

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

**DATE : OCTOBER 7, 2019**  
**JUDGE : LAURIE M. EARL**  
**REPORTER : NONE**

**DEPT. NO : 25**  
**CLERK : D. BEAROR**  
**BAILIFF : NONE**

---

**PEOPLE OF THE STATE OF CALIFORNIA,**  
**Plaintiff,**

**Case No.: 18FE018342**

**VS.**

**ROY CHARLES WALLER,**  
**Defendant.**

---

**Nature of Proceedings: MOTION FOR DISCOVERY - ORDER**

**FACTUAL AND PROCEDURAL BACKGROUND**

In this case, law enforcement submitted DNA extracted from evidence from a 2006 rape case to a private DNA company which offers genotyping of DNA. Once law enforcement received the DNA profile, they uploaded it to a genomics website, which allows the comparison of DNA profiles among users of their website. Upon receiving the results of the comparison, law enforcement used investigative techniques to attempt to identify the donor of the evidence sample in the 2006 rape case, namely they began building a family tree from person(s) identified by the genomics website as having shared centimorgans to the profile that had been submitted by law enforcement. That investigation led them to consider the defendant as the donor of the evidence sample.

Once identified as a potential suspect, law enforcement surreptitiously obtained a straw that the defendant had abandoned and conducted testing on DNA collected from the straw. The DNA profile developed from the straw was consistent with the DNA profile developed from the 2006 evidence sample.

Law enforcement then obtained an arrest warrant for the defendant and upon his arrest they obtained a DNA sample from him which they subsequently tested. The results of the testing showed that Mr. Waller's DNA profile was consistent with the DNA profile from the evidence left at the 2006 rape case.

**DATE : OCTOBER 7, 2019**  
**CASE NOS. : 18FE018342**  
**CASE TITLE : PEOPLE V. ROY WALLER**

**Superior Court of California, County of  
Sacramento**

**BY: D. BEAROR**  
**Deputy Clerk**

**CASE NUMBERS: 18FE018342**

**DEPARTMENT: 25**

**CASE TITLE: PEOPLE V. ROY WALLER**

**PROCEEDINGS: MOTION FOR DISCOVERY – ORDER**

The defense has requested that the prosecution provide them with “familial searches of the private genetic genealogy databases” as well as the “genetic genealogy company or companies that have been involved and all the reports and communications with them.” To date the prosecution has refused to disclose such information and this discovery motion followed.

### **Prosecutions’ Position**

The prosecution claims that the information sought by the defense is not information or evidence that they intend to introduce against the defendant at trial. Rather, the evidence they do intend to introduce is the DNA profile developed from a swab taken from the defendant upon his arrest and the comparison of the defendant’s profile to the DNA profile(s) developed from evidence left at the scene of the crimes he is charged with. Thus the prosecution argues that the information sought by the defense, namely the identity of the genealogy company that provided law enforcement with information or data, specific data provided by the genealogy company, and what particular investigative techniques law enforcement subsequently performed which led them to consider the defendant as a suspect is irrelevant and immaterial to the issues of guilt or punishment, and they are not required to disclose it. Additionally, they argue that the information sought by the defense is privileged from disclosure as “official information” pursuant to Evidence Code section 1040.

### **Defense Position**

The defense presents a number of arguments which they claim warrant the disclosure of the information – a) the information is required to be discovered under PC 1054.1, in that it may be exculpatory, or may lead to exculpatory evidence and/or constitute the type of scientific testing, experiments or comparisons that they are entitled to challenge, b) Mr. Waller has a right to present a defense, including third party culpability evidence and the information is necessary for them to do so, c) the information is necessary in order to bring a motion to suppress pursuant to the 4<sup>th</sup> Amendment, e) the information is necessary to bring a motion to test the reliability of the testing techniques used pursuant to the 6<sup>th</sup> Amendment and the Supreme Court’s holding in *Daubert v Merrell Dow Pharmaceuticals, Inc.* (1993) (509 U.S. 579), f) the information is required to be disclosed under the due process clause and the holding of the Supreme Court in *Brady v Maryland* (1963) 373 U.S. 83), and g) nondisclosure of the information would deprive the defendant of a fair trial.

