

BOSTON
JOINT TERRORISM TASK FORCE
MEMORANDUM OF AGREEMENT

PREAMBLE

This Memorandum of Agreement (MOA) is entered into by the Federal Bureau of Investigation (FBI) and the Massachusetts State Police (MSP) and outlines a cooperative effort to combat terrorism.

ARTICLE ONE:

PURPOSE OF MOA

This MOA establishes and delineates the mission and structure of the Boston Joint Terrorism Task Force (JTTF) in addressing the complex problem of terrorism affecting the New England states of Massachusetts, Maine, New Hampshire, and Rhode Island.

The purpose of this MOA is to set out a common understanding of the policies and procedures the Massachusetts State Police and the FBI will follow in providing law enforcement service to the citizens of Massachusetts and the United States of America.

ARTICLE TWO:

MISSION OF THE JTTF

The mission of the JTTF will be to utilize the collective resources of the participating agencies for the prevention, preemption, deterrence and investigation of terrorism and activities related to terrorism, both actual and potential, occurring in or affecting the U.S. carried out by terrorist groups and/or individuals, as well as apprehending individuals committing such violations. All parties agree to abide by the Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations (AG Guidelines) and the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations as they pertain to International Terrorism matters. In addition, it is understood that personnel of the MSP shall be required to utilize only those investigative techniques consistent with their given standards and procedures.

ARTICLE THREE:

ORGANIZATIONAL STRUCTURE AND MANAGEMENT OF THE TASK FORCE

A. MEMBERS



Commonwealth Fusion Center Standard Operating Procedure

Effective Date	Number
July 1, 2006	CFC - 06
Subject	
HSIN-MA Access	

Purpose

The Commonwealth Fusion Center (CFC) is responsible for vetting the Homeland Security Information Network - Massachusetts (HSIN-MA) access list Law Enforcement portal. Access to CFC information and intelligence will ultimately be determined by the need-to-know and right-to-know as defined in the Global Justice Information Sharing Initiative and the Department of Justice National Criminal Intelligence Sharing Plan.

Definition

The list will be comprised of full-time employees of law enforcement agencies (town, city, state, transit police, campus police sworn in as Special State Police Officers), homeland security agency personnel serving in a sworn or civilian intelligence capacity, as well as executives and designees from core stakeholder agencies participating in the CFC. Lead prosecutors or a designee at the county, state, and federal level will also be included.

Procedure

These lists will be used to disseminate information and intelligence products of the CFC, as well as those of other agencies, as appropriate. Inclusion on these lists can be obtained by sending the request (U.S. Mail or fax) on agency letterhead signed by the Chief or designee authorizing the individual to receive Homeland Security information. The following information must be submitted: name, rank/position, agency, and agency contact information to include address, phone, fax and e-mail. CFC Analytical Unit (CFC-AU) personnel will validate all information prior to inclusion.

Persons on either list may be authorized to receive the CFC Daily Brief, information, and intelligence documents classified as "LAW ENFORCEMENT SENSITIVE", access to the Law Enforcement portal on HSIN-MA, and less sensitive materials.

Misuse

Use of any information or intelligence in an unauthorized or illegal manner will result in the person's removal from the dissemination lists.

The JTTF shall consist of personnel of the Massachusetts State Police, the Bureau of Alcohol, Tobacco and Firearms (ATF), the Boston Police Department (BPD), the U.S. Customs Service (USCS), the Defense Criminal Investigative Service (DCIS), the Immigration and Naturalization Service (INS), the Internal Revenue Service (IRS), the Lowell Police Department (LPD), the U.S. Marshals Service (USMS), the MBTA Police Department, the Naval Criminal Investigative Service (NCIS), the U.S. Postal Inspection Service (USPIS), the U.S. Secret Service (USSS), and the Federal Bureau of Investigation (FBI).

B. IDENTIFICATION OF OBJECTIVES

The Special Agent in Charge (SAC) of the FBI and the participating agencies of the JTTF shall identify, agree upon, and articulate specific organizations and investigative objectives or matters assigned to the JTTF.

