

MEMORANDUM OF AGREEMENT
BETWEEN THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY
AND THE HAMPTON ROADS LAW ENFORCEMENT INFORMATION EXCHANGE

Objective and Scope

1. This Memorandum of Agreement (MOA) is entered into by the U.S. Department of Homeland Security (DHS) and the Hampton Roads Law Enforcement Information Exchange (HR LInX). DHS operates the Law Enforcement Information Sharing Service (LEIS Service). HR LInX operates the Law Enforcement Information Exchange (LInX). The purpose of this MOA is to set forth policies and procedures for the sharing of information by the Parties. HR LInX shall access and use information obtained via the LEIS Service for official criminal law enforcement purposes, national or homeland security purposes and background checks on applicants seeking employment with HR LInX member agencies only. DHS shall access and use HR LInX information for official law enforcement purposes, national or homeland security purposes and background checks on contractors as part of the suitability screening process prior to working at DHS and applicants seeking employment with DHS components.
2. This MOA defines the information sharing relationship between DHS and HR LInX and governs the ownership and use of the shared information. HR LInX will ensure that information DHS exposes to HR LInX is handled by its member law enforcement agencies in a manner that is consistent with the terms of this MOA.
3. The objective of this MOA is to develop a collaborative peer relationship between DHS and HR LInX to facilitate sharing of regional law enforcement information among federal, state, and local law enforcement partners via LEIS Service and HR LInX. Through this relationship, the Parties intend to capture the cumulative knowledge of regional law enforcement agencies at all levels in a systematic and ongoing manner in order to maximize the benefits of information collection and analysis needed to respond to national or homeland security threats, criminal threats, to support law enforcement activities, and to enhance public safety and protection of the Nation's critical infrastructure in the region covered by this MOA.
4. The Secretary of Homeland Security has designated the Director for Immigration and Customs Enforcement (ICE) as the executive lead for DHS law enforcement information sharing efforts; the Director is thereby authorized to sign this MOA on behalf of DHS. The ICE Director has further delegated this authority to the Executive Director of the Law Enforcement Information Sharing Initiative.
5. This MOA only applies to information shared between the Parties pursuant to this agreement and is not intended to affect any pre-existing, independent relationships or obligations between either Party and any third Parties.

Notwithstanding these pre-existing relationships, the legal requirements or other conditions placed on information shared pursuant to this agreement will continue to apply to the information when either Party shares it with third parties.

Parties and Definitions

6. The Parties to this MOA are DHS and HR LInX.
7. *LInX* is a data repository operated by HR LInX containing information from member agencies.
8. *Member agencies* are those law enforcement agencies participating in HR LInX and listed in Appendix 1. Additional law enforcement agencies may be added to HR LInX after the execution of this MOA. If additional law enforcement agencies join HR LInX, HR LInX will provide DHS with a list of those agencies before allowing such agencies access to the LEIS Service. If approved by DHS and the HR LInX Governance Board, those agencies will be provided access to the LEIS Service, and will be added to the list of participating agencies listed in Appendix 1.
9. *Law enforcement agencies* that will be granted access to the LEIS Service as a result of this MOA are limited to authorized "law enforcement agencies" in Virginia. That term is defined as those designated law enforcement agencies defined in the Code of Virginia 9.1-101 as amended:
 - [Statutory definition/authority of law enforcement agencies in Virginia
 - "Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth, and shall include any (i) special agent of the Department of Alcoholic Beverage Control; (ii) police agent appointed under the provisions of § 56-353; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the State Lottery Department; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; or (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.
10. The *LEIS Service* is a standards compliant Web-accessible service operated by DHS that accepts queries from external law enforcement and criminal justice partners and provides responses from a consolidated DHS law enforcement records repository. Information owned by DHS is shared through its LEIS Service.

Currently, only DHS information from ICE and Customs and Border Protection (CBP) is available for sharing; however, additional DHS law enforcement components will share information through the LEIS Service in the future.

11. *Law enforcement purpose* is defined as the investigation of alleged violations of law where DHS or HR LInX member agencies have the authority to enforce or support the enforcement of the law.
12. *National or homeland security purpose* is defined as those activities undertaken to identify, prevent, interdict, deter, or disrupt threats to the United States, its people, property, or interests, including threats involving terrorist activity, the use of weapons of mass destruction, and other threats and hazards to the nation where DHS or HR LInX member agencies have such authority.
13. *Subject records* are defined as records containing biographic data on persons who are or were subjects of law enforcement investigations.
14. *Authorized personnel* are supervisors, law enforcement officers, employees, detailees, agents, representatives, task force members, consultants, or contractors/subcontractors with an official need to access the information to be shared under this MOA in the performance of their official duties.