**DATE : OCTOBER 7, 2019**  
**CASE NOS. : 18FE018342**  
**CASE TITLE : PEOPLE V. ROY WALLER**

**Superior Court of California, County of Sacramento**

**BY: D. BEAROR,**  
**Deputy Clerk**

On October 1, 2019 the Court held an *in camera* hearing wherein the prosecution presented evidence of the information sought by the defense.

**RELEVANT LAW**

**California’s Criminal Discovery Statute**

Discovery in criminal cases in California is governed by Penal Code section 1054, et seq. Section 1054 sets forth the purposes of the chapter, including that ‘no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States.’ Courts have emphasized this statutory exclusivity, noting that ‘all court-ordered discovery is governed exclusively by—and is barred except as provided by—the discovery chapter newly enacted by Proposition 115.’ (*In re Littlefield* (1993) 5 Cal.4th 122, 129.)

Penal Code section 1054.1 describes the information required to be disclosed by the prosecution as follows:

The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

- (a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.
- (b) Statements of all defendants.
- (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged.
- (d) The existence of a felony conviction of any material witness whose credibility is likely to be critical to the outcome of the trial.
- (e) Any exculpatory evidence.
- (f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

**DATE : OCTOBER 7, 2019**  
**CASE NOS. : 18FE018342**  
**CASE TITLE : PEOPLE V. ROY WALLER**

**Superior Court of California, County of Sacramento**

**BY: D. BEAROR,**  
**Deputy Clerk**

**Due Process and *Brady***

Section 1054.1 is not the only avenue for a criminal defendant to obtain discovery of information within the possession of law enforcement. The Supreme Court in *Brady v Maryland* held that the defense is entitled to disclosure of evidence that is both favorable to the accused and material either to guilt or to punishment. Additionally, a criminal defendant’s right to compel discovery by demonstrating that the requested information will facilitate the ascertainment of the facts and a fair trial is long-standing. (*Pitchess v Superior Court* (1974) 11 Cal. 3d 531)

**ANALYSIS**

**Relevance and Materiality**

This Court continues to struggle with defense’s proffer of relevance and materiality of the information sought. Based upon the information provided to the Court at the *in camera* review hearing, it is clear that the information provided by the genealogy website did not form the basis of probable cause to arrest the defendant and as the prosecution has proffered, will not play any role in proving the crimes. The role that the genealogy website did play was akin to an informer. Law enforcement did not utilize this “informer” as a percipient witness or as a participant in the charged crimes. The “informer” provided information that caused law enforcement to conduct a specific type of investigation. This is not unlike what motivates many law enforcement investigations. Law enforcement receives information every day, tips that lead them to focus on certain individuals. For instance, law enforcement may receive information that a person is transporting drugs in a particular vehicle and they begin tracking the vehicle. They may receive information that a particular person fits the description of a suspect in a robbery, theft, sexual assault or murder and they begin focusing on that particular person. They may receive information that a certain vehicle was involved in a hit and run and they begin trying to determine who owns or had access to the vehicle. Law enforcement investigations rely a great deal on information from the public, yet those members of the public may never be participants in or percipient to the crimes. These members of the public may never step foot in a courtroom to testify when law enforcement locates material evidence against a suspect independent of the information provided by their “informer”. That is what occurred in this case. The information provided was nothing more than a tip, a lead

**DATE : OCTOBER 7, 2019**  
**CASE NOS. : 18FE018342**  
**CASE TITLE : PEOPLE V. ROY WALLER**

**Superior Court of California, County of Sacramento**

**BY: D. BEAROR,**  
**Deputy Clerk**

**CASE TITLE: PEOPLE V. ROY WALLER**

**PROCEEDINGS: MOTION FOR DISCOVERY – ORDER**

for law enforcement to follow up on, should they choose to. Upon receiving the information, law enforcement specifically tailored their investigation and obtained material evidence against Mr. Waller, independent of the information provided by the genealogy company. Namely, the collection of evidence abandoned by the defendant which led to the development of his DNA profile and it’s comparison to DNA developed from evidence left at the crime scene(s).