C. DIRECTION OF JTTF AND RESOURCE CONTROL

Responsibility for the overall policy and direction of the JTTF shall rest with an Assistant Special Agent in Charge (ASAC) of the FBI, who will closely coordinate with the Colonel of the Massachusetts State Police or their designees, on matters of mutual concern relating to such policy and direction, thus ensuring the absence of conflict.

Specific control over their JTTF resources and the continued dedication of these resources to the JTTF shall be retained by the participating agency heads, who will be kept fully apprized of all investigative developments by their respective subordinates.

D. SUPERVISION OF JTTF

The direct day-to-day supervision for matters assigned to the JTTF shall be the responsibility of the designated FBI Supervisory Special Agent (SSA) in conjunction with the designated supervisory personnel of the Massachusetts State Police. The FBI SSA will be responsible for administrative/operational matters directly associated with his/her Squad and the JTTF, such as assigning cases, shifts, and completion of written work necessary to make each squad and the JTTF operative and functional. Responsibility for the conduct of the JTTF members shall remain with the respective agency heads. All JTTF personnel will keep their respective superiors completely informed of pertinent developments.

E. PHYSICAL LOCATION AND SUPPORT

The FBI will provide office space for all JTTF members and support staff. In addition, the FBI will provide all necessary secretarial, clerical, automation and technical support for the

JTTF.

F. COMMITMENT OF PERSONNEL

ARTICLE FOUR:

VEHICLES

The JTTF agrees to provide the MSP task force members with a vehicle. The purpose of these vehicles is for surveillance, case management and investigation in connection with any JTTF investigation. The vehicle provided by the FBI can be used for official use only in connection with matters investigated by the JTTF.

In furtherance of the mission of the JTTF and in compliance with existing FBI policy for operation of U.S. Government vehicles, the FBI hereby agrees and authorizes members of the MSP participating in the JTTF to operate vehicles owned or leased by the FBI.

The MSP agrees to be responsible for tortious acts or omissions on the part of the MSP or their employees, and for any liability resulting from use of FBI owned or leased vehicles utilized by the MSP Task Force members, and for any damage to said vehicles as a result of any tortious action or omission on the part of the MSP or their employees.

ARTICLE FIVE:

RECORDS AND REPORTS

All JTTF investigative records will be maintained at the Boston office of the FBI. Investigative reports will be prepared on FBI forms. Decisions for placement of all or part of said investigative records into MSP files or data bases shall rest with supervisory personnel of the FBI and the MSP in compliance with applicable standards and procedures governing the respective parties. Classified information will not be placed in MSP files.

ARTICLE SIX:

SECURITY CLEARANCE/DEPUTATION

Due to various United States, Department of Justice and FBI regulations and laws regarding classified information, prospective members of the JTTF who do not possess Top Secret clearances previously granted by the FBI/DOJ will be subjected to full background investigation(s) with assignment contingent upon receipt of appropriate security clearances(s). All non-FBI personnel will be sworn in as Special Deputy United States Marshals. Security clearances will be granted for any applicable and relevant MSP managers or Supervisors up to, and including, the Colonel. Investigative restrictions imposed by the MSP shall not be voided by deputation of their respective personnel. All members of the JTTF shall agree not to disclose any classified or sensitive information to non JTTF members without the express permission of the FBI and shall agree to execute any applicable non-disclosure agreements, as may be necessary or required by the FBI.

ARTICLE SEVEN:

INVESTIGATIVE EXCLUSIVITY

It is agreed that matters designated to be handled by the JTTF will not knowingly be subject to non-JTTF law enforcement efforts. Recognizing the amount of specialized entities within each member agency, it is incumbent upon each agency to make proper internal notification regarding JTTF existence, including its areas of concern. All information developed by the individual member agency, in the course of investigations prior to the JTTF, will be referred to the JTTF for review and coordination, with approval of the command staff of each member agency. The non-specialized entities of each member agency handle a myriad of different law violations; therefore, JTTF members should make an effort to keep abreast of law enforcement developments within their respective agencies, to ensure information involving JTTF members is referred to the JTTF.

