



OAKLAND  
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# AGENDA REPORT

**TO:** Members of the City Council

**FROM:** Councilmember Lynette  
Gibson McElhaney

**SUBJECT:** Supplemental Information On  
Proposed Ordinance 'Transparency  
for City Participation With Federal  
Surveillance Activities'

**DATE:** September 28, 2017

## RECOMMENDATION

Councilmember McElhaney recommends that the City Council adopt an ordinance creating Chapter 9.72 of the Oakland Municipal Code to ensure greater transparency and a protocol for city participation in federal law enforcement surveillance operations.

## SUPPLEMENTAL INFORMATION

This supplemental report provides additional information for the legislative record on the proposed annual reporting requirement. The proposed ordinance includes the following provision:

"By January 31 of each year, the Chief of Police shall provide to the Privacy Advisory Commission and City Council, a public report with appropriate public information on the Police Department's work with the JTTF or other federal law enforcement agency task force in the prior calendar year, including any issues related to compliance with this Section." (Proposed O.M.C 9.72.010).

The Joint Terrorism Task Force (JTTF) partnership between the Federal Bureau of Investigation (FBI) and the Oakland Police Department (OPD) involves classified investigations, details of which are not publicly available. The ordinance under consideration makes allowance for this by stipulating that the reporting of activities conducted by OPD officers involved in JTTF or other partnerships need only include "appropriate public information" which does not compel OPD or the FBI to divulge classified information.

Attachment A 'San Francisco Police Department FBI Joint Terrorism Task Force for Calendar year 2016' provides an example of information that may be disclosed. (This attachment is not included as a template but rather as a general example of what may be made publicly available in an annual report).

Item: \_\_\_\_\_  
City Council  
October 3, 2017

The intention of the annual reporting requirement is to provide the City Council, the Privacy Commission and the public at large enough information about the activities of OPD officers operating under federal partnerships to know that Oakland and California policing standards are not being violated by those OPD officers. California state law<sup>1</sup> and OPD policy<sup>2</sup> prohibit OPD officers from engaging in profiling-based policing, defined as “consideration of, or reliance on, ... actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability.”<sup>3</sup> The purpose of the annual report is to disclose sufficient information about OPD officer activities so that the City may conclude that Oakland’s officers are fulfilling their duties in accordance with state and local law.

### **BACKGROUND / LEGISLATIVE HISTORY**

On January 19, 2016, the City Council adopted Ordinance No.13349 C.M.S. which created and defined the duties of the Privacy Advisory Commission. The Commission is charged with providing advice and technical assistance to the City of Oakland on best practices to protect citizen privacy rights in connection with the City's purchase and use of surveillance equipment and other technology that collects or stores citizen data. They are also asked to draft and analyze for City Council consideration, legislation relevant to privacy and data protection.

During their March 9, 2017 meeting, the Privacy Advisory Commission unanimously recommended that the City Council adopt an ordinance to require an agreement, such as a "Memorandum of Understanding" (MOU), be reviewed by the Privacy Advisory Commission before their adoption to ensure sufficient consideration of privacy and data protection. The recommended ordinance additionally included a requirement for the Chief of Police to submit an annual report on the activities of Oakland Police Officers operating in partnerships with federal law enforcement agencies.

On July 11<sup>th</sup>, 2017, the ordinance was heard before the Public Safety Committee and forwarded unanimously to the City Council. The City Council unanimously approved this ordinance on introduction and scheduled the ordinance for final passage on the next Council meeting on September 19<sup>th</sup>, 2017. At that meeting, the author made a successful motion to postpone the final vote to the next Council meeting on October 3<sup>rd</sup>, 2017 in order to engage in a final round of stakeholder meetings.

### **FISCAL IMPACT**

There is no anticipated fiscal impact to this legislation.

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<sup>1</sup> California Penal Code 13519.4

<sup>2</sup> Oakland Police Department General Order M-19

<sup>3</sup> California Penal Code 13519.4 (e)

**COORDINATION**

This supplemental report was prepared in coordination with the Oakland Police Department, privacy advocates and law enforcement partners from the Federal Bureau of Investigation.

**ACTION REQUESTED OF THE CITY COUNCIL**

Adopt an ordinance creating Chapter 9.72 of the Oakland Municipal Code to ensure greater transparency and a protocol for city participation in federal law enforcement surveillance operations.

