

CITY OF OAKLAND

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AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Anne E. Kirkpatrick
Chief of Police

SUBJECT: Immigration Policy, Partnerships, and
Data Sharing

DATE: May 22, 2017

City Administrator
Approval

Date

5/30/17

RECOMMENDATION

Staff Recommends That The City Council Receive This Informational Report From the Oakland Police Department (OPD) On To What Extent The City of Oakland's Existing Law Enforcement Policies And Rules Align With The American Civil Liberties Union (ACLU) Freedom Cities Nine Model State And Local Law Enforcement Policies And Rules.

EXECUTIVE SUMMARY

Oakland City Council President Pro Tempore, Abel Guillen, has requested an informational report concerning the alignment of OPD policies and rules with the ACLU Freedom Cities Nine Model State and Local Law Enforcement Policies and Rules. The City of Oakland Privacy Advisory Commission (Privacy Commission) requested information about a number of items from OPD, including:

- The drafting of an immigration policy that embodies the current practice of not asking for immigration status and not sharing it – if known – unless to provide assistance to an individual.
- Reviewing – and eventually rewriting – all agreements between the City of Oakland and Federal agency partners to incorporate restrictions – on all signatories – from corresponding resolutions.
- Reviewing access to OPD databases by non-OPD entities and ensuring that all information-sharing is appropriate, necessary, and beneficial.
- Collecting data from previous OPD interactions with Immigration and Customs Enforcement (ICE).

Because both the request from Council President Pro Tempore Guillen and the requests from the Privacy Commission concern OPD and immigration and because such requests were made contemporaneously, this report is responsive to both. Moreover, this report is an attempt to provide information about OPD and Federal partnerships and information-sharing.

Item: _____
Public Safety Committee
July 11, 2017

BACKGROUND AND LEGISLATIVE HISTORY

As requested by the Privacy Commission, a review of formal written agreements (Memoranda of Understanding, or MOUs) between OPD and Federal agencies was conducted at the March 9, 2017 Privacy Commission meeting.

Council President Pro Tempore Abel Guillen submitted a Request to Schedule Agenda Item titled Informational Report on City Alignment with ACLU's Model Law Enforcement Policies and Rules at the April 20, 2017 Rules and Legislation Committee meeting.

ANALYSIS AND POLICY ALTERNATIVES

New Immigration Policy and the ACLU Freedom Cities Policies and Rules

In light of recent concerns about the approach of the Federal government toward undocumented immigrants in the United States, OPD, through the efforts of the Director of Public Safety in the Mayor's Office, has implemented a new policy concerning immigration (**Attachment A**). This policy reflects the City of Oakland's status as a sanctuary city per Resolution No. 86498 C.M.S., existing OPD practices, and current Federal and State law.

The new OPD immigration policy provides that "Officers shall not inquire or request proof of immigration status or citizenship when providing services or benefits except where the receipt of such benefits or services is contingent upon one's immigration status..." The policy also provides that members of OPD shall not:

- Enforce or assist ICE in the enforcement of violations of civil immigration laws
- Initiate investigations or use personnel or resources where the only objective is to discover whether an individual is in violation of a civil immigration law
- Detain individuals for a violation of civil immigration law

Below is an in-depth analysis of how OPD policies and practices compare to the ACLU Freedom Cities Nine Model State and Local Law Enforcement Policies and Rules. The first four of the ACLU nine model state and local law enforcement policies and rules have been promulgated to "[d]efend our friends, families and neighbors from Trump's mass deportation agenda."¹ These model policies and rules are as follows:

- 1) The Judicial Warrant Rule: [County/City/State] officials shall require a judicial warrant prior to detaining an individual or in any manner prolonging the detention of an individual at the request of U.S. Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP).

OPD does not own or maintain a jail. Rather, individuals arrested by the OPD are taken to a County detention facility where they are booked into the custody of the Alameda

¹ <https://peoplepower.org/freedom-cities.html>

County Sheriff's Department. Accordingly, the OPD does not receive, and is not in a position to respond to, ICE detainer requests to prolong detention. OPD immigration policy also makes it clear that OPD officers may not detain or prolong the detention of an individual for a violation of civil immigration law. More specifically, the policy (section 415.3, third paragraph) provides:

The mere fact that an individual is unlawfully in the United States is not a criminal offense. Thus, unlawful presence in the United States, by itself, does not justify continued detention beyond that of an individual's normal release date. This applies even where ICE or United States Customs and Border Protection (CBP) provide an OPD officer with administrative forms that use the terms "probable cause" or "warrant." A lawful detention under the Fourth Amendment must be supported by probable cause that a person has committed a crime.

If the OPD could and did receive an ICE detainer request for someone in OPD custody, the policy provides that the request must be forwarded to the Chief or the Chief's designee for a compliance determination. (Section 415.5.) And, as noted above, there must be probable cause to support the detention of the individual named in the request for a violation of a criminal law (not merely civil immigration law). This would generally, but not necessarily, involve a judicial warrant.

