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The Commonwealth of Massachusetts

Department of State Police

Office of the Chief Legal Counsel

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October 24, 2005

Director Cristine McCombes
MEMA
400 Worcester Road
Framingham, MA 01702

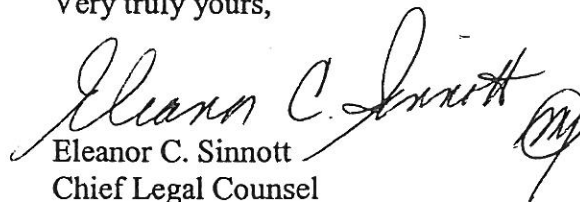
Re: Copy of Fully Executed Commonwealth Fusion Center MOU

Dear Director McCombes:

I have enclosed a copy of the fully executed MOU between your agency and the Commonwealth Fusion Center. The Department appreciates your cooperation and looks forward to working with your agency on important homeland security/public safety issues. I apologize it took so long for me to send this to you.

If you have any questions or need any further information, please do not hesitate to contact me. Thank you.

Very truly yours,


Eleanor C. Sinnott
Chief Legal Counsel

Excellence In Service Through Quality Policing

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MEMORANDUM OF UNDERSTANDING FOR: The Commonwealth Fusion Center and MEMA.

PURPOSE: This Memorandum of Understanding (MOU) sets forth policies, procedures and guidelines for MEMA in support of Law Enforcement Agencies (LEAs) and establishes parameters within which MEMA may provide support to the CFC.

Whereas, the Commonwealth Fusion Center (hereinafter referred to as the CFC) is empowered to enter into this Memorandum of Understanding; and

Whereas, MEMA is empowered to enter into this Memorandum of Understanding; and

Now, **THEREFORE**, it is agreed:

AUTHORITIES

This MOU is entered into under the authority of the laws of the Commonwealth of Massachusetts.

TERMS OF AGREEMENT

CFC DUTIES

The Massachusetts State Police will establish workspace within the CFC and will provide those computer and telephonic connections necessary to perform such assigned duties in furtherance of the CFC goals/mission. Direct access to computer applications and the Internet will be provided to each outside agency member assigned at the CFC. Access to any other online searchable databases will be provided on a contingent basis through CFC staff members. Intelligence products produced by the CFC may be made available to each outside agency member upon request, in accordance with CFC policy.

MEMA DUTIES

Members assigned to the CFC agree to be directed by the decisions of the Commanding Officer of the CFC for all matters occurring in the normal course of business of the CFC. In all matters concerning the member's salary, benefits, administration of personnel records and other administrative needs, the member is subject to the supervision of their own agency.

A MSP member(s), assigned to MEMA, shall act as the assigned MEMA liaison(s) to the CFC. The assigned MSP member(s) with the full cooperation of MEMA, will:

- Assist CFC personnel with requests for information and all other matters relating to criminal investigations by providing access to MEMA databases and resources.
- Assist CFC staff with the collection, collation, and vetting of incoming information for processing and dissemination of intelligence products.
- Share all relevant MEMA information with the CFC in a timely manner.
- Ensure appropriate information is entered into the CFC Intelligence System.

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- Provide adequate coverage and assign/delegate an alternative member during times of absence to enable timely access and effective utilization of MEMA resources.
- Record daily activities through the CFC blotter to ensure accurate data is included in the Performance Measures Report.
- The MSP members will provide the MEMA Director, Chief of Staff and/or Branch Chief of Homeland Security and Regional Services, information or intelligence developed by CFC staff as it relates to the emergency management and/or nuclear preparedness missions of MEMA.
- Under circumstances where the subject matter expertise to the CFC is necessary, a MEMA staff member may be assigned to CFC for periods of time as necessary.

DURATION AND TERMINATION

This MOU shall remain in effect until such time as a signatory agency withdraws from the agreement. MEMA or the CFC may withdraw from this agreement upon a 30-day notice in writing to the other participating agency.

AUTHORIZED REPRESENTATIVES

The CFC's authorized representative for the purposes of administration of this agreement is Major Robert G. Smith or his successor. MEMA'S authorized representative for the purposes of administration of this agreement is Director Cristine McCombs or his/her successor.

FINANCIAL RESPONSIBILITIES

Participating employees will carry out designated functions at their own agency's expense, including salaries, benefits and local transportation.

ASSIGNMENT

Neither the CFC nor MEMA shall assign or transfer any rights or obligations under this agreement without the prior written consent of the other party.

AMENDMENTS

Amendments to this MOU shall be proposed by the CFC Commanding Officer, and approved by all signatories to this MOU.

LIABILITY

The CFC and MEMA agree that each party will be responsible for its own acts, or the acts of its Representative(s) and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. The CFC and MEMA liability shall be governed by the provisions of Massachusetts law and other applicable law.

