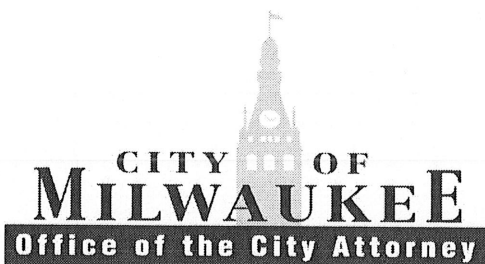


TEARMAN SPENCER
City Attorney

KIMBERLY R. WALKER
Special Deputy City Attorney

MARY L. SCHANNING
ODALO J. OHIKU
SCOTT F. BROWN
ROBIN A. PEDERSON
Deputy City Attorneys



Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551
Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

SUSAN E. LAPPEN
PATRICIA A. FRICKER
HEIDI WICK SPOERL
GREGG C. HAGOPIAN
JAY A. UNORA
KATHRYN Z. BLOCK
KEVIN P. SULLIVAN
THOMAS D. MILLER
JEREMY R. MCKENZIE
PETER J. BLOCK
JENNY YUAN
ALLISON N. FLANAGAN
HEATHER H. HOUGH
ANDREA J. FOWLER
PATRICK J. MCCLAIN
NAOMI E. GEHLING
BENJAMIN J. ROOVERS
ELLENY B. CHRISTOPOULOS
TYRONE M. ST. JUNIOR
HANNAH R. JAHN
JULIE P. WILSON
GREGORY P. KRUSE
KIMBERLY A. PRESCOTT
SHEILA THOBANI
KATRYNA C. RHODES
NICOLE F. LARSEN
JAMES M. CARROLL
WILLIAM G. DAVIDSON
MEIGHAN M. ANGER
ALEXANDER R. CARSON
Assistant City Attorneys

December 11, 2020

JoCasta Zamarripa
Alderdwoman, 8th District
City Hall, Room 205

Re: COPS Hiring Program Grant - Collaboration with ICE

Dear Alderdwoman Zamarripa:

By email dated December 9, 2020, you asked whether acceptance of the 2020 COPS Hiring Program grant (award number 2020ULWX0009) ("CHP Grant") would require that the Milwaukee Police Department ("MPD") collaborate with the United States Department of Homeland Security – Immigration Customs Enforcement ("ICE"). It is our opinion that the acceptance of the CHP Grant would not require collaboration with ICE.

In Section 16C of its March 10, 2020 grant application, MPD certified that the applicant has or will adopt rules ensuring certain notice and access is provided to DHS personnel in the applicant's correctional or detention facilities. These certifications were not required and instead provided bonus points. Under the CHP Award Document, the recipient agrees to comply with the representations made in the application.

By letter dated October 14, 2020, attached to the Legistar file for Resolution 200676, MPD informed the U.S. Department of Justice Office of Community Oriented Policing Services ("COPS Office") that MPD's Standard Operating Procedure ("SOP") 130.30 prohibited the actions certified in Section 16C:

[T]his letter serves to notify the [COPS] Office...that we will no longer certify Section 16 C...We will await your written confirmation that Milwaukee is still awarded [the grant], notwithstanding that Milwaukee is no longer certifying Section 16 C, before presenting the grant award to the City of Milwaukee Common Council for acceptance.

SOP 130.30 places restrictions on cooperation with ICE but does not prohibit all cooperation with ICE. Under SOP 130.30(E), "[d]epartment members may cooperate with ICE to detain or arrest a person, provide notification of any individual's release, or provide



personal information including home or work addresses only when a judicial warrant is presented” and one of several types of criminal matters is involved.¹

By letter dated October 16, 2020, attached to the Legistar file, the COPS Office confirmed that the City is still awarded the CHP Grant, writing, in pertinent part:

This letter is to confirm that without the bonus points awarded for Section 16C, your agency would still have been awarded a CHP award. We will document your department’s abstention regarding Section 16C Immigration Cooperation Certification. Please proceed with the implementation of your 2020 CHP award...

