Enhancing Security for Public Employees

Draft 5

Richard Varn

11/28/2022

Introduction

Note: This is a work in progress. It is intended to facilitate discussion about how best to enhance security of public employees.

The purpose of this short paper is to inform the ULC Committee on Redaction of Public Records of possible ways to address growing threats against public employees. The US Federal, State, and Local Governments have responded to threats and incidents in recent years by adopting robust threat analysis/planning/response laws, rules, plans, budgets, training, programs, governance, and operational entities. These efforts fall into two main categories. The first is infrastructure including government buildings as well as public and private assets like transportation assets, power grids, water treatment plants, and dams. The second is digital assets and cybersecurity. While both categories address personnel security to some extent, neither of them focusses on protecting employees and officials nor do they fully reflect the current threats that go beyond the physical workplace and government computer systems. The problem is that most of the effort has gone into protecting the buildings. It was assumed that was the primary way to protect the people who work in them. However, this should now be seen as insufficient given the current environment and threat matrix.

The existing security regimens for physical and cyber security have the right methodologies to address the broader threats to personnel. What is needed is a model approach to making sure threats to personnel are properly included in threat management and risk reduction and that the range of methods and countermeasures is expanded and deployed to address the wider range of current and emerging threats.

To advance the discussion of a model approach, this paper will review how the current methods and best practices for addressing threats work. The paper will identify ways to adapt these methods to better address personnel security. Finally, it will explore the options for improving protection for personnel, their families, and their associates that draws on practices from both the public and private sector.

Brief Threat Management Overview

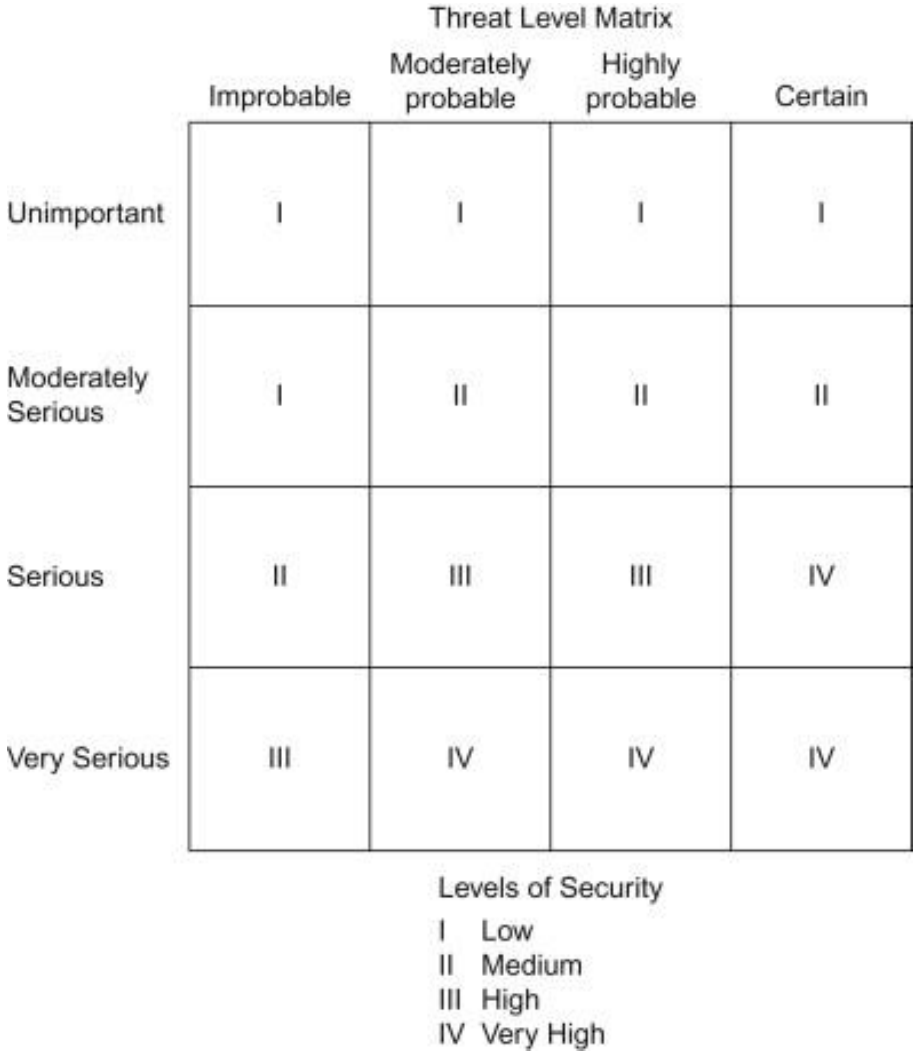
There are five distinct elements to threat management methods: survey of threats, assessment of threats, determination of countermeasures, decisions on risks to accept and those to address with available or new resources, and evaluation of maturity, quality, and efficacy of the methods and outcomes.