OPD policy also requires that the detention must comply with the California Trust Act, Gov't Code §§ 7282, 7282.5. The Trust Act limits the discretion of law enforcement officials to detain an individual pursuant to a federal immigration detainer request, should an agency choose to do so, unless two conditions are met. First, the continued detention must "not violate any federal, state, or local law, or any local policy." Second, the detainee must have a qualifying criminal history as enumerated in Government Code section 7282.5(a) or be the subject of an outstanding federal felony arrest warrant.

Finally, the Chief must also consider whether the individual poses a risk to public or officer safety and consider the availability of OPD personnel and resources necessary to comply with the request.

- 2) No Facilitation Rule: [County/City/State] officials shall not arrest, detain, or transport an individual solely on the basis of an immigration detainer or other administrative document issued by ICE or CBP, without a judicial warrant.

OPD immigration policy precludes officers from enforcing civil immigration laws, assisting ICE in the enforcement of immigration laws, or detaining individuals for violations of immigration law. (Section 415.4.) Moreover, the policy specifically informs officers that ICE administrative requests are not judicial warrants, even if they use the terms "probable cause" or "warrant." (Section 415.3.)

- 3) Defined Access/Interview Rule: Unless acting pursuant to a court order or a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no [County/City/State] official shall permit ICE or CBP agents access to

[County/City/State] detention facilities/jails or any person in [County/City/State] custody for investigative interviews or other investigative purposes.

OPD does not own or maintain a detention facility/jail. Moreover, OPD's policy provides that the OPD will not provide federal immigration agencies with access to individuals for the purposes of immigration enforcement. (Section 415.2.)

- 4) Clear Identification Rule: To the extent ICE or CBP has been granted access to [County/City/State] facilities, individuals with whom ICE or CBP engages will be notified that they are speaking with ICE or CBP, and ICE or CBP agents shall be required to wear duty jackets and make their badges visible at all times while in [County/City/State] facilities.

OPD does not own or maintain a detention facility/jail, and does not provide access to individuals for the purposes of immigration enforcement. (Section 415.2).

Additionally, OPD is currently reviewing all agreements with Federal agencies (see **Attachment B**). Requirements for notification, attire, and identification when accessing facilities controlled by OPD will be reviewed in this process. Language governing notification, attire, and identification will be included in any new and revised agreements wherever feasible.

Rules 5) through 7) of the ACLU nine model state and local law enforcement policies and rules have been promulgated to "[p]rotect our friends, families and neighbors' privacy from the Trump administration."² These model policies and rules are as follows:

- 5) Don't Ask Rule: [County/City/State] officials shall not inquire into the immigration or citizenship status of an individual, except where the inquiry relates to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, or where required by state or federal law to verify eligibility for a benefit, service, or license conditioned on verification of certain status.

As provided above, the new OPD immigration policy (**Attachment A**) provides that "Officers shall not inquire or request proof of immigration status or citizenship when providing services or benefits except where the receipt of such benefits or services is contingent upon one's immigration status..."

- 6) Privacy Protection Rule: No [County/City/State] official shall voluntarily release personally identifiable data or information to ICE or CBP regarding an inmate's custody status, release date or home address, or information that may be used to ascertain an individual's religion, ethnicity or race, unless for a law enforcement purpose unrelated to the enforcement of a civil immigration law.

OPD does not have a detention facility. As such, there is no inmate information to be collected or shared. Furthermore, OPD policy (415.6, second paragraph) provides that,

² <https://peoplepower.org/freedom-cities.html>

"Officers shall not share non-public information about an individual's address, upcoming court date, or release date with ICE or CBP. Officers shall respond to an ICE or CBP request for non-public information only when a judicial warrant accompanies the request."

- 7) Discriminatory Surveillance Prohibition Rule: No [County/City/State] agency or official may engage in any surveillance that is based, to any extent or degree, upon a person or group's actual or perceived religion, ethnicity, race, national origin, or immigration status, except where doing so is based on a reliable, specific description of a suspect and adheres to appropriate Constitutional standards.

OPD is committed to equal enforcement of the law and equal service to the public regardless of a person's immigration status. This commitment increases our effectiveness in protecting and serving the entire community.

OPD Department General Order (DGO) M-19, Prohibitions Regarding Racial Profiling and other Bias-Based Policing, provides that, "Members shall not consider actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in establishing either reasonable suspicion or probable cause or when carrying out law enforcement activities EXCEPT when credible and reliable information links specific suspect descriptions to specific unlawful or suspicious activity."³

Rule 8) of the ACLU nine model state and local law enforcement policies and rules has been promulgated to "[h]elp our friends, families and neighbors get redress when abuses and mistakes occur."⁴ This model rule is as follows:

- 8) Redress Rule: Any person who alleges a violation of this policy may file a written complaint for investigation with [oversight entity].

OPD provides a robust process to allow individuals to file written complaints for any policy violation or other misconduct. The OPD website⁵ provides a link to the "Filing a Complaint" guide. This guide is also physically available at several locations, including the Police Administration Building, the OPD Eastmont Station, the Internal Affairs Division office at Frank Ogawa Plaza, the Citizens Police Review Board (CPRB) office, OPD substations, and is carried in every OPD patrol car. The Complaint guide provides instructions on how to file a written complaint against members of OPD. The guide is available in English, Chinese, Spanish, and Vietnamese and provides a number of ways that a complaint can be filed:

- Request to speak directly to the supervisor of the officer or employee.
- Use the 24-hour Complaint Hotline...and leave a detailed message describing the complaint.
- Visit the Internal Affairs Division and file the complaint with the Intake Officer.

