



CITY OF PORTLAND, OREGON



Bureau of Police

Charlie Hales, Mayor

Michael Reese, Chief of Police

1111 S.W. 2nd Avenue • Portland, OR 97204 • Phone: 503-823-0000 • Fax: 503-823-0342

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MEMORANDUM

March 18, 2014

TO: Mayor Charlie Hales
Commissioner Dan Saltzman
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Steve Novick

SUBJ: Annual JTTF Report per Resolution 36859

The City passed Resolution 36859 in 2011 regarding the Portland Police Bureau's cooperation with the FBI for the purpose of combating terrorism. As part of that Resolution, the City asked the Police Chief to provide an annual report "with appropriate public information to the City Council and public on the Bureau's work with the FBI's Joint Terrorism Task Force (JTTF), including any issues related to compliance with Oregon Laws."

So that Council members have knowledge of the relevant provisions of the Resolution, I have listed the specifics of the Resolution below and provided responses on how we have addressed its provisions:

1. ***BE IT RESOLVED, that it is the policy of the City simultaneously to help prevent and investigate acts of terrorism, protect civil rights and civil liberties under United States and Oregon law, and promote Portland as an open and inclusive community;***

The Portland Police Bureau is committed to a model of community policing in which a positive connection between the police and the community contributes to the well-being of our City. Our mission statement includes a goal of working with all community members to maintain human rights. In keeping with our mission and the City's Resolution, we have implemented policies, procedures and oversight mechanisms that enable us to effectively investigate terrorist threats, protect civil rights and civil liberties, and promote an open and inclusive community.

2. ***BE IT FURTHER RESOLVED, the Police Chief shall regularly consult with the FBI Special Agent in Charge (SAC) to determine which aspects of JTTF work could benefit from PPB participation and whether there are PPB resources available to be allocated;***

Since the passage of the City's Resolution, I have conferred on several occasions with the FBI SAC and the Acting/SAC about terrorism investigations and threats from terrorism. In order to have an accurate sense of resources that might be available to work with the JTTF, I confer as needed with the Criminal Intelligence UNIT (CIU) Lieutenant or the Assistant Chief of Investigations. This is to ensure an appropriate balance is maintained between the local staffing needs of CIU and our work with the JTTF.

Regarding the substance of each request, I personally reviewed case-by-case every request by the FBI SAC for the use of Portland resources. For each request, I asked questions to ensure the Bureau's involvement in those inquiries would follow the Resolution 36859 and Oregon law. And, for each inquiry from the FBI, I received notice of each request, and reviewed it to determine if the request complies with the City's policies and Oregon law, the scope of the request and its impact on other Bureau priorities / officer workload, the stage of the investigation, topic / subject matter of each request, and if the topic had a "criminal nexus" to terrorism as defined in USC 18 USC sec. 2331 (01-0702011) (listed in this memorandum).

In 2013, there was at least one investigation where the Bureau's CIU passed on intelligence information to investigating members, some of whom were assigned to the JTTF.

3. ***BE IT FURTHER RESOLVED, the Police Chief may assign PPB officers to work with the JTTF on an as-needed basis as determined by the Police Chief in consultation with the Commissioner-in-Charge of PPB;***

In consultation with the Commissioner-in-Charge, I decided that CIU was the best unit to be prepared to provide resources if requested. I asked the CIU Lieutenant to identify two officers who could be assigned to the JTTF if needed. I limited the number of officers eligible to work with the JTTF in order to ensure effective oversight and consistency with the City's Resolution.

I have committed a very limited amount of Bureau resources to JTTF work, so disclosure of the number of cases or hours worked may compromise ongoing investigations and reveal the operational tempo of our work on terrorism. I can confirm, however, that we have worked with members of the JTTF and other non-participatory investigating agencies on at least one case of suspected domestic terrorism.

