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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.¹

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

¹ See 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.