

JOINT TERRORISM TASK FORCE

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JOINT TERRORISM TASK FORCE

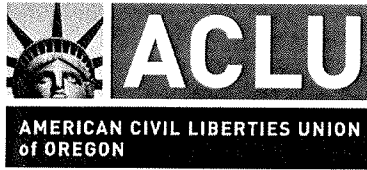
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2/✓ Sarah Hobbs		
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David Fidanque, Executive Director

Chief's Annual Report regarding  
Portland Police Bureau Cooperation with the FBI  
Portland City Council  
March 27, 2013

Mayor Hales and Commissioners:

Thank you for the opportunity to testify this morning in regard to your consideration of the Chief's annual report on the Police Bureau's interactions and cooperation with the FBI's Joint Terrorism Task Force (JTTF). This report is virtually identical to the information presented last year. At that time, and now again today, we urge you not to settle for a report with so few details regarding whether – and in what ways – the Bureau is in compliance with Council Resolution 36859.

Background

The ACLU of Oregon has appeared before this body on numerous occasions over the past 15 years in order to educate the Council and the public about inappropriate political, religious and ethnic surveillance carried out by the FBI and other federal, state and local law enforcement agencies.

With our coalition partners, we endeavored to sound an alarm regarding inappropriate investigative techniques and surveillance prior to the attacks of September 11, 2001. Our efforts, at least in part, led to the decision in 2005 by former Mayor Tom Potter and the Council to withdraw from formal participation in the FBI's Joint Terrorism Task Force (JTTF). When Mayor Adams renewed public discussions concerning the relationship between the Police Bureau and the JTTF in 2010, the ACLU provided expert testimony and documentary evidence regarding the conflicts between Oregon law and the guidelines and policies under which the FBI and its Joint Terrorism Task Force operates.

Two years ago we testified in support of Council Resolution 36859 which now governs the relationship between the Police Bureau and the JTTF. We did so despite our continued high degree of concern over the ability of the Bureau to navigate and respect the great differences between the very malleable federal guidelines and policies under which the FBI operates and the tighter restrictions of Oregon laws and the Oregon Constitution under which the City of Portland must operate. We remain concerned that cooperation between the Police Bureau and the JTTF will inevitably expose Portland officers to violations of Oregon law.

We arrived at our position in support of the Resolution in part because we considered it to be the continuation, not the end, of an ongoing conversation regarding the appropriate boundaries and safeguards for the Bureau's task of protecting the safety of all Portland residents, workers and visitors, while at the same time complying with and respecting the constitutional and statutory rights of individuals and organizations.

We will not repeat the well-documented (and ongoing) abuses by the FBI of the constitutionally protected activity of law-abiding American citizens and residents. We will, however, note that just last month the National ACLU posted a column on its website by Mike German, a Legislative Counsel for the ACLU and a former FBI Special Agent, highlighting recent actions by FBI agents to misrepresent themselves as part of an FBI "community outreach" effort while actually gathering "intelligence" information on the activities of law-abiding Muslim residents in Minneapolis.<sup>1</sup>

### 2013 Report

In 2011 we set out very specific expectations that we had for the annual reports on the City's relationship with the JTTF and the FBI. We urged the Mayor and Police Chief to put the systems in place that would ensure both that the terms of the Resolution would be honored and that Portland would be a model of transparency.

After significant revisions to the first draft, the 2012 Annual Report was submitted with some detail, but not enough detail to truly inform the public of the nature of PPB's participation on the JTTF – certainly not enough to compel anyone to point to Portland as a model of transparency. This year's report is similarly disappointing and we urge the following improvements:

Once again, missing from this report is data indicating the number of investigations, the types of investigations, at what stage of the FBI inquiries the Police Bureau was asked to work with the JTTF, and the total number of hours the investigating CIU officers worked on terrorism inquiries. While we believe all of this information is important, we believe the most critical is for the City to disclose the number and types of inquiries in which our officers have participated.

