

## **15.90 Handling of Informants and Cooperating Individuals**

### **15.90.010 Purpose**

The purpose of this order is to set forth guidelines for the handling of informants and cooperating individuals that will enable the department to gain the maximum benefit from their use while maintaining the department's integrity. The department's objectives in the handling, documentation, and compensation of informants throughout the department are as follows:

- A. To protect the integrity of the department and the individual officers who use confidential informants and cooperating individuals;
- B. To allow all Metropolitan Police Department officers access to information available from informants and cooperating individuals concerning their investigations;
- C. To ensure the confidentiality of the informant and cooperating individual;
- D. To protect the relationship between individual officers and informants or cooperating individuals; and
- E. To ensure accountability and consistency in police officer conduct when dealing with informants and cooperating individuals and disbursing payments to them.

### **15.90.020 Definitions**

- A. **Informant:** A person who provides the department with information about criminal investigations. This includes any individual whose identity is known to the officer and who is sent by the officer to Crime Stoppers to receive payment.
- B. **Cooperating Individual:** An ordinary citizen with no criminal history or background, who provides information or assistance of investigative significance to employees of the Metropolitan Police Department.
- C. **Confidential:** Keeping secret the identity of an Informant/Cooperating Individual, from whom information and/or investigative assistance is received.
- D. **Informant File:** A confidential informant's record, consisting of a folder containing a photograph of the informant, MNPD Form 336, Cooperating Individual Interview Form, an activity report, any

agreements made with the informant, arrest records, incident reports, and other information about the informant. Each informant and their informant file shall be assigned a code name and the file will be maintained by the appropriate component commander or their designee.

- E. **Special Operative:** An Informant/Cooperating Individual, acting at the direction, request, or encouragement of an employee of the Metropolitan Police Department.

### **15.90.030 Departmental Informant Files & Forms**

- A. Components Authorized to Maintain Confidential Informant Files

Confidential Informant Files are to be maintained only by the commanders of the Criminal Intelligence Division, Criminal Investigations Division, Youth Services Division, and Vice Division. Each Confidential Informant File actively used by an authorized component shall be maintained under the control and authority of the appropriate component commander. All Confidential Informant Files dealing with drug investigations shall be maintained under the control of the Vice Division commander.

The following procedures will apply to the handling of the Confidential File:

1. An officer will complete MNPDP Form 336, Cooperating Individual Interview Form, and forward the original and any other relevant information to the appropriate component commander or their designee.
2. Upon receipt of the Cooperating Individual Interview Form, the component commander shall review the document for its completeness and accuracy. He/she will prepare a confidential file or packet for the informant named on the form.
3. In addition to maintaining a list of all confidential informants used by their respective component, each commander, or his/her designee, will periodically review the status of Confidential Informant Files to determine if any should be purged (see 15.90.070).
4. These files will be considered highly confidential and will be kept under lock and key by the component commander or his/her designee. No information is to be released without the approval of the component commander. Each file consists of separate and distinct sections, as described below:

General Information - This section shall be maintained in a systematic fashion, and shall contain the following:

- a. Informant Documentation - MNPB Form 336, Informant/Cooperating Individual Interview Report, a current photograph, a code name, and the informant's fingerprint;
- b. Background Information - A complete criminal history, and copies of any offense or arrest reports that name the informant as a suspect or victim;
- c. All other pertinent documents, such as a Required Financial Accountability Form, or any agreement related to the payment of money to the Informant/C.I.; and
- d. A brief synopsis of the case.

Employees of the Metropolitan Police Department will use the above criteria to document all Informants/C.I.'s prior to their being used as special operatives. A file shall be maintained regarding each Informant/C.I. who becomes a Special Operative.

#### B. Juvenile Confidential Informant File

The Youth Services Division is authorized to maintain confidential informant files and required to maintain Juvenile Confidential Informant Files separate from Adult Confidential Informant Files. All informants under the age of eighteen (18) years shall meet the guidelines of T.C.A. 39-15-413 (see 15.100.040(C)(10)). The letter "J" shall be attached to any index number of the file to distinguish juvenile confidential records from adult records.

#### C. Access to Divisional Confidential Informant Files

If an investigator needs information to help them conduct a particular investigation, they may contact the appropriate component commander to determine whether or not there are any informants who may have or may be able to obtain information about the crime under investigation.

If an officer in the Community Services Bureau needs to request information from the Confidential Informant Files, he/she must obtain approval from his/her immediate supervisor before the request is made.

**15.90.040 Developing and Using Confidential Informants and/or Cooperating Individuals**

A. Developing Informants/C.I.'s

To protect the integrity of the department and individual officers, extreme care must be taken when dealing with individuals who have been apprehended violating laws. Often persons who are about to be arrested will promise to cooperate by providing information for better treatment, and/or little or no prosecution. Careful attention must be used when developing these individuals as informants to ensure all legal and department guidelines are followed.