³ <http://www2.oaklandnet.com/government/o/OPD/s/DepartmentalPublications/OAK032293>, Section III C

⁴ <https://peoplepower.org/freedom-cities.html>

⁵ www2.oaklandnet.com/w/dowd006270

- Telephone the Internal Affairs Division and make arrangements for an investigator to meet you at a convenient location, or a local community resource center.
- Call the Citizens' Police Review Board office...and if no one is available, leave a detailed voice mail message describing the complaint.
- Visit the Citizens' Police Review Board office and file the complaint with an investigator.

The Complaint guide includes a Complaint Form and detailed instructions on how to complete it and submit it upon completion.

Rule 9) of the ACLU nine model state and local law enforcement policies and rules has been promulgated to "[h]elp ensure our friends, families, and neighbors are protected from discrimination."⁶ This model rule is as follows:

- 9) Fair and Impartial Policing Rule: No [County/City/State] official shall interrogate, arrest, detain or take other law enforcement action against an individual based upon that individual's perceived race, national origin, religion, language, or immigration status, unless such personal characteristics have been included in timely, relevant, credible information from a reliable source, linking a specific individual to a particular criminal event/activity.

OPD is committed to equal enforcement of the law and equal service to the public regardless of a person's immigration status. This commitment increases our effectiveness in protecting and serving the entire community.

As stated above, OPD Department General Order (DGO) M-19, Prohibitions Regarding Racial Profiling and other Bias-Based Policing, provides that, "Members shall not consider actual or perceived race, ethnicity, national origin, gender, age, religion, sexual orientation, or disability in establishing either reasonable suspicion or probable cause or when carrying out law enforcement activities EXCEPT when credible and reliable information links specific suspect descriptions to specific unlawful or suspicious activity."⁷

Agreements with Federal Agencies

The City of Oakland has benefitted from a number of longstanding partnerships between OPD and various Federal agencies. These partnerships provide much greater opportunities to reduce violent crime in the City of Oakland and are governed by MOUs. The authority for OPD to enter these MOUs is delegated to the City Administrator or designee by the City Council through resolution. While such resolutions are binding on OPD staff, the restrictions incorporated in the resolutions have not traditionally been captured in the MOUs. In an effort to further protect the Oakland community from unfavorable Federal policies and practices, OPD has begun a comprehensive review of MOUs with Federal partners. For those MOUs that do not adequately

⁶ <https://peoplepower.org/freedom-cities.html>

⁷ <http://www2.oaklandnet.com/government/o/OPD/s/DepartmentalPublications/OAK032293>, Section III C

incorporate restrictions contained in corresponding resolutions, these MOUs are being rewritten to do so.

Memoranda of Understanding (MOUs) provide the basis for working relationships between OPD and other governmental agencies. Such agreements require authorization from City Council that is delegated to the City Administrator and/or designee. The Privacy Commission expressed concern that MOUs do not regularly include the express terms authorized by Council through resolutions and that Council does not generally review MOUs at the time they pass corresponding resolutions. The Privacy Commission advocated a change in the review process that would ensure that the terms of resolution are reflected in the corresponding MOUs – perhaps through regularly providing the draft MOU to Council with the agenda report and resolution. This practice would ensure that all terms – including restrictions – were contained in partnership agreements between OPD and Federal agencies.

An additional concern by the Privacy Commission in this area is the current agreement (effective June 15, 2016, **Attachment D**) between OPD and U.S. Immigration and Customs Enforcement/Homeland Security Investigations (ICE/HSI). This MOU was authorized by City Council on May 3, 2016 per Resolution No. 86156 C.M.S. The resolution and MOU authorize OPD Officers to be designated as United States Customs Title 19 Task Force Officers. The resolution and MOU both specifically state that ICE/HSI does not grant the authority to OPD to enforce immigration law.

The Privacy Commission has recommended that the City of Oakland terminate the MOU with ICE/HSI based on the following:

- There has been no demonstrated success under the program
- There have been no OPD Officers assigned to an ICE/HSI Task Force
- OPD has neither requested nor received any reimbursement for funds
- The presence of ICE in local communities has created trauma
- ICE has demonstrated a willingness to mislead local communities as to their intentions, as was recently demonstrated in the City of Santa Cruz
- ICE policies conflict with policies of sanctuary cities such as Oakland

The Privacy Commission has expressed an interest in requesting that the Oakland City Council retract the authorization granted in Resolution No. 86156 C.M.S. The Privacy Commission has provided a letter supporting this request (**Attachment E**).

A list of all current MOUs between OPD and Federal agency partners is provided as **Attachment B**.

Database Access

In order to be more effective – and efficient – at reducing crime in the City of Oakland, OPD maintains a number of databases and utilizes a number of databases maintained by other entities. All databases maintained by OPD contain only information that is necessary and appropriate to assist OPD personnel with investigations while providing greater opportunity to keep the Oakland community safe. Only information that provides value for criminal

Item: _____
Public Safety Committee
July 11, 2017

investigations is captured and maintained. Non-OPD databases that are accessed by OPD are only queried for information that will assist in criminal investigations.

