

**Memorandum of Understanding  
Between  
The Federal Bureau of Investigation  
and  
The Department Of Homeland Security  
Regarding  
Participation in the Law Enforcement National Data Exchange  
Information Sharing Initiative**

**A. Purpose**

1. This Memorandum of Understanding (MOU) is entered into by the Federal Bureau of Investigation (FBI) through its Criminal Justice Information Services (CJIS) Division of the and Department of Homeland Security (DHS), as represented by U.S. Immigration and Customs Enforcement (ICE), (collectively, "the Parties"). The FBI/CJIS Division operates the Law Enforcement National Data Exchange (N-DEx) system. DHS operates the Law Enforcement Information Sharing Service (LEIS Service). The Parties are establishing a bi-directional law enforcement information sharing relationship through the execution of two separate agreements which will set forth policies for the use of these two different information systems. This MOU establishes the policies and procedures for the use of N-DEx information accessed through N-DEx by DHS. N-DEx, a scalable information sharing system, is at the center of the Law Enforcement Information Sharing Plan (LEISP) and architecture. A separate MOA entitled the Memorandum of Agreement Between the Department of Homeland Security and the Federal Bureau of Investigation Regarding Participation in the Law Enforcement Information Sharing Service ("The LEIS Agreement") establishes the policies and procedures for the use of DHS information accessed through the DHS LEIS Service by FBI/CJIS and those law enforcement and criminal justice agencies and users that have entered into an N-DEx MOU with FBI/CJIS and are sharing information through N-DEx ("N-DEx participating members").
2. N-DEx, a repository for information from contributing state, local, tribal, and federal law enforcement and criminal justice entities, will provide the capability to make potential linkages between law enforcement information contained in crime incidents, criminal investigations, arrests, bookings, incarcerations, parole and/or probation reports in order to help solve, deter, and prevent crimes, and thereby, improve homeland security. The law enforcement and criminal justice information contributed to and/or exchanged by N-DEx participating members will contain personally identifiable information<sup>1</sup>, as well as, non-identifying descriptive data (location of offense, type of weapon involved, etc.), about crime incidents and criminal investigations. The development of the N-DEx system will also include the transition of data and capabilities from the OneDOJ information

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<sup>1</sup> The term "personally identifiable information" refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. See OMB Cir. M-07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information (May 22, 2007) n. 1.

sharing system. OneDOJ is an existing FBI/CJIS information sharing system which contains only Department of Justice (DOJ) agency data. OneDOJ uses a Law Enforcement Exchange Specification (LEXS) standard to interface and exchange search and retrieve (SR) queries with other state/regional information sharing systems. A migration of the DOJ data and transition of capabilities of OneDOJ into N-DEx is underway. Until the migration of data and transition of capabilities transition is complete, N-DEx will leverage the OneDOJ system, via SR query, to ensure optimum sharing and availability of DOJ data as well as the widest array of capabilities. This transition phase will include the OneDOJ capability to query N-DEx using the LEXS-SR, for OneDOJ users.

3. The contributed incident, offense, and/or case reports, arrest, booking, incarceration and probation and parole reports will populate N-DEx. N-DEx will have the capability to automatically correlate names, addresses, telephone numbers, offense locations, and other crime descriptors contained in these reports to identify potential linkages. These various reports will be contributed to N-DEx by N-DEx participating members pursuant to and in compliance with their own state laws, guidelines, and agency policies and practices.
4. N-DEx participating members may choose to utilize a SR query capability that will allow the leveraging of systems without contributing data to N-DEx. However, this method of participation may limit certain N-DEx functionality, most significantly, the automated correlation capability, as well as link and geo-spatial visualization. DHS will provide N-DEx participating members with access to its data through the LEIS Service as described further in the separate LEIS Agreement.
5. Utilizing N-DEx capabilities to further law enforcement activities, including counter terrorism efforts, will significantly advance public safety and security. Moreover, the resulting enhanced utility reinforces the incentive for maximum agency participation and contribution, thereby maximizing the information available.
6. This MOU supplements, but does not replace, any separate current or future MOUs, User Agreements, Letters of Acknowledgment, Interim User Agreements or any other Agreements relating to either the FBI/CJIS Division or the DHS LEIS Service.