For questions regarding this report, please contact Alex Marqusee, Sr. Legislative Analyst, at 510-238-7031.

Respectfully submitted,



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Lynette Gibson McElhaney  
Councilmember, District 3

Attachments (A): 'San Francisco Police Department FBI Joint Terrorism Task Force for Calendar year 2016'

ALBION  
DIVISION OF THE CITY OF  
OAKLAND

17 SEP 28 PM 3:22

## SAN FRANCISCO POLICE DEPARTMENT

Annual Report Regarding Involvement in the  
FBI Joint Terrorism Task Force for  
Calendar Year 2016  
(Admin Code § 2A.74(d))

### STAFFING, EQUIPMENT AND SALARY

As of January 1, 2016 one SFPD Officer was assigned to the FBI Joint Terrorism Task Force. On or about January 25, 2016, one additional SFPD officer was detailed to the Task Force. For the remainder of 2016, these two SFPD officers were assigned to the JTTF.

The SFPD paid the salaries of the Task Force Officers in 2016. A full time SFPD employee works approximately 2,080 hours per year. The Officers used SFPD issued safety and communication equipment. The FBI provided vehicles for their use, as well as office work space and provided funding for overtime expenses.

### DEPARTMENT POLICIES, SAFE CITY CIVIL RIGHTS ORDINANCE AND TRAINING

SFPD members assigned to the Joint Terrorism Task Force are trained and aware of several policies and regulations which govern their involvement in JTTF operations. The SFPD officers assigned to JTTF are trained regarding all Department General Orders, but specifically DGO 8.10, *Guidelines for First Amendment Activities*; and DGO 5.17, *Policy Prohibiting Biased Based Policing*. As part of their training on DGO 8.10, JTTF Officers have been trained utilizing the SFPD Training Video regarding DGO 8.10. They are also trained on Department Bureau Order 2011-07, *Bureau Order Regarding Joint Terrorism Task Force*. Additionally, Officers assigned to the JTTF are trained regarding compliance with *The Safe San Francisco Civil Rights Ordinance*.

Training Records are maintained by the OIC of the Special Investigations Division and were recently audited by the OCC as part of their annual DGO 8.10 Audit.

The FBI is aware of the requirements mandated of SFPD JTTF TFOs by each of these policies.

Supervision is maintained to ensure member oversight and compliance with Department policies and procedures.

### COMMAND STRUCTURE

The JTTF officer works under the command of the SFPD; their immediate supervisor is the Officer In Charge/Lieutenant of the Special Investigations Division (SID). The Lieutenant of SID reports to the Commander of Investigations, who reports to the Deputy Chief of Operations, who reports to the Chief of Police.

While assigned to the JTTF, the officer reports to a FBI Supervisory Special Agent (SSA). The SSA reports to an Assistant Special Agent in Charge, who reports to the Special Agent in Charge.

The SFPD member assigned to the JTTF is trained to be intimately familiar with the guidelines and restrictions contained in DGO 8.10, DGO 5.17, Bureau Order 2011-07 and the Safe San Francisco Civil Rights Ordinance as reviews are conducted regularly and frequently.

The JTTF member reviews these policies on a quarterly basis with their SFPD supervisor. The officer also has weekly, often daily, contact with their immediate supervisor, the Officer In Charge/Lieutenant of the Special Investigations Division.

### **JTTF OFFICER RESPONSIBILITIES**

In 2016, the primary role of the SFPD officers assigned to the JTTF was to establish a liaison and facilitate information sharing between the SFPD and federal, state and local agencies involved in the JTTF. Information sharing by law enforcement partners consists of information which has a potential impact upon public safety.

SFPD officers assigned to the JTTF work on a team whose mission is to identify potential terrorist plots and prevent terrorist attacks before they occur, and to investigate violent crimes and suspicious activities possibly related to terrorism.

The SFPD members on the JTTF have also helped conduct threat assessments and have provided security for special events in San Francisco including: *Bay to Breakers*, *Giants games*, *Outside Lands*, *SF Marathon*, *Hardly Strictly Bluegrass*, *Fleet Week*, *Pride Events*, *Halloween* and *New Year's Eve*. In addition, the SFPD members were an integral part in security planning and evaluating threats involving *Super Bowl 50* as well as related events within the City such as the *NFL Experience* and *Super Bowl City*.

