

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE FEDERAL BUREAU OF INVESTIGATION  
AND THE STATE OF MONTANA DEPARTMENT OF CORRECTIONS**

**1. PARTIES**

a. This Memorandum of Understanding (MOU) is entered into by and between the Federal Bureau of Investigation (FBI) and the State of Montana Department of Corrections (MTDOC) (hereinafter, "the Parties").

b. All existing FBI and MTDOC policies will remain in effect, and nothing in this MOU shall be construed as modifying existing policy requirements for the respective agencies.

**2. PURPOSE**

a. This MOU establishes the Parties' participation in the FBI task force known as the Correctional Intelligence Task Force (CITF). The CITF is composed of various states' law enforcement and corrections agencies. The purpose of the CITF is to share gang intelligence and data. For purposes of this MOU and the accompanying Data Sharing Agreement, "intelligence" is information provided by MTDOC to the CITF and "data" is information provided by the CITF to MTDOC. For purposes of this MOU and accompanying Data Sharing Agreement, "intelligence" includes both "telephonic transactional intelligence" and "other intelligence," unless specifically indicated otherwise.

b. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the Parties, the United States, the Montana Department of Corrections, the State of Montana, or the officers, employees, agents, or other associated personnel thereof.

**3. AUTHORITIES**

a. The FBI is authorized to enter into this MOU under the provisions of 28 U.S.C. § 533, 28 U.S.C. § 534, and 28 C.F.R. § 0.85.

**4. ORGANIZATIONAL STRUCTURE**

a. The CITF is currently comprised of supervisors and analytical staff from the FBI, MTDOC, and other states' departments of correction and law enforcement agencies, including FBI contractually-hired subject matter experts. Both Parties may assign personnel to the CITF, to include contractually hired personnel. Newly assigned personnel to the CITF must be agreed upon by both parties. Assigned personnel must meet and be able to obtain the proper clearances for access to the information and databases granted by both Parties. Both Parties

agree either directly or through the assigned personnel to provide requested information to meet those clearances.

b. The day to day supervision and administrative control of MTDOC or FBI personnel assigned to the CITF will be retained by the respective Party. Responsibility for personnel conduct, both personally and professionally, shall remain with the personnel's agency. Each Party shall be responsible for the actions of its respective employees. Each Party has the discretion to add, remove or change its personnel assigned to the CITF.

c. MTDOC will brief any MTDOC staff assigned to the CITF on relevant MTDOC policies and procedures. The FBI will brief all staff assigned to the MTDOC and CITF on relevant FBI policies and procedures.

d. The CITF is a multi-agency operation with each agency acting as a partner. MTDOC will designate a CITF point of contact (POC). The POC will work with the CITF to address CITF policy, operations, personnel, equipment, program progress and performance measurements.

## **5. ACCESS TO AND USE OF INFORMATION**

a. The intelligence and data to be shared is covered in the accompanying Data Sharing Agreement, which is included herewith as Addendum A. The intelligence collected and any data (such as analytical products) produced by the CITF based on the intelligence collected will be shared with all participants in the CITF. CITF intelligence and data may be considered confidential under federal or Montana law.

b. Intelligence provided by MTDOC to the CITF will be at the discretion of MTDOC. The FBI will provide data to MTDOC gathered through the CITF for its use as allowed in this MOU and accompanying Data Sharing Agreement.

c. The Parties acknowledge that the intelligence and data involved in this MOU may identify U.S. persons, whose information is protected by Montana state law and federal law, including the Privacy Act of 1974 and Executive Order 12333 (or any successor executive order). All such information will be handled lawfully by the Parties. The FBI agrees that it will endeavor to ensure that federal privacy laws will be followed by CITF members.

d. MTDOC shall obtain permission from the FBI CITF POC before it discloses to a third party any intelligence received pursuant to this MOU or from the CITF, unless such disclosure is otherwise authorized by state or federal law. All intelligence and data to be disseminated will be documented within the CITF database or case management system to memorialize recipient agency, date, and description of all information disseminated.

e. To the extent a Party discloses information received under this MOU to a third party, the Party is to provide notice to the third party to which the information was disclosed that the third party is prohibited from further disclosure, except to the extent required by applicable law, unless it obtains authorization in writing from the FBI CITF POC.

f. To prevent unauthorized disclosure, copying, use, or modification of information provided to a Party under this MOU, the receiving Party is to use security mechanisms and reasonable safeguards to prevent unauthorized access.