Information from the genealogy company certainly did not, as the defense has claimed, *single handedly le[ad] to the arrest of Mr. Waller* and most assuredly, the provider of the information did not *directly participate in the arrest of Mr. Waller*. Exactly *how* law enforcement became interested in the defendant does not appear to be relevant or material to the issues of guilt or punishment. Indeed the information sought is not that of a percipient witness, it is not real evidence seized or obtained during the investigation into the charges, and while it may constitute evidence of *scientific tests, experiments or comparisons*, it is specifically not evidence the prosecution intends to introduce at trial. While the defense argues that *they* will introduce the evidence at trial, they must provide the trial court with some basis in relevance or materiality in order for it to be admissible. While this Court does not determine the admissibility of evidence at trial, it must consider whether the evidence is relevant or material to the issue of guilt or punishment when ruling on the discovery motion. The Court finds that it is neither. Additionally, based upon the Courts *in camera* review of the information sought, the Court finds that there is nothing about the information which is exculpatory or would lead to exculpatory evidence.

**Third Party Evidence**

The defense asserts that consistent with their right to present a defense, the prosecution must turn over any evidence within their possession which relates to a third party suspect or tends to incriminate a third person, someone other than defendant for the alleged crimes. Based upon the Court’s *in camera* review of the information sought, it is clear that this type of evidence is not in the possession of the prosecution or others acting on their behalf. Furthermore, given the level of shared centimorgans found to exist in the genealogical comparison(s) and the statistical results of the DNA comparison between the defendant and the crime scene evidence, the Court finds it would be difficult, if not impossible, to stretch the data received from the genealogy company into information that would reasonably lead to a third party suspect, though the Court accepts the

**DATE : OCTOBER 7, 2019**  
**CASE NOS. : 18FE018342**  
**CASE TITLE : PEOPLE V. ROY WALLER**

**Superior Court of California, County of Sacramento**

**BY: D. BEAROR,**  
**Deputy Clerk**

argument that the defense could conduct such investigation on their own. Thus the Court is not convinced that the information sought is of a type which would assist the defendant in identifying third party suspects or assist the defendant in preparing or presenting a defense in this regard.

**4<sup>th</sup> Amendment Claim**

The defense claims that they need the information that is the subject of their discovery motion in order to be able to bring a 4<sup>th</sup> Amendment motion to suppress evidence. “The Fourth Amendment protects an individual's reasonable expectation of privacy against unreasonable intrusion on the part of the government.” (*People v. Evensen* (2016) 4 Cal.App.5th 1020, 1026 [208 Cal.Rptr.3d 784].) However the genesis of any such motion requires the defendant to convince a court that he had a reasonable expectation of privacy in the item searched or seized. A person seeking to invoke the protection of the Fourth Amendment must demonstrate both that he harbored a subjective expectation of privacy and that the expectation was objectively reasonable. (*People v. Ayala* (2000) 23 Cal.4th 225, 255 [96 Cal. Rptr. 2d 682, 1 P.3d 3].) (*People v. Hughston* (2008) 168 Cal. App. 4<sup>th</sup> 1062, 1068.) Here the defendant was not a user of the genomic website, his DNA was not uploaded to the website, nor does data received from the genealogy company relate to any information about the defendant. It is difficult for this Court to find that the defendant himself had a reasonable expectation of privacy in the genomic data.

The defense challenges whether law enforcement’s use of data from genealogy websites is moral or ethical and they assert that it is an invasion of the privacy rights of users of the websites. While an interesting issue, such is not the focus of this litigation. The defendant would be hard-pressed to establish his standing to challenge the violation, if any, of third party privacy rights. And once again, information received from the genealogy website is not evidence that will be used against *him*. Based upon the type of information law enforcement received from the genealogy website, the Court finds that the information sought would not assist the defense in this regard.

