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The Commonwealth of Massachusetts Department of State Police

Office of the Chief Legal Counsel

470 Worcester Road

Framingham, Massachusetts 01702

June 20, 2007

Mr. John Reinstein
Legal Director
ACLU of Massachusetts
211 Congress Street
Boston, MA 02110

RE: Public Records Request

Dear Mr. Reinstein:

The Massachusetts Department of State Police ("Department") has received and reviewed your public records request relative to the Massachusetts Fusion Center ("CFC"). The Department greatly appreciates your patience. The time required to research and assemble the enclosed information took longer than originally anticipated.

In the interest of clarity, the Department responds to the requests individually as follows:

1. Records identifying all government information systems, databases and records accessible by the CFC including:
 - (a) the name of any agency providing access to information to the Fusion Center and the nature of the records or systems of records which can be accessed by the Center;
 - (b) the names of each city and town which is providing access to information to the Fusion Center and the nature of the records or systems of records which can be accessed by the Center; and
 - (c) all federal government information systems which are accessible to the Center.

RESPONSE:

- 1a. The Fusion Center does not directly link into any state agency data systems with the obvious exception of databases provided through the Criminal History Systems Board, Registry of

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Motor Vehicles, and Criminal Justice Information System (CJIS). Attachment 1 lists databases accessible to Fusion Center staff.

The State Police Criminal Information Section and now the Fusion Center receives data on gun shot and knife wounds under the Department of Public Health's Weapons Related Injury Surveillance System ("WRISS") as mandated by the Massachusetts General Laws.

1b. Attached please find a file that contains the cities and towns in Massachusetts that provide Uniform Crime Reporting ("UCR") and/or National Incident Based Reporting System ("NIBRS") data to the Crime Reporting Unit of the Fusion Center. The Fusion Center does not have direct electronic access to city and/or town criminal databases. See Attachment 2.

These communities also submit survey and incident data to enable the Crime Reporting Unit to complete the following reports:

1. Annual Massachusetts Hate Crime report
2. FBI Annual Police Employment Survey

1c. Attachment 1 lists databases, both public and governmental, accessible to CFC staff. In addition, the following data sources are available to specific staff:

- ATF eTrace Gun Tracing System;
- ATF Bomb and Arson Tracking System;
- Automated Critical Asset Management System ("ACAMS");
- Memorial Institute for the Prevention of Terrorism ("MIPT") federally funded site;
- National Forensic Laboratory Information System ("NFLIS"); and
- Open Source Center, a federal government open source system offered to government partners.

2. Records concerning the authority for disclosure to the Center of information or records held by any state agency.

RESPONSE:

The Department is unable to discern what specific records the request seeks as it considers the request vague and ambiguous.

3. Any formal agreement between the Fusion Center and/or the Department of State Police and any state or local government agency providing for access to information or records held or maintained by that agency.

RESPONSE:

See attachment 3.

The Fusion Center is a participant in the Department of Homeland Security's ("DHS") Protected Critical Infrastructure Information ("PCII") program enacted as part of the Homeland Security Act of 2002. PCII protects critical infrastructure information from disclosure to restrict dissemination under the Freedom of Information Act ("FOIA"), civil legal actions and state and local sunshine laws. The Fusion Center staff do enter into non-disclosure agreements.

4. A description of all paper records which have been or will be converted to electronic form.

RESPONSE:

The CFC had proposed to convert criminal investigative records from the State Police Records Section to an electronic format as part of its Information Management System ("IMS") project. As the CFC assessed those records, it became clear that the investigative and analytical value of converting those legacy paper records would not justify the cost and time involved in this conversion. This part of the IMS-COPLINK project was deferred to examine a less costly solution. Ultimately, this was never completed.

The Fusion Center is currently examining the conversion of U.S. District Court Offender Release letters which are mailed from 7 U.S. Probation Department offices in Massachusetts to the cities and towns and the state under federal law. These notification

letters are sent from the U.S. Probation Department as described by 18 USC §4042. We propose to receive this data electronically to assist us in cataloging and maintaining the quality and security of this data. The proposal is currently under review by the U.S. Court System.

5. Records identifying each private sector entity providing the Fusion Center with access to records or information and the nature of the records or information which can be accessed by the Center.

RESPONSE:

The list of private sector databases such as Autotrack is listed along with public databases in Attachment 1.

As a public safety organization, the CFC requests and receives, on an *ad hoc* basis, information from a large variety of private sector entities. See Attachment 4. The CFC does not have direct access to private entity databases except as describe above.

The CFC is presently working with the Inter-Utilities Task Force, a private and public sector utility group in New England to reduce criminal incidents at utility sites. The focus of this effort is the theft of materials. The CFC receives incident data from utility companies on a voluntary basis which is then analyzed and returned to participants as finished intelligence and crime analysis products.