Super Bowl 50 drew hundreds of thousands of people to San Francisco as it hosted many Super Bowl related gatherings and activities, including *Super Bowl City*, a very large venue which encompassed a large portion of densely populated Market Street, Justin Herman Plaza, The Financial District, and the Embarcadero. A significant portion of SOMA was impacted by *The NFL Experience* venue at Moscone Center and the crowds that they drew. These events created a significant public safety concern due to the large crowds in attendance as well as the international notoriety and attention they attracted.

## **NUMBER OF CASES**

The SFPD members detailed to the JTTF were assigned a combined total of 54 cases. In addition to those cases, the SFPD JTTF members were assigned a total of 60 "Duty to Warn" cases. These cases involved individuals who were considered by the FBI to be in danger based on information indicating that these persons had been named as targets of terrorist organizations. The SFPD JTTF officers do not retain SFPD files and or names of individuals involved in these cases.

The SFPD is not able to release the names of the members assigned to the JTTF as this would compromise the security, privacy and safety of the members.

No member of the SFPD assigned to the JTTF was used to perform undercover work or used as an infiltrator in 2016 nor were there any requests made to SFPD members to perform such work.

SFPD JTTF officers do not manage informants nor conduct any case work involving informants.

The Department is briefed by JTTF members on their cases consistently and these cases are reviewed on a constant basis to ensure compliance with Department policies and procedures, state and local laws as required by the Ordinance.

In 2016, there were no investigations which fell under DGO 8.10 reporting requirements. The status of DGO 8.10 requests was submitted to the Police Commission on a monthly basis. The document was reviewed and signed by a Police Commissioner each month. The *San Francisco Police Commission's Review and Signature Log For Department General Order 8.10 Requests* was reviewed in January 2017 by the OCC as part of their 2016 annual DGO 8.10 audit. The document is retained by the OIC of the Special Investigations Division.

## **SUSPICIOUS ACTIVITY REPORTING**

SFPD submits Suspicious Activity Reports (SARs) to the NCRIC (Northern California Regional Intelligence Center). These reports consist of suspicious activity based on pre-identified risk indicators with a potential nexus to terrorist or criminal activity. The JTTF is a recipient of SAR information as are other law enforcement agencies.

SFPD officers have investigated cases consisting of bomb threats, possible material involving weapons of mass destruction, suspicious activity involving landmarks and critical infrastructure and other criminal activity with a potential terrorist nexus. These leads are provided by SFPD as well as from other law enforcement agencies, the private sector and members of the public.

Private sector partners involve local businesses, property owners and major companies in energy, health care, mass transit, etc.

SFPD JTTF officers are intimately familiar and comply with DGO 5.17, prohibiting biased policing, to ensure suspicious activity is not reported as a result of racial and religious profiling.

SFPD JTTF officers have handled information that come from citizens, anonymous callers, other law enforcement agencies and private entities. Suspicious Activity Reports involve bomb threats, threats to life, threats to property, suspicious photography, trespassing in and near protected critical infrastructure and suspicious activities as identified by reporting parties. SFPD members assigned to the JTTF do not engage in interviews regarding solely constitutionally protected activities which would constitute a violation of the Department General Orders and of the FBI DIOG (Domestic Investigative and Operational Guidelines). SFPD members do conduct preliminary interviews, which have a potential nexus to criminal and or terrorist activity.

Suspicious photography may include subject location and content captured of sensitive and secure access points involving iconic landmarks, government facilities, mass transit areas, and protected critical infrastructure.

#### **CORRESPONDENCE AND COLLABORATION WITH COMMUNITY ORGANIZATIONS REGARDING SFPD JTTF INVOLVEMENT**

Throughout 2016, the SFPD has worked collaboratively with Community Organizations including The Asian Law Caucus, The Council on American-Islamic Relations, and The American Civil Liberties Union, working toward alleviating concerns brought forth by representatives of these organizations. The SFPD Command Staff has met regularly with these organizations and has incorporated and coordinated involvement with representatives of these groups, the SFPD and the FBI. The efforts are ongoing and include updating the training component for SFPD JTTF TFOs.

Numerous emails and letters were exchanged and several face to face meetings were held to collaborate, discuss and take actions to alleviate the concerns brought forth.

It appears that all parties involved have agreed to the importance of the efforts of the officers assigned to the JTTF. It also appears that community concerns remain. The SFPD is committed to maintaining public safety and committed to fulfilling its role in detecting, preventing and investigating criminal activity in the City of San Francisco.