**Right to Challenge Testing**

The defense claims that by not having access to the information they are precluded from investigating evidence that may lead to admissible evidence as to the reliability of the testing. The failure of this argument is that the “testing” that they reference is the work they believe was done by the genealogy company, which is not

**DATE : OCTOBER 7, 2019**  
**CASE NOS. : 18FE018342**  
**CASE TITLE : PEOPLE V. ROY WALLER**

**Superior Court of California, County of Sacramento**

**BY: D. BEAROR,**  
**Deputy Clerk**

CASE TITLE: PEOPLE V. ROY WALLER

PROCEEDINGS: MOTION FOR DISCOVERY – ORDER

evidence that the prosecution intends to introduce at trial and not relevant or material to the issues of guilt or punishment. The inability to evaluate the reliability of the genealogy company’s work does not in any way thwart or diminish the defendant’s ability to challenge the relevant evidence in this case or to prepare a defense to meet such evidence.

Even if the Court were to assume that the work done by the genealogy company was unreliable, it would be difficult to deem such finding as somehow affecting the admissibility or reliability of evidence that supports the arrest and prosecution of the defendant in this case, namely the DNA sample collected from the abandoned straw and that collected directly from the defendant upon his arrest and its comparison to the evidence in this case. The exclusionary rule does not necessarily extend to items seized lawfully and independently from an illegal search.

**Required Disclosure**

“A motion for discovery by an accused is addressed to the sound discretion of the trial court, which has inherent power to order discovery in the interests of justice. (See *People v. Terry*, 57 Cal.2d 538, 560-561 [21 Cal.Rptr. 185, 370 P.2d 985]; *Powell v. Superior Court*, 48 Cal.2d 704, 708 [312 P.2d 698]; *Vetter v. Superior Court*, 189 Cal.App.2d 132, 134 [10 Cal.Rptr. 890].)

It has been stated that the basis for granting pretrial discovery to a defendant is the fundamental principle that an accused is entitled to a fair trial (see *Cash v. Superior Court*, 53 Cal.2d 72, 75 [346 P.2d 407]; *Powell v. Superior Court, supra*, 48 Cal.2d 704, 707, 709; *Louisell/Wally*, *Modern Cal. Discovery, supra*, pp. 881-882), and "Absent some governmental requirement that information be kept confidential for the purposes of effective law enforcement, the state has no interest in denying the accused access to all evidence that can throw light on the issues in the case, and in particular it has no interest in convicting on the testimony of witnesses who have not *been* as rigorously cross-examined and as thoroughly impeached as the evidence permits." (*People v. Riser*, 47 Cal. 2d 566, 586 [305 P.2d 1]; in accord, *Jones v. Superior Court*, 58 Cal.2d 56, 59 [22 Cal.Rptr. 879, 372 P.2d 919, 96 A.L.R.2d 1213]; *Powell v. Superior Court, supra*.)

An accused, however, is not entitled to inspect material as a matter of right without regard to the adverse effects of disclosure and without a prior showing of good cause. In criminal cases, the trial court retains wide discretion to protect against the disclosure of information which might unduly hamper the prosecution or violate

DATE : OCTOBER 7, 2019  
CASE NOS. : 18FE018342  
CASE TITLE : PEOPLE V. ROY WALLER

Superior Court of California, County of Sacramento

BY: D. BEAROR,  
Deputy Clerk

**CASE TITLE: PEOPLE V. ROY WALLER**

**PROCEEDINGS: MOTION FOR DISCOVERY – ORDER**

some other legitimate governmental interest.’ (See *People v. Lopez*, 60 Cal.2d 223, 246-247 . . . ; *Powell v. Superior Court*, *supra*, 48 Cal.2d 704, 707-708.) Additionally, the court has discretion to deny discovery in the absence of a showing which specifies the material sought and furnishes a 'plausible justification' for inspection. (See *Ballard v. Superior Court*, (1966) 64 Cal. 2d 159, 167; cf. Kaufman, *Criminal Discovery and Inspection of Defendant's Own Statements in the Federal Courts*, 57 Colum.L.Rev. 1113, 1118.)" (See *Joe Z. v. Superior Court*, *supra*, 3 Cal.3d 797, 804.) "'A showing, however, that the defendant cannot readily obtain the information through his own efforts will ordinarily entitle him to pretrial knowledge of any unprivileged evidence, or information that might lead to the discovery of evidence, *if it appears reasonable that such knowledge will assist him in preparing his defense . . .*' (Traynor, *Ground Lost and Found in Criminal Discovery* (1964) 39 N.Y.U.L.Rev. 228, 244; italics added.)" (*Ballard v. Superior Court*, *Ibid.*) (*Hill v. Superior Court of Los Angeles County* (1974) 10 Cal.3d 812, 816-817.)