6. Any formal agreement between the Fusion Center and/or the Department of State Police and any private sector entity providing for access to information or records held or maintained by that entity.

RESPONSE:

See Response No. 5.

7. Any records describing or concerning the use by the Center and/or the Department of State Police of the services of commercial data aggregators.

RESPONSE:

Attachment 1 lists several private data sources such as Autotrack and Locate Plus that are used for investigative support activities.

8. Records describing or listing the nature of the linkages between the Center and the Operational Control operated by the Massachusetts Highway Department, Massachusetts Port Authority, Massachusetts Bay Transportation Authority, the Massachusetts Turnpike Authority, the Boston Transportation Department, and the Boston Police Department, and whether the information obtained from those agencies is retained in retrievable form by the Center.

RESPONSE:

Language from the State Homeland Security Strategy, accessible through the Executive Office of Public Safety's website, developed prior to the opening of the Commonwealth Fusion Center lists a number of linkages with specific agencies. There are no electronic or communications links with the operational control centers listed in this document with the exception of phone contact. However, it should be noted that the Massachusetts State Police provides police services for the Massachusetts Highway Department, Massachusetts Port Authority and the Massachusetts Turnpike Authority.

The CFC does, on an event driven basis, have access to the Boston Police Department and/or Massachusetts Emergency Management Agency's ("MEMA") WEBEOC emergency management software application, as well as to the Executive Office of Transportation's traffic video service. The individual agency controls access to these applications.

The CFC does work closely with the Boston Regional Intelligence Center ("BRIC"), located at Boston Police Department Headquarters. The CFC produces law enforcement sensitive intelligence products with the BRIC and conducts conference calls and meetings routinely in pursuit of its crime reduction and homeland security mission. The CFC does not have access to Boston Police Department or BRIC data systems.

The Commonwealth of Massachusetts, acting through the Executive Office of Transportation (EOT) and the Massachusetts Highway Department (MassHighway), has requested responses from qualified vendors for the purpose of providing the Commonwealth with digital color oblique imagery. This procurement will be administered by the Office of Transportation

Planning. The CFC worked in partnership with EOT in developing the imagery RFR, assessing the responses and choosing a vendor. The CFC continues to work with EOT to implement this imagery and hopes to have access to the application for its critical infrastructure, strategic and tactical analysis missions.

9. Records describing the procedures used by the Center in responding to or acting on information received on the tip line, and the number of calls received on the tip line in 2005 and 2006.

RESPONSE:

See Attachment 5 and Attachments 6 (CFC Operations manual) and 7 (CFC-Standard Operating Procedures) subject to exemption. See Response 14, below.

10. Records identifying all government agencies, whether federal, state or municipal, which receive the information from the Fusion Center including the name of any federal agency accessing, or otherwise receiving information held or generated by the Fusion Center, and the nature of the information which the Fusion Center is disseminating; the name of any state agency accessing, or otherwise receiving information held or generated by the Fusion Center, and the nature of the information which the Fusion Center is disseminating; and the name of each city and town accessing, or otherwise receiving information held or generated by the Fusion Center, and the nature of the information which the Fusion Center is disseminating.

RESPONSE:

10a. Federal Agencies Accessing Information

Attachment 4 lists agencies such as the Department of Homeland Security, Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms and Explosives, Immigration and Customs Enforcement agency and other federal agencies with a need to know and right to information and intelligence information.

10b. State Agencies Accessing Information

Attachment 4 lists agencies such as the Executive Office of Public Safety, the Department of Corrections, Transit Police, Department of Fire Services and Massachusetts Emergency Management

Agency that represent our public safety partners. The CFC routinely works with these organizations and shares information in their particular discipline.

10c. Cities and Towns Accessing Information

Every city and town in Massachusetts as well as campus and special police departments receive crime reports from the CFC. See Attachments 1 and 4. Law enforcement agencies also have access to strategic and tactical crime reports from the CFC through HSIN-MA and RISSNET –LEO. See Attachments 1 and 4 lists the agencies/cities/towns with which the CFC routinely shares information. The CFC provides criminal and homeland security information with state and local public safety agencies that have a need to know.

11. Any written agreements between the Fusion Center and any federal, state, or municipal agency providing for access to, or receipt of, information from the Fusion Center in any form.

RESPONSE:
See Attachment 3.

12. Records identifying any non-governmental entity accessing, or in any way receiving, any information from the Fusion Center, including the name of all private entities accessing, or in any way receiving information held by the Fusion Center, and the nature of the information which the Fusion Center is disseminating thereto.

