

## ACLU of Oregon: Draft Agreement based on 2005 Resolution (Submitted: February 19, 2011)

This Agreement is being executed by the below listed agencies:

City of Portland

Federal Bureau of Investigation – Portland (FBI)

The City of Portland will cooperate with the FBI to insure the security and safety of the City. All Portland Police Bureau personnel are accountable to the Portland Chief of Police and Commissioner-in-Charge of the Portland Police Bureau for carrying out their lawfully assigned duties and responsibilities. This requires direct oversight and supervision of city personnel.

In order to provide the appropriate supervision and oversight consistent with Oregon law and the operations of the City of Portland, the Portland Chief of Police (Police Chief), the Commissioner-in Charge of the Portland Police Bureau (Commissioner-in-Charge), a designated attorney from the Portland City Attorney's office (Designated City Attorney), and the Director of the Independent Police Review Division (IPR Director) must have clearance and access to review all actions and activities of Portland Police Bureau personnel who are assigned to assist the FBI in terrorist-related or intelligence-based investigations or during any critical incident or imminent terrorist threat, including operations through the FBI Joint Terrorism Task Force.

The Police Chief, the Commissioner-in-Charge, the Designated City Attorney and the IPR Director shall apply for the highest level of clearance available to them. Portland Police officers who are expected to work with the FBI on any terrorist-related or intelligence-related investigation or assist in any critical incident or imminent terrorist threat shall seek the level of clearance that is provided to the Police Chief, the Commissioner-in Charge, the Designated City Attorney, and the IPR Director. Portland Police officers may not receive clearance higher than the lowest level of clearance provided to the Police Chief, the Commissioner-in-Charge, the Designated City Attorney and the IPR Director.

The FBI Special Agent in Charge in Portland will immediately contact and brief the Police Chief, the Commissioner-in-Charge and the Designated City Attorney regarding any terrorist-related or intelligence-related investigation, critical incident or imminent terrorist threat as determined by the FBI.

Portland Police personnel shall participate as requested on a case-by-case basis with the FBI Joint Terrorism Task Force only with regard to a full investigation, as defined in the U.S. Attorney General Guidelines for Domestic FBI Operation, including a terrorism-related or intelligence-related investigation or during a critical incident or imminent terrorist threat as determined by the FBI.

The FBI Special Agent in Charge in Portland will request assistance of Portland Police personnel for purposes of a full investigation, including a terrorism-related or intelligence-related investigation or during a critical incident or imminent terrorist threat as determined by the FBI. The Police Chief, the Commissioner-in-Charge, and the Designated City Attorney will be immediately notified and will provide full oversight to participating Portland Police officers during any terrorism-related or intelligence-related investigation, critical incident or imminent terrorist threat in conjunction with the FBI.

The FBI will regularly update and brief the Police Chief, the Commissioner-in-Charge and the Designated City Attorney at any time Portland Police personnel are engaged in any type of activities in conjunction with the FBI related to a terrorism-related or intelligence-related investigation or during a critical incident or imminent terrorist threat. The Designated City Attorney shall regularly meet with those Portland Police personnel who are participating in any type of these activities in conjunction with the FBI to provide direct oversight to ensure compliance with ORS 181.575, ORS 181.850 and any other Oregon constitutional or statutory requirements that may be different from federal law.

In all circumstances, participation by Portland Police officers in any FBI terrorism-related or intelligence-related investigation or activities shall be limited to only those activities that comply with ORS 181.575, ORS 181.850 and any other Oregon constitutional or statutory requirements that may be different from federal law. Participating Portland Police officers shall be able to seek advice from the Designated City Attorney on a real-time basis. The Designated City Attorney and the IPR Director shall be permitted periodically to review any files accessed by or contributed to by participating Portland Police officers to ensure compliance with all Oregon laws.

Every six months, the Police Chief shall update the list of those Portland Police officers who have any level of clearance with the FBI to the Commissioner-in-Charge, the Designated City Attorney and the IPR Director.

