



The League of Women Voters of Portland

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DATE: February 22, 2011

TO: Mayor Sam Adams
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Randy Leonard
Commissioner Dan Saltzman
Auditor LaVonne Griffin-Valade

FROM: League of Women Voters of Portland

CC: IPR Director Mary-Beth Baptista
IPR Assistant Director Constantine Severe

RE: **Protocols for Working with FBI on Terrorism Investigations**

The League of Women Voters of Portland would like to express its appreciation to Mayor Adams for arranging an inclusive and informative decision-making process. You have offered the public the opportunity to weigh in and provided access to helpful information.

After careful consideration of the available information and in light of our organization's principles, we urge the city to continue to work with the FBI Joint Terrorism Task Force (JTTF) on a case-by-case basis. Over its 91-year history, the League has developed a set of fundamental principles upon which we act. Two of those principles directly relate to the city's relationship to the JTTF. The League "promotes an open governmental system that is representative, accountable, and responsive ... and that protects individual liberties established by the Constitution." Furthermore, "it promotes political responsibility through informed and active participation in government."

Some discussion has focused on why Portland has engaged in repeated public debate of the city's participation in the JTTF. In our view, it is due to the fact that the Portland City Council is responsible for both legislative and administrative functions and city contracts appear on the weekly council agendas. This provides a level of transparency not available in other communities. FBI General Counsel Valerie Caproni said she was hoping for sunshine when she came to Portland. We can't always count on sunny days here, but as a community we do value the sunshine that comes from a city government and police force that is open and accountable.

As an organization that promotes political involvement, we value prohibitions on the collection and unlimited retention of police files on individuals engaging in political and other

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non-criminal first amendment activities. Living in fear of being spied upon by law enforcement can have a chilling effect. Without local oversight of our Portland police officers it will be impossible to be assured that those participating in political or religious activities are benefiting from protections offered by Oregon law. The FBI is not responsible for ensuring that local officers comply with state law and asking our police to monitor their own actions lacks accountability. The League supports the periodic review of all critical incident and intelligence related files by the City Attorney and the Independent Police Review Division (IPR) director. These reviews should be summarized in written reports presented to City Council and available to the public.

There is no doubt Oregon law offers considerably stronger protections to its residents than federal law. ORS 181.575 prohibits collection or maintenance of information related to first amendment activities unless it “directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.”

The 2008 Attorney General’s Guidelines give the FBI the authority to conduct "assessments" without any factual predicate and "preliminary investigations" based on a mere allegation of wrongdoing or the possibility of criminal activity. In a 2010 report, the U.S. Department of Justice Office of Inspector General stated that this “possibility of criminal activity standard” is “easily attainable and speculative.” Furthermore, the 2008 Attorney General’s Guidelines loosened the limitations on the retention of information related to attendance at public events, clearly a first amendment activity. The Inspector General raised concerns about this change in the guidelines and recommended reinstatement of the prohibition on the retention of files of people attending public events.

Department of Justice representatives offered assurance that the FBI does not engage in activities that would violate Oregon law, but provided no vehicle for the city to monitor the actions of its police officers if they are assigned to the JTTF. The City Attorney’s office will not be allowed to review files. The FBI conducts regular audits of its files, but those audits are not available to the public and one must assume that they would check for compliance with federal law, not Oregon law.

To summarize, the League urges City Council to enter into an agreement with the FBI that continues cooperation with the JTTF on a case-by-case basis. The agreement should require periodic review by the City Attorney and the IPR director of all critical incident and intelligence related files created by Portland police officers working with the FBI. In addition, the results of these reports should be presented on a regular basis to City Council and be available to the public. Thank you for considering our position.

“To promote political responsibility through informed and active participation in government.”