4. ***BE IT FURTHER RESOLVED, in addition to regular briefings and the Police Chief's participation in JTTF Executive Committee meetings, Bureau members shall work with the JTTF only on investigations of suspected terrorism that have a criminal nexus; in situations where the statutory or common law of Oregon is more restrictive***

of law enforcement than comparable federal law, the investigative methods employed by Bureau officers working on JTTF investigations shall conform to the requirements of such Oregon statutes or common law.

The Bureau confirms that officers have only worked on investigations of suspected terrorism that had a criminal nexus and that their investigative methods have complied with Oregon Law.

The City Attorney explained in 2012's report that the "criminal nexus" requirement was intended to identify the subject matter on which officers are allowed to work with the JTTF. Specifically, when officers work on JTTF terrorism investigations, the federal government defines terrorism as follows under: 18 USC Sec 2331 (01/07/2011), which states:

- (1) The term "international terrorism" means activities that:
 - (A) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
 - (B) Appear to be intended;
 - (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidating or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
 - (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;
- (2) the term "national of the United States" has the meaning given such term in section 101 (a) (22) of the Immigration and Nationality Act;
- (3) the term "person" means any individual or entity capable of holding a legal or beneficial interest in property;
- (4) the term "act of war" means any act occurring in the course of;
 - (A) declared war;
 - (B) armed conflict, whether or not war has been declared, between two or more nations; or
 - (C) armed conflict between military forces of any origin; and
- (5) the term "domestic terrorism" means activities that:
 - (A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;
 - (B) appear to be intended;

- (i) to intimidate or coerce a civilian population;
 - (ii) to influence the policy of a government by intimidation or coercion; or
 - (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (C) occur primarily with the territorial jurisdiction of the United States.

I have directed the Assistant Chief of the Investigations Branch and the CIU Lieutenant to attend JTTF Executive Committee meetings along with me or as my designee when I am absent so that I have several perspectives on our work with the JTTF investigations. Using this strategy, I am confident that when officers work on JTTF investigations, they are only allowed to work on investigations related to terrorism as defined in federal criminal law and that their investigative methods meet the requirements of Oregon law.

5. ***BE IT FURTHER RESOLVED, the PPB officers who work with the JTTF shall notify the FBI SAC and Police Chief if ever the work PPB officers are asked to do would be a potential violation or violation of ORS 181.575 or ORS 181.850 and the Police Chief shall immediately report any actual violation to the Commissioner-in-Charge of the PPB;***

I have implemented strong, multi-level, and redundant oversight of officers who work or might work with the JTTF. All CIU officers and the lieutenant have received training and guidance about limitations in Oregon law concerning information gathering (ORS 181.575) and immigration investigations (ORS 181.850) from the City Attorney. Furthermore, I have provided clear instruction and direction to the Assistant Chief of Investigations and the CIU Lieutenant concerning ORS 181.575 & ORS 181.850.

In order to provide oversight, the CIU Lieutenant is involved in the day-to-day management of all CIU officers' activities. The Assistant Chief of Investigations meets regularly with the CIU Lieutenant to receive up-to-date reports. I meet regularly with the Assistant Chief of Investigations and the CIU Lieutenant to review any work we do with the JTTF to ensure it is compliant with Oregon law, the City's resolution, and PPB's policies and procedures.

Officers in CIU who work with the JTTF are aware that they should report directly to the FBI SAC and me if ever the work Bureau officers are asked to do would be a potential violation of Oregon law.

As a result of this oversight, the officers have not engaged in any violations of Oregon law nor has any officer reported any potential or actual violations of Oregon law to me, the Assistant Chief of Investigations, or to the CIU Lieutenant.

