need for corporacy across the service to ensure that there is fairness in this process. Professional judgements will need to be made in all cases.

Although this work has been underway for some time, recent media interest is likely to focus attention in this area for the foreseeable future. The statement by the Secretary of State for Education, relating to the employment of sex offenders in schools, has ramifications for the holding and disclosure of police data.

Subject Access, and in particular Enforced Subject Access, is an issue that is likely to be extremely challenging, certainly in the short term. It is to be hoped that the Criminal Records Bureau will introduce Basic Checks at the earliest opportunity to ameliorate this situation. In the interim work is ongoing, led by A/DCC Adrian McAllister and his Records and Disclosure Portfolio Group, to address issues from the police perspective.

In addition others, including the Information Commissioner, the Home Office, and the Department for Education and Skills, will continue to have an interest in our work and are being kept closely advised.
At my request Detective Superintendent Gary Linton from the DNA and Fingerprint Retention Project team has drawn up a business process, which provides a central referral capability, together with associated template letters, to achieve the required level of consistency across forces.

Those documents are attached. I trust that you and your staff involved in this area of work will find these documents helpful and that they will provide for the corporate response referred to above.

Yours sincerely,

Ian Readhead
Deputy Chief Constable
Chairman ACPO Data Protection and Freedom of Information Portfolio
Exceptional Case Procedures for Removal DNA, Fingerprints and PNC Records

There is an increase in the number of requests being made to Chief Constables for the removal of DNA, fingerprints and PNC. This has been brought about by changes to PACE and a recent decision made in the Royal Courts of Justice by the Information Tribunal affecting the retention of criminal conviction history on PNC,

Whilst acknowledging the responsibility of Chief Officers as Data Controllers, it is important that national consistency is achieved when considering the removal of such records.

Chief Officers have the discretion to authorise the deletion of any specific data entry on the PNC 'owned' by them. They are also responsible for the authorisation of the destruction of DNA and fingerprints associated with that specific entry. It is suggested that this discretion should only be exercised in exceptional cases.

It is recognised that support may be required in making decisions regarding exceptional cases. To achieve the consistency required DCC Ian Readhead (Hampshire), ACPO Chairman of Data Protection and Freedom of Information Portfolio Group, has directed that with immediate effect the DNA and Fingerprint Retention Project (DNAFRP) will maintain a library of circumstances that have been viewed as exceptional cases. This will provide a bank of precedents to assist Chief Officers in their decision making process when considering requests to remove records. This will operate in a similar manner to the processes applied to Freedom of Information Act requests. The DNAFRP, governed by ACPO Records & Disclosure Portfolio holder, A/DCC Adrian McAllister (Lancashire), has considerable experience in the relevant areas and will be available to offer advice in relation to requests from data subjects.

Following the recent widespread media coverage relating to the retention of DNA, it is anticipated that during the next twelve months, there will be a high volume of requests.

Data protection officers and others within forces responsible for advising Chief Officers on such matters may find it useful to seek advice from the team, prior to making recommendations to their Chief Officers to delete a record deemed to be exceptional.

Under the authority of A/DCC McAllister and DCC Readhead, the Project Team will ensure that those who carry this responsibility are kept updated with relevant
policy and legislation as well as other information to assist in the process of advising their Chief Officer.

Exceptional cases will by definition be rare. They might include cases where the original arrest or sampling was found to be unlawful. Additionally, where it is established beyond doubt that no offence existed, that might, having regard to all the circumstances, be viewed as an exceptional circumstance.

For example where a dead body is found in a multi-occupancy dwelling and the cause of death is not immediately obvious. All the occupants are arrested on suspicion of murder pending the outcome of a post mortem. All arrested persons are detained at the local police station and samples taken. It later transpires that the deceased person died of natural causes. No offence therefore exists, and all persons are released from custody.

To assist in the process and to ensure a consistent approach is adopted across the whole of England and Wales, the following procedure should be adopted.

Upon receipt of a request for the deletion of a PNC data entry the force concerned should ensure that sufficient detail is obtained to correctly identify the applicant i.e. full name, maiden name where applicable, sex, date of birth, place of birth, address(es), and ethnicity.

When such a request is made, an applicant may request the deletion of his/her PNC record / DNA sample and profile / fingerprints. For the purposes of this document, a request for removal of any one item shall be construed as being a request to remove all items.

A PNC check should then be made to confirm the data entry subject of the request for deletion, and any other relevant entries. It is essential to ensure that DNA and fingerprints are matched to the appropriate Arrest Summons Number on the PNC record. Samples taken on other occasions should not be deleted.