It is also agreed there shall be no unilateral action taken on the part of any participating agency relating to JTTF investigations. All law enforcement actions will be coordinated and cooperatively carried out.

ARTICLE EIGHT:

SALARY/COMPENSATION

Salaries of JTTF members will be paid by their respective agencies. Overtime incurred in the performance of JTTF responsibilities, when allowable under federal law and to the extent that federal funding is available for such purposes, will be reimbursed by the FBI so long as a separate overtime agreement is executed between the parties. Otherwise, overtime shall be

compensated in accordance with applicable MSP overtime provisions and shall be subject to the prior approval of appropriate personnel.

ARTICLE NINE:

PROSECUTION

JTTF investigations will conform to the requirements of federal prosecution rules and regulations and will generally be prosecuted in federal courts. It is recognized, however, that specific circumstances may, on a case-by-case basis, indicate that prosecution should be in a state court. The criteria for making such decisions will focus upon achieving the greatest overall benefit to law enforcement and the public, and effecting the greatest impact on terrorism.

ARTICLE TEN:

INFORMANTS/EXPENSES

The JTTF will abide by the Attorney General's Guidelines on the Use of Informants and Confidential Sources. To the extent that MSP standards and procedures impose any greater restrictions upon the use of their informants and cooperating witnesses, such personnel shall be bound by those restrictions. Subject to appropriate FBI approvals, the FBI agrees to pay any reasonable and necessary expenses incurred by the JTTF. The MSP agrees that prior to incurring such expenses, it will consult with the FBI's designated representative to ensure anticipated expenses will be in furtherance of JTTF goals and objectives.

ARTICLE ELEVEN:

FORFEITURE

Any forfeiture realized as a result of cases worked by the JTTF will be handled in accordance with applicable federal law and FBI guidelines. FBI guidelines will govern the sharing of seized and/or forfeited assets.

ARTICLE TWELVE:

MEDIA

No members of the JTTF will discuss or otherwise reveal information relating to JTTF investigations, or other FBI related investigations known to them, to any media representatives. All media releases on JTTF matters will be mutually agreed upon and coordinated jointly.

ARTICLE THIRTEEN:

LIABILITY

Unless specifically addressed by the terms of this MOA, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees. Legal representation by the United States is determined by the Department of Justice (DOJ) on a case-by-case basis. The FBI cannot guarantee the United States will provide legal representation to any Federal or state law enforcement officer or employee.

Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of an employee of the United States government, acting within the scope of his/her employment, shall be an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. Section 1346(b), and Sections 2671 - 2680.

For the limited purpose of defending claims arising out of JTTF activity, state officers who have been specifically deputized and who are acting within the course and scope of their official duties and assignments pursuant to this MOA, may be considered an "employee" of the United States Government as defined in 28 U.S.C. Section 2671. See 5 U.S.C. Section 3374(c)(2).

Under the Federal Employees Liability Reform and Tort Compensation, Act of 1998 (commonly known as the Westfall Act), 28 U.S.C., Section 2679(b)(1), the Attorney General or his/her designee may certify that an individual defendant acted within the scope of his employment at the time of the incident giving rise to the suit. id., 28 U.S.C. Section 2679(d)(2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims. 28 U.S.C. Section 2679(d)(2). If the United States is substituted as defendant, the individual employee is thereby protected from suits in his official capacity.

If the Attorney General declines to certify that an employee was acting within the scope of employment, "the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment." 28 U.S.C. Section 2679(d)(3).

Liability for any negligent or willful acts of JTTF members, undertaken outside the terms of this MOA will be the sole responsibility of the respective employee and agency involved.

Liability for violations of federal constitutional law rests with the individual federal agent or officer pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971) or pursuant to 42 U.S.C. Section 1983 for state officers or cross-deputized federal officers.

