

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereinafter referred to as the "MOU") is entered into this 25<sup>th</sup> day of August, 2011 by and between the Boston Police Department (hereinafter referred to as the "Department"), having an address at One Schroeder Plaza, Boston, MA 02120 and the Cambridge Police Department (hereinafter referred to as the "CPD"), having an address at 125 Sixth Street, Cambridge, MA 02142.

This MOU establishes the responsibilities of the CPD when interacting with the Boston Regional Intelligence Center (hereinafter referred to as the "BRIC") for data, information and intelligence sharing purposes. The BRIC's operation is under the day-to-day management of the Department's Bureau of Intelligence and Analysis, the law enforcement entity physically housing and staffing the BRIC's workspace. All data, information, and intelligence compiled and contained at the BRIC is the property of the Department.

Further, this MOU establishes the responsibilities for the usage of information compiled by and contained at the Department that has been deemed confidential and privileged, and which might contain information relating to an individual's criminal record and investigatory materials, the disclosure of which is potentially prejudicial against continued effective law enforcement by the CPD, subject to the following terms and conditions.

### 1. Use

The CPD will have the full use and access to the Incident Tracking System (hereinafter referred to as "ITS"), the Frisk/Interrogation/Observation/Encounter (hereinafter referred to as "FIOE") database, the Gang Database, the Repository for Integrated Criminalistic Imaging (hereinafter referred to as "RICI"), SharePoint, CrimeNTel, the National Suspicious Activity Reporting Program's (NSI-SAR) "Shared Space," and other databases as deemed appropriate by the Department to enhance information sharing, equal to that of the Department, for law enforcement purposes, taking into consideration any and all CORI restrictions.

The CPD agrees to abide by all regulatory and statutory restrictions relative to its access of the information described above. This includes, but is not limited to the BRIC Privacy Policy, a copy of which is attached hereto as Appendix A. The CPD agrees that, by signing this MOU, it agrees that it has reviewed the Privacy Policy and will be bound by its terms both when receiving and providing data, information, and intelligence to any of the above referenced databases.

### 2. Duration and Termination

This agreement is effective upon the date the last party signs below. This MOU shall remain in effect for three (3) years from the effective date and may be terminated by either party upon fourteen (14) days written notice to the other party.

The termination of this agreement or any change in its terms shall not relieve the CPD of any obligations of non-use or non-disclosure hereunder or the obligations to return certain materials as outlined below.

### 3. Modifications

This MOU represents the final and only agreement binding the parties hereto. This MOU may be modified or waived only by a separate writing and will not be enforceable until signed by all parties.

### 4. Confidential Information

Whereas the CPD will have access to information that is deemed confidential and privileged, and which might contain information relating to an individual's criminal record and investigatory materials, the disclosure of which might be potentially prejudicial against continued effective law enforcement (hereinafter referred to as "Confidential Information"), the parties agree as follows:

1. As used through this MOU, the term Confidential Information means information not generally known to third parties and which is confidential to the Department. All information disclosed to the CPD, or to which the CPD obtains access, shall be presumed to be Confidential Information. This shall apply to all Confidential Information, including that originated by the BRIC or by the disclosure of others.
2. Whereas the Confidential Information obtained by the CPD may include information that is defined as Criminal Offender Record Information (CORI) per 803 CMR 2.03, the parties agree that the information released is done so pursuant to the "criminal justice agency" exemption. The parties agree that the CPD is responsible for ensuring compliance with any and all CORI obligations, including limitations on dissemination and the use of such information.
3. The parties understand that unauthorized disclosure or use, whether intentional or unintentional, of any of the Confidential Information would be detrimental to the Department. Accordingly, the CPD agrees:
  - a. Not to disclose Confidential Information to any third party.
  - b. Not to use any of the Confidential Information for any purpose other than for the specific law enforcement purposes covered by this MOU. Unauthorized uses include, but are not limited to, general licensing, employment, eligibility for federal or state benefits, or background investigation.
  - c. To maintain all the Confidential Information in confidence and not to disclose any portion of the Confidential Information to any person without the prior and explicit written consent of the Department.
  - d. Any use of the Confidential Information for reasons not outlined by this MOU will result in the immediate termination of this agreement and surrender of any information received by the CPD to the BRIC.