None of the databases maintained by OPD contain any information concerning immigration status. OPD does not collect or enter immigration status into any database. A list of databases, the information contained in each one, and who has access to each database is provided as **Attachment C**. The Privacy Commission expressed concern that the list did not provide the appropriate fields or adequate information concerning each database. In particular, the Privacy Commission expressed concern about conditions of upstream and downstream sharing of information as well as access rights. OPD staff looks forward to exploring this topic more closely with the Privacy Commission and providing that body with additional information.

Previous OPD Interactions with ICE

As a result of an internal OPD query in April 2017, it was discovered that no OPD commander has had any interaction with ICE since January 1, 2014. No OPD commander is aware of any interaction with ICE by any member of OPD since January 1, 2014. A search in the Law Enforcement Analysis Portal (LEAP) system showed only one service call record of OPD responding to, assisting, or otherwise engaging with an ICE operation since January 1, 2014. In October 2016, OPD provided two officers to serve as cover while ICE served a search warrant.

ICE, like any other local or state law enforcement agency, is not required to notify OPD prior to entering the City of Oakland. While it is customary for local and state agencies to do so, notification is a courtesy and not a requirement.

PUBLIC OUTREACH / INTEREST

OPD discussed immigration, Federal partnerships, and information-sharing with the Privacy Advisory Commission in February, March, and April 2017.

COORDINATION

Because changes in Federal immigration policies and practices potentially impact all Oaklanders – particularly undocumented immigrants – OPD worked with the Director of Public Safety in the Mayor's Office and the Oakland Privacy Advisory Commission on developing appropriate policy and presenting comprehensive information about Federal partnerships and information-sharing.

FISCAL IMPACT

There is no fiscal impact associated with this report.

Item: _____
Public Safety Committee
July 11, 2017

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

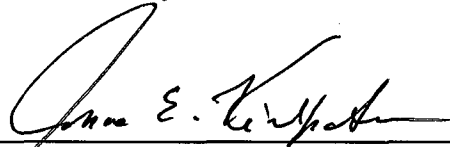
Social Equity: All persons deserve to be treated with respect and live free from fear of deportation based simply on country of citizenship.

ACTION REQUESTED OF THE PUBLIC SAFETY COMMITTEE

Staff Recommends That The City Council Receive This Informational Report From the Oakland Police Department (OPD) On To What Extent The City of Oakland's Existing Law Enforcement Policies And Rules Align With The American Civil Liberties Union's (ACLU's) Freedom Cities Nine Model State And Local Law Enforcement Policies And Rules.

For questions regarding this report, please contact Police Services Manager I Timothy Birch, Research and Planning, at (510) 238-6443.

Respectfully submitted,



Anne E. Kirkpatrick
Chief of Police
Oakland Police Department

Prepared by:
Timothy Birch, Police Services Manager I
OPD, Research and Planning, OCOP

Attachments (5)

- A: OPD Immigration Policy (Lexipol 415)
- B: List of all current agreements between OPD and Federal agency partners
- C: List of all OPD databases including access to each one by agency
- D: MOU between OPD and ICE
- E: Letter from Privacy Advisory Commission recommending withdrawal by OPD from the MOU between OPD and ICE

Item: _____
Public Safety Committee
July 11, 2017

Policy

415

Oakland Police Department

Policy Manual

Immigration

415.1 PURPOSE AND SCOPE

The purpose of this immigration policy is to provide guidance and direction to the members of the Oakland Police Department (OPD) on Federal, State, and local immigration laws.

The responsibility for enforcement of immigration laws rests solely with the U.S. Immigration and Customs Enforcement agency (ICE) under the direction of the United States Department of Homeland Security (DHS), and not with local or state law enforcement agencies. OPD is committed to equal enforcement of the law and equal service to the public regardless of a person's immigration status. This commitment increases our effectiveness in protecting and serving the entire community.

415.2 DUE PROCESS RIGHTS OF ALL PERSONS

OPD shall not provide federal immigration agencies access to individuals solely for the purpose of immigration enforcement.

If OPD receives a federal immigration detainer request for an individual in OPD custody, Officers shall provide the individual with a copy of the request.

Officers shall not inquire or request proof of immigration status or citizenship when providing services or benefits except where the receipt of such benefits or services is contingent upon one's immigration status, such as in the processing of a U visa or T visa.

Individuals with limited English proficiency must be given access to translation or interpretation and must receive documents in their native language if available.

415.3 FEDERAL LAW

The responsibility for enforcement of immigration laws rests solely with ICE, under the direction of DHS.

Immigration detainers or requests, sometime called "ICE holds," are not compulsory. Instead, they are merely requests enforceable at the discretion of the agency holding the arrestee. Federal regulations define immigration detainers as "requests" rather than commands.¹ Courts have also held that ICE detainers are voluntary requests that "do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal."² Thus, local agencies are "free to disregard [an] ICE detainer."³

¹ 8 C.F.R. § 287.7(a).

