

**INSTRUCTIONS FOR APPLICATIONS FOR DISTRIBUTION FROM THE
PRIVACY AND PIRACY FUND
Disbursement Cycle for Year 2013-2014**

On December 7, 2006, the Santa Clara County Superior Court (“Court”), in entering the Final Judgment and Permanent Injunction (“Judgment”) in the case of *People v. Hewlett-Packard Company*, Case No. 106CV-076081, established the Privacy and Piracy Fund (“Privacy and Piracy Fund” or “Fund”). The terms of the Fund are set forth in the Judgment at pages 8-10.

As established by the Judgment, the California Attorney General’s Office administers the Privacy and Piracy Fund. The Fund was established to give “authorized prosecutors,” as defined in the Judgment, access to additional funds so that they can more effectively conduct investigations and bring prosecutions to protect the public’s privacy rights and/or intellectual property rights. The maximum total amount of money that can be disbursed to all applicants in any given year is \$500,000.

Applications for disbursements from the Fund are reviewed by a three-person committee (“Committee”) within the California Attorney General’s Office, pursuant to Paragraph G(6) at page 10 of the Judgment. The California Attorney General will make final decisions regarding which applications are funded.

NOTICE: The grant application (including the narrative and attachments), any follow-up communications between the Applicant and the Committee, and any post-award progress report submissions are public records which, *absent limited exceptions*, are subject to production pursuant to a California Public Record Act (PRA) request. (Gov. Code § 6250 et seq.) In general, Applications should not include personally identifying information (e.g., personal phone number or home address of undercover officers) or materials containing sensitive information that may compromise an existing or contemplated investigation or litigation matter.

If you believe that submission of sensitive investigatory or personally identifying information is vital to the evaluation of your application, it is recommended that you first contact the Committee’s Project Coordinator, Supervising Deputy Attorney General Adam Miller, at (415)703-5551. If the Applicant Agency elects to submit personally identifying or sensitive information, it must be provided in a *separate* document labeled “Confidential Addendum to Application of [name of Applicant Agency].” The Addendum must provide (a) the legal authority to withhold the information from disclosure (e.g., applicable legal privilege or specific PRA exemption) and (b) a detailed explanation of the negative impact disclosure of the information would have on the existing or contemplated investigation or litigation that would justify withholding this information.

In the event that a PRA request for the grant applications is received, each Addendum will be reviewed on a case-by case basis. However, please note that the Committee cannot guarantee that the information, even if designated as “confidential” by the Applicant, will not be produced pursuant to a PRA request.

1. Schedule for Applications and Distributions

Applications for the 2013-2014 Distribution Cycle will be **accepted starting June 24, 2013, and must be postmarked by August 2, 2013.** (A Disbursement Cycle is defined as the fiscal year in which disbursements are made (e.g., July 1, 2013 - June 30, 2013).) All applications and attached documents must be sent to:

Privacy and Piracy Fund Committee
Attention: Sarah Dalton
California Office of the Attorney General
1300 I Street
Sacramento, California 95814

Original applications must be submitted by U.S. mail, overnight mail or messenger. Applications sent by messenger must be received by August 2, 2013. E-mail or facsimile applications will not be accepted alone, however, please also submit electronic copies of your application and attachments (in .pdf and .xls file format) to Sarah.Dalton@doj.ca.gov. Applications should be no more than five pages, not including the application form and supporting documentation.

Applicants will be notified of whether their application was accepted for funding by approximately September 20, 2013. Funds will be disbursed after September 20, 2013. At the discretion of the Committee, additional applications may be solicited after the September 20, 2013, notification date, if the total amount approved for distribution does not exceed \$500,000.

If the Committee solicits applications after the September 20, 2013 notification date, applications will be reviewed on an as-received basis. The Committee will notify potential applicants if and/or when it closes the application process, if it decides to extend the application acceptance date after the September 20, 2013, notification date.

