

DOES THE FBI CONTEND INTELLIGENCE REPORTS ON COMMUNITY OUTREACH EVENTS COMPLY WITH ITS POLICY?

Yesterday, the ACLU released a report on its ongoing FOIA on what FBI offices around the country are doing to collect intelligence on Muslim communities and particular ethnic groups. The report found a number of cases in which the FBI mixed community outreach with investigative actions:

A 2009 San Jose FBI memorandum describing FBI participation in a career day sponsored by an Assyrian community organization recorded information about the organization's expressive activities, the identities of several of its leaders, and the content of conversations with three community leaders and members about their opinions, backgrounds, travel histories, educations, occupations and charitable activities. Contact information for these individuals was forwarded to the FBI's San Francisco Division.

A 2009 Sacramento FBI memorandum regarding outreach at California State University, Chico documents a conversation with a student about the Saudi Student Association, including its size, purpose, and activities. This memorandum, which includes the student's social security number, telephone number and address, was sent to the FBI in Washington, DC.

A 2008 San Francisco memorandum to an intelligence file documents community

outreach to a Pakistani community organization. The document reports information about the organization's First Amendment-protected activities and the identities of the organization's officers, directors and advisors.

A San Francisco FBI memoranda written in 2007 and 2008 by FBI agents who attended Ramadan Iftar dinners under the guise of the FBI's mosque outreach program documented in several case files the names of attendees, the contents of participants' conversations and presentations, and the FBI's collection of pamphlets about different community organizations and identification of associated individuals. The 2008 memorandum shows that an FBI agent collected and documented individuals' contact information and First Amendment-protected opinions and associations, and conducted internet searches to obtain further information about the individuals in attendance, including, in one instance, the photo of a dinner participant. Both memoranda indicate that the information was "disseminated outside the FBI," presumably to other law enforcement or intelligence agencies.

A 2007 San Jose FBI memorandum documenting a mosque outreach meeting attended by 50 people representing 27 Muslim community and religious organizations analyzed the "demographics" of those in attendance and identified each individual by name and organization. This memo was sent to three different case files.

In response, the FBI released a statement of its policies on the relationship between its outreach programs and investigative functions. (h/t Ryan Reilly)

Established policy requires that an appropriate separation be maintained between outreach and operational activities and includes several provisions to ensure this is the case:

- *A Special Agent or Intelligence Analyst assigned to an operational squad should not engage in community outreach directed toward an individual or group associated with an investigation or assessment that the agent or analyst supports.*
- *The Community Outreach Coordinator cannot be assigned to the Field Intelligence Group or to an operational squad or task force.*
- *The Community Outreach Program cannot be used to conduct Domain Assessments.*
- *“It is important to maintain an appropriate separation between outreach activities conducted to build trust and confidence, and those conducted with a specific*

operational or intelligence purpose

- *The policy also expressly requires full compliance with the Privacy Act.*

The problem is, the statement doesn't say whether or not these case files reflect compliance with their policies. After all, if they do, then existing policies are inadequate to protect civil liberties. If they don't, then the FBI should also be explaining whether the officers involved were disciplined.

Frankly, most of the documents are redacted beyond the point where we can check whether the FBI is following its own policy of "appropriate separation" or not.

But here's what we can see:

The details in the Assyrian Career Day report appear tailored as much to record information on potential sources as it is for potential targets (particularly given that they were engaging FBI officers at a career fair). The fact that this report was forwarded to people in the San Francisco office might suggest those people had some investigation tied to the Assyrian community. If so that seem to show what it would look like for Agents assigned to a particular subject (here, involving the Assyrian community) to receive information from someone involved in outreach.

The Chico State Saudi Students Association report clearly says it is initial outreach. But it instead looks like a task assigned by someone running an investigation—perhaps into Saudi Student Associations generally—out of DC. Sure, there's separation (and entire continent) between the person conducting the investigation and the "outreach," Sure, this effort is not being run by the Community Outreach Program. But it does seem thin cover for investigative work

being done in "outreach."

The meeting with Pakistani Community organizations in Bayview has an intelligence-800-code name. And while the meeting wasn't held by the Community Outreach Coordinator, it clearly was sent to that person. Partly because the word "assessment" has two meanings for the FBI, it's include whether a general intelligence report should be done by someone investigating such things. But in any case, this seems to get awfully close to mixing outreach plus domain assessments, though on this and others, the FBI may be claiming that since the COP is not the same as localized outreach, it's okay to do domain assessments in local outreach programs.

The two Itfar reports appears to have been written by someone with a specific outreach function, who then shared the information with people (including in another government agency) conducting investigations into a few of the people who attend this mosque. I'm not sure whether this complies with FBI's stated policy or not. Note, too, that the FBI raised the classification level on one of the investigation file names to which these reports were sent.

The 2007 outreach event in San Jose appears to have served as much to check off some kind of training requirements for five FBI employees as it did to collect information and demographics on the Muslim community in Northern California. The one case number that is not redacted-the code 282 indicates an investigation into "Color of Law" violation when "anyone acting under 'color of law' willfully ... depriv[ing] or conspir[ing] to deprive a person of a right protected by the Constitution or U.S. law"-suggests they may have filed this report in a file investigating someone abusing the rights of the Muslim community. Oddly, the FBI redacted what the FBI's primary focus is, even though elsewhere they admit it is counterterroism every chance they get. All that said, the inclusion of names and demographic information

would seem to be “domain assessment,” which is prohibited for an event explicitly labeled as community outreach.

In other words, it seems the FBI is doing domain assessment and investigatory work in the guise of community outreach; but that seems to comply because of the separation between DC’s COP and local efforts. And the FBI seems to claim a fairly expansive ability (in the name of personnel management) to share information between these efforts, which seems to be what we’re seeing.

And then there’s this big tell: The FBI makes it clear that there are times when they use “outreach” not to collect information but to do something else:

It is important to maintain an appropriate separation between outreach activities conducted to build trust and confidence, and those conducted with a specific operational or intelligence purpose

This suggests some underlying “flexibility” behind the concept of outreach here.

In other words, the FBI has as much as admitted that its outreach efforts aren’t all intended to build warm relations with the Muslim community.