In the first instance applicants should be sent a letter informing them that the samples and associated PNC record are lawfully held and that their request for deletion / destruction is refused, unless the applicant believes the application should be regarded as exceptional. The applicant should be invited to state the grounds upon which they believe their case to be exceptional. A template letter is attached for your assistance. (Letter A)

The Chief Officer is asked to consider any response and either reply to the applicant rejecting the application for the removal of the record(s), or refer the case papers to the DNAFRP, thus ensuring that a consistent approach is adopted nationally.
The Chief Officer will receive an informed response, based on any relevant precedents held. Having regard to this information, they can then decide whether to retain or remove the record(s), and respond directly to the applicant with notification of this decision. A template letter is attached for your assistance. (Letter B)

It is not recommended that any proactive exercise is undertaken to determine potentially exceptional cases; however the DNAFRP will be in contact with forces to establish examples of deletions which have already taken place.

If you require further information or assistance in this matter please contact the DNAFRP:

Telephone: 023 8074 4367

Email: dna_fptproject@hampshire.pnn.police.uk

Address: DNA and Fingerprint Retention Project
Kings Worthy Court
Court Road
Kings Worthy
Winchester
SO23 7QA
Letter A

Our Ref : 
Your Ref :

Tel: 
Direct Dial: 
Fax: 
Email: 

Date

Dear

Re:

I refer to your letter dated ............ in which you have requested that your DNA, fingerprints and the relevant supporting entry held on the Police National Computer (delete as applicable) be destroyed. Once lawfully obtained, it is only in exceptional circumstances that the records will be removed. Such a decision must take full account of recent legislation, which provides for the long term retention of such records.

DNA samples and fingerprints, which are retained by the police, can only be used for purposes relating to the prevention or detection of crime, the investigation of any offence or the conduct of a prosecution. Legislation does not allow the samples to be used for any other reason.

The Criminal Justice and Police Act 2001 amended the Police and Criminal Evidence Act 1984, providing the police in England and Wales with the power to retain DNA samples and fingerprints, relating to persons following acquittal at court or other discontinuance of a case.

The Criminal Justice Act 2003 amended the Police and Criminal Evidence Act 1984, providing the police in England and Wales with the additional power to take DNA samples and fingerprints, from all persons detained at a police station having been arrested for a recordable offence.

The House of Lords recently ruled that the police are not prevented from keeping DNA samples and fingerprints by the privacy provisions of Article 8 of the European Convention on Human Rights, after they have fulfilled the purposes for which they have been taken.

Based upon the facts that you have provided so far, your case is not considered to be exceptional, and on that basis your DNA, fingerprints and PNC record (delete as applicable) will be retained. If you believe that your case is exceptional, I invite you to provide me with further details, in order that I can review the specific circumstances of your case.

Yours sincerely,

Chief Constable
Letter B

Police Headquarters

Tel:
Direct Dial:
Fax:
Email:

Dear

Re:

I refer to previous correspondence between us resting with your / my letter dated .......... under reference.........

I have further considered all the facts of your case and I am of the view that you have not provided information which suggests that your case should be treated as exceptional.

Based upon these facts, my decision is that your DNA, fingerprints and PNC record (delete as applicable) will be retained.

Yours sincerely,

Chief Constable

OR

Dear

Re:

I refer to previous correspondence between us resting with your / my letter dated .......... under reference.........

I have further considered these facts and the circumstances surrounding your case and have taken the view that it is exceptional. Based on this decision your DNA, fingerprints and PNC record (delete as applicable) will be removed.

Yours sincerely,

Chief Constable
Exceptional Case Procedures for the Removal of DNA, Fingerprint and PNC Records

- **Request received for the removal of DNA / Fingerprint and/or PNC record**

  - **If insufficient detail provided,** request more information before dealing with the request

  - Confirm the identity of the applicant via PNC and check for the existence of DNA / Fingerprint relating to the relevant A/S number

    - Chief Officer responds by letter to the applicant (Letter A)

- **Applicant does not respond:**
  - No further action required

- **Applicant states the grounds on which they believe their case to be exceptional:**
  - Chief Officer considers response

    - **Disagrees**
    - **Agrees or undecided**

    - **Refer case papers to DNA & Fingerprint Retention Project to ensure consistent approach and identify any relevant precedents.**

    - **Chief Officer decides whether to remove record(s)**

    - **ACPO Records and Disclosure and Data Protection portfolio holders provide a response back to Chief Officer**

    - **DNA & Fingerprint Retention Project**
      - Kings Worthy Court
      - Court Road
      - Kings Worthy
      - Winchester
      - Hampshire SO23 70A