



TEXAS FORENSIC
SCIENCE COMMISSION

Justice Through Science

1700 North Congress Ave., Suite 445
Austin, Texas 78701

September 16, 2014

Via e-mail

Mr. George Scharmen
315 Dwyer
San Antonio, Texas 78204

RE: Texas Forensic Science Commission Complaint #14-12

Dear Mr. Scharmen:

At its August 1, 2014 meeting, the Texas Forensic Science Commission voted to dismiss your complaint. The Commission investigates allegations of negligence and misconduct in forensic analysis. (*See* TEX. CODE CRIM. PROC. ART. 38.01) Based on the information you submitted, you have not alleged any negligence and/or misconduct related to a forensic analysis. Rather, your inquiry requests copies of data to verify the validity of breath alcohol machines used in your client's case. The Commission does not have the authority to produce the data you are requesting, or to require any other state agency or private entity to produce the data.

On May 27, 2014, Commission staff requested a response to your complaint from the Department of Public Safety ("DPS"). A copy is enclosed with this letter. The most pertinent section of the response is the following:

The Department's Office of the Scientific Director (OSD) has issued Standard Operating Guidelines (SOG) which provides guidance to not only the Department of Public Safety's Breath Alcohol Laboratory but also those laboratories providing breath alcohol services which fall under the Department's regulatory authority. The OSD does not have the authority to "govern" the disclosure of governmental records. Section 7A of the SOGs details record keeping for a laboratory providing breath alcohol services. There is no requirement these records must be maintained in electronic form.

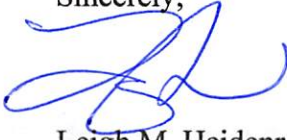
DPS does not provide breath alcohol laboratory services to Bexar County. Instead, the Bexar County Commissioner's Court has a contractual agreement with a private forensic laboratory, Alamo Forensic Services. Under the regulatory authority given the DPS by the Texas Legislature and the resulting administrative code set forth in TAC 37 Chapter 19, the Office of the Scientific Director certifies two employees of Alamo Forensic Services as Technical Supervisors. These two individuals provide breath alcohol laboratory services to Bexar County including instrument and operator supervision, testing facility oversight, and record compilation and retention. Since DPS is not involved in the day to day activities of Alamo Forensic Services, DPS has made no claims concerning Intoxilyzer interferences in Bexar County. All records concerning the instruments mentioned in the complaint are in the custody and control of Alamo Forensic Services.

DPS routinely receives a portion of the electronic information generated by the Intoxilyzer instrument. This data is used by the OSD for program management. The evidential test records and other information related to instrument maintenance is always maintained by the Technical Supervisor(s) responsible for instrument oversight. In this case, Alamo Forensic Services maintains the evidential test records and instrument maintenance files. The DPS regularly provides the collected program management data in response to public information requests. Late in calendar year 2013 the data acquisition software became corrupted and the program became inoperable. Prior efforts to repair the database had been unsuccessful; however, DPS believes recent attempts to patch the software will prove effective and will provide this program management data in accordance with established DPS policy related to public information requests. **However, it must be noted all of the records mentioned in the complaint are available through Alamo Forensic Services.**

In its letter, DPS emphasizes that it collects only a portion of the data you are seeking. However, DPS explains that all records you have requested are available through Alamo Forensic Services. In light of the Commission's dismissal of the complaint and DPS' response to our inquiry, we recommend you contact Alamo Forensic Services for the requested data, and follow-up with DPS directly to the extent necessary.

If you have any further questions, please feel free to contact our office.

Sincerely,



Leigh M. Heidenreich
Commission Coordinator

encl.

cc: J. Mack Cowan
Scientific Director
Texas Forensic Breath Alcohol Testing Program