

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FEDERAL BUREAU OF INVESTIGATION
AND
THE VIRGINIA FUSION CENTER

PREAMBLE

The timely sharing of intelligence between federal, state, local, tribal and private sector partners is a central and critical component in preventing or mitigating threats. State fusion centers (SFCs) and multi-agency intelligence centers (MAICs) are important focal points for federal, state, and local information and intelligence sharing. The establishment of SFCs and MAICs to combine the intelligence and information sharing efforts of all participating agencies will enhance our ability to predict, prevent, and respond to unlawful activity and threats to our nation.

This Memorandum of Understanding (MOU) is entered into between the Virginia Fusion Center (VFC) and the Federal Bureau of Investigation (FBI), hereinafter referred to as "the Parties."

I. PURPOSE

- A. The purpose of this MOU is to set forth the terms by which the FBI agrees to commit personnel resources and to contribute information to the Virginia Fusion Center. This effort will continue to improve communication and coordination among federal, state, local, tribal, and private sector organizations and assist in developing methods to combine relevant information at all levels to maximize the usefulness of all available information.
- B. By entering into this MOU, the Parties agree to and incorporate by reference the Fusion Center Standard Operating Procedures, which set forth the Mission, Goals, Functions, Management Principles, Membership, Staffing, Policies/Protocols (including privacy policy), and other provisions relating to the establishment, organization, and operation of the Virginia Fusion Center.
- C. This MOU is an agreement among the parties and is not intended, and should not be construed, to create or confer on any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise against the FBI, the Department of Justice, the United States, a party, or any State, locality, or other

sponsor under whose auspices a party is participating in the Fusion Center, or the officers, directors, employees, detailees, agents, representatives, task force members, contractors, subcontractors, consultants, advisors, successors, assigns or other agencies thereof.

II. MISSION

The SFC/MAIC environment is a complementary adjunct to the FBI's existing field capability that provides an optimum environment for advancing mission objectives and goals across all FBI programs. A full partnership with these centers represents a key element of optimizing our combined reach and extending our capacity through robust interaction with state, local, tribal and private sector partners. The FBI's involvement in SFC/MAICs further enhances the ability to provide those tools which assist law enforcement in intelligence-led policing. This partnership will further develop the requirements management process which translates the needs of intelligence customers into requirements to collect information, produce intelligence reports, and disseminate intelligence to those who need it.

FBI Field Intelligence Groups (FIGs) are and will remain the focal point for FBI intelligence activity in the field. Through integration or the assignment of personnel they extend that role into the specialized needs of Joint Terrorism Task Forces (JTTFs) and fusion centers. Each has a distinct, but interdependent function -- FIGs managing and providing oversight to the effective application of intelligence in support of FBI's mission; the intelligence components of JTTFs focused on enabling the detection, pursuit and disruption of terrorist threats; and Fusion Centers as a focal point for extending and interweaving a network of information exchange and partnership to achieve a true capacity for domain management.

The VFC is a collaborative effort between the Virginia State Police (VSP) and the Virginia Department of Emergency Management (VDEM) to provide operational and strategic counterterrorism/criminal information and intelligence to law enforcement, military, public safety, governmental, and private industry decision makers, as well as to the general public.

III. AUTHORITY

III. AUTHORITY

Pursuant to 28 U.S.C. § 533, 28 C.F.R. § 0.85, Executive Order 12333, and Annex II to National Security Presidential Decision Directive (NSPD) 46/Homeland Security Presidential Directive (HSPD) 15, the FBI is authorized to coordinate an intelligence, investigative, and operational response to terrorism and other major crimes within both state and federal jurisdictions. By virtue of that same authority, the FBI is participating in the Virginia Fusion Center, whose other members are acting in support of the above-listed statutory and regulatory provisions.

