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December 20, 2018

Dan Flaming
Economic Roundtable
315 W 9th St.
Los Angeles, CA 90015

Dan,

Based on recent presentations and meetings regarding Economic Roundtable (ERT) projects, some serious concerns about ERT's use of County administrative data in conducting these projects have been raised, as well as questions regarding your intentions with respect to publishing results based on these data. I wanted to take this opportunity to spell out our concerns in the hope that we can resolve them quickly and amicably, so that ERT and the County can continue to work together for the benefit of the County's residents.

Reliance Upon a June 2005 Board Motion

You recently indicated that ERT's work with some of the County data in question is permitted by a June 7, 2005 motion by the County's Board of Supervisors. That motion requested that ERT "conduct a family-centered research project to understand the parents and children that now make up the County's welfare caseload and the best practices for helping them achieve success" and additionally asked ERT to report the results back to the Board in 12 months. While I acknowledge that it took longer for the County to provide you the data you needed to conduct the research for this study, the data that was provided to you was only to be used for this study. Furthermore, a Board action does not obviate the requirement to have active agreements in place, either directly with departments or with CEO as a central point of contact, as a precondition of using County administrative data.

"Derivative Data "

You have also recently expressed a position that because the Department of Public Social Services (DPSS) data that you received via CAO-SIB are linked to service records from multiple agencies, you believe the data is "derivative data" and thus not DPSS data at all. The agreement that provided you with DPSS data via CAO-SIB expired over 10 years ago, and because of that, there is no authority for you to have it in your possession or use it in any way. Additionally, that expired agreement does not use the term "derivative data" or anything similar, and I am not aware of any precedent in the research or legal fields that would support your position that linking data would strip an agency (and client) of the ownership, control, and authority over the data.

De-Identification Also Deletes the Underlying Departments' Rules

You have also asserted that once "records become de-identified they become public records." While it is perhaps true that some governmental records can be redacted in such a manner as to remove personally identifiable information and then be released in response to a request made under the California Public Records Act, that is not at all a similar ERT's current use of County data. The administrative records you have obtained via contracts and agreements with the County are not a matter of public record and are not part of the public domain, as you suggest. Additionally, they were provided to ERT under contract, for specific reasons, and with specific timeframes and contract terms and conditions, including provisions regarding disposition of the data upon the contract expiration.

Using EDD Data

In addition to the concerns I have with ERT's unauthorized use of County data, I suspect that the State will have concerns as well. The MOU signed by CAO and through which ERT received EDD data states that the requesting entity (which was CAO and ERT jointly in this case) "*shall...Use and process the EDD data only for the purposes stated in this MOU.*" The clause in question continues: "*This right shall be revoked immediately upon termination of this MOU.*" Even if ERT has validated the permissibility to use the EDD data with either the California Department of Social Services or directly with EDD, any active authorization to use these data is nevertheless meaningless insofar as the EDD records are linked to County data ERT is not presently authorized to use. More immediately, the MOU signed by CAO is unambiguous in stipulating that "*Use of the EDD data for any other purpose is prohibited.*" ERT's continued use of these records puts the County at risk insofar as the County signs the associated confidentiality and indemnification agreements, which bind the County to agree that, "*unauthorized use of EDD data is punishable by a fine or imprisonment in the County jail or both (Penal Code 502).*"

Use of Data Restricted to the CEO's Recent Analytics Solicitation

I am rather concerned about some of the content of the materials that ERT distributed at recent meetings with the County's Homeless Initiative (HI). For instance, the figure shown on page 3 of the *Employment Interventions* deck you discussed with the HI and with me in November appears to include data you obtained through the CEO's recent analytics solicitation. Specifically,

although the data sources and overarching data period are not clearly specified in the figure, the Research and Evaluation Services (RES) unit did not begin receiving exhaustive Department of Mental Health (DMH) data, inclusive of *Acute Inpatient* and *Residential* episodes, until October 2015 (the new data were backdated to 2010), which means that the CEO's analytics solicitation is the only way ERT could access DMH records of these types of services. Given the protocol you signed as a pre-condition for obtaining access to these data as a participant in the analytics solicitation, this unauthorized use of the data for a different purpose other than responding to the solicitation, is prohibited. By signing the protocol you agreed that ERT would *not use or share these data for any purposes other than the solicitation process for which the data have been made available without written and explicit authorization from the County of Los Angeles*, and additionally acknowledged that, *violation of this agreement may subject [ERT] to civil and/or criminal action and that parties inside and/or outside Los Angeles County governance may seek all possible legal redress.*

Conclusion

At this time, it is imperative that ERT agree to take immediate corrective action to address the County's concerns, as follows:

Corrective Action 1: All data in ERT's possession and/or your personal possession in any physical format, including data that are de-identified, identifiable, linked and/or linkable, must immediately be returned to my attention at the address given below if they were obtained through any arrangement with Los Angeles County's CAO, CEO and/or DPSS, through agreements (however named and categorized) or other circumstances (e.g. the recent CEO analytics contest), including all EDD/CDSS data linked to DPSS records.

Corrective Action 2: All existing copies of the data specified in the above description of Corrective Action 1 must be immediately destroyed.

Corrective Action 3: Any planned publication and public or private release of any report that makes use of the data specified in the above description of Corrective Action 1 is prohibited.

Corrective Action 4: Upon completion of *Corrective Actions 1, 2 and 3*, ERT must notify me via electronic mail, copying Phil Ansell (PAnsell@ceo.lacounty.gov), to affirm (a) that these actions have been duly taken, (b) that ERT and/or you personally do not presently have authority to possess or use any data received from Los Angeles County's CAO, CEO, and/or DPSS, including any data derived from these sources, EDD/CDSS data linked to DPSS records, and data that are either de-identified, identifiable, linkable and/or linked across public entities; and (c) that ERT and you personally agree not to publish any report that makes use of the data specified in the above description of Corrective Action 1 and to immediately halt all direct use of these data and of information derived from these data.

Dan Flaming
December 18, 2018
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If these corrective actions are taken and completed within 30 days of the date of this letter, CEO will consider a future data sharing agreement with ERT, although the departmental owners of the data make the final determination with respect to data sharing and data use authorizations. The scope of any future agreements to share data will be at the discretion of Los Angeles County and contain language specifying the uses to which the data can be put. I look forward to hearing from you.

Sincerely,

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

Max Stevens
County of Los Angeles
Chief Information Office
350 S. Figueroa Street, Suite 188
Los Angeles, CA 90071

MS:lc

c: Fesia Davenport
Phil Ansell
William Kehoe