



U.S. Department of Justice

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

April 12, 2018

Libby Schaaf
Mayor
City of Oakland
1 Frank H. Ogawa Plaza
3rd Floor
Oakland, CA 94612

RE: Award Number 2016-DJ-BX-0748, Alameda County, California

Dear Mayor Schaaf:

As you are aware, in connection with the above-referenced award, under which the City of Oakland, California was a joint applicant and is a subrecipient, this agency, is seeking information that, in its opinion, may be related or pertinent to the award. *See, e.g.*, 34 U.S.C. § 10230(b). Specifically, this agency is seeking information regarding compliance by the City of Oakland with 8 U.S.C. § 1373, a statute that the solicitation under which the award was made expressly indicated was an applicable federal law. The Department is concerned that the City of Oakland's laws, policies, or practices may violate section 1373, or, at a minimum, that they may be interpreted or applied in a manner inconsistent with section 1373. For example:

Oakland Police Department Policy Manual, Policy 415. Policy 415.6 states, "Officers shall not share non-public information about an individual's address, upcoming court date, or release date with ICE or CBP. Officers shall respond to an ICE or CBP request for non-public information only when a judicial warrant accompanies the request." This appears to restrict the sending of information regarding immigration status, in violation of section 1373(a).

Special Condition No. 1 of the award, of course, incorporates by reference and expressly makes applicable to it the provisions of 2 C.F.R. part 200, as adopted and supplemented by the Department of Justice in 2 C.F.R. part 2800. And part 200, in turn, affirms that this agency has "the right of access to any documents, papers, or other records of the [recipient that] are pertinent to the . . . award." 2 C.F.R. § 200.336(a). Accordingly, in light of the concerns described above, and in keeping with its ongoing award-monitoring and –oversight obligations, this agency requests that, by Monday, May 14, 2018, the City of Oakland provide it with an official opinion of legal counsel for the City of Oakland that addresses whether Oakland Police Department Policy Manual, Policy 415, violates section 1373, and whether the City of Oakland otherwise has any laws, policies, or practices in place that violate section 1373. To the extent that any such

laws, policies, or practices may be thought not to violate section 1373 on the ground that they contain provisions in the nature of “saving” provisions, the opinion should explain how such provisions are interpreted and applied, and whether and how any such interpretations are communicated to the City of Oakland law enforcement officers and employees. The opinion should be provided in coordination with the fiscal agent under the award.

Please be advised that the Department has not made a final determination regarding the City of Oakland’s compliance with section 1373. This letter does not constitute final agency action and nothing in this letter should be understood to create any right or benefit enforceable at law against the United States.

A handwritten signature in black ink that reads "Jon Adler". The signature is written in a cursive, flowing style.

Jon Adler
Director
Bureau of Justice Assistance

CC: Michael Hunt, Harry Bruno, Gregory Ahern