

2.02 USE OF CONFIDENTIAL INFORMANTS



USE OF CONFIDENTIAL INFORMANTS

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I. GENERAL CONSIDERATIONS AND GUIDELINES

The department recognizes the importance of confidential sources of information. Such sources often provide critical information that leads to the successful solution of many crimes. Sources may provide information which results in the prevention of either violence or disruption of public order.

The courts have long upheld the use of confidential sources as legitimate and necessary tools for law enforcement. Each police officer should be cognizant of the role of the confidential source and the need to use the source properly. Police officers should cultivate all legitimate sources of information including witnesses, other police officers, anonymous tips, and persons who may reveal information through casual conversation.

The use of informants, however, requires detailed documentation and administrative control. All actions by the confidential informant must be carefully supervised to provide investigative integrity.

This policy will provide uniformity, accountability, and protection to officers and the department in official actions with confidential informants, and it will also serve to enhance the effective use of confidential informants.

II. POLICY

It is the policy of this department that:

- A. Confidential informants may be used to enhance efforts to detect, investigate and prosecute criminals; and

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B. All necessary precautions shall be taken to protect the identity of confidential informants and the integrity of the agency, and to guard against the misconduct or misuse of confidential informants.

III. DEFINITIONS

A. *Source of Information*: Any person who provides information about criminal activity to the department. This includes, but is not limited to, witnesses, other police officers, anonymous tips, and persons who may reveal information through casual conversations. These persons are not confidential informants.

B. *Informant*: A confidential source who:

1. Provides information in exchange for monetary or other lawful consideration;
2. By virtue of providing information is directed by the contact officer to perform certain lawful acts; and
3. By his/her position or knowledge is solicited by the police department to provide information to which [s]he has access.

C. *Contact Officer*: A police officer who maintains an ongoing professional relationship with a confidential source.

D. *Entrapment*: Activity on the part of a police officer that induces or lures an otherwise innocent person to commit a crime that [s]he did not contemplate committing. Entrapment is a defense to criminal charges. It is the implanting of criminal intent in the mind of the person. It includes acts of persuasion, coercion, trickery, or fraud carried out by law enforcement officers or their agents to induce a person to commit a crime which [s]he would not otherwise commit.

IV. PROCEDURES

A. *Development of Confidential Informants*

1. INFORMANT MANAGER: The Chief of Police shall designate a Confidential Informant Manager to oversee the agency's use of informants.
2. INFORMANT REGISTRATION
 - a. All confidential informants shall be registered with this department.
 - b. Registration of informants is mandatory when an officer:
 - 1) Has developed a confidential source of information whom [s]he: intends to use as an informant;
 - 2) Wants to document the use of a source of information; or

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- 3) Wants to activate an inactive informant/source of information.
- c. The officer shall register the informant by submitting an informant registration package which includes:
 - 1) Completing an *Informant Personal History Form*;
 - 2) Criminal history (BOP, III);
 - 3) Local police record, if any;
 - 4) Confidential Informant Agreement;
 - 5) Recent photograph; and
 - 6) Fingerprints.
- d. If the contact officer is unable to obtain all of the information required, [s]he shall:
 - 1) Submit as much of the informant registration package as possible, with a signed copy of the Confidential Informant Agreement being mandatory;
 - 2) Provide a written explanation of the reasons [s]he is unable to obtain the missing information.
 - 3) Provide a summary of the information possessed by the informant and its relative importance to the success of the investigation.

3. APPLICATION PROCESSING
 - a. The Informant Manager will process informant registration.
 - b. Upon receipt of an application, the manager will assign an Informant Registration Number which will be noted in the Informant Registration Package.
 - c. The Informant Manager shall review the application and accompanying documents and determine the suitability of the informant.
 - d. If the Informant Registration Package is incomplete, the manager shall weigh the importance of the informant's information against the missing information in determining suitability of the informant.
4. DISAPPROVALS: If the use of the person as an informant is disapproved:
 - a. Note the reasons for disapproval in the Other Pertinent Information Section;
 - b. Notify the contact officer of the decision; and
 - c. File the Informant Registration Package in the master file for reference.

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5. APPROVALS: If the use of the person as an informant is approved, the Informant Manager shall:
 - a. File the a copy of the Informant Registration Package in the master file; and
 - b. Notify the contact officer of the approval and the informant's registration number.