Survey of Threats

An all-threats approach begins with a wide view of the possible threats. The threats can be individual and combinatory (combining a cyber-attack with a physical one for example) and should be part of an overall risk assessment process for an entity. In other words, do not survey threats in isolation but in the context of the jurisdiction and its overall risks as this allows for better alignment and prioritization of responses later. The threats and threat targets are typically listed within categories. Several of these threat categories and threat targets are beyond the scope of this analysis such as the threat category of natural disasters and the threat target of public utilities. The threat categories of interest here are crime (physical and cyber), civil disturbance, reputational harm, and tortious harm to persons and property. The threat targets of concern are people, buildings/facilities where government employees work and live, and goodwill/public trust.

Assessment and Prioritization of Threats

Risk managers have time-tested methods of enumerating and prioritizing threats. These methods have been honed and committed to rote practice since the terrorist attacks on 9/11 and various other events that have disrupted our lives. The methods can be easily applied in this context to create a complete description of the threats listed above and others considered emergent or relevant. These descriptions identify the frequency, trends, threat vectors, sources, targets, and types of attacks and acts that can be part of the threat. These are then used to create a threat level matrix, like the kind shown below, used to determine which threats to address and what methods and countermeasures are warranted for a given threat.



Threat Level Matrix

	Improbable	Moderately probable	Highly probable	Certain
Unimportant	I	I	I	I
Moderately Serious	I	II	II	II
Serious	II	III	III	IV
Very Serious	III	IV	IV	IV

Levels of Security

I	Low
II	Medium
III	High
IV	Very High

Selection of Methods and Countermeasures to Reduce Risk
Once the threats and targets are identified and ranked, available and needed methods and countermeasures for addressing those threats against those targets are inventoried, cost-benefit analyzed, and chosen based on a variety of factors that focus on optimizing risk reduction. The chosen methods and countermeasures will be assigned a cost, a cost avoidance, and a return on investment that weighs the costs against the reductions in risk to find the best ways to use the (always) limited resources available to accomplish the goal of making public service work safer.

Alignment of Resources with Desired Level of Risk Reduction
After the methods and countermeasures are identified, the risk tolerance level of the leadership that determines the allocation of resources is determined, the level of resources needed to reach that level of acceptable risk is calculated, and the available resources are compared to what is needed. If resources are available and adequate, they are allocated. If they are insufficient, the decision is made to either accept more risk or find more resources.

Implementation of Risk Reduction Methods and Countermeasures
Once the resources are allocated, the entities and persons responsible for implementation are charged with that duty. The process of selecting the staff, vendors, or other parties that will implement the methods and countermeasures is undertaken. Then the projects are launched and managed to completion and placed into routine operation.

Evaluation of Risk Reduction Efficacy
After implementation, the risk reduction levels are measured, and the methods and countermeasures are evaluated for their respective contributions to risk reduction. The cost of the methods and countermeasures are set against their effectiveness to see which ones provide the most protection for the money, time, and effort and accomplished the desired goals. The ongoing challenge of risk management is that when done well, nothing happens. Therefore, the avoidance of bad outcomes must be acknowledged and valued.

Monitor Active, Emerging, and Unaddressed Threats
A surveillance and survey process needs to be undertaken periodically to inform the threat management and risk reduction process. By monitoring what is happening vis a vis threats to public employees by querying both the people affected and various data sources, a jurisdiction can make sure their risk management plan can remain evergreen.

Periodic Revision and Re-evaluation of Threat Reduction Strategy
Using the efficacy and threat monitoring data, the threat management plan and strategy should undergo periodic review and updating. This should include level setting the risk tolerance of the leadership and evaluating availability of resources to ensure ongoing alignment.