During the review process, the Committee may contact applicants with questions about the applications. It is possible that a project will be awarded a disbursement in lesser amounts than requested in the application, or that the Committee may request modifications prior to accepting an application as a disbursement recipient. Similarly, the Committee may accept requests for modifications to specific applications, after the application is accepted and/or disbursements are made.

Applicants are limited to one application per Disbursement Cycle (e.g., Disbursement Cycle 2013-2014). There is no prohibition against re-submitting the same application in a future cycle, if it has been denied in a previous cycle.

Application procedures may be modified from year to year as needed.

All potential applicants will be notified of the application procedures and applicable deadlines annually or more often as needed, via CPIN or other methods.

2. Distribution from the Privacy and Piracy Fund Account: “Authorized Prosecutors,” Purpose and Parameters

a. “Authorized Prosecutors”

An “authorized prosecutor” – meaning one who is eligible for disbursements from the Fund – is defined in the Judgment as any district attorney, any city attorney, and any city and county attorney authorized to prosecute violations of California Business and Professions Code section 17200 et seq., as set forth in California Business and Professions Code section 17206. (See Judgment, p. 9, para. G(2).)

b. *Purpose*

Distributions to authorized prosecutors under Paragraph G(5) of the Judgment must be used solely and exclusively by authorized prosecutors to facilitate the investigation and/or prosecution of both civil and criminal violations of the public’s privacy rights and/or violations of intellectual property rights. For example, the Committee will consider requests for distribution that will be used to further consumer protection in the areas of identity theft, computer-related activities that adversely impact privacy or intellectual property rights, theft of trade secrets, and other types of requests dealing with the issues of privacy and piracy, as well as training of investigators and staff in combating these issues. Applications can request funds to help with the payment of costs and expenses incurred by multi-agency consumer protection efforts, as well as the costs of independent/outside (or, if applicable, limited term) consultants, auditors, experts, and/or investigators, and/or equipment the applicant needs, but does not currently possess, to make the proposed project a success.

Distributions may be used to augment, but not supplant, the budget of the disbursement recipient. As part of the application, an applicant must represent that the budget of the applicant will not be reduced by reason of approval of the application.

b. *Parameters*

i. *Staff Expenses*

The Committee assumes applicants will devote the staff needed to make the application-project succeed. Because the distribution is yearly, there is no guarantee that the same applicant will receive a disbursement in successive years and so, as a general matter, these disbursements are not intended to pay for new staff. Absent extraordinary circumstances, funds may not be used to pay for already existing staff salary, benefits, overtime or other compensation. An application that fails to demonstrate clearly the availability of sufficient staff to complete the proposed project without staff funding from the Privacy and Piracy Fund will likely be denied.

Recognizing that there is no guarantee of future money, an application can be made to fund or partially fund, for the term of the Disbursement Cycle, new project-specific positions such as forensic consultants or experts hired as independent contractors, or for limited term positions, such as investigators or auditors, needed to commence an investigation or prosecution. If some of the disbursement is used to partially fund payment for a consultant or expert, with the remainder of the money to come from a different source, applicants are reminded that there is no guarantee that the disbursements will continue in subsequent years (and in fact, except under extraordinary circumstances as described in Section 4 below, the maximum number of years for which a project may receive disbursement funds in a single application is three years).

ii. *Limitations on Travel or Training Expenses*

The Committee disfavors requests to use disbursements for out-of-state travel or training. The Committee encourages applicants to identify training opportunities in California or online.

Travel-related expenses, such as per diems, hotels and rental cars, will be reimbursed at the applicant's government rate.