I want to emphasize that the ACLU has never asked the City to disclose specific factual information regarding the individual matters on which the Police Bureau cooperates with the FBI. However, disclosing the number of inquiries and the stage of the inquiry at the time of the FBI request to the City would not disclose information that could compromise an ongoing inquiry or investigation.

In 2011, we had urged that the Resolution limit PPB involvement to only those inquiries designated as "full investigations" by the FBI. We had taken that position because the

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<sup>1</sup> See [www.aclu.org/blog/national-security/fbis-community-outreach-program-trojan-horse](http://www.aclu.org/blog/national-security/fbis-community-outreach-program-trojan-horse)

FBI's investigation guidelines and policies permit them to carry out "assessments" and "preliminary investigations" without a reason to believe that the target of the inquiry is or may be involved in terrorism activity.

Based on other Freedom of Information Act requests and investigations by the Office of Inspector General, we know there is a greater likelihood that FBI "assessments" and "preliminary investigations" will result in surveillance and collection of information related to political, religious and social activities that are lawful and constitutionally protected. Only inquiries at the "full investigation" stage require a factual predicate towards a specific individual, group or organization.

Thus, if the FBI request of the Police Bureau is made during either the "assessment" or "preliminary investigation" stage, it should automatically trigger heightened inquiry by the Chief, the Commissioner-in-Charge and the active involvement of the City Attorney to ensure that the City's involvement will not violate either the Resolution or Oregon law.

Especially because the "criminal nexus" standard of the Resolution is undefined and fuzzy, it is *critical* for the public and the Council to know *how many* inquiries PPB officers have participated in and at *what* stage (as classified by the FBI). If we knew that few, if any, of our officers worked on either "assessments" or "preliminary investigations," it would go a long way toward public verification that the City is in compliance with the Resolution and Oregon law.

Conversely, if PPB officers were involved only in "assessments" and "preliminary investigations," it would indicate there was a much greater likelihood that the City was in violation of the Resolution and Oregon law. Having this data is really the only way for the public to "trust but verify."

Last year Council passed up the opportunity to ensure that a means for addressing this important issue be put in place for future reports. For example, one important step would be to ensure that the Police Chief keeps a log of all terrorism requests made by the FBI and the stage of the inquiry at the time of the request. If such a record has been maintained, or is started this year, then it would at least be possible in future years to release cumulative data.

The Chief's report once again provides assurances that a "Senior Deputy City Attorney" has ensured that the Bureau "is in full compliance with Oregon law and the City's Resolution regarding the JTTF." In addition, the Chief assures us that officers have been able to seek advice from the City Attorney. However, there is no indication whether or not Bureau personnel actually have sought the advice of the City Attorney regarding requests to the Bureau from the FBI. Again, we would hope that a log would be kept of such contacts and that at least the number of such requests could be made public.

Finally, we note the requirement for annual training of the Police Bureau personnel who interact with the JTTF by the City Attorney's office. We strongly encourage the Mayor, and any other interested members of the Council, to attend that training at least once. We also urge the Commissioner-in-Charge (the Mayor) to make the training curriculum available to the public.

Thank you again for considering our recommendations.



## The League of Women Voters of Portland

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### **Chief of Police - Annual Report FBI Joint Terrorism Task Force March 27, 2013 City Council Testimony**

The League of Women Voters believes democratic government depends on informed and active participation and that the public's right to know must be protected. We value the protections afforded by Oregon law to individuals engaging in political and other non-criminal first amendment activities.

The resolution adopted by Council in 2011 is intended to ensure that our officers abide by state law and that they investigate only when a reasonable suspicion of criminal behavior exists. Although there is some information in the report on the Chief's process for making these determinations, more is needed on which factors are considered and how decisions are made. How does the Mayor provide oversight before he receives a security clearance? Should the city attorney also be consulted on each case? Whether our officers are at risk of violating the public's rights and Oregon law is of critical importance to the community.

