

DEPARTMENT OF POLICE  
Thomas Smith, Chief of Police

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CITY OF SAINT PAUL  
Christopher B. Coleman, Mayor

367 Grove Street  
St. Paul, Minnesota 55101

Telephone: 651-291-1111  
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March 7, 2012

Mr. Michael Price  
Brennan Center for Justice  
161 Avenue of the Americans  
12<sup>th</sup> Floor  
New York, NY 10013

**VIA US MAIL**

RE: MOU JTTF Data Practices Request

Dear Mr. Price:

The City of Saint Paul Police Department is in receipt of your request for memorandum of understanding related to Joint Terrorism Task Force. I have enclosed the 2005 agreement. The Federal Bureau of Investigations and our agency are negotiating a new agreement as of your request date.

Very truly yours,

Dan Malmgren  
Data Compliance Official  
Saint Paul Police Department  
(651) 266-5759

367 Grove Street  
Saint Paul, MN 55101

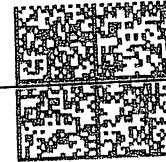


CITY OF SAINT PAUL  
DEPARTMENT OF POLICE

*Sgt. Dan Malinaga*

Mr. Michael Price  
Brennan Center for Justice  
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New York, NY 10013



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## MINNEAPOLIS JOINT TERRORISM TASK FORCE

### MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into by the Saint Paul Police Department (SPPD) and the Minneapolis Office (MP) of the Federal Bureau of Investigation (FBI).

#### I. PURPOSE

The purpose of this Memorandum is to set forth a common understanding of the policies which the SPPD and FBI will follow for terrorism investigations in the Minneapolis Division. This MOU is not intended to be a legally binding contract on either of the parties who sign the document. The guidelines established herein will serve to maximize cooperation and to create a formal, effective task force capable of addressing the most complex terrorist situations in the Minneapolis Division.

#### II. MISSION

The primary mission of the Minneapolis Joint Terrorism Task Force (MJTTF) will be to detect and neutralize any terrorist attempt in the Minneapolis Division and to investigate terrorist activities carried out by groups or organizations which fall within the definition of terrorist groups set forth in the current U.S. Attorney General Guidelines. The secondary mission of the MJTTF is to react to terrorist and bombing incidents.

#### III. ORGANIZATIONAL STRUCTURE OF THE TASK FORCE

##### A. MEMBERS

The MJTTF shall consist of a combination of Special Agents (SAs) and Investigators from each participating agency.

##### B. DIRECTION OF THE MJTTF AND RESOURCE CONTROL

Responsibility for the overall policy and direction of the MJTTF shall rest with the FBI Special Agent In Charge (SAC) of the Minneapolis Division. The SAC will closely coordinate investigative objectives and related investigative information with designated officials from the SPPD.

##### C. SUPERVISION

Overall supervision of the MJTTF will be the responsibility of the Supervisory Special Agent (SSA) of the FBI who reports to an Assistant Special Agent in Charge (ASAC). The SSA is the Program Manager for Minneapolis' Terrorism Program.

Problems or difficulties which may arise during the operation of the task force will be mutually addressed and resolved as expeditiously as possible. Any problems which cannot

be resolved by the MJTTF FBI supervisor will be forwarded through the chain of command for resolution. Designated supervisors of the SPPD will also be notified. It is agreed that resolution of any and all problems at the lowest possible administrative level is in the best interest of the MJTTF.

D. INVESTIGATIVE PERSONNEL

SPPD agrees to initially assign one investigator on a full-time basis to the MJTTF. The FBI agrees to assign six full-time FBI SAs and provide all task force members with sufficient clerical and administrative support.

E. SECURITY CLEARANCES

Members of the MJTTF are required to have security clearances for access to classified information. Personnel who do not have appropriate clearances will be required to undergo a background investigation.

Personnel from participating agencies will receive a comprehensive briefing of FBI Field Office security policy and procedures. During the briefing, each individual will execute non-disclosures agreements (SF-312 and FD-868). Upon departure from the MJTTF, personnel from participating agencies will execute non-disclosure agreements (SF-312 and FD-868) and will be given a security debriefing.

F. DEPUTATION

Each representative from state or local law enforcement will be deputized as a Special Deputy United States Marshal. Deputation will ensure that all members of the MJTTF will be able to fully assist in investigations and apprehensions in compliance with all applicable federal statutes. Deputation is not required for federal law enforcement officers.

Inasmuch as this MOU will satisfy the definition of "Memorandum of understanding" contained in Minnesota Statute 626.8453 (Qualified Federal law enforcement officers; special state and federal task forces; peace officer authority) by: 1) agencies; and 2) being filed with the Minnesota Peace Officers Standards and Training (POST) Board, the federal law enforcement officers assigned to the MJTTF will possess the same peace officer authority of the state and local MJTTF members.

MJTTF members will be considered "on duty" when called to work during non-duty time.