Points of Contact

15. DHS has designated the ICE Special Agent in Charge (SAC), Washington, D.C. to serve on a rotating basis as of the point of contact (POC) with the HR LInX Governance Board.

Contact information for the Parties is provided below:

Immigration and Customs Enforcement *SAC: Washington, DC*

Special Agent in Charge John P. Torres
2675 Prosperity Avenue:
Suite 400
Merrifield, VA 22031
Main Telephone: (703) 285-6700
Fax: (703) 285-6709

Hampton Roads LInX *POC:LInx HR Chairman*

Chief Mark Marshall
Smithfield VA Police Department
1613 South Church Street
Smithfield VA 23430
(757) 357-5940 ext 225
Fax (757) 357-6551

Authority

16. Authority for HR LInX and DHS to enter into this MOA includes the following:
 - The Code of Virginia 15.2-1300, 9.1-128 and 19.2-389 as amended.

- Section 102 of the Homeland Security Act of 2002, as amended.
- Homeland Security Presidential Directive -11, Terrorist-Related Screening Procedures, dated August 27, 2004.
- 8 U.S.C. § 1105, Liaison with Internal Security Officers; Data Exchange. This section of law authorizes DHS to maintain direct and continuous liaisons with internal security officers of the federal government for the purpose of obtaining and exchanging information for use in enforcing the provisions of the Immigration and Nationality Act in the interest of the internal security of the United States.
- Section 701 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), PL 107-56 (2001 HR 3162). This section of law authorizes the establishment and operation of information sharing systems to enhance the investigation and prosecution abilities of participating law enforcement agencies.
- 8 U.S.C. § 1103(a) (4). This section of law authorizes ICE employees to perform and exercise powers, privileges, and duties relating to immigration enforcement.
- 8 U.S.C. § 1357(a). This section of law authorizes ICE employees to take specific actions in the investigation of violations of the immigration laws.
- 19 U.S.C. § 1589a. This section of law authorizes ICE employees to take specific actions to enforce the Customs laws and investigate violations thereof.
- 5 U.S.C. § 552a, Privacy Act of 1974; ICE Pattern and Analysis and Information Collection (ICEPIC) System of Records Notice, DHS/ICE-002, Aug. 18, 2008, 73 FR 48226.
- Presidential Decision Directives 39 and 62.
- Executive Order 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans, dated October 27, 2005. This Executive Order addresses access to terrorism-related information by agencies with counter-terrorism functions.
- DHS Federal Information Sharing Environment (ISE) Privacy and Civil Liberties Protection Policy, Memorandum Number: 2009-01. This policy outlines DHS's obligations as a participant in the ISE and includes limitations on the retention and collection of information protected by the First Amendment to the U.S. Constitution.
- DHS Policy Against Racial and Ethnic Profiling, June 2004 (adopting the U.S. Department of Justice Guidance Regarding the Use of Race by Federal Law Enforcement Agencies, June 2003). This policy prohibits DHS from engaging in racial or ethnic profiling in violation of this policy.

Definition of Data to be Exchanged

17. Through the LEIS Service, DHS shall initially share ICE and CBP subject records with HR LInX member agencies. DHS intends to share subject records from additional DHS law enforcement components in the future after following appropriate DHS internal review processes. Shared records shall conform to the National Information Exchange Model (NIEM) for individual data items and to the NIEM extensible Markup Language, Information Exchange Package Documentation for the messages themselves.
18. LInX is a data repository containing information from law enforcement agencies in southeastern, central, southern, western, and southwestern Virginia.

Ownership, Sharing, Use and Quality of LInX Information

19. As a result of this MOA, only DHS personnel with an official need for this information in the performance of authorized duties consistent with the purposes and functions reflected in this MOA will have the same access to LInX data as HR LInX member agencies.
20. DHS will have access to LInX via internet connections meeting Criminal Justice Information Services (CJIS) Division Security Policy requirements. DHS will provide its own Internet connectivity and maintenance.
21. Each HR LInX member agency that contributes information to the LInX retains sole ownership of, sole responsibility for, and exclusive control over the information that it contributes, and may at any time update, correct, or delete that information.
22. Each HR LInX member agency will, to the quickest degree possible, update, correct, or delete the information that is found to be incorrect within LInX.
23. Each HR LInX member agency that contributes information to the LInX has the sole responsibility to ensure that information that it contributes was not obtained and is not maintained in violation of any federal, state, or local law applicable to that agency. In addition, each HR LInX member agency will ensure compliance with all laws, regulations, policies, and procedures applicable to its entry and sharing of information into LInX, or otherwise made applicable to the information contained therein by the terms of this agreement.
24. Each HR LInX member agency will make reasonable efforts to ensure the accuracy upon entry, and continuing accuracy thereafter, of information that it contributes to LInX. If DHS receives a challenge to or a question regarding the accuracy of the information in LInX, DHS will notify the HR LInX member agency that contributed this information and HR LInX in writing.
25. DHS may access and use LInX information for the following purposes only: all official law enforcement purposes, national or homeland security purposes and background checks on contractors as part of the suitability screening process prior to working at DHS and applicants seeking employment with DHS components. LInX information cannot be

