



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
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RICHARD J. CODEY
Acting Governor

PETER C. HARVEY
Attorney General

MEMORANDUM

TO: Sidney Casperson, Director
Office of Counter-Terrorism

Col. Rick Fuentes, Superintendent
New Jersey State Police

AAG Vaughn L. McKoy, Director
Division of Criminal Justice

Thomas J. O'Reilly, Administrator
Department of Law and Public Safety

All County Prosecutors

FROM: Peter C. Harvey, Attorney General

DATE: December 20, 2005

SUBJECT: Directive to Prevent Racial, Ethnic and Religious Profiling in the Course of Conducting Counter-Terrorism Investigations and Intelligence Collection

I have been evaluating several legal and policy questions regarding the collection, handling and sharing of intelligence information that is used to support New Jersey's counter-terrorism efforts. Questions have been raised concerning when and under what circumstances law enforcement and intelligence personnel, including personnel assigned to the Office of Counter-Terrorism, may consider, and are prohibited from considering, a person's ethnicity or religious affiliation or practices when determining whether the person is involved in terrorist activity. The citizens of New Jersey rightfully expect that all lawful and appropriate means will be used to thwart terrorists. Public confidence in the integrity, objectivity and



impartiality of the law enforcement community requires a clear policy that prohibits law enforcement officials from relying to any extent on broad-brushed ethnic or religious stereotypes in targeting individuals for law enforcement scrutiny. The impermissible use of such stereotypes would ultimately undermine our counter-terrorism efforts by alienating significant segments of our society, thereby eroding public support for law enforcement efforts and denying us access to valuable sources of information that are needed to identify and deter terrorist organizations.

Pursuant to my authority as the Chief Law Enforcement Officer of the State pursuant to the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq. I hereby direct that the following actions be immediately taken:

1. Official Non-discrimination Policy as Applied to Counter-Terrorism

a. The non-discrimination policy prohibiting “racially-influenced policing” set forth in Attorney General Law Enforcement Directive 2005-1 shall apply to all sworn and unsworn personnel assigned to the Office of Counter-Terrorism, and to any other law enforcement personnel operating under the authority of State law to investigate, prosecute, or collect or analyze intelligence information pertaining to terrorism. For purposes of the implementation of the statewide non-discrimination policy, a person’s religious affiliation or any act that constitutes a constitutionally-protected expression of religion shall be treated in the same manner as law enforcement officers in this State are required to treat the person’s race or ethnicity. Specifically, personnel assigned to the Office of Counter-Terrorism and any other sworn or unsworn member of a law enforcement agency operating under the authority of the laws of the State of New Jersey shall not consider a person’s race, ethnicity, religious affiliation, or religious practice or expression as a factor in drawing an inference or conclusion that the person may be involved in terrorist activity, except when responding to a suspect or investigation-specific “Be on The Lookout” (B.O.L.O.) situation as described in Section 1b of this Directive and in the training provided to Office of Counter-Terrorism personnel by the Division of Criminal Justice pursuant to Section 1c of this Directive.

b. Consistent with the provisions of Section 2b of Attorney General Law Enforcement Directive 2005-1, nothing herein shall be construed in any way to prohibit the Office of Counter-Terrorism or its officers or civilian employees, or any other law enforcement personnel, from taking into account a person's race, ethnicity, religious affiliation, or religious practice or expression when such factor(s) is/are used to identify or describe the physical characteristics of a particular individual or individuals who is/are the subject of a law enforcement investigation, or who is/are otherwise being sought by the Office of Counter-Terrorism or any other law enforcement agency in furtherance of a specific investigation or prosecution of a specific terrorist act, scheme, conspiracy or organization.

c. The Division of Criminal Justice shall within 45 days of the effective date of this Directive provide training on the policies established in this Directive to all sworn personnel assigned to the Office of Counter-Terrorism, to all Office of Counter-Terrorism intelligence analysts, whether sworn or unsworn, and to such other civilian staff of the Office of Counter-Terrorism as may be appropriate. Any person hereinafter detailed to or employed by the Office of Counter-Terrorism who would have been required to undergo the foregoing training had he/she been so detailed or employed on the effective date of this Directive shall undergo the training described in this section within 5 days of being detailed to or employed by the Office of Counter-Terrorism. Such training shall be made available to other law enforcement officers to the extent it is not included in the racially-influenced policing training described in Attorney General Law Enforcement Directive 2005-1.

2. Promulgation of Investigation and Intelligence Collection Procedures

a. The Division of Criminal Justice, in consultation with the Office of Counter-Terrorism, the New Jersey State Police, and the County Prosecutors, and subject to the approval of the Attorney General or his/her designee, shall within 90 days of the effective date of this Directive prepare revisions to the 2004 Attorney General Guidelines on the Collection, Handling, Storage and Dissemination of Intelligence in New Jersey ("the Revised Attorney General Guidelines"). The Revised Attorney General Guidelines shall, among other things, delineate investigation guidelines that specify when and how counter-terrorism cases are to be opened. These guidelines shall define the permissible scope, duration, subject matter and objectives of counter-terrorism investigations, and shall explain when and under what circumstances various investigative techniques are authorized and when investigators must obtain specific approval

from designated superiors before employing certain investigative techniques. In preparing the revised investigative guidelines, the Division of Criminal Justice shall use as a reference and be guided by the United States Attorney General's "Guidelines on General Crimes, Racketeering Enterprise and Terrorism Investigations," and shall specify distinct procedures and standards for opening and pursuing cases involving the following levels of investigative activity: (1) prompt and extremely limited checking of initial leads, (2) preliminary inquiries, and (3) full investigations. The investigation guidelines shall also include the following requirements:

