



## CITY OF PORTLAND, OREGON



### Bureau of Police

Sam Adams, Mayor

Michael Reese, Chief of Police

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February 28, 2012

TO: Portland City Council

FROM: Chief Mike Reese  
Portland Police Bureau

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RE: Annual JTTF Report per Resolution 36859

In April of 2011, the City passed a Resolution regarding PPB cooperation with the FBI for the purpose of combating terrorism. As part of that Resolution, the City asked the Police Chief, by the end of January each year, to provide a report “with appropriate public information to the City Council and public on PPB’s work with the FBI’s Joint Terrorism Task Force (JTTF), including any issues related to compliance with Oregon laws”. I am pleased today to provide that report.

In order to organize the report, I have listed the relevant specific provisions of the Resolution below and provided appropriate public information about 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 citizens* to maintain human rights. In keeping with our mission and the City’s Resolution, I affirm that 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;*

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Since the passage of the City's Resolution, I have conferred on numerous occasions with the FBI SACs 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 lieutenant of the Criminal Intelligence Unit (CIU) or his supervisor to ensure an appropriate balance is maintained between the local staffing needs of his unit and our work with JTTF.

In terms of the substance of each request: Case-by-case, I personally reviewed every request by the FBI SAC for the use of Portland resources. For each request I asked questions to ensure that PPB 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 PPB priorities/officer workload, the stage of investigation (i.e., whether it was classified by the FBI as an assessment, preliminary investigation or full 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 (01/07/2011) (listed below).

For each request, I shared all information with the Commissioner-in-Charge. After I conferred with the Commissioner-in-Charge, I then made my own independent analysis required under Resolution 36859 to determine that all *aspects* of our work with JTTF conformed to Resolution 36859 and Oregon law.

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 of PPB, I decided that CIU was the best unit to be prepared to provide resources if requested. I asked the Lieutenant of CIU to identify two officers who could be assigned to 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 know that some of the public has a keen interest in knowing the details of our work with the JTTF. We have committed a very limited amount of PPB resources to JTTF work, so disclosure of the number of cases or hours worked would be likely to compromise ongoing investigations and reveal the operational tempo of our work on terrorism. But I can affirm that we have worked with the JTTF at their request on a limited number of domestic terrorism investigations, and we have shared information with the JTTF regarding a suspected international terrorism case.

4. *BE IT FURTHER RESOLVED, in addition to regular briefings, and the Police Chief's participation in JTTF Executive Committee meetings, PPB officers 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 PPB officers working on JTTF investigations shall conform to the requirements of such Oregon statutes or common law;*

I affirm that our officers have only worked on investigations of suspected terrorism that had a criminal nexus and that their investigative methods have complied with Oregon law.

In testimony before Council, the City Attorney explained 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 intimidation 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 within the territorial jurisdiction of the United States.

In order to ensure that I have multiple points of views on our work with the JTTF, I require the Assistant Chief and the CIU Lieutenant to attend JTTF Executive Committee meetings along with me or in my place when I am absent. Thus, I affirm 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 conform to 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 with the JTTF. The two officers who were chosen to work with the JTTF as needed are very experienced. They have received training and guidance about the limitations in Oregon law concerning information gathering (ORS 181.575) and immigration investigations (ORS 181.850) from the City Attorney, the CIU lieutenant, the AC of Investigations, and me.

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

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

In preparation for this report, also, I asked the City Attorney to independently question the officers who have worked with the JTTF to verify whether there have

been any violations of Resolution 36859 or Oregon law. I received an independent evaluation report from the Office of the City Attorney that Portland is in compliance with Resolution 36859 and Oregon law.

Furthermore, if I have any doubt, I affirm that will proactively consult with the City Attorney before accepting a request to check if the request complies with the terms of the Resolution 368359 or raises any questions about Oregon state law.

As a result of this oversight, I can attest that 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 AC of Investigations, or 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 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 the 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 over fifteen 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 the two officers identified as eligible to work with the JTTF as well as the lieutenant of CIU 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. The officers have been able to freely share information and seek advice from the City Attorney. The City Attorney has met with them separately and alone 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 attorney reports that he has received unfettered access to ample information from the officers and their lieutenant in order to assess compliance with Oregon law and this Resolution.

Furthermore, if I have any doubt, I affirm that will proactively consult with the City Attorney before accepting a request to check if the request complies with the terms of the Resolution 36859 or raises any questions about Oregon state law.

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 the terms of the resolution apply, including that the PPB officer's investigative methods must still conform to Oregon law;*

I have not assigned any officers to work on JTTF investigations outside the City of Portland.

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 a FBI facility.” The FBI explains a Top Secret/Sensitive Compartmented Information (SCI) clearance 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 implemented this provision. I currently have a “Secret” level clearance and am in the process of seeking to obtain Top Secret/Secure Compartmentalized Information (TS/SCI) clearance. My officers are not seeking TS/SCI clearance and will not need clearance above the “Secret” level.

When the Resolution was passed, we anticipated that the FBI would require any of our officers who worked with the JTTF 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 the two officers whom I identified as eligible to work with the JTTF would be sufficient, based on Portland's current participation status with, but not membership with JTTF.

The Assistant Chief of the Investigations Branch, Lieutenant of the Criminal Investigation Unit, and two assigned officers all currently have “Secret” level security clearances.

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;*

I affirm that PPB officers who work with the JTTF have remained in the PPB chain of command and their work is overseen by PPB supervisors, including a lieutenant, the Assistant Chief of Investigations, and me. The lieutenant holds regular meetings with the assigned officers to inquire about the subject matter of investigations, monitor the investigative methods being employed, and verify that the work performed meets federal, state, and city requirements. And the AC and I hold regular meetings with the 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 of PPB 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 numerous occasions with the SAC about threats from terrorism and terrorism investigations. I receive regular briefings on the work of the JTTF, certainly at a rate of more than twice a year.

*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 fulfilled this provision. I assigned a CIU lieutenant to oversee the two officers identified as eligible to work with the JTTF. The lieutenant has regular meeting with the JTTF supervisor and attends JTTF Executive Committee meetings. Any time these officers have been assigned to JTTF work, the lieutenant, the AC of Investigations, and I have actively supervised their work.

I also attend JTTF Executive Committee meetings. The Commissioner-in-Charge has stated that his intent was not to exclusively require the Chief or any particular PPB member to attend, but to expect regular attendance from multiple Portland Police Bureau members, so long as the PPB consistently represented at JTTF Executive Committee meetings. These meetings have been valuable to me, and our City, and I believe that our City is much safer as a result.

*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 law;*

I affirm that we are in compliance with this provision. In May of 2011 and January of 2012, the City Attorney's office had an in-service training for the entire CIU which included the two CIU officers identified as eligible to work with the JTTF as needed. The City Attorney trained officers 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 includes instruction on the FBI Guidelines and how Resolution 36859 or Oregon law are different from the FBI Guidelines.

The Chief of Police, Assistant Chief of the Investigations Branch, Lieutenant of the Criminal Investigation Unit, and two assigned officers have all received required trainings.

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

We 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, PPB adopted Standard Operating Procedure (SOP) CIU #23. We published the SOP on the front page of our website for several months. It continues to be available online at <http://www.portlandonline.com/police/index.cfm?c=50417&a=358129>.