The burden of making such a showing and establishing the existence of a plausible justification for the production of the requested information or material is on the criminal defendant. The key to his right to discovery is a showing that the requested information or material *will facilitate the ascertainment of the facts and contribute to the fairness of his trial.* (*Pitchess v. Superior Court*, *supra*, 11 Cal.3d 531, 536.) "Although the defendant does not have to show, and indeed may be unable to show, that the evidence which he seeks to have produced would be admissible at the trial [citations], he does have to show some better cause for inspection than a mere desire for the benefit of all information which has been obtained by the People in their investigation of the crime." (*Lemelle v. Superior Court*, (1978) 77 Cal. App. 3d 148, 162.)

In this regard the defense fails to convince the Court that the information sought either falls within the requirements of Penal Code section 1054.1, or constitutes *Brady* evidence, that is, evidence favorable to the accused which is material to issues of guilt or punishment. Nor is the Court convinced that the failure to have such information deprive the defendant of a fair trial. Thus, the Court finds that the prosecution is not compelled by statute or due process protections, to release the information.

**DATE : OCTOBER 7, 2019**  
**CASE NOS. : 18FE018342**  
**CASE TITLE : PEOPLE V. ROY WALLER**

**Superior Court of California, County of Sacramento**

**BY: D. BEAROR,  
Deputy Clerk**



**Claim of Privilege**

The prosecution additionally asserts that the information received from the genealogy company was information received in confidence by law enforcement during their investigation into these cases and is thereby privileged under Evidence Code section 1040. As relevant here, Evidence Code section 1040 states as follows:

(a) As used in this section, “official information” means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and either of the following apply:

(1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state.

(2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure of the information is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered.

**Confidentiality of Information**

Evidence gathered by police as part of an ongoing criminal investigation is by its nature confidential. This notion finds expression in both case and statutory law. For example, in *People v. Otte* (1989) 214 Cal. App. 3d 1522, the court made the following observation concerning the confidentiality of criminal investigative files in the course of interpreting the section 1041 privilege as to confidential informants: “Communications are made to an officer in official confidence when the investigation is of such a type that disclosure of the investigation would cause the public interest to suffer. An apt illustration of this situation is the investigation of a crime by police officers. [Citations.] It is not only where a witness requests that his statement be kept in

**DATE : OCTOBER 7, 2019**  
**CASE NOS. : 18FE018342**  
**CASE TITLE : PEOPLE V. ROY WALLER**

**Superior Court of California, County of Sacramento**

**BY: D. BEAROR,  
Deputy Clerk**

**CASE TITLE: PEOPLE V. ROY WALLER**

**PROCEEDINGS: MOTION FOR DISCOVERY – ORDER**

confidence, but in all cases of crime investigation that the record and reports are privileged." (*Jessup v. Superior Court* (1957) 151 Cal.App.2d 102, 108 [311 P.2d 177].)

Thus, although the cases recognize that preservation of the informer's usefulness and protection of the informer against physical harm are additional purposes for secrecy (see *People v. Superior Court (Biggs)* (1971) 19 Cal.App.3d 522, 532 [97 Cal.Rptr. 118]), the primary justification for the privilege is the public interest in protecting the flow of information to law enforcement officials. (See *People v. Hardeman* (1982) 137 Cal.App.3d 823, 827 [187 Cal.Rptr. 296].) Thus, the test for confidentiality in the instant case is not whether the particular informant demanded that his identity not be disclosed, or was in physical danger, but whether the "investigation is of such a type that disclosure . . . would cause the public interest to suffer." (*Jessup v. Superior Court, supra*, 151 Cal.App.2d at p. 108.) (*People v. Otte, supra*, p.1532.)