Existing Resources and Laws

The process laid out above is practiced in most all state and local jurisdictions and there are trained staff that would be able to apply their knowledge to the problem of public employee protection and threat and risk reduction. The Federal Government, some of these state and local jurisdictions, and private companies have done just that. The Federal Government has several laws and programs aimed at keeping public officials and employees safe. For example, the Election Threats Task Force surveyed and investigated threats against election workers and has begun prosecuting some of these cases. Here is a summary of their findings:

- *"The task force has reviewed over 1,000 contacts reported as hostile or harassing by the election community.*
- *Approximately 11% of those contacts met the threshold for a federal criminal investigation. The remaining reported contacts did not provide a predication for a federal criminal investigation. While many of the contacts were often hostile, harassing, and abusive towards election officials, they did not include a threat of unlawful violence.*
- *In investigations where the source of a reported contact was identified, in 50% of the matters the source contacted the victim on multiple occasions. These investigations*

accordingly encompassed multiple contacts. The number of individual investigations is less than 5% of the total number of reported contacts.

- *The task force has charged four federal cases and joined another case that was charged prior to the establishment of the task force. There have also been multiple state prosecutions to date. The task force anticipates additional prosecutions in the near future.*
- *Election officials in states with close elections and postelection contests were more likely to receive threats. 58% of the total of potentially criminal threats were in states that underwent 2020 post-election lawsuits, recounts, and audits, such as Arizona, Georgia, Colorado, Michigan, Pennsylvania, Nevada, and Wisconsin."*

The Congressional Research Service lists the following Federal laws that are relevant to election threats as well as threats in general:

- *18 U.S.C. § 115, which prohibits threats "to assault, kidnap or murder" federal officials, employees, or their family members with the "intent to impede, intimidate, or interfere with" the performance of official duties, or in retaliation for official duties;*
- *18 U.S.C. § 610, which prohibits intimidating or threatening federal employees to engage in or to not engage in "any political activity";*
- *18 U.S.C. § 876, which prohibits knowingly sending by mail "any communication ... addressed to any other person and containing any threat to kidnap any person or any threat to injure" and includes additional penalties for mailing threats to federal officials;*
- *18 U.S.C. § 1503, which prohibits "corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes or endeavors to influence, obstruct, or impede, the due administration of justice";*
- *18 U.S.C. § 1505, which prohibits the obstruction of justice, including by threats, for any proceeding before a U.S. agency or a congressional investigation;*
- *18 U.S.C. § 1512, which prohibits threatening or intimidating a witness in an official proceeding to withhold testimony, tamper with evidence, or prevent someone from reporting a federal offense to law enforcement;*
- *52 U.S.C. § 20511, which provides criminal penalties for any person, including an election official from, among other things, "knowingly and willfully intimidat[ing], threat[ening], or coerc[ing] or attempt[ing] to intimidate, threaten, or coerce any person for ... urging or aiding any person" in voting or registering to vote in a federal election; and*
- *52 U.S.C. § 10307, which prohibits persons acting under the color of law or otherwise from intimidating, threatening, or coercing any person "for urging or aiding any person to vote or attempt to vote" or for enforcing the right to vote.*

A reasonable line of inquiry regarding this list of statutes is to see where states need, but do not have, comparable laws if federal jurisdiction cannot be established. Since the list above is not an exhaustive one of all the relevant laws that can be considered and applied to this problem, a thoughtful inventory and analysis of existing law is needed, which can be used to determine what advice to states could be generated regarding gaps in state laws. There is also active discussion of numerous bills at the federal level, and one recently passed bill of note summarized here by CNN:

> *"The House voted 396-27…to pass a bill extending security protections to Supreme Court justices' immediate family members.*
>
> *The bill – the Supreme Court Police Parity Act of 2022 – will now be sent to President Joe Biden to be signed into law. It was introduced by Republican Sen. John Cornyn of Texas and passed the Senate in May…the final measure…does allow the Marshal of the Supreme Court to provide security to "any officer" of the bench if the Marshal deems it necessary.*
>
> *Supreme Court justices are currently covered by federal security protection under US Code. The bill would extend those protections to immediate family members of the justices as well if the Marshal of the Supreme Court "determines such protection is necessary," according to the text of the legislation."*

Congress has also acted on this topic for its own members and staff by allocating and allowing the use of funds for office and home security for members and their families. This activity shows that beyond laws, there are numerous protection programs that can serve as models or inform us as to what needs to be improved to make public employees safer. This includes the programs of the Marshall Service, the Supreme Court Police, the US Congress, the Federal Protective Service of the Department of Homeland Security, the Capitol Police, FBI, Justice Department, State Department, and many others. Private companies also have robust programs ranging from executive protection plans to safety programs for all employees. Grants have been given and used by several jurisdictions to improve security in the run up to the last election. Gleaning best practices from such programs, grants, and practices is also a task worth consideration to inform state and local government as to how best to improve their security for public employees.

