

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT**

SUFFOLK, SS

SUPERIOR COURT  
DOCKET NO. \_\_\_\_\_

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AMERICAN CIVIL LIBERTIES UNION OF )  
MASSACHUSETTS, INC., )  
  
Plaintiff )  
  
v. )  
  
OFFICE OF THE DISTRICT ATTORNEY )  
FOR THE BRISTOL DISTRICT )  
  
Defendant )

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**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

1. Plaintiff American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”) files this action for declaratory and injunctive relief requiring Defendant Bristol District Attorney’s Office (“BDAO” or “Bristol”) to release all records responsive to ACLUM’s May 23, 2023, public records request regarding the agency’s collection, storage, and use of individual’s DNA information.

2. In or around September 2019, the BDAO, in collaboration with at least five other district attorney offices (“DAOs”), began a well-publicized campaign to obtain certain DNA data that had been generated, aggregated, and stored by the Massachusetts State Police Crime Laboratory (“MSPCL”). The DAOs sought this DNA data for the explicit purpose of creating a local DNA database. *See Robin Cotton et al., Report on the Bristol County District Attorney’s*

*Office DNA Database*, Forensic Sciences Oversight Board 7-8, 23-25 (Oct. 22, 2021) [hereafter “FSOB Report”].<sup>1</sup>

3. Through written requests to the MSPCL and a grand jury subpoena, the BDAO obtained from the MSPCL certain DNA information developed from, *inter alia*, suspects in specific criminal investigations and criminal offenders charged with certain crimes who are required by statute to submit their DNA to the state database under G.L. c. 22E, § 3.<sup>2</sup> *Id.* at 43- 44. However, the information sought was not limited to convicted offenders or suspects in criminal investigations; the BDAO also obtained DNA information developed from victims of crimes as well as their family members and consensual sexual partners who may have submitted their DNA for the sole purpose of being excluded as a suspect in the relevant criminal matter. *Id.* at 44.

4. Upon information and belief, the BDAO created a local database, or spreadsheet, to store this collected DNA information,<sup>3</sup> which includes DNA data developed from samples relating to crimes that occurred outside of Bristol County. *See* Exhibit 4.

5. The Massachusetts Forensic Sciences Oversight Board (“FSOB”)—which has oversight and investigative authority over all facilities engaged in forensic services pursuant to

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<sup>1</sup> Available at <https://www.mass.gov/doc/forensic-science-oversight-boards-investigation-of-the-bristol-county-district-attorneys-office-dna-database-subsection-d-report-october-2021/download> (last accessed Jan. 8, 2024).

<sup>2</sup> “Any person who is convicted of an offense that is punishable by imprisonment in the state prison and any person adjudicated a youthful offender by reason of an offense that would be punishable by imprisonment in the state prison if committed by an adult shall submit a DNA sample to the department or the commissioner of probation as a condition of probation forthwith upon conviction or, if sentenced to a term of imprisonment, the DNA sample shall be collected within 10 days of intake or return to the correctional facility to which the inmate has been sentenced. No person required to submit a DNA sample pursuant to this section shall be released from a correctional facility until a DNA sample has been collected.” G.L. c. 22E, § 3.

<sup>3</sup> *See* Karen Anderson and Keith Rothstein, State, DA in dispute over cutting-edge DNA database, WCVB-5 (Feb. 19, 2021), available at <https://www.wcvb.com/article/massachusetts-state-da-dispute-over-cutting-edge-dna-database/35568421> (last accessed Jan. 8, 2024).

G.L. c. 6, § 184A—initiated an investigation into the BDAO’s local DNA database and requested information from the BDAO regarding the same. FSOB Report at 4. The BDAO “declined to respond in writing to any of the FSOB’s inquiries, and elected not to attend any of the public meetings at which the Bristol Forensic DNA Database was discussed.” *Id.* at 1, 5.

6. As a result, the public has little, if any, knowledge about the scope, security, or use of the DNA information that the BDAO collected and stored.

7. On May 23, 2023, ACLUM filed a public records request with the BDAO seeking records about its local DNA database. Exhibit 1. The BDAO responded to ACLUM’s request on June 7, 2023. Exhibit 2. In its response, the BDAO revealed that it has no protocols regulating access to its local DNA database, that it keeps no records of the names and positions of individuals with access to the database nor logs documenting their access, that it has no records of training for individuals with access to the database, and that it has no specific protocols regarding the use, dissemination, destruction, or removal of DNA data from the database. *Id.*

8. In response to ACLUM’s request for any agreements with third parties, the BDAO provided a single Memorandum of Understanding (“MOU”) that grants access to the database to a third-party. *Id.* However, that MOU was produced in a highly redacted format that failed to provide even the bare minimum of information such as with whom the MOU was entered into and the terms of use for the information in the database. *Id.*

9. The BDAO further refused to provide records responsive to ACLUM’s request for a redacted copy of the database showing what categories of information Bristol maintains about the DNA data by asserting numerous exemptions, including the state DNA database statute, grand jury secrecy, and the statutory protections for privacy and law enforcement investigation techniques. *Id.*

10. Although ACLUM provided an explanation to the BDAO as to why ACLUM believed the cited exemptions were inapplicable and the MOU redactions inappropriate, the BDAO refused to provide any additional records. Exhibits 3, 4.

11. What has become abundantly clear through separate public records requests to other DAOs is that the BDAO did not comply with its obligations under the Public Records Law. Through those other requests, ACLUM was able to obtain unredacted MOUs between the BDAO and the Offices of the District Attorneys for the Plymouth District and the Northwestern District. *See* Exhibits 5. Based on that information, ACLUM confirmed that the BDAO withheld records that it was required to produce under the Public Records Law and may have incorrectly redacted the MOU it did produce. For example, the BDAO did not disclose in response to ACLUM's public records request the existence of at least one additional MOU into which it entered.

12. ACLUM now files this action to seek a declaration that the requested records are public within the meaning of the Public Records Law and that the BDAO failed to search for and produce all MOUs or other agreements granting third parties access to its local DNA database in violation of the Public Records Law. In addition, ACLUM seeks an order instructing the BDAO to comply with its obligations to search for and produce all records responsive to ACLUM's request.

13. The public has a right to know whether personal and sensitive DNA data, including DNA information submitted voluntarily for the limited purpose of excluding an individual as a suspect in a particular matter, is being stored in an unregulated and unsecure local county database for criminal investigation purposes in violation of Massachusetts law.

## **PARTIES**

14. Plaintiff American Civil Liberties Union of Massachusetts, Inc. is a non-profit membership organization with its principal place of business in Boston. It is dedicated to the protection of civil rights and civil liberties, including the right to privacy and constitutional search and seizure protections.

15. Defendant Bristol District Attorney's Office is a state agency subject to suit, including under the Public Records Law. It is a keeper of the records ACLUM seeks.

## **JURISDICTION AND VENUE**

16. Jurisdiction and venue are proper pursuant to G.L. c. 66, § 10A(c), G.L. c. 212, § 4, G.L. c. 214, § 1, G.L. c. 231A, § 1, and G.L. c. 249, § 4.

## **FACTUAL BACKGROUND**

17. Deoxyribonucleic acid, or DNA, contains an individual's unique genetic code and is "highly sensitive" information. *See Amato v. Dist. Att'y for Cape & Islands Dist.*, 80 Mass. App. Ct. 230, 240 (2011). An individual's DNA reveals a panoply of intimate, sensitive, and private information about the individual. To search, or access, an individual's DNA is to take an intimate look at the most fundamental information of their identity, both for that individual and for their past, existing, and future relatives. STR (or short tandem repeat) DNA testing, which looks at discrete sequences of nucleotides, is the general method for analyzing DNA for criminal investigation purposes. *Cf. Maryland v. King*, 569 U.S. 435, 443 (2013) (explaining that forensic analysts focus on STR testing "to ensure that a DNA profile matches only one individual").

18. Y-STR (or Y-chromosome short tandem repeat) DNA testing looks at genetic information from the male (Y) chromosome and can be utilized to reveal a person's patrilineal ancestry and relations "because every family member of a paternal lineage shares the same Y-STR

profile, absent mutations.”<sup>4</sup> In that sense, it is different from other STR DNA testing, which looks at information specific to the individual. It implicates the privacy of a much larger group of people beyond that of the tested individual.

19. Courts have routinely recognized that “[c]itizens have a reasonable expectation of privacy” in their DNA information. *Amato v. Dist. Att’y for Cape & Islands Dist.*, 80 Mass. App. Ct. 230, 240 (2011). As the U.S. Supreme Court stated when holding that a buccal (or cheek) swab to collect DNA is a search for purposes of the Fourth Amendment, “[a]n individual's identity is more than just his name or Social Security number,” and includes their DNA and attendant analysis. *King*, 569 U.S. at 450-51. “It uses a different form of identification than a name or fingerprint, but its function is the same.” *Id.* at 452.

20. The Massachusetts Appeals Court, assuming without deciding that DNA information constituted “personal data,” further held that a state entity’s unreasonable maintenance of DNA information, even where lawfully obtained, may violate the Fair Information Practices Act, G.L. c. 66A, § 2(l). *Id.* at 238.

### ***I. The State DNA Database Act – G.L. c. 22E***

21. The Massachusetts Legislature enacted a statutory scheme for the maintenance of DNA data by the Commonwealth, and it requires that DNA data obtained in connection with criminal investigations and crimes be organized and maintained by the MSPCL. *See* G.L. c. 22E.

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<sup>4</sup> *See* Hon. Nancy Gertner et al., “Report on S.2480, ‘An Act Permitting Familial Searching and Partial DNA Matches in Investigating Certain Unsolved Crimes’ and Related Recommendations Pertaining to G.L. c.22E Governing the Massachusetts Statewide DNA Database,” FSOB Working Group on Familial DNA Searching 10 (March 24, 2021), available at <https://www.mass.gov/doc/forensic-science-oversight-board-familial-dna-searching-report-march-24-2021/download> (last accessed Jan. 9, 2024).

22. In creating the state DNA database, the Legislature sought to balance individual privacy interests against the need “to assist local, state and federal criminal justice and law enforcement agencies in: (1) deterring and discovering crimes and recidivistic criminal activity; (2) identifying individuals for, and excluding individuals from, criminal investigation or prosecution; and (3) searching for missing persons.” *See Landry v. Attorney General*, 429 Mass. 336, 338 (1999). It created specific procedures for the collection, maintenance, security, and expungement of DNA information within the Commonwealth, G.L. c 22E, §§ 1-15, and charged the Executive with creating detailed regulations for enforcement of the law, which it did by promulgating 801 CMR 3.00 and 515 CMR 2.00.

23. In *Landry*, the Supreme Judicial Court (“SJC”) upheld this statutory and regulatory scheme against a challenge that the requirement for certain criminal offenders to submit their DNA to the Commonwealth constituted an unreasonable search or seizure under the Fourth Amendment to the U.S. Constitution and article 14 of the Massachusetts Declaration of Rights. *Id.* at 354.

24. While the SJC stated that *individuals convicted of crimes* have a diminished expectation of privacy where the Commonwealth collects their DNA for identification purposes, it recognized that the Commonwealth’s authority to collect and store DNA data was not without limits. *Landry*. 429 Mass. at 346-47.

25. The SJC emphasized that “[t]he DNA analysis that the Act allows to be performed . . . , and the limited distribution of the information, should eliminate fears about wrongful privacy disclosures that might otherwise arise.” *Landry*, 429 Mass. at 352-53. It explicitly relied on the limited personal information that can be derived from the STR testing process and the restricted purpose for which a blood sample obtained under the Act may be tested. *Id.* at 353.

26. The SJC further encouraged the director of the MSPCL to consider strengthening regulations regarding what type of DNA testing may be performed and stored. *Id.* at 354 n.20. “[T]he indefinite storage of the entire DNA sample . . . creates some concern that the samples could be misused at some point in the future to search for and disclose private genetic information.” *Id.*

## ***II. Bristol’s Requests for DNA Data from the State Database***

27. In September 2019, the BDAO sent a written request to the MSPCL for all Y-STR data, in aggregate form, from all counties in the Commonwealth. Specifically, Bristol requested “any/all investigative cases/DNA reports that produced a Y-STR profile in the possession of the Massachusetts State Crime Lab” and “all Y-STR results tables include sample description, case numbers, item numbers and Y-STR results in data form . . . .”

28. Pursuant to this request, the MSPCL provided the BDAO with all Y-STR reports without redactions originating from the BDAO’s cases and requests only. The provided data included full DNA reports, which may include proper names, gender, Y-STR profiles, and STR profiles, developed from suspects, victims, as well as profiles voluntarily submitted by individuals for purposes of being excluded as suspects, *e.g.*, family members and consensual sexual partners of a victim, although the exact relationship of an individual to a case is not always known.

29. In releasing the data, the MSPCL communicated significant concerns to the BDAO regarding the BDAO’s use and maintenance of sensitive individual DNA information. The lab was concerned “about the operation of a DNA database by non-forensic scientists that is not regulated, release of data from other counties without expressed permission, and safeguards that would be employed to protect data and any information resulting from any potential forensic links resulting from that data.” FSOB Report at 43.



30. The MSPCL did not provide the BDAO with any Y-STR profiles developed from crimes which occurred outside of Bristol County in response to the 2019 written request.

31. Beginning August 2020, the district attorneys for the Cape and Islands, Essex, Plymouth, Worcester, and Northwestern districts wrote to the MSPCL and/or the FSOB to request the release of Y-STR data originating from their counties to the BDAO, with the intent of building a single spreadsheet to house and compare Y-STR data. *Id.* at 23-25, 44. The Crime Lab reported that it did not release data in response to these requests. *Id.* at 44.

32. In January 2021, the BDAO issued a grand jury subpoena to the MSPCL.

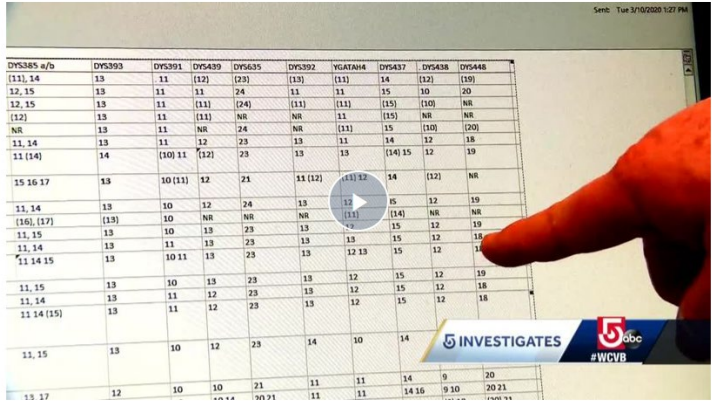
33. Upon information and belief, the BDAO sought DNA data related to crimes which occurred outside of Bristol County through the grand jury subpoena. *See* Exhibit 4.

34. Represented by the Office of the Massachusetts Attorney General, the MSPCL moved to quash the subpoena. ACLUM, with the Massachusetts Association of Criminal Defense Lawyers, wrote a letter in support of that motion laying out legal concerns. The motion was denied, and the MSPCL began producing the requested data to the BDAO.

35. No information is publicly known about the scope and nature of the DNA information that was released to the BDAO by the MSPCL.

36. Upon information and belief, the BDAO built a local DNA database, or spreadsheet, using the DNA information that it received from the MSPCL.

37. In or around February 2021, the BDAO discussed its DNA database with at least one news outlet and allowed the news outlet to film the contents of the database. Below is a screen capture of news footage of the Bristol local DNA database, Anderson, *supra.*:



38. In April 2021, the FSOB opened an investigation into the BDAO local DNA database. FSOB Report at 3. The BDAO declined to answer any of the FSOB’s written questions regarding the local database, and it did not attend the FSOB’s public meetings discussing the same.

