



U.S. Department of Justice

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The Honorable Sam Adams
Mayor, City of Portland
1221 SW 4th Ave Room 340
Portland, Oregon

Dear Mayor Adams:

Thank you for the opportunity to comment on your draft resolution regarding the Joint Terrorism Task Force.

I also want to thank you for your leadership in the City's consideration of this issue. I appreciate the commitment and thoughtfulness that you and each of your colleagues have brought to the table as we discuss how the City can best meet its responsibilities both to protect civil rights and prevent and investigate acts of terrorism. The Department of Justice shares this twin responsibility – it's what we work to achieve every day. And as FBI Special Agent-in-Charge Balizan and I have always committed to you and the people of Portland, we will do our best to keep people here and throughout the world safe regardless of the outcome of these discussions.

As you know, I firmly believe that the City of Portland and federal government can be most effective in meeting our responsibilities if the Portland Police Bureau ("PPB") rejoins the Joint Terrorism Task Force ("JTTF") and commits officers to join the JTTF team in preventing and investigating acts of terrorism. As the state's largest police force, with officers uniquely familiar with this community, daily participation from PPB officers is a tremendous asset which has been sorely missed.

Unfortunately, as currently drafted, the proposed resolution does not provide a way in which the PPB can rejoin the team. There is a single provision which stands as a roadblock to participation – specifically, the provision that seeks to have the City Council delineate only certain investigative steps a Task Force Officer can take part in. If this provision were deleted, we would certainly be able to reach agreement on other provisions and we would welcome PPB on the team.

But before I specifically address the roadblock, let me highlight the remarkable provisions in the balance of the draft resolution which stakes out an unprecedented commitment to civil rights while meeting our public safety obligations. The agreed upon parts of the resolution represent a dramatic departure from the operation of JTTFs elsewhere under Standard JTTF Memorandum of Understanding.

First, the proposed draft explicitly and firmly requires compliance with state law:

- The draft bars officers from violating ORS 181.575, which makes it illegal to gather intelligence based on a person's religion or background.
- The draft bars officers from violating ORS 181.850, which limits participation in illegal immigration cases.
- The draft goes further than mere compliance, and requires PPB officers to report any violation or question as to violation of ORS 181.575 and ORS 181.850.

Second, the proposed draft ensures that senior city officials will have the information they need to manage PPB officers:

- The draft provides for the Chief of Police to seek Top Secret security clearance – a first in Oregon, I believe.
- The draft provides for the Commissioner-in-Charge of the Police to seek Secret clearance – and become one of less than 10 mayors nationwide in the last 10 years to have a security clearance.
- The draft requires regular briefings for both the Chief of Police and Commissioner-in-Charge of the Police on the work of the JTTF.

Third, the proposed draft ensures effective management and supervision of PPB officers

- The draft requires that at any time a PPB officer is assigned to the JTTF, a supervisor must also be assigned.
- The draft specifically requires that PPB officers keep the Chief of Police informed of their work on the JTTF.

Fourth, the proposed draft ensures access to the City Attorney for PPB officers

- The draft expressly provides that PPB officers can seek legal advice from the City Attorney to ensure compliance with state and city law.
- The draft also sets up a mechanism for the FBI to share classified information with the City Attorney if that is necessary to provide legal advice.

Fifth, the proposed draft imposes no limitation on duration of commitment

- The proposed draft does not contain the two year minimum commitment found in the Standard JTTF Memorandum of Understanding – the Chief of Police can remove officers at any time.
- In recognition of pressing need for PPB resources for a host of responsibilities, the proposed draft also provides that the Chief of Police can assign officers on an “as needed” basis, rather than indefinitely and full-time, as was the practice in the past.

Sixth, the proposed draft brings unprecedented transparency

- The Standard JTTF Memorandum of Understanding currently limits public disclosure, whereas the proposed draft would be a public document through and through.
- The proposed draft provides for annual public briefing on the work of the JTTF.

These provisions represent a truly remarkable commitment to civil rights – especially when considered together – that works together with a steadfast commitment to public safety. Were the City to adopt the resolution with these provisions, it would truly be setting the pace nationally for both civil rights and public safety.

Unfortunately, the proposed draft contains one provision which veers from policy and oversight into what I consider micro-management of the work of the Task Force. Specifically, the resolution seeks to dictate for the JTTF which stages of an investigation Task Force Offices from the PPB can work on. The Department of Justice considers this provision fatally flawed in a number of ways:

First, the provision stems from a faulty premise about what “assessments” are. Assessments *never* involve intrusive techniques such as search warrants, wiretaps, and undercover operations – techniques like those are flatly prohibited in an “assessment.” Rather, assessments involve following up on leads through the kind of routine steps that PPB officers take every single day – steps like talking to people on the street or looking at open source webpages online.

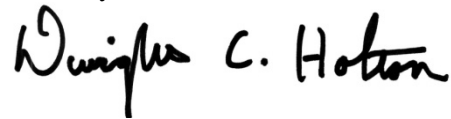
Second, the restriction is not workable. Investigation and prevention of complex crimes and terrorism are typically fluid and fast-moving, and it makes no sense to ask PPB officers to be in for one part of a conversation, but out for another part of the same conversation as investigators discuss findings from assessments, investigations, etc., in evaluating and addressing terrorist threats in Portland and beyond.

Third, the restriction crosses the line from policy-setting and oversight and into day-to-day operations. Political leadership on policy and oversight of law enforcement is *essential* to liberty, but political involvement in day-to-day operations of law enforcement can undermine both public safety and civil liberty.

I would like nothing more than for the City of Portland and PPB to fully rejoin the JTTF team. I remain hopeful. The City can achieve a tremendous accomplishment – unprecedented commitment to civil rights and transparency coupled with steadfast commitment to public safety. With the removal of the one provision that drifts into operational directive rather than policy, we can reach agreement and get back to work. I hope that is the direction the City Council chooses to go.

As always, I stand ready to work with you to achieve our mutual goals of civil rights enforcement and public safety. Please pass on to your colleagues and City Hall staff my tremendous appreciation and respect for their heartfelt and thoughtful contributions as we have considered this important issue.

Sincerely,

A handwritten signature in black ink that reads "Dwight C. Holton". The signature is written in a cursive, slightly slanted style.

Dwight C. Holton
United States Attorney