

COUNTY OF ALLEGHENY



RICH FITZGERALD
COUNTY EXECUTIVE

DEPARTMENT OF LAW

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November 5, 2015

VIA E-Mail: jiwolfe@pa.gov

Jill S. Wolfe, Esquire
Appeals Officer
Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

VIA E-Mail: fitzgerald@epic.org

Caitriona Fitzgerald
John Tran
Electronic Privacy Information Center
1718 Connecticut Avenue NW
Suite 200
Washington, DC 20009

RE: *Caitriona Fitzgerald vs. Allegheny County*
Docket No.: AP 2015-2380

Dear Attorney Wolfe and Ms. Fitzgerald:

Enclosed please find a Statement of Information and Legal Argument with respect to the above-referenced matter. Please feel free to contact me with any questions or if you need additional information.

Very truly yours,

RACHEL M. CIPOLAT

Attachment/Enclosure

cc: Jerry Tyskiewicz, Director, County of Allegheny Open Records Officer (via e-mail)

IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS

IN THE MATTER OF:

CAITRIONA FITZGERALD,
Complainant,

vs.

Docket No.: AP 2015-2380

ALLEGHENY COUNTY,
Respondent.

STATEMENT OF INFORMATION AND LEGAL ARGUMENT

AND NOW comes the Respondent, Allegheny County (“County”), by and through its undersigned attorneys, and files this Statement of Information and Legal Argument in compliance with Pennsylvania Office of Open Records’ Official Notice of Appeal dated October 27, 2015, setting forth the following:

I. FACTUAL BACKGROUND

On October 14, 2015, the Allegheny County Office of Open Records (“Office”)¹ received an email from Ms. Caitriona Fitzgerald with the following Right-to-Know Law (“RTKL”) request:

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.”²

On October 22, 2015, the Office denied Ms. Fitzgerald’s RTKL request, citing Section 705 of the RTKL, on the basis that no such records exist.³ 65 P.S. §67.705. On October 22, 2015, Ms. Fitzgerald submitted a “Right to Know Law Appeal” (“Appeal”) to the Pennsylvania Office of Open Records (“OOR”), which was received by them on October 27, 2015.⁴

¹ Allegheny County’s Department of Administrative Services acts as the County’s Right to Know Office and the Director of the Department, Jerry Tyskiewicz, is the County’s RTK Officer.

² A copy of the RTKL request is attached hereto as Exhibit “A.”

³ A copy of the final response to the RTKL request is attached hereto as Exhibit “B.”

⁴ A copy of the RTKL appeal is attached hereto as Exhibit “C.”

II. LEGAL EXPLANATION OF THE COUNTY'S DENIAL

As previously stated, Ms. Fitzgerald requested the following:

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."⁵

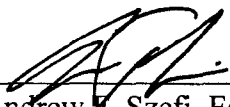
The County issued a denial of this request, citing Section 705 of the RTKL, on the basis that no such records existed due to an internal miscommunication within the Allegheny County Office of the Medical Examiner ("ME's Office") regarding the scope of this request.⁶ Only after the filing of the Appeal was the miscommunication within the ME's Office resolved. Now that the ME's Office is fully aware of the scope of this request, it has identified responsive documents. As a result, the County will grant the request in part and deny the request in part.⁷

Item #1 of the request is granted and the responsive documents are attached. Item #2 of the request is denied because no such record exists. 65 P.S. §67.705. The portion of item #3 seeking documentation of the software program is granted and the responsive documents are attached. The portion of item #3 seeking the source code for the software program is denied because no such record exists. 65 P.S. §67.705.

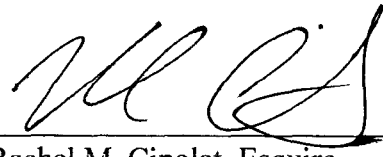
III. CONCLUSION

For the reasons set forth above, the Appeal is moot because the County will grant the request.

Respectfully submitted:



Andrew F. Szefi, Esquire
County Solicitor
Pa. I.D. No. 83747



Rachel M. Cipolat, Esquire
Assistant County Solicitor
Pa. I.D. No. 308925

⁵ See attached Exhibit "A."

⁶ See affidavit from Robert Huston, Director of the Allegheny County Office of the Medical Examiner Forensic Science Branch attached hereto as Exhibit "D."

⁷ See responsive documents attached hereto as Exhibit "E." Due to the voluminous nature of these documents and the possible issues with e-mail inbox size limits, these responsive documents are being provided in hard copy format via US Mail only.

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