## **6. FUNDING AND EQUIPMENT**

a. This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. All obligations and expenditures by the Parties are subject to their respective budgetary and fiscal processes and availability of funds pursuant to all laws, regulations, and policies applicable thereto. The Parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

b. Each Party agrees to assume all personnel costs for its employees assigned to the CITF including salaries, overtime payments, and fringe benefits consistent with that Party's governing laws, regulations, and policies.

c. The FBI will operate any necessary portals for MTDOC to transmit the intelligence to the CITF. The FBI has the responsibility for ensuring that the portals are operational and providing the necessary support for MTDOC's participation in the CITF. For the purposes of the telephonic transactional intelligence, the Parties will work together to determine how the intelligence will be gathered and transmitted to the FBI. Each Party will provide their personnel assigned to the CITF with any other equipment necessary to fulfill their duties. The information provided by MTDOC to the CITF will be maintained in a database managed by the FBI. MTDOC will not be responsible for maintaining any specific CITF database or information.

## **7. MEDIA**

a. No unilateral press releases concerning the CITF will be made without the prior approval of both Parties. This paragraph does not prevent or restrict MTDOC's compliance with state law or the FBI's compliance with federal law regarding the release of public information.

## **8. CIVIL LIABILITY OF THE PARTIES**

a. Each Party agrees that it will be fully responsible for the investigation and disposition of any claim arising out of alleged negligent or wrongful acts or omissions by its own employees assigned to the CITF.

- b. The Parties understand that this MOU does not alter applicable state and federal law that might govern any claim of civil liability arising out of their participation in the CITF.
- c. Each Party agrees to notify the other in the event of receipt of such a civil claim.
- d. Nothing in this section prevents any Party from conducting an independent administrative review of an incident giving rise to a claim.

**9. DURATION**

a. The MOU will remain in effect until terminated as specified herein. Continuation of this MOU shall be subject to the availability of necessary funding. This MOU may be modified at any time by written consent of authorized representatives of both Parties. This MOU may be terminated at any time by either Party by providing a 30-day written notice of its intent to withdraw to the other Party's designated CITF POC. Information shared pursuant to this MOU does not have to be returned to the supplying Party, but the Parties agree that such information will remain confidential to the extent allowed by federal and Montana state law.

**10. Original CITF MOU**

a. This MOU incorporates by reference the Data Sharing Agreement (DSA) attached hereto as Addendum A.

**11. Complete Agreement**

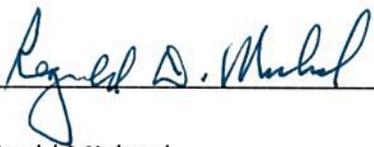
a. This MOU and the Data Sharing Agreement (Addendum A) constitute the complete agreement of the Parties as to MTDOC's participation in the CITF.

**12. SIGNATURES**

a. By signing below, the FBI and MTDOC agree to the terms and conditions set forth in the MOU and Addendum A (Data Sharing Agreement).

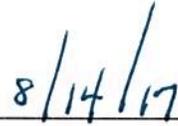
SIGNATURES ON NEXT PAGE

THE STATE OF MONTANA DEPARTMENT OF CORRECTIONS



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Reginald Michael  
Director



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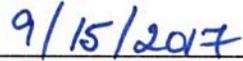
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FEDERAL BUREAU OF INVESTIGATION



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Stephen Richardson  
Assistant Director  
Criminal Investigative Division



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Date

**DATA SHARING AGREEMENT  
BETWEEN THE FEDERAL BUREAU OF INVESTIGATION  
AND THE STATE OF MONTANA DEPARTMENT OF CORRECTIONS**

**1.0 Introduction**

- 1.1** The State of Montana Department of Corrections (MTDOC) and the Federal Bureau of Investigation (FBI) of the Department of Justice (collectively referred to as “the Parties”) intend to further enhance and strengthen their cooperative law enforcement relations by sharing intelligence and data pursuant to this Data Sharing Agreement (DSA).
- 1.2** This DSA is intended to document the agreed upon responsibilities and functions of the Parties with respect to the sharing of the Parties’ available Intelligence and data with the Correctional Intelligence Task Force (CITF). For purposes of this DSA, information MTDOC provides to the CITF is considered “intelligence” and information provided to MTDOC from the CITF is considered “data.” This DSA documents the responsibilities of MTDOC in providing certain intelligence to the CITF and in receiving data from the CITF. Intelligence and data that are shared can include, but are not limited to, information gained from contraband, information from inmate records, and information concerning gang activity.
- 1.3** The FBI derives its authority to enter into this DSA from 18 U.S.C. §§ 3107 and 3052 (FBI law enforcement powers); 28 U.S.C. § 533 (appointment of law enforcement officers); 42 U.S.C. § 3771 (authority for criminal justice systems development and certain training activities); and 28 C.F.R. § 0.85 (general functions of the Director).

