

The Commonwealth of Massachusetts

Executive Office of Public Safety

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Deval L. Patrick
Governor

Kevin M. Burke
Secretary

Timothy P. Murray
Lieutenant Governor

March 10, 2008

Dear Ms. Rose and Mr. Reinstein,

In response to your letter of December 12, 2007, regarding the Commonwealth Fusion Center (CFC), as well as a subsequent conversation we had, the Executive Office of Public Safety and Security (EOPSS) has worked with the CFC to provide you with an honest, comprehensive response to the issues and concerns you have raised.

We would like to take this opportunity to address your more general claims about fusion centers – and why they do not apply to the CFC – as well as your specific claims that the CFC has not been transparent in terms of what it does, what information it collects, and how this information is being shared and used.

In response to your assertion that most fusion centers have ambiguous lines of authority, this is not the case with the CFC. While the CFC has partners from appropriate state and federal agencies and takes strategic guidance from the Department of Homeland Security (DHS), the CFC's chain of command ends with the Colonel of the State Police, who is under the authority of the Secretary of Public Safety and Security and ultimately the Governor. The core of the CFC is staffed with Massachusetts State Police (MSP) personnel, who first and foremost are responsible up their chain of command. Representatives from other agencies include one Federal Bureau of Investigation (FBI) analyst, one agent and one analyst from the Bureau of Alcohol, Tobacco, Firearms and Explosives, one counter-drug analyst from the Massachusetts National Guard (MANG), one analyst from the Department of Correction (currently deployed to Iraq), one representative from the DHS Office of Intelligence and Analysis (I&A), one police officer from CSX railroad, and a Geographic Information Systems (GIS) specialist from the U.S. Army Civil Support Team. In addition, several MSP troopers under the direct command of the CFC, and therefore EOPSS, are assigned to the FBI Joint Terrorism Task Force (JTTF) for specific investigation support.

The CFC actually has several core functions. These include its role as the repository of traditional criminal law enforcement information so that localities and regions can work together to share criminal information about specific investigations, arrests, warrants, and trends. It also includes issues involving critical infrastructure assessments (i.e. managing a statewide database, known as ACAMS, which assesses vulnerabilities), serves as a missing children information clearinghouse, and promotes uniform crime reporting and gun tracing. All of these different roles are subject to strict standards. This letter specifically addresses your concerns with the CFC's role as an intelligence repository or intelligence gathering entity and the standards that govern this role.

As an initial matter, because of the necessity for joint federal/state interaction, an MOU has been implemented between the FBI's JTTF and the MSP, in order to clarify and delineate roles and responsibilities. The JTTF's core function is to investigate terrorism related crimes. The representative from the DHS I&A is present at the CFC to facilitate the coordination and flow of information, provide expertise in intelligence analysis and reporting, coordinate with local DHS and FBI components, and provide DHS with local situational awareness and access to appropriate CFC information. The DHS representative is not involved in intelligence collection in any way. These limited roles and responsibilities will be codified in an MOU between DHS and the CFC soon.

Regarding the CFC's authority over data collection and retention, and their policies for privacy and civil rights, the CFC's National Standards for Intelligence Sharing policy (CFC-07, enclosed) follows national best practices. The policy voluntarily adopts the National Criminal and Intelligence Sharing Plan, the Global Justice Information Sharing Initiative, and the Criminal Intelligence Systems standards under Title 28, part 23 of the Code of Federal Regulations (28 CFR 23). The latter provides criteria for the submission of criminal intelligence, requiring reasonable suspicion of a criminal act before data on individuals or groups can be collected. The mandates of the 28 CFR 23 also require controlled dissemination of that information, information review, and a five year purge of unused information. The DHS representative at the CFC is also bound by 28 CFR 23, any internal regulations set forth by the CFC, and Executive Orders 12333 and 13355 (governing United States intelligence activities), which specifically address retention of personal identifying information on DHS computers or I&A databases.

You have also raised concerns regarding private-sector and military involvement, data mining, and excessive secrecy. With respect to private-sector participation, the sole quasi-private representative is the officer from CSX railroad who serves to ensure that rail-related intelligence is disseminated widely to our rail transportation assets and to work on critical infrastructure analysis. The CFC does communicate when appropriate with the private sector (particularly critical infrastructure). For example, members of the private sector are educated on indicators of terrorism and are encouraged to report suspicious activity gathered in their normal course of business that fits the indicators. Law enforcement sensitive information (covering CORI, among other things) is withheld from the private sector.

In terms of military participation, the CFC has one MANG counter-drug analyst.^[1] His duties are solely to provide analytic support for narcotics investigations, as well as to support other counter-drug operations as requested. In addition, the MANG Civil Support Team (which supports emergency response, not intelligence) collaborates with the CFC GIS analyst on a monthly basis.

No "wholesale data collection" goes on at the CFC. Data is collected and maintained in accordance with 28 CFR 23, based on suspected criminal activity.

As to claims of excessive secrecy, the CFC has presented to various audiences on fusion center functions. The CFC will gladly meet with you to discuss their operations and tour their facility. The CFC will continue to respond to all appropriate inquiries with transparency and honesty.