The Information Practices Act of 1977 (Civ. Code, § 1798 et seq.) protects information compiled by law enforcement agencies for the purpose of investigating criminal activities, including reports of informants and investigators. (Civ. Code, § 1798.40, 1798.41.) Similarly, Penal Code section 11107, which states the obligation of each sheriff or police chief to report crime data to the Department of Justice, specifically recognizes the confidential nature of criminal investigations. That statute includes the proviso that "[t]he Attorney General may also require that the report shall indicate whether or not the submitting agency considers the information to be confidential because it was compiled for the purpose of a criminal investigation of suspected criminal activities." (Pen. Code, §11107.) (*County of Orange v Superior Court* (2000) 79 Cal. App. 4<sup>th</sup> 759, 764-765.)

In this case, the information the defense seeks was information provided to law enforcement in confidence during their investigation, the fact that the defense believes they know which genealogy website was used does not alter its confidentiality. In fact, a defendant who knows the identity of the informer ordinarily will not be prejudiced by a refusal to disclose that identity. (*People v. McShann*, (1958) 50 Cal.2d 802, 807.)

**Balancing of Interests**

“In determining whether to uphold the privilege, the trial court is required to engage in a balancing process under section 1040, subdivision (b)(2) which provides that a governmental privilege will be upheld

**DATE : OCTOBER 7, 2019**  
**CASE NOS. : 18FE018342**  
**CASE TITLE : PEOPLE V. ROY WALLER**

**Superior Court of California, County of Sacramento**

**BY: D. BEAROR,**  
**Deputy Clerk**

CASE TITLE: PEOPLE V. ROY WALLER

PROCEEDINGS: MOTION FOR DISCOVERY – ORDER

"where the necessity for confidentiality 'outweighs the necessity for disclosure in the interest of justice,' . . ." (*People v. Superior Court* (1971) 19 Cal.App.3d 522, 530 [97 Cal.Rptr. 118].) Section 1040 does not, however, "license fishing trips. By calling for disclosure in the interest of justice, it compels the claimant to throw into the balance some showing of the 'plausible justification' demanded by antecedent [to the enactment of section 1040 et seq.] case law [citations]." (Ibid) (*People v Walker* (1991), 230 Cal. App. 3d 230, 236)

The procedures for weighing the necessity for disclosure against the necessity for preserving the confidentiality of the information also require that the information sought constitute material evidence. "Under California law, once the privilege is claimed the trial court should conduct an in camera hearing pursuant to the procedural guidelines set forth in *People v. Superior Court*, (1971) 19 Cal.App.3d 522, 530-532, to determine if the testimony relates to issues that are *material*. [Italics added] (*People v. Montgomery, supra*, 205 Cal.App.3d at p. 1019) However, pursuant to section 1042, subdivision (a), the trial court is required to make an adverse finding only where the evidence is *material*." [Italics added] (*In re David W.* (1976) 62 Cal.App.3d 840, 847 [133 Cal.Rptr. 342].) Section 1042, subdivision (a) was enacted in 1965 and embodies due process concepts that were discussed in *United States v. Reynolds* (1952) 345 U.S. 1, 12 [97 L.Ed. 727, 735, 73 S.Ct. 528, 32 A.L.R.2d 382]. (See Assem. Com. on Judiciary, 29B West's Ann. Evid. Code (1966 ed.) § 1042, p. 649 [Cal. Law Revision Com. com., Deering's Ann. Evid. Code (1986 ed.) § 1042, p. 247].) Both section 1042, subdivision (a) and *Reynolds* require that the information be material for the government to suffer consequences in refusing to disclose the information." (*People v Walker* (1991), *Supra*, pp. 236-237.)