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SECURITY

The Commanding Officer of the CFC, currently Major Robert G. Smith, or his designee shall be responsible for establishing appropriate security measures to ensure the integrity of the operations of the Commonwealth Fusion Center.

The Commanding Officer shall report on security measures to the Colonel/Superintendent of State Police on a periodic basis. Any breach of security shall immediately be reported to the Colonel/Superintendent of State Police.

The Commanding Officer of the CFC shall be responsible for ensuring that appropriate background checks have been made on each member assigned to the CFC and each member who is authorized to receive information from the Center. The Commanding Officer of the CFC shall have the discretionary authority to deny the assignment of an individual to the CFC and/or deny access to any information or the facility itself for security reasons.

The CFC shall utilize the “Third Agency Rule,” meaning dissemination of another agency’s materials beyond the CFC requires advanced permission from the originating agency. In addition, no agency shall disseminate materials produced by the CFC without first obtaining the permission of the Commanding Officer of the CFC, or his/her designee. These rules shall apply to all individuals assigned to the CFC, regardless of their agency.

THE INFORMATION SECURITY COMPLIANCE AGREEMENT

The CFC has established the Information Security Compliance Agreement to ensure that the rights of innocent citizens are not abridged by the operations of the CFC, and MEMA agrees to abide by it. The Information Security Compliance Agreement is attached to this MOU as **Appendix A**. Contingent upon receipt of federal funding to support CFC operations, CFC personnel and all MEMA personnel assigned to the CFC shall abide by the rules of intelligence sharing as defined by Section 28 of the Code of Federal Regulations, Part 23 (see attached Appendix B).

DISPUTE RESOLUTION

Any disputes that may arise between the participating agencies concerning the operations of the CFC shall be referred to the Commanding Officer for resolution. If the Commanding Officer cannot resolve the dispute, it will be referred to the Agency Heads of the parties involved for resolution.

OTHER PROVISIONS

The parties agree to abide by the terms of the attached CFC-MEMA Job Description. It is hereby attached and incorporated by reference.

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IN FURTHERANCE of their respective goals, objectives, and missions, the parties jointly agree to abide by the provisions of this MOU.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be duly executed.

APPROVED:

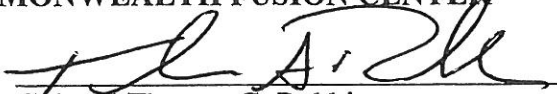
1. AGENCY

By: 
Cristine McCombs

Title: Director, Massachusetts Emergency Management Agency

Date: 8-12-05

**2. MASSACHUSETTS STATE POLICE
COMMONWEALTH FUSION CENTER**

By: 
Colonel Thomas G. Robbins

Title: Superintendent, Massachusetts State Police

Date: 8/12/05

Distribution:

Executive Office of Public Safety & Homeland Security
Colonel/Superintendent's Office, MSP

APPENDIX A

MASSACHUSETTS STATE POLICE (MSP)
INFORMATION SECURITY COMPLIANCE AGREEMENT

SECURITY, NONDISCLOSURE AND CONFIDENTIALITY

MEMA and its **Representative(s)** assigned to the Commonwealth Fusion Center (CFC) shall maintain the security, nondisclosure and confidentiality of all information in accordance with the following clauses in the performance of their duties under this Agreement:

SECURITY PROCEDURES:

MEMA agrees that its **Representative(s)** designated to work under this Agreement will comply fully with all security procedures of the state in relation to the performance of their duties and further agrees that its **Representative(s)** designated to work under this Agreement have, as a condition of their employment, or if not, shall be required to undergo, the same security clearances as are required of the Massachusetts State Police (MSP). Specifically, each prospective and current representative designated to work under this Agreement at the CFC, shall submit identifying information and may be fingerprinted for purposes of a background check. CFC personnel shall arrange for the scheduling of such fingerprinting activities on State premises. Each Representative assigned to the CFC will be required to attain a SECRET Level security clearance from the FBI or DHS upon assignment to the CFC.

NONDISCLOSURE AND CONFIDENTIALITY:

Except as may be required by applicable law or a court of competent jurisdiction, MEMA and its **Representative(s)** shall maintain strict confidence with respect to any Confidential Information to which MEMA and its **Representative(s)** have access. This representation shall survive termination of this Agreement. For purposes of this Agreement, MEMA and its **Representative(s)** agree to treat all information (oral, visual, or written) accessed in the course of their assignment to the CFC as Confidential Information, unless provided written release from the designation for specified information by the Colonel/Superintendent of the MSP, or his/her designee.

ADMINISTRATIVE OBLIGATION:

MEMA and its **Representative(s)** designated to work under this agreement, agree not to use CFC provided equipment to engage in non-duty related activities.