B. Guidelines for Using Non-Arrested Informants/Confidential Informants

1. Misdemeanor Charges

In misdemeanor cases if the decision is made not to arrest the person immediately, the officer shall get approval from his/her supervisor, shall report and document the action, and discuss the results of any assistance the non-arrested informant gave with the District Attorney General's Office as soon as practical. The officer shall make sure that the District Attorney's Office is notified before any case in which the informant is involved comes to court in General Sessions or any presentment is made to the Grand Jury.

2. Felony Charges

The decision not to arrest or defer prosecution of individuals for felony violations in exchange for cooperation and/or information **must** have the prior approval, preferably in writing, of a member of the District Attorney's Office. The approval will be documented as to date, time, and the member of the District Attorney's Office making the approval, then placed in the case file. This policy will be followed except for the ensuing guidelines previously approved by the District Attorney's Office involving drug investigations:

- a. The decision not to arrest individuals in violation of T.C.A. 39-17-417 (a-h) (e.g. up to 26 grams of cocaine, 14.175 grams up to 70 pounds of marijuana) in exchange for cooperation and/or information **must** be approved by the officer's supervisor. Prosecution **must** commence by warrant or indictment within six (6) months unless written approval to defer prosecution is obtained from the District Attorney, a Deputy District Attorney, or the Assistant District Attorney in charge of the Twentieth Judicial Drug Task Force.

- b. The decision not to arrest individuals in violation of T.C.A. 39-17-417 (i) (e.g. 26 to 300 grams of cocaine, 70 pounds, one ounce to 700 pounds of marijuana) in exchange for cooperation and/or information **must** be approved by the officer's supervisor and notification must be made to the District Attorney's Office as soon as practical. Notification is made by sending a copy of the case file, criminal history, search warrant, seizure forms, etc. to the Deputy District Attorney designated as liaison with the Metropolitan Police Department, Vice Division. Prosecution must commence within six (6) months unless written approval to defer prosecution is obtained from the District Attorney, or a Deputy District Attorney.
  - c. The decision not to arrest individuals in violation of T.C.A. 39-17-417 (j) (e.g. more than 300 grams of cocaine, more than 700 pounds of marijuana) in exchange for cooperation and/or information **must** be approved by the officer's supervisor. Written approval **must** also be obtained from the District Attorney, or a Deputy District Attorney. Oral notification must be made by the next working day. A copy of the case file, criminal history, search warrant, seizure forms, etc. must be provided before written approval can be obtained.
  - d. Regardless of (a) through (c) above, if there are co-defendants, a decision not to arrest one co-defendant in violation of T.C.A. 39-17-417 in exchange for cooperation and/or information, but to arrest other co-defendant(s) **must** be approved by the officer's supervisor. Written approval **must** also be obtained from the District Attorney, or a Deputy District Attorney within five (5) working days.
3. An officer developing, working with, and using Informants/C.I.'s must **NEVER** promise the Informant/C.I. anything concerning any criminal prosecution or return of vehicles or property. It is not improper, however, for the officer to advise that he/she will make their cooperation and assistance known to the District Attorney's Office. There must be no discussions or negotiations with Informants/C.I.'s concerning payments or contributions to any fund (Drug Fund, Felony Forfeiture Fund, etc.) for either not placing or reducing any criminal charges. Any officer developing Informants/C.I.'s shall advise them early in the relationship that they will probably be required, sometime during the course of the case, to testify in court.

C. Use of Confidential Informants and/or Cooperating Individuals

1. The presence of an Informant/C.I. in or around departmental facilities is discouraged and should be strictly controlled.
2. All contacts with an Informant/C.I. will be in an official capacity.
3. No officer will meet any Informant/ C.I. at the officer's residence or the residence of any department employee.
4. No relationship will be developed with any Informant/C.I. which is, or may be construed by continuing circumstances, to be "social" or anything other than strictly business in nature.
5. Informants/C.I.'s will not be a party to information concerning investigations conducted by this or any other agency or any information derived as a result of any such investigation.
6. Informants/C.I.'s will not be allowed to meet or view any undercover officers or any other members of the department in their capacity as an Informant/C.I., other than those designated for such purposes on a case-by-case basis.
7. No Informant/C.I. will be allowed to knowingly meet or view any other Informant/C.I. working for this or any other agency, under circumstances which could conceivably disclose either one's status, except for a specified law enforcement purpose.
8. All phone conversations and personal contacts with Informants/C.I.'s are to be conducted as if they were being audio or video recorded. Contacts with Informants/C.I.'s should be witnessed by another officer.
9. No contact will be made with a terminated Informant/C.I. without the express permission of the officer's component commander.
10. No person under the age of eighteen (18) years will be used as an Informant/C.I. in any capacity without compliance with T.C.A. 39-15-413 and all applicable rules of the Davidson County Juvenile Court regarding the use of children in law enforcement. This includes the **WRITTEN CONSENT** of the juvenile's parents or legal guardian, and the **WRITTEN CONSENT** of Juvenile Court. MNPD Form 294, Consent For Juvenile To Work With Metro Police will be completed and signed by a parent or legal guardian and placed in the juvenile's informant file.