B. Master File Security

1. FILE MAINTENANCE [42.2.7(C)]
 - a. The Informant Manager shall maintain a secure master file of all informants in the Detectives area. [42.2.7(a)]
 - b. Each file in the master file shall contain the following: [42.2.7(b)]
 - 1) A copy of the *Informant Personal History Form*;
 - 2) A signed copy of the *Informant Agreement Form*;
 - 3) All *Informant Contact Sheets*; and
 - 4) All *Confidential Fund Expenditure Requests* and Receipts.
 - c. Each informant's file shall be maintained for a minimum of ten years after the informant is declared inactive or disapproved.
 - d. Review the status of each active recorded informant or source of information on a quarterly basis. When the file indicates that an informant has not been utilized for one year, the Chief or his/her designee will notify the contact officer to discuss the informant's status.
2. FILE ACCESS
 - a. Informant files are considered confidential and shall be available only on a need-to-know basis.
 - b. Access to the Informant Master File shall be limited to:
 - 1) Informant Manager;
 - 2) Chief of Police;
 - 3) Investigations Supervisor

C. CONTACT WITH INFORMANT

1. CONTACT DOCUMENTATION
 - a. Each time an informant supplies information concerning an investigation to the contact officer, the officer will complete an *Informant Contact Sheet* containing:
 - 1) A summary of the information received from the informant;

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- 2) Whether or not the information is used at the time received; and
- 3) A summary of any corroboration of the informant's information.

- b. The form will be forwarded to the Informant Manager to be placed in the Master File.

2. INFORMANT HANDLING
 - a. Officers are to seek and accept only that information which furthers investigative activities and law enforcement responsibilities.
 - b. The informant should be treated with consideration, regardless of his/her character, education, or occupation.
 - c. The contact officer should be scrupulous in the fulfillment of all lawful and ethical promises which [s]he has made.
 - d. The contact officer should attempt to determine whether or not the informant is being used by another law enforcement agency and/or officer to prevent duplication of effort.

3. ALTERNATE CONTACT
 - a. Introduce the informant to a second officer, if possible. The informant should be told to contact the second officer during the times that the contact officer is unavailable.
 - b. Officers shall keep the Informant Manager informed of relations and activities involving informants.

D. Compensating Informants [42.2.7 (g)]

1. Cash payments for information given, services rendered or expenses incurred will be made as follows:
 - a. All informant payments shall require two officers to be present.
 - b. The informant will fill in his/her code name and the amount of the payment on the *Confidential Fund Expenditure Report*.
 - c. This receipt shall then be signed by the witnessing officers.
 - 1) The receipt must be completed in full, listing the reasons the informant is being paid, by whom and a brief summary of the investigation.
 - 2) Completed Confidential Fund Expenditure Forms shall be treated as security sensitive information and shall not be disclosed to unauthorized personnel.
 - d. The receipt shall be forwarded to the Informant Manager to be placed in the informant's master file.

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- e. All cash payments for any other items purchased for an informant's personal benefit must be recorded in the informant's file.
- 2. If practical, informants will not be paid until the case is completed or the information is checked.

E. Covert Purchases

- 1. All transactions in which an informant receives funds for the purpose of purchasing goods or contraband will be witnessed by two officers.
 - a. The informant will be thoroughly searched preceding the buy. If the informant's vehicle or residence is utilized in the investigation, a thorough search will also be conducted of those areas to which the informant had access.
 - 1) The serial number of the bills will be recorded or the bills photocopied prior to providing them to the informant.
 - 2) The informant shall not purchase any contraband with his/her personal funds.
 - 3) All personal funds should be taken from the informant prior to contact with the suspect. The personal funds shall be returned to the informant immediately after the purchase.
 - b. When possible, constant surveillance will be conducted of the informant after the search and until [s]he meets with officers after the buy.
 - c. After the buy, the informant shall be thoroughly searched again.
 - 1) All evidence and narcotic funds will be retrieved from the informant.
 - 2) When possible, the entire process should be accomplished by the same officer, with the same witness.
- 2. The informant shall be thoroughly debriefed, and a written statement signed by the informant shall be obtained. If a written report is not practical at that time, a statement shall include a complete description of the suspect, a detailed account of all circumstances and conversations involved in the transaction, and any other facts that may be of importance.