The Committee generally will not approve disbursements to train non- full-time employees, such as retired annuitants, contractors or part-time employees.

c. *Factors that the Committee May Consider*

In addition to those considerations described above, in making decisions regarding which projects to fund, the Committee may consider the following factors and others which may be relevant to the specific application:

- (1) the intended purpose of the project for which funds are sought;
- (2) the specificity of the proposal, including the use of funds, expected costs and expenses, materials and personnel to be used, the services or goods to be provided through the project (in addition, if the application is for a video, brochure, or instruction unit, it is extremely helpful for the applicant to provide a draft of the text or a detailed description of the contents). Please note that an application may be denied based solely on the lack of specificity, including the absence of a sufficiently detailed itemization of expenses as requested in Section III (F) of the application form;
- (3) competing requests for funding;
- (4) the anticipated public benefit if the project is approved;
- (5) the ability of the Committee to audit the use of the disbursement funds to ensure that the funds are used solely for authorized purposes;

(6) the ability of the applicant to provide the Committee with a report regarding the actual results obtained as a result of any project funded with disbursements; and

(7) the likelihood for the production of high quality materials that may be replicated and used by the applicant and others after the term of the project has expired.

3. Conditions on Disbursements

Each applicant must agree in writing, as part of the application, to the following if chosen as a disbursement recipient:

- a. The recipient will comply with each and every order of the Court in connection with the Privacy and Piracy Fund and the disbursement received;
- b. The recipient will vigilantly safeguard the monies disbursed and maintain financial controls sufficient to protect such monies and ensure that the use of monies fully comports with the recipient's application for the disbursement, and provide detailed written description of such financial controls upon request by the Committee;
- c. The funding requested will not be used to pay for regular staff of the agency or entity applying for this project;
- d. The person submitting the application represents that his/her office is authorized to accept funds under applicable state and local laws and that the budget of the applicant's office/unit will not be reduced by the receipt of disbursement funds. Disbursement funds shall be used to augment but not supplant the budget of the disbursement recipient;
- e. Except as otherwise expressly agreed by the Committee in writing, the funds will only be used for the purposes described in this application or for like purposes, as approved or modified by the Committee;
- f. If the project is for the purpose of investigation or litigation, any civil settlement the recipient enters will provide for full reimbursement of the amount of the disbursement to the Privacy and Piracy Fund. The Fund shall be reimbursed before any settlement funds are used for any other purpose;
- g. In the event a disbursement recipient is the prevailing party after trial, the recipient will use its best efforts to reimburse the Privacy and Piracy Fund in full from any monetary recovery ordered by trial and appellate courts and paid by the defendant(s);

- h. A disbursement recipient will notify the Committee in writing of investigation or litigation results, including any settlement, judgment or other resolution, within 60 days of such settlement, judgment or other resolution;
- i. A disbursement recipient will notify the Committee in writing of the status of all outstanding litigation or investigations related to this disbursement application six months after the funds are disbursed to the recipient and then every 12 months on the anniversary date of the disbursement, until resolution of the investigation or litigation;
- j. A disbursement recipient will cooperate with the Committee and its agents in providing all information and documents concerning the use of funds as the Committee reasonably requests and will maintain sufficient records for auditing purposes to substantiate any expenditure. In the event of a multi-agency project, the initial disbursement applicant shall be solely responsible for complying with this paragraph, except as otherwise expressly agreed by the Committee in writing;
- k. A disbursement recipient will comply with all additional requirements the Committee imposes, including but not limited to completing and promptly returning the JUS 8765 form to acknowledge selection as a disbursement recipient;
- l. Approval of this application does not constitute Committee or California Attorney General endorsement of the applicant's project;
- m. Except as otherwise expressly agreed by the Committee in writing, within 60 days after the conclusion of the investigation, litigation, or training for which the disbursement was requested, the recipient must return unused or excess funds to the Committee by check made payable to the California Attorney General's Office, with the notation "Privacy and Piracy Fund Reimbursement;"
- n. Except as otherwise expressly agreed by the Committee in writing, if the project is for the purchase of non-case specific goods or services, any excess or unused funds must be returned to the Committee within 60 days after purchase of such goods or services by check made payable to the California Attorney General's Office, with the notation "Privacy and Piracy Fund Reimbursement;"
- o. If an application is for the production of any materials, the Applicant agrees to permit the California Attorney General's Office and other authorized prosecutors to use those materials, without restriction, for their intended purposes, if the Committee so requests; and
- p. Disbursement recipients must submit a self-evaluation report within six months after receipt of funds, and, if the funds were awarded for a specific project, litigation or investigation, a final report to the Committee within 60 days of

completing the project for which the disbursement was awarded. These reports shall specify how disbursement funds were used and, if applicable, a description of the project's outcome. Multi-year recipients must also provide yearly progress reports, after the initial report, as described in Section 4 below.

