



MICHAEL N. FEUER
City Attorney

August 7, 2017

Tracey Trautman, Acting Director
Bureau of Justice Assistance
Office of Justice Programs
810 Seventh Street, NW
Washington, DC 20531

Dear Ms. Trautman:

The purpose of this letter is to seek written guidance that unambiguously clarifies one of the new award conditions imposed on Edward Byrne Memorial Justice Assistance Grant (JAG) Program recipients. Time is of the essence given the pending deadline for the City's submission of our JAG 2017 application. We therefore respectfully request that the Department of Justice (DOJ) issue written and authoritative guidance resolving the issue we have identified no later than August 11, 2017. If DOJ does not timely provide written guidance that resolves our concerns, the City may be compelled to seek judicial relief.

This past Friday, August 4, we spoke by telephone with Andera Hawkins, State Policy Advisor, Southwest Division, Office of Justice Programs, Bureau of Justice Assistance (BJA) and were told that all requests to clarify the new conditions must be submitted in writing. Pursuant to that direction, that evening the City transmitted to your office an email setting forth our request and the basis for it. We submit this letter to underscore the urgency with which the City seeks DOJ's clarification of this condition.

For many years, the City of Los Angeles has applied for and received Edward Byrne Memorial Justice Assistance Grant (JAG) Program funds to support important local law enforcement efforts, such as the City's Community Law Enforcement and Recovery program. JAG funding is distributed according to a statutory grant formula, which provides states and units of local governments with support for a range of program areas including law enforcement,

prosecution, corrections, drug treatment and crime victim programs. BJA's formula allocations for FY 2017 show that the traditional joint allocation between the City and the County of Los Angeles equals \$1,953,647, with the plan allocating \$1,555,265 to the City and \$398,382 to the County.

As we explained to Ms. Hawkins, this year, information from the federal government in the JAG FY 2017 local solicitation regarding new award conditions attached to the JAG program is confusing and unclear.

Our concerns center on the condition obligating local governments receiving funds to "provide at least 48 hours' advance notice to DHS regarding the scheduled release date and time of an alien in the jurisdiction's custody when DHS requests such notice in order to take custody of the alien pursuant to the Immigration and Nationality Act."

The City of Los Angeles operates Type I local detention facilities (California Code of Regulations, Title 15) which typically are used to detain arrestees for brief periods after booking. Any person detained by Los Angeles Police Department on an open, non-warrant criminal charge (including Fugitive Holds per California Penal Code Section 1551.1 and Probation Violations per California Penal Code Section 1203.2) must be subjected to a Probable Cause Determination (PCD) by a magistrate within 48 hours of his/her arrest. *See County of Riverside, et al. v. McLaughlin*, 500 U.S. 44 (1991). Absent a magistrate's determination of probable cause, the detained arrestee must be released from custody without unnecessary delay.

Unlike state prisons or Los Angeles County jails, the City's detention facilities are not used to house inmates serving post-conviction sentences. As such, because Los Angeles rarely, if ever, holds detainees for 48 hours' time, it is not possible for the City, or other similarly situated cities, to comply with the 48-hour advance notice provision posted in the JAG solicitation, without detaining individuals beyond the point at which they are entitled to release.

In other related contexts, the Department of Homeland Security and DOJ have recognized the practical limitations on this 48-hour notice policy, and accompanied the 48-hour advance notice requirement with the qualifier, "if possible". We specifically refer you to DHS Form I-247A (version 3/17), as well the DOJ August 3rd release regarding the Public Safety Partnership ("PSP"). This qualifier accommodates jurisdictions, such as the City of Los Angeles, which most often do not hold an individual for even 48 hours and do not typically have scheduled release times.

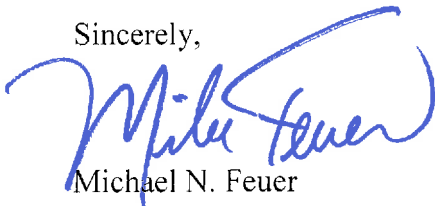
We are confused and concerned that BJA did not include the qualifying language "if possible" in the award condition stated in its FY 2017 local JAG solicitation, given that it apparently recognized and allowed for the impracticality of the requirement in other instances. Given this uncertainty, we require written, authoritative guidance acknowledging that, with respect to the JAG FY 2017 Local Solicitation, 48-hour notice is not required when provision of that notice is not possible given the nature of the jurisdiction's custody operations, such as quick

Tracey Trautman
Bureau of Justice Assistance
August 7, 2017
Page 3

releases (e.g., non-PCD bond and Own Recognizance release orders). Otherwise, BJA would appear to be conditioning federal formula grant allocations on a requirement which would place the City of Los Angeles at risk of liability for violating the Fourth Amendment.

Since local JAG grant applications are due on September 5, 2017, we request that the written guidance be issued no later than August 11, 2017. Thank you for your prompt response to our concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mike Feuer", is written over the typed name.

Michael N. Feuer
City Attorney