


Approved as to Form and Legality



City Attorney's Office

OAKLAND CITY COUNCIL

88346

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT KAPLAN AND
COUNCILMEMBER FORTUNATO BAS

**RESOLUTION TERMINATING THE OAKLAND POLICE
DEPARTMENT'S PARTICIPATION IN THE JOINT TERROR TASK
FORCE.**

WHEREAS, the City of Oakland has a strong tradition of embracing and valuing diversity and respecting the civil and human rights of all residents regardless of race, religion, political opinion, or national origin; and

WHEREAS, the City Council acknowledges that cities across the country, including San Francisco¹, Portland², Albuquerque, Saint Paul, and Atlanta have ended their participation in various federal task forces, including the Federal Bureau of Investigation's (FBI) Joint Terrorism Task Force (JTTF) because of the federal government's refusal to allow local police departments to follow state and local laws; and

WHEREAS, the City Council finds that the FBI and the JTTF have a troubling history of profiling individuals and communities based on their race, religion, national origin, and political opinion; and

WHEREAS, in its April 1, 2010-September 30, 2010 "Semiannual Report to Congress", the Office of the Inspector General found that the FBI's "factual basis for opening some of the investigations of individuals affiliated with the groups was factually weak, and in several cases there was little indication of any possible federal crimes"; that the FBI "extended the duration of investigations involving advocacy groups or their members without adequate basis, and in a few instances the FBI improperly retained information about the groups in its files"; that the FBI also "classified some investigations relating to nonviolent civil disobedience under its "Acts of Terrorism" classification, which resulted in the watch listing of subjects during the investigation"; that the FBI "inappropriately used a confidential informant to collect and retain information about

¹ <https://sanfrancisco.cbslocal.com/2017/02/01/san-francisco-police-department-suspendsparticipation-with-fbi-joint-terrorism-task-force/>

² <https://www.wweek.com/news/city/2019/02/13/portland-leaves-the-joint-terrorism-task-force-againbecoming-second-city-to-cut-ties/>

the First Amendment expressions of persons associated with the Pittsburgh Organizing Group”; that the FBI’s initiating of a case pertaining to an individual associated with PETA “did not support opening any investigation at all”; that the FBI “opened investigations of individuals associated with Greenpeace based on concerns about *potential* illegal conduct, such as trespass, and vandalism”; that the FBI’s files “contained information about nonviolent civil disobedience by Catholic Worker members’ “peaceful trespass on a military facility”³; and

WHEREAS, the City Council finds that after the tragic events of 9/11, the FBI used bogus counterterrorism measures to entrap an innocent California man and wrongfully prosecute and imprison him for 14 years on terrorism charges based solely on his religious views and national origin;⁴ and

WHEREAS, Oakland has been on record as a City of Refuge since July 8, 1986; and

WHEREAS, ICE is the second largest member of the JTTF by number of agents; and

WHEREAS, the FBI and the JTTF actively worked with ICE to deport a Texas man with DACA status, because of his political views;⁵ and

WHEREAS, the “FBI is monitoring groups on the border that are protesting U.S. immigration policy”;⁶ and

WHEREAS, the City Council finds that the San Francisco office of the FBI, which runs the Bay Area JTTF that the OPD is part of, investigated California civil rights groups as terrorism threats;⁷ and

WHEREAS, “members of an FBI J[TTF] tracked the time and location of a Black Lives Matter protest” at the Mall of America in Bloomington, Minnesota after a tipster contacted the FBI and said some vandalism may occur; no mention of potential vandalism is present in the JTTF email chain, and no vandalism or any acts of violence occurred at the protest;⁸ and

WHEREAS, “the FBI is investigating political activists campaigning against the Dakota Access pipeline, diverting agents charged with preventing terrorist attacks to instead focus their attention on indigenous activists and environmentalists;⁹ and

WHEREAS, the FBI’s 2018-2019 “Threat Guidance” stated that Black Identity Extremists and Animal Rights/Environmental extremists were the top existential threats;¹⁰ and

³ <https://oig.justice.gov/semiannual/1011/fbi.htm>

⁴ <https://www.oregister.com/2019/08/16/lodi-terror-case-shows-injustice-results-when-fear-rules/>

⁵ <https://theintercept.com/2019/11/02/deportation-occupy-ice-daca/>

⁶ <https://news.yahoo.com/exclusive-document-reveals-the-fbi-is-tracking-border-protest-groups-as-extremistorganizations-170050594.html>

⁷ <https://www.theguardian.com/us-news/2019/feb/01/sacramento-rally-fbi-kkk-domestic-terrorism-california>

⁸ <https://theintercept.com/2015/03/12/fbi-appeared-use-informant-track-black-lives-matter-protest/>

⁹ <https://www.theguardian.com/us-news/2017/feb/10/standing-rock-fbi-investigation-dakota-access>

¹⁰ <https://www.newsweek.com/fbi-leak-black-identity-extremist-threat-1453362>

WHEREAS, the mission of the OPD is to protect the safety of the public against crimes committed by persons in accordance with the laws of the State of California and the City of Oakland, and the policies of the Police Department; and

WHEREAS, the City of Oakland has previously entered into a Safe Streets Task Force agreement with the FBI to combat violent crimes, which states that its mission “is to identify and target for prosecution criminal enterprise groups and individuals responsible for crimes of violence such as murder and aggravated assault, bank robbery, Hobbs Act offenses, extortion, transportation crimes, special jurisdiction matters, and other violent incident crimes, as well as to focus on the apprehension of dangerous fugitives where there is or may be a federal investigative interest; and