² *Galarza v. Szalczyk*, 745 F.3d 634 (3rd Cir. 2014); see also *Flores v. City of Baldwin Park*, No. CV 14-9290-MWF, 2015 WL 756877, at *4 (C.D. Cal. Feb. 23, 2015) ("federal law leaves compliance with immigration holds wholly within the discretion of states and localities").

³ *Galarza*, 745 F.3d at 645.

Immigration

The mere fact that an individual is unlawfully in the United States is not a criminal offense.⁴ Thus, unlawful presence in the United States, by itself, does not justify continued detention beyond that of an individual's normal release date. This applies even where ICE or United States Customs and Border Protection (CBP) provide an OPD officer with administrative forms that use the terms "probable cause" or "warrant." A lawful detention under the Fourth Amendment must be supported by probable cause that a person has committed a crime.⁵

415.4 CITY POLICY

Members of OPD shall not:

- Enforce or assist ICE in the enforcement of violations of civil immigration laws
- Initiate investigations or use personnel or resources where the only objective is to discover whether an individual is in violation of a civil immigration law
- Detain individuals for a violation of civil immigration law⁶

415.5 REQUESTS FOR ASSISTANCE FROM DHS OR ICE

Unless the circumstances present an imminent danger to officer or public safety, requests by DHS or ICE for any operational assistance from OPD (including but not limited to ICE detainer requests), shall immediately be directed to the watch commander on duty for approval, who in turn shall immediately notify the Chief of Police, or the Chief's designee.

In the event a determination needs to be made about whether an ICE detainer request should be fulfilled, the Chief of Police, or the Chief's designee, shall consider the merits of each request carefully. In making this determination, the Chief, or Chief's designee, shall comply with the California TRUST Act,⁷ assess whether the individual poses a risk to public or officer safety, and consider the availability of OPD personnel and resources necessary to comply with the request.

415.6 INFORMATION SHARING

OPD does not collect or maintain any information regarding a person's immigration status, unless the information is gathered specifically for the purposes of completing U visa or T visa documents.

Officers shall not share non-public information about an individual's address, upcoming court date, or release date with ICE or CBP. Officers shall respond to an ICE or CBP request for non-public information only when a judicial warrant accompanies the request.

⁴ *Arizona v. United States*, 567 U.S. 387, 132 S. Ct. 2492, 2505 (2012); *Melendres v. Arpaio*, 695 F.3d 990, 998, 1000 (9th Cir. 2012).

⁵ *Gerstein v. Pugh*, 420 U.S. 103, 120 (1975).

⁶ See November 29, 2016, Oakland City Council "Resolution Denouncing Tactics Used to Intimidate Immigrants Residing in Oakland and Re-affirming the City's Declaration as a City of Refuge" (Resolution No. 86498).

⁷ See Gov't Code, §§ 7282, 7282.5. The TRUST Act limits the discretion of law enforcement officials to detain an individual pursuant to a federal immigration detainer request, should an agency choose to do so, unless two conditions are met. First, the continued detention must "not violate any federal, state, or local law, or any local policy," and second, the detainee must have a qualifying criminal history as enumerated in Government Code section 7282.5(a) or be the subject of an outstanding federal felony arrest warrant.

Immigration

415.7 U VISA AND T VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes. Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking.

Any request for assistance in applying for a U visa or T visa should be forwarded in a timely manner to the Special Victims Section (SVS) Lieutenant for review and endorsement. The SVS Lieutenant may consult with the assigned investigator to confirm the applicant is cooperative with the investigation.

The SVS Lieutenant or their designee shall approve or deny the request and complete the certification or declaration, if appropriate, within the time frame required under Penal Code § 679.10(h).⁸ The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website and under Penal Code § 679.10.

The OPD website has information regarding the U visa or T visa application process as well as a non-profit organization that can assist with the application process.

⁸ "A certifying entity shall process an I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request." Penal Code § 697.10(h).

Oakland Police Department Agreements with Federal Agencies

Federal Entity	Purpose	Time Period
Department of Homeland Security (DHS) - Immigrations and Customs Enforcement (ICE)	Designate particular OPD officers as Customs Task Force Officers (TFOs).	06/15/16-No end date
Department of Homeland Security (DHS) - Immigrations and Customs Enforcement (ICE)	Designate particular OPD officers as Customs Task Force Officers (TFOs).	01/08/17-No end date
Federal Bureau of Investigation (FBI) Safe Streets Task Force	Delineate responsibilities of Safe Streets Task Force personnel and formalizes relationships between participating agencies.	06/23/14- No end date
Federal Bureau of Investigation (FBI) Safe Streets Task Force	Provides for cost reimbursement by FBI to OPD for costs related to Safe Streets Task Force.	08/29/16-No end date
Drug Enforcement Administration (DEA)	Cooperative agreement concerning use and abuse of controlled substances under Federal law.	10/01/16-09/30/17
Northern California High Intensity Drug Trafficking Area (HIDTA)	Provides for cost reimbursement by HIDTA to OPD for costs related to drug law enforcement activities.	04/24/15-No end date
Joint Terrorism Task Force (JTTF)	Formalizes relationship between the FBI and OPD.	04/25/07-No end date
Federal Protective Service (FPS)	Establishes procedures for coordination of law enforcement activities between FPS and OPD relating to Federal property and persons on Federal property within the City of Oakland.	10/22/14-No end date