accessed for any other purpose, including general licensing, employment (except as provided for in paragraph 1), general screening concerning eligibility for federal or state benefits, or background checks not related to employment with DHS.

26. DHS will protect the confidentiality of all LInX information. DHS will protect such information from disclosure consistent with the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, any other applicable public access law, and applicable compulsory process. DHS will notify HR LInX immediately upon becoming aware of an information demand or a lawsuit brought in any court seeking access to information in LInX, in either verbatim or derivative form. Where DHS receives a third party request for reports or information, DHS shall consult with HR LInX in order to determine an appropriate response.
27. LInX information, including any analytical products derived there from, may not be used as a basis for any enforcement action or disseminated outside DHS for any purpose or in any other manner, unless DHS first obtains the express permission of the agency or agencies that contributed the information in question. For the purpose of this paragraph an enforcement action is any inclusion of LInX information in an official case file and any use of LInX information in the preparation of judicial process such as affidavits, warrants, or subpoenas. DHS users of LInX information may not electronically retain LInX information without obtaining the HR LInX contributing agency's permission. When LInX information is summarized or otherwise documented, the DHS user shall indicate that the information was obtained from LInX. The date the information was accessed from LInX will also be annotated.
28. Notwithstanding the requirement in the preceding paragraph that LInX information not be used as a basis for an enforcement action or disseminated without first obtaining the permission of the contributing agency, in accordance with and to the extent permitted by applicable law, judicial process, or applicable guidelines, immediate dissemination of LInX information without such permission can be made if DHS determines that:
 - a) there is an actual or potential threat of terrorism accompanied by an immediate danger of death or serious physical injury to any person, or imminent harm to U.S. national or homeland security; and
 - b) it is necessary to disseminate such information without delay to any appropriate recipient for the purpose of preventing or responding to such a threat, danger, or harm.

DHS shall immediately notify HR LInX in writing upon receiving notice of any information dissemination made under this exception.

29. DHS will duly report to HR LInX in writing any instance in which LInX information is lost, stolen, compromised, or otherwise used in an unauthorized manner. Such notice is to be provided immediately after the party first learns of the unauthorized use.

30. Each HR LInX member agency understands that DHS information accessed via the LEIS Service may change over time and users should verify the accuracy of information prior to taking any action based on the information.

Ownership, Sharing, Use and Quality of DHS Information

31. Authorized LInX users will have access to DHS information via the LEIS Service. HR LInX member agencies will provide their own Internet connectivity and maintenance.
32. DHS will permit authorized personnel of HR LInX agencies to access and use information via the LEIS Service.
33. Each DHS component that contributes information shared via the LEIS Service retains sole ownership of, sole responsibility for, and exclusive control over the information that it contributes, and may at any time update, correct, or delete that information.
34. Each DHS component contributing information will, to the quickest degree possible, update, correct, or delete the information that is found to be incorrect within the DHS source system.
35. Each currently contributing DHS component has ensured and each future DHS contributing component will ensure that information it makes available through the LEIS Service is information that it is authorized to share with HR LInX and its member agencies under this MOA, and that such information was not obtained and is not maintained in violation of any applicable law. In addition, each DHS component will ensure compliance with all laws, regulations, policies, and procedures applicable to the information it makes available through the LEIS Service or otherwise made applicable to the information contained therein by the terms of this agreement.
36. Each DHS component will make reasonable efforts to ensure that information that it makes available through the LEIS Service is accurate, complete, timely, and relevant. If an HR LInX member agency receives a challenge to or has a reasonable question about the accuracy of DHS information, then the member agency will notify the DHS point of contact listed in this MOA in writing.
37. HR LInX member agencies will access and use DHS information obtained via the LEIS Service for the following purposes only: official criminal law enforcement purposes, national or homeland security purposes, and background checks on applicants seeking employment with HR LInX member agencies. DHS information obtained via the LEIS Service cannot be accessed or used for any other purpose, including general licensing, employment (except as provided for above in paragraph 1), eligibility for federal or state benefits, and background investigations not related to employment with HR LInX member agencies.
38. LInX will protect the confidentiality of all DHS information. DHS information obtained via the LEIS Service may not be disclosed in response to a request made under any state or