WHEREAS, on June 2, 2015, the City Council voted to authorize the “FBI buildout” at OPD headquarters and to amend the Safe Streets Task Force agreement to restrict FBI involvement to homicide investigations only, and this restriction was ignored, and no amendment occurred; and

WHEREAS, the City Council finds that the FBI has actively resisted and worked to thwart local efforts at transparency and accountability and worked with local police departments to mislead elected officials and the public about the scope of joint terrorism investigations in the Bay Area;¹¹ and

WHEREAS, on June 8, 2012, the City of San Francisco enacted Ordinance No. 2A.74 et seq., the “Safe San Francisco Civil Rights Ordinance”, which states in relevant part that the San Francisco Police Department may only assist the JTTF in a manner that is fully consistent with the laws of the State of California, as well as the laws and policies of the City of San Francisco, including but not limited to Police Department policies, procedures, and orders; and

WHEREAS, in December 2016, the FBI produced a white paper which essentially concluded that San Francisco could only comply with its “Civil Rights Ordinance” if San Francisco’s standing orders, policies, or ordinance were weakened, only sanitized information was provided in the required annual report, San Francisco withdraws from the JTTF, or its task force officers are not assigned any investigations or leads;¹² and

WHEREAS, on October 3, 2017, the City Council enacted Ordinance No. 13457 C.M.S., Chapter 9.72 et seq., which states in relevant part that the Oakland Police Department may only assist the JTTF in a manner that is fully consistent with the laws of the State of California, as well as the laws and policies of the City of Oakland, including but not limited to Police Department policies, procedures, and orders; and

WHEREAS, the FBI JTTF Memorandum of Understanding (MOU) states that “JTTF personnel are not permitted to discuss official JTTF business with supervisors who are not members of the JTTF unless the supervisor possesses the appropriate security clearance and the dissemination or discussion is specifically approved by the FBI JTTF Supervisor¹³”, which could prohibit OPD’s compliance with Oakland’s “Transparency and Accountability for City

¹¹ <https://theintercept.com/2019/11/01/fbi-joint-terrorism-san-francisco-civil-rights/> Last Updated 2019.11.30

¹² <https://www.documentcloud.org/documents/6535344-FBI-White-Paper.html>

¹³ “Joint Terrorism Task Force Standard Memorandum of Understanding Between the Federal Bureau of Investigation and The Oakland Police Department”, Section VI A. 4.

Participation in Federal Surveillance Operations” Ordinance No. 13457 C.M.S., Chapter 9.72.010; and

WHEREAS, under the Oakland City Charter section 504(l) (Charter section 504(l)), any interagency agreement between the City and another public agency for joint governmental actions, such as a “Memorandum of Understanding” (MOU), must be approved by the City Council and the public has a right to speak on the items; and

WHEREAS, the “Transparency and Accountability for City Participation in Federal Surveillance Operations” Ordinance No. 13457 C.M.S., Chapter 9.72.010 requires that before execution of any MOU between OPD and the FBI, the Chief of Police shall submit the proposed MOU and any orders, policies, and procedures relevant to the subject matter of the MOU for discussion and public comment at an open meeting of the Privacy Advisory Commission; and

WHEREAS, the FBI and JTTF may conduct surveillance without reasonable suspicion, in conflict with state law,¹⁴ and OPD DGO M-17 Section V A. 1; and

WHEREAS, the FBI and JTTF may conduct demographic mapping, in conflict with state law,¹⁵ Oakland’s Sanctuary City ordinance, and OPD DGO M-19 Section III C.; and

WHEREAS, the FBI and JTTF may seize assets pursuant to federal “civil asset forfeiture” guidelines, which conflict with state law;¹⁶ and

WHEREAS, OPD has deprioritized participation in the JTTF, by assigning one part time employee that “only participated minimally in JTTF operations (approximately 1-2 times a month)”¹⁵ demonstrating a lack of need; and

WHEREAS, the OPD 2018 JTTF annual report states that OPD’s JTTF officer was only assigned to assist on one case, that the JTTF officer participated in zero “duty to warn cases”, again demonstrating the lack of need; and

WHEREAS, in 2019, OPD informed the Privacy Advisory Commission that the JTTF officer was unaware of the existence of the “Transparency and Accountability for City Participation in Federal Surveillance Operations” Ordinance No. 13457 C.M.S., Chapter 9.72.010, enacted October 3, 2017; now, therefore, be it

RESOLVED: That pursuant to Ordinance No. 13457, OPD may participate in the JTTF only in a manner that is fully consistent with the laws of the State of California as well as the laws and policies of the City of Oakland, including but not limited to Police Department policies, procedures, and orders; and be it

FURTHER RESOLVED: That the City Council finds that OPD’s participation in the JTTF would violate the “Transparency and Accountability for City Participation in Federal Surveillance Operations” Ordinance No. 13457 C.M.S., Chapter 9.72.010, enacted October 3, 2017, due to existing federal rules and guidelines; and be it

¹⁴ Cal. Const. Article 1, Section 1, *White v. Davis* (1975) 13 Cal.3d 757.

¹⁵ SB 31 (Lara, 2017)

¹⁶ SB 443 (Mitchell, 2016).

FURTHER RESOLVED: That OPD shall immediately cease participation in the FBI's JTTF, and shall immediately destroy any files or information retained pursuant to JTTF investigations, unless federal or state law requires their retention.

IN COUNCIL, OAKLAND, CALIFORNIA,

OCT 20 2020

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid

ATTEST: *Candace Tracy For*
ASHA REED
Acting City Clerk and Clerk of the Council of
the City of Oakland, California

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