39. To date, the BDAO has not released information to the public about the scope of the DNA information obtained and subsequently stored within the BDAO local DNA database, for what purpose the DNA information is being used, and who has access to this stored DNA information.

40. No information is publicly known about whether the individuals whose DNA was compelled from the MSPCL and provided to the BDAO, including victims and individuals who consented to testing for the limited purposes of being excluded as suspects in a criminal investigation, were informed as to the BDAO’s storage of their DNA information or whether those individuals consented to that storage.

**III. ACLUM’s May Public Records Request**

41. On May 23, 2023, ACLUM filed a public records request with the BDAO seeking records related to its DNA database (the “Request”). A true and correct copy of the Request is attached as Exhibit 1. The Request sought, *inter alia*, a redacted copy of the database showing the categories of information stored about each entry; all notification procedures for individuals whose

DNA profiles are included in the database; all records regulating access to the database, including MOUs with any third party; and all records concerning the destruction, removal, use, or dissemination of record(s) stored in the database.

42. On June 7, 2023, the BDAO responded to the Request (the “June Response”). A true and correct copy of the June Response is attached as Exhibit 2. In the response, the BDAO refused to produce any portion of the database, citing a number of purported exemptions, and otherwise denied having any notification procedures, protocols regulating access, or policies specific to the destruction, removal, use, or dissemination of the DNA record(s) stored in its local DNA database. *Id.*

43. ACLUM replied by letter dated November 2, 2023 (the “November Letter”). A true and correct copy of the November Letter is attached as Exhibit 3. In the November Letter, ACLUM renewed its public records request and addressed why the stated exemptions raised in the June Response were inapplicable and/or did not preclude the complete withholding of information from the public under the law.

44. The BDAO responded to the November Letter on November 16, 2023, and reiterated the arguments made in the June Response (the “November Response”). A true and correct copy of the November Response is attached as Exhibit 4.

#### ***IV. Bristol’s Violation of the Public Records Law***

45. The BDAO’s denial of ACLUM’s request for a redacted copy of the local DNA database and its failure to search for and produce all MOUs or other agreements granting third parties access to its local DNA database violated the Public Records Law.

*a. ACLUM's Request for Redacted Copy of the BDAO local DNA database*

46. ACLUM requested a “redacted copy of database(s) concerning DNA samples, reports, or profiles, including Y-STR data. This request seeks without limitation a capture (or captures) showing what categories of information are stored.” Exhibit 1.

47. The BDAO denied this request by erroneously citing a number of exemptions to the Public Records Law, and it refused to produce any responsive records. *See* Exhibits 2, 4. Specifically, it made reference to: (1) the State DNA Database Act, or G.L. c. 22E, § 10(a); (2) the Criminal Offender Record Information (CORI) Act, G.L. c. 6, §§ 167, et al.; (3) statutory invasion of privacy, or G.L. c. 214, § 1B<sup>5</sup>; (4) Exemption (c), or G.L. c. 4, § 7 twenty-sixth(c); (5) Exemption (f), or G.L. c. 4, § 7 twenty-sixth(f); and (6) grand jury secrecy citing Mass. R. Crim. P. 5(d). *Id.*

48. None of the exemptions raised by the BDAO are applicable.

49. For example, the BDAO claimed that the State DNA Database Act exempts “Y-STR records developed from samples collected from victims’ persons and from crime scenes relating to crimes that occurred within Bristol County.” Exhibit 2. However, the Act reads, “All *DNA records* collected pursuant to this chapter shall be confidential and shall not be disclosed to any person or agency unless such disclosure shall be authorized by this chapter.” G.L. c. 22E, § 9 (emphasis added). It defines “DNA record” as the “DNA information that is *derived from* a DNA sample and DNA analysis and is *stored in the state DNA database or in CODIS*, including all records pertaining to DNA analysis.” *Id.* at § 1 (emphasis added). The records ACLUM seeks are not “DNA records” under the statute. The Request did not seek any information derived from a

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<sup>5</sup> The cited statutes (nos. 1-3 above) are applicable under the Public Records Law through Exemption (a), which exempts records that are “specifically or by necessary implication exempted from disclosure by statute.” G.L. c. 4, § 7 twenty-sixth(a).

DNA sample or analysis; it sought information about what general categories of information the BDAO stores about the samples as well as information about how and from what category of persons each sample was developed. This information cannot be said to have derived from the DNA sample or analysis.

50. The Supervisor of Public Records required the MSPCL to disclose information similar to that which ACLUM requested about records held in the state DNA database. *See* Exhibit 3, Determination of the Supervisor of Public Records, SPR20/2032 (Nov. 4, 2020). The Supervisor determined that where a requestor sought only information related to the DNA database rather than private information derived from the DNA samples themselves “it is unclear how . . . [G.L. c. 22E] specifically or by necessary implication permit[s] the [MSPCL] to withhold the requested information from disclosure.” *Id.* There, the requestor sought “the date of each request [for forensic testing], the completion date of each test, each requestor’s name, the identified case file (the victim’s name), and the names of any third party testing site.” *Id.*

51. In regards to information concerning the “Y-STR records of samples relating to crimes that occurred outside of Bristol County,” the BDAO claimed grand jury secrecy. Exhibits 2, 4. It stated that the requested records were obtained as part of a grand jury proceeding and, consequently, that they are “properly part of the grand jury proceedings and investigations.” Exhibit 4. However, the mere fact that a record was used as part of a grand jury proceeding does not imbue those records with secrecy. Tellingly, if ACLUM requested the same records from the MSPCL, the lab would be required to disclose them. *See* Exhibit 3. Further, the BDAO appears to have shared the records it obtained through the grand jury with individuals uninvolved with the proceedings, presumably for purposes unrelated to the grand jury proceedings, and with parties external to the BDAO with no security measures in place. Even if the records could arguably have

been protected by grand jury secrecy, they are no longer. *See Globe Newspaper Co. v. Police Com'r of Bos.*, 419 Mass. 852, 865 (1995).

52. The BDAO also claimed that it was prohibited from releasing the requested records due to statutory protections for privacy. It claimed the CORI Act, which prohibits Massachusetts criminal justice agencies from releasing records and data “which concern an identifiable individual.” Exhibit 2. It asserted that release of the records would constitute an unwarranted invasion of privacy under G.L. c. 214, § 1B. *Id.* And it claimed that the records were protected under Exemption (c), which protects “materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy,” G.L. c. 4, § 7 twenty-sixth(c), and requires a balancing test. *See Champa v. Weston Pub. Schs.*, 473 Mass. 86, 96 (2015). However, ACLUM did not request information which would identify a specific individual or their criminal offender record, and it specifically requested the redaction of personally identifiable information as appropriate. These statutes do not bar the release of the requested records.

53. Indeed, the Supervisor of Public Records opined that records contained in the state DNA database maintained by the MSPCL were not exempt under the privacy exemption because “it is uncertain how the date of a request, the completion date of each test, each requestor’s name, the identified case file (the victim’s name), and the names of any third party testing site . . . constitutes intimate details of a highly personal nature or how disclosure would result in personal embarrassment to an individual of normal sensibilities” as would be required under Exemption (c). Exhibit 3.

54. Lastly, the BDAO claimed Exemption (f), which protects “investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the

disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” G.L. c. 4, § 7 twenty-sixth(f). But here too, the Supervisor opined that similar records requested from the MSPCL would not be exempt under Exemption (f). Exhibit 3. Further, the records at issue concern DNA information that individuals knowingly submitted to the MSPCL for use in criminal investigations. It is thus unclear in what regards the records were “necessarily compiled out of the public view” or how releasing this information would prejudice an investigation as required under Exemption (f).

***b. ACLUM’s request for MOUs and other agreements***

55. The BDAO also failed to adequately search for and produce all records responsive to ACLUM’s Request in that it failed to disclose all MOUs and other agreements granting third parties access to its local DNA database.

56. After receiving the June Response, ACLUM filed public records requests with other DAOs, including Northwestern and Plymouth. *See* Exhibit 5. Both the Northwestern and the Plymouth DAOs provided MOUs between their offices and the BDAO granting their office access to the BDAO’s local DNA database. *Id.* These were produced unredacted. *Id.*

57. In contrast, when responding to ACLUM’s request, the BDAO failed to produce at least one of these MOUs and produced the other MOU in a highly-redacted format. Exhibit 2. Tellingly, the BDAO even redacted the name of the party with whom it entered into the MOU as well as the majority of the terms of the agreement. *Id.*

**CLAIMS FOR RELIEF**

**Count I – Violation of the Public Records Law**

58. The foregoing allegations are realleged and incorporated herein.

59. The Public Records Law strongly favors disclosure by creating a presumption that all government records are public records. G.L. c. 66, § 10A(d)(1)(iv).

60. Under the Public Records Law, the BDAO was required to conduct an adequate search for responsive documents and to demonstrate application of any exemptions. G.L. c. 66, §§ 6A, 10(a)-(b).

61. ACLUM's request reasonably describes the public records sought.

62. The BDAO has possession, custody, or control of the public records requested by ACLUM.

63. The BDAO has wrongfully withheld and failed to search for and/or produce records responsive to ACLUM's request as required by the Public Records Law.

64. ACLUM is entitled to injunctive relief requiring the BDAO to promptly produce all requested records. G.L. c. 66, § 10A(c)-(d).

65. ACLUM is entitled to injunctive relief prohibiting the BDAO from charging any fee for the production of the records sought. G.L. c. 66, §§ 10(e), 10A(c)-(d).

66. ACLUM is entitled to an award of reasonable attorney fees and costs. G.L. c. 66, § 10A(d)(2).

### **Count II – Declaratory Judgment**

67. The foregoing allegations are realleged and incorporated herein.

68. The BDAO has withheld some records responsive to ACLUM's public records request by citing exemptions.

69. ACLUM maintains that the purported exemptions are not applicable and do not permit the BDAO to withhold otherwise public information regarding its local DNA database and



that the BDAO violated the Public Records Law, G.L. c. 66, § 10 by failing to provide requested records.

70. A concrete dispute exists between ACLUM and the BDAO regarding the applicability of the exemptions raised by the BDAO and whether the BDAO has complied with its obligations under the Public Records Law.

71. There is an actual case and controversy between ACLUM and the BDAO regarding the production of the requested records.

72. Pursuant to G.L. c. 231A and the Public Records Law, ACLUM is entitled to a declaration that the records it requests are public records within the meaning of G. L. c. 66, § 10, that the BDAO violated its duty to thoroughly search for responsive records, that their release is required by law, and that the BDAO is prohibited from charging any fee for responding to the request.

#### **PRAYER FOR RELIEF**

Wherefore, ACLUM asks this Court to GRANT the following relief:

73. Issue a declaratory judgment pursuant to G. L. c. 231A that the records ACLUM has requested are public records within the meaning of G. L. c. 66, § 10 and that their release is required by law;

74. Enter permanent injunctions pursuant to G. L. c. 66, § 10A (d)(iii) ordering the BDAO to conduct a thorough search for all responsive records and to immediately disclose all responsive records to ACLUM;

75. Enjoin the BDAO from charging ACLUM search, review, or duplication fees for processing the requests;

76. Award ACLUM costs and reasonable attorney fees in the action; and

77. Grant such other relief as the Court may deem just and proper.

Dated: March 12, 2024

*/s/ Nicholas K. Mitrokostas*

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# EXHIBIT 1

May 23, 2023

**Via Email**

Courtney Almeida, Records Access Officer  
Office of the District Attorney for Bristol County  
218 South Main Street  
Fall River, MA 02721  
[publicrecords@bristolda.com](mailto:publicrecords@bristolda.com)

**Re: Public Records Request – Bristol Forensic DNA Database**

Dear Records Access Officer:

This is a public records request pursuant to G.L. c. 66, § 10 made on behalf of the American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”). This request concerns the use, storage, and/or collection of DNA samples, including Y-STR data, by the Bristol District Attorney’s Office (BDAO) and any associated databases.<sup>1</sup> This request does not concern DNA samples maintained exclusively and solely by the Massachusetts State Police Crime Laboratory.

ACLUM hereby requests the following records:

- (1) Redacted copy of database(s) concerning DNA samples, reports, or profiles, including Y-STR data. This request seeks without limitation a capture (or captures) showing what categories of information are stored about the DNA records such as the following:
  - a. status of donor (*e.g.*, victim, family member, consensual sexual partner, suspect, defendant, etc.);
  - b. origin of sample (*e.g.*, statutorily-required submission, voluntary submission, etc.);
  - c. who collected the sample (*e.g.*, municipal law enforcement, prison official, state lab technician, etc.);
  - d. city and county where the sample was collected;
  - e. date of collection.
- (2) Procedures regarding notification for individuals whose DNA profiles are included in any database maintained by the Bristol District Attorney’s Office.
- (3) Protocols, guidelines, or standards regulating access to any DNA database maintained by, accessible to, or otherwise used by the Bristol District Attorney’s Office. This request

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<sup>1</sup> See Robin Cotton et al., *Report on the Bristol County District Attorney’s Office DNA Database*, Forensic Sciences Oversight Board (Oct. 22, 2021), available at <https://www.mass.gov/doc/forensic-science-oversight-boards-investigation-of-the-bristol-county-district-attorneys-office-dna-database-subsection-d-report-october-2021/download>.

- includes any test(s), assessment(s), or agreement(s) required for individuals eligible to access any such DNA database.
- (4) Name(s) and position(s) of all individuals with access to any DNA database maintained by, accessible to, or otherwise used by the Bristol District Attorney's Office.<sup>2</sup> This request includes information regarding the individuals' level of access (*i.e.*, whether they are permitted to view or edit information).
  - (5) Logs documenting a user's access to any DNA database maintained by the Bristol District Attorney's Office.
  - (6) Records of training(s) provided to employees who have access to any DNA database maintained by, accessible to, or otherwise used by the Bristol District Attorney's Office.
  - (7) All Memorandum of Understanding (or other agreement) governing access to DNA database(s) maintained by the Bristol District Attorney's Office by any individual, entity, or party external to the BDAO.
  - (8) All Memorandum of Understanding (or other agreement) granting user access to DNA database(s) to the Bristol District Attorney's Office.
  - (9) Protocols, guidelines, or standards concerning destruction or removal of record(s) stored in any DNA database maintained by, accessible to, or otherwise used by the Bristol District Attorney's Office.
  - (10) Protocols, guidelines, or standards regulating use and dissemination of DNA samples, reports, or profiles. This request includes any such policies regarding the federal DNA Identification Act, state Privacy Act, and/or the Fair Information Practices Act.
  - (11) Records pertaining to technology used to collect, store, and analyze DNA records, including but not limited to contracts, brochures, manuals, training materials, and specifications documents.
  - (12) Records of accreditation (or application for accreditation) or licensing for Bristol's DNA database(s).

I ask that you waive any fees and copying costs, pursuant to 950 C.M.R. 32.07. ACLUM is a not-for-profit, non-partisan organization dedicated to the principles of liberty and equality.

**We expressly exclude from the request any personal identifiable information of non-government personnel**, except to the extent that we also exclude from the request any individually identifying information for DNA samples submitted by government personnel consistent with G.L. c. 4, § 7 twenty-sixth(c). However, if you withhold or redact portions of the requested records on the grounds that they are exempt from disclosure, please specify which exemptions apply and release any portions of the records for which you do not claim an exemption. We ask that you provide the records in electronic, machine readable format to the maximum extent possible. As you know, a

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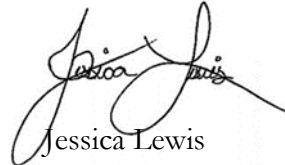
<sup>2</sup> As used herein, the Bristol District Attorney's Office includes its employees, agents, representatives, and all other individuals purporting to act on the agency's behalf.