local access law. Information available through the LEIS Service remains in the custody and control of DHS and is subject to release only in accordance with federal law, including the Freedom of Information Act and the Privacy Act. HR LInX agencies will notify HR LInX and the DHS contributing component immediately upon becoming aware of a lawsuit, freedom of information act request or other judicial proceeding seeking access to DHS information obtained via the LEIS Service, in either verbatim or derivative form. Where HR LInX receives a third party request for DHS reports or information accessed through the LEIS Service, HR LInX shall consult with the DHS POC listed in this MOA for a determination as to the manner in which the request will be responded to.

39. DHS information obtained via the LEIS Service, including analytical products derived there from, may not be used as a basis for enforcement action or disseminated for any other purpose or in any other manner outside the HR LInX agency that accessed the information, unless that agency first obtains the express permission of the DHS contributing component. Specifically included within this prohibition is any inclusion of DHS information obtained via the LEIS Service in an official investigative or case file and any use of this information in the preparation of judicial process such as affidavits, warrants, or subpoenas. HR LInX users of DHS information obtained via the LEIS Service may not print, copy, or electronically retain this information without obtaining the DHS contributing component's permission. When DHS information obtained via the LEIS Service is summarized for internal communications or otherwise documented for internal use, the HR LInX user shall indicate that the information was obtained via the LEIS Service. The date the information was accessed via the LEIS Service will also be annotated.
40. Notwithstanding the requirement in the preceding paragraph that LEIS Service information not be used as a basis for enforcement action or disseminated without first obtaining the permission of the DHS contributing component, in accordance with and to the extent permitted by applicable law, judicial process, or applicable guidelines, immediate dissemination of LEIS Service information can be made without such permission if the HR LInX agency determines that:
 - a) there is an actual or potential threat of terrorism accompanied by an immediate danger of death or serious physical injury to any person, or imminent harm to the national security; and
 - b) it is necessary to disseminate such information without delay to any appropriate recipient for the purpose of preventing or responding to such a threat, danger, or harm.

HR LInX member agency shall immediately notify the HR LInX and DHS POC listed in this MOA upon receiving notice of any information dissemination made by a member agency under this exception.

41. HR LInX member agencies will duly report in writing to the DHS POC listed in this MOA any instance in which DHS information is lost, stolen, compromised, or otherwise used in

an unauthorized manner. Such notice is to be provided to DHS immediately after the party first learns of the unauthorized use.

42. Each DHS component understands that HR LInX information accessed via the LEIS Service may change over time and users should verify the accuracy of information prior to taking any action based on the information.

Privacy, Security, Civil Rights and Civil Liberties

43. Before access to LEIS Service will be granted, HR LInX will certify to DHS that LInX users have undergone background checks consistent with HR LInX or DHS requirements. These background checks will require, at a minimum, criminal history and national fingerprint checks.
44. Both LInX and LEIS Service have an audit capability that will log the date, time, subject, and originating account of all user queries. The Parties will maintain these audit logs for five years or for the life of the records accessed, whichever is longer. Each Party will, upon request, cooperate with reasonable requests for information from the other party as necessary to allow the parties respective oversight authorities to ensure the proper execution and implementation of the terms of this agreement. Upon request, the Parties will also share the results of audit reports or other internal investigations related to performance under the agreement.
45. DHS and the HR LInX will exercise the degree of care appropriate to protecting information with respect to the information obtained through the LEIS Service and LInX pursuant to this MOA. DHS and HR LInX will restrict access to such information to authorized personnel. Unauthorized use or sharing may result in administrative or disciplinary action, and the offending party may be prosecuted or fined, when appropriate, under applicable federal or state laws. (See **Sanctions** below for greater details regarding the penalties for unauthorized use of information through the LEIS Service.) The Parties acknowledge that unauthorized disclosure of LInX or LEIS Service information could reasonably be expected to interfere with ongoing investigations and enforcement proceedings.
46. The collection, use, disclosure, and retention of personally identifiable information shall be limited to that which is necessary for purposes of the Parties as set forth in this MOA. Personally identifiable information shall be protected by administrative, technical and physical safeguards appropriate to the sensitivity of the information. Personally identifiable information will only be disclosed to authorized individuals with a need to know and only for uses that are consistent with the provisions of the Privacy Act of 1974, 5 U.S.C. 552a and the stated purposes under this MOA and for which the information was originally collected.
47. The Parties acknowledge that their access to or use of information covered by this agreement must comply with any written Privacy and Civil Liberties Protection Policies

applicable to the information shared by either party under this MOA including, when feasible and as otherwise required, written guidelines that ensure the protection of privacy and other legal rights of Americans in the development and use of the Information Sharing Environment (ISE).¹

