epic.org

1718 Connecticut Ave NW

Suite 200

Washington DC 20009

USA

+1 202 483 1140 [tel]

+1 202 483 1248 [fax]

www.epic.org

BY EMAIL
E-mail: foilunit@troopers.ny.gov

October 13, 2015

New York State Police
Attn: Records Access Officer
1220 Washington Avenue, Bldg 22
Albany, NY 12226-2252

To Whom It May Concern,

      This letter constitutes a request under the New York Freedom of Information Law ("FOIL") N.Y. Pub. Off. Law § 87, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the New York State Police.

      EPIC seeks documents concerning the TrueAllele Casework software.

Background

      According to a press report published last week, secret techniques are being used in the criminal justice system to determine guilt or innocence.[1] Proprietary software such as Cybergenetics' TrueAllele technology ("TrueAllele") is being used by law enforcement officials across the nation to automatically analyze and interpret DNA data, and individuals accused of crimes are being denied the ability to ascertain the accuracy of the software's results by examining its source code.

      Cybergenetics' website describes TrueAllele as follows:

> TrueAllele Casework is a computerized DNA interpretation system that objectively infers genetic profiles from all types of DNA samples. These profiles can then be automatically matched against available references or large databases, producing informative match statistics that are easy to explain and report. TrueAllele Casework is court tested and offers tools for simplified validations and training.[2]

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[1] Rebecca Wexler, *Convicted by Code*, SLATE (Oct. 6, 2015, 12:28 PM), http://www.slate.com/blogs/future_tense/2015/10/06/defendants_should_be_able_to_inspect_software_co de_used_in_forensics.html.

[2] Cybergenetics: DNA Casework, http://www.cybgen.com/systems/casework.shtml (last visited October 9, 2015).

Earlier this year, a similar program used by New Zealand prosecutors was found to have a coding error that provided incorrect likelihood ratio DNA match statistics in approximately 60 cases, including a high profile murder case.[3]

After an admissibility challenge earlier this year in Schenectady County, Schenectady Supreme Court Justice Michael Coccoma found that Cybergenetic's TrueAllele software is "generally accepted" under the *Frye* standard despite not reviewing the source code.[4] The TrueAllele results were admitted at trial and the defendant, John Wakefield, was convicted and sentenced to life in prison.[5] Secrecy of the algorithms used to determine guilt or innocence undermines faith in the criminal justice system.

Documents Requested:

1. All contracts, proposals, and technical specifications from Cybergenetics regarding the automated DNA-matching program TrueAllele;

2. All audits, assessments, and memoranda regarding the accuracy of TrueAllele; and

3. A copy of the source code and documentation for TrueAllele software.

To minimize duplication fees, EPIC requests that records be provided in electronic format.

Conclusion

Thank you for your consideration of this request. As provided in N.Y. Pub. Off. Law § 89(3)(a), I will anticipate your determination on our request within five business days. For questions regarding this request I can be contacted at 617-945-8409 or FOIA@epic.org.

Respectfully Submitted,

Caitriona Fitzgerald
EPIC State Policy Coordinator

John Tran
EPIC FOIA Counsel
Coordinator, Open Government Project

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[3] David Murray, *Queensland authorities confirm 'miscode' affects DNA evidence in criminal cases*, The Courier Mail (March 21, 2015 12:00 AM), http://www.couriermail.com.au/news/queensland/queensland-authorities-confirm-miscode-affects-dna-evidence-in-criminal-cases/story-fnn8dlfs-1227272252768.
[4] *People v. Wakefield*, 9 N.Y.S.3d 540 (Sup. Ct. 2015).
[5] Robert Gavin, *John Wakefield sentenced to life for Schenectady murder*, Albany Times Union (May 27, 2015, 8:26AM), http://www.timesunion.com/news/article/John-Wakefield-to-be-sentenced-for-murder-6288635.php.