Page 3  
Bristol Forensic DNA Database  
May 23, 2023

custodian of public records shall comply with a request within ten days of receipt as required by G.L. c. 66, § 10(a), (b).

Thank you for your assistance. Please do not hesitate to contact me if I can clarify any part of this request.

Sincerely,



Handwritten signature of Jessica Lewis in black ink, featuring a large, stylized initial 'J' and 'L'.

Jessica Lewis

# EXHIBIT 2



# The Commonwealth of Massachusetts

OFFICE OF THE  
**DISTRICT ATTORNEY**  
BRISTOL DISTRICT

**THOMAS M. QUINN III**  
DISTRICT ATTORNEY

218 South Main Street  
Fall River, MA 02721  
(508) 997-0711

June 7, 2023

Jessica Lewis, Staff Attorney  
ACLU  
One Center Plaza, Suite 850  
Boston, MA 02108  
jlewis@aclum.org  
EMAIL ONLY

Re: Public Records Request: YSTR DNA records

Dear Attorney Lewis,

On May 23, 2023, this office received your request for public records. This response is timely. G.L. c. 66, § 10 (a) (response required within ten business days of the receipt of the request). You requested records of “the use, storage, and/or collection of DNA samples, including Y-STR data... and any associated databases.” Your request under subsection (1) is denied; the remainder of your requests are answered below and in the attached document.

Where your request concerns “databases” (a term undefined within your request), this office does not understand your request to reference any records of individual criminal prosecutions within trial files. The DNA information within individual prosecution trial files does not constitute “databases”, and therefore is not responsive to your request. Even if your request was intended to encompass such DNA reports, evidence, or records, such records would be exempt from public disclosure under the criminal offender record information act (CORI). G.L. c. 6, §§ 167, et al. *Attorney General v. District Attorney for the Plymouth District*, 484 Mass. 260, 277 (2020). Such information would also be withheld under the privacy exemption, if it pertained to individuals who were victims, witnesses, or potential suspects. G.L. c. 4, § 7, cl. 26(c); G.L. c. 214, § 1B; c. 4, § 7, cl. 26(a). See also *Amato v. District Attorney for the Cape & Islands*, 80 Mass. App. Ct. 230, 240 (2011) (“DNA information is highly sensitive. Citizens have a reasonable expectation of privacy in such information.”)

Regarding your request for Y-STR records, please be advised that Y-STR records developed from samples collected from victims’ persons and from crime scenes relating to crimes that occurred within Bristol County are received by statute. G.L. c. 22E, § 10(a) (“The director shall furnish records in his possession, including DNA records and analysis, to police departments in cities and towns, to the department, to the department of correction, to a sheriffs



department, to the parole board or to prosecuting officers within the commonwealth upon request in writing or electronically.") That statute does not include the public as a statutory recipient of such records. Records pertaining to such samples relating to crimes that occurred outside of Bristol County were obtained pursuant to grand jury subpoena(s). These records are exempt from public disclosure.

**Exemption for Ongoing Investigations.** The records that you requested relate to ongoing criminal investigations. G.L. c. 4, § 7, cl. 26(f) (public records statute exempts investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest). The investigatory exemption permits the withholding of records of matters that are still being investigated. G.L. c. 4, § 7, cl. 26(f). Public release of an investigatory record of this nature will impair the potential resolution of these ongoing investigations, possibly preventing them from being solved and the perpetrators from being criminally prosecuted.

**Grand Jury Investigations.** Records that were obtained pursuant to grand jury subpoenas are exempt from public disclosure. Grand jury records are secret. Mass. R. Crim. P. 5(d) reads:

A person performing an official function in relation to the grand jury may not disclose matters occurring before the grand jury except in the performance of his or her official duties or when specifically directed to do so by the court. No obligation of secrecy may be imposed upon any person except in accordance with law.

Grand jury records cannot be disclosed pursuant to a public records request. See *In the Matter of a Grand Jury Investigation*, 485 Mass. 641, 656 (2020).

**Privacy Exemption.** As noted above, CORI and DNA information are protected from public disclosure. *Attorney General v. District Attorney for the Plymouth District*, 484 Mass. at 277; *Amato v. District Attorney for the Cape & Islands*, 80 Mass. App. Ct. at 240 (2011); G.L. c. 4, § 7, cl. 26(c); G.L. c. 214, § 1B; c. 4, § 7, cl. 26(a). While you have not asked for personal identifiable information of non-government personnel, you have made a specific request for "status of donor, origin of sample, identity of sample collector, city and county where the sample was collected and the date of collection." All of this information endangers identifying the individual whose sample is being notated. See also *Globe Newspaper Co. v. Boston Retirement Bd.*, 388 Mass. 427, 438 (1983) (explanation of "identifying details" and "grave risk of indirect identification" of witnesses). Private individual information is exempt from public dissemination by statute. G.L. c. 214, § 1B (privacy statute); G.L. c. 4, § 7, cl. 26(c) (materials related to a specifically named individual, that if disclosed would constitute an unwarranted invasion of privacy). A requestor cannot be prohibited from publicly disclosing a document that was provided under the Public Records Law. See *Commonwealth v. Barnes*, 461 Mass. 644, 651 (2012) (heavy presumption against the constitutionality of prior restraint on public dissemination of communications). This office therefore is required to deny your request for private DNA and Y-STR records.

In response to your requests, labeled subsections (2) through (6) and (11) through (12), this office has no responsive records. The Public Records Law does not require this office to create a record. “The mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the governmental entity at the time the request is received. Consequently, there is no obligation to create a record for a requestor....” A Guide to the Massachusetts Public Records Law, p.8 (Feb. 2022) (published by the Massachusetts Secretary of State) (<https://www.sec.state.ma.us/divisions/public-records/download/guide.pdf>). See also *Attorney General v. District Attorney for the Plymouth District*, 484 Mass.at 275 (“a member of the public may not, through a public records request, require an agency or municipality to create new documents that do not already exist”).

In subsections (7) and (8), you requested: “All Memorandum of Understanding (or other agreement) governing access to DNA database(s) maintained by the Bristol District Attorney’s Office by any individual, entity, or party external to the BDAO” and “All Memorandum of Understanding (or other agreement) granting user access to DNA database(s) to the Bristol District Attorney’s Office.” Please find the redacted document attached to the e-mail that enclosed this letter. The redactions within that document have been made under the investigatory exemption described above, for the purposes of protecting the integrity of ongoing investigation(s) and preventing interference with ongoing investigations.

In subsection (9), you requested: “[p]rotocols, guidelines, or standards concerning destruction or removal of record(s) stored in any DNA database maintained by, accessible to, or otherwise used by the Bristol District Attorney’s Office.” In terms of retention of records, this office is governed by the Massachusetts Statewide Records Retention Schedule: [Massachusetts Statewide Records Retention Schedule \(mma.org\)](https://www.mass.gov/info-details/massachusetts-statewide-records-retention-schedule); [MA Statewide Records Schedule updated2022-10-31.pdf](https://www.mass.gov/info-details/massachusetts-statewide-records-retention-schedule). Additionally, the retention of evidence relating to criminal prosecutions is governed by G.L. c. 278A.

In subsection (10), you requested: “protocols, guidelines, or standards regulating use and dissemination of DNA samples, reports, or profiles.” This office is restricted in its use and dissemination under G.L. c. 6, §§ 167, et al (CORI); Mass. R. Crim P. 5(d) (grand jury secrecy); the exemptions to the public records law under G.L. c. 4, § 7, cl. 26(a) through (v), with specific reference to (a) (confidentiality by statute), (c) (privacy), and (f) (investigatory); G.L. c. 265, § 24C (confidentiality of rape victims); G.L. c. 41, § 97D (specific investigatory records are not public records). This office is also cognizant of the privacy statute, G.L. c. 214, § 1B, although the Commonwealth is immune from suit under the doctrine of sovereign immunity for violations of chapter 214, section 1B. *Whirty v. Lynch*, 27 Mass. App. Ct. 498, 500, rev. denied, 405 Mass. 1204 (1989). This office is bound by the special rules of a prosecutor. Mass. R. Prof. Conduct, 3.8, with specific reference to subsection (f): “except for statements that are necessary to inform the public of the nature and extent of the prosecutor’s action and that serve a legitimate law enforcement purpose: (1) refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule; and (2) take reasonable steps to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.” See also Mass. R. Prof. Conduct 3.6 (restricting a lawyer’s public disclosures). In

response to the requests in subsections (7) and (8), this office has also provided a redacted memorandum of understanding that explains the agreed protocol of this office in restricting access and use of the records you are seeking. Indeed, these very restrictions require the denial of your request under subsection (1).

Please be advised that this office does not waive any fees associated with the Public Records Law in this matter. If further records are requested, fees will be assessed at \$25 per hour after the first four hours, as is permissible under the statute.

Where this response constitutes a partial denial of your request, please be advised that you have the right to appeal to the Supervisor of Public Records and to seek a judicial remedy in Superior Court pursuant to 950 C.M.R. 32.06(3)(c); 950 C.M.R. 32.08(1); G.L. c. 66, §§ 10(b), 10A(a).

Sincerely,

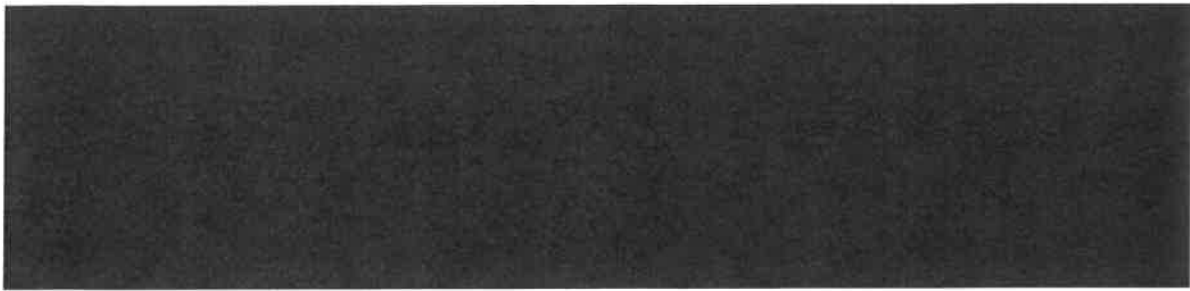
Mary Lee

Mary Lee  
Assistant District Attorney  
Bristol District

**MEMORANDUM OF UNDERSTANDING,  
BETWEEN [REDACTED]  
AND THE BRISTOL DISTRICT ATTORNEY REGARDING THE**

**I. GENERAL PRINCIPLES**

[REDACTED]



**II. DISTRICT ATTORNEY OBLIGATIONS**

The Bristol District Attorney will maintain and supervise the operation of the Y-STR spreadsheet.

The Bristol District Attorney will designate an IT (Information Technology) employee to supervise and oversee the day-to-day operation of the spreadsheet which will include the collection, entry and removal of any Y-STR profiles. This designation will be in effect until such time as the designation is changed or discontinued in writing.


The Bristol District Attorney will ensure that access to the spreadsheet is limited to authorized individual(s) and that such information is safeguarded at all times.

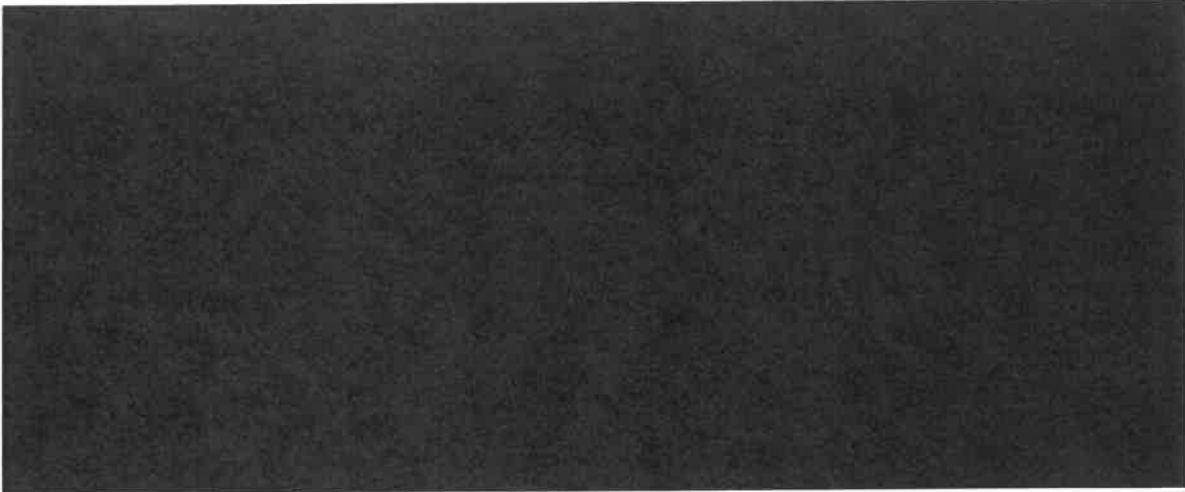


An internal search of the entire spreadsheet will be performed at least one time every month



The Bristol District Attorney will maintain a log listing the profiles received, case identifying information and the originating District as well as the date of entry and/or removal from the spreadsheet.

All requests  for entry of Y-STR information into the spreadsheet shall be made to the Bristol District Attorney's designated representative in writing.



**III. EFFECTIVE DATE AND DURATION OF THIS AGREEMENT**

The provisions of this Memorandum of Understanding shall be effective as of September 28, 2020 and will remain in full force and effect until amended or rescinded by the parties.



FOR THE BRISTOL DISTRICT ATTORNEY:

Thomas M. Quinn III  
THOMAS M. QUINN III

12/10/20  
Date

# EXHIBIT 3



November 2, 2023

**Via Email**

Mary Lee, Assistant District Attorney  
Courtney Almeida, Records Access Officer  
Office of the District Attorney for Bristol District  
218 South Main Street  
Fall River, MA 02721  
mary.e.lee@state.ma.us

**Re: Public Records Request – Bristol’s Collection and Maintenance of DNA**

Dear Records Access Officer:

This letter responds to your office’s response to the May 23, 2023 public records request submitted on behalf of the ACLU of Massachusetts, Inc. (ACLUM). Therein, ACLUM requested records related to the database (or spreadsheet) of DNA information maintained by the Bristol District Attorney’s Office (BDAO), specifically a redacted copy of the database (or spreadsheet) and policies and protocols regarding security of, destruction of, and access to the DNA information. A copy of the May public records request and response is enclosed as Exhibit A. ACLUM hereby renews its records request and responds to your asserted exemptions below. We ask that your office release the requested records without the need for further action.

To start, exemptions to the Public Records Law are construed narrowly in light of the presumption that government records are public. *Gen. Elec. Co. v. Dep’t of Env’t Prot.*, 429 Mass. 798, 801-02 (1999). The Law gives the public broad access to these records and is particularly strong where the records in question concern “whether public servants are carrying out their duties in an efficient and law-abiding manner.” *Attorney Gen. v. Collector of Lynn*, 377 Mass. 151, 158 (1979). Here, ACLUM requested records related to DNA information that the BDAO subpoenaed from the MSP Crime Lab and which are now being maintained separately by the BDAO. In 2021, the Massachusetts Forensic Sciences Oversight Board (FSOB) released a report detailing concerns with the BDAO’s planned database and noted therein your office’s failure or refusal to respond to any requests for information regarding the same.<sup>1</sup> As such, little to no information is publicly available as to whose DNA the BDAO has obtained and stored, for what purpose the information is being used, and who has access to this stored DNA information. However, what is certain is that the BDAO has chosen to operate outside the regulatory scheme enacted by the Legislature for the Commonwealth’s collection, storage, and

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<sup>1</sup> <https://www.mass.gov/doc/forensic-science-oversight-boards-investigation-of-the-bristol-county-district-attorneys-office-dna-database-subsection-d-report-october-2021/download>



maintenance of DNA records. ACLUM, in the public interest, sought and continues to seek access to records related to the BDAO's storage and use of DNA records under the Public Records Law.

