

[CAPTION]

REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

TO: STATE DEPARTMENT OF TOXICOLOGY
Gateway Building
950 N. Meridian St., Suite 960
INDIANAPOLIS, INDIANA 46204

The Defendant, by counsel, requests the production of the following documents or information concerning BAC DataMaster, Instrument Number [INSERT #] and any simulators and simulator solutions used to calibrate and maintain this BAC DataMaster, pursuant to this Request and Subpoena Duces Tecum accompanying this Request. This information/documentation should be produced at the offices of [INSERT LAW OFFICE ADDRESS], on or before [INSERT DATE], to wit:

1) A copy of all data ever collected as to this BAC DataMaster, from the date it was acquired and/or placed into service to present, including, but not limited to, all data to establish that this breath alcohol test device meets, or did not meet, the requirements of precision and accuracy established by the Breath Test Division of the State Department of Toxicology.

2) All of the data from all of the records for all of the files that are downloaded from this breath alcohol test device for the time period from the date it was acquired and/or placed into service to present. This request includes, but is not limited to:

- a. Subject files;
- b. Maintenance files;
- c. Diagnostic files;
- d. Calibration Factors;
- e. Calibration files;
- f. Operational error files;
- g. Internal Standards records from [INSERT TWO OR THREE MONTH PERIOD AROUND TIME OF BREATH TEST]; and
- h. Instrument files.

NOTE: File names may not be exactly as requested but the intent of this item is to receive any transferred files. Any data fields, records or files that are not provided must be clearly identified.

- 3) A copy of the owner's and/or user's manual for data acquisition/management program, that the Breath Test Division of the Indiana State Department of Toxicology is using, or has ever used, for the acquisition and/or management of the tests conducted on this breath alcohol test device.
- 4) A listing of all codes, shorthands, messages, and/or acronyms used in the computer data files. (e.g. 'INV' indicates mouth alcohol, 'RFT' indicates radio frequency interference.)
- 5) A copy of all procedures (including the Breath Test Policy & Procedure Manual) used by the Breath Test Division, including but not limited to its inspectors, in administering the breath test program. This request includes, but is not limited to:
 - a. All past and present policy and procedure manuals, and any revisions thereto and the standard operating procedures (SOP), including but not limited to those effective [INSERT DATE OF BREATH TEST];
 - b. Policy and procedure manuals;
 - c. Notes; memorandums or any other documents that describe the requirements and/or guidelines for the breath testing program and equipment maintenance.
- 6) Experiments and informal studies both in the ordinary course of research and in response to new or unique court challenges to the accuracy and/or reliability of the DataMaster.
- 7) All internal memorandum, notes, minutes, training records, or similar such records issued to inspectors or other employees of the State Department of Toxicology concerning the BAC DataMaster used in Indiana, since it was acquired and/or placed into service to present:
 - a). Concerning the retention, destruction and/or turning off the ability of the BAC DataMaster so that it can or cannot or will not retain data;
 - b) Concerning the destruction or failure to save or retain the data contained in the BAC DataMaster;
- 8) The Database:
 - a) All Data collected by this BAC DataMaster from [INSERT TWO OR THREE MONTH PERIOD AROUND TIME OF BREATH TEST] on every breath test performed on it, including all the data entries made by the operator at the time of the administration of the test to Defendant on [INSERT DATE AND TIME OF TEST].
 - b) The occurrences of error codes and certain maintenance contained within the memory chip or that is capable of being downloaded and/or has been downloaded.
- 9) A copy of the quality assurance program that is utilized by the State Department of Toxicology for any and all aspects of the breath alcohol-testing program.
- 10) Identification of the source for the alcohol reference standards (simulator solutions or dry gas) used and the quality assurance measures taken during the preparation, analysis and handling of the standards.
- 11) Identification of the source for the interferent test solution(s) used and the quality assurance measures taken during the preparation, analysis and handling of the interferent test solution(s).

- 12) Identification of all steps taken by the Indiana State Department of Toxicology to verify the concentration of the alcohol reference standards used for the calibration of this BAC DataMaster.
- 13) All laboratory data reflecting the analysis or verification of the concentration of the alcohol reference standard(s) used with this BAC DataMaster during the time period from January 1, 1999 to present.
- 14) The complete instrument history file for this BAC DataMaster. This request includes, but is not limited to:
 - A) Maintenance and testing conducted at the Breath Test Division of the Indiana State Department of Toxicology or any other laboratory/service center;
 - B) Maintenance, repairs or calibrations conducted by the manufacturer or other laboratory/service center; and
 - C) Any computer data collected and transferred, via modem or other means, to the Indiana State Department of Toxicology Breath Test Division or other monitoring agency for diagnostic and/or troubleshooting purposes, as well as any reported errors and/or error codes.
- 15) The complete maintenance history for all simulators used with this BAC DataMaster during the time period of January 1, 1999 to present. Specifically, this item is asking for documentation that verifies that any and all simulators used in connection with this breath alcohol test device have been maintained and calibrated as per the manufacturers specifications and/or State regulations. [If dry gas was utilized, comparable documentation for the gauges, flow detectors and pressure sensors would be expected. If dry gas was used, the calibration history of the barometric pressure sensor is also requested]
- 16) The basic practical and educational requirements for the person(s) holding the position(s) responsible for the maintenance and the calibration of breath alcohol test device. Included in this request are the identification of any and all basic training requirements and all annual or periodic refresher-training requirements for the person(s) responsible for the maintenance and calibration of the breath testing equipment.
- 17) An outline of the course-work and the results of any proficiency testing performed by the people responsible for the maintenance and the calibration of this breath alcohol device.
- 18) A copy of the maintenance, calibration and operators manuals for this BAC DataMaster and any other materials utilized in training the Breath Test Division Staff of the Indiana State Department of Toxicology on:
 - a. The basic calibration;
 - b. Preventive maintenance; and
 - c. Operation of the device.
- 19) A copy of all training materials used for training inspectors concerning the BAC DataMaster.
- 20) Copies of any and all notices to the individuals who have ever performed inspection, maintenance, calibration and/or repairs to this or any other BAC DataMaster advising these individuals to

turn over their notes and/or records concerning BAC DataMasters that these individuals may have inspected, maintained, calibrated and/or repaired from 1/1/1995 to present.

This Request for Production of documents and Things is made in accordance with Trial Rule 34 of the Indiana Rules of Civil Procedure. You are advised that you, as the entity to whom this Request for Production is directed, are entitled to security against damages resulting from this Request.

(Signature)

CASE LAW

State v. Schmitt, 915 N.E.2d 520 (Ind.Ct.App. 2009) (trial court did not abuse its discretion by dismissing OWI charges where State failed to respond to Defendant's Request for Production of Documents regarding the arresting officer's training for the administration of traffic stops and field sobriety tests and the NHTSA manual).