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June 5, 2017

VIA SUPPLEMENTAL AGENDA PACKET

Hon. Desley Brooks (dbrooks@oaklandnet.com)
Hon. Noel Gallo (ngallo@oaklandnet.com)
Hon. Abel Guillen (aguillen@oaklandnet.com)
Hon. Larry Reid (lreid@oaklandnet.com)
Oakland City Council
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Dept. of Homeland Security – Homeland Security Investigations (“HSI”) Agreement

Dear Chairperson Brooks and Members of the Public Safety Committee:

On June 1, 2017, the Privacy Advisory Commission (“PAC”) voted unanimously to recommend to the City Council that the authorization granted by the Council allowing the Oakland Police Department to enter into an agreement with HSI for cross-designating task force officers (“TFO”) to investigate and enforce customs laws, be rescinded. This letter is submitted on behalf of the PAC.

We understand that if the Council approves our request, a subsequent resolution will be needed to void or replace Resolution 86156. The agreement with HSI provides for termination of the agreement upon a 30-day written notice to HSI, and we request that this option be exercised immediately, in addition to bringing a subsequent resolution rescinding the overall authority to prohibit a future agreement.

Background

On March 28, 2016, staff submitted a report to the Public Safety Committee, seeking approval for OPD to enter a memorandum of understanding (“MOU”) with HSI, one of the two components of the Immigrations and Customs Enforcement (“ICE”) agency, the other being Enforcement and Removal Operations. Superior federal resources, and help combating violent crime, drugs and weapon smuggling, and human trafficking, were given as justification for entering the MOU. TFO’s would not have authority to enforce administrative violations of immigration law.

The requested authority was granted by the Council on May 3, 2016, by Resolution 86156. On June 8, 2016, former Chief Whent signed the HSI MOU on behalf of OPD. On January 5, 2017, Acting Chief Downing entered into an additional agreement with HSI regarding reimbursement of overtime expenses related to the task force.

Beginning in March 2017, the PAC began a review of our outside entity data sharing agreements. OPD has participated at each of our subsequent monthly meetings, to provide information about these agreements, and about our past involvement with ICE-HSI.

Our continuing analysis of these data sharing agreements indicates that by participating in law enforcement sharing agreements such as ARIES (generally, east bay partners but expanding), and NCRIC (a federal-state fusion center located in San Francisco), OPD may be inadvertently placing data of Oaklander's at risk, as entities like ICE also participate in those sharing agreements, and in fact, do query those databases.

In response to Councilmember Guillen's request to OPD as to how Oakland currently aligns with the ACLU's Freedom Cities "Nine Model State and Local Law Enforcement Policies and Rules", OPD is providing to Public Safety a written report combining responses to both the PAC and Councilmember Guillen. Attached to that report is OPD's new policy on Immigration. These documents were provided to the PAC for our review at our June 1 meeting.

Reasons to Rescind Authorization

Having discussed with various command team officers regarding OPD's involvement with ICE at each of our monthly meetings since March, with the addition of the analysis provided by OPD's written report, and in researching the current legal status and political climate surrounding immigration under President Trump, the PAC found that the HSI agreement:

- Has provided Oakland with no demonstrated successes or benefits
- No TFO's were ever assigned, indicating a lack of need
- No reimbursements under the overtime agreement have been received, indicating a lack of participation
- The request for this agreement was external; it was not generated by OPD
- A previous partnership resulted in no demonstrated successes in the 2013-2015 annual crime reports
- President Trump and Attorney General Sessions are threatening loss of federal funding at the same time they are potentially imposing costs on us/diverting resources
- The presence of HSI-ICE in our community is causing trauma
- ICE-HSI has demonstrated that it is willing to lie to immigrant communities (while posing as local police officers)¹, and to their local law enforcement partners (e.g. Santa Cruz police department)²
- DHS Secretary Kelly has authorized an expansion of the controversial 287(g) program, which authorizes local law enforcement agents to enforce immigration law, and has eliminated exemptions to enforcement for certain categories (such as victims of trafficking)

¹ <https://lawestmedia.com/lawest/reports-sexual-assaults-domestic-violence-latino-community-plummet/>

² <http://ktla.com/2017/02/23/santa-cruz-police-chief-claims-ice-misled-agency-during-collaboration-in-recent-raids/>

- Under President Trump, ICE's revised policies clearly conflict with Oakland's status as a Sanctuary City.

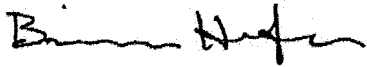
Stated simply, this is an agreement that provides no benefit to Oakland. In our three months of meetings on the issue, no one has come forth to justify maintaining the agreement. Although rescission may be of mostly symbolic value, the PAC believes rescission of this agreement will help OPD's relationship with certain communities, and how those communities perceive OPD and the City's dedication to our sanctuary city status.

Like Oakland, Houston and Los Angeles prohibit their officers from enforcing immigration laws. The presence of ICE in those cities, with large immigrant populations, is already leading to dramatic changes in crime reporting, as a chilling effect from President Trump's inflammatory rhetoric takes hold. Houston's Chief Acevedo is reporting that Hispanics reporting sexual assault have dropped 43% compared to last year; reported robberies and aggravated assaults are each down 12%.³ Los Angeles Chief Beck is reporting that sexual assault reports from the Hispanic population have dropped 25% compared to last year.⁴

Although the HSI agreement does not pertain to the enforcement of immigration law, it is clear throughout the country that a 'guilt by association' effect is present, is harmful, is inhibiting cooperation with local law enforcement and frustrating public safety goals.

Speaking solely for myself, I represent to you that I have received more calls and emails from concerned citizens about our ICE agreement than any other item before the PAC except for the controversial Stingray. This agreement is of concern to the community.

Sincerely,



Brian Hofer
Chair, City of Oakland's Privacy Advisory Commission

cc: tburch@oaklandnet.com; jdevries@oaklandnet.com

³ <http://www.chron.com/news/houston-texas/houston/article/HPD-chief-announces-decrease-in-Hispanics-11053829.php>

⁴ <http://www.latimes.com/local/lanow/la-me-ln-immigrant-crime-reporting-drops-20170321-story.html>