



BY EMAIL
E-mail: openrecords@pa.gov

October 22, 2015

Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225

Re: Right to Know Appeal

Dear Appeal Officer,

This letter constitutes an appeal of your October 22, 2015 decision denying EPIC's request under the Pennsylvania Right to Know Law, 65 P.S. §67.101 et seq.

In the October 14, 2015 request, EPIC requested 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 used by the Allegheny County Crime Lab.

Your response stated that no such records exist. However, in *Commonwealth v. Foley*, Dr. Mark Perlin, founder of Cybergenetics and creator of TrueAllele, testified under oath, "The Allegheny County Crime Lab has been using our system as a service and recently purchased the system for looking at mixtures in complex cases and DNA evidence."¹

Therefore, EPIC again requests the documents listed above including any contracts between Cybergenetics and the Allegheny County Crime Lab or any other Allegheny County agency.

Duplication Fee Waiver

EPIC requests a waiver of duplication fees as permitted by 65 P.S. § 67.1307(f). EPIC is an independent non-profit research center in Washington, DC working to protect privacy,

¹ *Commonwealth v. Foley*, 38 A.3d 882, 889 (Pa. Super. Ct. 2012).

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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,”² and seeks the records for non-commercial reasons.³

Conclusion

Thank you for your consideration of this appeal. 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

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

³ *About*, EPIC (2015), <https://epic.org/epic/about.html>.



BY FAX AND BY EMAIL

Fax: (412) 350-4925

E-mail: openrecords@alleghenycounty.us

October 14, 2015

Jerry Tyskiewicz
Executive Branch Open Records Officer
436 Grant Street, Room 202
Pittsburgh PA 15219

Dear Mr. Tyskiewicz,

This letter constitutes a request under the Pennsylvania Right to Know Law, 65 P.S. §67.101 et seq., and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Allegheny County Crime Lab.

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

In Allegheny County, defendant Michael Robinson is currently challenging his inability to examine the TrueAllele source code that is providing evidence against him in a capital case.⁴ Without the TrueAllele source code, the Robinson's DNA forensics expert Ranajit Chakraborty cannot accurately review the results of the DNA test.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 used by the Allegheny County Crime Lab.

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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 Paula Reed Ward, *Court to decide defense request for secret DNA computer source code*, PITTSBURGH POST-GAZETTE (Oct. 15, 2015, 12:00 AM), <http://www.post-gazette.com/local/city/2015/10/10/Court-to-decide-defense-request-for-secret-DNA-computer-source-code/stories/201510100063>.

⁵ *Id.*

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>.

Conclusion

Thank you for your consideration of this request. As provided in 65 P.S. § 67.901, 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

COUNTY OF



ALLEGHENY

RICH FITZGERALD
COUNTY EXECUTIVE

October 22, 2015

Caitriona Fitzgerald
FOIA@epic.org

Re: RTK – Final Response

Dear Ms. Fitzgerald:

This is in response to your attached request for records under the Pennsylvania Right-to-Know Law (RTKL), which this Office received on October 14, 2015.

Your request for information is denied. No such records exist; therefore the County is not obligated to provide them. Section 705 of the Right-to-Know Law states “When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.”

Any party denied access to a record may file an appeal with the Office of Open Records within 15 days of the mailing date of the agency response:

Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225

Sincerely,

A handwritten signature in black ink that reads "Jerry Tyskiewicz".

Jerry Tyskiewicz, Director
County of Allegheny Open Records Officer



BY FAX AND BY EMAIL
 Fax: (412) 350-4925
 E-mail: openrecords@alleghenycounty.us

October 14, 2015

Jerry Tyskiewicz
 Executive Branch Open Records Officer
 436 Grant Street, Room 202
 Pittsburgh PA 15219

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⁴ Paula Reed Ward, *Court to decide defense request for secret DNA computer source code*, PITTSBURGH POST-GAZETTE (Oct. 15, 2015, 12:00 AM), <http://www.post-gazette.com/local/city/2015/10/10/Court-to-decide-defense-request-for-secret-DNA-computer-source-code/stories/201510100063>.

⁵ *Id.*

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