- e. That, upon termination of this MOU or upon the Department's request, all records, compositions, articles, documents and other items which contain, disclose, and/or embody any Confidential Information (including but not limited to all copies, reproductions, summaries and notes of the contents thereof), shall be returned to the Department, and the Commander of the Boston Regional Intelligence Center will certify that the provisions of this paragraph have been complied with.
4. The parties agree that the obligations and/or restrictions pursuant to Section 3 above shall not apply to information which:
  - a. Is or becomes part of the public domain through no act or omission of the CPD; or
  - b. The Department authorizes, in writing, for release.
5. In the event that the CPD receives a request to disclose all or any of the Confidential Information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body, the CPD agrees to immediately notify the Department's Office of the Legal Advisor of the existence, terms, and circumstances surrounding each request, so that the Department may seek an appropriate protective order and/or waive compliance with the provisions of this MOU. The CPD understands that it may not disclose any of the Confidential Information requested in the subpoena or order until such time as the Department seeks a protective order or until the Department provides the CPD with a written release for the Confidential Information, unless otherwise ordered by a Court.

#### 5. License

The parties hereto acknowledge that the information provided is the property of the Department and the disclosure of such information to the CPD does not convey any right, title or license in the Confidential Information to the CPD. Additionally, the CPD agrees that it shall not appropriate the Confidential Information for its own use or the use of any third party except to the extent otherwise authorized in writing by the BRIC.

#### 6. Liability

The CPD agrees to be solely responsible for any and all claims (including without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements, and court costs) of every kind and nature whatsoever, arising in any manner by reason of the CPD's negligent acts, errors, omissions or willful misconduct arising out of, or related to, the performance of this MOU, including the use or alleged or actual misuse of Confidential Information by the CPD, its officers, agents or employees.

Further, the CPD shall defend, indemnify and hold harmless the Department, including its agents, officers and employees against any and all claims, including, without limitation, for

any personal injury or property damages, patent or copyright infringement or other damages, that the Department may sustain which arise out of or in connection with the CPD's performance of this MOU.

The above obligation to indemnify shall not apply to claims which allege intentional, willful, or malicious acts or omissions, by either Party, their agents, servants, or employees, or if the act or omission which gave rise to the claim was not provided for, or contemplated, as within the scope of this Agreement.

This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the Department, its departments, agencies, entities, officers, employees or agents, or any other person therein.

The provisions of this Section shall survive the expiration or termination of this MOU.

7. Damages

The parties agree that money damages would not be a sufficient remedy for any breach of this MOU and the non-breaching party shall be entitled to enforce this Agreement by injunctive and other available relief.

8. Jurisdiction

This MOU shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts. Whenever possible, each provision of this MOU shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision, or portion thereof, is deemed by a court of competent jurisdiction to be prohibited or invalid under applicable law, such provision or portion thereof shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this MOU.

9. Miscellaneous

This MOU shall be binding upon the parties hereto and their successors and assigns.

10. Notices

Any notices delivered hereunder relating to this MOU shall be sent by first class mail, facsimile, email, recognized courier or overnight delivery service, addressed as follows:

To the Department: Edward F. Davis  
Police Commissioner  
Boston Police Department  
One Schroeder Plaza, Boston, MA 02120

With copies to: Amy E. Ambarik, Legal Advisor

Office of the Legal Advisor  
Boston Police Department  
One Schroeder Plaza, Boston, MA 02120  
Phone: (617) 343-4550  
Fax: (617) 343-4609

To CPD:


11. Contacts

The contact person for any issues associated with this agreement shall be:


For the Department: David Carabin  
Phone: 617-343-4328

For the CPD: Lieutenant Daniel Wagner  
Phone: 617-349-9349

**In Witness Whereof**, the parties acknowledge their agreement to the foregoing as of the date first set forth above by execution of the MOU.

  
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Edward F. Davis  
Police Commissioner  
Boston Police Department

11/24/11  
Date

  
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Robert C. Haas  
Police Commissioner  
Cambridge Police Department

9/29/11  
Date

**Appendix A**  
**(BRIC Privacy Policy)**