

Model Policy

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<i>Subject</i> Confidential Informants and Information		
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I. PURPOSE

The purpose of this policy is to provide protocols for the control and use of confidential informants (CI).

II. POLICY

It is the policy of this law enforcement agency to take necessary precautions by developing sound informant control procedures. In many instances, a successful investigation cannot be conducted without the use of CIs. While the use of CIs can be an effective tool in investigations, it can be undermined by misconduct of the CI or improper handling by the officer using the informant.

III. DEFINITIONS

Confidential informant: An individual who, in an arrangement with law enforcement authorities, agrees to serve in a clandestine capacity to gather information for those authorities on suspected criminal activity or known criminal operatives in exchange for compensation or consideration.

Confidential informant file: File maintained in order to document all information that pertains to confidential informants.

Unreliable informant file: File containing information pertaining to individuals determined to be generally unfit to serve as informants.

Compelling public interest: For purposes of this policy, situations in which failure to act would result or likely result in loss of life, serious injury, or have some serious negative consequence for persons, property, or public safety and therefore demand action.

Handler: The officer primarily responsible for supervision and management of a CI.

IV. PROCEDURES

A. Initial Suitability Determination

1. An officer requesting use of an individual as an informant shall complete an Initial Suitability Report. The report shall be submitted to the department's chief of detectives or other authorized personnel to review for potential selection as a CI. The report shall include sufficient detail regarding the risks and benefits of using the individual so that a sound determination can be made. The following information shall be addressed in the report where applicable:
 - a. Age, sex, and residency status
 - b. Immigration status
 - c. Employment status or occupation
 - d. Affiliation with legitimate businesses and illegal or suspicious enterprises
 - e. Extent to which potential information, associations, or other assistance could benefit a present or future investigation
 - f. Relationship between the potential CI and the target of an investigation
 - g. The CI's motivation in providing information or assistance
 - h. Risk that he or she might adversely affect an existing or future investigation
 - i. Extent to which provided information can be corroborated
 - j. Prior record as a witness
 - k. Criminal history, to include whether he or she is the subject of a pending investigation, is under arrest, or has been charged
 - l. Whether he or she is reasonably believed to pose a risk to the public, or is a flight risk
 - m. Whether he or she is a substance abuser
 - n. Whether he or she is related to anyone in law enforcement

- o. Whether there is risk of physical harm to the potential CI or his or her immediate family or relatives for cooperating with the police
 - p. Any prior or current service as a CI with this or another law enforcement organization
2. Each CI's suitability shall be reviewed annually (at a minimum), during which time the CI's primary officer contact shall submit a Continuing Suitability Report addressing the foregoing issues in IV.A.1.a.-p. where applicable.
 3. Any information that may negatively affect a CI's suitability during the course of his or her use shall be forwarded to the chief of detectives or other authorized personnel for information and appropriate action as soon as possible.
 4. Supervisors shall review informant files regularly with the handler and shall attend debriefings of CIs periodically as part of the informant management process.
 5. CI contracts shall be terminated and the CI file placed in inactive status when the CI has not been used for one year or more.

B. Special CI Approval Requirements

Certain individuals who are being considered for use as a CI require special review and approval. They include the following classes of individuals:

1. Juveniles

Use of a juvenile under the age of 18 as a CI may only be undertaken with the advance approval of the department chief executive or his or her designee, and with the written authorization of the individual's parents or guardians. Authorization for such use should be granted only when a compelling public interest can be demonstrated.

2. Individuals Obligated by Legal Privilege of Confidentiality

This class of individuals includes, but may not be limited to, attorneys, physicians, and members of the media. The office of the prosecutor and the chief of police shall be consulted before any officers use such individuals as CIs.

3. Governmental Officials

This includes persons in high-level and highly sensitive local, state, or federal governmental positions. The office of the prosecutor and chief of police shall be consulted before any officers use such individuals as CIs.

4. Wards of the Corrections Authority

This includes persons who are in the custody of local or state departments of corrections or under their supervision in the community through probation, parole, supervised release, or other programs. It may also include persons

who are current or former participants of the federal witness security program. Use of such individuals as CIs requires, at a minimum, approval of the department of corrections.

