



BY FAX AND BY EMAIL

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October 13, 2015

Joe Frolik  
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Cuyahoga County Prosecutor's Office  
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Dear Mr. Frolik,

This letter constitutes a request under Ohio's Sunshine Laws, Ohio Rev. Code. Ann. §149.43, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Cuyahoga County Prosecutor's Office.

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.<sup>1</sup> 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.

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<sup>1</sup> 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\\_code\\_used\\_in\\_forensics.html](http://www.slate.com/blogs/future_tense/2015/10/06/defendants_should_be_able_to_inspect_software_code_used_in_forensics.html).

TrueAllele Casework is court tested and offers tools for simplified validations and training.<sup>2</sup>

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.<sup>3</sup>

Last year in Cuyahoga County, defendant Maurice Shaw challenged his inability to examine the TrueAllele source code that is providing evidence against him.<sup>4</sup> Without the TrueAllele source code, Shaw's DNA forensics expert Ranajit Chakraborty stated that he cannot validate or recreate the results of the DNA test.<sup>5</sup> The defendant's motion was denied. 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 used by the Cuyahoga County Prosecutor's Office.

#### Duplication Fee Waiver

EPIC requests that documents be made available in electronic form when available. Further, EPIC requests a waiver of any duplication fees.<sup>6</sup> EPIC is an independent non-profit research center in Washington, DC working to protect privacy, freedom of expression, democratic values, and to promote the Public Voice in decisions concerning the future of the Internet. EPIC pursues a wide range of program activities including public education, litigation, and advocacy. EPIC is recognized as a "representative of the news media,"<sup>7</sup> and seeks the records for non-commercial reasons.<sup>8</sup>

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

<sup>3</sup> 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>.

<sup>4</sup> *Ohio v. Shaw*, No. CR-13-575691 (C.P. Cuyahoga County, Ohio, Oct. 10, 2014), available at <http://www.cybgen.com/information/admissibility/Shaw2014.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> See *North Cty. Parents Org. v. Dep't of Education*, 23 Cal. App. 4th 144 (1994).

<sup>7</sup> *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

<sup>8</sup> *About*, EPIC (2015), <https://epic.org/epic/about.html>.

Conclusion

Thank you for your consideration of this request. As provided in Ohio Rev. Code. Ann. §149.43(B)(1), I will anticipate your determination on our request within a reasonable period of time. For questions regarding this request I can be contacted at 617-945-8409 or FOIA@epic.org.

Respectfully Submitted,

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John Tran  
EPIC FOIA Counsel  
Coordinator, Open Government Project