
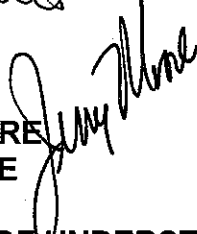


FOR THE COUNCIL MEETING OF:  
AGENDA ITEM NO:

December 7, 2009  
4.3 (c)

TO: MAYOR AND CITY COUNCIL  
THROUGH:  LINDA NORRIS  
CITY MANAGER  
FROM: GERALD F. MOORE   
CHIEF OF POLICE  
SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE OREGON  
DEPARTMENT OF JUSTICE AND CITY OF SALEM FOR  
PARTICIPATION IN THE OREGON TITAN FUSION CENTER

**ISSUE:**

Should the City of Salem approve the Memorandum of Understanding between the Oregon Department of Justice and the City of Salem to participate in the Oregon TITAN Fusion Center to gain access to their resources?

**RECOMMENDATION:**

Staff recommends City Council approve the Memorandum of Understanding with the Oregon Department of Justice.

**BACKGROUND:**

The Titan Fusion Center was established to act as an information clearinghouse on criminal activity for Oregon law enforcement with a special emphasis on terrorist and gang activity. Salem Police Department is a participating agency in the Titan Fusion Center. Our membership in the Fusion Center affords us access to many Federal and State databases and other law enforcement restricted databases. Non-participating agencies do not have the ability to search without going through another source. We are also granted free terrorism and analysis training for our Crime Analyst. Also, our participation allows for us to request a Titan Fusion Center support team to assist with research and analysis in any terrorism or long term criminal investigation.

**FACTS AND FINDINGS:**

1. Currently the Salem Police Department provides the services of one Crime Analyst 5 hours per week.
2. Titan Fusion Center participating agencies include:
  - Oregon Department of Justice
  - Oregon Military Department
  - Oregon State Police
  - Salem Police Department
  - Internal Revenue Service

- Federal Bureau of Investigation
- Bureau of Alcohol, Tobacco, & Firearms
- Federal Department of Homeland Security
- Transportation Safety Administration (DHS)

3. There fiscal impact to the City for participation in the Oregon Titan Fusion Center is the cost of services of one Crime Analyst 5 hours per week.

Attachment 1: Memorandum of Understanding between the Oregon Department of Justice and the City of Salem

**MEMORANDUM OF UNDERSTANDING  
REGARDING PARTICIPATION IN  
THE OREGON TITAN FUSION CENTER**

This Memorandum of Understanding (the "MOU") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2009 by and between the State of Oregon for and on behalf of the Oregon Department of Justice, Criminal Division (ODOJ) and \_\_\_\_\_ (Participating Agency), with respect to participation in the establishment, organization, operation and administration of the Oregon Titan Fusion Center (the "Center"). ODOJ, Participating Agency and other governmental law enforcement agencies executing an MOU will hereafter collectively be referred to as "Participating Agencies".

**RECITALS**

The Participating Agencies desire to work together and cooperate to establish, organize, operate and administer the Center, which is intended to be an all-crime information clearinghouse for law enforcement agencies devoted to the protection of the citizens of the State of Oregon from terrorism and terrorist activity including crimes traditionally committed in support of terrorism, organized crime and gang-related criminal activity. ("Terrorist Activity")

By combining the intelligence resources of the Participating Agencies and coordinating and cooperating in the collection, analysis, maintenance, dissemination and exchange of criminal intelligence to local, state, tribal and federal law enforcement agencies, the Center will provide an effective, timely, , and secure mechanism to assist such law enforcement agencies in the investigation, detection, disruption, and prevent ion of Terrorist Activity. This will enhance the ability of law enforcement agencies throughout the State of Oregon to predict, prevent and respond to Terrorist Activity.

In addition, the Center will be able to more effectively act to eliminate or reduce operational conflicts in law enforcement activities which in turn should result in the lessening of danger to officers and civilians from such law enforcement activities.

The purpose of this MOU is to set forth the terms agreed to by ODOJ and the Participating Agency for the establishment, organization, operation and administration of the Center, and for the commitment of personnel resources and the contribution of information to meet the goals of the Center.