C. Establishment of an Informant File System

1. The officer in charge of the criminal investigations function shall be responsible for developing and maintaining master informant files and an indexing system.
2. A file shall be maintained on each CI deemed suitable by the department. An additional file shall be established for CIs deemed unsuitable during initial suitability determinations or at a later time. Each file shall be coded with an assigned informant control number for identification within the indexing system and shall include the following information:
 - a. Name, aliases, and date of birth
 - b. Height, weight, hair color, eye color, race, sex, scars, tattoos, or other distinguishing features
 - c. Name of officer initiating use of the informant and any subsequent officer handlers
 - d. Photograph, fingerprints, and criminal history record
 - e. Current home address and telephone number(s)
 - f. Residential addresses in the last five years
 - g. Current employer, position, address, and telephone number
 - h. Marital status and number of children
 - i. Vehicles owned and their registration numbers
 - j. Places frequented
 - k. Gang affiliations
 - l. Briefs of information provided by the CI and their subsequent reliability
 - m. Special skills and avocations
 - n. Special areas of criminal expertise or knowledge
 - o. A copy of the signed informant agreement
3. Informant files shall be maintained in a separate and secured area in the criminal investigations section.
4. Informant files shall be used for the following purposes:
 - a. Provide a source of background information about the informant
 - b. Provide a complete history of the information received from the informant
 - c. Enable supervisory review and evaluation of information given by the informant
 - d. Minimize incidents that could be used to question the integrity of investigators or the reliability of the CI
 - e. Help prevent unwanted duplicate uses of the same CI by officers in this department

5. The officer in charge of informant files shall ensure that information concerning informants is strictly controlled and distributed only to officers and other authorities who have a need and a right to such information.
 6. Sworn personnel may review an individual's informant file only upon the approval of the chief or his designee. The requesting officer shall submit a written request explaining the need for review. A copy of this request, with the officer's name, shall be maintained in the CI's file. Such officers shall not remove, copy or disseminate information from the file; all informant files shall be reviewed only in designated areas of the police facility and returned as soon as possible to their secure file location.
 7. All disclosures or access to informant files shall be recorded by the file supervisor to include information such as the requesting officer or agency, the purpose of access or disclosure, the information conveyed, and the date and time of access or dissemination.
 8. The name of a CI shall not be included in an affidavit for warrant unless judicial authority is obtained to seal the document from public record or the CI is a subject of the investigation upon which the affidavit is based. Additionally, officers shall scrupulously avoid providing details of CI actions or involvement in arrest reports and other documents available to the public.
 9. No portion of a CI's file shall be entered into any other electronic or related database without controls sufficient to exclude access to all but authorized personnel with a need and a right to know.
 10. Handlers are responsible for ensuring that information of potential value to other elements of the department is provided promptly to authorized supervisory personnel.
 11. Employees leaving employment with the department have a continuing obligation to maintain as confidential the identity of any CI and the information he or she provided unless obligated to reveal such identity or information by law or court order.
- D. General Guidelines for Handling CIs
1. CIs are assets of the department, not the individual handler.
 2. CIs shall not be used without authorization of the department through procedures identified in this policy.
 3. CIs shall not be used to gather information on individuals who are not otherwise under investigation or suspicion of criminal conduct.
 4. CIs shall not be used for gathering information purely of a political nature or for other information-gathering efforts that are not connected with a criminal investigation.
5. All CIs shall sign and abide by the provisions of the departmental informant agreement. The primary officer handling the CI shall discuss each of the provisions of the agreement with the CI, with particular emphasis on the following:
 - a. Informants are not law enforcement officers. They have no arrest powers, are not permitted to conduct searches and seizures, and may not carry a weapon.
 - b. Informants will be arrested if found engaging in any illegal activity. They will receive no special legal considerations.
 - c. Informants are prohibited from engaging in actions or activities that could be deemed entrapment. The meaning of the term and implications of such actions shall be explained to each CI. For instance, CIs shall not participate in actions that encourage, persuade, or otherwise motivate a person to engage in criminal activity.
 - d. Informants are prohibited from engaging in self-initiated information or intelligence gathering without departmental direction and approval.
 - e. Every reasonable effort will be taken to ensure the confidentiality of the informant but, upon judicial order, he or she may be required to testify in open court.
 - f. Informants may be directed to wear a listening and recording device.
 - g. Informants may be required to submit to a search before and after a controlled purchase.
 6. Officers shall take the utmost care to avoid conveying any confidential investigative information to a CI (such as the identity of other informants, surveillance activities, or search warrants) other than what is necessary and appropriate for operational purposes.
 7. No member of this agency shall knowingly maintain a social relationship with CIs, or otherwise become personally involved with CIs beyond actions required in the performance of duty. Members of this agency shall not solicit, accept gratuities from, or engage in any private business transaction with a CI.
 8. Meetings with CIs shall be conducted in private and with another officer present. Meetings with CIs shall be documented and subsequently entered into the CI's file.
 9. When reasonably possible, officers shall corroborate information provided by a CI and document efforts to do so in the informant or case file.