#### **B. Parties**

The Parties to this MOU are the FBI and DHS.

#### **C. Points of Contact**

1. The Parties shall each designate an individual as that Party's point-of-contact (POC), known as an N-DEx Agency Coordinator (NAC), for representing that Party in regard to this MOU. A Party may change its POC at any time upon by providing written notification thereof to the other Party's POC.
2. The Parties shall each designate system administrators (User Administrator, Data Administrator and Audit Administrator) for their agencies. User

Administrators are designated by the CSO and a form provided by the N-DEX Program Office will be completed and kept on file by both parties.

#### **D. Authority**

Authority for the FBI to enter into this MOU includes: 28 U.S.C. §§ 533, 534; the Uniform Federal Crime Reporting Act of 1988, Public Law 100-690, Title VII, Subtitle I, § 7332 (codified as a note to section 534); 28 C.F.R. § 0.85; and Presidential Decision Directives 39 and 62.

Authority for DHS to enter this MOU includes:

- 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 DHS employees to perform and exercise powers, privileges, and duties relating to immigration enforcement.
- 8 U.S.C. § 1357(a). This section of law authorizes DHS employees to take specific actions in the investigation of violations of the immigration laws.
- 19 U.S.C. § 1589a. This section of law authorizes DHS 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; TECS System of Records Notice, DHS/CBP-011, December 19, 2008, 73 FR 77778; Immigration and Enforcement Operational Records System (ENFORCE) System of Records Notice, DHS/ICE-011, May 3, 2010, 75 FR 23274..
- 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.

### **E. Mission/Objectives**

The N-DEX Mission: "To provide law enforcement agencies with a powerful new investigative tool to search, link, analyze and share criminal justice information such as, incident/case reports, booking and incarceration data, and parole/probation data on a national basis to a degree never before possible."

The vision of N-DEX is to share complete, accurate, timely and useful criminal justice information across jurisdictional boundaries and to provide new investigative tools that enhance the Nation's ability to fight crime and terrorism.

### **F. Concept**

1. The N-DEX program is a cooperative endeavor of N-DEX participating members including state, local, tribal, and federal law enforcement and criminal justice agencies, in which each agency is participating under its own individual legal status, jurisdiction, and authorities. All N-DEX operations will be based upon the legal status, jurisdiction, and authorities of individual participants. N-DEX is not intended, and shall not be deemed, to have any independent legal status.
2. Pursuant to Executive Order 12958 as amended, Classified National Security Information, the N-DEX system is designated as an UNCLASSIFIED system. The Parties shall ensure that data entered into or exchanged by the N-DEX system is UNCLASSIFIED and free of classified National Security information. Information contributed to N-DEX will reside on a server located in FBI-controlled space, containing Sensitive But Unclassified (SBU) and Controlled Unclassified Information (CUI) information from the record systems of the FBI and DHS. All N-DEX participating members, whether contributing information to N-DEX or leveraging systems as DHS will do, will have role-based access to the N-DEX server(s) and N-DEX functionality via secure Internet connections or via the FBI's CJIS Wide Area Network.