## **AGREEMENT**

### **1. Establishment of the Center –**

1.1 The Participating Agencies shall establish the Center in a facility located within the Oregon Department of Justice, Criminal Division, at 610 Hawthorne Avenue, SE, Suites 120 and 150, Salem, Oregon or at such other location as may be agreed to by the Participating Agencies.

1.2 The Participating Agencies agree to participate in, and cooperate with respect to the establishment, organization, operation and administration of the Center in accordance with the terms and conditions set forth in this MOU.

1.3 A list of participating Agencies is attached to and made part of this MOU as Attachment A. The list will be updated as necessary and reviewed annually.

### **2. Roles of the Oregon Attorney General and the Center Executive Committee**

#### **2.1 The Oregon Attorney General.**

2.1.1 The Oregon Attorney General (the "Attorney General") shall have general supervisory responsibility over the activities of the Center and final decision making authority with respect to the matters affecting the administration, operations, enforcement, policies and other activities of the Center.

2.1.2 In exercising the authority granted by Section 2.1.1, the Attorney General shall give due consideration to the recommendations, advice and guidance of the Center Executive Committee but is not bound by such recommendations, advice and guidance.

#### **2.2 The Center Executive Committee.**

2.2.1 The Participating Agencies shall establish a Center Executive Committee (the "Committee") which shall include (a) one member designated by each Participating Agency (b) a representative of the Oregon Chiefs of Police Association (c) a representative of the Oregon Sheriff's Association and (d) a representative of the Oregon District Attorney's Association. Each Participating Agency shall have an equal vote on all matters put before the Committee.

2.2.2 The Committee will select a Chairperson from among its members to preside at meetings and to be responsible for other duties as delegated by the Committee.

2.2.3 Membership of the Committee may be expanded by adding designees of law enforcement agencies as defined in ORS 181.010(8) that are not Participating Agencies. Such members shall be voting members of the Committee. The Committee may designate additional members to serve on the Committee in an Ex Officio capacity. Ex Officio membership is limited to relevant federal, state and local entities and other

public or private sector entities that contribute to, use, and have a vested interest in the criminal justice system, or which have been identified by the Committee as possessing a particular perspective or expertise that will enhance the Center's ability to carry out its mission. Ex Officio members are not voting members of the Committee.

### 2.3 Responsibilities of the Committee

2.3.1 The Committee will be responsible for (a) formulating recommendations to the Attorney General regarding the adoption and implementation of bylaws, and policies with respect to the administration, operations, enforcement, policies and other activities of the Center and (b) implementing, directing and coordinating the operations and administration of the Center in conformance with policies approved in accordance with Section 2.1.1 of this MOU.

2.3.2 Meetings of the Committee and the conduct of the business of the Committee including voting shall be in accordance with Bylaws adopted by the Committee and approved in accordance with Section 2.1.1 of this MOU.

## 3. Day to Day Operations of the Center –

### 3.1 Direction and Coordination of Day-to-Day Operations.

3.1.1 The Director of the Oregon TITAN Fusion Center (the "Center Coordinator") shall have responsibility for (a) supervising the day-to-day operation and administration of the Center and assigned staff and (b) establishing appropriate security measures for the Center to ensure the integrity of the Center's operations.

3.1.2 Any breach of security shall immediately be reported to the Committee by the Center Coordinator.

3.1.3 The Center Coordinator has discretionary authority to deny, for security reasons, the assignment of an individual to the Center, and to deny access to the Center facility.

### 3.2 Staffing.

3.2.1 The Center will be staffed by trained criminal intelligence analysts, intelligence research specialists, and criminal investigators (the "Staff"). All Staff will be required to submit to and pass a law enforcement background check and be eligible to obtain a secret clearance issued by the United States Government.

3.2.2 A Participating Agency must assign at least one person employed by the Participating Agency on a full time basis (a "Participating Agency Employee" or "PAE") to participate in the work of the Center. A PAE of an entity other than an Agency of the State of Oregon, (a) remains as an

employee of the assigning Participating Agency, (b) is not an employee of any Participating Agency other than the assigning Participating Agency and (c) is not an "officer", "employee", or "agent" of the State of Oregon as those terms are used in ORS 30.265.

3.2.3 Staff shall be physically located at the Center designated in accordance with Section 1.1. Participating Agency retains the authority to assign general tasks to its own PAE's.

