

VIA EMAIL

December 13, 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 Meeting

Members of the Advisory Committee:

We are writing today on behalf of the Electronic Frontier Foundation (EFF) and the ACLU of California Center for Advocacy & Policy (ACLU). We ask that this letter be entered into the record as part of the December 14, 2016 meeting of the CLETS Advisory Committee (CAC).

We would like to draw your attention today to three issues that we hope you will consider during Wednesday's proceedings.

CAC Must Address CLETS Misuse

At your last meeting, committee members instructed staff to present information on CLETS misuse. As EFF has been reporting for more than a year, misuse of CLETS has been on a steep incline.¹ CAC has a statutory obligation to enforce discipline over the system, but unfortunately this duty has been neglected for many, many years. The committee must take steps to address this threat to privacy.

CAC should launch an investigation into how CLETS misuse figures into the ongoing scandals unfolding in the San Francisco and Oakland police departments. San Francisco Police Officer Jason Lai, who was allegedly involved in the "racist text messages" scandal, was charged in the spring within misusing databases.² In November, Oakland Police Officer Terryl Smith was

¹ EFF Deeplinks: "Misuse Rampant, Oversight Lacking at California's Law Enforcement Network." <https://www.eff.org/deeplinks/2015/11/misuse-rampant-oversight-lacking-californias>-EFF Deeplinks: "EFF Pressure Results in Increased Disclosure of Abuse of California's Law Enforcement Databases." <https://www.eff.org/deeplinks/2016/03/eff-pressure-results-increased-disclosure-abuse-californias-law-enforcement>

² San Francisco Examiner: "Former SFPD officer arraigned on database misuse charges." <http://www.sfexaminer.com/former-sfpd-officer-arraigned-database-misuse-charges/>

charged with five misdemeanors related to accessing databases in a high-profile sexual exploitation case involving many law enforcements officers across jurisdictions.³

We further urge your committee to review an Associated Press investigation from September analyzing law enforcement database across 50 states.⁴ Incidents of CLETS misuse were among those highlighted in the report.

Deny U.S. Federal Housing Finance Agency Access to CLETS

EFF and ACLU formally oppose CAC granting CLETS access to the U.S. Federal Housing Finance Agency, Office of the Inspector General. The California Legislature is currently pursuing legislation (S.B. 54) to limit federal access to California data. Moreover, the FHFA OIG application offers no explanation of what data is needed and how it will be used, and thus does not justify—or even attempt to justify—why this agency requires access to the breadth of data on Californians provided by CLETS. We urge CAC to table this item until the legislature has an opportunity to debate the issue. We also ask whether applications for CLETS access are generally so vague and uninformative.

Bagley-Keene Act Compliance

EFF and ACLU have raised a variety of issues over the last two years about how CAC conducts its meetings under the Bagley-Keene Act. We are pleased with many of the changes CAC has made, including staggering CAC meetings and the Standing Strategic Planning Subcommittee. However, we believe this December 14, 2016 meeting agenda does not comply with the Bagley-Keene Act or the Attorney General’s guidelines for open meetings.

In particular, Item 5(a) “Action Items from previous meeting” does not provide enough detail to allow a member of public to know what is being discussed. Based on the recording of the previous meeting, we believe that this is related to misuse data, however without more information we are unable to provide comment addressing the issue.

In addition, Item 9, “Closed Session,” does not detail what issues will be discussed in private. As the Attorney General guidelines state:

“There is a tendency to think that agendas need not be prepared for closed session items because the public cannot attend. But the public’s ability to monitor closed sessions directly depends upon the agenda requirement which tells the public what is going to be discussed.”⁵

³ KQED: “Sixth Officer Charged in Police Sexual Exploitation Case.”

<https://ww2.kqed.org/news/2016/11/03/sixth-officer-charged-in-police-sexual-exploitation-case/>

⁴ Associated Press: “Across US, police officers abuse confidential databases.”

<http://bigstory.ap.org/article/699236946e3140659fff8a2362e16f43/ap-across-us-police-officers-abuse-confidential-databases>

⁵ California Attorney General: “A Handy Guide to The Bagley-Keene Open Meeting Act 2004”

http://ag.ca.gov/publications/bagleykeene2004_ada.pdf

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We urge CAC to provide details of closed sessions in further agendas and to provide the public with information regarding the December 14, 2016 closed session when the body returns to open session.

Thank you for taking the time to consider our concerns regarding these matters. Please do not hesitate to contact us with further questions or comments at 415-436-9333 x151 or dm@eff.org.

Sincerely,

A handwritten signature in black ink, appearing to read "DMAS", written on a white background.

Dave Maass
Investigative Researcher
Electronic Frontier Foundation

A handwritten signature in black ink, appearing to read "KB", written on a white background.

Kevin G. Baker
Legislative Director
ACLU of California Center for
Advocacy & Policy