Property

48. Each party is responsible for purchasing and maintaining its own equipment and facilities in relation to this MOA.
49. Unless otherwise provided herein or in an addendum, each party shall bear its own costs in relation to this MOA. Expenditures will be subject to applicable budgetary processes and availability of funds pursuant to applicable laws and regulations, including the Anti-Deficiency Act, 31 U.S.C. 1341. The Parties expressly acknowledge that this MOA in no way implies that any funds will be appropriated for such expenditures.

Liability

50. Unless specifically addressed by the terms of this MOA, the Parties acknowledge they are not responsible for wrongful acts or for acts of omission or negligence of the other Parties' officers and employees. Parties are only responsible for the negligent or wrongful acts or omissions of their respective officers and employees to the extent they would be liable under the laws of the jurisdiction(s) to which they are subject.
51. This MOA is an agreement between the Parties and is not intended to create or confer, and does not create or confer, on any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise.

Sanctions

52. HR LInX participating agencies and DHS participating components will duly report to HR LInX and DHS in writing any instance in which HR LInX or the LEIS Service information is used in an unauthorized manner. Such notice is to be provided immediately after the party first learns of the unauthorized use.
53. Any participating agency, component or user who is determined by HR LInX or DHS to be in systemic or repeated violation of applicable laws and procedures governing access to and use of LInX or LEIS Service information may be denied access to LInX and the LEIS Service.
54. Any supervisor, law enforcement officer, employee, detailee, agent, representative, task force member, contractor/subcontractor, or consultant, who by virtue of his employment or

¹ As established pursuant to section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended. For the purposes of this MOA, applicable ISE guidelines are those which pertain specifically to the exchange of terrorism-related information.

official position, has possession of, or access to, information shared under this MOA which contain personally identifiable information, the disclosure of which is prohibited by law, agreement, rules, or regulation and who, knowing that the disclosure of the information is prohibited, willfully discloses the material in any matter, including oral communication, will have their access to the information shared under this MOA revoked, and may be prosecuted or fined, when appropriate, under applicable federal or state law, or may be subject to administrative or disciplinary actions.

Entry into Force, Duration, Amendment, and Termination

55. This MOA will enter into force on the day it is signed by the last Party and it will remain in effect until terminated pursuant to paragraph 57, 59, or 60 of this MOA
56. Participating HR LInX agencies may leave the system. If a HR LInX member agency withdraws from HR LInX, HR LInX will provide written notice to DHS at least thirty days prior to effective date of withdrawal and Appendix 1 will be updated to reflect the change. If HR LInX terminates a member agency's authorized use of LInX, then HR LInX will contact the DHS as soon as practical to inform DHS of the termination and to discuss the effects of the termination.
57. Except as otherwise provided, this MOA may be amended by the mutual written consent of the signatories, delegates or successors.
58. This MOA may be terminated at any time upon the mutual written consent of the signatories, delegates or successors. In the event that both Parties consent to terminate this MOA, the Parties will consult prior to the date of termination to ensure termination on the most economical and equitable terms.
59. Either party may terminate this MOA upon 30 days written notice to the other party. Such notice will be the subject of immediate consultation by the Parties to decide upon the appropriate course of action. In the event of such termination, the following will apply:
 - a) The terminating party will assume full responsibility for all obligations agreed upon by this MOA, including continued and full participation in the sharing of information between all MOA signatories, through the effective date of termination.
 - b) Each party will pay all costs incurred as a result of the termination of this MOA.
 - c) All rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of all information received during a party's participation in this MOA shall survive any termination.

- d) No additional penalties shall be imposed on the party initiating the termination of the partnership set forth in this MOA if notice is given within 30 days of the proposed termination.

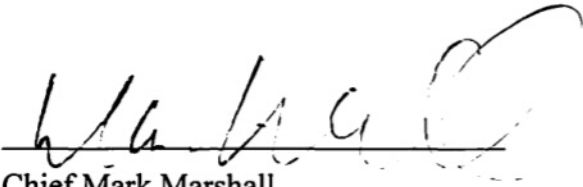
In witness thereof, the Parties have executed this MOA by the signatures of the duly authorized officials from DHS and HR LInX.



John Morton
Director,
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

10-26-10

Date



Chief Mark Marshall
Chairman LInx Hampton Roads

10/26/10

Date