**Request No. 1:** Redacted copy of database(s) concerning DNA samples, reports, or profiles, including Y-STR data.

In its May request, ACLUM requested a redacted copy of any Bristol database housing DNA samples, reports, or profiles, including Y-STR data. In response, your office asserted Exemption (a), specifically that the records were exempt by virtue of G.L. c. 22E, § 10(a) governing the State's DNA Database (hereinafter the "DNA Law") and the CORI Act, G.L. c. 6, §§ 167 *et al.* Your office further asserted Exemption (f), grand jury secrecy, and Exemption (c). In essence, your office asserted any and everything to prevent public access to information concerning the BDAO's ad hoc maintenance of DNA records involuntarily submitted or otherwise by residents of the Commonwealth and which were intended to be stored by the MSP Crime Lab pursuant to statutory and agency regulations. ACLUM responds to each of your asserted exemptions in turn.

**Exemption (a).** Neither the DNA Law nor the CORI Act apply. First, as noted in the FSOB report, your office secured these records outside of G.L. c. 22E. That law is intended to allow law enforcement case-by-case access to DNA records pursuant to established procedures, and it is not intended to allow the aggregate collection of DNA information for use in future and unknown cases. It would be inappropriate for the BDAO to seek to use this law, which should have prevented a local state agency like Bristol from amassing DNA information, as now a shield to prevent the public from obtaining any information as to how these obtained records are being stored and used by Bristol.

Beyond this contradiction, the DNA Law protects "DNA records," which ACLUM did not request. Section 1 of Chapter 22E defines "DNA records" as "DNA information *that is derived from a DNA sample and DNA analysis and is stored in the state DNA database or in CODIS*, including all records pertaining to DNA analysis" (emphasis added). ACLUM requested, *inter alia* and by way of example, "a capture (or captures) showing what categories of information are stored *about* the DNA records" (emphasis added) such as the status of donor (*e.g.*, victim, family member, consensual sexual partner, suspect, defendant, etc.); origin of sample (*e.g.*, statutorily-required submission, voluntary submission, etc.); who collected the sample (*e.g.*, municipal law enforcement, prison official, state lab technician, etc.); city and county where the sample was collected; date of collection. By definition, the records ACLUM seeks are not "DNA records." Notably, the Supervisor of Public Records has required the MSP Crime Lab to disclose records related to the State DNA Database under the Public Records Law. *See, e.g.*, Exhibit B, Determination of the Supervisor of Public Records, SPR20/2032, issued Nov. 4, 2020. The Supervisor determined that where a requestor sought only information related to the DNA database rather than private information derived from the DNA samples themselves "it is unclear how . . . [M.G.L. c. 22E] specifically or by necessary implication permit[s] the Department to withhold the requested information from disclosure." *Id.* G.L. c. 22E does not apply.

Similarly, the CORI Act does not apply. ACLUM has not requested information that would identify any specific individual or their criminal offender record. The assertion of CORI appears to be without basis. The Law established that it is the BDAO's burden to provide enough information to

show why the records may be withheld. G.L. c. 66, § 10A (d)(1)(iv). That burden has not been met here.

**Exemption (c).** To the extent that any of the requested records would implicate Exemption (c), the BDAO has not shown why the records cannot be redacted to omit personally identifiable information. ACLUM explicitly excluded from its request “any personal identifiable information of non-government personnel, except to the extent that we also exclude from the request any individually identifying information for DNA samples submitted by government personnel consistent with G.L. c. 4, § 7 twenty-sixth(c).” And the Public Records Law “specifically contemplates redaction of material that would be exempt, to enable the release of the remaining portions of a record.” *Champa v. Weston Pub. Schs.*, 473 Mass. 86, 92 (2015). Thus, even where an exemption applies, the Law requires an agency to redact or segregate those exempt portions and to produce the remainder. *Id.* Exemption (c) does not bar wholesale the release of the requested records. The BDAO's assertion that it does because someone somewhere may read the released records and know that a specific individual gave a DNA sample on a specific date within a named town is without merit. Even if the argument was valid, the balance of interests weighs in favor of that individual identified through happenstance knowing that the BDAO has obtained and is using their DNA. *See Amato v. District Attorney for Cape and Dist.*, 80 Mass. App. Ct. 230, 241 (2011); *cf. Globe Newspaper Co. v. Dist. Attorney for the Middle Dist.*, 439 Mass. 374, 384 (2003) (release of docket numbers appropriate and would allow review of district attorney's office).

**Grand Jury Secrecy.** It is unclear on what basis grand jury secrecy would apply as the interests guiding this protection are not advanced here. Grand jury secrecy is intended to shield the grand jury process from external influences and protect the privacy interests of individuals involved in the proceedings. *See WBZ-TV4 v. Dist. Atty. for Suffolk Dist.*, 408 Mass. 595, 599 (1990); *Matter of Grand Jury Investigation*, 485 Mass. 641, 656 (2020). The records ACLUM has requested were not created pursuant to any grand jury session, do not involve the privacy interest of anyone appearing for the purposes of the grand jury through which the records were obtained, and do not otherwise reveal the nature of the grand jury. Further, in its response, the BDAO provided a redacted copy of a Memorandum of Understanding that appears to provide individuals outside of the agency access to the Y-STR information housed in Bristol's database or spreadsheet. Thus, it appears that the BDAO has itself waived any confidentiality here. *See Globe Newspaper Co. v. Police Com'r of Bos.*, 419 Mass. at 866; *Globe Newspaper Co. v. Bratton*, 1993 WL 818904, at \*9.

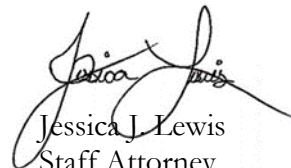
**Exemption (f).** Exemption (f) exempts from the definition of public records: “investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” G.L. c. 4, § 7, Twenty-sixth(f). Contrary to the BDAO's assertion, it does not blanketly exempt records because they may relate to an open investigation; it requires proof that release of information would be sufficiently prejudicial. Here, unless the BDAO intends to assert otherwise, the records at issue concern DNA information that individuals knowingly submitted to the MSP Crime Lab for use in criminal investigations. It is thus unclear how releasing this information would prejudice an investigation as required under Exemption (f).

**Request Nos. 7 and 8.** All Memorandum of Understanding (or other agreement) governing access to DNA database(s) maintained by the Bristol District Attorney's Office by any individual, entity, or party external to the BDAO; and all Memorandum of Understanding (or other agreement) granting user access to DNA database(s) to the Bristol District Attorney's Office.

In response to these requests, your office provided a copy of an MOU with redactions the BDAO contend was made pursuant to Exemption (f). *See* Exhibit A. No basis is provided to justify these redactions. Relevantly, the Supervisor of Public Records rejected an application of Exemption (f) where a requestor sought forensic testing records from the MSP Crime Lab because "it is unclear how the dates, requestor's name, victim's name, company's name, and testing dates of forensic tests constitute investigatory materials. It is additionally uncertain how disclosure of this information 'would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest' or compromise the Department's investigatory efforts." *See* Exhibit B. Here, it is unclear how knowing who has been granted access to the Bristol database (or spreadsheet) and for what purpose would prejudice an investigation. Please provide an unredacted copy of the MOU.

We ask that the records be released without further delay. We are available to speak by telephone at (617) 482-3170 ext. 325 should further communication be desired to help facilitate resolution of this request.

Sincerely,



Jessica J. Lewis  
Staff Attorney  
(617) 482-3170 ext. 334  
[jlewis@aclum.org](mailto:jlewis@aclum.org)

Kirsten Mayer  
Interim Legal Director  
(617) 482-3170 ext. 325  
[kmayer@aclum.org](mailto:kmayer@aclum.org)

Encl.

# **EXHIBIT A**

May 23, 2023

**Via Email**

Courtney Almeida, Records Access Officer  
Office of the District Attorney for Bristol County  
218 South Main Street  
Fall River, MA 02721  
[publicrecords@bristolda.com](mailto:publicrecords@bristolda.com)

**Re: Public Records Request – Bristol Forensic DNA Database**

Dear Records Access Officer:

This is a public records request pursuant to G.L. c. 66, § 10 made on behalf of the American Civil Liberties Union of Massachusetts, Inc. (“ACLUM”). This request concerns the use, storage, and/or collection of DNA samples, including Y-STR data, by the Bristol District Attorney’s Office (BDAO) and any associated databases.<sup>1</sup> This request does not concern DNA samples maintained exclusively and solely by the Massachusetts State Police Crime Laboratory.

ACLUM hereby requests the following records:

- (1) Redacted copy of database(s) concerning DNA samples, reports, or profiles, including Y-STR data. This request seeks without limitation a capture (or captures) showing what categories of information are stored about the DNA records such as the following:
  - a. status of donor (*e.g.*, victim, family member, consensual sexual partner, suspect, defendant, etc.);
  - b. origin of sample (*e.g.*, statutorily-required submission, voluntary submission, etc.);
  - c. who collected the sample (*e.g.*, municipal law enforcement, prison official, state lab technician, etc.);
  - d. city and county where the sample was collected;
  - e. date of collection.
- (2) Procedures regarding notification for individuals whose DNA profiles are included in any database maintained by the Bristol District Attorney’s Office.
- (3) Protocols, guidelines, or standards regulating access to any DNA database maintained by, accessible to, or otherwise used by the Bristol District Attorney’s Office. This request

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<sup>1</sup> See Robin Cotton et al., *Report on the Bristol County District Attorney’s Office DNA Database*, Forensic Sciences Oversight Board (Oct. 22, 2021), available at <https://www.mass.gov/doc/forensic-science-oversight-boards-investigation-of-the-bristol-county-district-attorneys-office-dna-database-subsection-d-report-october-2021/download>.

- includes any test(s), assessment(s), or agreement(s) required for individuals eligible to access any such DNA database.
- (4) Name(s) and position(s) of all individuals with access to any DNA database maintained by, accessible to, or otherwise used by the Bristol District Attorney's Office.<sup>2</sup> This request includes information regarding the individuals' level of access (*i.e.*, whether they are permitted to view or edit information).
  - (5) Logs documenting a user's access to any DNA database maintained by the Bristol District Attorney's Office.
  - (6) Records of training(s) provided to employees who have access to any DNA database maintained by, accessible to, or otherwise used by the Bristol District Attorney's Office.
  - (7) All Memorandum of Understanding (or other agreement) governing access to DNA database(s) maintained by the Bristol District Attorney's Office by any individual, entity, or party external to the BDAO.
  - (8) All Memorandum of Understanding (or other agreement) granting user access to DNA database(s) to the Bristol District Attorney's Office.
  - (9) Protocols, guidelines, or standards concerning destruction or removal of record(s) stored in any DNA database maintained by, accessible to, or otherwise used by the Bristol District Attorney's Office.
  - (10) Protocols, guidelines, or standards regulating use and dissemination of DNA samples, reports, or profiles. This request includes any such policies regarding the federal DNA Identification Act, state Privacy Act, and/or the Fair Information Practices Act.
  - (11) Records pertaining to technology used to collect, store, and analyze DNA records, including but not limited to contracts, brochures, manuals, training materials, and specifications documents.
  - (12) Records of accreditation (or application for accreditation) or licensing for Bristol's DNA database(s).

I ask that you waive any fees and copying costs, pursuant to 950 C.M.R. 32.07. ACLUM is a not-for-profit, non-partisan organization dedicated to the principles of liberty and equality.

**We expressly exclude from the request any personal identifiable information of non-government personnel**, except to the extent that we also exclude from the request any individually identifying information for DNA samples submitted by government personnel consistent with G.L. c. 4, § 7 twenty-sixth(c). However, if you withhold or redact portions of the requested records on the grounds that they are exempt from disclosure, please specify which exemptions apply and release any portions of the records for which you do not claim an exemption. We ask that you provide the records in electronic, machine readable format to the maximum extent possible. As you know, a

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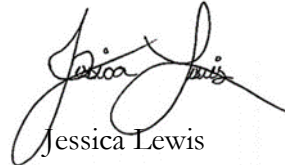
<sup>2</sup> As used herein, the Bristol District Attorney's Office includes its employees, agents, representatives, and all other individuals purporting to act on the agency's behalf.

Page 3  
Bristol Forensic DNA Database  
May 23, 2023

custodian of public records shall comply with a request within ten days of receipt as required by G.L. c. 66, § 10(a), (b).

Thank you for your assistance. Please do not hesitate to contact me if I can clarify any part of this request.

Sincerely,



Handwritten signature of Jessica Lewis in cursive script.

Jessica Lewis



# The Commonwealth of Massachusetts

OFFICE OF THE  
**DISTRICT ATTORNEY**  
BRISTOL DISTRICT

**THOMAS M. QUINN III**  
DISTRICT ATTORNEY

218 South Main Street  
Fall River, MA 02721  
(508) 997-0711

June 7, 2023

Jessica Lewis, Staff Attorney  
ACLU  
One Center Plaza, Suite 850  
Boston, MA 02108  
jlewis@aclum.org  
EMAIL ONLY

Re: Public Records Request: YSTR DNA records

Dear Attorney Lewis,

On May 23, 2023, this office received your request for public records. This response is timely. G.L. c. 66, § 10 (a) (response required within ten business days of the receipt of the request). You requested records of “the use, storage, and/or collection of DNA samples, including Y-STR data... and any associated databases.” Your request under subsection (1) is denied; the remainder of your requests are answered below and in the attached document.

Where your request concerns “databases” (a term undefined within your request), this office does not understand your request to reference any records of individual criminal prosecutions within trial files. The DNA information within individual prosecution trial files does not constitute “databases”, and therefore is not responsive to your request. Even if your request was intended to encompass such DNA reports, evidence, or records, such records would be exempt from public disclosure under the criminal offender record information act (CORI). G.L. c. 6, §§ 167, et al. *Attorney General v. District Attorney for the Plymouth District*, 484 Mass. 260, 277 (2020). Such information would also be withheld under the privacy exemption, if it pertained to individuals who were victims, witnesses, or potential suspects. G.L. c. 4, § 7, cl. 26(c); G.L. c. 214, § 1B; c. 4, § 7, cl. 26(a). See also *Amato v. District Attorney for the Cape & Islands*, 80 Mass. App. Ct. 230, 240 (2011) (“DNA information is highly sensitive. Citizens have a reasonable expectation of privacy in such information.”)

Regarding your request for Y-STR records, please be advised that Y-STR records developed from samples collected from victims’ persons and from crime scenes relating to crimes that occurred within Bristol County are received by statute. G.L. c. 22E, § 10(a) (“The director shall furnish records in his possession, including DNA records and analysis, to police departments in cities and towns, to the department, to the department of correction, to a sheriffs



department, to the parole board or to prosecuting officers within the commonwealth upon request in writing or electronically.") That statute does not include the public as a statutory recipient of such records. Records pertaining to such samples relating to crimes that occurred outside of Bristol County were obtained pursuant to grand jury subpoena(s). These records are exempt from public disclosure.

