



BY FAX AND BY EMAIL

Fax: 213-974-7991

E-mail: nadomian@da.lacounty.gov

October 23, 2015

Deputy District Attorney Natalie Adomian
 Special Assistant for the Bureau of Prosecution and Support Operations
 Los Angeles County District Attorney's Office
 210 W. Temple Street, Rm. 18-1103
 Los Angeles, CA 90012

Dear Deputy District Attorney Adomian,

This letter clarifies EPIC's October 13, 2015 request under the California Public Records Act, Cal. Gov. Code § 6250 et seq. to the Los Angeles County District Attorney's Office.

Procedural History

On October 13, 2015, EPIC submitted, via fax and email, a request to the Los Angeles District Attorney's Office for records related to the TrueAllele computer program.¹ In a letter dated October 22, 2015, the DA's Office responded to EPIC's request.²

Your response stated that you are unable to respond to EPIC's request without a case name or number. In *People v. Chubbs*, No. B258569 defendant Martell Chubbs challenged his inability to examine the source code of the software that was providing evidence against him, but his request was denied by the Court of Appeals of the State of California, Second Appellate District.³ Your office was the Petitioner in that case. The Court's opinion stated:

As part of trial preparation, in September 2013, the People sent the victim's vaginal slide to Cybergenetics' lab in Pittsburgh, Pennsylvania for further testing. Cybergenetics prepared a supplemental report, explaining that it had used its TrueAllele software to "infer possible DNA contributor genotypes from the samples," then compared the evidence genotypes to the reference genotypes (which

¹ Attachment A.

² Attachment B.

³ *People v. Chubbs*, No. B258569 (Cal. Ct. App. 2015), available at <https://www.courtlistener.com/opinion/2768743/people-v-chubbs-ca24/>.

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included Chubbs' and Hankins' genotypes) to compute likelihood ratio DNA match statistics.⁴

Accordingly, EPIC requests copies of the following documents in connection with case No. B258569:

1. All contracts for the license or purchase of the the automated DNA-matching program TrueAllele; and
2. Records of all performance audits or assessments of the TrueAllele program conducted .

Duplication Fee Waiver

EPIC requests a waiver of duplication fees as permitted by Cal. Gov. Code § 6253.1.⁵ 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,”⁶ and seeks the records for non-commercial reasons.⁷

Conclusion

Thank you for your consideration of this request. 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

⁴ *Id.* at 2.

⁵ *See North Cty. Parents Org. v. Dep't of Education*, 23 Cal. App. 4th 144 (1994).

⁶ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

⁷ *About*, EPIC (2015), <https://epic.org/epic/about.html>.

Attachment A:

EPIC's Public Records Request
October 13, 2015



BY FAX AND BY EMAIL

Fax: 213-974-7991

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October 13, 2015

Deputy District Attorney Natalie Adomian
Special Assistant for the Bureau of Prosecution and Support Operations
Los Angeles County District Attorney's Office
210 W. Temple Street, Rm. 18-1103
Los Angeles, CA 90012

Dear ADA Adomian,

This letter constitutes a request under the California Public Records Act, Cal. Gov. Code § 6250 et seq., and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Los Angeles County District Attorney'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.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 re-

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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port. 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

In California, defendant Martell Chubbs challenged his inability to examine the source code of the software that was providing evidence against him, but his request was denied.⁴ Secrecy of the algorithms used to determine guilt or innocence undermines faith in the criminal justice system.

Accordingly, EPIC requests copies of the following documents:

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 the Los Angeles County District Attorney uses to compute likelihood ratio DNA match statistics.

Duplication Fee Waiver

EPIC requests a waiver of duplication fees as permitted by Cal. Gov. Code § 6253.1.⁵ 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,”⁶ and seeks the records for non-commercial reasons.⁷

Conclusion

Thank you for your consideration of this request. As provided in Cal. Gov. Code § 6253(c), I will anticipate your determination on our request within ten business days. For questions regarding this request I can be contacted at 617-945-8409 or FOIA@epic.org.

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 *People v. Chubbs*, No. B258569 (Cal. Ct. App. 2015), available at <https://www.courtlistener.com/opinion/2768743/people-v-chubbs-ca24/>.

⁵ See *North Cty. Parents Org. v. Dep't of Education*, 23 Cal. App. 4th 144 (1994).

⁶ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

⁷ *About*, EPIC (2015), <https://epic.org/epic/about.html>.

Respectfully Submitted,

Caitriona Fitzgerald
EPIC State Policy Coordinator

John Tran
EPIC FOIA Counsel
Coordinator, Open Government Project

Attachment B:

DA Office's Response
October 22, 2015



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF PROSECUTION SUPPORT OPERATIONS

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
PAMELA BOOTH • Assistant District Attorney

SERGIO A. GONZALEZ • Director

VIA ELECTRONIC MAIL
fitzgerald@epic.org

October 22, 2015

Caitriona Fitzgerald
EPIC State Policy Coordinator
1718 Connecticut Avenue, NW Suite 200
Washington DC 20009

Dear Ms. Fitzgerald:

CALIFORNIA PUBLIC RECORDS ACT REQUEST

The Los Angeles County District Attorney's Office (LADA) is in receipt of your California Public Records Act (PRA) request received October 13, 2015, requesting:

- 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 the Los Angeles County District Attorney uses to compute likelihood ratio DNA match statistics.*

RESPONSE TO REQUESTS #1-3, IN GENERAL:

The LADA is unable to respond to this request without a case name or number. The LADA needs the case name and number to properly search the case file and determine what documents may exist related to this request.

RESPONSE TO REQUEST #1:

Additionally, as to request #1, the request for, "proposals and technical specifications" is vague and it is unclear what documents you are requesting. In order to respond, a PRA request must be for identifiable documents. (Gov. Code § 6253(b); *State Board of Equalization v. Superior Court* (1992) 10 Cal. App. 4th 1177, 1185. Please describe in more detail what documents you are referring to.

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Ms. Fitzgerald
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October 22, 2015

RESPONSE TO REQUEST #2:


As to request #2, the request for, "audits and assessments" is vague and it unclear what documents you are requesting. In order to respond, a PRA request must be for identifiable documents. (Gov. Code § 6253(b); *State Board of Equalization v. Superior Court* (1992) 10 Cal. App. 4th 1177, 1185. Please describe in more detail what documents you are referring to.

RESPONSE TO REQUEST #3

As to request #3, the LADA does not have, "a copy of the source code and documentation for TrueAllele software."

Very truly yours,

JACKIE LACEY
District Attorney

By 

NATALIE ADOMIAN

Deputy District Attorney

Special Assistant Bureau of Prosecution Support Operations and Administration