Laws and programs that improve security of public employees that are informed by a robust security planning and risk mitigation process is what is needed to rise to the level of this problem in our society. We need to know what the viable threats are, how to address them, know what works, and allocate resources to meet our level of risk tolerance. Next, we can consider what kinds of countermeasures and methods could be considered as part of a study process and potential model law.

Countermeasures and Methods to Be Considered as Part of a Model Law and Policy Process

A best practice in risk reduction is what is called "security in depth." Security-in-depth, also known as layered protection, is a concept that means placing a series of progressively more difficult obstacles in the path of an aggressor. These obstacles are often referred to as lines of defense. What this means is that one should use a variety of risk reduction methods and countermeasures to avoid single points of failure and to make the security response itself more robust and resilient.

One thing to avoid in pursuing security in depth is "security theater." Wikipedia defines this as "the practice of taking security measures that are considered to provide the feeling of improved security while doing little or nothing to achieve it." The article goes on to say that "by definition, security theater provides no security benefits (using monetary costs or not), or the benefits are so minimal it is not worth the cost." And further notes that "critics such as the American Civil Liberties Union have argued that the benefits of security theater are temporary and illusory since after such security measures inevitably fail, not only is the feeling of insecurity increased, but there is also loss of belief in the competence of those responsible for security." Redacting the very public and easily discovered fact of the addresses of public employees is security theater. It's widely known and acknowledged that one can find a person's address by numerous means. Further, the dark web also provides cheap complete profiles of persons gleaned from hacked data, data breaches, malware, apps with loose privacy policies, and data from many, many sources in common circulation. It is also relevant to consider those who are willing to go beyond the stage of thought to actual action to harm, harass, threaten, and stalk a public employee are not in any way likely to be deterred by weak security theater level measures.

The following is a list of possible methods and countermeasures that have been deployed in public and private sector security plans that have proven to be effective. These could be applied alone and in various combinations and at various levels of effort depending on the threat and what works best against it. Using combinations of these would create lines of defense that would be deployed in alignment with the process described above for threat management.

- Identity, Reputation, and Credit Management, Monitoring, and Repair Services
    - This can be considered as a new and necessary employee benefit for all or for selected employees deemed at higher risk
- Electronic Surveillance, Monitoring, and Threat Detection
    - This includes video surveillance, social media monitoring, gunshot sensors, chemical sensors, AI programs, computer network monitoring, and device security
- Security Personnel
    - This includes those routinely assigned to locations as well those who can be deployed to where the threat may be realized and when the threat level for a person or group of persons goes up
- Physical Barriers
- Cybersecurity Training and Services
- Personal Safe Rooms and Panic Buttons
- Self-Defense Training

- Self-Protection Devices and Weapons
- Safety Procedures and Protections
  - For example, safe words, pattern variance, having an electronic way to monitor home entrances and not answering the door directly when a stranger is present, and so on
- Civil Legal Processes and Support
  - Public employees may need assistance to use the laws available to protect themselves and pursue those to have harmed them or seek to harm them
- Protective Orders
- Law Enforcement and Prosecutorial Personnel and Policy Priorities
- New Criminal and Civil Laws, Rules, and Policies (as discussed above)

During ULC discussions on the redaction topic, it has been stated that putting in barriers to finding a person's address from public records will slow and deter those who wish to harm or harass public employees from doing so. As noted above, those who are determined to do harm or harass are likely substantially more motivated to get the information they need and therefore the redaction barrier is not effective against them. But it is effective in limiting those who want to use that data for informational and beneficial purposes. We lack any solid evidence that informational obscurity on addresses will deter the determined who have the capacity for violence and harmful behavior. We know that public employees are facing a more hostile and violent subset of the public that is willing and able to harm them. We must take this threat seriously and match the threats with processes, programs, and laws that will reduce and prevent risks, deter bad actors, and apprehend and punish those who break the law while targeting public employees. A longer and more complete study of ways to enhance public employee safety that goes beyond a single weak solution to a security in depth approach is what the times demand and what public employees deserve.