E. Monetary Payments

1. All fees and rewards paid to CIs shall be commensurate with the value of the information or assistance provided the department.
2. All CI payments shall be approved in advance by the officer in charge of confidential funds.
3. Officers shall provide accounting of monies received and documentation for expenditure of confidential funds expended.
4. Two officers shall be present when making payments or providing funds to CIs.
5. The commanding officer of criminal investigations shall ensure that the process for authorization, disbursement, and documentation of CI payments, as well as the accounting and reconciliation of confidential funds is consistent with this department's policy.¹
6. If a CI is authorized to work with another law enforcement or prosecutorial agency, financial payments shall be coordinated between the agencies in a manner that is proportionate to the assistance rendered to each agency and consistent with provision IV.E.1. of this policy.

ENDNOTES

¹ See International Association of Chiefs of Police, National Law Enforcement Policy Center, "Confidential Funds: Model Policy," Alexandria, Va.: 1989.

Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this model policy incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

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INFORMANT AGREEMENT

During my association with the {name} Police Department as an Informant, I, the undersigned, do hereby agree to be bound by the following conditions and procedures while so associated:

1. I agree that I have no police power under the State of {state} or any local governmental subdivision and have no authority to carry a weapon while performing my activity as an Informant.
2. I acknowledge that I am not authorized to engage in any criminal activity in furtherance of my role as a CI and will not be granted immunity from prosecution for any crimes committed.
3. I acknowledge that I am associated with the {name} Police Department as an Informant on a case or time basis as an independent contractor and that any payment I receive from the {name} Police Department will not be subject to federal or state income tax withholding or social security. All reporting of income is the responsibility of the Informant.
4. I further acknowledge that as an Informant and independent contractor, I am not entitled to workman's compensation or unemployment compensation from the State of {state} and I shall not hold {county} County liable for any injuries or damage incurred by reason of my association with the {name} Police Department. As an independent contractor I further acknowledge that I may not take or seek any independent action on behalf of the {name} Police Department or City of {city} and that I may not represent myself as an employee of same, nor enter into any contract or obligation on their behalf, unless specifically authorized to do so.
5. I further agree not to divulge to any person, except the investigator with whom I am associated, my status as an Informant for the {name} Police Department unless required to do so in court and shall not represent myself to others as an employee or representative of the {name} Police Department.
6. I further agree not to use the {name} Police Department or any of its officers as credit references or employment references unless prior approval is obtained from the investigator with whom I am associated.
7. I further agree that my association with the {name} Police Department does not afford me any special privileges.
8. I further agree that after making a purchase of anything of evidentiary value, I will deliver such evidence to my investigator as soon as possible.
9. I further agree to maintain a strict accounting of all funds provided to me by the {name} Police Department as part of my activity as an Informant. I understand that misuse of funds could be grounds for criminal prosecution against me.
10. I acknowledge that I have read and fully understand the provisions of this agreement.

Dated this ____ day of ____, 20__.

Informant _____

Investigator _____