



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

March 17, 2006

Mr. Todd Griffith
Designated State Official
Arizona Department of Public Safety
2102 West Encanto Blvd.
Phoenix, AZ 85009

Dear Mr. Griffith:

This is to follow-up on the release of DNA data in response to an Arizona Superior Court Order (Keppel, J.) for matches of your State's offender DNA records at 9 or more loci. This is to advise you that your agency's release of CODIS search results containing DNA Specimen Identification Numbers is currently under review.

As you know, the Arizona Department of Public Safety is a participant in the National DNA Index System (NDIS). As such, you have agreed to abide by the Federal DNA Identification Act and the Memorandum of Understanding for Participation in the National DNA Index System (NDIS MOU) and use of the CODIS software. A key provision of the Federal DNA Act and the NDIS MOU concerns your responsibility to comply with the limited access and disclosure provisions for the DNA samples and DNA records that are contributed to NDIS.

The Federal DNA Identification Act of 1994, as amended (42 U.S.C. §14132; a copy of which is enclosed) specifies who may access the DNA records in NDIS as follows:

- "(3) maintained by Federal, State, and local criminal justice agencies (or the Secretary of Defense in accordance with section 1565 of title 10, United States Code) pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only--
- (A) to criminal justice agencies for law enforcement identification purposes;
 - (B) in judicial proceedings, if otherwise admissible pursuant to applicable statutes or rules;
 - (C) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or
 - (D) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes. " 42 U.S.C. §14132 (b)(3).

Mr. Todd Griffith

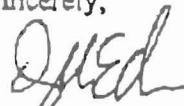
It has consistently been the interpretation of the FBI, the agency responsible for the establishment and operation of the National DNA Index System, that the defense is entitled under subdivision (3)(C) to access to the DNA records and DNA samples related to the defendant's case, such as the defendant's sample and that of the crime scene evidence. The FBI has never interpreted this provision to permit the defense access to all of the DNA records at the National Index or the performance of any searches at NDIS.

While we understand that the Arizona Department of Public Safety, acting in good faith, complied with a proper judicial court order in the release of the 9 loci search of your offender DNA records, this release of DNA data was not authorized under the NDIS MOU. Moreover, as I am sure you are now aware, the Arizona DNA search results, containing Specimen Identification Numbers, is now being disseminated beyond the specific California case for which the judicial court order was issued.

The FBI requests that you advise your legal representative of the further dissemination of Arizona's DNA search results and data so that appropriate corrective action may be taken with the Court that issued the original order for production of this document. At a minimum, such corrective action should include measures to prevent any further distribution of the DNA search results and data.

If you have any questions, please feel free to contact me or Dr. Thomas Callaghan, Chief of the CODIS Unit at (703) 632-8302 or Thomas.Callaghan@ic.fbi.gov.

Sincerely,



Dwight E. Adams
Director
Laboratory Division

1-Mr. Randy Johnson, DNA Database Unit Supervisor