The Committee may designate, and require completion of, forms to satisfy these requirements. The Committee may attach additional written conditions to the award of any disbursements from the Privacy and Piracy Fund.

The Committee will (except in extraordinary circumstances) condition funding an application for the production of any materials on the applicant's agreement to permit the California Attorney General's Office and other authorized prosecutors to use those materials, without restriction, for their intended purposes.

4. Disbursements for Existing and Multi-Year Projects

Partial operating support may be awarded to existing projects depending on how well they fulfill the purpose and goals of the Fund, and the ability to access other sources of funding, now and in the future.

Although the Committee anticipates that most disbursements will be for projects lasting one year or less, applicants may seek distribution for ongoing programs for consecutive or multiple years, not to exceed three years in a single application. Applicants for a multi-year project must provide a compelling reason and specific goals and objectives for each year requested. Multi-year recipients will be required to submit an annual progress report in each succeeding year of a multi-year project. If, in the opinion of the Committee, the annual progress report fails to demonstrate progress in the project and a continuing need for continued funding, the Committee reserves the right to revoke the disbursement and not provide funding for subsequent years of a multi-year project, and/or to reduce the amount of funding for subsequent years.

If a multi-year project is awarded, the Committee will consider awarding a follow-up application to continue the same project if the applicant submits a new supplemental application at the end of the multi-year disbursement period demonstrating a compelling need for future funding.

5. Distribution Decisions

Applications are to be submitted to the Privacy and Piracy Fund Committee within the California Attorney General's Office, which will consist of the Senior Assistant Attorney General of the Consumer Law Section, the Senior Assistant Attorney General of the eCrime Unit, and the Chief Assistant Attorney General of the Public Rights Division or his/her respective delegates. Only those applications that two-thirds of Committee approves will be submitted to the Attorney General for final approval. The Attorney General will select and notify disbursement recipients no later than September 20, 2013, and recipients will receive their disbursement after that date.

6. Reimbursements and Contributions to the Fund

As noted above, the Committee will require applicants, as a condition of accepting any funds, to provide reimbursement of the disbursement amount from any settlement or recovery (as permitted by law), in keeping with the terms of the Judgment. Nothing in the Judgment or these instructions shall preclude a recipient from reimbursing the Fund with amounts greater than those originally received from the Fund, and an authorized prosecutor, regardless of whether a disbursement recipient, may provide contributions to the Fund. Additional funds may be donated or contributed to the Fund from any source, subject to approval by the Committee.

7. Auditing and Reporting

Disbursement recipients shall maintain accounting records and other evidence pertaining to costs incurred during the Disbursement Cycle and thereafter for three years from the date of the final payment of disbursement funds. The Committee must be permitted to audit, review and inspect the activities, books, documents, papers and records during the progress of the project and thereafter for three years following final allocation of funds.

Disbursement recipients must submit a self-evaluation report within six months after receipt of disbursement funds, and, for funds used for a specific project, litigation, or investigation, a final report to the Committee within 60 days of completing the project. For projects, litigations, or investigations that are not completed within a year, or for multi-year projects, disbursement recipients shall also submit annual progress reports (at, i.e., 12, 24 and 36 months after receipt of disbursement funds) and a final report to the Committee within 60 days of completing the project, litigation or investigation. See Section 4 above for reporting requirements of multi-year project recipients.

The reports shall specify how disbursement funds were used, and, if applicable, a description of the progress and/or outcome of the project for which the disbursements were awarded.