The Police Chief will be a member of the JTTF Executive Group, which is briefed on the work of the JTTF. The Police Chief will brief the Commissioner-in-Charge and the Designated City Attorney immediately after each Executive Group meeting. Terror Alert information will continue to be shared with City officials by the FBI and the Department of Homeland Security.

The FBI will provide Portland Police officers with roll-call training, supervisory and management training on terrorist-related issues.

The City of Portland will contact the FBI immediately with any information regarding possible terrorist threats.

Every six months, the Designated City Attorney and the IPR Director shall jointly conduct a review and audit of all terrorism-related or intelligence-related investigation or critical

incident or imminent terrorist threat investigations carried out by Portland Police Bureau personnel in conjunction with the FBI.

That review and audit, which shall result in a report setting forth details about the each of the following and any other relevant information as determined at the time:

- 1) The status of federal government security clearance levels given to any Portland personnel, including which Portland Police personnel received clearance and the type of clearance, the type of clearance given to the Commissioner-in-Charge, the Designated City Attorney and the IPR Director;
- 2) Examination of all records related to any terrorism-related or intelligence-related investigations, critical incidents or imminent terrorist threats in which any City of Portland personnel participated in order to ensure compliance with Oregon statutory and constitutional provisions, including but not limited to ORS 181.575;
- 3) Interviews with all Portland Police Bureau personnel who were involved in any terrorist-related or intelligence-related investigations, critical incident or imminent terrorist threat specifically to address issues related to compliance with Oregon statutory and constitutional provisions, including but not limited to ORS 181.575. Interviews with the Police Chief and the Commissioner-in-Charge related to their involvement in any terrorist-related or intelligence-related investigations, critical incident or imminent terrorist threat and the scope of briefings received by the FBI to ensure full compliance with this agreement;
- 4) Non-confidential details regarding any requests made by any Portland Police personnel who were involved in any terrorist-related or intelligence-related investigations, critical incident or imminent terrorist threat to the Designated City Attorney, such as the number of consultations, types of issues raised and any action taken as a result of those consultations;
- 5) The number, the type of and at what stage Portland Police personnel were asked to participate any terrorism-related or intelligence-related investigation, critical incident or imminent terrorist threat. If any of these requests occurred prior to the defined FBI “full investigation” stage, the review shall examine and report on how many were “preliminary investigations” “assessments” or any other type and whether such activities complied with Oregon statutory and constitutional provisions, including but not limited to, ORS 181.575;

- 6) What steps were taken by both the Police Bureau and the FBI to ensure that Portland Police personnel complied with Oregon statutory and constitutional provisions, including but not limited to ORS 181.575;
- 7) The number of contacts or briefings by the FBI to the Police Chief, the Commissioner-in-Charge and the Designated City Attorney;
- 8) The number of post-JTTF Executive Committee briefings by the Police Chief to the Commissioner-in-Charge and the Designated City Attorney;
- 9) Whether all Terror Alert information was shared with City officials by the FBI and/or the Department of Homeland Security; and
- 10) Whether the appropriate roll-call training, supervisory and management training on terrorist-related issues were given to Portland Police Bureau Officers by the FBI.

Upon completion of the review and audit by the Designated City Attorney and the IPR Director, but no later than two months following each six-month review, the Designated City Attorney and the IPR Director shall issue a report of their findings. In addition to reporting on the findings of the review, the report specifically shall detail any action by Portland personnel that was not in full compliance with Oregon statutory and constitutional provisions, including but not limited to ORS 181.575.

Each report shall be made available to the public and all steps shall be taken to release as much detail as possible. Any details that are redacted shall be made available to the Commissioner-in-Charge and the Police Chief.

At least once yearly, the City Council shall receive a public briefing on all intervening reviews and reports since its previous consideration, as well as the compliance with this agreement by all parties and provide opportunity for public testimony.