MEMA and its **Representative(s)** designated to work under this Agreement, agree to immediately notify the Commanding Officer of the CFC, or his/her designee, in the event of the arrest of, or disciplinary action involving the **Representative(s)** assigned to the CFC.

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In circumstances where the signer of this document represents an MEMA with more than one **Representative** assigned to the CFC, MEMA agrees that all **Representative(s)** now working at the CFC and all future **Representative(s)** who may be assigned to the CFC have been and will be instructed in the requirements of this Agreement.

Violation of the Security, Nondisclosure and Confidentiality, and Administrative Obligation clauses specified in this Agreement may constitute grounds for removal of MEMA **Representative(s)** from their assignment at the CFC.

I have read, understand and agree to the contents of this document.



Cristine McCombs, Director
Massachusetts Emergency Management Agency

8.11.05
Date



Signature of CFC Commanding Officer – Major Robert G. Smith

10/11/05
Date

CC: Executive Office of Public Safety & Homeland Security
Office of the Colonel/Superintendent, Massachusetts State Police

APPENDIX B

Department of Justice

§ 23.20

(f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.

(2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

(g) A project maintaining criminal intelligence information shall ensure that administrative, technical, and physical safeguards (including audit trails) are adopted to insure against unauthorized access and against intentional or unintentional damage. A record indicating who has been given information, the reason for release of the information, and the date of each dissemination outside the project shall be kept. Information shall be labeled to indicate levels of sensitivity, levels of confidence, and the identity of submitting agencies and control officials. Each project must establish written definitions for the need to know and right to know standards for dissemination to other agencies as provided in paragraph (e) of this section. The project is responsible for establishing the existence of an inquirer's need to know and right to know the information being requested either through inquiry or by delegation of this responsibility to a properly trained participating agency which is subject to routine inspection and audit procedures established by the project. Each intelligence project shall assure that the following security requirements are implemented:

(1) Where appropriate, projects must adopt effective and technologically advanced computer software and hardware designs to prevent unauthorized access to the information contained in the system;

(2) The project must restrict access to its facilities, operating environment and documentation to organizations and personnel authorized by the project;

(3) The project must store information in the system in a manner such that it cannot be modified, destroyed, accessed, or purged without authorization;

(4) The project must institute procedures to protect criminal intelligence information from unauthorized access, theft, sabotage, fire, flood, or other natural or manmade disaster;

(5) The project must promulgate rules and regulations based on good cause for implementing its authority to screen, reject for employment, transfer, or remove personnel authorized to have direct access to the system; and

(6) A project may authorize and utilize remote (off-premises) system data bases to the extent that they comply with these security requirements.

(h) All projects shall adopt procedures to assure that all information which is retained by a project has relevancy and importance. Such procedures shall provide for the periodic review of information and the destruction of any information which is misleading, obsolete or otherwise unreliable and shall require that any recipient agencies be advised of such changes which involve errors or corrections. All information retained as a result of this review must reflect the name of the reviewer, date of review and explanation of decision to retain. Information retained in the system must be reviewed and validated for continuing compliance with system submission criteria before the expiration of its retention period, which in no event shall be longer than five (5) years.

(i) If funds awarded under the Act are used to support the operation of an intelligence system, then:

(1) No project shall make direct remote terminal access to intelligence information available to system participants, except as specifically approved by the Office of Justice Programs (OJP) based on a determination that the system has adequate policies and procedures in place to insure that it is accessible only to authorized systems users; and

(2) A project shall undertake no major modifications to system design without prior grantor agency approval.

(ii) [Reserved]

APPENDIX B

§ 23.30

28 CFR Ch. I (7-1-04 Edition)

(j) A project shall notify the grantor agency prior to initiation of formal information exchange procedures with any Federal, State, regional, or other information systems not indicated in the grant documents as initially approved at time of award.

(k) A project shall make assurances that there will be no purchase or use in the course of the project of any electronic, mechanical, or other device for surveillance purposes that is in violation of the provisions of the Electronic Communications Privacy Act of 1986, Public Law 99-508, 18 U.S.C. 2510-2520, 2701-2709 and 3121-3125, or any applicable State statute related to wiretapping and surveillance.

(l) A project shall make assurances that there will be no harassment or interference with any lawful political activities as part of the intelligence operation.

(m) A project shall adopt sanctions for unauthorized access, utilization, or disclosure of information contained in the system.

(n) A participating agency of an interjurisdictional intelligence system must maintain in its agency files information which documents each submission to the system and supports compliance with project entry criteria. Participating agency files supporting system submissions must be made available for reasonable audit and inspection by project representatives. Project representatives will conduct participating agency inspection and audit in such a manner so as to protect the confidentiality and sensitivity of participating agency intelligence records.