F. Precautions with Informants [42.2.7 (f)]

- 1. MEETING INFORMANTS
 - a. Informants provide information for a variety of reasons, usually for their own interests. The best interests of the informant and of the officer meeting with the informant may not be the same.

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- b. It is preferable when meeting with informants that the meeting is done by more than one officer. In the event that a single officer must meet an informant alone:
 - 1) The officer shall advise the supervisor of the time, location and approximate duration of the meeting; and
 - 2) The officer shall contact the supervisor when the meeting is over.
- c. The informant should never be permitted to take charge of any phase of the investigation.
- d. The circumstances surrounding a meeting should not be repeated to the extent that a recognizable pattern is created.
- e. The proper name of the informant should never be used in telephoning.
- f. **OPPOSITE SEX:** The contact officer should meet personally with an informant of the opposite sex only in the presence of another officer.
- g. **PROBATION/PAROLE:** If it is known that an informant is on supervised probation or parole, the contact officer will coordinate with the informant's probation or parole officer to ensure that using the informant does not interfere with conditions of the probation or parole.

2. **PROTECTING INFORMANT'S IDENTITY:** In order to avoid the risk that the confidential informant's identity might have to be disclosed in court proceedings, officers should:¹

- a. Use informants only for introductions while having an undercover officer develop the relationship with the target and execute the transaction;
- b. Prohibit the informant's involvement in planning an operation other than providing information;
- c. Not permit the informant to participate in the criminal offense, unless absolutely necessary, and instruct the informant to leave as soon as possible after negotiations or transactions begin in a drug case;
- d. Not permit the informant to be a witness to the criminal activity which will result in charges being brought against the suspect; and
- e. Attempt to make the informant's testimony cumulative. For example, if the target in a drug case can be persuaded to bring a friend, the informant's testimony might be cumulative to what others present would say, and the informant's identity may not have to be revealed.

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G. Juvenile Informants [42.2.7(g)]

1. A juvenile (a person under the age of 18) informant may be used if:
 - a. Officers have met and discussed the involvement with at least one parent or legal guardian; and
 - b. Officers have obtained written permission from at least one parent or legal guardian.

NOTE: In the case of a juvenile whose parents are separated or divorced, permission shall be obtained from the parent having legal custody.

The use of a juvenile informant must be approved by the Chief.

2. For a meeting with a juvenile informant, two officers should be present.

H. Use of Informants by Patrol Officers

1. Patrol officers are encouraged to identify and develop informants.
2. Potential informants shall be registered by the patrol officer in compliance with this policy.

I. EVALUATING AN INFORMANT'S INFORMATION

1. GENERALLY

- a. The contact officer should consider the informant's basis of knowledge and the informant's propensity for honesty and truthfulness.
- b. All pertinent information supplied by an informant should be independently investigated. This is particularly important in the early stages of a relationship with an informant to assist in evaluating his/her credibility and reliability.

2. BASIS OF KNOWLEDGE

- a. The contact officer should ascertain how the informant came upon the information, including what he or she saw, heard, and participated in, as well as any other background facts of the information.
- b. There will be no issues as to the "basis of knowledge" where the source of the tip was a citizen witness who obtained his information through personal observation.

3. PROPENSITY FOR TRUTHFULNESS

- a. The contact officer should assess the informant's propensity for honesty or truthfulness to determine whether the information is reliable and the informant credible.

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- b. Officers who assert that they relied upon the informant in the past and, therefore, that [s]he is reliable must give some indication of the nature of that prior reliance.

4. RELIABILITY

- a. Although the officer's knowledge of a confidential informant's identity and whereabouts is not adequate standing alone to confirm the informant's reliability, it is a factor that weighs in favor of a finding of reliability.
- b. Officers may use, but are not limited to, the following methods in attempting to establish the credibility and reliability of information supplied by the informant:
 - 1) Assessing any information previously provided;
 - 2) Checking with other law enforcement agencies for whom the informant provided information;
 - 3) Corroboration of details by other informants or by police investigation;
 - 4) Surveillance; or
 - 5) The use of controlled test situations.