**2.0 Background**

- 2.1** The MTDOC regularly collects and maintains records of calls placed by inmates and the related transactional data to include: inmate name; prison registration number; date, time, duration of each call/message; number dialed; originating telephone number; and inmate/recipient email addresses (if applicable). Inmates are provided with notice during intake processing that non-privileged telephone conversations and email transmittals (if applicable) are subject to monitoring for law enforcement purposes. This data, specifically, is referred to as “telephonic transactional intelligence.” MTDOC will provide telephonic transactional intelligence on at least a weekly basis in bulk transmission through secure methods, including, but not limited to, disc or secured VPN. For purposes of this DSA, MTDOC may decide to allow the FBI limited access to telephonic

transactional intelligence consistent with the requirements in this agreement and applicable law.

**2.2** The MTDOC has intelligence related to its inmates, to include, but is not limited to, biographical data, intake information, gang affiliation, violations of rule/law while incarcerated, associations, visitors, financial records, mail records, assigned cell inmates, and information lawfully gathered from contraband such as cell phones. By sharing this intelligence with the FBI through the CITF, security threats may be identified. This intelligence, specifically, is referred to as "other intelligence." MTDOC will provide "other intelligence" on a discretionary basis through secure methods.

### **3.0 Responsibilities**

- 3.1** Pursuant to this DSA and the accompanying Memorandum of Understanding (MOU), MTDOC will provide at its discretion intelligence as outlined in Section 2.0 to the FBI for use in the CITF. The FBI will fully investigate any linkage and any related leads to determine whether an inmate is involved in criminal or terrorist activity. The FBI will share such linkages or threats identified with MTDOC and other participants in the CITF, according to the CITF protocols and applicable law.
- 3.2** As it pertains to inmate call records from institutional phones and devices, only transactional intelligence related to non-privileged calls will be provided by the MTDOC to the FBI. The MTDOC will comply with all state laws in providing this transactional intelligence to the FBI for the designated purpose.
- 3.3** The FBI will process the MTDOC telephonic transactional intelligence and other intelligence through the CITF, which includes comparing this intelligence to intelligence in FBI databases and other CITF participants' intelligence. When there is a match, the analytic results, i.e., data, will be disseminated to the relevant FBI Headquarters substantive unit and to the field office from which intelligence was derived and the CITF will share the data with MTDOC. The FBI will retain the transactional intelligence for future analysis.
- 3.4** The Parties acknowledge that this DSA may be subject to laws and internal guidelines concerning privacy, civil liberties, and other rights in the information sharing environment. The Parties agree to adhere to these laws and guidelines.
- 3.5** Intelligence supplied by MTDOC to the FBI is the property of MTDOC and shall not be shared with third parties outside the CITF without the written permission of MTDOC. The shared intelligence shall not be used for any purpose not directly related to the scope defined in this DSA or accompanying MOU without the written permission of MTDOC.

**3.6** Any data provided to MTDOC through this DSA or otherwise through the CITF is provided to MTDOC for its official use, but shall remain the property of the CITF. With respect to data received by MTDOC from the CITF, it will be the responsibility of MTDOC to determine whether the data constitutes a public record pursuant to Montana law. MTDOC agrees to notify the CITF when disclosure of CITF data is required by Montana law.

#### **4.0 Data Security**

The FBI shall employ industry best practices, both technically and procedurally, to protect MTDOC's intelligence from unauthorized physical and electronic access.

#### **5.0 Data Classification**

**5.1** MTDOC intelligence is considered either confidential or non-confidential, depending on the intelligence. Intelligence considered confidential by Montana law will be protected to the extent allowed by Montana and federal law.

