



BY FAX AND BY EMAIL

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October 13, 2015

Amy Curtis
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Virginia Department of Forensic Science
700 North Fifth Street
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Dear Attorney Curtis,

This letter constitutes a request under the Virginia Freedom of Information Act, Va. Code. Ann. § 2.2-3700 et seq., and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Virginia Department of Forensic Science.

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.

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_code_used_in_forensics.html.

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TrueAllele Casework is court tested and offers tools for simplified validations and training.²

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

DNA match statistics provided by TrueAllele have been entered into evidence in numerous criminal cases in Virginia.⁴ 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 Virginia Department of Forensic Science.

To minimize duplication fees, EPIC requests that documents be made available in electronic form where available.

Conclusion

Thank you for your consideration of this request. As provided in Va. Code. Ann. § 2.2-3704(B), I will anticipate your determination on our request within five 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

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

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 Cybergenetics :: Criminal Trials, http://www.cybgen.com/news/criminal_trials.shtml (last visited Oct. 13, 2015).