

Lindsey Barrett
California Public Records Request

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 (“CalDOJ”).

Background

Probabilistic DNA matching software is being used to extrapolate the probability of a match to mixed samples, previously a near-impossible task. Logan Koepke, Should Secret Code Help Convict? <https://www.equalfuture.us/2016/03/24/should-secret-code-help-convict/> (March 24, 2016). While the capability of such software could enable remarkable advances in forensic science, flaws in the technology make unthinking adoption a poor choice. But the widely-used method it replaces, Combined Probability of Inclusion, is itself far from perfect—and as the TrueAllele and STRMix validation studies EPIC has previously received from CalDOJ indicate, it is not an effective tool in measuring mixed samples in particular. STRmix V2.0.6 BFS Casework Internal Validation Summaries, at 10.

Courts have further refused to allow defendants to inspect the source code of the software being used to create the evidence being used against them, in California, as well as in other states. *People v. Chubbs*, No. B258569 (Cal. Ct. App. 2015). The inability of defendants to inspect the source code is antithetical to an open and transparent adversarial justice system, and implicates the Sixth Amendment right of a defendant to confront witnesses against him. U.S. Const. amend. VI. In order to confront a witness, a defendant must be able to understand how the analysis of the evidence used against him is conducted. This includes whether the technology is outdated; if the new technology is significantly flawed; and in either event, the methodology of the technology, such that those shortcomings are apparent.

EPIC requests a waiver of duplication fees as permitted by Cal. Gov. Code § 6253.1. *North Cty. Parents Org. v. Dep’t of Education*, 23 Cal. App. 4th 144 (1994). EPIC is an independent, non-profit research and advocacy organization located in Washington, DC, working to protect privacy, individual autonomy, and open government, including algorithmic transparency in governmental processes. EPIC is an organization “primarily engaged in disseminating information.” *American Civil Liberties Union v. Department of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.C. Cir. 2004); About, EPIC (2015), <https://epic.org/epic/about.html>.

There is an urgency to inform the public about the technology being used to evaluate evidence in a criminal case, whether that technology is new and untested, or outdated and ineffective.

I. DOCUMENTS REQUESTED

The CalDOJ should be in possession of a variety of documents related to MixMaster. EPIC requests:

(1) Any California DNA Casework Technical Procedures Manual referencing MixMaster, particularly but not limited to the manual from 2015, and the manual from 2016, and including any guidance indicating the particular variables used, and the settings for those variables, such as (but not limited to) the peak height ratio (PHr), minimum peak height (mPH), minimum proportion (mP), homozygote threshold (HT), stutter percentage, stochastic effects, allele overlap, the probability of allele drop-out or drop-in, and any other mixture interpretation settings;

(2) All evaluation report materials relating to the CalDOJ's decision whether to purchase, implement, or create a deconvolution method using Excel, including but not limited to MixMaster;

(3) All validation studies on MixMaster conducted by the CalDOJ;

(4) A copy of the Excel file used for MixMaster, including macros;

(5) All technical specifications, contracts, and statements of work for MixMaster purchases and acquisitions by the CalDOJ;

(6) All policies and procedures for the collection, storage, analysis, use, sharing, retention, and/or deletion of data used in conjunction with MixMaster.