



ASSOCIATION OF CHIEF POLICE OFFICERS

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**Author: Amanda
Cooper**

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DNA Strategy Board**

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FOR THE ATTENTION OF:

ALL CHIEF CONSTABLES

21st January 2013

OPERATION NUTMEG REVIEW OF S.12 AND S.13 OFFENCES FROM THE 1956 ACT

I am writing to you in my capacity as Chair of the DNA Strategy Board and further to my letter dated 17th January 2013.

Recently Operation Nutmeg has received some media attention with concerns raised about it specifically targeting gay men. This issue relates to those individuals on the Operation Nutmeg list who have certain section 12 and 13 offences under the Sexual Offences Act 1956 as a sole offence. The purpose of Operation Nutmeg is to ensure individuals convicted of the most serious offences are on the National DNA Database in order to prevent and detect such crimes. There is no intention to specifically target any community.

It is important to remind all involved in Operation Nutmeg of what is stated in the guidance covering section 12 and 13 of the Sexual Offences Act 1956.

"It should be noted that under section 92 (Protection of Freedoms Act) of this Act certain convictions under s.12 and s.13 of the Sexual Offences Act 1956 will be disregarded on application to the Secretary of State. Therefore Forces should not seek to obtain a DNA sample from subjects who only have this conviction on their record."

I have written separately to Forces Operation Nutmeg SPOC.

Not all offences under s.12 and s.13 of the Sexual Offences Act 1956 involve gay men and some of the offences include non-consensual acts and those involving children. Therefore it is not possible for ACPO Criminal Records Office to remove the individuals who have s.12 and s.13 offences from the Operation Nutmeg list. This is because it would be necessary to research every individual's criminal record centrally. This research is expected to be conducted by individual forces once they have been provided with the list of Operation Nutmeg individuals living within their force area. This further highlights the need for each Operation Nutmeg individual to be dealt with on a case by case basis.

1st Floor, 10 Victoria Street, London SW1H 0NN T 020 7084 8950 F 020 7084 8951

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Having a legal power to take a sample does not necessarily mean that it may be proportionate to do so under Operation Nutmeg. As stated in the original guidance a risk assessment is strongly recommended to be undertaken by each Force in relation to every decision to sample an Operation Nutmeg individual. This risk assessment should include the Modus Operandi of the offence. This may require searching microfiche records. If this information is still not retrievable due to the age of the offence then forces are reminded to consider the proportionality requirement and perhaps seek a more senior level oversight on any sampling decision.

The Activity Process Map (Appendix F) of the Operation Nutmeg guidance shows that the risk assessment is recommended to take place before writing to any individual. Appendix K – the Nominal Research Form - allows for the recording of this risk assessment and the decision making process. This applies for the approach to sampling of ALL Operation Nutmeg subjects. Following the risk assessment the Force may come to the decision not to sample an individual.

From the media report it appears there may be a small number of s12 and s13 subjects who have been sampled. It is important to ensure that the above risk assessment process was followed in such cases. As such I would recommend that you review any such cases involving s.12 and s.13 offences of the Sexual Offences Act 1956 in order to ensure that you are satisfied with the information considered and the decisions taken. If in any instance a different outcome would be deemed appropriate e.g. not to have sampled, as Chief Constable you are able to approve the removal of the DNA profile and the destruction of the sample. Should you have any such instances I suggest your SPOC contacts Operation Nutmeg (operation.nutmeg@acro.pnn.police.uk) to facilitate this and ensure the appropriate destruction processes are followed.

Should you have any further queries in relation to Operation Nutmeg I can be contacted through my staff officer Sgt Nicole Murphy nicole.murphy@thamesvalley.pnn.police.uk

Yours faithfully,

Amanda Cooper

Chair of the DNA Strategy Board
Director of Information, Science & Technology, Thames Valley Police
Thames Valley Police Headquarters South
Oxford Road
Kidlington
Oxon
OX5 2NX