



VIA EMAIL

June 9, 2016

CLETS Advisory Committee
California Department of Justice
4949 Broadway Room J231
Sacramento, CA 95820
Email: steve.kennedy@doj.ca.gov

RE: CLETS Advisory Committee Misuse

Members of the Advisory Committee:

We are writing today on behalf of the Electronic Frontier Foundation (EFF), a San Francisco-based non-profit that advocates for civil liberties in the digital age. We ask that this letter be entered into the record as part of the June 9, 2016 meeting of the CLETS Advisory Committee (CAC).

EFF has expressed its concern several times that the CAC is not fulfilling its statutory duty to maintain discipline over the California Law Enforcement Telecommunication System (CLETS). As we explained at previous meetings, cases of confirmed misuse have doubled over the last five years.

Our review of the latest California Department of Justice (CADOJ) data shows that CLETS misuse has continued to rise. In 2015, law enforcement agencies reported 107 cases of confirmed misuse. Another 49 cases were listed as pending, which may ultimately increase the number of confirmed misuse cases.

Despite these continued reports of CLETS misuse, we have yet to see a single CAC meeting in which the committee has considered these violations, despite being required to do so by state law and CLETS policies.

California Gov't Code § 15154 requires CAC and CADOJ to oversee CLETS "system discipline," including its misuse. As the CLETS Policies, Procedures and Practices manual states, whenever a violation is investigated:

The agency head or his/her designee shall investigate the incident of system abuse by reviewing its internal processes and documentation. In the event the agency head requires assistance from the CA DOJ in conducting a journal search of the CLETS transactions, a written request on agency letterhead, signed by a supervisor or agency head, shall be submitted to the CA DOJ. Any information as a result of the journal search will be provided to the agency head in writing. The agency head shall return an assessment of the investigation and statement of corrective action to the CA DOJ.

If the reported explanation and corrective actions resolve the problem, the investigation and results will be reported to the CAC by the CA DOJ.

If the reported explanation and corrective actions do not resolve the problem to the satisfaction of the CA DOJ, the head of the agency may be requested to appear before the CAC to explain the incident.

Unresolved incidents shall be presented to the CAC by the CLETS Executive Secretary. The CAC will recommend a course of action or sanction to apply. The CA DOJ will issue a letter formally notifying the agency of the decision.

The manual further states:

In the event of a violation of law or the PPP results in system misuse, the CA DOJ with a recommendation from the CAC will take appropriate action such as:

1. Letter of censure;
2. Suspension of service – This may be for varying lengths of time and/or may include suspension for a specified database or other system services; and/or
3. Removal of CLETS service.

To our knowledge, these procedures have not been followed by CAC or CADOJ and no actions have been taken against an agency that has documented misuse or violations of policy.

This is especially of concern for today's meeting, in which CAC is set to approve applications for upgraded CLETS access for five agencies that reported misuse in 2015 and another four agencies failed to file the required misuse disclosures. These are:

Agencies reporting misuse:

Anderson Police Department - 1 confirmed case
Huntington Beach Police Department - 1 confirmed case
Shasta County Sheriff's Department - 1 confirmed case
San Francisco Police Department - 3 confirmed cases
Ventura County District Attorney's Office - 1 confirmed case

Agencies that failed to file misuse disclosures:

Desert Hot Springs Police Department
El Monte Police Department
Garden Grove Police Department
Shasta County Probation Department

Additionally, given that the San Francisco Police Department (SFPD) is scheduled to receive upgraded access to CLETS, we want to make sure this committee is aware of a recent high-profile case of misuse within the agency. As part of a larger investigation into certain SFPD officers, prosecutors have charged a former officer with criminal misuse of several police

databases.¹ It is not clear to EFF whether SFPD has reported this case to this committee or CADOJ.

CAC must fulfill its statutory duty and begin enforcing the policies it has laid out. Please do not hesitate to contact us with further questions or comments at 415-436-9333 x151 or dm@eff.org and amackey@eff.org

Thank you again for considering our concerns.

Sincerely,

Dave Maass
Investigative Researcher

Aaron Mackey
Frank Stanton Legal Fellow

¹ Vivian Ho, *Ex-SF cops in racist text case plead not guilty to other charges*, San Francisco Chronicle (May 3, 2016) <http://www.homes.sfgate.com/crime/article/SF-cop-tangled-in-racist-texting-case-denies-7390695.php>