

State of California  Department of Justice
OFFICE of the ATTORNEY GENERAL
KAMALA D. HARRIS

ONLINE REQUEST FORM

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Your Information

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Record Requested

Please provide as much detailed information as possible regarding the records you seek (e.g., date, case name, case number, document description, etc.)

Record Description

1. All internal documentation relating to the CalDOJ's decision whether to purchase and/or implement probabilistic genotyping software, including but not limited to TrueAllele and STRmix;
2. All evaluation report materials relating to the CalDOJ's decision whether to purchase and/or implement probabilistic genotyping software, including but not limited to TrueAllele and STRmix;
3. All validation studies on probabilistic genotyping software, including but not limited to TrueAllele and STRmix, conducted by the CalDOJ; and
4. A copy of the source code and documentation for TrueAllele and/or STRmix software.

Comments

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 California Department of Justice.

EPIC seeks documents concerning probabilistic genotyping software, including but not limited to TrueAllele and STRmix.

Background

According to a recent press report, secret techniques are being used in the criminal justice system to determine guilt or innocence. See 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. 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. TrueAllele Casework is court tested and offers tools for simplified validations and training. Cybergenetics: DNA Casework, <http://www.cybgen.com/systems/casework.shtml> (last visited October 9, 2015)

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. 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>.

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. *People v. Chubbs*, No. B258569 (Cal. Ct. App. 2015). Secrecy of the algorithms used to determine guilt or innocence undermines faith in the criminal justice system.

It is our understanding the the California Department of Justice ("CalDOJ") evaluated TrueAllele at one of more of its training labs, but chose not to implement it for use in casework. Accordingly, EPIC requests copies of the above mentioned documents.

Duplication Fee Waiver

EPIC requests a waiver of duplication fees as permitted by Cal. Gov. Code § 6253.1. See *North Cty. Parents Org. v. Dep't of Education*, 23 Cal. App. 4th 144 (1994). 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," and seeks the records for non-commercial reasons. *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003); *About, EPIC* (2015), <https://epic.org/epic/about.html>.

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.

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