J. Use of Wired Informant

- 1. Generally, an office may not *secretly* intercept an oral or wire communication, except in the following situations:
- 2. An oral or wire conversation may be intercepted and recorded secretly by police during investigations involving organized crime if:
 - a. An officer is a party to the conversation or has been given prior authorization by a party; and
 - b. It is being intercepted or recorded as part of an investigation or recorded as part of an investigation of one of a number of "designated offenses."²
- 3. An oral or wire conversation may be intercepted and recorded secretly by police if the conversation or communication is intercepted or recorded pursuant to a warrant obtained in accordance with the provisions of M.G.L. c. 272, §99 (E) to 99 (N).
- 4. These policies are used to ensure the safety of a police officer or informant operating in an undercover capacity or as a witness to the Commonwealth.³

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K. Criminal Activity by an Informant

1. AUTHORIZED CRIMINAL ACTIVITY

- a. Informants sometimes gain authority from police officers for participation in activity which would otherwise be criminal. Such authorization must be carefully considered. Authorization for such activity shall be as follows:
 - 1) The Chief of Police only must approve, in writing, the use of an informant for activities which would otherwise be criminal. The Chief's approval should only cover activities in which there is little danger of violence, or in which corrupt action by a public official is not involved.

The Chief should obtain the advice of the District Attorney's Office before giving his/her approval.

When authorizing activity which would otherwise be criminal, the Chief of Police shall attempt to ensure the following:

- i. There is minimal effect on innocent people;
- ii. The informant is not the primary source of technical expertise or financial support;
- iii. The informant's activity is closely monitored; and
- iv. The informant does not directly profit from his/her participation beyond the plea agreement or compensation provided by the department.

2. UNAUTHORIZED CRIMINAL ACTIVITY

- a. Unauthorized criminal activity by an informant shall be dealt with as follows:

1) An officer learning of unauthorized criminal activity by an informant shall notify the Chief of Police.

2) The Chief of Police shall:

Decide whether or not to delay notification of appropriate law enforcement personnel;

Decide whether or not to request appropriate authorities to delay or forego enforcement action;

Decide whether or not to continue the use of the informant; and

Maintain detailed records of such incidents.

3) Delaying Notification of Law Enforcement

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The Chief of Police must contact the District Attorney's Office from the affected jurisdiction if the Chief wants to delay notification of law enforcement authorities or request authorities not to take action.

Only after contacting the District Attorney shall the Chief of Police make the decision to delay such notification or make such request and continue the use of the informant.

- 4) In determining whether or not to delay notification of authorities, the Chief of Police shall consider:

Whether the crime is completed, imminent or just beginning;

The seriousness of the crime in terms of danger to life and property;

Whether the crime is a violation of federal or state law, and whether a felony or misdemeanor;

The degree of certainty of the information regarding the criminal activity;

Whether the appropriate authorities already know of the criminal activity and the informant's identity; and

The effect of notification on any regional "task force" investigative activity.

- b. Under no circumstances shall any officer take any action to conceal a crime by an informant.

L. Dismissing Informants

1. If the behavior of an informant reduces his/her credibility or the informant does not meet performance criteria, the contact officer will notify the Informant Manager.
2. If the Informant Manager, in consultation with the contact officer, determines that the informant should no longer be used, a memorandum indicating the reason why the informant was deactivated will be placed in the informant's file and the informant will be deactivated.
3. The informant shall not be used again without the approval of the Informant Manager.
4. Any informant who has not supplied information for a one year period shall be considered inactive unless the Informant Manager specifically approves otherwise.

¹ *Com. v. Madigan* 449 Mass. 702, 871 N.E.2d 478 (2007).

² M.G.L. c. 277, §99(B)(7): The term "designated offense" shall include the following offenses in connection with organized crime as defined in the preamble: arson, assault and battery with a dangerous weapon, extortion, bribery, burglary, embezzlement, forgery, gaming in violation of section seventeen of chapter two hundred and seventy-one of the general laws, intimidation of a witness or juror, kidnapping, larceny, lending of money or things of value in violation of the

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general laws, mayhem, murder, any offense involving the possession or sale of a narcotic or harmful drug, perjury, prostitution, robbery, subornation of perjury, any violation of this section, being an accessory to any of the foregoing offenses and conspiracy or attempt or solicitation to commit any of the foregoing offenses.

³ M.G.L. c. 277, §99(D)(1)(e).