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February 11, 2015

Hanni M. Fakhoury, Esq.
Electronic Freedom Foundation
815 Eddy Street
San Francisco, CA 94109

RE: California Public Records Act Request

Dear Mr. Fakhoury:

This letter is in response to your California Public Records Act request for the following documents:

All records dated between 2007 and the present that discuss or reference Hemisphere, including but not limited to:

[1] Training and promotional records and materials, including presentations, memorandums, policies and guidelines concerning "Hemisphere" whether produced or created by LA CLEAR itself, or produced, created or received from some other third party;

[2] Contracts, service agreements or memorandums of understandings concerning "Hemisphere" between LA CLEAR and

- *any federal, state or local law enforcement agency;*
- *any national, regional or local fusion center; or*
- *AT&T or any other telecommunications provider; and*

[3] Any and all reports, emails or other correspondence concerning LA-CLEAR's use or knowledge of the "Hemisphere" program sent to or received from

- *any federal, state or local law enforcement agency, or any national, regional or local fusion center; or*
- *AT&T or any other telecommunications provider.*

Response to Request No. 1:

LA CLEAR has several copies of training materials which are responsive to request no. 1. Because most of the copies are duplicates, and all of the training materials present essentially

the same information, we are providing copies which represent the type of information used for these presentations. If after reviewing these materials you would like to see other copies, please let me know. We redacted information from the materials to protect against the disclosure of information germane to investigations and information gathered under assurances of confidentiality. (Gov. Code, § 6255.)

Response to Request No. 2:

LA CLEAR has no records that are responsive to this request.

Response to Request No. 3:

For the following reasons, the records LA CLEAR has in its possession that are responsive to request no. 3 are exempt from disclosure.

A. Investigative Records

Section 6254 of the California Government Code exempts from disclosure investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General, the Department of Justice, and any other state or local police agency.¹ (Gov. Code, § 6254, subd. (f).) Section 6254 exempts from disclosure any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for law enforcement purposes. (*Id.*) Portions of investigative files that reflect the analysis or conclusion of the investigating officer also are exempt. (*Id.*)

Courts have construed these exemptions broadly. Records of preliminary inquiries to determine if a crime has been committed are investigative records which are exempt from disclosure under California's Public Records Act. (*Haynie v. Superior Court* (2001) 26 Cal.4th 1061.) Records of investigations and closure memoranda also are exempt from disclosure. (*Id.*; see also, *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174 [Once a law enforcement investigation has come into being materials that relate to the investigation remain exempt from California Public Records Act subject to the terms of the statute.]) In addition, records that are not inherently investigatory may be covered by the exemption where they pertain to a law enforcement proceeding that has become concrete and definite. (*Haynie, supra*, 26 Cal.4th at pp. 1068-1072.) Unlike its federal analog, the California Public Records Act does not require agency justification of an exemption on a case-by-case basis. (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 353.)

¹ The term "law enforcement" agency refers to traditional criminal law enforcement agencies. (*State of California ex rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778, 784.)

The exemption is permanent and does not terminate once the investigation has been completed. (*Williams, supra*, 5 Cal.4th at p. 354-362.)

B. Official Information

Information gathered by a government agency under assurances of confidentiality may be withheld if it is in the public interest to do so. The official information privilege appears in Evidence Code section 1040 and is incorporated into the California Public Records Act through Government Code section 6254(k). The analysis and balancing of competing interests in withholding versus disclosure is the same under Evidence Code section 1040 as it is under Government Code section 6255. (*California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 832.)

Any public interest in knowing about the existence of a law enforcement investigative tool must be weighed against the public interest in nondisclosure of materials that could jeopardize the safety of individuals and law enforcement's ability to conduct successful investigations into criminal conduct. In this case, unredacted copies of the documents you requested would reveal important information about the current techniques and strategies being utilized throughout the nation to combat illegal activities. Knowledge of these investigative techniques might prove beneficial to criminal elements wishing to avoid interference by law enforcement officials in their unlawful activities. As the court stated in *Eskaton Monterey Hosp. v. Meyers* (1982) 134 Cal.App.3d 788, there is no public interest in disclosing information that may assist violators in evading detection. (*Id.* at p. 793.)

Finally, the material we have redacted and withheld may be protected by exemptions not listed here. We reserve our right to assert additional exemptions but will let you know if we invoke an exemption we have not previously identified.

Sincerely,



ROBERT D. WILSON
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

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