G. LIABILITY

Unless specifically addressed by the terms of this MOU, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees. Legal

representation by the United States is determined by DOJ on a case-by-case basis. The FBI cannot guarantee the United States will provide legal representation to any Federal, state or local law enforcement officer.

Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of an employee of the United States government, acting within the scope of his employment, shall be an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. Section 1346(b), SubSection 2671-2680.

For the limited purpose of defending claims arising out of MJTTF activity, state or local law enforcement officers who have been specially deputized and who are acting within the course and scope of their official duties and assignments pursuant to this MOU, may be considered an "employee" of the United States government as defined in 28 U.S.C. Section 2671. See 5 U.S.C. Section 3374(C)(2).

Under the Federal Employees Liability Reform and Tort Compensation Act of 1988 (commonly known as the Westfall Act), 28 U.S.C. Section 2679(b)(1), the Attorney General or her designee may certify that an individual defendant acted within the scope of his employment at the time of the incident giving rise to the suit. Id., 28 U.S.C. Section 2679(d)(2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims. 28 U.S.C. Section 2679(d)(2). If the United States is substituted as defendant, the individual employee is thereby protected from suits in his official capacity.

If the Attorney General declines to certify that an employee was acting within the scope of employment, "the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment." 28 U.S.C. 2679(d)(3).

In the event a claim is filed under the Federal Tort Claims Act or under Title 31 U.S. Code Section 3724 (Claims for damages caused by investigative or law enforcement officers of the Department of Justice) which is the result of the combined actions of several personnel from different agencies, the respective agencies' legal representatives agree to discuss the matter, determine each agency personnel's proportional negligence and/or involvement and then settle the matter accordingly with the claimant(s).

Liability for any negligent or willful acts of MJTTF employees, undertaken outside the terms of this MOU will be the sole responsibility of the respective employee and agency involved. Nothing herein is intended as a waiver of the limitation on liability under Minnesota Statutes 466.02 and 466.04.

Liability for violations of federal constitutional law rests with the individual federal agent or officer pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. Section 1983 for state and local officers or cross-deputized federal officers.

Both state and federal officers enjoy qualified immunity from suit for constitutional torts "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800 (1982).

MJTTF officers may request representation by the U.S. Department of Justice for civil suits against them in their individual capacities for actions taken within the scope of employment. 28 C.F.R. SubSection 50.15, 50.16. An employee may be provided representation "when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General or (his/her) designee determines that providing representation would otherwise be in the interest of the United States." 28 C.F.R. Section 50.15 (a).

A MJTTF officer's written request for representation should be directed to the Attorney General and provided to the Chief Division Counsel (CDC) of the FBI division coordinating the MJTTF. The CDC will then forward the representation request to the FBI's Office of the General Counsel (OGC) together with a letterhead memorandum concerning the factual basis for the lawsuit. FBI/OGC will then forward the request to the Civil Division of DOJ together with an agency recommendation concerning scope of employment and Department representation. 28 C.F.R. Section 50.15 (a) (3).

If a MJTTF officer is found to be liable for a constitutional tort, he/she may request indemnification from DOJ to satisfy an adverse judgment rendered against the employee in his/her individual capacity. 28 C.F.R. Section 50.15 (c) (4). The criteria for payment are substantially similar to those used to determine whether a federal employee is entitled to DOJ representation under 28 C.F.R. Section 50.15 (a).

#### H. VEHICLES

The FBI hereby agrees and authorizes members of the MJTTF to use vehicles owned or leased by the FBI. The operational purpose of these vehicles is for surveillance, case management and other official MJTTF investigative activities.

The participating agencies agree to be responsible for the negligent acts or omissions on the part of the agencies or their employees in the operation of such vehicles and for any damage caused to said vehicles as a result of any act or omission on the part of the participating agency or employee.

## I. COMMUNICATIONS EQUIPMENT

Reliable communications are absolutely essential for law enforcement personnel. MJTTF members from each participating agency should have radios for direct communications with their home agencies. In addition, the FBI will provide each task force member with a voice privacy radio equipped with FBI frequencies. The MJTTF members will communicate primarily over the FBI radio system.

## IV. RECORDS AND REPORTS

All MJTTF investigative records will be maintained by the FBI. Investigative reports will be prepared on FBI forms. All task force personnel will participate in the preparation of FBI reports relating to terrorism investigations. The information obtained during these investigations will be consistent with approved investigative techniques of the FBI. Classified material must remain within FBI controlled space.

## V. PHYSICAL LOCATION AND ACCESS TO INVESTIGATIVE INFORMATION

MJTTF headquarters will be located at the Minneapolis Field Office of the FBI, 111 Washington Ave. So., Suite 1100, Minneapolis, MN, 55401. The telephone number for the MJTTF is (612) 376-3373. To ensure awareness of all MJTTF operations, the officials of the participating agencies will be briefed, upon request, and will be authorized access to appropriate MJTTF records, subject to any pertinent legal and/or policy restrictions on such access.