## **G. Ownership, Entry, and Maintenance of Information<sup>2</sup>**

1. Each Party retains sole responsibility and control and disposition over the information it contributes or allows access to, and may, update or correct any of its information in N-DEx, delete it from the N-DEx entirely, or no longer use N-DEx to facilitate exchange of its information. All system entries can be traced back to the contributing Party. The content of the contributed or accessed information remains the sole responsibility of the contributing Party and is under that Party's exclusive control and contributed or shared under an express promise of confidentiality.
2. Each Party will retain sole responsibility and control over the content of the information it contributes to or makes available through the N-DEx system. N-DEx, through the FBI's CJIS Advisory Process, has established a policy that each data contributor has an obligation to maintain "system discipline," that is, to maintain, timely, accurate, complete, and relevant information in the N-DEx system or in a system that the N-DEx system is able to query.
3. Each Party has the sole responsibility and accountability for ensuring that information entered into or made available through N-DEx was not obtained in violation of any state, local, tribal, or federal law applicable to the contributor. Data must be pertinent to and within the scope of the authorized law enforcement, criminal justice, counterterrorism, public safety, homeland security and/or national security functions of the contributing agency and still meet N-DEx security standards.
4. Because information contributed to N-DEx will be limited to duplicates and summaries of information obtained and separately managed by the entering or sharing Party within its own record system(s), and for which the contributing agency is solely responsible and accountable, information submitted by any N-DEx participating member shall not be altered or changed in any way, except by the contributing Party.
5. Any N-DEx participating member that desires to incorporate into its own separate records N-DEx information contributed to or made available by another participating member, including any analytical products based on another participating member's information, must first obtain the contributing agency's express permission. N-DEx information may not be used in the preparation of documents related to the judicial process such as affidavits, warrants, or subpoenas, without the permission of the Party that initially provided the information and corroboration of the information.
6. Commercially available references, public source information, and software applications, such as commercial directories, census data, mapping applications, and analytical applications are considered to be non-record material and should be maintained in accordance with applicable contracts and/or licensing

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<sup>2</sup> The provisions in Section G cover the information contributed to N-DEx by FBI/CJIS and other Participating Agencies. The LEIS Agreement contains similar provisions which cover the Ownership, Entry, and Maintenance of DHS information to be made available through a connection between the LEIS Service and N-DEx.

agreements. To the extent that any such information is relevant and appropriate to maintain as independent records, it will be the responsibility of the accessing N-DEx participating member to incorporate such information as records in that N-DEx participating members own official records systems(s) in accordance with that agency's records management processes and any applicable contract or licensing agreement applicable to the information.

7. The N-DEx system will thus only be populated with information derived from or made available through queries of N-DEx participating members' own records. The system is not in any manner intended to be an official repository of original records or to be used as a substitute for such a repository. Rather, this system is merely an application to facilitate the sharing of copies of certain information that may be contributed from or made available via connections with pre-existing records systems of the N-DEx participating members and to make correlations with such information.
8. The N-DEx participating member has the sole responsibility and accountability for ensuring that it is not constrained from sharing this information in accordance with this MOU by any laws, regulations, policies, and procedures and for making reasonable efforts to ensure the accuracy upon entry, and continuing accuracy thereafter, of any information contributed or made available.

#### **H. Access, Use, and Disclosure of Information<sup>3</sup>**

1. All disclosures of federal records from the N-DEx system must be made in accordance with federal law, including the Privacy Act of 1974. Disclosure of any non-federal records will be determined by the contributing agency or a participating member sharing N-DEx information under the applicable laws of their respective jurisdictions. Participating federal agencies agree to treat information, as sensitive to the extent permitted by law, including the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. §552a.
2. Each Party will contribute or allow access to information via N-DEx and agrees to permit the access, dissemination, and/or use of such information by every other N-DEx participating member under the provisions of this MOU. The contributing and/or sharing N-DEx participating member has the sole responsibility and accountability for ensuring that it is not constrained from permitting this access by any laws, regulations, policies, and procedures applicable to that contributing and/or sharing N-DEx participating member.
3. A Party may only access the N-DEx system when it has a legitimate need-to-know the information for an authorized law enforcement, criminal justice, counterterrorism, public safety, homeland security and/or national security purpose, after receiving required training and/or any necessary certification(s) (e.g. NCIC, III). Specifically, the N-DEx system may be used to develop criminal

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<sup>3</sup> The provisions in Section H cover the information contributed to N-DEx by FBI/CJIS and other Participating Agencies. The LEIS Agreement contains similar provisions which cover the Access, Use, and Disclosure of DHS information to be made available through a connection between the LEIS Service and N-DEx.

investigations and local crime trends, verify links between criminals in the community, and other criminal justice purposes.

