

Human Rights Commission's Analysis of the Joint Terrorism Task Force

Introduction

This brief report outlines the Portland Human Rights Commission's position on the City of Portland's re-examination of its participation in the Portland Joint Terrorism Task Force (JTTF).

The Human Rights Commission recognizes the duty of governments to protect public safety and accepts that circumstances can arise where specific measures are required to address the threat to public safety. We affirm that the promotion and protection of human rights for all and the rule of law are essential in furthering community safety. We understand the importance of communication across jurisdictions. ***We recognize that effective counter-terrorism measures and the protection of human rights are not conflicting, but complementary goals.***

The Commission notes that since the terrorist attacks of 9/11 there has been an unprecedented increase in counter-terrorism powers granted to law enforcement agencies throughout the United States with limited communication concerning levels of threat. We consider this review an important opportunity to ensure that counter-terrorism powers and related agreements to collaborate across jurisdictions are consistent and compatible with the City of Portland's civil and human rights commitments and obligations.

Information Gathering and Background Documents

The Human Rights Commission held one informational meeting on this issue and one public hearing at City Council Chambers. These events took place on January 5th and February 3rd respectively. Approximately 75 people attended in total. The presentations and testimony provided during these meetings helped inform the Commission's analysis regarding the JTTF.

The HRC reviewed the documents listed on the Mayor's JTTF website and presented at the meetings noted above. In addition, the Human Rights Commission consulted the following resources:

- Protection of Human Rights and Fundamental Freedoms While Countering Terrorism. United Nations. Human Rights Council to the United Nations General Assembly. April 2010.
- Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism. United Nations Human Rights Council. February 2009.
- The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines. Department of Justice, Office of Inspector General. Special Report. September 2005.
- A Review of the FBI's Investigations of Certain Domestic Advocacy Groups. Department of Justice, Office of the Inspector General. 2010
- Draft Agreement based on the City of Portland's 2005 JTTF Negotiations Resolution (Resolution No. 3615). Submitted February 19, 2011 by the American Civil Liberties Union of Oregon.

- The Universal Declaration of Human Rights. United Nations. 1948.
- Information presented by the Equality and Human Rights Commission of Great Britain to the United Nations General Assembly, September 3, 2010. *This report details perceived impacts on Muslims of counter-terrorism measures.*

Human Rights Implications and Concerns

In our review the following issues consistently emerged as community concerns. Our assessment is that these concerns would be heightened if there were a closer collaboration between the Federal Bureau of Investigation and the Portland Police Bureau.

1. Oregon State Laws vs. Federal Laws

Oregon State Law provides a higher standard of protection for civil rights than does Federal Law. *ORS 181.575 specifically prohibits any state or local law enforcement agency from collecting or maintaining information about the political, religious, social views or associations or activities of any individual, group, or organization unless the information directly relates to an investigation of criminal activities and there are reasonable grounds to suspect the subject of the information may be involved in criminal conduct.*

During HRC meetings, community members expressed concern that if Portland police officers were to be deputized as federal agents as part of their participation in JTTF squads, they would be operating within a legal framework which is incompatible with Oregon law and with the City's commitment to uphold fundamental human rights and freedoms such as the right to liberty, and the right to privacy, freedom of thought and expression, freedom of peaceful assembly and association, and freedom from discrimination.

Federal agents are not bound by Oregon law. In addition, past reports issued by the US Department of Justice Office of the Inspector General raise questions regarding the FBI's adherence to federal policy and law.¹

2. Federal Guidelines Governing FBI Operations

The US Attorney General (AG) establishes the legal parameters for FBI operations through its Guidelines for Domestic FBI Operations. Since September 11, 2001, these guidelines have been revised to expand FBI functions, granting greater permissions and flexibility to the FBI for surveillance and investigation activities. New guidelines have loosened previous restrictions, allowing greater agency discretion and permitting intrusions that erode civil liberties in the interest of protecting national security².