## VI. COMMITMENT OF PERSONNEL

The SPPD agrees to initially provide one officer on a full-time basis to investigate terrorism matters. The decision on whether to assign an Investigator on a part-time basis can be made on a case by case basis. However, an Investigator working less than full-time on the MJTTF cannot be reimbursed for overtime by the FBI. The continued assignment of MJTTF members will be based on performance and will be at the discretion of their respective supervisors at the SPPD.

## VII. INVESTIGATIVE EXCLUSIVITY

Cases assigned to the MJTTF will be investigated jointly. It is hereby agreed that unilateral action is not in the best interest of the MJTTF. Therefore, participating agencies agree to assign all matters pertaining to terrorism, regardless of substantive violation, to the MJTTF. SPPD personnel will be assigned to work with the FBI SAs who will be dedicated full-time to terrorism matters. It is agreed that there will be no unilateral action taken on the part of any participating agency relating to MJTTF investigations. All law enforcement action will be coordinated and cooperatively carried

out.

#### VIII. ASSIGNMENT OF CASES

The actual investigations will be carried out by the MJTTF personnel regardless of agency affiliation. The MJTTF, at times, may be broken into teams in order to bring investigative assignments to logical conclusions as quickly as possible. It is recognized that requests for investigative assistance and for advice on terrorism matters will be received from other police departments and from other FBI offices which do not have task forces. These matters will be coordinated by the MJTTF.

#### Use of Deadly Force

MJTTF participants will follow their own agency policies concerning use of deadly force and pursuit but should be knowledgeable of each other's policies.

#### IX. PROSECUTION

The MJTTF investigative procedures will conform to the requirements for federal prosecution and will, generally, be prosecuted in federal court. A decision can be made on a case by case basis whether the prosecution of cases will be at the state or federal level. The use of established investigative methods and techniques and reporting procedures will be consistent with applicable federal law and with the policies and procedures of the FBI.

#### X. INFORMANTS/ASSETS

The MJTTF will abide by the Attorney General Guidelines and by the FBI informant guidelines. The FBI will pay reasonable and necessary informant or cooperative witness expenses incurred by the MJTTF so long as the informant or cooperative witness is opened and operated pursuant to FBI Informant Guidelines. Non FBI informants utilized by the MJTTF will be assigned to both the respective agency's officer or agent and an FBI agent member of the MJTTF. An appropriate FBI informant file will be opened and maintained wherein all information furnished by the informant to the MJTTF will be maintained. In addition, any recommendations for payments to this informant will also be documented. The SPPD agrees that prior to incurring such expenses, they will consult with the FBI's designated supervisor to ensure the anticipated expenses will be in furtherance of MJTTF objectives and to ensure that the necessary funding is available.

#### XI. NEWS MEDIA AND PRESS

All media releases will be mutually agreed upon prior to release and jointly handled within existing SPPD and FBI guidelines, which will be in conformity with the Department of Justice guidelines regarding such releases.



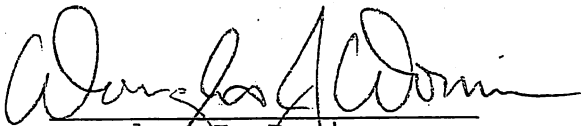
XII. DURATION OF THE MJTTF

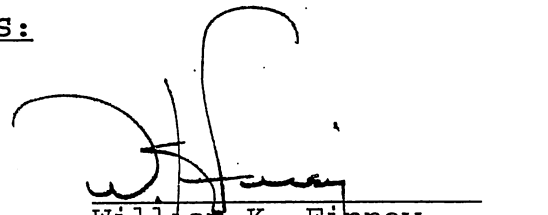
The task force will continue for an indefinite period, but participation may be terminated at any time upon written notice by a particular party. Its extension is contingent upon congressional approval of necessary funding. Formal changes to this MOU shall be in writing, agreed upon by all parties and signed by authorized representatives of the parties. Upon termination of this understanding, all equipment will be returned to the supplying agency.

XIII. SALARIES AND COMPENSATION

Salaries of MJTTF members will be paid by their respective agencies. Overtime incurred in the performance of MJTTF responsibilities, when allowable under federal law and to the extent that federal funding is available for such purposes, will be reimbursed by the FBI pursuant to the terms and conditions of a reimbursement agreement to be executed by the FBI and the agency seeking reimbursement. Overtime, when not reimbursed by the FBI, shall be compensated in accordance with applicable SPPD overtime provisions and shall be subject to the prior approval of the appropriate personnel of each respective agency. The FBI shall report all payments made to non-FBI MJTTF members, including but not limited to overtime, to the appropriate SPPD supervisor.

SIGNATORIES:

  
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Douglas J. Domin  
SAC Minneapolis FBI

  
\_\_\_\_\_  
William K. Finney  
Saint Paul Police Chief