Oakland Police Department Databases

Database or Service	Outside Administrator	Who Has Access	Oakland Administrator	Federal Access	Notes
BOSS ALPR (Back Office Software System Automated License Plate Reader)	OPD	Credentialed OPD employees and FBI Safe Streets Task Force members	OPD Information Technology Unit	FBI Safe Streets Task Force	3M Product that stores collected ALPR data
CalPhoto	California Department of Justice (Cal DOJ)	Credentialed OPD employees	Information Technology Department	N/A	Provides digital photographs and signatures of persons with California driver licenses and identification cards
CLETS/NCIC (California Law Enforcement Technology Services/ National Criminal Information Center)	California Department of Justice (Cal DOJ)	Credentialed OPD employees	OPD Communications Division	N/A	Data managed by Alameda County that includes wants and warrants and other associated criminal justice databases
CrimeView Dashboard	Tritech (formerly Omega)	Credentialed OPD employees	OPD Crime Analysis Section	N/A	OPD data used only in the apps -- data CJIS-compliant, not directly available to other agencies
CrimeView Desktop	Tritech (formerly Omega)	Credentialed OPD employees	OPD Crime Analysis Section	N/A	OPD data used only in the apps -- data CJIS-compliant, not directly available to other agencies
CrimeView crimemapping.com	Tritech (formerly Omega)	Public (application only, not underlying data)	OPD Crime Analysis Section	N/A	OPD data used only in the apps -- data CJIS-compliant, not directly available to other agencies
CRIMS (Consolidated Records Information System)/ ARIES (Automated Regional Information Exchange System)	Alameda County (CRIMS)/ Contra Costa County (ARIES)	Credentialed OPD employees	OPD Communications Division	ARIES: NCRIC (Northern California Regional Intelligence Center)	Data managed by Alameda County and Contra Costa County and includes information about subjects who have had criminal justice system interaction in Alameda and Contra Costa County

Database or Service	Outside Administrator	Who Has Access	Oakland Administrator	Federal Access	Notes
Field Based Reporting (FBR)	OPD	Credentialed OPD employees	OPD Information Technology Unit	FBI Safe Streets Task Force	Motorola report writing platform
Hummingbird	Information Technology Department	Credentialed OPD employees	Information Technology Department	OPD PRIME	OPD used primarily for report generation prior to PRIME
LEAP (Law Enforcement Analysis Portal)	Forensic Logic	Credentialed OPD employees and other subscriber agencies	OPD Information Technology Unit interfaces with Forensic Logic (no administrative privileges)	FBI Safe Streets Task Force	Data CJIS compliant and available to all participating agencies and provides portal to other agency databases
LRMS (Law Records Management System)	OPD	Credentialed OPD employees and FBI Safe Streets Task Force members	OPD Records Division	FBI Safe Streets Task Force	Motorola Product that provides data storage for Oakland Police records including reports
ParoleLEADS	California Department of Corrections and Rehabilitation (CDCR)	Credentialed OPD employees	Designated OPD Officer	N/A	Provides access to information about individuals on California state parole
PAS (Personnel Assessment System)	OPD	Credentialed OPD employees	OPD PAS Administration Unit	N/A	Serves as personnel management and early warning system
PRIME (Performance, Reporting, Information, and Metrics Environment)	OPD	Credentialed OPD employees	Information Technology Department/ OPD Bureau of Services	N/A	Newly developed system that includes a large array of data including use of force, complaints, and many other categories

Database or Service	Outside Administrator	Who Has Access	Oakland Administrator	Federal Access	Notes
ShotSpotter	ShotSpotter	Credentialed OPD employees and credentialed Oakland Housing Authority employees	OPD Information Technology Unit	FBI Safe Streets Task Force	Gunshot locator system
SpeedTrack	OPD	Credentialed OPD employees	OPD Information Technology Unit	N/A	Search tool for OPD databases including FBR, LRMS, and LPR
VieVue	OPD	Credentialed OPD employees	OPD Information Technology Unit	N/A	Stores body worn camera video

MEMORANDUM OF UNDERSTANDING

between

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
HOMELAND SECURITY INVESTIGATIONS**

and

Oakland Police Department

-
- I. **PARTIES.** *The Parties to this Agreement are U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) and the Oakland Police Department.*
- II. **AUTHORITY.** *This Agreement is authorized under the provisions of This MOU is authorized under the provisions of the Homeland Security Act of 2012, as amended, Pub. L. No. 107-296, § 403, 116 Stat. 2135 (2003); Section 401(i) of the Tariff Act of 1930, as amended; Title 19, United States Code (U.S.C.), Section 1401(i); 19 U.S.C. § 1589a; Department of Homeland Security (DHS) Delegation 7030.2, dated November 13, 2004, or as updated; ICE Delegation Order 04-006, dated March 26, 2004, or as updated; HSI Delegation Order 10001.1, dated June 3, 2011, or as updated; and all other applicable DHS/ICE delegation orders..*
- III. **PURPOSE.** *The Parties to this Agreement agree that effective enforcement of the laws relating to ICE jurisdiction requires close cooperation and coordination between the two agencies, and have therefore entered into this agreement to govern the use of ICE designations by certain employees of your agency.*
- IV. **RESPONSIBILITIES.**

There may be instances when it may be desirable on occasion for certain sworn law enforcement employees of your agency to be able to perform certain ICE duties. Pursuant to section 401(i), Tariff Act of 1930, as amended, (19 U.S.C. 1401(i)), the Secretary of Homeland Security or his/her designee is authorized to designate persons as Customs Officers (Excepted) who are designated to perform the duties of an ICE Officer. The designated Customs Officers will have the authority to enforce "Customs" laws. This agreement does not grant the designated Customs Officers the authority to enforce "Immigration" laws.

