



TO: Mayor Hales & Commissioners

FROM: David Fidanque

RE: FBI JTTF Memorandum of Understanding

DATE: February 25, 2015

In addition to the comments I made regarding the MOU during my testimony on February 4, I wanted to emphasize several issues regarding the proposed ordinance (Item 224) on today's agenda.

1. The draft MOU provides on P. 9, Section IX(A), that "All JTTF materials...**including any Memorandum of Understanding**, originate with, belong to, and will be maintained by the FBI." This language has been used in other cities, including San Francisco and Oakland, to prevent other JTTF MOU's from being made available under state public record laws and the federal Freedom of Information Act. **We strongly urge you to add language to the proposed ordinance that would prohibit the Mayor from executing an MOU for the Portland JTTF unless the FBI and the U.S. Department of Justice permit the document to be made public by the City.** There is nothing in the draft MOU that would justify it being kept secret.
2. While the draft MOU provides on P. 5, Section V(B)(5) that Police Bureau members of the JTTF will be subject to Oregon law and Police Bureau policies, in addition to those of the FBI, the very same paragraph provides conflicting language providing that when "there is a conflict between the standards or requirements of the Participating Agency and the FBI, the standard or requirement that provides **the greatest organizational protection or benefit will apply**, unless the organizations jointly resolve the conflict otherwise." **Since the draft MOU gives the FBI total discretion to resolve any such conflict as it sees fit, we urge Council to amend the ordinance to provide that the City will withdraw from the JTTF if any such conflict is not resolved in a manner consistent with Oregon law or the Oregon Constitution.**
3. Another provision of the draft MOU which is inconsistent with the MOU provision regarding state law and local policies appears on P. 8, Section VII(A) which provides that "All non-FBI members of the JTTF must adhere to the same rules and regulations as FBI employees...while conducting JTTF business." **We urge Council to require that this**

**language be modified to acknowledge that the FBI's rules and regulations are minimum requirements for Police Bureau personnel who participate and that City of Portland personnel are also required to adhere to Oregon law and Bureau policies to the extent they are more restrictive than the FBI's rules and regulations.**

4. In addition to these specific recommendations, Council needs to consider that Bureau personnel will inevitably violate, at least indirectly, ORS 181.575, which prohibits not only the collection but also the maintenance of records regarding the political, religious or social activities of individuals or organizations without suspicion of criminal wrongdoing. On P. 4, Section V(B)(3), the draft MOU provides that JTTF personnel investigations "will be documented on FBI forms..." The effect of this provision will be that even material regarding persons or organizations that are subjected to JTTF inquiries who turn out to be completely innocent of any wrongdoing will not be purged as required by Oregon law, but will rather be subject to the FBI's retention policies and may be maintained permanently.

In summary, while the ACLU is still strongly opposed any direct participation in the FBI JTTF by City personnel, we strongly urge Council to take additional steps prior to authorizing the Mayor to executing an MOU with the FBI. The total veil of secrecy surrounding JTTF operations will prevent any semblance of transparency and accountability to the public – or even to any member of Council other than the Commissioner in charge of the Police Bureau – once the MOU is signed.

Thank you for considering these concerns.