



October 12, 2020

**VIA EMAIL ONLY**

Members, Oakland City Council  
 1 Frank H. Ogawa Plaza  
 Oakland, CA 94612

**RE: End OPD’s Participation in the FBI’s Joint Terrorism Task Force**

Dear Honorable Members of the Oakland City Council:

We are a coalition of community and civil rights organizations writing to urge you to vote in support of terminating the Oakland Police Department’s (OPD) participation in the Federal Bureau of Investigation’s (FBI) Joint Terrorism Task Force (JTTF) on October 20, 2020.

The OPD has participated in the JTTF since at least 2007. However, in violation of the Oakland City Charter,<sup>1</sup> the OPD did not bring up the JTTF Memorandum of Understanding (MOU) with the FBI for City Council approval until a few days, and only after a hearing was scheduled on October 13, 2020 at the Public Safety Committee to terminate the OPD's participation with the JTTF. It is for this and other reasons detailed below, that on December 5, 2019, the Oakland Privacy Advisory Commission voted unanimously against the resolution approving the JTTF MOU, and for effectively ending the OPD's participation in the FBI's JTTF.

Through this letter, we hope to provide you a clear picture of the FBI's abuse of power and the urgent need for the OPD to end its illegal participation in the JTTF.

### **THE FBI'S CIVIL RIGHTS ABUSES**

The FBI has a long history of criminalizing entire communities and spying on organizations and movements engaged in First Amendment-protected dissent under the guise of national security. Under the presidency of Donald Trump and the auspices of Attorney General William Barr, the FBI has continued to abuse its broad investigative and intelligence-gathering authorities to viciously target Black, immigrant, and Muslim communities, and other communities of color. Often, the FBI has used the JTTF, a task force where local police officers, such as those in the OPD, are cross-deputized as federal agents to carry out counterterrorism functions, as the vehicle to carry out its abuse of power.

#### ***FBI's Dangerous Response to the George Floyd Protests***

The current most egregious example of the FBI's abuse of power lies in its investigation of Black and Brown activists protesting for racial justice across the United States after the murder of George Floyd by a Minneapolis police officer. At the outset of the protests, President Trump indicated that he wanted to quash the nationwide movement calling for justice for Black Lives. In a June 1<sup>st</sup> call with state governors, the President referred to the mass protests as "war" and a "battle ground" and urged governors to "dominate the streets" through increased use of force.<sup>2</sup> He labeled protesters demanding racial justice as "radicals" and "anarchists," and called for their arrest and prosecution, and for "long periods" of jail time.<sup>3</sup> The previous day, the President declared his intention to designate Antifa as a terrorist organization.<sup>4</sup> Subsequently,

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<sup>1</sup> Section 504(l) of the Oakland City Charter requires City Council approval of every joint governmental contract. See Oakland, Cal., City Charter art. V, § 504(l).

<sup>2</sup> READ: President Trump's call with US governors over protest, CNN (June 1, 2020), <https://www.cnn.com/2020/06/01/politics/wh-governors-call-protests/index.html>.

<sup>3</sup> *Id.*

<sup>4</sup> Donald J. Trump (@realDonaldTrump), TWITTER (May 31, 2020, 9:23 AM), <https://twitter.com/realdonaldtrump/status/1267129644228247552>.

Attorney General Barr officially announced that the U.S. Department of Justice will investigate “Antifa and other similar groups” under domestic terrorism laws and activate the JTTFs to carry out these investigations.<sup>5</sup> It is clear that this administration has singled out Antifa as a way to criminalize individuals exercising their right to dissent, despite the fact that Antifa has no organizational structure and the FBI’s own internal assessments do not support the claim that Antifa is somehow weaponizing protests.<sup>6</sup>

Across the country, JTTF agents have sprung into action, interrogating protesters about their social media accounts and their religious and political views. In New York, it was reported that individuals arrested by local police for allegedly violating curfew were turned over to the FBI for questioning.<sup>7</sup> They were asked what they knew about Antifa and anarchist groups and what social media accounts they followed.<sup>8</sup> In Tennessee, JTTF officers questioned at least four protest organizers at their homes and workplaces about their alleged ties to Antifa.<sup>9</sup> The National Lawyers Guild has reported similar incidents in Sacramento and Oakland.