The forms and authorities referenced herein may be renamed or replaced by ICE without prejudice to this agreement.

The two agencies have, therefore, entered into an agreement as follows:

- A. *The U.S. Immigration and Customs Enforcement agrees:*
1. *to designate certain employees of your agency as Customs Officers (Excepted), without additional compensation, to perform the duties shown on the attached "Designation, Customs Officer" form (which is hereby made part of the agreement);*

2. *to provide appropriate training in Customs laws, policies, and procedures to the designated employees;*
3. *to issue a "Designation, Customs Officer," as described in A1 above to each qualified employee;*
4. *to advise your officers regarding any court proceedings that question any seizures or arrests that are made in accordance with this agreement;*
5. *to process, under appropriate regulations, any injury claim submitted as a result of injuries occurring to local law officers acting pursuant to this agreement, for compensation under the Federal Employee Workers Compensation Act (5 U.S.C. 8101, et. seq.);*

B. The above listed law enforcement agency agrees:

1. *to advise ICE of each situation in which the agency proposes to use an ICE designation;*
2. *that ICE designations to employees of your agency will be used only in situations where there has been specific advance approval by the appropriate Special Agent in Charge or Resident Agent in Charge. Designations will be used only for the duration of the specified law enforcement activity for which the approval was extended, and to the extent of such approval.*
3. *that only personnel who are sworn law enforcement officers of your agency and who successfully complete the appropriate ICE cross-designation training and received a "Designation, Customs Officer" form will be granted Customs Officer status;*
4. *to report to ICE, in writing, the results of all activity undertaken by the designated Customs Officer as a consequence of the Customs cross designation authority;*
5. *to advise ICE of each court proceeding in which the validity of ICE search, seizures, or arrest authority has become an issue; and to permit ICE to provide legal memoranda or other assistance in such cases when desired by ICE.*
6. *to follow ICE directives and instructions that are applicable to ICE concerning ICE search, seizure, and arrest authority;*
7. *to return all ICE equipment and identification if issued, when a cross designated officer terminates employment for any reason.*

C. Both Parties agree to:

1. *recognize that any abuse of ICE cross designation authority may lead to the revocation of such cross designations by ICE;*
2. *agree to exchange implementing instructions prior to issuance; and*
3. *agree to schedule periodic meetings to review this agreement.*

V. POINTS OF CONTACT.

ICE:
HSI Office: San Francisco
Name: Jeff Snowden
Title: Group Supervisor
Address: 630 Sansome Street, San Francisco, CA 94111
Telephone: 415-844-5287
E-Mail Address: jeffrey.m.snowden@ice.dhs.gov

Other Party:
HSI Office:
Name:
Title:
Address:
Telephone:
E-Mail Address:

VI. OTHER PROVISIONS.

This MOU is an internal agreement between the Parties and does not confer any rights, privileges, or benefits to any other party or the public.

Nothing in this MOU is intended to conflict with current law or regulation or the directives of both Parties. If a term of this MOU is inconsistent with such authority, that term shall be invalid but the remaining terms and conditions of this MOU shall remain in full force and effect.

Nothing in this MOU is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519.

VII. EFFECTIVE DATE.

The terms of this MOU will become effective on the date the last Party signs the MOU.


VIII. MODIFICATION.

This MOU may be amended by deletion or modification of any provision contained herein, or by adding new provisions after written concurrence of the Parties.

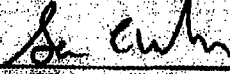
IX. TERMINATION.

This MOU may be terminated by either Party upon a 30-day written notification to the other Party.

APPROVED BY:



Ryan L. Spadlin
Special Agent in Charge
Homeland Security Investigations
U.S. Immigration and Customs Enforcement



Sean Whent
Chief of Police
Oakland Police Department

Date: 6/15/16

Date: 6-8-16

June 5, 2017

VIA SUPPLEMENTAL AGENDA PACKET

Hon. Desley Brooks (dbrooks@oaklandnet.com)
Hon. Noel Gallo (ngallo@oaklandnet.com)
Hon. Abel Guillen (aguillen@oaklandnet.com)
Hon. Larry Reid (lreid@oaklandnet.com)
Oakland City Council
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Dept. of Homeland Security – Homeland Security Investigations (“HSI”) Agreement

Dear Chairperson Brooks and Members of the Public Safety Committee:

On June 1, 2017, the Privacy Advisory Commission (“PAC”) voted unanimously to recommend to the City Council that the authorization granted by the Council allowing the Oakland Police Department to enter into an agreement with HSI for cross-designating task force officers (“TFO”) to investigate and enforce customs laws, be rescinded. This letter is submitted on behalf of the PAC.