6. *BE IT FURTHER RESOLVED, that PPB officers working with the JTTF shall seek legal advice from the City Attorney whenever the officer has any question(s) about the application of Oregon law, including ORS 181.575 and ORS 181.850, or this Resolution to their work with the JTTF. Any consultation with the City Attorney will be undertaken consistent with the requirements for the handling of classified information and with the other legal restrictions on dissemination of information. In the event disclosure of classified information is necessary for the City Attorney to provide appropriate advice, the Police Chief shall request the FBI SAC to authorize the City Attorney to receive such information pursuant to a non-disclosure agreement. If the City Attorney cannot obtain the necessary authorization to provide legal advice, the City Attorney shall notify the Police Chief and the Commissioner-in-Charge of PPB.*

A Senior Deputy City Attorney, who has provided legal advice to the Police Bureau for more than 20 years, has reported to me that the Police Bureau is in full compliance with Oregon law and the City's Resolution regarding JTTF. He has met individually with all CIU members identified as eligible or potentially eligible to work with the JTTF as well as the CIU Lieutenant to ensure that they are familiar with the application of Oregon law, including Oregon's limitations concerning the collection and retention of information about a person's political, religious, and social affiliations. All CIU members have been able to freely share information and seek advice from the City Attorney. The City Attorney has met with them separately so that they could voice any and all concerns.

The FBI has not asked the City Attorney to sign a non-disclosure agreement, and the City Attorney reports that he has received unfettered access to ample information from the CIU Officers and the CIU Lieutenant in order to assess compliance with Oregon law and this Resolution.

7. *BE IT FURTHER RESOLVED, the Police Chief may assign PPB officers to work on JTTF investigations that comply with the requirements stated above regardless of whether or not the investigation is based in the City of Portland. On those occasions, all terms of the Resolution apply, including that the PPB officer's investigative methods must still conform to Oregon law;*

In 2013, no members of CIU worked outside the City of Portland on JTTF-related investigations.

8. *BE IT FURTHER RESOLVED, to ensure access to information necessary to manage and supervise PPB officers, the Police Chief will seek clearance at the Top Secret / Secure Compartmentalized Information level, and the Commissioner-in-Charge of PPB will seek clearance at the Secret Level.*

The FBI defines a Secret clearance as “generally the most appropriate security clearance for state and local law enforcement officials that do not routinely work in an FBI Task Force or in an FBI facility.” The FBI explains a Top Secret Secure (Sensitive) Compartmentalized Information clearance (SCI) as “this type clearance may be granted to those persons who need unescorted access to FBI facilities and will most often be appropriate for law enforcement officers assigned to FBI Task Forces housed in FBI facilities.”

I have been granted a Secret level clearance. Members of CIU are not seeking TS/SCI clearance and I will not need clearance above the Secret level in order to manage their work or potential work with the JTTF.

When the Resolution was passed, we anticipated that the FBI would require any of our officers who worked with the FBI to have TS/SCI clearance. After the adoption of the Resolution, the FBI informed us that PPB officers who work with the JTTF would not be required to possess Top Secret clearance because they would have no need to access FBI facilities unescorted or obtain access to informant source information. The SAC and I decided that Secret level clearance for any officers whom I identified as eligible to work with the JTTF would be sufficient, based on Portland’s current participation in the JTTF.

The Assistant Chief of Investigations, the CIU Lieutenant and all officers assigned to CIU have Secret level security clearances. One member is in the final process of obtaining their clearance.

9. ***BE IT FURTHER RESOLVED, the City understands that the FBI SAC or designee needs the ability to direct the operational and day-to-day work of PPB officers who work with the JTTF. However, at all times, PPB officers who work with the JTTF remain in the chain of command and under the formal supervision of PPB;***

The Bureau officers who work with the JTTF have remained in the Bureau chain of command and their work overseen by Bureau supervisors, including a lieutenant, the Assistant Chief of Investigations and myself. The CIU Lieutenant holds regular meetings with all CIU officers to inquire about the subject matter of all investigations, monitors the investigative methods being employed, and verify that the work performed meets federal, state and city requirements. The Assistant Chief of Investigations and I hold regular meetings with the CIU Lieutenant.

10. ***BE IT FURTHER RESOLVED, that the City Council directs the Police Chief and Commissioner-in-Charge of PPB to request regular briefings from the FBI SAC, at least twice a year, on the work of the JTTF so that the Police Chief and the Commissioner-in-Charge will be familiar with terrorist threats in the Portland area and will, therefore, be better able to manage local public safety issues;***

Since the passage of the City's Resolution, I have conferred on several occasions with the SAC about threats from terrorism and terrorism investigations. I receive regular briefings a few times a year on the work of the JTTF.