**Exemption for Ongoing Investigations.** The records that you requested relate to ongoing criminal investigations. G.L. c. 4, § 7, cl. 26(f) (public records statute exempts investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest). The investigatory exemption permits the withholding of records of matters that are still being investigated. G.L. c. 4, § 7, cl. 26(f). Public release of an investigatory record of this nature will impair the potential resolution of these ongoing investigations, possibly preventing them from being solved and the perpetrators from being criminally prosecuted.

**Grand Jury Investigations.** Records that were obtained pursuant to grand jury subpoenas are exempt from public disclosure. Grand jury records are secret. Mass. R. Crim. P. 5(d) reads:

A person performing an official function in relation to the grand jury may not disclose matters occurring before the grand jury except in the performance of his or her official duties or when specifically directed to do so by the court. No obligation of secrecy may be imposed upon any person except in accordance with law.

Grand jury records cannot be disclosed pursuant to a public records request. See *In the Matter of a Grand Jury Investigation*, 485 Mass. 641, 656 (2020).

**Privacy Exemption.** As noted above, CORI and DNA information are protected from public disclosure. *Attorney General v. District Attorney for the Plymouth District*, 484 Mass. at 277; *Amato v. District Attorney for the Cape & Islands*, 80 Mass. App. Ct. at 240 (2011); G.L. c. 4, § 7, cl. 26(c); G.L. c. 214, § 1B; c. 4, § 7, cl. 26(a). While you have not asked for personal identifiable information of non-government personnel, you have made a specific request for "status of donor, origin of sample, identity of sample collector, city and county where the sample was collected and the date of collection." All of this information endangers identifying the individual whose sample is being notated. See also *Globe Newspaper Co. v. Boston Retirement Bd.*, 388 Mass. 427, 438 (1983) (explanation of "identifying details" and "grave risk of indirect identification" of witnesses). Private individual information is exempt from public dissemination by statute. G.L. c. 214, § 1B (privacy statute); G.L. c. 4, § 7, cl. 26(c) (materials related to a specifically named individual, that if disclosed would constitute an unwarranted invasion of privacy). A requestor cannot be prohibited from publicly disclosing a document that was provided under the Public Records Law. See *Commonwealth v. Barnes*, 461 Mass. 644, 651 (2012) (heavy presumption against the constitutionality of prior restraint on public dissemination of communications). This office therefore is required to deny your request for private DNA and Y-STR records.

In response to your requests, labeled subsections (2) through (6) and (11) through (12), this office has no responsive records. The Public Records Law does not require this office to create a record. “The mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the governmental entity at the time the request is received. Consequently, there is no obligation to create a record for a requestor....” A Guide to the Massachusetts Public Records Law, p.8 (Feb. 2022) (published by the Massachusetts Secretary of State) (<https://www.sec.state.ma.us/divisions/public-records/download/guide.pdf>). See also *Attorney General v. District Attorney for the Plymouth District*, 484 Mass.at 275 (“a member of the public may not, through a public records request, require an agency or municipality to create new documents that do not already exist”).

In subsections (7) and (8), you requested: “All Memorandum of Understanding (or other agreement) governing access to DNA database(s) maintained by the Bristol District Attorney’s Office by any individual, entity, or party external to the BDAO” and “All Memorandum of Understanding (or other agreement) granting user access to DNA database(s) to the Bristol District Attorney’s Office.” Please find the redacted document attached to the e-mail that enclosed this letter. The redactions within that document have been made under the investigatory exemption described above, for the purposes of protecting the integrity of ongoing investigation(s) and preventing interference with ongoing investigations.

In subsection (9), you requested: “[p]rotocols, guidelines, or standards concerning destruction or removal of record(s) stored in any DNA database maintained by, accessible to, or otherwise used by the Bristol District Attorney’s Office.” In terms of retention of records, this office is governed by the Massachusetts Statewide Records Retention Schedule: [Massachusetts Statewide Records Retention Schedule \(mma.org\)](https://www.mass.gov/info-details/massachusetts-statewide-records-retention-schedule); [MA Statewide Records Schedule updated2022-10-31.pdf](https://www.mass.gov/info-details/massachusetts-statewide-records-retention-schedule). Additionally, the retention of evidence relating to criminal prosecutions is governed by G.L. c. 278A.

In subsection (10), you requested: “protocols, guidelines, or standards regulating use and dissemination of DNA samples, reports, or profiles.” This office is restricted in its use and dissemination under G.L. c. 6, §§ 167, et al (CORI); Mass. R. Crim P. 5(d) (grand jury secrecy); the exemptions to the public records law under G.L. c. 4, § 7, cl. 26(a) through (v), with specific reference to (a) (confidentiality by statute), (c) (privacy), and (f) (investigatory); G.L. c. 265, § 24C (confidentiality of rape victims); G.L. c. 41, § 97D (specific investigatory records are not public records). This office is also cognizant of the privacy statute, G.L. c. 214, § 1B, although the Commonwealth is immune from suit under the doctrine of sovereign immunity for violations of chapter 214, section 1B. *Whirty v. Lynch*, 27 Mass. App. Ct. 498, 500, rev. denied, 405 Mass. 1204 (1989). This office is bound by the special rules of a prosecutor. Mass. R. Prof. Conduct, 3.8, with specific reference to subsection (f): “except for statements that are necessary to inform the public of the nature and extent of the prosecutor’s action and that serve a legitimate law enforcement purpose: (1) refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule; and (2) take reasonable steps to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.” See also Mass. R. Prof. Conduct 3.6 (restricting a lawyer’s public disclosures). In

response to the requests in subsections (7) and (8), this office has also provided a redacted memorandum of understanding that explains the agreed protocol of this office in restricting access and use of the records you are seeking. Indeed, these very restrictions require the denial of your request under subsection (1).

Please be advised that this office does not waive any fees associated with the Public Records Law in this matter. If further records are requested, fees will be assessed at \$25 per hour after the first four hours, as is permissible under the statute.

Where this response constitutes a partial denial of your request, please be advised that you have the right to appeal to the Supervisor of Public Records and to seek a judicial remedy in Superior Court pursuant to 950 C.M.R. 32.06(3)(c); 950 C.M.R. 32.08(1); G.L. c. 66, §§ 10(b), 10A(a).

Sincerely,

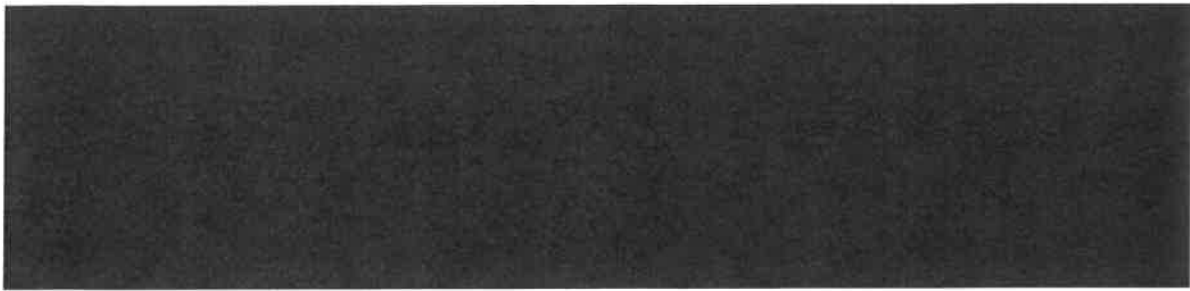
Mary Lee

Mary Lee  
Assistant District Attorney  
Bristol District

**MEMORANDUM OF UNDERSTANDING,  
BETWEEN [REDACTED]  
AND THE BRISTOL DISTRICT ATTORNEY REGARDING THE**

**I. GENERAL PRINCIPLES**

[REDACTED]



**II. DISTRICT ATTORNEY OBLIGATIONS**

The Bristol District Attorney will maintain and supervise the operation of the Y-STR spreadsheet.

The Bristol District Attorney will designate an IT (Information Technology) employee to supervise and oversee the day-to-day operation of the spreadsheet which will include the collection, entry and removal of any Y-STR profiles. This designation will be in effect until such time as the designation is changed or discontinued in writing.


The Bristol District Attorney will ensure that access to the spreadsheet is limited to authorized individual(s) and that such information is safeguarded at all times.

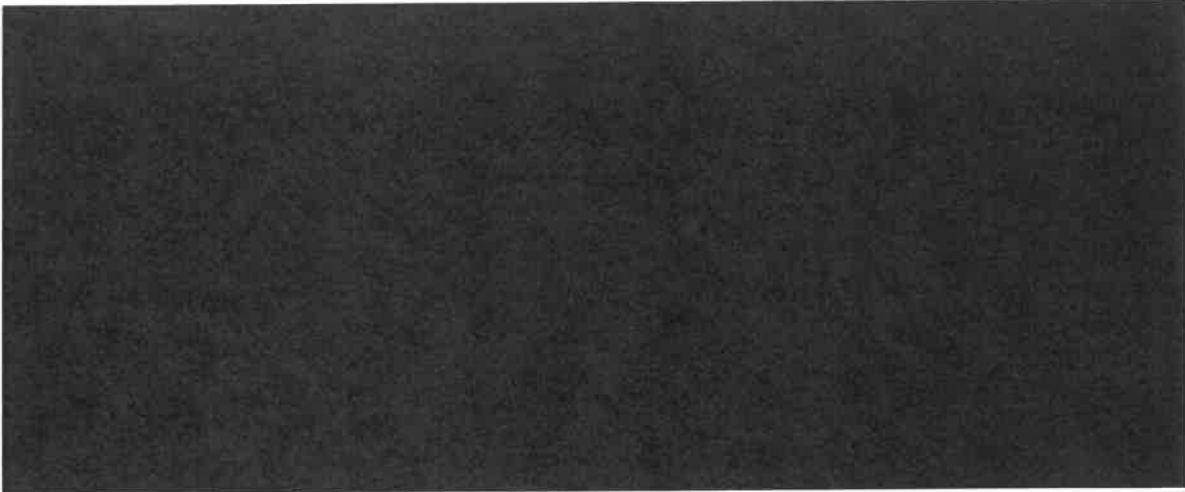


An internal search of the entire spreadsheet will be performed at least one time every month



The Bristol District Attorney will maintain a log listing the profiles received, case identifying information and the originating District as well as the date of entry and/or removal from the spreadsheet.

All requests  for entry of Y-STR information into the spreadsheet shall be made to the Bristol District Attorney's designated representative in writing.



**III. EFFECTIVE DATE AND DURATION OF THIS AGREEMENT**

The provisions of this Memorandum of Understanding shall be effective as of September 28, 2020 and will remain in full force and effect until amended or rescinded by the parties.



FOR THE BRISTOL DISTRICT ATTORNEY:

Thomas M. Quinn III  
THOMAS M. QUINN III

12/10/20  
Date

# **EXHIBIT B**



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Rebecca S. Murray  
*Supervisor of Records*

November 4, 2020  
**SPR20/2032**

Darina Griffin, Esq.  
Legal Counsel  
Department of State Police  
Crime Laboratory  
124 Acton Street  
Maynard, MA 01754

Dear Attorney Griffin:

I have received the petition of Craig Shibley appealing the response of the Department of State Police Crime Lab (Department) to a request for public records. G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). Specifically, on October 2, 2020, Mr. Shibley requested the following records during the timeframe of 2015 to present within the possession of the Department:

- All submissions to the Lab requesting forensic tests relating to unsolved murders. Specifically, the dates received, requestor's name and case file [victim's name]. If outsourced to a third party, please provide the company's name;
- Testing completion dates related to each request.

***Previous appeal***

The requested records were the subject of a previous appeal. See SPR20/2015 Determination of the Supervisor of Records (October 21, 2020). SPR20/2015 was closed after this office was notified that the Department had provided a response to Mr. Shibley on October 19, 2020. Unsatisfied with the Department's response, Mr. Shibley petitioned this office and this appeal, SPR20/2032, was opened as a result.

***The Public Records Law***

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).



It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b)(iv); 950 C.M.R. 32.06(3); see also Dist. Attorney for the Norfolk Dist. v. Flatley, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10(b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records.

### ***The Department's October 19<sup>th</sup> response***

In its October 19, 2020 response, the Department asserts that the records are being withheld in their entirety under Exemptions (a), (c), and (f) of the Public Records Law.

#### ***Exemption (a)***

Exemption (a), known as the statutory exemption, permits the withholding of records that are:

specifically or by necessary implication exempted from disclosure by statute

G. L. c. 4, §7 (26)(a).

A governmental entity may use the statutory exemption as a basis for withholding requested materials where the language of the exempting statute relied upon expressly or necessarily implies that the public's right to inspect records under the Public Records Law is restricted. See Attorney Gen. v. Collector of Lynn, 377 Mass. 151, 54 (1979); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 545-46 (1977).

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either "shall not be a public record," "shall be kept confidential" or "shall not be subject to the disclosure provision of the Public Records Law."

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

Under Exemption (a), the Department explains that ". . . pursuant to G.L. c. 38 §4, the respective district attorney shall control the investigation of the death and shall coordinate the

investigation within the jurisdiction of where the death occurred. Particularly, where you are seeking records related to submitted evidence in ‘unsolved murders,’ the Worcester County District Attorney’s Office is [] the appropriate agency to determine which cases are currently considered unsolved. Although in some circumstances the laboratory may be made aware when a suspect is identified, the laboratory records will not necessarily contain this information for all cases considered unsolved homicides by the Worcester District Attorney’s Office between 2015 through present. As a result, please be advised that the Worcester County District Attorney is in possession of any potential responsive materials related to this incident and as such, all record requests should be directed towards their office.”

The Department further states that “[t]o the extent that any of laboratory files for homicide investigations where the suspect is listed as unknown, to the extent that Criminalistics and/or DNA testing was conducted, those case files would contain private, personal, potentially medical and biological DNA information. In this instance, you are seeking all of the case files, victim information, testing dates, location of testing and who requested the testing. If Criminalistics and DNA testing was completed in a case, the responsive material will potentially contain DNA testing records from the State Police Crime Lab. Massachusetts General Laws Chapter 22E, § 1 defines DNA records as ‘DNA information that is derived from a DNA sample and DNA analysis and is stored in the state DNA database or in CODIS, including all records pertaining to DNA analysis.’” The Department further explains that “Massachusetts General Laws Chapter 22E, § 1 defines DNA analysis as ‘DNA typing tests that generate numerical identification information and are obtained from a DNA sample’ Therefore, it is clearly established that the records you are requesting are those specifically addressed in Massachusetts General Law Chapter 22E. According to Massachusetts General Laws Chapters 22E, §9, ‘all DNA records collected pursuant to [c. 22E] shall be confidential and shall not be disclosed to any person or agency unless such disclosure shall be authorized by this chapter.’”

In his appeal petition, Mr. Shibley states the following:

As an aside, [the Department] . . . attempts to make the argument the Crime Lab is not the rightful records custodian of records it possesses even though on its web site it provides this disclaimer: “As Laboratory records are subject to disclosure pursuant to the public records laws . . . the Laboratory may be legally obligated to provide records associated with a submitted case to an external third party.’ The MSPCL no doubt has protocol in place specific to the submission of evidence to include: a Submission Form with dated Chain of Custody as well as identifying “Received From /By”. Such internal documentation is created by the Lab, not the Worcester DAO.

In light of the above, it is unclear why the Department is not the proper custodian of the information requested by Mr. Shibley. The Department must clarify this matter.

Mr. Shibley further states:

As a point of clarification, I did not seek any related lab files which likely “contain private, personal, potentially medical and biological DNA information”. Furthermore, I did not request “all of the case files and victim information” as stated by [the Department]. As such, [its] argument for exemption (a) is unfounded and not relevant to this discussion.

