



P.O. Box 40585, Portland, OR 97240  
503-227-3186

April 16, 2013

Mayor Kent Studebaker  
Councilor Karen Bowerman  
Councilor Jeff Gudman  
Councilor Jon Gustafson  
Councilor Donna Jordan  
Councilor Mike Kehoe  
Councilor Skip O'Neill  
380 A Ave. #3  
Lake Oswego, OR 97034

Re: Resolution 13-21. Lake Oswego Involvement in FBI's Joint Terrorism Task Force

Dear Mayor and Councilors:

The ACLU of Oregon urges the Council to remove from tonight's consent agenda the proposal to affirm the City's direct participation in the FBI's Portland Area Joint Terrorism Task Force (JTTF) and instead ask the City Manager and Chief of Police to report to Council at a future meeting on the details of the Memorandum of Understanding with the FBI.

I want to emphasize that the ACLU of Oregon does not object to efforts to improve communication and cooperation among law enforcement agencies, including cooperation with the FBI and other federal law enforcement agencies. As yesterday's events in Boston have once again illustrated, such cooperation can be essential to protect public safety.

However, the FBI and other federal agencies operate under very different laws and policies than state and local police agencies are required to follow here in Oregon.

Unfortunately, the FBI's standard agreement for participation by local agencies in their Joint Terrorism Task Forces does not make any accommodation for those different standards and requirements. Indeed, that standard agreement makes it extremely likely that local police officers, once deputized as members of the FBI JTTF, will engage in activities that violate the important protections and safeguards of Oregon law and the Oregon Constitution.

Contrary to some recent reports in the news media, the City of Portland did **not** rejoin the Portland JTTF in 2011. Instead, Portland agreed to cooperate with the FBI and the JTTF on a case-by-case basis that permits meaningful cooperation as well as regular briefings for

the police chief, Mayor and other police personnel while also ensuring that city officials continue to comply with Oregon law.

We urge the Council to fully consider these concerns and insist that changes be made to the FBI's standard Memorandum of Understanding to ensure that Lake Oswego police personnel cooperating with the FBI meet the City's obligations to follow Oregon law and the Oregon Constitution.

In particular, ORS 181.575 prohibits state and local police officials from either "collecting" or "maintaining" records that include information about the political, religious or social views, associations or activities of any individual or organization unless there are reasonable grounds to suspect that the subject of the information is or "or may be" involved in criminal conduct.

In contrast, FBI policies and the U.S. Attorney General Guidelines specifically allow the collection and maintenance of extensive information regarding the political, religious and social activities of individuals and organizations even when there is no individualized suspicion of criminal wrongdoing nor of a conspiracy to commit an act of terrorism or any other crime.

Even under Oregon's relatively strict standard, innocent people are often caught up in investigations because those individuals may have associated with groups, attended public events or interacted with one or more third party suspects through day-to-day contact—none of which relates directly to that third party's suspected criminal activity. Often, such incidental contact has led to intensive investigations of such individuals who are eventually proven by law enforcement officials to be completely innocent.

Under Oregon law, such files involving the constitutionally protected activities of those innocent individuals would be reviewed and purged. However, since all such information gathered by the JTTF is collected and maintained as FBI files, that information will continue to be maintained indefinitely.

Another reason that the City of Portland chose to cooperate with the FBI only on a case-by-case basis was to maintain the chain of command within the City's police force. This is the reason that Portland's Chief of Police, Deputy Chief and the director of its Criminal Intelligence Unit all have applied for and received Secret clearance from the Department of Justice. The Portland officers that cooperate directly with the JTTF have the same level of clearance and can therefore brief their supervisors – and be supervised by them – regarding the work they are being asked to perform by the FBI. The Mayor of Portland, who serves as the Commissioner-in-Charge of the Police Bureau, is also required by city ordinance to apply for Secret clearance and to be briefed regularly on JTTF activities.

While only some portions of the Portland example may be appropriate for Lake Oswego's City Manager form of government, we hope that you will agree that the issues we raise regarding Oregon's legal requirements are worth reviewing prior to the Council acting on this request and prior to the City executing a Memorandum of Understanding with the FBI.

If any of the members of Council or City staff would like additional information regarding these issues, or if we can assist the City in some other way, please do not hesitate to contact me or my staff. Thank you very much for your consideration of these comments.

Sincerely,

/s/

David Fidanque  
Executive Director  
ACLU of Oregon

cc: Tom Coffee, City Manager  
Don Johnson, Chief of Police

### **Text of ORS 181.575**

**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]

### **U.S. Attorney General Guidelines**

“Assessments, authorized by Subpart A of this Part, require an authorized purpose **but not any particular factual predication.**” – 2008 AG Guidelines, p. 17

“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