If this was not enough, **on June 24 Attorney General Barr announced the formation of a new task force to target “anti-government extremism.”**<sup>10</sup> The memorandum announcing the formation of the task force once again singled out Antifa. **The FBI is a core part of this new task force.** One of the purposes of the task force is to develop information about “extremist individuals, networks, and movements” and share that data with local law enforcement. The task force will also provide training and resources to local authorities to help prosecute “anti-government extremists.” In short, the FBI and the JTTF are doing what they have always done - repress legitimate political dissent and social justice movements to uphold white supremacist power structures.<sup>11</sup>

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<sup>5</sup> Press Release, U.S. Dep’t of Justice, Attorney General William P. Barr’s Statement on Riots and Domestic Terrorism (May 31, 2020), <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-riots-and-domestic-terrorism>.

<sup>6</sup> Ken Klippenstein, *The FBI Finds ‘No Intel Indicating Antifa Involvement’ in Sunday’s Violence*, THE NATION (June 2, 2020), <https://www.thenation.com/article/activism/antifa-trump-fbi/>.

<sup>7</sup> Ryan Devereaux, *What Law Did We Break? How the NYPD Weaponized a Curfew Against Protesters and Residents*, THE INTERCEPT (June 28, 2020), <https://theintercept.com/2020/06/28/new-york-city-curfew-nypd-protests/>.

<sup>8</sup> Ryan Devereaux, *What Law Did We Break? Brooklyn Man Was Arrested for Curfew Violation. The FBI Interrogated Him About His Political Beliefs.*, THE INTERCEPT (June 4, 2020), <https://theintercept.com/2020/06/04/fbi-nypd-political-spying-antifa-protests/>.

<sup>9</sup> Chris Brooks, *After Barr Ordered FBI to “Identify Criminal Organizers,” Activists Were Intimidated at Home and at Work*, THE INTERCEPT (June 12, 2020), <https://theintercept.com/2020/06/12/fbi-jttf-protests-activists-cookeville-tennessee/>.

<sup>10</sup> Matt Zapotosky, *Barr forms task force to counter ‘anti-government extremists’*, THE WASHINGTON POST (June 26, 2020, 2:15 PM), [https://www.washingtonpost.com/national-security/william-barr-task-force-anti-government-extremists-antifa-boogaloo/2020/06/26/138f424e-b7bf-11ea-a510-55bf26485c93\\_story.html](https://www.washingtonpost.com/national-security/william-barr-task-force-anti-government-extremists-antifa-boogaloo/2020/06/26/138f424e-b7bf-11ea-a510-55bf26485c93_story.html).

<sup>11</sup> MAPPING POLICE VIOLENCE, <https://mappingpoliceviolence.org/> (last visited July 15, 2020).

## Racially Motivated Terrorism Investigations and Charges

Since September 11, 2001, members of Arab, Middle Eastern, Muslim and South Asian (“AMEMSA”) communities have been subject to pervasive discrimination and surveillance by the federal government based on nothing more than their religion or national origin. In recent years, civil rights organizations<sup>12</sup> and investigative journalists<sup>13</sup> have reported on the FBI’s pattern of discriminatory investigations, predatory sting operations, and resulting baseless prosecutions against members of AMEMSA communities. In one of the most egregious cases, the FBI paid an informant to infiltrate Southern California mosques and gather personal information, such as email addresses, cell phone numbers, and political and religious views. The informant was even encouraged to enter into sexual relations with Muslim women in order to gather intelligence.<sup>14</sup>

In 2018, according to an East Bay Express article, the Bay Area JTTF, which OPD is a part of, investigated and arrested five Muslim men over a span of five years. All five cases fit a pattern: the men had not committed a violent crime prior to their arrest, and were charged only with attempted crimes — four with attempting to provide “material support” to a terrorist organization and one with attempted use of a weapon of mass destruction. Undercover FBI agents posing as terrorists heavily influenced the actions of three of the suspects. Each of them had been struggling with mental health issues and family problems.<sup>15</sup> Moreover, in 2019, it was revealed that after September 11, 2001, the FBI and the JTTF used bogus counterterrorism measures to entrap an innocent California man who was then wrongfully prosecuted and imprisoned for 14 years on terrorism charges based solely on his religious views and national origin.<sup>16</sup>