Rather, I am seeking only the date of each request as well as the completion date of each test; each requestor’s name; the identified case file (the victim’s name), NOT the contents therein; and the names of any third party testing site if outsourced by the MSPCL.

Based on the foregoing, where Mr. Shibley requests only the date of each request, the completion date of each test, each requestor’s name, the identified case file (the victim’s name), and the names of any third party testing site, it is unclear how the above referenced statutes specifically or by necessary implication permit the Department to withhold the requested information from disclosure. The Department must clarify this issue.

*Exemption (c)*

Exemption (c) permits the withholding of:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy

G. L. c. 4, § 7(26)(c).

*First clause of Exemption (c) – medical*

Exemption (c) contains two distinct and independent clauses, each requiring its own analysis. Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-33 (1983). The first clause creates a categorical exemption for medical information that relates to an identifiable individual and is of a “personal nature.” Globe Newspaper Co., 388 Mass. at 434. Medical information that is of a personal nature and relates to a specifically named individual is exempt from disclosure. Brogan, 401 Mass. at 308; Globe Newspaper Co., 388 Mass. at 438. Generally, medical information is sufficiently personal to warrant exemption. Id. There is a strong public policy in Massachusetts that favors confidentiality as to medical data about a person’s body. Globe Newspaper Co. v. Chief Medical Examiner, 404 Mass. 132, 135 (1987).

*Second clause of Exemption (c) – privacy*

Analysis under the second clause of Exemption (c) is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. Torres v.

Attorney Gen., 391 Mass. 1, 9 (1984); Attorney Gen. v. Assistant Comm’r of Real Property Dep’t, 380 Mass. 623, 625 (1980). Therefore, determinations must be made on a case by case basis.

This clause does not protect all data relating to specifically named individuals. Rather, there are factors to consider when assessing the weight of the privacy interest at stake: (1) whether disclosure would result in personal embarrassment to an individual of normal sensibilities; (2) whether the materials sought contain intimate details of a highly personal nature; and (3) whether the same information is available from other sources. See People for the Ethical Treatment of Animals (PETA) v. Dep’t of Agric. Res., 477 Mass. 280, 292 (2017).

The types of personal information which the second clause of this exemption is designed to protect includes: marital status, paternity, substance abuse, government assistance, family disputes and reputation. Id. at 292 n.13; see also Doe v. Registrar of Motor Vehicles, 26 Mass. App. Ct. 415, 427 (1988) (holding that a motor vehicle licensee has a privacy interest in disclosure of his social security number).

This clause requires a balancing test which provides that where the public interest in obtaining the requested information substantially outweighs the seriousness of any invasion of privacy, the private interest in preventing disclosure must yield. PETA, 477 Mass. at 291. The public has a recognized interest in knowing whether public servants are carrying out their duties in a law-abiding and efficient manner. Id. at 292.

Under Exemption (c), the Department posits that “. . . in addition to being exempt by specific statute as stated above, the laboratory case files for unsolved homicide cases are also likely to contain medical information and private and personal details of the homicide. This information is of a highly personal nature, unique to an individual victim as well as potential witness(es). The case files associated with a homicide investigation are likely to contain medical details of the events. Generally, medical information is sufficiently personal to warrant exemption. Globe Newspaper Co. v. Retirement Board, 388 Mass. 427, 432-34 (1983). There is a strong public policy in Massachusetts that favors confidentiality as to medical data about a person’s body. Globe Newspaper Co. v. Chief Medical Examiner, 404 Mass. 132, 135 (1987).” The Department asserts that “. . . publically releasing information that specifically details the occurrence of a homicide inherently impedes on a privacy interest for victims, witnesses, potential suspects and the family members.”

Based on the Department’s response, it is uncertain how the date of a request, the completion date of each test, each requestor’s name, the identified case file (the victim’s name), and the names of any third party testing site, constitute medical information that can be withheld under the first clause of Exemption (c). Additionally, it is uncertain how this information constitutes intimate details of a highly personal nature or how disclosure would result in personal embarrassment to an individual of normal sensibilities. Also, the Department did not address whether the information is available from other sources.

*Exemption (f)*

Exemption (f) permits the withholding of:

investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

G. L. c. 4, § 7(26)(f).

A custodian of records generally must demonstrate a prejudice to investigative efforts in order to withhold requested records. Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials. Confidential investigative techniques may also be withheld indefinitely if disclosure is deemed to be prejudicial to future law enforcement activities. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976). Redactions may be appropriate where they serve to preserve the anonymity of voluntary witnesses. Antell v. Attorney Gen., 52 Mass. App. Ct. 244, 248 (2001); Reinstein v. Police Comm'r of Boston, 378 Mass. 281, 290 n.18 (1979). Exemption (f) invites a “case-by-case consideration” of whether disclosure “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.” See Reinstein, 378 Mass. at 289-290.

Under Exemption (f), the Department indicates that “. . . forensic testing case files, victims’ names, dates of evidence submission, dates of testing completion and the name of another forensic service provider in cases of outsourced testing would constitute ‘investigatory materials’ that are exempt from disclosure under the public record law. G.L. c. 4, § 7(26)(f).” Explaining the policy considerations behind this exemption, the Department states that “[w]hereas your request seeks records from unresolved homicide investigations between 2015 and present, inherent in that language is that, you are seeking confidential investigative materials that, if released publically, could compromise the nature of the investigations. The release of details listed in any request or communication and certainly the results should not be made public as they could jeopardize that investigation. In Bougas v. Chief of Police of Lexington, 371 Mass. 59, 63 (1976), the court recognized the importance of protecting such limited class of material in order to protect the public’s interest in effective law enforcement and prosecution.”

Based on the Department’s response, it is unclear how the dates, requestor’s name, victim’s name, company’s name, and testing dates of forensic tests constitute investigatory materials. It is additionally uncertain how disclosure of this information “would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest” or compromise the Department’s investigatory efforts.

***Conclusion***

Accordingly, the Department is ordered to provide Mr. Shibley with a response to the request, provided in a manner consistent with this order, the Public Records Law and its Regulations within ten (10) business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of this response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murray". The signature is written in a cursive, flowing style.

Rebecca S. Murray  
Supervisor of Records

cc: Craig Shibley

# EXHIBIT 4



# The Commonwealth of Massachusetts

OFFICE OF THE

**DISTRICT ATTORNEY**

BRISTOL DISTRICT

**THOMAS M. QUINN III**  
DISTRICT ATTORNEY

218 South Main Street  
Fall River, MA 02721  
(508) 997-0711

November 16, 2023

Jessica Lewis, Staff Attorney  
ACLU  
One Center Plaza, Suite 850  
Boston, MA 02108  
jlewis@aclum.org  
EMAIL ONLY

Re: Public Records Request: Y-STR and DNA records

Dear Attorney Lewis,

On November 2, 2023, this office received your request for public records. This response is timely. G.L. c. 66, § 10 (a) (response required within ten business days of the receipt of the request). You renewed your request for records of “the use, storage, and/or collection of DNA samples, including Y-STR data... and any associated databases.” Please refer to this office’s response dated June 7, 2023 fully explaining why your request is denied. That response letter is incorporated and adopted in this letter.

The claims within your letter that this office is operating outside of the law are incorrect and have no bearing on a request for public records.

As stated in our previous letter, your request for records is denied because the requested records are not public. Y-STR records that were developed from samples collected from victims’ persons and from crime scenes relating to crimes that occurred within Bristol County are received by statute. G.L. c. 22E, § 10(a). DNA records that are obtained in individual cases are also obtained pursuant to that statute. That statute reads: "**The director shall furnish records in his possession, including DNA records and analysis**, to police departments in cities and towns, to the department, to the department of correction, to a sheriffs department, to the parole board or **to prosecuting officers within the commonwealth upon request in writing or electronically.**" *Id.* (emphasis added). Your claim, that such disclosure must only occur on a case-by-case basis, as opposed to aggregate records, is not supported by the language of the statute or the legislative intent. Section 10(a) permits this office to receive those records without



limitation as to the number of records or the aggregation of such records. The legislative intent behind chapter 22E is expressly stated in the legislative preamble:

**It shall be the policy of the commonwealth to assist local, state and federal criminal justice and law enforcement agencies in: (1) deterring and discovering crimes and recidivistic criminal activity; (2) identifying individuals for, and excluding individuals from, criminal investigation or prosecution; and (3) searching for missing persons.** Said policy shall be served by establishing facilities for comparing biological evidence recovered during criminal investigations with biological material obtained from offenders convicted of crimes in the commonwealth.

G.L. c. 22E, §§ 1 et al, Stat. 1997 Ch. 106, § 107, § 1 (emphasis added). Plainly, the announced statutory mandate permits prosecution offices to obtain DNA evidence, whether on a case-by-case basis or through aggregated records.

Further, you cannot receive any DNA records in the possession of this office because you are not an authorized recipient as enumerated in the statute. See *Commonwealth v. Rainey*, 491 Mass. 632, 639 (2023) citing *Bank of Am., N.A. v. Rosa*, 466 Mass. 613, 619 (2013) (“applying ‘the statutory maxim, “expressio unius est exclusio alterius,” meaning ‘the expression of one thing in a statute is an implied exclusion of other things not included in the statute’ ”). Whether the DNA records are received individually for specific case requests or in aggregation, as was done with the Y-STR records, the District Attorney is a statutorily-approved recipient but you and the public are not.

In fact, it is prohibited by statute to disclose such records to the public and to you. “All DNA records collected pursuant to this chapter shall be confidential and shall not be disclosed to any person or agency unless such disclosure shall be authorized by this chapter. DNA records shall not be stored in a criminal offender record information system operated by the department of criminal justice information services pursuant to sections 167 to 178, inclusive, of chapter 6.” G.L. c. 22E, § 9. “Any person who, by virtue of employment or official position, has possession of, or access to, a DNA sample or record or portion thereof contained in the state DNA database and who purposely discloses such record or portion thereof in any manner to any person or agency not authorized to receive such record or portion thereof shall be subject to punishment by a fine of not more than \$1,000 or imprisonment in a jail or house of correction for not more than six months or both.” G.L. c. 22E, § 12. Disclosure to you upon your request will also subject you to criminal liability: “Any person who, without proper authorization, willfully obtains a DNA record or a portion thereof contained in the state DNA database shall be subject to punishment by a fine of not more than \$1,000 or imprisonment in a jail or house of correction for not more than six months or both.” G.L. c. 22E, § 13. These statutes make clear to the public, including you as a public records requestor, that records obtained by this office under chapter 22E whether on a case-by-case basis as with standard DNA or in the aggregate as with Y-STR DNA, are protected from public disclosure by statute that demands such records be withheld from the public. When a statute prohibits public disclosure of records, they are exempt from the definition of public records and public dissemination. G.L. c. 4, § 7, cl. 26 (a) (“Public records” shall mean all... papers,... documentary materials or data, regardless of physical form..., unless such materials or data fall within the following exemptions in that they are: (a) specifically or by

necessary implication exempted from disclosure by statute;...”) Chapter 22E specifically exempts these records from public disclosure.

In regard to Y-STR records of samples relating to crimes that occurred outside of Bristol County, those records were lawfully obtained. A prosecutor may lawfully seek records through the use of a court order, subpoena and/or grand jury subpoena. *Commonwealth v. Gosselin*, 486 Mass. 256, 261 (2020) (“In the context of a grand jury investigation, the Commonwealth may subpoena certain documents in the possession of third parties pursuant to G. L. c. 277, § 68, for the purpose of presenting evidence to the grand jury prior to the defendant's indictment without prior judicial approval and without producing them directly to the court.”) Your letter of November 2 incorrectly suggested that materials obtained through a grand jury subpoena would not be subject to grand jury secrecy or that grand jury secrecy can be waived. “A person performing an official function in relation to the grand jury **may not disclose matters occurring before the grand jury** except in the performance of his or her official duties or when specifically directed to do so by the court.” Mass. R. Crim. P. 5(d) (emphasis added). This prohibition on disclosure cannot be waived. It is a prohibition imposed on prosecutors by the courts. You incorrectly suggested in your letter (See your letter of 11-2-23, p.3) that this office disclosed the records that were summoned to the grand jury or the content of the grand jury proceedings, by referencing a memorandum of understanding (MOU). The MOU does not state that grand jury materials are being inappropriately shared; it describes how the Y-STR spreadsheet will be maintained and protected from unauthorized access. In short, your claim of waiver is both legally and factually incorrect.

Your letter also reflects a misunderstanding of the significance of grand jury secrecy. Records that are summoned to the grand jury are properly part of the grand jury proceedings and investigations. See *In the Matter of a Grand Jury Investigation*, 485 Mass. 641, 656-658 (2020); *Gosselin*, 486 Mass. at 262. Under *In the Matter of a Grand Jury Investigation*, a prosecutor cannot disclose “matters occurring before a grand jury” unless there is a court order or the disclosure is in the performance of the prosecutor’s official duties. 485 Mass. at 657. The Supreme Judicial Court has explained the importance of such secrecy:

It is certainly true that “[t]he requirement that grand jury proceedings remain secret is deeply rooted in the common law of the Commonwealth.” *Globe Newspaper Co. v. Police Comm’r of Boston*, 419 Mass. 852, 865 (1995), quoting *WBZ-TV4 v. District Attorney for the Suffolk Dist.*, 408 Mass. 595, 599 (1990). It is also true that “[s]ecrecy is of fundamental importance to grand jury proceedings.” *Commonwealth v. Holley*, 476 Mass. 114, 118 (2016).

“[S]everal interests are served by maintaining strict confidentiality, ‘such as protection of the grand jury from outside influence, including influence by the news media; protection of individuals from notoriety and disgrace; encouragement of free disclosure of information to the grand jury; protection of witnesses from intimidation; and enhancement of free grand jury deliberations.’”

*Globe Newspaper Co.*, *supra* at 865-866, quoting *Matter of a John Doe Grand Jury Investigation*, 415 Mass. 727, 729 (1993).

*In the Matter of a Grand Jury Investigation*, 485 Mass. at 656. This office relies on Rule 5(d) as a proper exemption under the Public Records Law.

As stated above, this letter incorporates and adopts the entirety of this office's response dated June 7, 2023. All the exemptions will not be repeated here.

Additionally, your suggestion that the Forensic Science Oversight Board (FSOB) has control over this office, the court or the grand jury is misplaced. In fact, the FSOB reports to the Supreme Judicial Court and to the Massachusetts District Attorneys Association (MDAA) regarding the results of its investigations. G.L. c. 6, § 184A (d). The FSOB's oversight is limited to "commonwealth facilities engaged in forensic services in criminal investigations." G.L. c. 6, § 184A (a); see also G.L. c. 6, § 184A (c) ("facilities and practices being utilized for criminal forensic analysis in the Commonwealth and the operation and management of the Massachusetts state police crime laboratories"). This office does not provide forensic services or forensic analysis, and it is not a state police crime laboratory. This office is a recipient of record information under chapter 22E and is part of an agency (MDAA) to whom the FSOB reports. G.L. c. 6, § 184A (d). To the extent that the FSOB is attempting to prevent a statutory recipient of information from receiving and using that information in criminal investigations to solve crimes including rapes, the FSOB is acting contrary to its enabling statute and outside its statutory authorization.

