

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF MASSACHUSETTS  
99 CHAUNCY STREET, SUITE 310 BOSTON, MASSACHUSETTS 02111

John Reinstein  
*Legal Director*

(617) 482-3170  
Fax (617) 451-0009

November 18, 2003

Alan Cote  
Supervisor of Public Records  
Office of the Secretary of State  
John W. McCormack Building  
Boston, Massachusetts 021008

Dear Mr. Cote:

This is an appeal from the refusal of the University of Massachusetts to make available certain public records.

In the aftermath of the terrorist attacks of September 11, 2001, the U.S. Department of Justice significantly expanded the activities of Joint Terrorism Task Forces ("JTTF") across the country. These task forces include representatives of state and local law enforcement agencies, and, in a number of states, officers drawn from college and university police departments. It has been reported that local law enforcement officers assigned to these task forces report are required to obtain security clearance and work under the direction and control of the Federal Bureau of Investigation. Published reports have indicated that a number of campus police departments are participating in this program, including, among others, police at such major universities as the University of Massachusetts.

Last year, officials at the University of Massachusetts in Amherst acknowledged that one of its campus police officers, Barry Flanders, had been assigned to work with, and under the supervision of, the JTTF in Massachusetts. The FBI's arrangement with Officer Flanders and the University of Massachusetts police came to light after FBI agents, apparently acting on the basis of information provided by Flanders, questioned a faculty member and an organizer for a campus union about their political views and organizations in which they may have been involved. It was reported at the time that Officer Flanders, while designated as a campus police "liaison" with the FBI and paid by the University, in fact worked under the direction and control of the FBI for several days each week and was not permitted to inform his commanding officer about the nature of his activities, as she did not have the required security clearance.

Alan Cote, Supervisor of Public Records  
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In the light of these disclosures, I wrote to University of Massachusetts Chancellor John V. Lombardi on October 31, 2003 requesting certain documents that would confirm the nature and scope of the arrangement between the Federal Bureau of Investigation and the University, and, in particular, documents concerning the University's participation in the Joint Terrorism Task Force ("JTTF"). The following records were requested:

1. All records made or received after September 11, 2001 of communications between the FBI and the University of Massachusetts or any officer or employee of the University of Massachusetts concerning participation in the JTTF by the University of Massachusetts or its police or security officers, or cooperation or liaison between the FBI and university police or security officers; and
2. Any formal intergovernmental agreements, memoranda of understanding or memoranda of agreement concerning participation in the JTTF by the University of Massachusetts or its police or security officers, or cooperation or liaison between the FBI and university police or security officers.

A copy of that letter is attached as Exhibit A.

By letter dated November 13, 2003, Brian W. Burke, Associate Counsel for the University of Massachusetts, denied the request for these records in its entirety, asserting that the records in question are exempt from disclosure under G.L. c. 4, § 7, clause 26 (f) in that they were "investigative materials necessarily compiled out of public view by law enforcement . . . disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest". The sole basis for the claim of exemption was that "[t]he Federal Bureau of Investigation, under whose cognizance the JTTF operates, indicated to me that it views the materials you seek in such a light." A copy of that letter is attached as Exhibit B.

The claimed exemption does not apply to the requested documents. The exemption is limited by its terms to "investigatory materials." A careful examination of the request, however, shows that it was intended to include only two narrow categories of records. We sought in the first instance any written agreement or agreements between a federal agency and a public university concerning the participation by university police officers in cooperative anti-terrorism efforts. Based on review of similar agreements which are publicly available, it appears that such agreements would include such non-sensitive issues as number of local personnel, responsibility for supervision, general administration, funding and liability. (A similar agreement between the FBI and the University of Texas may be found at [http://www.utwatch.org/security/jttf\\_moa.html](http://www.utwatch.org/security/jttf_moa.html) )

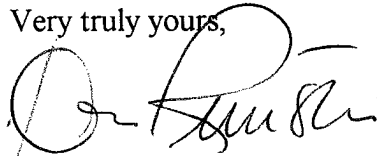
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An agreement between a federal agency and a university police department dealing with the nature of the relationship between the two agencies is neither an investigatory record nor a document "necessarily compiled out of the public view."

The second category of records included records of communications between the Department and the FBI concerning the Department's participation in the JTTF and would certainly include routine correspondence and e-mail concerning the negotiation and administration of the agreement. There was no specific request for investigatory materials, and, to the extent that the language of the request is broad enough to encompass such materials, the segregable nonexempt portions of those records should have been released.

For the foregoing reasons, I request that the University of Massachusetts be ordered to comply with the requirements of G.L. c. 66, § 10 and to provide us with the records which we have requested.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Reinstein", written over a circular stamp or mark.

John Reinstein

Encl.

cc: Brian W. Burke, Esq.

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF MASSACHUSETTS  
99 CHAUNCY STREET, SUITE 310 BOSTON, MASSACHUSETTS 02111

John Reinstein  
Legal Director

(617) 482-3170  
Fax (617) 451-0009

October 31, 2003

Chancellor John V. Lombardi  
University of Massachusetts  
374 Whitmore Administration Building  
Amherst, Massachusetts 01003

Dear Chancellor Lombardi:

This is a request under the Public Records Law, G.L. c. 66, § 10.

