

VIA EMAIL

May 14, 2020

Dirk Wilke
Human Resources Director
North Dakota Department of Health
600 East Boulevard Ave
Bismarck, ND 58505-0200
Email: health@nd.gov

Dear Mr. Wilke:

This letter constitutes a government records request under North Dakota's open record law, N.D.C.C. § 44-04-18 et seq., and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the North Dakota Department of Health.

EPIC seeks records relating to the launch of Care19, a COVID-19 contact tracing mobile application.¹

Documents Requested

1. The contract between North Dakota and ProudCrowd for the development of Care19, a contact tracing mobile app;²
2. All technical specifications, statements of work, privacy policy of the Care19 app;
3. Any memoranda describing the Care19 app used in conjunction with North Dakota government databases and/or public health systems; and
4. All audits or independent privacy reviews of the Care19 app.

Background

In response to the COVID-19 pandemic, North Dakota has partnered with ProudCrowd to create Care19, a mobile contact tracing app released as part of the state's response to the novel coronavirus.³ The state claims that Care19 "will become a hub of information for key information in the state" that includes infection statistics, symptom checker, and test site locator.⁴ The initial version of the app collects data for the ND Department of Health and allows contact tracing teams to identify individuals who may have come into contact with someone who tested positive for COVID-

¹ Press Release, North Dakota Dep't of Health, North Dakota Launches Care19 App to Combat COVID-19 (Apr. 7, 2020), <https://www.health.nd.gov/news/north-dakota-launches-care19-app-combat-covid-19>.

² *Id.*

³ *Care19*, North Dakota Response, <https://ndresponse.gov/covid-19-resources/care19>.

⁴ *Id.*

19 by reviewing the COVID-19 positive individual's previous locations.⁵ The Care19 app collects "GPS location data," WiFi data, and cell phone tower data to locate and track individuals' movements over time.⁶ The ND Department of Health claims that the data collected will be "anonymous" and that the data is aggregated.⁷ But the state has not provided any evidence that it can anonymize precise geolocation data; studies have shown that geolocation data is uniquely identifying. Once an individual tests positive and provides permission for the state to access the data, the ND Department of Health will have full access to the individual's location history.⁸

The Care19 app tracks a user's location history even when they are out of state.⁹ But users have already reported issues with the app, particularly with the accuracy of the location tracking.¹⁰

In addition to the app's use of GPS location data, the state claims that Care19 "will incorporate the joint Bluetooth proximity tracking technology that Apple/Google announced to be released mid-May."¹¹ But this would likely require changes to the Care19 app; Google and Apple have stated that they will not allow apps that collect GPS data to use the Apple-Google Bluetooth API.¹² The state has not announced plans to change their app or explained how they intend to get user approval for these changes.

Request for "News Media" Status, Waiver of Fees, and Expedited Response

EPIC is a "representative of the news media" for fee classification purposes. *EPIC v. DOD*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on EPIC's status as a "news media" requester, EPIC requests a waiver of all fees associated with the processing of its request because releasing the requested records will primarily benefit the public rather than the requester.

EPIC is an independent non-profit research center in Washington, D.C., working to protect privacy, open government, and civil liberties. EPIC pursues a wide range of program activities including public education, litigation, and advocacy. EPIC is recognized as a "representative of the news media"¹³ and has no commercial interest in the records requested.¹⁴

The release of this information would be beneficial to the public in understanding exactly how the Carw19 contact tracing app works in conjunction with the North Dakota Department of

⁵ *COVID-19 FAQs*, North Dakota Response, https://ndresponse.gov/covid-19-resources/covid-19-faqs?field_faq_category_target_id=47.

⁶ *Care19*, Apple Store Preview, <https://apps.apple.com/us/app/care19/id1506077328?mt=8>; Elliot Setzer, *Contact-Tracing Apps in the United States*, Lawfare (May 6, 2020), <https://www.lawfareblog.com/contact-tracing-apps-united-states>.

⁷ *COVID-19 FAQs*, *supra* note 5.

⁸ *Id.*

⁹ *Id.*

¹⁰ Jack Morse, *North Dakota Launched a Contact Tracing App. It's Not Going Well.*, Mashable (May 7, 2020), <https://mashable.com/article/north-dakota-contact-tracing-app/>.

¹¹ *Care19*, *supra* note 3.

¹² Stephen Nellis & Paresh Dave, *Apple, Google Ban Use of Location Tracking in Contact Tracing Apps*, Reuters (May 4, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-apps-idUSKBN22G28W>.

¹³ *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

¹⁴ EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

Health. The urgency to inform the public about the use of Utah's utilization of the Healthy Together app to address the public health crisis is clear given the extensive press coverage and privacy implications of collecting location data to limit the spread of the coronavirus. Little information has been released about whether the North Dakota Department of Health has conducted any privacy assessments or independent audits of the app and where the data collected from the app is stored. EPIC's request specifically seeks such information.

For these reasons, EPIC requests a waiver of any fees connected with this request. However, if EPIC's request cannot be sent without cost, then prior to fulfillment of the request, please notify EPIC with the reasons for the denial of the waiver and estimated costs involved.

Conclusion

Thank you for your consideration of this request. EPIC expects a response within a reasonable time and should there be a delay, expects a reason for delay and status of the records request. N.D.A.G. 98-O-02. For questions regarding this request please contact Enid Zhou at zhou@epic.org, 'cc FOIA@epic.org.

Respectfully submitted,

/s/ Enid Zhou

Enid Zhou

EPIC Open Government Counsel