RESPONSE:
See Attachment 4 which lists non-governmental agencies such as the Biotechnology Council, the Inter-Utilities Task Force, and the federal Emergency Services Function 18 (ESF-18) working group. The CFC routinely meets and shares information regarding critical infrastructure protection, criminal threats and/or other public safety relevant information.

13. Any written agreements between the Fusion Center and any non-governmental entity providing for access to, or receipt of, information from the Fusion Center in any form.

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RESPONSE:
See Attachment 3.

14. Records describing or containing any policies and procedures establishing minimum standards for intelligence analysis products generated by the Center.

RESPONSE:
See Attachment 7 (CFC Operations Manual) and Attachment 8 (CFC Standard Operating Procedures).¹ Please note that the Department is not producing Chapter 9 of the CFC Operations Manual on the grounds that the information is exempt from public disclosure under the provisions of G.L. c. 4, §7, cl. 26 (f) and (n) since the contents relate to internal security measures. For the same reasons, the Department will not produce CFC-01 since the contents relate to internal security measures. Lastly, the Department takes the position that the redacted portions of CFC-04 are not subject to public disclosure pursuant to G.L. c. 4, §7 cl. 26(f) since these portions relate to general investigative techniques, intelligence gathering activities, informant operations and guidelines. See, *Bougas v. Chief of Police*, 371 Mass. 59, 62 (1976)(exemption (f) serves to prevent “the disclosure of confidential investigative techniques, procedures, or sources of information, the encouragement of individual citizens to come forward and speak freely with police concerning matters under investigation, and the creation of initiative that police officers might be completely candid in recording their observations, hypotheses and interim conclusions”).

15. Fusion Center budget information for fiscal years 2006 and 2007, including identification of any federal funds received or applied for.

RESPONSE:
The Department will supplement this response and provide documents responsive to this request as Attachment 8.

16. Certification of compliance with 28 C.F.R. §23.20.

¹ Please note that the Department is providing CFC Operational policies subject to the fact that the Anti-terrorist Unit (“ATU”), referenced therein, is no longer in existence.

RESPONSE:

The Department has no documents responsive to this request.

17. Any Fusion Center policies and/or procedures governing the protection of privacy, confidentiality, or the constitutional rights of Massachusetts citizens, including procedures for the screening, training and supervision of employees and the use of any software audit trail capabilities such as the one provided by the Fusion Center's intelligence management system, COPLINK.

RESPONSE:

See Attachments 6, 7 and 9.

18. Policies and procedures providing for a privacy oversight board or officer including procedures for auditing and disciplining Fusion Center employees.

RESPONSE:

Policies and Procedures (CFC-05). The Fusion Center does not have an oversight board.

19. The identity of the Center's privacy officer and all members of the privacy oversight board or committee.

RESPONSE:

The Department has no documents responsive to this request. The Fusion Center does not have a privacy officer.

20. Policies and procedures governing the establishment and maintenance of case files including any procedures or practices to prevent the scrutiny of persons or groups solely on the basis of espousing an unpopular viewpoint.

RESPONSE:

See Attachments 6, 7 and 9.

21. Policies and procedures governing records retention and access by the public to records held by the Fusion center including any Fusion Center policies on permitting members of the public to view, contest, or correct information about them.

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RESPONSE:
See Attachment 7 (CFC-05).

Please be advised that you may appeal any denial of your request to the following office:

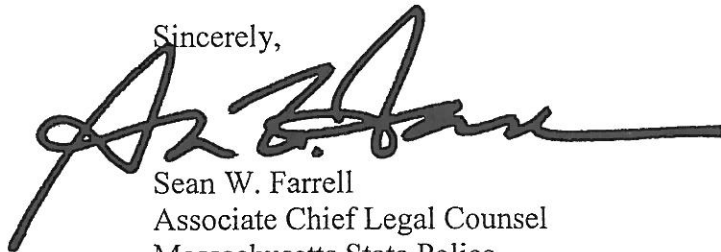
Supervisor of Public Records
Office of the Secretary of the Commonwealth
Public Records Division
One Ashburton Place, 17th Floor
Boston, MA 01208

Please note that the contents of this correspondence were generated as a result of information and documents received from individuals assigned to the CFC.

Lastly, Department officials and the Executive Office of Public Safety are more than willing to meet with you at a mutually convenient time and location to discuss any concerns you may have regarding the CFC and its operations. Please contact me or Attorney Greg Messing at the Executive Office of Public Safety should you want to meet.

In closing, I want to thank you for your patience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean W. Farrell', with a long horizontal flourish extending to the right.

Sean W. Farrell
Associate Chief Legal Counsel
Massachusetts State Police
(508) 820-2153

SWF/st

cc: Ann M. McCarthy, Esq.
Major Dermott Quinn
Sgt. David Lambert