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<sup>12</sup> THE HUMAN RIGHTS INSTITUTE AT COLUMBIA LAW SCHOOL, *ILLUSION OF JUSTICE: HUMAN RIGHTS ABUSES IN US TERRORISM PROSECUTIONS*, (Human Rights Watch 2014), [https://www.hrw.org/sites/default/files/reports/usterrorism0714\\_ForUpload\\_1\\_0.pdf](https://www.hrw.org/sites/default/files/reports/usterrorism0714_ForUpload_1_0.pdf).

<sup>13</sup> In 2017, *The Intercept* updated and expanded upon the Human Rights Watch findings with their meticulously reported “Trial and Terror” series of stories, which thoroughly documented these abusive practices. *Inter alia*, it concluded that the federal government’s own behavior towards those caught up in these stings demonstrates they know “many of these so-called terrorists weren’t particularly dangerous in the first place.” Trevor Aaronson, *The Released: More Than 400 People Convicted of Terrorism in the U.S. Have Been Released Since 9/11*, THE INTERCEPT (Apr. 20, 2017), <https://theintercept.com/2017/04/20/more-than-400-people-convicted-of-terrorism-in-the-u-s-have-been-released-since-911/>. The full “Trial and Terror” series is available at <https://theintercept.com/series/trial-and-terror/>.

<sup>14</sup> Rahel Gebreyes, *Former FBI Informant Craig Monteilh: FBI Encouraged Me To Sleep With Muslim Women For Intel*, Huffington Post (March 4, 2015). Available at [https://www.huffpost.com/entry/fbi-informant-craig-monteilh\\_n\\_6800126](https://www.huffpost.com/entry/fbi-informant-craig-monteilh_n_6800126).

<sup>15</sup> Darwin BondGraham, *Terror or Entrapment*, EAST BAY EXPRESS (Jan. 03, 2018), [www.eastbayexpress.com/oakland/terror-or-entrapment/Content?oid=12242075&showFullText=true](http://www.eastbayexpress.com/oakland/terror-or-entrapment/Content?oid=12242075&showFullText=true).

<sup>16</sup> Steven Greenhut, *Lodi Terror Case Shows Injustice Results When Fear Rules*, THE ORANGE COUNTY REGISTER (Aug. 16, 2019), <https://www.ocregister.com/2019/08/16/lo-di-terror-case-shows-injustice-results-when-fear-rules/>.

In October 2017, Foreign Policy revealed that the FBI issued a secret intelligence assessment warning of the rise of a “Black Identity Extremist” (“BIE”) movement. In doing so, the FBI created the term “Black Identity Extremists” to attempt to justify the surveillance of, and other government action against, Black people, including Black activists.<sup>17</sup> This troubling FBI assessment was widely distributed to law enforcement agencies nationwide. Repeated requests from Congressional leaders and organizations such as the National Organization of Black Law Enforcement Executives (“NOBLE”) for the assessment to be retracted have been ignored by the FBI. In October 2019, the FBI testified to Congress that they are no longer using the designation Black Identity Extremists. **However, recent FOIA requests by the ACLU and Media Justice show that the FBI misled Congress: of one million pages of documents, up to one-third of the pages are on open investigations of Black people as “domestic terrorist” threats for potential “Black identity” activities.**<sup>18</sup> The San Francisco office of the FBI, which runs the Bay Area JTTF that the OPD is part of, is no different from other FBI and JTTF offices across the country, as it investigated a California civil rights group, By Any Means Necessary, for terrorism.<sup>19</sup>

### *The JTTFs’ Core Partnership with ICE*

Through FOIA requests, the ACLU has also received a document that details the FBI’s “Baseline Collection Plan,” which seeks to standardize the information collected during JTTF and other counterterrorism assessments and investigations.<sup>20</sup> It is also intended to “establish a foundation of intelligence upon which the FBI may base the decision to continue or close an Assessment or investigation.”<sup>21</sup> Among other things, **this document instructs JTTF officers to use federal databases to inquire about the “US person status” (citizenship or legal residency) of all people who are the subject of an “assessment,” even if the assessment is based on nothing more than a tip.** This information is recorded in the cases files and in federal databases accessible to, among others, Immigration and Customs Enforcement (ICE) and other Department of Homeland Security agencies.