In claiming that you are entitled to the DNA records, you have asserted that this office has acted outside the law. This office disputes that assertion, as described above, where the records were obtained by statute and through a court order. Beyond that, this office takes the opportunity to explain the importance of its investigations, using DNA and more traditional investigatory methods, to find the perpetrators of unsolved crimes. The Bristol District Attorney's Office established an Unsolved Homicide Unit in January, 2007. At that time, there were approximately 100 unsolved homicide cases dating back to the 1970s. One of the cases involved the murder of a woman, Marlene Rose, who had been killed in the summer of 2002 in New Bedford. Marlene had been beaten, bitten and sexually assaulted before she was strangled to death. A rape kit recovered from her body revealed the presence of male DNA from an unknown perpetrator. Although a DNA profile was entered into CODIS, witnesses were interviewed and other evidence was reviewed, there were no other leads to pursue in this case and it remained unsolved. In November of 2010, a CODIS hit was made to a convicted felon, John Loflin, who was then living in Tennessee, but had previously lived in the area and had previously attacked another woman who had survived. The police learned that Loflin's surviving victim had submitted to evidence collection but *no DNA testing had ever been conducted*. This office re-submitted the surviving victim's rape kit and the test results conclusively linked Loflin to that attack. Loflin was subsequently convicted in November of 2013 and is now serving a life sentence for these crimes.

In pursuing information about the laboratory's failure to complete testing in Loflin's case, the investigators discovered *hundreds of other rape kits that similarly had never been tested for DNA despite having been sent to the laboratory*. Like New Bedford, many other police departments had rape kits that had been sent out but were returned without any DNA testing being conducted. In total, there were over 1,100 rape kits countywide that were not tested. Many of these police departments were still under the impression that this testing had

been performed and just had never been matched to anyone. The Bristol District Attorney's Office recognized that these untested rape kits would contain (as seen in the Marlene Rose murder case) evidence that would assist in solving cases. This office also recognized the laboratory's inability to address this problem. The Bristol District Attorney's Office, with the assistance of Lt. AnnMarie Robertson, applied for a federal grant seeking funds to test these untested kits. In 2018, a federal grant from the Sexual Assault Kit Initiative (SAKI) and overseen by the U.S. Department of Justice was awarded to the Bristol District Attorney's Office in the amount of \$2.2 million dollars with monies to be spent specifically on: identifying and inventorying untested sexual assault kits, preparing them for submission to an external laboratory vendor (Bode Laboratories) and having them tested. Despite the grant relieving the laboratory of testing these rape kits itself, it persisted in attempting to thwart the testing through delays and inaction.

This office has not stopped its efforts, regardless of the laboratory's conduct. Another example is the case of Ivan Keith. On September 22, 1998, a woman was raped by a masked intruder as she worked cleaning an office building in Easton. The laboratory issued a report 14 months later indicating that sperm cells were found but this evidence was never DNA tested. Like many other officers involved in these cases, the Easton Police detective believed that the evidence had been tested for DNA. Thirteen years later, Lt. Robertson arranged for the DNA testing, which was finally completed in 2013. The results of that testing showed that the perpetrator of this rape had also been linked to three other cases occurring from 1996 to 1998 spanning 3 counties: Bristol, Plymouth, and Norfolk. As the DNA profile could not be connected to any known CODIS offender, the case remained unsolved until 2019 when the Bristol County District Attorney's Office used newly developed genetic genealogy and Y-STR testing to identify Ivan Keith. Keith has since pled guilty to his crimes in Plymouth and Norfolk counties based on the Y-STR and later STR testing. The Loflin and Keith cases demonstrate that the laboratory has failed in its responsibilities and simply declined to conduct DNA testing, permitting perpetrators of rape and murder to walk free for a decade or more. This office has been working to find solutions and to do so without increased cost to the laboratory, in order to make sure that rape victims get justice and rapists are prosecuted for their crimes. The laboratory has not done its part and until 2010, it did so without any effective oversight.

Additionally, this office determined that the Commonwealth had also failed to collect approximately 15,000 DNA samples from convicted felony offenders, even though it is required by statute and this office has taken steps to remedy that unlawful omission. This office has undertaken efforts to solve cases of missing persons and unidentified bodies, by using available DNA evidence. To date, this office has identified two unidentified deceased persons - and intends to continue to attempt to locate missing persons from our county, one person who was identified had been missing for seventeen years and another for thirty-eight years. We also intend to assist in the identification of over 100 unidentified deceased person located across the state. All forensic tools should be employed to help solve cases, locate missing persons, identify deceased persons, if only to bring closure to the loved ones left behind. In short, this office has abided by chapter 22E in its statutory language and other governing laws and has effectuated the legislative intent that inspired that statute, where the laboratory has not, and this office has properly sought court orders and pursued all legally appropriate means in pursuit of its objectives.

Please be advised that this office does not waive any fees associated with the Public Records Law in this matter. If further records are requested or ordered, fees will be assessed at \$25 per hour after the first four hours, as is permissible under the statute.

One of the intended recipients of your letter, Courtney Almeida, is no longer associated with this office. Please refrain from directing any correspondence to her or her now non-operational e-mail address, to prevent it from becoming lost.

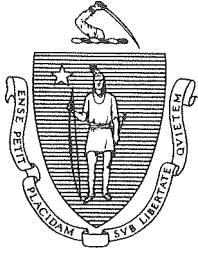
Where this response constitutes a denial of your request, please be advised that you have the right to appeal to the Supervisor of Public Records and to seek a judicial remedy in Superior Court pursuant to 950 C.M.R. 32.06(3)(c); 950 C.M.R. 32.08(1); G.L. c. 66, §§ 10(b), 10A(a).

Sincerely,

Mary Lee

Mary Lee  
Assistant District Attorney  
Bristol District

# EXHIBIT 5



# The Commonwealth of Massachusetts

## DISTRICT ATTORNEY

NORTHWESTERN DISTRICT

DAVID E. SULLIVAN  
DISTRICT ATTORNEY

ONE GLEASON PLAZA  
NORTHAMPTON, MASSACHUSETTS 01060  
TEL (413) 586-9225 FAX (413) 584-3635  
www.NorthwesternDA.org

November 27, 2023

Attorney Jessica J. Lewis  
ACLU of MA  
One Center Plaza, Suite 850  
Boston, MA 02108

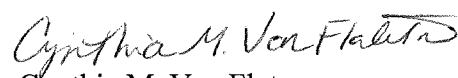
Re: Public Records Request – DAO's Collection and Use of DNA

Dear Attorney Lewis:

Thank you for your November 7, 2023 Public Records request to the Northwestern District Attorney's Office (NWDAO). Responses are below

1. NWDAO does not maintain a database, spreadsheet or other lists relating to DNA samples;
2. As no database, spreadsheet or list is maintained, there are no protocols, guidelines and standards regarding access to them;
3. NWDAO possesses no responsive documents to Question 3;
4. Please see attached Memorandum of Understanding (MOU) between NWDAO and the Bristol District Attorney's Office (Bristol DAO) dated January 27, 2021. Please also find attached hereto a letter from several District Attorneys, including Northwestern District Attorney David E. Sullivan, to Kerry A. Collins, Chair of the Forensic Science Oversight Board at the Executive Office of Public Safety and Security, also dated January 27, 2021. Although the MOU was executed on January 27, 2021, NWDAO has not participated in the sharing of any databases, spreadsheets, or lists;
5. The MOU between NWDAO and Bristol DAO exists as stated above. However, NWDAO has not participated in the sharing of DNA samples, reports, profiles or information with Bristol DAO;
6. NWDAO possesses no responsive records to Question 6;
7. NWDAO possesses no responsive records to Question 7;
8. NWDAO possesses no responsive records to Question 8.

Sincerely yours,

  
Cynthia M. Von Flatern  
Assistant District Attorney/RAO

**MEMORANDUM OF UNDERSTANDING,  
BETWEEN THE NORTHWESTERN DISTRICT ATTORNEY  
AND THE BRISTOL DISTRICT ATTORNEY REGARDING THE  
SHARING OF LAB REPORTS RELATED TO Y-STR TESTING FOR THE  
PURPOSE OF MAINTAINING A SEARCHABLE SPREADSHEET**

**I. GENERAL PRINCIPLES**

The NORTHWESTERN DISTRICT ATTORNEY and the BRISTOL DISTRICT ATTORNEY agree that Y-STR DNA testing is a reliable and accepted scientific process that identifies DNA from the male Y chromosome. Y-STR DNA testing has been used by the Massachusetts State Police Lab, Bode Cellmark Laboratories and other accredited forensic labs across the country for years. Y-STR has not only gained scientific acceptance in the forensic community but it is also routinely admitted as reliable and generally accepted evidence in criminal cases in the courts of the Commonwealth and across the nation.

Y-STR DNA testing has been conducted by the Massachusetts State Police lab for over a decade. During this period, reports resulting from this testing have been provided to the police departments who submit the evidence and to District Attorney's Office of the District in whose jurisdiction the police department operates. The lab has continued to maintain all records of this testing.

Despite the best efforts of law enforcement and prosecutors, many serious cases (including rapes and homicides) remain unsolved. In some of these cases, investigators have been able to recover DNA evidence from the victim or the scene that has resulted in the development of an unknown Y-STR profile believed to be connected to the perpetrator. Identifying this unknown Y-STR profile would provide a significant lead in these unsolved cases. However, there is currently no ability to compare this Y-STR profile developed from evidence against all of the other Y-STR profiles developed by the lab unless each result is manually compared with the thousands of other profiles previously developed by the lab. Consequently, under the current procedure Y-STR reports that are provided to police and the District Attorneys have limited value to investigators because it would take hundreds of hours to try and match a single new result to previously generated Y-STR profiles. Moreover, there is no current mechanism to compare Y-STR profiles outside of a District because Y-STR profiles are only provided to the District Attorney with jurisdiction over the police department that provided the item of evidence for testing.

To address this problem, the Bristol District Attorney's Office aggregated all its Y-STR profiles provided to it by the lab from prior case submissions into a searchable spreadsheet. This method allows for searching the spreadsheet for similar profiles from an individual or other unsolved case within seconds and provides the capability of making case-to-case matches as well as excluding individuals who may have been persons of interest in a particular investigation. Aggregating all Y-STR data will allow investigators to effectively and efficiently use information that is already being provided to the police and the respective District Attorney's Office. Because individuals frequently commit crimes in more than one county, this Memorandum of Understanding provides for the aggregation of Y-STR profiles of all participating Districts in the Commonwealth.



By this Memorandum of Understanding the Northwestern District Attorney's Office agrees to provide its Y-STR profiles to the Bristol District Attorney in order to expand the searchable spreadsheet to include profiles from all participating Districts. The Bristol District Attorney agrees to perform searches requested by participating District Attorneys and provide the investigative leads generated by these searches to the participating District Attorney. Including every District in this undertaking increases the likelihood that the aggregated profiles will provide investigatory leads to all.

## II. DISTRICT ATTORNEY OBLIGATIONS

The Bristol District Attorney will maintain and supervise the operation of the Y-STR spreadsheet.

The Bristol District Attorney will designate an IT (Information Technology) employee to supervise and oversee the day-to-day operation of the spreadsheet which will include the collection, entry and removal of any Y-STR profiles. This designation will be in effect until such time as the designation is changed or discontinued in writing.

The Bristol District Attorney will ensure that access to the spreadsheet is limited to authorized individual(s) and that such information is safeguarded at all times.

A known individual's profile cannot be entered into the spreadsheet if the sample was provided by or recovered from an individual subject to case specific restrictions preventing its entry into the spreadsheet. Only a District Attorney's office can provide profiles for entry into the spreadsheet and any submitted profiles/samples are required to have been produced by the Massachusetts State Police Crime Lab or other ASCLAD certified laboratory.

An internal search of the entire spreadsheet will be performed at least one time every month but would also be run anytime a submission is made by a participating District Attorney's Office or at any other time as is necessary to further an active investigation. A District Attorney can request a search with any number of Loci that match to a profile. Profiles with mixtures that have identified a major and minor profile can also be searched.

Every participating District Attorney will designate a representative from his/her office who will be the contact person for all communications and will be responsible for determining which Y-STR profiles will be provided to the Bristol District Attorney's Office to be entered into the spreadsheet.

The Bristol District Attorney will maintain a log listing the profiles received, case identifying information and the originating District as well as the date of entry and/or removal from the spreadsheet.

All requests by the participating District Attorney's office for entry of Y-STR information into the spreadsheet shall be made to the Bristol District Attorney's designated representative in writing.

Upon receipt of this request, the Bristol District Attorney's designated representative will enter such information within seven (7) days of receipt (or sooner if necessary to assist an active investigation) of the request and accompanying Y-STR profiles.

In the event that a submitted profile matches a profile in the spreadsheet, the Bristol District Attorney's Office will notify in writing the respective District Attorney's Office. Notice of any match resulting from the entry of a Y-STR profile shall be given to the participating District Attorney's Office immediately or no later than forty-eight (48) hours upon learning of the match.

If matching profiles were provided by different Districts, each of those Districts will be notified when there is a match. Each District will also be informed of the corresponding case which matched their profile and the District Attorney's Office that submitted the case. The District Attorney's offices whose cases are matched can then coordinate the sharing of this information.

If the participating District Attorney requests that any Y-STR profile it submitted for entry into the spreadsheet later be removed for any reason, the Bristol District Attorney will remove the profile and confirm the removal in writing to the participating District Attorney.

### III. EFFECTIVE DATE AND DURATION OF THIS AGREEMENT

The provisions of this Memorandum of Understanding shall be effective as of January 6, 2021 and will remain in full force and effect until amended or rescinded by the parties.

FOR THE NORTHWESTERN DISTRICT ATTORNEY:

David E. Sullivan  
DAVID E. SULLIVAN

1-6-21  
Date

FOR THE BRISTOL DISTRICT ATTORNEY:

Thomas M. Quinn III  
THOMAS M. QUINN III

1-28-21  
Date



MICHAEL D. O'KEEFE  
DISTRICT ATTORNEY

THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE  
DISTRICT ATTORNEY

CAPE & ISLANDS DISTRICT

3281 MAIN STREET  
P.O. BOX 465  
BARNSTABLE, MA 02830  
(508) 362-8113

January 27, 2021

Kerry A. Collins, Chair  
Forensic Science Oversight Board  
Undersecretary of Forensic Science and Technology  
Executive Office of Public Safety and Security  
1 Ashburton Place  
Boston, MA 02108

Dear Chair Collins and Board Members,

We understand that the Forensic Science Oversight Board's (FSOB) has been asked to weigh in on specific familial DNA legislation, and in the process, was discussing the use of Y-STR testing. Thank you for the opportunity to provide information relative this important investigative tool that helps bring justice to victims of unsolved violent crimes.

Since 2003, the Massachusetts State Police Crime Laboratory, (MSPCL), has been conducting Y-STR testing on thousands of biological samples submitted to the lab. This biological evidence is frequently recovered from a victim's body using a sexual assault collection kit and/or recovered from other evidence left at a crime scene. In many sexual assault cases, traditional STR testing is not effective because the samples produce a mixture of the victim's DNA and the perpetrator's DNA. In traditional STR analysis, the victim's DNA can overwhelm the male perpetrator's DNA and the perpetrator's STR profile cannot be determined. In those cases, Y-STR is used instead as it allows the analyst to extract the Y (male) DNA from the mixture and develop a profile for just the male perpetrator. This type of testing has been scientifically accepted and used in the courts across the country, including Massachusetts, for the last eighteen years. During this time, the MSPCL has provided, as required, a copy of Y-STR reports to the submitting police department and/or the District Attorney's Office. However, these Y-STR reports, which contain a series of sixteen numbers, are not useful to investigators attempting to identify an unknown/unidentified suspect. Until now, no effort has been made to attempt to use the information provided in these reports to compare it to the thousands of other unknown profiles from biological material where similar Y-STR testing was performed. The time is long overdue for our investigators to make use of these Y-STR reports for their intended purpose, i.e. to identify unknown perpetrators of violent crimes.