Both state and federal officers enjoy qualified immunity from

suit for constitutional torts, "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800 (1982).

JTTF officers may request representation by the U. S. Department of Justice for civil suits against them in their individual capacities for actions taken within the scope of employment. 28 C.F.R. Sections 50.15, 50.16.

An employee may be provided representation "when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General, or his/her designee, determines that providing representation would otherwise be in the interest of the United States." 28 C.F.R. Section 50.15(a).

A JTTF officer's written request for representation should be directed to the Attorney General and provided to the Chief Division Counsel (CDC) of the FBI division coordinating the task force. The CDC will then forward the representation request to the FBI's office of General Counsel (OGC) together with a letterhead memorandum concerning the factual basis for the lawsuit. FBI/OGC will then forward the request to the Civil Division of DOJ together with an agency recommendation concerning scope of employment and Department representation. 28 C.F.R. Section 50.15 (a) (3).

If a JTTF officer is found to be liable for a constitutional tort, he/she may request indemnification from DOJ to satisfy an adverse judgement rendered against the employee in his/her individual capacity. 28 C.F.R. Section 50.15 (c) (4). The criteria for payment are substantially similar to those used to determine whether a federal employee is entitled to DOJ representation under 28 C.F.R. Section 50.15(a).

ARTICLE FOURTEEN:

DURATION OF THE TASK FORCE

The JTTF will continue for an indefinite period but participation may be terminated at any time upon the written notice of either party to this Memorandum of Agreement.

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SIGNATORIES:

CHARLES S. PROUTY
SPECIAL AGENT IN CHARGE
Federal Bureau of Investigation
Boston, Massachusetts

Thomas J. Foley 1/17/03

COLONEL THOMAS FOLEY
Massachusetts State Police
Framingham, Massachusetts

John A. Belmont 12/29/02

Office of the Chief Contracting Officer
Federal Bureau of Investigation
Washington, D.C.

**REIMBURSEMENT AGREEMENT
BETWEEN THE FEDERAL BUREAU OF INVESTIGATION
AND
MASSACHUSETTS STATE POLICE**

Pursuant to Fiscal Year 2003 appropriations as authorized by Congress, overtime to police officers assigned to this task force, for expenses necessary for detection, investigation, and prosecution of crimes against the United States is authorized subject to the limits set forth in the budget for this task force as approved by the Counterterrorism Division, Federal Bureau of Investigation (FBI), and subject to specific provisions and conditions as set forth in this Reimbursement Agreement. Therefore, it is hereby agreed between the FBI and the Massachusetts State Police (hereinafter referred to as "agency") that:

1. The FBI will reimburse the agency for overtime payments made to officers assigned full-time to the Boston Joint Terrorism Task Force (JTTF). The agency will have two (2) full-time officers assigned to the JTTF and the number of agency officers entitled to reimbursement in Fiscal Year 2003 shall not exceed one (2).

2. Requests for reimbursement shall be made on a monthly basis and should be forwarded to FBI Headquarters as soon as practicable after the first of the month which follows the month for which reimbursement is requested. Such requests should be forwarded by the appropriate agency supervisor(s) to the FBI Task Force Squad Supervisor and Special Agent-in-Charge for their review, approval and submission.

3. Overtime payments shall be made payable to and mailed directly to the agency by the FBI.

4. Overtime reimbursement will be calculated at the usual rate for which the individual officers' time would be compensated in the absence of this agreement. However, the FBI will only reimburse the agency for overtime paid to the officers who work full-time in support of the JTTF in Fiscal Year 2003 (October 1, 2002 to September 30, 2003) up to a total amount of \$10,573.56 per officer per year. Additionally, reimbursement for any one month period shall not exceed \$881.13 per officer.

5. Each request for consideration shall include the name, rank, identification number, overtime compensation rate, number of reimbursable hours claimed and the dates of those hours for each officer for whom reimbursement is sought. Each reimbursement request must be accompanied by a certificate signed by an appropriate supervisor of the submitting department that