Under the Award Document, MPD will deploy veteran officers to Operation Legend (formerly Operation Relentless Pursuit) task forces and will receive funding to hire 30 additional officer positions. The Memorandum of Understanding between the United States Attorney – Eastern District of Wisconsin and MPD, for implementation of Operation Legend, attached to file 200676, specifies the participating federal partner agencies, including the U.S. Attorney’s Office, the United States Marshal Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Federal Bureau of Investigation. Neither ICE nor its umbrella agency DHS are participating agencies.²

Finally, Term and Condition 25 of the Award Document prohibits a local government recipient from expending CHP Grant funds if its police department is subject to a policy that violates 8 U.S.C. § 1373, a federal statute that prohibits a local government from restricting its officers and employees from communicating with ICE regarding an individual’s immigration status.³ While at least one federal court of appeals has held that § 1373 is unconstitutional under the Tenth Amendment, the Seventh Circuit Court of Appeals declined to address the issue. *City of Chicago v. Barr*, 961 F.3d 882, 898 (2020). The court in *City of Chicago* held that the Attorney General violated the separation of

¹ (1) The individual is engaged in or is suspected of terrorism or espionage; (2) The individual is reasonably suspected of participating in a transnational criminal street gang; (3) The individual is arrested for any violent felony; (4) The individual is arrested for a sexual offense involving a minor as a victim; (5) The individual is a previously deported felon; (6) Any other serious felony which demonstrates the subject is a safety threat to the population at large.

²It is also worth noting that MPD did not select immigration cooperation as its “problem/focus area” in the application, instead selecting “violent crime problems” with a particular focus on “Gun Violence.”

³ 8 USC § 1373 provides: (a) Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [ICE] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, [ICE].
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

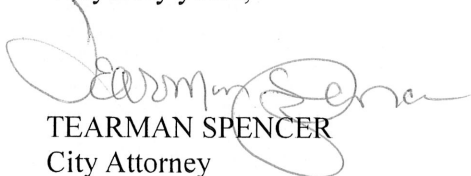
powers when the Attorney General conditioned Byrne JAG formula grants on compliance with 8 U.S.C. § 1373. However, that holding does not apply to competitive grants such as the CHP Grant. *City of Los Angeles v. Barr*, 929 F.3d 1163, 1171-72 (9th Cir. 2019).

Nonetheless, SOP 130.30 complies with 8 U.S.C. § 1373. As we previously explained to the U.S. Department of Justice regarding the Byrne JAG formula grant:


Multiple federal courts have held that § 1373 concerns only “information strictly pertaining to immigration status (i.e. what one’s immigration status is)” and does not apply to communications regarding release dates or addresses of individuals. *See e.g., United States v. California*, 921 F.3d 865 (9th Cir. 2019), *cert. denied*, 590 U.S. ---, 2020 WL 3146844 (U.S. June 15, 2020) (No. 19-532); *City and County of San Francisco v. Barr*, 965 F.3d 753, 762-63 (9th Cir. July 13, 2020); *City of Philadelphia v. Sessions*, 309 F. Supp.3d 289, 332-33 (E.D. Pa. 2018) *aff’d in part, vacated in part on other grounds sub nom. City of Philadelphia v. Attorney Gen.*, 916 F.3d 276 (3rd Cir. 2019); *County of Ocean v. Grewal*, 2020 WL 4345317, *12-13 (D. N.J. July 29, 2020). Accordingly, SOP 130.30 does not violate § 1373 because the SOP does not prohibit or restrict MPD personnel from sharing “information regarding...citizenship or immigration status.”⁴

Therefore, compliance with Term and Condition 25 requires no more cooperation than is allowed under SOP 130.30 and current federal law. Accordingly, CHP Grant acceptance does not require collaboration with ICE. We hope that this information is helpful. Under Milwaukee Code of Ordinances § 304-81, the decision whether to accept the CHP Grant lies with the Common Council.

Very truly yours,



TEARMAN SPENCER
City Attorney



THOMAS D MILLER
Assistant City Attorney

c: James Owczarski, City Clerk
1055-2020-1736:272644

⁴ August 17, 2020 letter to the U.S. DOJ in support of the Milwaukee County/City of Milwaukee/City of West Allis application for the FY 2020 Edward Byrne Memorial Justice Assistance Grant Program.