4. The N-DEx system cannot be used for licensing and employment purposes, background investigations of state, local, or federal employees, or any other non-law enforcement purposes.
5. All monitoring of successful and unsuccessful N-DEx logon attempts, file access, correlations, type of transaction, and password changes will be established and maintained by the N-DEx system regardless of access means. All audit trail files shall be protected to prevent unauthorized changes or destruction. No additional requirements are being imposed by the N-DEx upon participating agencies.
6. Information in N-DEx, including any analytical products, may be disseminated subject to the following requirements:
  - a. Hard or electronic copies of documents made available through N-DEx may not be provided to any third Party agency without the approval of the contributing/sharing N-DEx participating member.
  - b. Information or summaries of information contributed to or made available through N-DEx may be shared with a non-participating law enforcement agency in the furtherance of a legitimate law enforcement criminal investigation with the approval of the contributing/sharing N-DEx participating member.
  - c. Immediate dissemination of information can be made if the recipient of the information determines that an emergency involving an actual or potential threat of terrorism, immediate danger of death or serious physical injury to any person, or imminent harm to the national security requires dissemination without delay. The N-DEx participating member that contributed and/or shared the information shall be promptly notified of all disseminations made under this exception.
7. Sanctions for misuse of N-DEx are established by the FBI's CJIS Advisory Policy Board (APB). Sanctions for misuse of the system may include disabling user accounts, removal from system, or other appropriate penalties.

#### **I. Security**

1. Each Party will be responsible for designating those employees who should have access to the N-DEx system. N-DEx has been developed with the capability to record each use of the system, including the identity of the individual accessing the system, time of access to the system, and the information entered and/or queried. N-DEx was developed with privacy and security in mind, and each N-DEx participating member should ensure that access to system information is on a need-to-know basis, and that all information is treated as law enforcement sensitive.

2. Each Party agrees to use the same degree of care in protecting information accessed through N-DEx, pursuant to this MOU, as it exercises with respect to its own sensitive information.
3. Each Party is responsible for training those employees authorized to access the N-DEx system regarding the use and dissemination of information obtained from the system. Specifically, employees should have a clear understanding of the need to verify the information with the contributing Party prior to using the information for purposes such as obtaining search and arrest warrants, affidavits, subpoenas, etc. Parties should also fully brief accessing employees regarding the proscriptions for using third party information as described in section H above.

**J. Property**

1. The equipment purchased by the FBI to support this effort will remain the property of the FBI. The FBI will also remain responsible for maintaining any equipment owned by the FBI that is being used to support N-DEx.
2. Ownership of all property purchased by parties other than the FBI will remain the property of the purchasing party. The accessing agency is responsible for configuring its computers to conform to the access requirements of the SBU server(s). Maintenance of the equipment purchased by a party shall be the responsibility of that party.
3. FBI equipment and software may be "*transferred*" to another party during the N-DEx Initiative. If so transferred, the receiving party will be responsible for maintaining such property while it is in its possession and the property is being used to support the N-DEx initiative.

**K. Costs**

Unless otherwise provided herein, or in a supplementary writing, each party shall bear its own costs in relation to this MOU. Verbal agreements to assume a particular financial responsibility shall have no force or effect, unless accompanied by a written agreement that expresses the intent of the parties. All obligations of and expenditures by the parties will be subject to their respective budgetary and fiscal processes and availability of funds pursuant to all laws, regulations, and policies applicable thereto. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

**L. Liability**

1. The N-DEx system is not a separate legal entity capable of maintaining an employer-employee relationship and, as such, all personnel assigned by a Party to perform N-DEx functions shall not be considered employees of the N-DEx or of any other Party for any purpose. The employing Party thus remains solely responsible for supervision, work schedules, performance appraisals, compensation, overtime, vacations, retirement, expenses, disability, and all other employment-related benefits incident to assignment of its personnel to the N-DEx functions.



2. Unless specifically addressed by the terms of this MOU (or other written agreement), the Parties agree to be responsible only for the negligent of their respective officers and employees, but only to the extent they would be liable under the laws of the jurisdiction(s) to which they are subject.