CONTROLLING DOCUMENTS

A. Since the FBI operates under the authority of the Attorney General of the United States, all FBI participants must adhere to applicable Attorney General's Guidelines and directives, to include the following, as amended or supplemented:

1. Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (May 30, 2002);
2. Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (October 31, 2003);
3. Attorney General's Supplemental Guidelines for Collection, Retention, and Dissemination of Foreign Intelligence (November 29, 2006);
4. Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations (May 30, 2002);
5. Attorney General Memorandum, dated March 6, 2002, titled "Intelligence Sharing Procedures for Foreign Intelligence and Foreign Counterintelligence Investigations Conducted by the FBI";
6. Attorney General's Guidelines Regarding the Use of FBI Confidential Human Sources (effective June 13, 2007);
7. Memorandum from the Deputy Attorney General and the FBI Director re: Field Guidance on Intelligence Sharing Procedures for [Foreign Intelligence] and [Foreign Counterintelligence] Investigations (December 24, 2002); and
8. Memorandum of Understanding Between the Intelligence Community, Federal Law Enforcement Agencies, and the Department of Homeland Security Concerning Information Sharing (March 4, 2003).

Guidance on investigative matters handled by the FBI will be issued by the Federal Law Enforcement Agencies, and the Department of Homeland Security Concerning Information Sharing (March 4, 2003).

Guidance on investigative matters handled by the FBI will be issued by the Attorney General and the FBI. The FBI will provide copies of the above-listed guidelines and any other applicable policies for reference and review to all Fusion Center members. However, in accordance with applicable federal law and executive orders, copies of classified guidelines or documents will be provided to those members with the appropriate security clearance. Notwithstanding the above, this MOU does not alter or abrogate existing directives or policies regarding the conduct of investigations or the use of special investigative techniques or confidential human sources.

V. STAFFING COMMITMENT

- A. As a Fusion Center Member Agency, the FBI hereby agrees to be a Principal Member of the Fusion Center, as described in the Charter and shall contribute the following resources to the Fusion Center:

The FBI agrees to detail one Intelligence Analyst to the Virginia Fusion Center on a rotating basis. Personnel detailed by the FBI to the Fusion Center shall hold and maintain a Top Secret/SCI clearance or hold and maintain a minimum of a Secret clearance, with a request for Top Secret/SCI clearance in process.

- B. Responsibility for the conduct of each FBI Fusion Center detailee, both personally and professionally, shall remain with the FBI. During this detail, FBI employees will continue to work under the rules and regulations applicable to the FBI's employees and will be subject to the same personnel rules, regulations, laws and policies, including ethical standards, applicable to those employees. FBI employees will comply with FBI rules pertaining to outside employment and prepublication review requirements and will remain subject to the Supplemental Standards of Ethical Conduct for Employees of the Department of Justice. FBI detailees will report personnel and administrative matters to the FBI designated Fusion Center representative.

VI. RECORDS, REPORTS AND INFORMATION SHARING

- A. Information in FBI information systems will be disseminated to Fusion Center partners in accordance with federal law, Executive Orders, Department of Justice and FBI regulations, and information sharing policy and the information sharing provisions of the FBI Intelligence Policy Manual. FBI information extracted from investigative and intelligence files and disseminated to Fusion Center partners may not be further disseminated outside the Fusion Center; entered into a Fusion Center generated report intended for external dissemination; or used as a basis for investigative or law enforcement activity by Fusion Center partners without the approval of the FBI Fusion Center representative. If the dissemination of FBI information results in a request or demand for that (or related) information from FBI files under federal law, state "sunshine" or freedom of information laws, or investigative or law enforcement activity by Fusion Center partners without the approval of the FBI Fusion Center representative. If the dissemination of FBI information results in a request or demand for that (or related) information from FBI files under federal law, state "sunshine" or freedom of information laws, or federal or state criminal discovery, the request or demand will be referred to the Chief Division Counsel of the Richmond Division and processed under regulations issued by the Attorney General in 28 Code of Federal Regulations, Part 16.

- B. To the extent information received as a result of this MOU is the subject of or is responsive to a request for information under the Freedom of Information Act, the Privacy Act, or a Congressional inquiry, such disclosure may only be made after consultation with the FBI.
- C. Terrorism-related threat information will continue to flow to the appropriate JTTF as the recognized and designated environment in which Federal-to-local operational partnerships take place to detect, investigate, and disrupt terrorist threats or pursue perpetrators.