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<sup>17</sup> Jana Winter & Sharon Weinberger, *The FBI’s New U.S. Terrorist Threat: ‘Black Identity Extremists,’* FOREIGN POLICY (Oct. 6, 2017), <http://foreignpolicy.com/2017/10/06/the-fbi-has-identified-a-new-domestic-terrorist-threat-and-its-black-identity-extremists/>.

<sup>18</sup> Press Release, MediaJustice, FBI Misled Congress: Black Activists Still Under Investigation by New and Old Extremist Designations (June 17, 2020), <https://mediajustice.org/news/fbi-misled-congress-black-activists-still-under-investigation-by-new-and-old-extremist-designations/>.

<sup>19</sup> Sam Levin, *Revealed: FBI investigated civil rights group as ‘terrorism’ threat and viewed KKK as victims,* THE GUARDIAN (Feb. 1, 2019), <https://www.theguardian.com/us-news/2019/feb/01/sacramento-rally-fbi-kkk-domestic-terrorism-california>.

<sup>20</sup> FED. BUREAU OF INVESTIGATION, COUNTERTERRORISM PROGRAM GUIDANCE BASELINE COLLECTION PLAN: AN ADMINISTRATIVE AND OPERATIONAL GUIDANCE, (Sept. 24, 2009), <https://www.aclu.org/files/fbimappingfoia/20111019/ACLURM004887.pdf>.

<sup>21</sup> *Id.* at 3, Category A.2.

In discussions with a representative of the Asian Law Caucus and the San Francisco Bay Area office of the Council on American Islamic Relations, the FBI's Assistant Special Agent in-Charge Craig Fair did not dispute that this sort of information is sought and retained in federal databases as a result of JTTF-conducted assessments. **This standard JTTF activity, if performed for the FBI by OPD officers, directly violates Oakland's Sanctuary City Resolution, which states that city employees shall not "request information about or disseminate information regarding the immigration status of any individual."**<sup>22</sup> It does not matter if that information is sought from federal databases or individuals. It does not matter if the OPD officer makes use of the information during the JTTF investigation or assessment. The outcome of the search (whether a person is found to be with or without legal status) is irrelevant. Oakland's own laws prohibit the inquiry from being made at all. If the person is undocumented, a new record will have been created in a federal database identifying him or her as such for the first time.

Moreover, the FBI actively works with ICE to detain and deport undocumented individuals, especially those who are politically active. In August 2018, Sergio Salazar, a DACA recipient, was arrested outside of his home and eventually deported to Mexico. An investigation by The Intercept revealed that the JTTF surveilled Mr. Salazar and monitored his social media accounts, where he unabashedly expressed his political views, before turning him over to ICE.<sup>23</sup> It is also no secret that the FBI and the JTTF monitor immigrants' rights activists for nothing more than their political opinion.<sup>24</sup> In recent years, the FBI has surveilled organizations such as Pangea Legal Services, a Bay Area-based organization which provides legal services to immigrants, the Transgender Law Center, and Kids in Need of Defense.<sup>25</sup>

## **THE FBI ACTIVELY PREVENTS LOCAL POLICE FROM FOLLOWING LOCAL LAW**

The San Francisco Bay Area office of the FBI has actively resisted and worked to thwart local efforts at transparency and accountability. For the five years that the San Francisco Police Department (SFPD) participated in the JTTF, both the FBI and the SFPD assured elected officials and city residents that SFPD officers participating in the JTTF were following all state and local laws and policies. However, in December 2016, the FBI produced a white paper which essentially concluded that San Francisco could only comply with its "Safe San Francisco Civil

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<sup>22</sup> Oakland, Cal., Resolution 86498 (Nov. 29, 2016), <http://www.oaklandcommunity.org/wp-content/uploads/2017/03/86498-C.M.pdf>.

<sup>23</sup> Ryan Devereaux & Cora Currier, *How An Occupy ICE Activist And DACA Recipient Was Deported For Tweeting*, THE INTERCEPT (Nov. 2, 2019), <https://theintercept.com/2019/11/02/deportation-occupy-ice-daca/>.