We understand that if the Council approves our request, a subsequent resolution will be needed to void or replace Resolution 86156. The agreement with HSI provides for termination of the agreement upon a 30-day written notice to HSI, and we request that this option be exercised immediately, in addition to bringing a subsequent resolution rescinding the overall authority to prohibit a future agreement.

Background

On March 28, 2016, staff submitted a report to the Public Safety Committee, seeking approval for OPD to enter a memorandum of understanding (“MOU”) with HSI, one of the two components of the Immigrations and Customs Enforcement (“ICE”) agency, the other being Enforcement and Removal Operations. Superior federal resources, and help combating violent crime, drugs and weapon smuggling, and human trafficking, were given as justification for entering the MOU. TFO’s would not have authority to enforce administrative violations of immigration law.

The requested authority was granted by the Council on May 3, 2016, by Resolution 86156. On June 8, 2016, former Chief Whent signed the HSI MOU on behalf of OPD. On January 5, 2017, Acting Chief Downing entered into an additional agreement with HSI regarding reimbursement of overtime expenses related to the task force.

Beginning in March 2017, the PAC began a review of our outside entity data sharing agreements. OPD has participated at each of our subsequent monthly meetings, to provide information about these agreements, and about our past involvement with ICE-HSI.

Our continuing analysis of these data sharing agreements indicates that by participating in law enforcement sharing agreements such as ARIES (generally, east bay partners but expanding), and NCRIC (a federal-state fusion center located in San Francisco), OPD may be inadvertently placing data of Oaklander's at risk, as entities like ICE also participate in those sharing agreements, and in fact, do query those databases.

In response to Councilmember Guillen's request to OPD as to how Oakland currently aligns with the ACLU's Freedom Cities "Nine Model State and Local Law Enforcement Policies and Rules", OPD is providing to Public Safety a written report combining responses to both the PAC and Councilmember Guillen. Attached to that report is OPD's new policy on Immigration. These documents were provided to the PAC for our review at our June 1 meeting.

Reasons to Rescind Authorization

Having discussed with various command team officers regarding OPD's involvement with ICE at each of our monthly meetings since March, with the addition of the analysis provided by OPD's written report, and in researching the current legal status and political climate surrounding immigration under President Trump, the PAC found that the HSI agreement:

- Has provided Oakland with no demonstrated successes or benefits
- No TFO's were ever assigned, indicating a lack of need
- No reimbursements under the overtime agreement have been received, indicating a lack of participation
- The request for this agreement was external; it was not generated by OPD
- A previous partnership resulted in no demonstrated successes in the 2013-2015 annual crime reports
- President Trump and Attorney General Sessions are threatening loss of federal funding at the same time they are potentially imposing costs on us/diverting resources
- The presence of HSI-ICE in our community is causing trauma
- ICE-HSI has demonstrated that it is willing to lie to immigrant communities (while posing as local police officers)¹, and to their local law enforcement partners (e.g. Santa Cruz police department)²
- DHS Secretary Kelly has authorized an expansion of the controversial 287(g) program, which authorizes local law enforcement agents to enforce immigration law, and has eliminated exemptions to enforcement for certain categories (such as victims of trafficking)

¹ <https://lawestmedia.com/lawest/reports-sexual-assaults-domestic-violence-latino-community-plummet/>

² <http://ktla.com/2017/02/23/santa-cruz-police-chief-claims-ice-misled-agency-during-collaboration-in-recent-raids/>

Public Safety Committee
HSI-ICE MOU
June 5, 2017
Page 3 of 3

- Under President Trump, ICE's revised policies clearly conflict with Oakland's status as a Sanctuary City.

Stated simply, this is an agreement that provides no benefit to Oakland. In our three months of meetings on the issue, no one has come forth to justify maintaining the agreement. Although rescission may be of mostly symbolic value, the PAC believes rescission of this agreement will help OPD's relationship with certain communities, and how those communities perceive OPD and the City's dedication to our sanctuary city status.

Like Oakland, Houston and Los Angeles prohibit their officers from enforcing immigration laws. The presence of ICE in those cities, with large immigrant populations, is already leading to dramatic changes in crime reporting, as a chilling effect from President Trump's inflammatory rhetoric takes hold. Houston's Chief Acevedo is reporting that Hispanics reporting sexual assault have dropped 43% compared to last year; reported robberies and aggravated assaults are each down 12%.³ Los Angeles Chief Beck is reporting that sexual assault reports from the Hispanic population have dropped 25% compared to last year.⁴

Although the HSI agreement does not pertain to the enforcement of immigration law, it is clear throughout the country that a 'guilt by association' effect is present, is harmful, is inhibiting cooperation with local law enforcement and frustrating public safety goals.

Speaking solely for myself, I represent to you that I have received more calls and emails from concerned citizens about our ICE agreement than any other item before the PAC except for the controversial Stingray. This agreement is of concern to the community.

Sincerely,



Brian Hofer
Chair, City of Oakland's Privacy Advisory Commission

cc: tburch@oaklandnet.com; jdevries@oaklandnet.com

³ <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>

⁴ <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>