**5.2** The Parties anticipate that intelligence shared with the FBI will involve an aggregation of data classes including sensitive and confidential information. Therefore, whenever data elements are aggregated for collection, transmission, or storage, the aggregated data shall be handled using the protocols that apply to the most sensitive data element.

#### **6.0 Compliance**

**6.1** The FBI shall comply with all applicable federal laws and regulations protecting the privacy of citizens including the Privacy Act of 1974, Family Educational Rights and Privacy Act (FERPA), and Health Insurance Portability and Accountability Act (HIPAA). Where applicable, the FBI shall also comply with all provisions of the Financial Services Modernization Act (the "Gramm-Leach-Bliley Act").

**6.2** Each Party is responsible for ensuring that intelligence or data that it discloses was not knowingly obtained or maintained in violation of any law or policy applicable to the disclosing Party, and that such intelligence or data is only made available to the receiving Party as may be permitted by laws, regulations, policies, or procedures applicable to the disclosing Party.

**6.3** Each Party will immediately report to the other Party each instance in which intelligence or data received from the other Party is used, disclosed, or accessed in manner that violates state or federal law or violates this DSA or accompanying MOU (including any data losses or breaches).

6.4 MTDOC will protect any data collected through the CITF, or otherwise provided through this DSA and accompanying MOU, to the extent allowed under Montana state law.

**7.0 Notification of Breach**

7.1 The FBI agrees that in the event of any breach or compromise of the security, confidentiality, or integrity of computerized data where personal information of a MTDOC inmate is reasonably believed to have been acquired or accessed by an unauthorized person, the FBI shall notify the MTDOC of the breach of the security system containing such data within 48 hours of its own internal notification of the breach, comply with all notification actions, and assist MTDOC with all notification actions required by Montana state policy and law.

7.2 MTDOC contact for such notification is:

John Daugherty  
Administrator Information Technology Division  
Montana Department of Corrections  
406-444-4469  
jdaugherty@mt.gov

7.3 FBI contact for such notification is:

Dwayne H. David  
Supervisory Security Specialist  
Chief Security Officer  
Criminal Investigative Division  
Federal Bureau of Investigation  
202-324-8604  
Dwayne.david@ic.fbi.gov

**8.0 Liability**

8.1 The Parties understand that this DSA does not alter applicable state or federal law governing any claim of civil liability arising out of any activity conducted pursuant to this agreement. Each Party agrees to notify the other in the event of a receipt of such a civil claim. Both Parties agree to cooperate fully with one another in the event of an official investigation arising from alleged negligence or misconduct arising from acts related to this DSA. Nothing in this paragraph prevents any Party from conducting an independent administrative review of the incident giving rise to the claim.

8.2 This DSA is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third

party against the Parties, the United States, or the officers, employees, agents, or other associated personnel thereof. No assignment of rights, duties, or obligations of this DSA shall be made by any Party without the express written approval of a duly authorized representative of the other Party.

**8.3** The Parties acknowledge that financial and civil liability, if any and in accordance with applicable law, for the acts and omissions of employees in relation to this DSA remain vested with the employing agency. However, the U.S. Dept. of Justice (DOJ) may, in its discretion, determine on a case-by-case basis that an individual should be afforded legal representation, legal defense, or indemnification of a civil judgment, pursuant to federal law and DOJ policy and regulations.

**9.0 Modification**

This DSA may be modified at any time by mutual written consent of both Parties. Such modification should be effective on a date as may be jointly determined by the Parties.

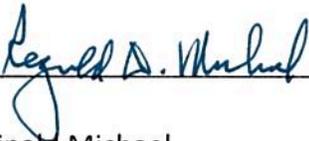
**10.0 Effective Date and Termination**

**10.1** This DSA shall be effective when executed by both Parties and will continue in effect until terminated.

**10.2** This DSA may be terminated by either Party at any time by providing a 30-day written notice of its intent to withdraw to the other Party's CITF point of contact.

By the signatures of their duly authorized representative below, MTDOC and the FBI agree to all the provisions of this Data Sharing Agreement.

**THE STATE OF MONTANA DEPARTMENT OF CORRECTIONS**

  
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Reginald Michael  
Director

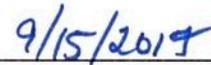
  
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**FEDERAL BUREAU OF INVESTIGATION**

  
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Stephen Richardson  
Assistant Director  
Criminal Investigative Division

  
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Date