





# How The City of Portland Can Best Prevent Terrorism: Stay Out of the JTTF

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# Oregon Law

- **181.575 Specific information not to be collected or maintained.** No law enforcement agency, as defined in ORS 181.010, may **collect or maintain** information about the **political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership** **unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.** [1981 c.905 §8]

# Expansion of the FBI Role

- Intelligence vs. Law Enforcement
  - Much less emphasis on solving crimes
  - Greatly expanded surveillance w/o suspicion
    - Dragnet Surveillance
      - Telephone records
      - Internet & e-mail tracking
    - Use of commercial & private databases
  - Making the Haystack Bigger

# How Big Is the Haystack?

- By 2007, 1.5 Billion records held by FBI
- By 2012, est. 6 Billion records
- Today? Unknown
- Foreign Terrorist Tracking Task Force
  - 360 Staff Members
  - 40 different projects

# Intimidation & Infiltration

- Expansion of the No-Fly List
- Since 2009, No-Fly List has increased by more than 1,000%
- Pressuring innocent people to infiltrate and spy on others
  - Abe Mashal refused boarding, detained and questioned in Chicago
  - Nagid Ali Ghaleb refused boarding overseas

# Are There Limits on the FBI?

- Attorney General Guidelines
  - Weakened in 2002
  - Weakened again in late 2008
    - 2008 Guidelines unchanged under Eric Holder and President Obama
- FBI DIOG: Domestic Investigations and Operations Guide
  - Secret; most recent “public” version is 2011



# Attorney General's Guidelines

- “Assessments, authorized by Subpart A of this Part, require an authorized purpose **but not any particular factual predication.**”
  - 2008 AG Guidelines, p. 17
- “‘no particular factual predication’ is less than ‘information or allegation’ as required for the initiation of a preliminary investigation”
  - 2011 FBI DIOG, p. 5-1



# Attorney General's Guidelines

- A **“preliminary investigation”** may be initiated on the basis of information or an **allegation indicating...**[that] a federal crime or a threat to the national security has **or may have** occurred, is **or may be** occurring, or will **or may occur** and the investigation **may obtain information** relating to the activity or the involvement or role of an individual, group, or organization in such activity.
  - 2008 AG Guidelines, p. 21

# 2010 Inspector General's Report

- “As described in this report, these current (2008) policies and guidelines, like prior policies and guidelines, allow the FBI to open preliminary and full investigations **through standards that are easily met.**”
  - A Review of the FBI's Investigations of Certain Domestic Advocacy Groups, U.S. DOJ Office of Inspector General, September 2010, p. 3 (OIG)

# 2010 Inspector General's Report

- “[T]he “purpose” test for attending public events under Part VI of the **2002** Attorney General Guidelines did not require **any** demonstration of an articulable suspicion to attend the event. It simply required that **the agent** ordering the activity **have an anti-terrorism purpose in mind.**”
  - OIG, p 61.

# 2010 Inspector General's Report

- [The] 2008 guidelines loosened the limitations on the FBI retention of information collected in connection with attendance at public events. It no longer needs to relate to potential criminal or terrorist activity to be retained.
  - OIG p. 14

# FBI Religious/Political Profiling

- “These Guidelines do not authorize investigating or collecting or maintaining information on United States persons **solely** for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States.”
  - 2008 AG Guidelines p. 13

# FBI Domestic Investigations and Operations Guide (DIOG)

- “The DOJ guidance...and FBI policy permit the FBI to identify locations of concentrated ethnic communities in the field office’s domain, if these locations will **reasonably aid** the analysis of potential threats and vulnerabilities, and, overall, assist domain awareness for the purpose of performing intelligence analysis.”
  - 2011 DIOG, p. 4-13

# 2014 US-DOJ Profiling Guidance

- A-G Eric Holder's administrative guidance specifically authorized the FBI to continue its practice of data-gathering and surveillance of racial, ethnic and religious communities;
- A-G guidance also continues to permit "recruitment" of innocent individuals based solely upon their race, ethnicity or religion to be sources and informants;

# Proposed JTTF MOU

- P. 4, Section V(B)(3): “all investigations” to be “documented on FBI forms in accordance with FBI rules and regulations.”
- P. 5, Section V(B)(5): “Where there is a conflict between the standards and requirements of the Participating Agency and the FBI, the standard or requirement that provides the greatest **organizational** protection or benefit will apply...”



# Proposed JTTF MOU

- P. 6, Section VI(A)(4): JTTF personnel “are not permitted to discuss official JTTF business with supervisors who are not members of the JTTF unless the supervisor possesses the appropriate security clearance...”
- P. 7, Section VII: “Non-federal members of the JTTF...will be federally deputized while detailed to the JTTF.”

# Proposed JTTF MOU

- P. 8, Section VIII(A): All non-FBI members of the JTTF must adhere to the same rules and regulations as FBI employees...while conducting JTTF business.”
- P. 9, Section IX(A): “All JTTF materials and investigative records, including any Memorandum of Understanding, originate with, belong to, and will be maintained by the FBI.”

# Summary

- The JTTF operates in total secrecy under the FBI's "rules"
- If in the JTTF, Police Bureau personnel:
  - Would be shielded from the chain of command;
  - Would create FBI records subject to FBI rules and retention policies, not Oregon law;
  - Would be tainted by the FBI's suspicionless surveillance tactics and practices; and
  - Would be further alienated from the community, rather than trying to rebuild relationships of trust.