#### **M. Governance**

1. The Parties recognize that the success of this collaboration requires close cooperation by both Parties. To this end, the N-DEx system will be operated under the FBI/CJIS APB shared management concept in which the Parties will be represented in formulating operating policies and procedures. The Parties agree to comply with all future policies and procedures developed by the FBI/CJIS APB. Additionally, the Parties agree this MOU is subject to change by the FBI/CJIS APB by the adoption of policies pursuant to their authorized duty and advisory function. The terms of any policy, subsequently adopted by the APB, will override any existing inconsistent terms contained in this MOU.
2. Disagreements among the Parties arising under or relating to this MOU shall be resolved only via consultation at the lowest practicable level by and between the Parties (or as otherwise may be provided under any separate governance procedures) and will not be referred to any court, person or entity for adjudication or resolution.
3. The Parties may establish additional procedures for governance of the N-DEx system and in furtherance, thereof, may enter into one or more separate formal or informal agreements, provided that any such agreement does not conflict with the spirit, intent, or provisions of this MOU, and is sufficiently memorialized to meet the business purposes of the N-DEx governance (including adequately informing current and future N-DEx participating members). Such governance agreement(s) may, for instance, address: organizational structure and control; executive management and administration; delegation of authority; operating policies, procedures, rules, and practices; meetings, quorums, and voting procedures; audits; and sanctions (including involuntary termination of a Party's participation in this MOU).

#### **N. No Rights in Non-Parties**

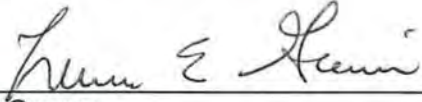
1. This MOU is an agreement between DHS and FBI and is not intended, and should not be construed, to create or confer on any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise against the FBI, the Department of Justice, ICE, the Department of Homeland Security, the United States, or any state or local agency participating in the N-DEx program, or the officers, directors, employees, detailees, agents, representatives, task force members, contractors, subcontractors, consultants, advisors, successors, assignees, or other agencies thereof.

**O. Effective Date/Duration/Modification/Termination**

1. This MOU shall become effective when the duly authorized representatives of both Parties have signed the document.
2. This MOU shall continue in force indefinitely for so long as it continues to advance the Parties' mission purposes, contingent upon approval and availability of necessary funding.
3. This MOU may be modified as described above in Section M. or upon the mutual written consent of both Parties. However, the Parties may, without the need of formal MOU modification, cooperatively address and resolve administrative, technical, and operational details relating to this MOU, provided that any such resolution does not conflict with the spirit, intent, or provisions of this MOU; could not reasonably be viewed as particularly sensitive, controversial, or objectionable by either Party; and is sufficiently memorialized to meet the business purposes of N-DEX governance (including adequately informing current and future Parties).
4. This MOU may be terminated at any time by the mutual written agreement of both Parties. A Party's duly authorized representative may also terminate the Party's participation in the MOU upon written notice to the other Party of not less than thirty (30) days. A Party's participation may also be terminated involuntarily as may be provided in any applicable governance agreement.
5. Upon termination of this MOU, all property being used under its purview will be returned to the respective supplying Parties. Similarly, if a Party's participation in this MOU is terminated, the Party will return any property to supplying Parties, and the remaining Parties will return any property supplied by the withdrawing Party.
6. All information contributed to the N-DEX system by a terminating Party will be removed from the N-DEX system, unless the agency offers no objections and provides written permission to retain the data.
7. As to information retrieved from the N-DEX system during a Party's participation under this MOU, the rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of such information shall survive any termination. This applies both as to a terminating Party's disclosure and use of the other Parties' information, and to the other Parties' disclosure and use of a terminating Party's information.

IN WITNESS WHEREOF, the Parties have executed this MOU by the signatures of the duly authorized representative of each on the dates indicated. A photocopy or faxed signature is as valid as the original.

FOR: Law Enforcement N-DEX

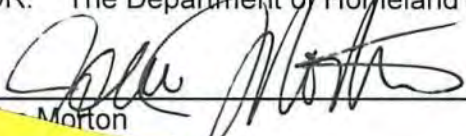


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Louis E. Grever  
Executive Assistant Director  
Science and Technology Branch  
Federal Bureau of Investigation

10/25/2010

\_\_\_\_\_  
Date

FOR: The Department of Homeland Security



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Robert Morton

Secretary,  
Immigration and Customs Enforcement  
Department of Homeland Security

10/26/10

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Date