



BY FAX AND BY EMAIL

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October 29, 2015

Katya N. Herndon  
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Dear Deputy Director Herndon,

On October 20, 2015, Electronic Privacy Information Center (“EPIC”) received your response to its request under the Virginia Freedom of Information Act, Va. Code. Ann. § 2.2-3700 et seq.<sup>1</sup> This letter narrows our request regarding TrueAllele Casework software.

In the interest of eliminating or minimizing fees, we revise our October 13, 2015 request to request the following documents referenced in your response:

1. Contract documents between Cybergenetics and the Department of Forensic Science (“DFS”) for the purchase of the TrueAllele Casework Service;
2. The validation summary of the TrueAllele study conducted by DFS; and
3. The journal article on the validation study prepared by DFS staff.

EPIC is not requesting the voluminous supporting validation data that would require redaction.

#### 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>2</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,

<sup>1</sup> Appendix A.

<sup>2</sup> See *North Cty. Parents Org. v. Dep’t of Education*, 23 Cal. App. 4th 144 (1994).

and advocacy. EPIC is recognized as a “representative of the news media,”<sup>3</sup> and seeks the records for non-commercial reasons.<sup>4</sup> Please estimate any charges in advance and alert EPIC to any costs upfront.

### 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

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<sup>3</sup> *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

<sup>4</sup> *About*, EPIC (2015), <https://epic.org/epic/about.html>.

Appendix A:  
DFS Response  
October 20, 2015



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF FORENSIC SCIENCE

OFFICE OF THE DIRECTOR  
A Nationally Accredited Laboratory

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October 20, 2015

Caitriona Fitzgerald  
EPIC State Policy Coordinator  
1718 Connecticut Avenue, NW, Suite 200  
Washington, D.C. 20009

**RE: Freedom of Information Act Request**

Dear Ms. Fitzgerald,

On October 14, 2015, Amy Curtis, Counsel for the Department of Forensic Science (the Department or DFS), received your request pursuant to the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq.) regarding the TrueAllele Casework software.

Regarding your request number 1 for “[a]ll contracts, proposals, and technical specification from Cybergenetics regarding the automated DNA-matching program TrueAllele,” the Department has records responsive to your request, including the procurement documents (quotes, purchase orders, sole source documentation, and contract documents) for the purchase of the TrueAllele Casework Service. These documents are approximately 150 pages and would need to be photocopied for production.

Regarding your request number 2 for “[a]ll audits, assessments, and memoranda regarding the accuracy of TrueAllele,” DFS has conducted its own validation study of TrueAllele. A validation summary and a journal article on the validation study prepared by DFS staff are available and responsive to your request. There is also supporting validation data that consists of approximately 2,000 pages. This data contains confidential DNA profile information that would need to be redacted before being photocopied for production.

Regarding your request number 3 for “[a] copy of the source code and documentation for TrueAllele software,” the Department has no responsive documents.

Pursuant to Virginia Code § 2.2-3704, “[i]n any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination.” The Department estimates the response costs will meet or exceed \$1,100.00. The estimated costs include 15.0 hours in search and redaction time and 6.0 hours of production time, along with copying costs at \$.10 per page. The Department estimates that there are approximately 2,150 pages of responsive records.

*Ms. Fitzgerald*  
*October 20, 2015*  
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I know Ms. Curtis tried to reach you yesterday by telephone to discuss your request, but you were not available. Pursuant to § 2.2-3704(H) of the Code of Virginia, before continuing to process your request, the Department is requiring you to pay a deposit of \$1,000. In accordance with the provisions of FOIA, “[t]he deposit shall be credited toward the final cost of supplying the requested records.” Please contact Ms. Curtis directly at (804) 786-6848 should you wish to discuss how you would like to proceed.

Sincerely,

A handwritten signature in black ink that reads "Katya N. Herndon". The signature is written in a cursive, flowing style.

Katya N. Herndon  
Chief Deputy Director

cc: File

KNH/cms