The League recommends requiring the city attorney and Independent Police Review Division Director to regularly review all Joint Terrorism Task Force (JTTF) files created with Portland police officers' participation. Any files collected in violation of Oregon law should be purged. Periodic review by those independent parties would provide confirmation that the protections we have as Oregonians are being honored.

Last year a number of questions were raised and they remain unanswered. Have our officers participated in any assessments or preliminary investigations? How many hours have our officers devoted to their JTTF assignments? To what extent is that affecting work on local public safety? In light of current budget pressures, this is especially critical. How many cases required their involvement and how many are closed? How did the Mayor participate in the management and supervision of Bureau staff?

The resolution states that when a change in leadership takes place, the commissioner-in-charge must ensure that, within 30 days, its provisions are understood by the FBI and U.S. Attorney. The Chief's report states that Mayor Hales met with the FBI SAC on February 14, but it is not clear if the 30-day

requirement was met. If the Chief included this information in his annual report or the commissioner-in-charge issued a separate report, that would eliminate the uncertainty.

When the city finds certain provisions in the resolution are unworkable, they should be amended. You recently changed the due date for the annual report to March and we suggest adding a provision allowing at least two weeks for public review.

We urge Council to insist on more disclosure and oversight so we can be certain this relationship meets the community's expectations. Thank you for the opportunity to comment.

## COMMENTS: Joint Terrorism Task Force report reveals little new information

March 25, 2013, updated for testimony March 27, 2013

Members of City Council and Chief Reese

We have reviewed the Joint Terrorism Task Force report and are deeply concerned that the report barely contains any more information than last year's threadbare version. We continue to support the ideas floated at City Council last year by members of the public, and by Commissioner Fritz, to make a more comprehensive report.

The new report is nearly a verbatim copy of the Chief's report from February 2012 with few exceptions:

- 1— after stating how revealing how many cases the Bureau has helped the JTTF investigate may compromise their investigations (which still makes no sense), the Chief says the Bureau has worked on at least one domestic terrorism case.
- 2— The description of the two officers in the Criminal Intelligence Unit (CIU) who are assigned to help the JTTF no longer describes them as "very experienced."
- 3— Whereas last year, the Chief stated the officers did not work outside of Portland, this year he says "I assigned officers to work on a JTTF investigation outside the City of Portland, after consultation with the Commissioner-in-charge." It is unclear whether "this year" means 2012 or 2013.\* Was the Commissioner Adams or Hales? Did they work within Oregon or leave the state? The report is vague on these issues.
- 4— Explaining why the officers received "Secret" clearance instead of "Top Secret" clearance, the report states the difference would be if they needed to "access FBI facilities unescorted or obtain access to informant source information." It seems that the Chief reports he "will not need clearance above the 'Secret' level to manage [the officers'] work with the JTTF," but doesn't say whether he might seek to obtain that level of clearance anyway. That his clearance level might be higher than the Mayor/Commissioner's was the main reason Mayor Potter pulled out of the JTTF in 2005.
- 5 Instead of saying he'd met with the FBI Special Agent in Charge "numerous" times and "certainly at a rate of more than twice a year," the Chief now says he conferred on "several occasions" and receives briefings "a few times a year." It still does not make sense why the number of meetings should be classified information.
- 6 There is no longer a link to the Standard Operating Procedure for the JTTF. The link in last year's report leads to generic page for the PPB, so it is not clear whether the SOP has now been taken out of the public domain.

Last year, we wrote (with the support of the Japanese American Citizens League, the National Lawyers Guild, the League of Women Voters, the Arab Muslim Police Advisory Council, CWA Local 7901, and Portland School Board member Martin Gonzalez) a letter to Council outlining the deficiencies in the report(s). We asked for more detailed information, particularly how many hours officers were working given the tight city budget, and exactly how many cases were involved. The new report does not adequately address any of the concerns raised in that letter. The most concerning one is that the term "criminal nexus" is still not defined, and we believe the FBI will invoke need for Portland Police at a lower threshold than would be appropriate under Oregon law (ORS 181.575, requiring reasonable suspicion of criminal activity).

