

JTTF relationship continues to hide behind 'trust us' facade

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On March 27, with dissenting votes from Commissioners Fritz and Novick, the Portland City Council voted to accept the annual report on the Portland Police Bureau's collaboration with the Joint Terrorism Task Force (JTTF). The report, submitted by Chief Mike Reese, was nearly identical to the report that was accepted last year and provided very minimal detail about the number and types of cases where PPB is lending resources to the FBI's terrorism investigations.

We in Portland are left to wonder not only how and when PPB is lending resources to the FBI, but also whether we should continue to endorse a partnership we know very little about.

Without adequate detail of the implementation of the JTTF agreement, we are forced to accept a "trust us" approach to oversight. And while we all wish we could trust our government to do what is right, history has taught us that unless there is adequate oversight and opportunities for accountability to the public, we should not.

The ACLU has appeared before City Council 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 Sept. 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 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

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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 frequently remind the Council that,



(REUTERS / STEVE DIPAOLA)

since 1981, Oregon law has prohibited any state or local police agency from collecting or maintaining any information about political or religious or social activities of individuals or organizations unless they're directly related to criminal activities.

We arrived at our position in support of the resolution in 2010 in part because we considered it to be the continuation, not the end, of an ongoing conversation regarding the appropriate boundaries and safeguards for PPB'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.

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 was similarly disappointing.

by the FBI. The 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 PPB 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.

Before casting his no vote at Council in March, Commissioner Novick talked about the ongoing frustration with receiving a JTTF report that cites so little detail about PPB's involvement. While the ACLU disagrees that abandoning the reporting requirement is the appropriate response to this frustration, we wholeheartedly agree with Novick that until we can break the cycle of presenting and accepting such bare bones reports, the mechanism over which JTTF activities are monitored will remain inadequate and we in Portland will be forced to accept this "trust us" approach.

Once again, missing from this report was data indicating the number of investigations, the types of investigations, at what stage of the FBI inquiries PPB was asked to work with the JTTF, and the total number of hours the investigating criminal intelligence unit officers worked on terrorism inquiries. The ACLU has never asked the city to disclose specific factual information regarding the individual matters on which PPB cooperates with the FBI. Disclosing the number of inquiries and the stage of the inquiry at the time of the FBI request to the city, however, 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"

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