




MEMORANDUM

TO: Mayor and Council Members

FROM: Rey Arellano, Assistant City Manager 

DATE: September 14, 2022

SUBJECT: **Interlocal Agreement with Travis County to Perform Materiality Reviews of Cases Arising from the Closure of the APD DNA Lab**

This memorandum provides context for [Item 22](#) on the September 15, 2022 Council agenda, which recommends Council authorize negotiation and execution of an interlocal agreement with Travis County relating to services arising from the closing of the Austin Police Department lab that processed DNA evidence, in an amount not to exceed \$2,200,000.

On March 23, 2017, Council approved Resolution [20170323-015](#) that authorized staff to execute an interlocal agreement with Travis County that committed the City and the County to each procure the services of identified professionals who will address criminal justice-related issues arising from the closing of the Austin Police Department lab that processed DNA evidence; and that committed the City and the County to share the costs of these two professional services contract equally.

Resolution 20170323-015 described two Professional Services Agreements (PSAs):

In **PSA One**, the City agreed to seek out consultants that would evaluate the impact on DNA samples on past and pending cases that may have been affected by the audit findings; address recommendations contained in the Texas Forensic Science Commission's Audit Report; and identify strategies for the operation and governance of a DNA testing lab and present options and restore integrity to DNA testing in Austin/Travis County. The City engaged the Quattrone Center for the Fair Administration of Justice for this purpose. PSA One was completed with the issuance of Quattrone's report, [The Austin Police Department DNA Laboratory, 2010-2015: Looking Back to Move Forward](#).

In **PSA Two**, Travis County agreed to engage the Capital Area Private Defender Service (CAPDS) to provide a legal review and post-conviction writ litigation of the APD DNA Cases impacted by the Audit Report findings. This legal case review and writ litigation project (CAPDS Forensic Project) will assess the materiality of potentially impacted DNA evidence and will provide representation for affected defendants opting to re-open their case through post-conviction writ litigation.

509 individuals have requested materiality reviews from the CAPDS Forensic Project. The total number of cases exceeds the number of individuals because it is common for an individual to have additional

cases come to light during discovery that may have also been affected by DNA analysis. Of particular note: one client received relief from the Court of Criminal Appeals and the Travis County District Attorney ultimately dismissed the charge ([Lamarcus Turner - National Registry of Exonerations \(umich.edu\)](#)); and the CAPDS Forensic Project is currently in active litigation on another writ that the District Attorney has indicated that it agrees to on the DNA issue and is currently before the district court.

As of the end of June 2022:

- 249 requests are currently pending review.
- 356 cases completed the review process.
- Four cases were in active litigation; one of the four has since transferred to a CAPDS panel attorney.
- One case has been resolved by reinterpretation of DNA evidence without retesting.
- 352 cases have been closed; 189 of those cases were closed due to DNA being immaterial to conviction.

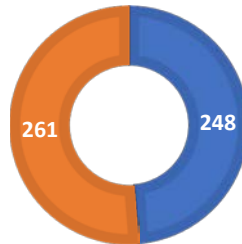
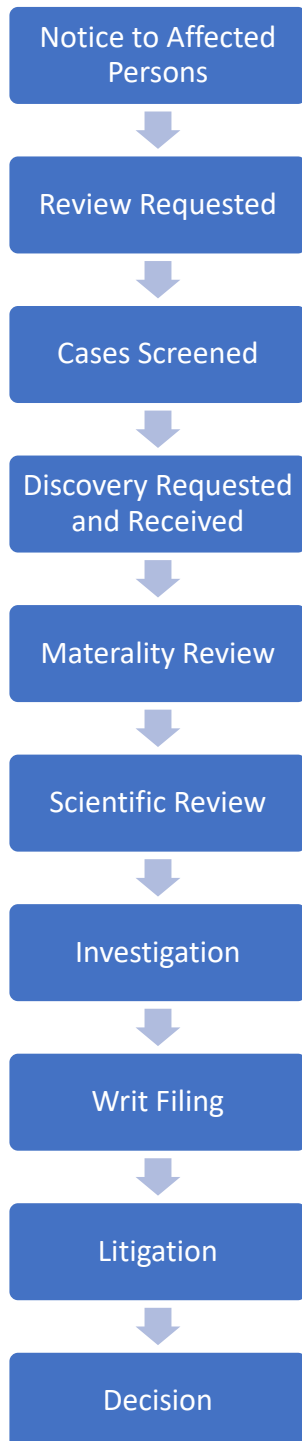
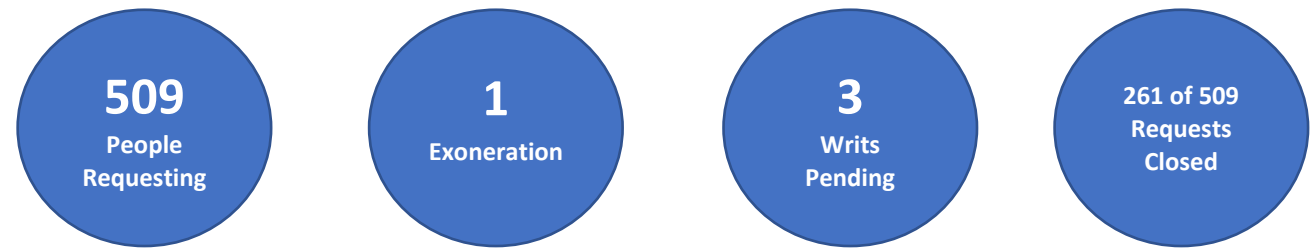
Attached is a description of how the CAPDS Forensic Project conducts a materiality review.

Should you have any questions, please contact Dr. Dana Kadavy at Dana.Kadavy@austintexas.gov.

cc: Spencer Cronk, City Manager
CMO Executive Team
Dana Kadavy, Forensic Science Director

Attachment

APD DNA REVIEW AT A GLANCE



REVIEWS STATUS

■ Pending ■ Resolved

MATERIALITY REVIEW

After cases are screened and discovery received, they undergo materiality review to determine if DNA was material to the defendant's case. The project has completed the review of 356 cases.

SCIENTIFIC REVIEW

In cases where the DNA was material to the defendant's case received a review is conducted by a highly qualified DNA expert to determine proper evaluation changes the results.

WRIT INVESTIGATION AND LITIGATION

Cases for which the DNA is material and there is a change in the results during the scientific review are advanced to writ investigation and litigation. The project has three writs pending, one is in active litigation, and one has been granted.



Successes

- ✓ Since 1989 there have been 13 exonerations in Travis County. Our client Lamarcus Turner is the 13th, and the first and only exoneration since 2018. Of the 13, only half of the cases, including Mr. Turner's, have involved DNA evidence.
- ✓ Hundreds of clients have been advised as to how unreliable lab work may have affected their cases.



Challenges

- Discovery must be received from the prosecution before a materiality review can be completed.
 - Significant delays occurred with the change in administration and COVID. Some requests have been pending for more than a year, preventing advancement.
 - 87 discovery requests were pending at the end of Q2 2022
- COVID prevented investigations from progressing
 - Investigations require field work and in person contact with witnesses. Much of that work was delayed during COVID.