(i) reaffirm that no investigative activity of any type should ever be undertaken based to any extent on racial, ethnic or religious stereotypes;

(ii) establish a preference for the use of the "least intrusive means" reasonably available to complete the legitimate investigative objective whenever any person's constitutional rights are implicated;

(iii) authorize a "full investigation" only when facts or circumstances "reasonably indicate that a crime has been, is being, or will be committed;"

(iv) require that a "preliminary inquiry" be promptly terminated when it becomes apparent that a full investigation is not warranted, and

(v) provide that information collected pursuant to a "tips and leads" or "preliminary inquiry" shall be purged after a reasonable period of time if investigative activities fail to disclose information that would meet the reasonable indication of criminal activity threshold necessary to initiate a full investigation.

b. The Revised Attorney General Guidelines shall provide a single and comprehensive source of guidance for all law enforcement agencies operating under the laws of the State of New Jersey concerning: (1) the nondiscrimination policy established in Attorney General Law Enforcement Directive 2005-1 and this Directive, and (2) the special rules governing intelligence collection, handling and sharing activities that may implicate any person's constitutional rights, described more fully in Section 3 of this Directive.

c. Personnel assigned to the Office of Counter-Terrorism shall not seek issuance of any grand jury subpoena, arrest warrant, communications data warrant, search warrant, or electronic surveillance order without first obtaining the approval of the Attorney General or the Director of the Division of Criminal Justice.

3. Policy and Procedures to Strengthen the Statewide Intelligence Management System (SIMS) and Ensure Compliance With Applicable Federal and State Regulations

a. No person assigned to the Office of Counter-Terrorism shall submit data for entry into the Statewide Intelligence Management System (SIMS) unless such data has been reviewed by a designated supervisor who has been trained in the requirements of 28 C.F.R Part 23, and that supervisor has determined that the information satisfies the data entry standards set forth in both 28 C.F.R. Part 23 and the 2004 Attorney General Guidelines on the Collection, Handling, Storage and Dissemination of Intelligence in New Jersey, including as such guidelines may be amended pursuant to Section 2 of this Directive. Special supervisory care shall be taken whenever information proposed for entry into the SIMS system relates to or references a person or organization who/that has not previously been entered into the system. The Office of Counter-Terrorism, subject to the direction and review of the Attorney General or his/her designee, shall establish procedures to ensure that data proposed for entry into SIMS is subjected to supervisory review as expeditiously as practicable.

b. All sworn personnel assigned to the Office of Counter-Terrorism, all Office of Counter-Terrorism intelligence analysts, whether sworn or unsworn, and such other civilian staff of the Office of Counter-Terrorism as may be appropriate shall within 60 days of the effective date of this Directive receive specialized training on the standards for submitting information into SIMS. The Office of the Attorney General shall take steps to develop this training program in consultation with the United States Department of Justice, Bureau of Justice Assistance and/or the Institute for Intergovernmental Research. The training program shall address the key components and concepts articulated in 28 C.F.R Part 23. The training shall emphasize the need for adequate documentation so that a supervisor can reliably determine whether the information proposed for submission into SIMS meets all applicable data entry criteria.

c. The New Jersey State Police shall within 45 days of the effective date of

this Directive review the operating procedures for SIMS and shall take steps to make certain that, other than as may be necessary for routine system management and maintenance, no individual or unit of a law enforcement agency shall have access to or in any way operationally use information other than as may be authorized pursuant to the security grading level that has been assigned in the first instance by the agency that had submitted the information. The New Jersey State Police will make certain that the scope and membership of all security groups is clearly defined, and that members of the security group are aware of the identity of all other persons and law enforcement units that are members of that security group.

d. All SIMS users shall be required to make a notation in the narrative portion of their reports whenever the name of any individual or organization referenced in the report represents only non-criminal identifying information. Following consultation by the Attorney General with the Justice Department, all SIMS users shall be provided training on how to properly identify and label non-criminal identifying information that may be contained in the narrative text of information submissions.

4. Independent Review to Ensure Compliance With This Directive

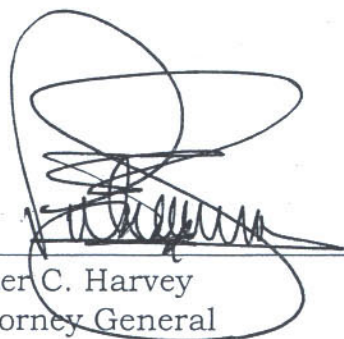
One or more Assistant or Deputy Attorneys General, and such other staff as may be appropriate, shall be assigned to review and monitor compliance with the provisions of this Directive. The Assistant or Deputy Attorney General in charge of the review function shall report directly to the Attorney General, or to such person as the Attorney General may designate, and shall be provided with complete access to all pertinent Office of Counter-Terrorism and Division of State Police intelligence information, files, and other materials and information as may be necessary to efficiently and effectively perform the compliance monitoring function. The Assistant or Deputy Attorney General-In-Charge shall report to the Attorney General on not less than a quarterly basis as to the implementation of this Directive.

5. Monthly Investigation Summary Reports

The Office of Counter-Terrorism shall submit to the Attorney General written reports on a monthly basis, or otherwise when requested by the Attorney General, that provide detailed information concerning all pending investigations, new investigations, matters on which electronic surveillance is being used and cases that are the subject of any court proceedings.

6. Effective Date

This Directive shall take effect immediately and shall remain in full force and effect unless and until repealed, amended or superceded by the Attorney General.

A handwritten signature in black ink, appearing to read "Peter C. Harvey", is written over a horizontal line. The signature is highly stylized and somewhat illegible due to overlapping loops and flourishes.

Peter C. Harvey
Attorney General

Dated: December 20, 2005
Trenton, New Jersey