Your letter states that the CFC has no civil rights protection policy. In fact, there are two policies governing this issue. The CFC recently revisited and revised its standard operating procedures,

^[1] Under United States Code Title 32, this MANG analyst is serving under state duty/authority.

including its Guidelines for Investigations Involving First Amendment Activity (CFC-04, enclosed). This document details the general principles and applicability of the CFC's policy:

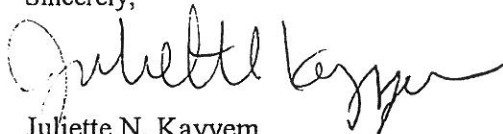
It is the policy of the Commonwealth Fusion Center (CFC) that its members will not initiate or participate in investigations into groups or individuals based solely upon their lawful exercise of First Amendment rights. Where the CFC must initiate or participate in investigations involving First Amendment activity, its policy requires that those investigations conform to the guarantees of the Massachusetts Constitution, the United States Constitution, state law, and federal law. It also requires that those investigations be supported by a legitimate law enforcement or public safety purpose.

An additional CFC privacy policy, previously released to you (CFC-05), embraces privacy design principles developed to ensure that safeguards and sanctions are in place to protect personal information. The policy addresses issues ranging from clearly articulating mission-specific reasons for using information to ensuring data quality and maintaining effective security over personal information. In addition, it is clearly stated in the CFC privacy policy that "all agencies participating in the CFC will make this privacy policy available for public review."

The ACLU also claims that the CFC has wide-ranging data on individuals with no oversight to govern its use and protect against violations of privacy and civil liberties. In addition to the privacy and First Amendment policy standards adopted by the CFC, EOPSS is working with the CFC to develop and establish an advisory group, as suggested by the U.S. Department of Justice and DHS in their "Fusion Center Guidelines" publication. The general function of the CFC advisory group will be to provide oversight and regular review of the policies, procedures, guidelines, organizational structure, and resources of the CFC as they relate to homeland security issues. The advisory group will serve to guarantee that the CFC functions with maximum effectiveness, while continuing to protect the rights and liberties of citizens, through continuous review and updating of policies and procedures. The Governor's clear intent is to maintain a center that maximizes our capabilities to enhance public safety while steadfastly maintaining the privacy, rights and trust of the Commonwealth's citizens.

We recognize and hope we have addressed your concerns with the CFC. Our goal, like yours, is to continue to support our criminal and counter-terrorism needs with as much transparency as possible.

Sincerely,



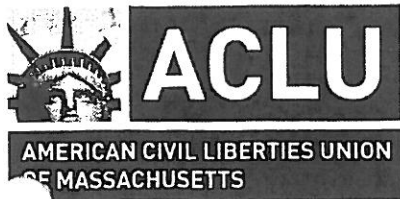
Juliette N. Kayyem
Undersecretary for Homeland Security

CC: Secretary Kevin Burke, Executive Office of Public Safety and Security
Mr. Ben Clements, Chief Legal Counsel, Office of the Governor
Attorney General Martha Coakley

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Carol Rose, Executive Director
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May 2, 2008

Juliette N. Kayyem, Undersecretary of Homeland Security
Executive Office of Public Safety and Security
One Ashburton Place, Suite 2133
Boston, MA 02108

Dear Undersecretary Kayyem:

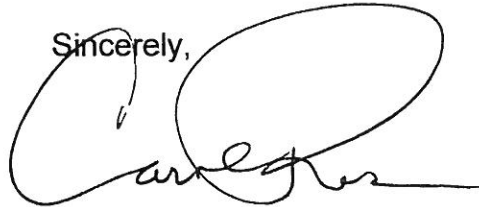
Thank you for your letter of March 10, 2008 outlining the measures which the Commonwealth has taken with respect to the Commonwealth Fusion Center (CFC). These are important steps in the process of insuring that the operations of the CFC do not intrude on the rights of Massachusetts residents. We believe, however, that these should be only the first steps in this process.

The CFC represents a significant expansion of the traditional role of state government. The intelligence function which it serves extends substantially beyond the investigation of specific crimes, and it is tied to a broader nationwide network of law enforcement and intelligence agencies as part of what the Department of Homeland Security's Director of Intelligence has described as a "seamless national intelligence network." To be sure, we understand the reasons for the creation of the CFC and for the intelligence-sharing initiatives of which it is a part. At the same time, we believe that the expansion of the government's domestic intelligence activities calls for the most exacting management and oversight.

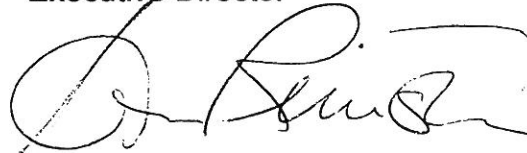
Having reviewed the regulations now in place, we are concerned that they fall short of meeting the requirements of either the federal guidelines and regulations or the applicable state laws. We are also unconvinced that a privacy committee that is limited to review of standards and regulations is adequate to protect against the possibility of abuse. We are in the process of conducting a more extensive review of the federal standards and their application to the CFC as well as an analysis of the provisions of state law which must be addressed.

We look forward to a continuing dialogue on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Carol Rose". The signature is fluid and cursive, with a large loop at the beginning.

Carol Rose
Executive Director

A handwritten signature in black ink, appearing to read "John Reinstein". The signature is cursive and somewhat stylized, with a large loop at the beginning.

John Reinstein
Legal Director

cc: Kevin Burke, Secretary, Executive Office of Public Safety and Security
Ben Clements, Chief Legal Counsel, Governor Deval Patrick
Martha Coakley, Attorney General