3.2.4. Responsibility for the conduct of each PAE assigned to the Center shall remain with the assigning Participating Agency. Such PAE shall continue to work under the rules and regulations applicable to employees of the assigning Participating Agency and will be subject to the same rules, regulations, laws and policies including ethical standards applicable to employees of the assigning Participating Agency.

3.2.5 Each PAE assigned to the Center and each member of a Participating Agency who will receive information from the Center must sign a Non-Disclosure Agreement in a form adopted by the Committee.

3.2.6 The Center has formally adopted protocols developed by the National Incident Management System (NIMS) for responding to and planning for critical events and disasters. Participating Agencies agree that all assigned Staff will complete NIMS recommended training within sixty (60) days of assignment. Training will be provided through the Center.

3.2.7 All compensation for PAE's assigned to the Center will be paid solely by the assigning Participating Agency without reimbursement by the Center or ODOJ. Compensation includes salary, benefits, overtime and all other compensation, and all benefits, of any type or description due the Participating Agency employee.

3.2.8 All approved travel expenses and per diem for a PAE assigned to the Center shall be the responsibility of the assigning Participating Agency. All out of state travel must be pre-approved by the assigning Participating Agency.

3.2.9 The Participating Agency will pay all training and associated costs for its PAE's assigned to the Center. To the extent such funds are available, the Center may apply federal or state grant funds to defray the costs of training if permitted by applicable law relating to the grant.

3.2.10 The Center Coordinator may, after consultation with the Chief Counsel of ODOJ's Criminal Division and upon belief that it is in the best interest of the Center, request that a Participating Agency remove its PAE from the Center. The Center Coordinator will advise the PAE's supervisor of any potential criminal or personnel issue(s) that may involve the PAE,

and may recommend removal of the PAE from the Center pending a review. The Participating Agency and Center Coordinator will confer regarding the manner and timing of the PAE's removal and the assignment of a replacement PAE.

### 3.3 Equipment and Vehicles.

3.3.1 ODOJ will arrange for and provide office space, basic office equipment, such as facsimile and photocopy machines, automation, and technical support for daily operations of the Center.

3.3.2 The assigning Participating Agency will provide safety equipment for all Staff assigned by the Participating Agency to the Center.

3.3.3 A Participating Agency may provide equipment for use by Center Staff and to the extent permitted by applicable law, this equipment may include equipment purchased with federal or state grant funds available to the Participating Agency. All equipment provided or purchased for the Center by a Participating Agency shall be used in accordance with guidelines established by the Center. Any equipment provided or purchased by Participating Agency will remain the property of Participating Agency unless agreed to in writing at the time that the equipment is provided or purchased, or at a later time by agreement of the Committee.

3.3.4 Participating Agency will provide vehicle(s) as needed for the use of its employees assigned to the Center.

### 3.4 Maintenance and Dissemination of Documents and Records.

All documents and records with respect to Center operations or administration shall be maintained at the Center headquarters and disseminated only in accordance with applicable law and policies adopted by the Committee which do not contravene the applicable law.

## 4. Background Investigations.

### 4.1 Access to Center Information

Due to the sensitive nature of the information gathered, processed and disseminated by the Center, access to such information by any PAE assigned to the Center will be granted only after satisfactory completion of a background check and criminal history check.

### 4.2 Background Checks

Participating Agency is responsible for ensuring that appropriate background checks have been completed on its assigned PAE's prior to their assignment to the Center. Additionally, Participating Agencies shall be responsible for ensuring that adequate background checks have been made on each

employee, agent or representative of the Participating Agency that is authorized to receive information from the Center.

#### 4.3 Performance of Background Checks

Background checks may include secret or top secret level clearance performed by the Federal Bureau of Investigation or the Department of Homeland Security.

### 5. **Duration and Termination of the MOU –**

#### 5.1 Termination of the MOU

The MOU shall be effective upon execution by the Participating Agency and shall continue in full force and effect until such time as either ODOJ or Participating Agency withdraws in accordance with Section 5.2.

#### 5.2 Withdraw and Notice

A Participating Agency may withdraw upon written notice to the ODOJ and remaining Participating Agencies of not less than sixty days.

