



NATIONAL COMMISSION ON FORENSIC SCIENCE



Recommendation to the Attorney General Transparency of Quality Management System Documents

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| Subcommittee |
| Interim Solutions |

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| Date of Current Version | 03/22/2016 |
| Approved by Subcommittee | 02/29/2016 |
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| Action by Attorney General | 09/06/2016 |

Attorney General Action

The Department of Justice (DOJ) responded on September 6, 2016, by announcing that the Department’s forensic laboratories that support criminal investigation and prosecution will post current quality management system (QMS) documents and existing summaries of internal validation studies online within 18 months. QMS documents and existing summaries of internal validation studies may be posted in a format of each laboratory’s choice and redacted for security, investigative, intelligence, and other statutory exemption reasons. This mandate does not alter existing discovery obligations. For more information, please see the Attorney General’s Memorandum at: <https://www.justice.gov/opa/file/891366/download>.

Commission Action

The Commission voted to adopt this Recommendation on March 22, 2016 by more than a two-thirds majority vote (83% yes, 13% no, 3% abstain).

Note: This document includes recommendations developed and adopted by the National Commission on Forensic Science and proposes specific acts that the Attorney General could take to further the goals of the Commission. The portion of the document directly labeled “Recommendations” represents the formal recommendations of the Commission. Information beyond that section is provided for context. This document does not necessarily represent the views of the Department of Justice or the National Institute of Standards and Technology. The National Commission on Forensic Science is a Federal Advisory Committee established by the Department of Justice. For more information, please visit: <https://www.justice.gov/ncfs>.

Recommendations

The US Attorney General should direct all Department of Justice (DOJ) Forensic Science Service Providers (FSSPs) to make quality management system documents (as described

below)¹ readily accessible to the public in an electronic format upon request.

The US Attorney General should direct all DOJ FSSPs to make quality management system documents (as described below) available on the department's website within one year of the passage of this directive.

Starting January 1, 2017, the US Attorney General should require that federal prosecutions, in cases in which federal prosecutors request forensic testing, shall only use Forensic Science Service Providers (FSSPs) and Forensic Medicine Service Providers (FMSPs) that make quality management system documents (as described below) available in an electronic format upon request by either the defense or the prosecution.

The US Attorney General should encourage the universal publication of quality management system documents (as described below) from all non-DOJ FSSPs and FMSPs through any means available including providing funding or information technology support and infrastructure where possible to state and local FSSPs and FMSPs.

Statement of the Issue

Publication of quality management system documents specified below by FSSPs and FMSPs will promote accountability and transparency and help foster a culture within the community of FSSPs and FMSPs of adopting and complying with quality management systems.

Many FSSPs and FMSPs, including most federal providers have written policies and procedures. A few state and local providers are leading the way in making these documents available to the public on the internet² and others are leveraging technology to make these documents electronically available to the parties and the court through secure websites.³ These actions are consistent with the trend in forensic science for accountability and transparency.

Quality management system documents that should be public or readily available are those

¹ When referring to "documents" the NCFS is not using the ISO definition but rather the common meaning of the term. The NCFS recognizes that the ISO defines "documents" and defines "records" and that these are two distinct groups of items. Because the understanding of these definitions does not appear to be uniform and not every FSSP is accredited, the NCFS instead uses the common meaning and refers readers to the list below to identify what *class* of documents should be made public and for *specific* documents (or records) that should also be made public.

² See for example <http://www.dfs.virginia.gov/documentation-publications/manuals/>; <http://www.isp.idaho.gov/forensics/>; and <http://dfs.dc.gov/page/open-government-and-foia-dfs>; <http://www.ncdoj.gov/About-DOJ/Crime-Lab/ISO-Procedures.aspx>; <http://www.nyc.gov/html/ocme/html/ftox/SOP.shtml>; <https://www.austintexas.gov/page/forensics-policy-manuals>; <http://www.scottsdaleaz.gov/Assets/ScottsdaleAZ/Attorney/Lab+Disclosure/Blood+Alcohol+Analysis+Procedures+Manual+effective+7-11-12.PDF>.

³ For example, the Michigan State Police Forensic Science Division makes available to the prosecutors, the courts and the defense bar the following through a secure website: FSD Accreditation; FSD Laboratory Operations Manual; FSD Quality Manual; Procedures/Training Manuals - Biology; Procedures/Training Manuals - Controlled Substances; Procedures/Training Manuals - Crime Scenes; Procedures/Training Manuals - Firearms/Toolmarks; Procedures/Training Manuals - Latent Prints; Procedures/Training Manuals - Questioned Documents; Procedures/Training Manuals - Toxicology; and Procedures/Training Manuals - Trace Evidence. For each employee of the laboratory the website contains the following information: Employment History and Development; Position Description; Proficiency Tests; Expert Witness Evaluations; Statement of Qualifications; Trained To Competency; and Casework Authorization.

which are generally applicable to the FMSP or the FSSP and the forensic work it performs and not items that are case specific. Such items include:

1. Policies, procedures or specifications for forensic testing, examination, and analysis, including but not limited to:
 - Maintenance and calibration of all equipment and materials
 - Estimations of uncertainty
 - Monitoring the quality of forensic analysis
 - Minimizing bias
 - Internal and external audits
 - Proficiency testing
 - Evidence handling
 - Issuing written reports and courtroom testimony
 - Nonconformities and root cause analysis
2. Summaries of internal validation studies, including at a minimum (i) the scope of the study, (ii) summaries of major events/experiments performed, results, major conclusions and methods implemented or approved by the forensic provider
3. Classification standards (e.g., position requirements, minimum qualification requirements) and curricula vitae for all analysts, scientists, and managers with positions of oversight over forensic testing, research or quality management.
4. Summaries of Root Cause Analysis (RCAs) undertaken, including at a minimum any changes made to quality documents, notifications issued to any stakeholder (without identifying the entity) regarding the impact of the nonconformity, any resultant Brady implications the lab is aware of, the number of cases reviewed/audited as a result of the issue, and the number of cases where an amended report was necessary. The summary may exclude (a) information that would permit the identification of individuals involved in the underlying case or the investigation itself and (b) confidential, privileged or attorney work product information regarding specific individuals. See National Commission on Forensic Science August 11, 2015 Directive Recommendation: Root Cause Analysis in Forensic Science.

While sometimes necessary, redactions of personnel information, protected intellectual property, or sensitive law enforcement procedures should be as limited as possible while still allowing forensic providers to comply with applicable labor, intellectual property, and other applicable public records statutes. Technical information that is otherwise in the public realm and/or known by the larger science community should not be redacted.