<sup>24</sup> Jana Winter & Hunter Walker, *Exclusive: Document reveals the FBI is tracking border protest groups as extremist organizations*, YAHOO NEWS (Sep. 4, 2019), <https://news.yahoo.com/exclusive-document-reveals-the-fbi-is-tracking-border-protest-groups-as-extremist-organizations-170050594.html>.

<sup>25</sup> Patrick Eddington, *Constitution Day 2019: The Hidden Domestic Surveillance Crisis*, JUST SECURITY (Sept. 17, 2019), <https://www.justsecurity.org/66201/constitution-day-2019-the-hidden-domestic-surveillance-crisis/>.

Rights Ordinance” (San Francisco Administrative Code Section 2A.74)<sup>26</sup> if San Francisco’s standing orders, policies, or ordinance, which is identical to the Oakland Ordinance, were weakened.<sup>27</sup>

Perhaps unbeknownst to the OPD, the resolution they introduced in September 2019 before the Privacy Advisory Commission for the purpose of getting the MOU approved by the City Council also tries to thwart local efforts at transparency and oversight. In addition to getting the City of Oakland on record unnecessarily and dangerously lauding the FBI’s discriminatory counterterrorism tactics, the resolution’s language creates confusion about the standard of law OPD officers participating in the JTTF must follow. The resolution, if passed, would signal to OPD officers participating in the JTTF that when faced with a conflict between local rules and federal standards, they have to engage in some sort of balancing test to determine which standard to follow. However, Oakland law is clear: OPD officers must follow state and local laws and policies, and not federal standards, at *all* times. It is hard to see this language as anything but a thinly veiled attempt by the FBI to weaken Oakland laws and policies.

### **OPD’S VIOLATIONS OF LOCAL LAWS AND POLICIES**

In 2017, when many of our organizations worked to pass the *City Participation in Federal Law Enforcement Surveillance Operations Ordinance* (Ordinance), which requires OPD officers working with the JTTF to follow local laws that provide stronger safeguards against profiling than federal rules, we believed that transparency and oversight over the OPD JTTF officer’s activities would keep Oakland communities safe from FBI harassment. We believed that if we put transparency measures on the books, the OPD would follow through.

However, our work over the last two years and the events of the past few months have proved us wrong. As previously mentioned, OPD has been in continuous violation of the Section 504(l) of the Oakland City Charter since at least 2007 when it first joined the JTTF. Section 504(l) requires the OPD to obtain city council approval for every intergovernmental contract or MOU it enters. The OPD is only bringing up the MOU for council approval now that a hearing has been scheduled to potentially terminate their participation in the JTTF. Moreover, in the two and half years since the Ordinance has been in effect, OPD has already violated it twice, effectively blocking the City Council from exercising its oversight functions. On February 7, 2019, OPD submitted their first annual report on their 2018 participation on the JTTF to the Privacy Advisory Commission (Commission). After several months of advocacy from community and civil rights organizations, during which time OPD insisted that they could

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<sup>26</sup> S.F., Cal., Code ch. 2A, art. IV, § 2A.74, <https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances12/o0083-12.pdf>.

<sup>27</sup> Ryan Devereaux, *FBI And San Francisco Police Have Been Lying About Scope Of Joint Counterterrorism Investigations, Document Suggests*, THE INTERCEPT (Nov. 1, 2019), <https://theintercept.com/2019/11/01/fbi-joint-terrorism-san-francisco-civil-rights/>.

not release much of the data they had already agreed to publicly disclose, OPD finally provided a complete report to the Commission on May 2, 2019, which was formally accepted by the Commission. From here, per the Ordinance, OPD should have sent the 2018 annual report to the City Council to schedule for a public hearing and final approval; yet they did not. Similarly, the OPD presented their 2019 annual report to the Commission in June 2020, four months after it was initially due. This submission only happened after many of our organizations pressed OPD to submit a report during Commission public hearings and through a letter to the Public Safety Committee of the Oakland City Council. OPD only submitted these reports for consideration by the full city council a few weeks ago, when our coalition sent a letter to members of Oakland's Public Safety Committee pointing out the OPD's violations of the 2017 Ordinance.