The Commissioner-in-Charge met with the FBI SAC twice during 2013.

11. BE IT FURTHER RESOLVED, the Chief will assign a PPB supervisor to the JTTF at any time that a PPB officer is assigned to JTTF work;

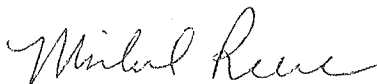
I have assigned the CIU Lieutenant to oversee the investigative work by the officers assigned to CIU. The lieutenant has regular meetings with the JTTF supervisor as well as attends all JTTF Executive Committee meetings. Any time a CIU officer or officers have worked with the JTTF, or may in the future work with the JTTF, the CIU Lieutenant has been, and will be actively involved in the supervision of their work.

12. BE IT FURTHER RESOLVED, PPB officers assigned to the JTTF shall attend annual training to be conducted by the Office of the City Attorney, to ensure compliance with applicable state and federal laws;

The Bureau is in compliance with this provision. The Chief of Police, the Assistant Chief of Investigations, the CIU Lieutenant, and all members of CIU have received required training from the City Attorney's office. In May 2011, January 2012, January 2013 and June 2013, the City Attorney's office had an in-service training for all CIU members. The City Attorney trained officers (members) about the provisions of the Resolution, ORS 181.575, ORS 181.850 and Oregon laws that are more restrictive of law enforcement investigative methods than comparable federal law. The training included instruction on the FBI guidelines and how Resolution 36859 and/or Oregon law are different from the FBI guidelines.

13. BE IT FURTHER RESOLVED, that the Portland Police Bureau shall adopt publicly available administrative policies and procedures consistent with this Resolution.

The Bureau as implemented this provision. The Police Bureau refers to its administrative policies and procedures as "directives." Standard Operating Procedures (SOP) are unit-specific directives. On July 22, 2011, the Bureau adopted Standard Operating Procedure (SOP) CIU #23.



MICHAEL REESE
Chief of Police

Agenda No.
REPORT
Title

Accept Commissioner-in-Charge and Portland Police Bureau annual report regarding the Portland Police Bureau participation with the Federal Bureau of Investigation Joint Terrorism Task Force (Report introduced by Mayor Hales)

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| <p>INTRODUCED BY Commissioner/Auditor: Mayor Hales</p> | <p>CLERK USE: DATE FILED <u>MAR 21 2014</u></p> |
| <p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Hales <i>[Signature]</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p> | <p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p> |
| <p>BUREAU APPROVAL</p> <p>Bureau: Police Bureau Head: Chief Michael Reese <i>[Signature]</i></p> <p>Prepared by: Bob Del Gizzi Date Prepared: March 13, 2014</p> <p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>City Auditor Office Approval: required for Code Ordinances</p> <p>City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan</p> <p>Council Meeting Date</p> | <p>ACTION TAKEN: MAR 26 2014 CONTINUED TO APR 02 2014 9:30 A.M. APR 02 2014 ACCEPTED</p> |

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| AGENDA |
| <p>TIME CERTAIN <input checked="" type="checkbox"/></p> <p>Start time: <u>9:30</u></p> <p>Total amount of time needed: 1 Hour (for presentation, testimony and discussion)</p> |
| <p>CONSENT <input type="checkbox"/></p> |
| <p>REGULAR <input type="checkbox"/></p> <p>Total amount of time needed: <u>1 hr</u> (for presentation, testimony and discussion)</p> |

| FOUR-FIFTHS AGENDA | COMMISSIONERS VOTED AS FOLLOWS: | | |
|--------------------|---------------------------------|------|------|
| | | YEAS | NAYS |
| 1. Fritz | 1. Fritz | | ✓ |
| 2. Fish | 2. Fish | ✓ | |
| 3. Saltzman | 3. Saltzman | ✓ | |
| 4. Novick | 4. Novick | | ✓ |
| Hales | Hales | ✓ | |