In the aftermath of the terrorist attacks of September 11, 2001, the U.S. Department of Justice significantly expanded the activities of Joint Terrorism Task Forces ("JTTF") across the country. These task forces include representatives of state and local law enforcement agencies, and, in a number of states, officers drawn from college and university police departments. It has been reported that local law enforcement officers assigned to these task forces report are required to obtain security clearance and work under the direction and control of the Federal Bureau of Investigation. Published reports have indicated that a number of campus police departments are participating in this program, including, among others, police at such major universities as the University of Massachusetts.

Last year, officials at the University of Massachusetts in Amherst acknowledged that one of its campus police officers, Barry Flanders, had been assigned to work with, and under the supervision of, the JTTF in Massachusetts. The FBI's arrangement with Officer Flanders and the University of Massachusetts police came to light after FBI agents, apparently acting on the basis of information provided by Flanders, questioned a faculty member and an organizer for a campus union about their political views and organizations in which they may have been involved. It was reported at the time that Officer Flanders, while designated as a campus police "liaison" with the FBI and paid by the University, in fact worked under the direction and control of the FBI for several days each week and was not permitted to inform his commanding officer about the nature of his activities, as she did not have the required security clearance.

Even apart from the specific information that was sought by the FBI agents in their interviews at the University, the enlistment of campus security officers to serve the intelligence interests of the FBI within the academic community raises concerns for First

Amendment freedoms. In the interests of public disclosure of the nature and scope of this program, the American Civil Liberties Union of Massachusetts hereby requests that you provide it with a copy of each of the following records made or recieved by the University of Massachusetts:

1. All records made or received after September 11, 2001 of communications between the FBI and the University of Massachusetts or any officer or employee of the University of Massachusetts concerning participation in the JTTF by the University of Massachusetts or its police or security officers, or cooperation or liaison between the FBI and university police or security officers; and
2. Any formal intergovernmental agreements, memoranda of understanding or memoranda of agreement concerning participation in the JTTF by the University of Massachusetts or its police or security officers, or cooperation or liaison between the FBI and university police or security officers.

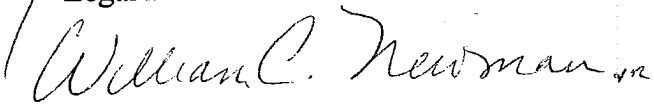
The purpose of this request is to allow the requester to assess the nature and scope of FBI activities at the University of Massachusetts. As the information contained in the requested documents is being sought by a public interest organization, and its disclosure would contribute significantly to the public understanding of the operations and activities of the government, we request that you waive any copying costs pursuant to 950 CMR § 32.06(5).

Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to the redacted portions. As you know, a custodian of public records shall comply with a request within ten days after receipt. If you wish to discuss the request, Mr. Newman may be reached by telephone at (413) 584-7331, and Mr. Reinstein may be reached at (617) 482-3170, ext. 324.

Sincerely yours,



John Reinstein  
Legal Director



William C. Newman  
Director, Western Massachusetts Office



UNIVERSITY of  
MASSACHUSETTS

300 Whitmore Administration Building  
Amherst, MA 01003-9313

Associate Counsel  
Office of the General Counsel  
voice: 413.545.2204  
fax: 413.545.3138  
email: bwburke@external.umass.edu

November 13, 2003

John Reinstein, Legal Director  
William C. Newman, Director, Western Massachusetts Office  
American Civil Liberties Union  
Foundation of Massachusetts  
99 Chauncy Street, Suite 310  
Boston, MA 02111

RE: Public Records Request

Dear Messrs. Reinstein and Newman:

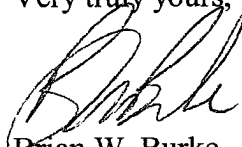
I write in response to your public records request of October 31, 2003. In your letter, you requested:

1. All records made or received after September 11, 2001 of communications between the FBI and the University of Massachusetts or any officer or employee of the University of Massachusetts concerning participation in the JTTF by the University of Massachusetts or its police or security officers, or cooperation or liaison between the FBI and university police or security officers; and
2. Any formal intergovernmental agreements, memoranda of understanding or memoranda of agreement concerning participation in the JTTF by the University of Massachusetts or its police or security officers, or cooperation or liaison between the FBI and university police or security officers.

I regret that the University must decline to produce the records you request. Clause twenty-sixth of Section 7 of Chapter 4 of the Massachusetts General Laws defines "public records." Paragraph (f) of that clause exempts from that definition, and therefore from production "investigatory materials necessarily compiled out of the public view by law enforcement . . . disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." The Federal Bureau of Investigation, under whose cognizance the JTTF operates, indicated to me that it views the materials you seek in such a light.

If you disagree with this determination, the proper route of appeal in Massachusetts is through the office of the Supervisor of Public Records at (617) 727-2832.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. Burke", written over a circular stamp.

Brian W. Burke  
Associate Counsel

cc: John V. Lombardi  
Patrick T. Archbald