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June 9, 2008

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

Re: Commonwealth Fusion Center

Dear Secretary Burke and Undersecretary Kayyem:

Thank you for your cooperation with our previously submitted public records requests and for the regulations forwarded by Undersecretary Kayyem with her letter of March 10, 2008. While we appreciate the efforts that have been taken to protect individual privacy and civil liberties in the operation of the commonwealth Fusion Center, our review of the materials made available to us has raised a number of additional questions and concerns as to the adequacy of those efforts. We are requesting the following records under the Massachusetts Public Records Law (G.L. c. 66 § 10) in order to address these concerns.

Formal Agreements with Other Agencies

Standard Operating Procedure CFC-04 states that "[a]ll agencies who contribute staff to the CFC will be subject to a Memorandum of Understanding and will be required to adhere to all CFC policies and security requirements." We anticipate that these documents, along with any Non-Disclosure Agreements, describe the mechanisms by which privacy will be maintained as information is shared between agencies. Furthermore, CFC-04 establishes that "[p]articipating agencies remain the owners of the data contributed and are, therefore, responsible for the quality and accuracy of the data accessed by the CFC." We are concerned that participating agencies will not meet sufficiently high levels of accuracy and completeness in relaying information to the CFC. As you recognized in CFC-04, "[i]naccurate personal information can have a damaging impact on the person concerned and on the integrity and functional value of the CFC." We therefore request access to the following public records:

1. The signed Memorandum of Understanding ("MOU") between the Joint Terrorism Task Force ("JTTF") of the Federal Bureau of Investigations ("FBI") and the Massachusetts State Police ("MSP") or, if not yet signed, all correspondence, communications, records of meetings, and drafts relating to the development of this MOU.
2. The signed MOU between the Department of Homeland Security ("DHS") and the CFC or, if not yet signed, all correspondence, communications, records of meetings, and drafts relating to the development of this MOU.
3. Any and all other signed MOUs between CFC and any and all other agencies, or, if not yet signed, all correspondence, communications, records of meetings, and drafts relating to the development of such MOUs.
4. Any and all other signed MOUs relating to the CFC between MSP and any and all other agencies, or, if not yet signed, all correspondence, communications, records of meetings, and drafts relating to the development of such MOUs.
5. Any and all signed Non-Disclosure Agreements ("NDAs") between the CFC and any and all other agencies, or, if not yet signed, all correspondence, communications, records of meetings, and drafts relating to the development of such NDAs.
6. Any and all signed NDAs relating to the CFC between the MSP and any and all other agencies, or, if not yet signed, all correspondence, communications, records of meetings, and drafts relating to the development of such NDAs.

Oversight

In your letter to us dated March 10, 2008, you commented that the CFC is working "to develop and establish an advisory group, as suggested by the U.S. Department of Justice and DHS in their 'Fusion Center Guidelines' publication." You further stated that 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." We believe that such an advisory group must operate independently, transparently, and with full security authorization and sufficient resources in order to effectively protect the rights and liberties of citizens. We therefore request the following documents:

1. Any and all documents that authorize the advisory committee to oversee privacy and First Amendment policy standards, and any and all correspondence, communications, records of meetings, and other documents relating to the development, scope, function, independence, transparency, and powers of the advisory committee.

2. Any and all organizational charts and documents outlining all departments, committees, task forces, individuals (hereinafter "CFC entities"), and lines of authority within the CFC. Any and all organizational charts and documents outlining and describing the position and authority of the advisory committee in relation to CFC entities. Any and all organizational charts and documents outlining and describing the rules, regulations, laws, and bylaws which govern all CFC entities.
3. Any and all documents relating to oversight of the CFCs operations, including those relating to privacy, First Amendment, and other constitutional standards.

Standard Operating Procedures

We have received CFC Standard Operating Procedures CFC-04, CFC-05, and CFC-07. While these documents address the CFC's policies relating to privacy, First Amendment activity, civil rights, and civil liberties, they do not paint a complete picture of the rules governing the CFC's operations. Thus, we request the following documents:

1. CFC Standard Operating Procedures CFC-01, CFC-02, CFC-03, CFC-06.
2. Any and all other Standard Operating Procedures, including those pertaining to information that may be sought and retained; classification of that information; collation and analysis of that information; sharing and disclosure of that information with participating agencies, public health or safety agencies, and the general public; and the retention and destruction of that information.

Because this request involves a matter of public concern and because it is made on behalf of a non-profit organization, we ask that you waive any copying costs pursuant to 950 C.M.R. § 32.06(5). Alternatively, we ask that you permit us to examine the requested records and, at our election, obtain copies of specified records.

Should you determine that some portion of the documents requested are exempt from disclosure, please release any segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to the redacted portions. As you know, a custodian of public records shall comply with a request within ten days after receipt.