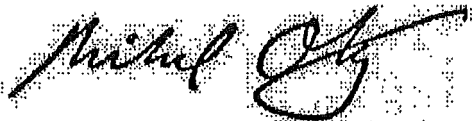
The Lab's obligation to furnish the reports to the District Attorney's Offices is clear. ("The director shall furnish records in his possession, including DNA records and analysis, to police departments in cities and towns, to the department, to the department of correction, to a sheriff's department, to the parole board or to prosecuting officers within the commonwealth upon request in writing or electronically.") The Commonwealth's District Attorneys' Offices are

criminal justice agencies seeking the Y-STR reports for legitimate law enforcement purposes. Specifically it is our goal to identify the perpetrators of sexual assaults in unsolved investigations in the Commonwealth.

The use of a spread sheet to compare Y-STR reports does not violate M.G.L. c. 22E. That statute pertains to the state maintained STR database which is made up of STR records. The District Attorneys have repeatedly indicated that the use of Y-STR information is for investigative leads in unsolved homicides, rapes, and other serious violent crimes. These Y-STR reports have been provided to the police and District Attorneys' Offices for years but the information has largely been unusable except when a suspect has been identified. As a result, Y-STR reports have not been effectively used to identify the unknown perpetrators responsible for the thousands of unsolved violent crimes. To date, the involved District Attorneys' Offices have made a request for all of their Y-STR reports to get an accurate list of every case where this testing was used. The District Attorneys are not asking the lab to do anything other than provide these readily available Y-STR reports. The District Attorneys have made it perfectly clear that their intent is to pool resources to use this, already tested and available information, to solve these crimes.

These District Attorneys have a shared interest in identifying unknown perpetrators of violent crimes in their respective counties. The Y-STR reports have simply been placed in a searchable spreadsheet so that unknown individuals can now be identified or connected to other unsolved cases. There is nothing inappropriate with compiling this information in this manner to make it usable and efficient. The searchable Y-STR spreadsheet is needed so that Y-STR information can actually be used for its intended purpose, i.e. to assist in identifying the unknown perpetrators of these violent crimes. To date, only one unknown Y-STR profile from a different county was compared with the Bristol District Attorney's searchable spreadsheet. In that case, although the unknown perpetrator was linked through CODIS to multiple rapes and the homicides of two women, he was not identified. As a result, this case has remained unsolved for several years as there was no other way to identify him. However, within seconds of submitting the Y-STR profile of this individual to the Bristol County Y-STR spreadsheet, his profile was matched to a Bristol County rapist. This simple and undoubtedly proper comparison has now provided investigators with a significant investigative lead to pursue in that case.

Sincerely,

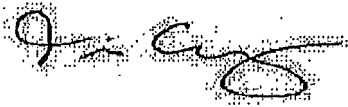


Michael O'Keefe

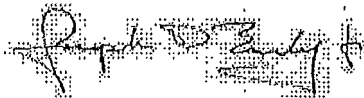
Cape and Islands District Attorney



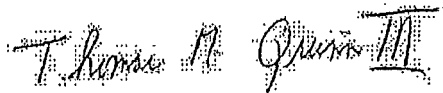
Jonathan W. Blodgett  
Essex District Attorney



Timothy Cruz  
Plymouth District Attorney



Joseph D. Early, Jr.  
Worcester District Attorney



Thomas M. Quinn III  
Bristol District Attorney



David E. Sullivan  
Northwestern District Attorney

**From:** [Freeman, Kristin \(PLY\)](#)  
**To:** [Jessica Lewis](#)  
**Subject:** Re: ACLUM - Public Records Request - 11.07.23  
**Date:** Thursday, December 28, 2023 3:59:19 PM  
**Attachments:** [image001.jpg](#)

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Hi sorry I am out of the office recovering from surgery, but I checked with Jack Zanini, our first assistant district attorney, and he said as far as he knows the Plymouth County DA's Office has not shared any information pursuant to the MOU.

Hope this helps and sorry for the delay in responding!

Happy New Year!

Get [Outlook for iOS](#)

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**From:** Jessica Lewis <jlewis@aclum.org>  
**Sent:** Thursday, December 28, 2023 11:15:27 AM  
**To:** Freeman, Kristin (PLY) <kristin.freeman@mass.gov>  
**Subject:** RE: ACLUM - Public Records Request - 11.07.23

**CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.**

Good Morning Kristin,

And happy holidays! I wanted to try and follow-up on the below. If you are able, could you please let me know whether Plymouth has ever acted upon the MOU it signed with Bristol?

All the best,

Jessica Lewis

ACLU of Massachusetts

Staff Attorney

Tel.: (617) 482-3170 x334 | [jlewis@aclum.org](mailto:jlewis@aclum.org)

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**From:** Jessica Lewis  
**Sent:** Thursday, December 14, 2023 1:30 PM  
**To:** 'PlymouthDA, Public Records (PLY)' <PlymouthDA.PublicRecords@mass.gov>  
**Subject:** RE: ACLUM - Public Records Request - 11.07.23

Thank you, Kristin. Your message seems to have been caught by our SPAM filter, but it has now been received. Are you able to tell me whether the Office has acted upon the MOU with Bristol such that you are sharing information?

All the best,

Jessica Lewis

ACLU of Massachusetts

Staff Attorney

Tel.: (617) 482-3170 x334 | [jlewis@aclum.org](mailto:jlewis@aclum.org)

---

**From:** Freeman, Kristin (PLY) <[kristin.freeman@mass.gov](mailto:kristin.freeman@mass.gov)> **On Behalf Of** PlymouthDA, Public Records (PLY)

**Sent:** Thursday, December 7, 2023 2:58 PM

**To:** Jessica Lewis <[jlewis@aclum.org](mailto:jlewis@aclum.org)>

**Subject:** RE: ACLUM - Public Records Request - 11.07.23

RE: Public Records Request of November 15, 2023., Reference # R000994-111523.

Dear Attorney Jessica Lewis,

The Plymouth County MA District Attorney's Office received a Public Records Request from you on November 15, 2023. Your request mentioned:

**"A Public Records Request – DAO's Collection and Use of DNA"**

We do not have any public records that are responsive to your request, with the exception of the Memorandum of Understanding that is requested in (4) and (5). I have attached the Memorandum of Understanding above.

If you have any questions please feel free to call me or email me at anytime. My direct line is listed below and my email address is [Kristin.Freeman@mass.gov](mailto:Kristin.Freeman@mass.gov) Under M. G. L. c. 66, section 10A (a), you have the right of appeal to the supervisor of records, and under M. G. L. c. 66, section 10A(c) you have the right to seek judicial review of an unfavorable decision by commencing a civil action in the superior court.

Sincerely,

Kristin Freeman  
Assistant District Attorney  
Records Access Office  
(508) 894-2698

**Kristin Freeman**  
Assistant District Attorney  
Plymouth County District Attorney's Office  
Main Office - 166 Main Street, Brockton, MA 02301  
Tel: (508) 894-2698 - Fax: (508) 586-3578



Website: <https://www.plymouthda.com>  
Follow us on Twitter: <https://twitter.com/PlymouthCtyDAO>

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**From:** Jessica Lewis <[jlewis@aclum.org](mailto:jlewis@aclum.org)>

**Sent:** Friday, December 1, 2023 12:12 PM

**To:** PlymouthDA, Public Records (PLY) <[PlymouthDA.PublicRecords@mass.gov](mailto:PlymouthDA.PublicRecords@mass.gov)>

**Subject:** RE: ACLUM - Public Records Request - 11.07.23

**CAUTION:** This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good Afternoon, and I hope this email finds you well. Could you please provide an update as to

the DAO's response to ACLUM's public records request?

All the best,

Jessica Lewis

ACLU of Massachusetts

Staff Attorney

Tel.: (617) 482-3170 x334 | [jlewis@aclum.org](mailto:jlewis@aclum.org)

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**From:** Jessica Lewis

**Sent:** Tuesday, November 7, 2023 10:19 AM

**To:** 'PlymouthDA, Public Records (PLY)' <[PlymouthDA.PublicRecords@mass.gov](mailto:PlymouthDA.PublicRecords@mass.gov)>

**Subject:** RE: ACLUM - Public Records Request - 11.07.23

Good Afternoon Attorney Palumbo,

We decline to use the online portal; under the Public Records Law, a state agency is required to accept a records request by email. Thank you

All the best,

Jessica Lewis

ACLU of Massachusetts

Staff Attorney

Tel.: (617) 482-3170 x334 | [jlewis@aclum.org](mailto:jlewis@aclum.org)

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**From:** PlymouthDA, Public Records (PLY) <[PlymouthDA.PublicRecords@mass.gov](mailto:PlymouthDA.PublicRecords@mass.gov)>

**Sent:** Tuesday, November 7, 2023 10:17 AM

**To:** Jessica Lewis <[jlewis@aclum.org](mailto:jlewis@aclum.org)>

**Subject:** Automatic reply: ACLUM - Public Records Request - 11.07.23

If you would like to make a Public Records request, please click on the following link to access the official Plymouth County District Attorney's Office Public Records portal:

[Plymouth MA DA Records Center \(govqa.us\)](https://www.plymouthma.gov/govqa)

Thank you,

**RECORDS ACCESS OFFICER:**

Karen Palumbo

Assistant District Attorney

166 Main Street

Brockton, MA 02301

508-584-8120

[PlymouthDA.PublicRecords@mass.gov](mailto:PlymouthDA.PublicRecords@mass.gov)

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have received this communication in error, please immediately notify the sender and delete this communication, any attachments, and all copies from your system and records.

**MEMORANDUM OF UNDERSTANDING,  
BETWEEN THE PLYMOUTH COUNTY DISTRICT ATTORNEY  
AND THE BRISTOL DISTRICT ATTORNEY REGARDING THE  
SHARING OF LAB REPORTS RELATED TO Y-STR TESTING FOR THE  
PURPOSE OF MAINTAINING A SEARCHABLE SPREADSHEET**

**I. GENERAL PRINCIPLES**

The PLYMOUTH COUNTY DISTRICT ATTORNEY and the BRISTOL DISTRICT ATTORNEY agree that Y-STR DNA testing is a reliable and accepted scientific process that identifies DNA from the male Y chromosome. Y-STR DNA testing has been used by the Massachusetts State Police Lab, Bode Cellmark Laboratories and other accredited forensic labs across the country for years. Y-STR has not only gained scientific acceptance in the forensic community but it is also routinely admitted as reliable and generally accepted evidence in criminal cases in the courts of the Commonwealth and across the nation.

Y-STR DNA testing has been conducted by the Massachusetts State Police lab for over a decade. During this period, reports resulting from this testing have been provided to the police departments who submit the evidence and to District Attorney's Office of the District in whose jurisdiction the police department operates. The lab has continued to maintain all records of this testing.

Despite the best efforts of law enforcement and prosecutors, many serious cases (including rapes and homicides) remain unsolved. In some of these cases, investigators have been able to recover DNA evidence from the victim or the scene that has resulted in the development of an unknown Y-STR profile believed to be connected to the perpetrator. Identifying this unknown Y-STR profile would provide a significant lead in these unsolved cases. However, there is currently no ability to compare this Y-STR profile developed from evidence against all of the other Y-STR profiles developed by the lab unless each result is manually compared with the thousands of other profiles previously developed by the lab. Consequently, under the current procedure Y-STR reports that are provided to police and the District Attorneys have limited value to investigators because it would take hundreds of hours to try and match a single new result to previously generated Y-STR profiles. Moreover, there is no current mechanism to compare Y-STR profiles outside of a District because Y-STR profiles are only provided to the District Attorney with jurisdiction over the police department that provided the item of evidence for testing.

To address this problem, the Bristol District Attorney's Office aggregated all its Y-STR profiles provided to it by the lab from prior case submissions into a searchable spreadsheet. This method allows for searching the spreadsheet for similar profiles from an individual or other unsolved case within seconds and provides the capability of making case-to-case matches as well as excluding individuals who may have been persons of interest in a particular investigation. Aggregating all Y-STR data will allow investigators to effectively and efficiently use information that is already being provided to the police and the respective District Attorney's Office. Because individuals frequently commit crimes in more than one county, this Memorandum of Understanding provides for the aggregation of Y-STR profiles of all participating Districts in the Commonwealth.

By this Memorandum of Understanding the Plymouth County District Attorney's Office agrees to provide its Y-STR profiles to the Bristol District Attorney in order to expand the searchable spreadsheet to include profiles from all participating Districts. The Bristol District Attorney agrees to perform searches requested by participating District Attorneys and provide the investigative leads generated by these searches to the participating District Attorney. Including every District in this undertaking increases the likelihood that the aggregated profiles will provide investigatory leads to all.

## **II. DISTRICT ATTORNEY OBLIGATIONS**

The Bristol District Attorney will maintain and supervise the operation of the Y-STR spreadsheet.

The Bristol District Attorney will designate an IT (Information Technology) employee to supervise and oversee the day-to-day operation of the spreadsheet which will include the collection, entry and removal of any Y-STR profiles. This designation will be in effect until such time as the designation is changed or discontinued in writing.

The Bristol District Attorney will ensure that access to the spreadsheet is limited to authorized individual(s) and that such information is safeguarded at all times.

A known individual's profile cannot be entered into the spreadsheet if the sample was provided by or recovered from an individual subject to case specific restrictions preventing its entry into the spreadsheet. Only a District Attorney's office can provide profiles for entry into the spreadsheet and any submitted profiles/samples are required to have been produced by the Massachusetts State Police Crime Lab or other ASCLAD certified laboratory.

An internal search of the entire spreadsheet will be performed at least one time every month but would also be run anytime a submission is made by a participating District Attorney's Office or at any other time as is necessary to further an active investigation. A District Attorney can request a search with any number of Loci that match to a profile. Profiles with mixtures that have identified a major and minor profile can also be searched.

Every participating District Attorney will designate a representative from his/her office who will be the contact person for all communications and will be responsible for determining which Y-STR profiles will be provided to the Bristol District Attorney's Office to be entered into the spreadsheet.

The Bristol District Attorney will maintain a log listing the profiles received, case identifying information and the originating District as well as the date of entry and/or removal from the spreadsheet.

All requests by the participating District Attorney's office for entry of Y-STR information into the spreadsheet shall be made to the Bristol District Attorney's designated representative in writing.

Upon receipt of this request, the Bristol District Attorney's designated representative will enter such information within seven (7) days of receipt (or sooner if necessary to assist an active investigation) of the request and accompanying Y-STR profiles.

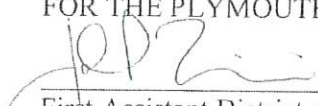
In the event that a submitted profile matches a profile in the spreadsheet, the Bristol District Attorney's Office will notify in writing the respective District Attorney's Office. Notice of any match resulting from the entry of a Y-STR profile shall be given to the participating District Attorney's Office immediately or no later than forty-eight (48) hours upon learning of the match.

If matching profiles were provided by different Districts, each of those Districts will be notified when there is a match. Each District will also be informed of the corresponding case which matched their profile and the District Attorney's Office that submitted the case. The District Attorney's offices whose cases are matched can then coordinate the sharing of this information.

### III. EFFECTIVE DATE AND DURATION OF THIS AGREEMENT

The provisions of this Memorandum of Understanding shall be effective as of September 28, 2020 and will remain in full force and effect until amended or rescinded by the parties.

FOR THE PLYMOUTH COUNTY DISTRICT ATTORNEY:

  
\_\_\_\_\_  
First Assistant District Attorney

September 28, 2020

FOR THE BRISTOL DISTRICT ATTORNEY:

  
\_\_\_\_\_  
THOMAS M. QUINN III

12/10/20  
\_\_\_\_\_  
Date