The Court has already determined that the information sought is not material but will analyze whether disclosure of the information is against the public interest. "Such a weighing procedure will entail a separate assessment of the 'necessity for disclosure in the interest of justice' and the 'necessity for preserving the confidentiality [of the information]. Implicit in each assessment is a consideration of consequences -- i.e., the consequences to the litigant of nondisclosure, and the consequences to the public of disclosure. The consideration of consequences to the litigant will involve matters similar to those in issue in the determination of materiality and good cause in the context of Code of Civil Procedure section 1985, including the importance of the material sought to the fair presentation of the litigant's case, the availability of the material to the litigant by other means, and the effectiveness and relative difficulty of such other means. The consideration of the consequences of disclosure to the public will involve matters relative to the effect of disclosure upon the

DATE : OCTOBER 7, 2019  
CASE NOS. : 18FE018342  
CASE TITLE : PEOPLE V. ROY WALLER

Superior Court of California, County of Sacramento

BY: D. BEAROR,  
Deputy Clerk

**CASE NUMBERS: 18FE018342**

**DEPARTMENT: 25**

**CASE TITLE: PEOPLE V. ROY WALLER**

**PROCEEDINGS: MOTION FOR DISCOVERY – ORDER**

integrity of public processes and procedures (a matter to which we advert in more detail below). In this respect the court should be fully aware that -- in the words of the Assembly Committee on Judiciary -- "the public has an interest in seeing that justice is done in the particular cause as well as an interest in the secrecy of the information." (Comment, *supra*, final paragraph.)” (*Shepherd v Superior Court* (1976) 17 Cal. 3d 107, 126)

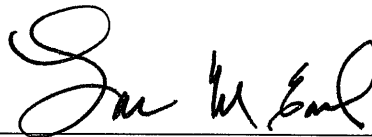
In this case the prosecution makes a compelling argument in the strong public interest in solving crimes and bringing those accused of heinous acts - like the ones charged in this case, to justice. Clearly if their “informer”; the genealogy company, their data, or law enforcement’s subsequent work product employed in identifying Mr. Waller was publicly disclosed it would have a chilling effect on their collaboration. On the other scale, the defense has failed to assert a reasonable claim of materiality. It is clear that the public interest lies in preserving the confidentiality of the information, especially in a case such as this, where the information is not direct or circumstantial evidence against Mr. Waller, will not be used as evidence against him at trial and will not, as the Court has already found, assist him in preparing a defense, nor will its nondisclosure deprive him of a fair trial. The balance tips in favor of preserving the confidentiality of the information.

Thus the Court finds that the claim of privilege pursuant to Evidence Code section 1140 is proper and that disclosure of the information is against the public interest.

**Conclusion**

The discovery motion is denied.

DATED: October 7, 2019



\_\_\_\_\_  
HONORABLE LAURIE M. EARL, JUDGE  
OF THE SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO

**DATE : OCTOBER 7, 2019**  
**CASE NOS. : 18FE018342**  
**CASE TITLE : PEOPLE V. ROY WALLER**

**Superior Court of California, County of Sacramento**

**BY: D. BEAROR,**  
**Deputy Clerk**

**CERTIFICATE OF SERVICE BY MAILING**  
**(C.C.P. Sec. 1013a(4))**

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing MOTION FOR DISCOVERY – ORDER by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at 720 Ninth Street Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

Chris Ore  
Supervising Deputy District Attorney  
District Attorney's Office  
901 H. Street  
Sacramento, CA 95814  
*(also by e-mail)*

Erica Graves  
917 G Street  
Sacramento, CA 95814  
*(also by e-mail)*

Keith Hill  
Supervising Deputy District Attorney  
District Attorney's Office  
901 H. Street  
Sacramento, CA 95814  
*(also by e-mail)*

Guy Leighton  
P.O. Box 19699  
Sacramento, CA 95819  
*(also by e-mail)*

Joseph Farina  
604 10<sup>th</sup> Street  
Sacramento, CA 95814  
*(also by e-mail)*

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: October 7, 2019

Superior Court of California, County of  
Sacramento

By:

  
\_\_\_\_\_  
D. BEAROR, Deputy Clerk

DATE : OCTOBER 7, 2019  
CASE NOS. : 18FE018342  
CASE TITLE : PEOPLE V. ROY WALLER

Superior Court of California, County of  
Sacramento

BY: D. BEAROR,  
Deputy Clerk