(o) The Attorney General or designee may waive, in whole or in part, the applicability of a particular requirement or requirements contained in this part with respect to a criminal intelligence system, or for a class of submitters or users of such system, upon a clear and convincing showing that such waiver would enhance the collection, maintenance or dissemination of information in the criminal intelligence system, while ensuring that such system would not be utilized in violation of the privacy and constitutional rights of individuals or any applicable state or federal law.

§ 23.30 Funding guidelines.

The following funding guidelines shall apply to all Crime Control Act funded discretionary assistance awards and Bureau of Justice Assistance (BJA) formula grant program subgrants, a purpose of which is to support the operation of an intelligence system. Intelligence systems shall only be funded where a grantee/subgrantee agrees to adhere to the principles set forth above and the project meets the following criteria:

(a) The proposed collection and exchange of criminal intelligence information has been coordinated with and will support ongoing or proposed investigatory or prosecutorial activities relating to specific areas of criminal activity.

(b) The areas of criminal activity for which intelligence information is to be utilized represent a significant and recognized threat to the population and:

(1) Are either undertaken for the purpose of seeking illegal power or profits or pose a threat to the life and property of citizens; and

(2) Involve a significant degree of permanent criminal organization; or

(3) Are not limited to one jurisdiction.

(c) The head of a government agency or an individual with general policy making authority who has been expressly delegated such control and supervision by the head of the agency will retain control and supervision of information collection and dissemination for the criminal intelligence system. This official shall certify in writing that he or she takes full responsibility and will be accountable for the information maintained by and disseminated from the system and that the operation of the system will be in compliance with the principles set forth in § 23.20.

(d)(1) Where the system is an interjurisdictional criminal intelligence system, the governmental agency which exercises control and supervision over the operation of the system shall require that the head of that agency or an individual with general policy-making authority who has been expressly delegated such control and supervision by the head of the agency:

APPENDIX B

Department of Justice

§ 24.102

(i) Assume official responsibility and accountability for actions taken in the name of the joint entity, and

(ii) Certify in writing that the official takes full responsibility and will be accountable for insuring that the information transmitted to the interjurisdictional system or to participating agencies will be in compliance with the principles set forth in § 23.20.

(2) The principles set forth in § 23.20 shall be made part of the by-laws or operating procedures for that system. Each participating agency, as a condition of participation, must accept in writing those principles which govern the submission, maintenance and dissemination of information included as part of the interjurisdictional system.

(e) Intelligence information will be collected, maintained and disseminated primarily for State and local law enforcement efforts, including efforts involving Federal participation.

§ 23.40 Monitoring and auditing of grants for the funding of intelligence systems.

(a) Awards for the funding of intelligence systems will receive specialized monitoring and audit in accordance with a plan designed to insure compliance with operating principles as set forth in § 23.20. The plan shall be approved prior to award of funds.

(b) All such awards shall be subject to a special condition requiring compliance with the principles set forth in § 23.20.

(c) An annual notice will be published by OJP which will indicate the existence and the objective of all systems for the continuing interjurisdictional exchange of criminal intelligence information which are subject to the 28 CFR part 23 Criminal Intelligence Systems Policies.

PART 24—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN DEPARTMENT OF JUSTICE ADMINISTRATIVE PROCEEDINGS

Subpart A—General Provisions

- Sec.
24.101 Purpose of these rules.
24.102 Definitions.
24.103 Proceedings covered.

- 24.104 Applicability to Department of Justice proceedings.
24.105 Eligibility of applicants.
24.106 Standards for awards.
24.107 Allowable fees and other expenses.

Subpart B—Information Required From Applicants

- 24.201 Contents of application.
24.202 Net worth exhibit.
24.203 Documentation of fees and expenses.
24.204 Time for submission of application.

Subpart C—Procedures for Considering Applications

- 24.301 Filing and service of documents.
24.302 Answer to application.
24.303 Comments by other parties.
24.304 Settlement.
24.305 Extensions of time.
24.306 Decision on application.
24.307 Department review.
24.308 Judicial review.
24.309 Payment of award.

AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: Order No. 975-82, 47 FR 15776, Apr. 13, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 24.101 Purpose of these rules.

These rules are adopted by the Department of Justice pursuant to section 504 of title 5, U.S. Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Public Law No. 96-481. Under the Act, an eligible party may receive an award for attorney fees and other expenses when it prevails over the Department in an adversary adjudication under 5 U.S.C. 554 before the Department, unless the Department's position as a party to the proceeding was substantially justified or special circumstances make an award unjust. The purpose of these rules is to establish procedures for the submission and consideration of applications for awards against the Department.

§ 24.102 Definitions.

As used in this part:

(a) *The Act* means section 504 of title 5, U.S. Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Public Law No. 96-481.

(b) *Adversary adjudication* means an adjudication under 5 U.S.C. 554 in which the position of the United States