Community concerns regarding civil and human rights violations by the FBI are widespread and warranted. The HRC advises Council to review the history of revisions to the AG Guidelines and examine the various reports of the Office of the Inspector General (OIG) concerning repeated FBI violations of AG Guidelines. ***These reports detail extensive civil and human***

¹ In its 2010 review of the FBI's investigations of domestic advocacy groups, the Office of the Inspector General highlights its own concern regarding FBI surveillance practices, information retention, the provision of inaccurate and misleading information which point to breaches of authority at the Federal level. *A Review of the FBI's Investigations of Certain Domestic Advocacy Groups. Department of Justice, Office of the Inspector General. 2010. pg. 174-176.*

² Citing policy violations uncovered in Merton Center case, the Office of the Investigator General's 2010 Report on the FBI's investigation of domestic advocacy organizations recommends revising AG Guidelines to re-instate prohibitions on retention of irrelevant information from public events. The recommendation references the 2008 weakening of AG Guidelines which now allow infringements on first amendment rights.

rights violations in both national and international FBI operations. OIG Reports also highlight instances in which the FBI has failed to follow AG Guidelines. We urge Council to address these issues should Council negotiate terms to re-join the JTTF. This is a unique opportunity for Portland's City Council to guide national policy discussion concerning civilian and elected oversight of counter-terrorism efforts.

3. Police Accountability and Civilian Oversight

One of the principal criticisms of the collaboration structure set forth by the FBI through a JTTF is the loss of local control and oversight of police officers who become deputized as special federal officers through their participation in JTTF squads. The issue of authority and accountability was a fundamental concern for City Council in 2005 when Council opted to withdraw from the JTTF. The Human Rights Commission heard repeated concerns regarding police accountability among Portlanders providing testimony at HRC meetings and the Council forum. The HRC's Community and Police Relations Committee also regularly receives testimony regarding police accountability.

We are aware that City Council attempted to negotiate greater oversight of Portland police officers in its 2005 deliberations regarding the JTTF. On February 19, 2011, the ACLU of Oregon presented draft language to the Council which would strengthen communication and oversight for future collaborations with the FBI through the JTTF. The HRC supports this approach and endorses the ACLU's Draft Agreement.

The Commission strongly encourages Council to address concerns regarding civilian and elected oversight of the Portland Police should the Council negotiate terms to re-join the JTTF. We believe Portland has a unique opportunity to guide the national policy-making discussion on accountability and to be a model for other cities participating in JTTFs.

4. Community and Police Relations

The Human Rights Commission takes into account the impact of policy decisions on community relations. The Human Rights Commission's Community and Police Relations Committee (consisting of police officers, Human Rights Commissioners, and community members) dedicates significant resources to healing the divide between communities and police. Challenges already include tensions regarding the intersect between racial profiling and use of force. We believe a decision to rejoin the JTTF – absent detailed oversight, accountability, and transparency in the agreements, would exacerbate existing tensions and negative perceptions about Portland's police.

5. Disparate Impacts

The Human Rights Commission acknowledges the FBI's long history of profiling. We remain urgently concerned about disparate impacts on Portland's advocacy organizations and activist movements, Muslim communities (or individuals assumed by law enforcement to be Muslim) and others. ***Without civilian and elected oversight of the JTTF, community concern is high about these disparate impacts.***

Human Rights Analysis

The Human Rights Commission upholds the United Nations' Universal Declaration of Human Rights by City ordinance. The HRC has reviewed the JTTF discussion to outline ways that participation might further human rights and ways that it might constrain human rights:

Human rights furthered by effective counter-terrorism measures that respect and uphold human rights

Article 3: Everyone has the right to life, liberty and the security of person.

Article 28: Everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration can be fully realized.

Article 30: Nothing in the UN Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein.

Human rights violated by the F.B.I as documented in Department of Justice reports during counter-terrorism surveillance, investigations and proceedings:

Article 3: Everyone has the right to life, liberty and the security of person.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him/her by the constitution or by law.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 10: Everyone is entitled in full equality to a fair public hearing by an independent and impartial tribunal.

Article 11: Everyone has the right to be considered innocent until proven guilty.

Article 12: No one shall be subjected to arbitrary interference with his/her privacy, family, home or correspondence, nor to attacks upon his/her honor and reputation.

Article 18: Everyone has the right to freedom of thought, conscience and religion.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20: Everyone has the right to freedom of peaceful assembly and association.

Article 30: Nothing in the UN Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein.

Thank you for your consideration. We appreciate the opportunity to participate in the deliberation about Portland's participation in the JTTF.

Portland Human Rights Commission