There are several requirements in the Resolution for the Commissioner in Charge, but the Commissioner has not issued his own report this year, so we do not know, other than a few mentions by the Chief, whether the Commissioner has fulfilled all his duties under the agreement.

Also, the Resolution requires the City Attorney to check in with the Oregon Attorney General each year to be sure that Oregon law. Since no report is required from the City Attorney, we don't know whether that has happened.

There are still no names named— even the Assistant Chief of Investigations, who was Eric Hendricks until January, and is now Donna Henderson, nor City Attorney David Woboril, who is again referred to as a “Senior Deputy City Attorney who has provided legal advice to the Police Bureau for over fifteen years.”

The report still refers to “acts of war” in its section defining “terrorism” even though there is no mention of “acts of war” anywhere else in the document.

We also continue to have concerns about those times we do know the Portland Police helped the FBI. It came out during the trial of Mohamed Mohamud that the PPB helped the supposed bomb plot by securing Mr. Mohamud’s parking space for the van of fake explosives.

Similarly, the Mayor’s website states that in the case of Reaz Qadir Khan, “one patrol car was in the area of the search warrant for traffic control only.” This was apparently not done under the auspices of the JTTF agreement, but both cases raise the question of whether the PPB demands information about whether reasonable suspicion of a crime exists before they agree to assist the FBI. If not, they are putting the City at considerable risk for violation of state law and possible civil action.

Given the very few differences between this report and last year’s, it’s astounding that the Chief needed an extra two months to put it together. We certainly deserve better and more information.

As a reminder, the Human Rights Commission issued an analysis of the JTTF in early 2011 when the debate opened up whether Portland should re-join (after the 2010 “Holiday Tree bombing” sting), cautioning the City against working with the FBI for fear of damaging relationships with communities affected by FBI activities. Those concerns are not, in our opinion, allayed by these reports.

Incidentally, we heard from the Communications Workers of America, and are providing their written testimony, and from the National Lawyers Guild, who were unable to prepare testimony due to the short amount of time the report was available. Their absence underscores our testimony from February urging that the Resolution require the reports to be issued at least two weeks before being presented to Council.

Thank you,  
—dan handelman  
—Portland Copwatch

## Communications

LOCAL 7901

MADELYN ELDER  
PRESIDENT

JEANETTE TURNER  
Executive Vice PRESIDENT



Workers of America

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March 26, 2013

To the Portland City Council

RE: JTTF Report

It is with deep disappointment that CWA Local 7901 read the mandated annual report for the Joint Terrorism Task Force (JTTF) released last Wednesday. In April of 2011, Local 7901 opposed Portland's participation in the JTTF because of the chilling effect on our right to organize, assemble, and defend our rights under the National Labor Relations Act. Negotiations with several employers whose workers CWA represents are excruciatingly difficult. We need the right to demonstrate and to picket the employers if necessary without the dread of getting on some sort of list. We've exercised these rights for decades in Portland, and are reluctant to allow the City Council to hem in those rights through the JTTF.

More transparency is needed in this report. While anyone can figure out who wrote the report, it should be stated explicitly. In addition, there needs to be explanation for some of the activities that were reported in the newspaper yet do not even get a mention in the report. The public pays taxes that support the Police Department, and the FBI. The public should get a thorough and explicit report on Portland's activities with the JTTF. Anything less is an abridgement on our rights as citizens.

Sincerely,

A handwritten signature in cursive script that reads 'Madelyn Elder'. The signature is written in dark ink and is positioned below the word 'Sincerely,'.

Madelyn Elder for CWA Local 7901