### 6. **Funding –**

This MOU does not constitute an obligation or commitment of funds, nor a basis for the transfer of funds. It is instead, a statement of understanding between the Participating Agencies to commit resources to the Center. Unless otherwise agreed in writing, each Participating Agency shall bear its own costs in relation to this MOU and the operations of the Center.

### 7. **Privacy and Civil Liberties -**

#### 7.1 Compliance with Civil Rights and Privacy Laws

The Participating Agencies agree to comply with all applicable laws protecting privacy, civil rights, and civil liberties in the collection, use, analysis, retention, destruction, sharing and disclosure of information through the Center.

#### 7.2 Changes to Comply with Section 7.1

Each Participating Agency agrees to make appropriate changes, if any, to their privacy compliance documents in advance of the implementation of this MOU to ensure that the scope and uses of their privacy compliance documents permit the collection, maintenance and sharing of information as set forth in this MOU.

#### 7.3 Coordination between Center Policy and Federal Law

The Committee will develop a privacy policy that comports, to the extent practicable, with the Privacy Policy Development Guide published by the United States Department of Justice as part of the Global Information Sharing Initiative.

## **8. No Third Party Beneficiaries -**

The Participating Agencies are the only parties to this MOU. Nothing in this MOU gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons, and against any Participating Agency or any of the officers, directors, officers, employees, detailees, agents, representatives, task force members, contractors, subcontractors, consultants, advisors, successors, assigns or other agencies of a Participating Agency, unless the third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this MOU.

## **9. Media**

The preparation and dissemination of media releases and communications regarding operations of the Center must be approved by the Attorney General in accordance with Section 2.1.1.

## **10. Amendments**

This MOU may be amended as provided by the Bylaws.

## **11. Liability and Indemnification**

11.1 Each Participating Agency shall be solely responsible for (a) the acts of the Participating Agency, and (b) the acts of its PAE's assigned to the Center, and (c) the acts of its employees engaged in activities or operations of the Center. In the event of a claim by a third party against a Participating Agency or an employee of the Participating Agency as described in this Section, the responsible Participating Agency shall, subject to the limitations set forth in Section 11.3, indemnify and hold harmless, all other Participating Agencies and their respective officers, directors, employees, agents or representatives from such claim.

11.2 In addition, a Participating Agency shall be solely responsible for any claims made by an employee of the Participating Agency, or an assignee or representative of such employee, against another Participating Agency or any officer, director, employee, agent or representative of the other Participating Agency for personal injury, death or damage to property resulting from the operations of the Center. In the event of a claim by an employee of a Participating Agency as described in this Section against another Participating Agency or an employee of another Participating Agency as described in this Section, the Participating Agency responsible for the claimant shall, subject to the limitations set forth in Section 11.3, indemnify and hold harmless, all other Participating Agencies and their respective officers, directors, employees, agents or representatives from such claim.

11.3 The indemnification obligations set forth in Sections 11.1 and 11.2 are limited by the organic law(s) applicable to the indemnifying Participating Agency.

**12. Dispute Resolution**

Any disputes that may arise between Participating Agencies concerning the operations of the Center shall be referred to the Committee for resolution.

**13. Conflicts**

**13.1 Order of Precedence for Conflicts**

In the event of a conflict between the provisions of this MOU and the laws, applicable to the Participating Agency, the laws applicable to the Participating Agency shall supersede the terms and conditions of this MOU to the extent of the conflict.

**13.2 No Modification of MOU as a Result of Differing Terms in Other MOU's**

The Participating Agencies understand that a Memorandum of Understanding between ODOJ and another agency may contain different terms which are more stringent than the terms contained in this MOU or are required by the other agency as a condition of participating in the Center. Nothing contained in such a Memorandum of Understanding shall modify or supersede the terms and conditions of this MOU.

**IN FURTHERANCE OF** their respective goals, objectives, and missions, the parties jointly agree to abide by the provisions of this MOU.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
OR Department of Justice

\_\_\_\_\_  
Participating Agency

Attachment A

List of Participating Agencies as of April 1, 2009

1. OR Department of Justice
2. OR Military Department
3. OR State Police
4. Salem Police Department
5. Internal Revenue Service
6. Federal Bureau of Investigation
7. Bureau of Alcohol, Tobacco, & Firearms
8. Federal Department of Homeland Security
9. Transportation Safety Administration (DHS)