

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF MASSACHUSETTS
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John Reinstein
Legal Director

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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 Police Department of the City of Springfield to make available certain public records.

On October 31, 2003, I wrote to Chief of Police Paula Meara on behalf of the American Civil Liberties Union of Massachusetts for the stated purpose of "learning whether the City of Springfield ha[d] entered into an agreement with the Department of Justice or the Federal Bureau of Investigation concerning the department's participation in the Joint Terrorism Task Force ('JTTF')." Toward that end, I requested a copy of the following records made or received by the Springfield Police Department:

1. All records of communications between the FBI and the Springfield Police Department or any officer, employee or attorney of the Springfield Police Department concerning participation in the JTTF by the Springfield Police Department or its police officers; and
2. Any formal intergovernmental agreements, memoranda of understanding or memoranda of agreement concerning participation in the JTTF by the Springfield Police Department or its police officers.

A copy of that letter is attached as Exhibit A. Similar requests were sent to the Massachusetts State Police, the Boston Police Department, the Cambridge Police Department, the Lowell Police Department, the Lawrence Police Department, the New Bedford Police Department, the Fall River Police Department, the Worcester Police Department and the University of Massachusetts.

By letter dated November 12, 2003, Deputy City Solicitor Harry P. Carroll 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 (a) and (f) and that the records were, in any event "property of the Federal Bureau of Investigation." A copy of that letter together with what purports to be a supporting letter from the Boston office of the FBI is attached as Exhibit B. None of the claims put forward by the Department justifies withholding of the documents which we have requested.

I wish to emphasize at the outset that we sought only two narrow categories of records. We sought in the first instance any written agreement or agreements between a federal agency and a municipal police department concerning the city's participation 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. Examples of similar agreements which may be found on the internet are listed in an appendix to this appeal.

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 request for investigative records.

Given the limited scope of the request, there is no credible basis for the Department's claim that the records are the "property" of the FBI. The City of Springfield, as a party to any agreement or contract, certainly has an interest if not an obligation to retain a copy of any such agreement or contract in its own files. Similarly, any correspondence or communications which it may have had with a federal agency concerning the terms of such an agreement would also be its own records. And thus, as records "made or received" by the Department, they are squarely within the statutory definition of "public records." They are, moreover, precisely the type of documents which are intended to be covered by the public records law: an agreement by a government agency concerning its relationship with another government agency, the use of public money and the responsibilities of municipal police officers. The Department and the FBI provide no factual support and cite no authority for the extraordinary claim that the FBI has somehow retained ownership of an agreement which has been signed by city officials and creates obligations on the part of the city and of communications which have been sent to and from city officials.

With respect to the specific provisions of the Massachusetts Public Records Law cited by the Department, exemption (a) provides no support for the refusal to release the requested records. That provision of the law exempts from disclosure materials which

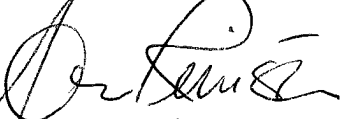
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are "specifically or by necessary implication exempted from disclosure by statute." The Department's response simply asserts that it *appears* that the requested documents are exempted by federal law. As the Department can cite no specific statutory mandate for its position, it rather appears that they are not.

Exemption (f) is likewise unavailing. That exemption is limited by its terms to "investigatory materials." Significantly, the Department's response, while reciting the descriptive language of exemption (f), does not use the term "investigatory materials." This is not surprising given the nature of the records which have been requested. An agreement between a federal agency and a municipal 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."

For the foregoing reasons, I request that the Springfield Police Department 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 horizontal line.

John Reinstein

Encl.

cc: Harry P. Carroll, Esq.

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APPENDIX

Publicly available materials

Memorandum of Agreement with the City of San Francisco, CA

http://faculty.maxwell.syr.edu/asroberts/foi/library/jttf_moa/SF_JTTF_MOA.pdf

Memorandum of Agreement with the City of Oakland, CA

http://faculty.maxwell.syr.edu/asroberts/foi/library/jttf_moa/SFBay_JTTF_MOU.pdf .

Memorandum of Agreement with the City of Orlando, FL

[http://edocs.ci.orlando.fl.us/asv/paperlessagenda.nsf/0/e8b0dc0d4eb8117d85256c6000770a1c/\\$FILE/Memorandum%20of%20Agreement.pdf](http://edocs.ci.orlando.fl.us/asv/paperlessagenda.nsf/0/e8b0dc0d4eb8117d85256c6000770a1c/$FILE/Memorandum%20of%20Agreement.pdf)