Moreover, the events of the past few months, especially the OPD's handling of the George Floyd protests on June 1, clearly show that the OPD is unable to follow its own departmental policies. On June 1, twenty minutes *before* the start of an 8pm curfew, the OPD fired numerous rounds of tear gas and other less than lethal weapons into a crowd of mostly young protesters.<sup>28</sup> This was confirmed by a review of over 50 videos and hundreds of photos taken that evening. However, the OPD leadership has consistently defended its use of force and used the misleading rhetoric from the White House to brand protesters as "outsiders" and "agitators" that seek to harm the community.<sup>29</sup> These incidents have prompted the National Lawyers Guild to file a lawsuit against the OPD for their use of "non-lethal" weapons to disperse lawful protesters.<sup>30</sup>

With the federal government consistently treating protesters and activists as domestic terrorism threats and the OPD showing repeatedly that it does not follow local laws and policies, there is no reason to believe that OPD is in fact following local laws and policies when participating in the JTTF. With the FBI and JTTF using domestic terrorism laws to investigate protesters, and targeting and criminalizing Black, immigrant, Muslim, and other communities of color, the OPD's participation in the JTTF further erodes any trust the community may have in the department. The OPD's participation in the JTTF only enhances the FBI's ability to suppress First Amendment-protected activities. The only way for OPD to start building some semblance of trust with the community is for them to withdraw from the JTTF.

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<sup>28</sup> Sarah Belle Lin et al., *Did OPD violate its own policies against protesters? We investigated.*, THE OAKLANDSIDE (July 6, 2020), <https://oaklandside.org/2020/07/06/opd-excessive-force-against-protesters/>.

<sup>29</sup> George Kelly, *George Floyd Protests: Oakland Officials Defend Downtown Use Of Force*, EAST BAY TIMES (June 2, 2020), <https://www.eastbaytimes.com/2020/06/02/george-floyd-protests-oakland-officials-justify-downtown-use-of-force/>.

<sup>30</sup> Angela Ruggiero, *Civil Rights Lawsuit Filed Against Oakland For Police Use Of Force During Protests*, SAN JOSE MERCURY NEWS (June 11, 2020), <https://www.mercurynews.com/2020/06/11/civil-rights-lawsuit-filed-against-oakland-for-police-use-of-force-during-protests/>.



## **CLOSING**

Oakland has a rich diversity of communities, immigrant and non-immigrant, that follow a variety of religions and hold a range of political opinions. The OPD's public safety mandate is to protect the human and civil rights of these communities, not undermine those rights by partnering with the FBI's JTTF that is involved in the suppression of First Amendment protected activities. Therefore, we ask you to follow in the footsteps of cities like Atlanta, San Francisco, Portland, Albuquerque, and Saint Paul, who withdrew from the JTTF, and vote to end the OPD's participation in the FBI's JTTF on October 20, 2020.

Sincerely,

Asian Americans Advancing Justice-Asian Law Caucus  
Council on American Islamic Relations – San Francisco Bay Area  
Yemeni Alliance Committee  
American Civil Liberties Union of Northern California  
Alliance of South Asians Taking Action  
American Muslims for Palestine  
Anti Police-Terror Project  
Arab American Democratic Club  
Arab Resource and Organizing Center  
As-Salam Mosque  
Block by Block Organizing Network  
CA Sanctuary Campaign  
California Immigrant Policy Center  
Critical Resistance Oakland  
Defending Rights and Dissent  
Ella Baker Center  
Habari Ummah  
Immigrant Legal Resource Center  
Islamic Cultural Center of Northern California  
Islamophobia Studies Center  
Lighthouse Mosque  
Media Justice  
MSA West  
National Lawyers Guild San Francisco  
Palestine Legal  
Pangea Legal Services  
Partnership for the Advancement of New Americans  
Restore the Fourth

San Francisco Muslim Community Center  
Secure Justice  
SEIU Local 87  
Support Life Foundation  
Wellstone Democratic Club

CC: Chief Susan Manheimer, Oakland Police Department  
Mr. Bruce Stoffmacher, Oakland Police Department  
Mr. Joe DeVries, City of Oakland  
Commissioner Brian Hofer, Oakland Privacy Advisory Commission