



December 20, 2017

**SENT VIA EMAIL**

CLETS Advisory Committee  
California Department of Justice  
4949 Broadway Room J231  
Sacramento, California 95820  
c/o CLETS Administration Section  
Maria Cranston, CLETS Executive Secretary  
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Members of the Advisory Committee:

We are once more writing on behalf of the Electronic Frontier Foundation (EFF) to share our continued concern that the CLETS Advisory Committee (CAC) has failed to fulfill its statutory duty to police and punish misuses of the California Law Enforcement Telecommunications System (CLETS). In light of this failure, we request that you take specific steps, described below, to ensure adequate discipline for local and state law enforcement who misuse CLETS and to promote responsible use of the system moving forward. We further ask that this letter be entered into the record as part of CAC's December 21, 2017 public meeting.

For several years, EFF has been documenting increasing CLETS misuse and CAC's inaction.<sup>1</sup> Our most recent review of CLETS misuse data under the California Public Records Act showed reported cases of confirmed misuse have increased 50 percent since 2011.<sup>2</sup>

Our research also showed that the data is incomplete and is likely underreporting the total amount and rate of misuse because several law enforcement agencies, including the Los Angeles Police Department (LAPD) and San Diego Police Department (SDPD), failed to file their misuse data with the California Department of Justice (DOJ).

CAC has repeatedly ignored these problems. It has held no hearings about the large increase in CLETS misuse or publicly demanded that LAPD, SDPD, and other agencies provide

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<sup>1</sup> See, e.g., EFF and ACLU letter to CLETS Advisory Committee (Dec. 13, 2016) [https://oag.ca.gov/sites/oag.ca.gov/files/cac-letter-eff-aclu-121416\\_0.pdf](https://oag.ca.gov/sites/oag.ca.gov/files/cac-letter-eff-aclu-121416_0.pdf); EFF letter to CLETS Advisory Committee (June 9, 2016) (June 9 letter) [https://oag.ca.gov/sites/oag.ca.gov/files/cac-letter-eff-06-09-16\\_0.pdf](https://oag.ca.gov/sites/oag.ca.gov/files/cac-letter-eff-06-09-16_0.pdf).

<sup>2</sup> Dave Maass, *California Authorities Are Failing to Track and Prevent Abuse of Police Databases*, EFF Deeplinks (May 14, 2017) <https://www.eff.org/deeplinks/2017/05/california-authorities-still-ignoring-rising-abuse-police-databases>.

basic details about their CLETS misuse. Further, the committee has not publicly disciplined any agencies that have documented CLETS misuse.

California law and this committee's own policies require that it take these steps. As EFF has repeatedly told CAC, California Gov't Code § 15154 requires it to oversee CLETS and to manage "system discipline," including misuse.<sup>3</sup> The CLETS Policies, Procedures and Practices require the Advisory Committee to follow up on reported misuse that is not resolved by the agency or the DOJ and provides that the committee can punish violations by suspending or removing CLETS service. Section 1.10.1.

The DOJ and CAC are not following these procedures. EFF is unaware of any agency receiving punishment from this committee due to its CLETS misuse. This failure includes the most minimal sanction of writing a letter of censure to agencies that misuse CLETS.<sup>4</sup>

It is time for CAC to meet its duties under the law to maintain CLETS "system discipline" and police misuse as required by law. CAC can begin to satisfy its duties under Government Code section 15154 by:

#### **Reforming Misuse Reporting and General Oversight Practices**

- Conducting a system-wide audit of CLETS misuse that comprehensively tracks how local and state agencies access and misuse the system.
- Following up with local and state agencies that report misuse cases as "pending" to determine the final outcome of those investigations and updating annual CLETS misuse data accordingly.
- Publishing an annual list of law enforcement agencies that fail to report their annual misuse data.
- Holding public hearings with heads of law enforcement agencies that fail to report annual misuse data and potentially sanctioning those agencies for their failures.
- Ceasing to misrepresent CLETS misuse data in its public meetings by relying on faulty math and incomplete reporting. This would include obtaining full data from agencies that are currently not reporting and ceasing to divide reported misuse by the total amount of CLETS queries.

#### **Investigating Specific Misuse and Following Through on Current Policies**

- Holding a hearing to inquire why the Yuba County Probation Department reported an alarmingly high rate of CLETS misuse for such a small law enforcement agency.<sup>5</sup>

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<sup>3</sup> June 9 letter.

<sup>4</sup> Maybe call out a few from your reporting?

- Ordering Oakland Police Department (OPD) to explain discrepancies between the CLETS misuse data it reported to DOJ in 2016 – which indicated 17 confirmed cases of misuse – and its denial that the data was accurate when EFF inquired about it. OPD told EFF that it had only one confirmed case of misuse in 2016 while the other 16 were pending.<sup>6</sup>
- Enforcing CLETS policies that police misuse, including the requirements that:
  - An “[a]gency head shall return an assessment of the investigation and statement of corrective action to the CA DOJ.”
  - “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.”
  - “Take action on investigations where misuse was concluded. This may include a letter of censure or suspension of service.”

EFF hopes that the Advisory Committee takes these specific steps to police CLETS misuse and to fulfill its duties under California law.

In addition, we remain concerned that CAC is not fulfilling the requirements of the Bagley-Keene Open Meeting Act in regards to closed sessions. Agenda Item 9 does not adequately describe what 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.”<sup>7</sup>

At the very least, CAC must describe which agencies’ “Client Reports” will be discussed. The agenda cites Government Code 11126(c)(18), however this section further requires:

“After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.”<sup>8</sup>

CAC therefore must provide the public with information regarding the December 21, 2017 closed session and the actions taken when the body returns to open session.

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<sup>5</sup> Public records show Yuba County Probation Department reported 15 confirmed cases of CLETS misuse in 2015 and six confirmed cases in 2016. *See supra*, n. 1.

<sup>6</sup> *See supra*, n. 1.

<sup>7</sup> California Attorney General: “A Handy Guide to The Bagley-Keene Open Meeting Act of 2004 [http://ag.ca.gov/publications/bagleykeene2004\\_ada.pdf](http://ag.ca.gov/publications/bagleykeene2004_ada.pdf).

<sup>8</sup> <http://codes.findlaw.com/ca/government-code/gov-sect-11126.html>

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Should you have any questions or comments about this letter, please contact either of us via phone or email below.

Sincerely,

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