VII. FUNDING

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the Parties to commit resources to the Fusion Center. Unless otherwise agreed in writing, each Party shall bear its own costs in relation to this MOU. Expenditures by each Party will be subject to each organization's budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The Parties expressly acknowledge that the above language in no way implies that Congress will appropriate additional funds for such expenditures.

VIII. MEDIA

Media releases relating to FBI intelligence or operational activity will be mutually agreed upon and jointly handled by the member Participating Agencies of the Fusion Center.

IX. PRIVACY AND CIVIL LIBERTIES

- A. The Parties 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 Fusion Center, including, to the extent applicable, the privacy guidelines established for the Information Sharing Environment created by §1016 of the Intelligence Reform and Terrorism Prevention Act of 2004.
- B. Each Party agrees to review and make appropriate changes, if any, to their privacy compliance documents, including, with respect to federal parties, applicable Privacy Act system of records notices, (e)(3) notices, and privacy policies (including policies applicable to the Information Sharing Environment) in advance of the implementation of this MOU to ensure that the scope and routine uses of such notices and policies permit the collection, maintenance and sharing of

personal information as set forth in this MOU and, with respect to state parties, applicable requirements imposed by state privacy laws.

- C. Each party agrees that the Fusion Center has now, or will develop, a privacy policy that comports, to the extent practicable, with the Privacy Policy Development Guide published by the Department of Justice as part of the Global Information Sharing Initiative.

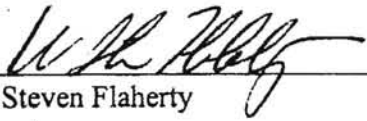
X. DURATION

- A. The term of the MOU shall be an indefinite period. The MOU may be terminated at will by any party, provided written notice is provided to the other parties of not less than sixty (60) days. Upon termination of the MOU, all equipment will be returned to the supplying party.
- B. Notwithstanding this provision, the provisions of Paragraph VI, entitled RECORDS, REPORTS AND INFORMATION SHARING will continue until all potential liabilities have lapsed.

XI. AMENDMENTS

This agreement in no manner affects any existing MOUs or agreements with the FBI or any other agency. This agreement may be amended only by mutual written consent of the parties. The modifications shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of the FBI and the Fusion Center.

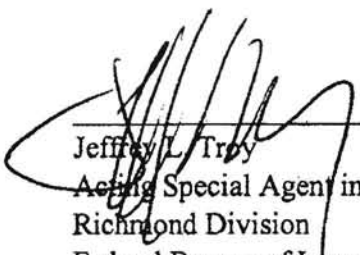
SIGNATORIES:


Colonel W. Steven Flaherty
Superintendent
Commonwealth of Virginia
Department of State Police


Date: 2/28/08

Michael M. Cline
State Coordinator
Virginia Department of Emergency Management

Date: _____

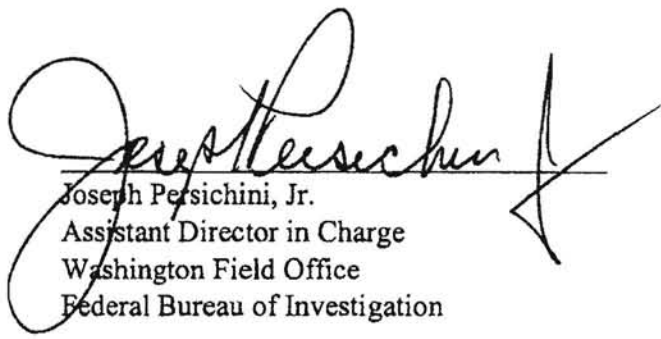

Jeffrey L. Troy
Acting Special Agent in Charge
Richmond Division
Federal Bureau of Investigation

Date: 1/6/2008


Alex Juan Turner
Special Agent in Charge
Norfolk Division
Federal Bureau of Investigation

Date: 1/29/08

~~Special Agent in Charge~~
Norfolk Division
Federal Bureau of Investigation


Joseph Persichini, Jr.
Assistant Director in Charge
Washington Field Office
Federal Bureau of Investigation

Date: 1/20/2008