11. The use of the polygraph to verify information supplied by an Informant/C.I. that cannot be corroborated by other sources, such as surveillance and/or intelligence reports, may be required in some cases.
12. Informants/C.I.'s should be searched during each contact. A search of the Informant/C.I. during contacts is to insure compliance with the Special Operative Agreement for Informant/C.I.'s. Failure to submit to a search will result in the **immediate** termination of the use of said Informant/C.I.
13. Criminal activity by Informants/C.I.'s will not be condoned.

D. Use of Informants/Cooperating Individuals as Special Operatives

A review of the Informant/C.I. file, background investigation, and personal interview of the Informant/C.I. will be conducted before using the Informant/C.I. as a Special Operative. The approval by a supervisor will be documented in the file by the signing of MNP Form 336, Informant/C.I. Interview Form. The use of Informants/C.I.'s as operatives actually purchasing or otherwise involved in transactions concerning drugs or other contraband will be subject to the following controls when the handling of drugs, contraband or other evidence by the Special Operative is necessary.

1. The completion of all documentation and other enumerated requirements concerning conduct and required testimony.
2. A thorough search of the Special Operative, his/her automobile, if used, and passengers, if any, will be made. This search will be conducted by the case officer or a designee prior to any purchase or meeting between the Informant/C.I. and the subject of an investigation. The search will be primarily for drugs and weapons, but any evidence of unlawful activity will be noted and the appropriate action (arrest, citation, etc.) taken.
3. Continued surveillance of the Special Operative to, from, and during the transaction or meeting.
4. A thorough search of the Special Operative, his/her vehicle, and passengers after delivery of evidence to the case officer.
5. A complete debriefing, to include a complete written report concerning the circumstances of the transaction.

6. The use of electronic and/or video surveillance, if appropriate, requires signed consent. MNPDP Form 338, Consent for Audio/Video Intercept, shall be signed by the Special Operative. The case officer will be responsible for verifying an Audio/Video Intercept Form is signed, or a Consent for Audio/Video Intercept is on file.

E. Payments to Informants/C.I.'s

The Investigative Services Bureau Chief and the Vice Division Commander shall have sole authorization for the distribution of moneys from the Investigative and/or Drug Fund. Due to varying circumstances, involved in each case, the amount of payment will be determined on a-case-by case basis. Factors to be given consideration should include: quality of the information, the quantity of drugs or contraband seized, the willingness or likelihood that the informant will have to testify in court, the ease of handling the informant, etc.

The following guidelines shall be followed when moneys from the Investigative or Drug Fund are utilized:

1. All requests for disbursements shall be made as soon as the officer determines money from the Investigative or Drug Fund will be required.
2. Personnel who must use investigative or drug funds will obtain such money from the component administrator or supervisor authorized to distribute such funds. To procure such money, personnel must complete MNPDP Form 331, Receipt For Currency Used To Purchase Information, adhering to the following:
  - a. The completed voucher form should include all details available;
  - b. A complaint number, if available, will be placed on the voucher;
  - c. If a confidential informant will receive these moneys, the informant's name or code name will be placed on the form;
  - d. The informant will sign the voucher receipt for moneys given to him/her;
  - e. MNPDP Form 331 will be signed by the officer dispersing the money, and by the component commander or his/her designee;
  - f. At the conclusion of the investigation, or when requested by the Investigative Services Bureau Chief or the Vice Division



Commander, the officer using the investigative or drug funds will specify in writing the exact nature of the expenditure, any enforcement action taken as a result of the expenditure, and forward the document to the Investigative Services Bureau Chief or the Vice Division Commander;

- g. All requests for money in the amount of two thousand five hundred dollars (\$2,500.00) or more will require the approval of the Investigative Services Bureau Chief or his/her designee;
- h. Any money to be given to any informant must have the approval of the officer's supervisor; and
- i. Under no circumstances will "front money", or payment prior to information being delivered, be provided to an informant while conducting an investigation.

The Investigative Services Bureau Chief and the Vice Division Commander will have their investigative funds accounts balanced on a monthly basis. A report of this audit will be provided to the Chief of Police for his/her retention.

#### **15.90.050 Termination of the Use of an Informant/Cooperating Individual**

The following circumstances concerning an Informant/C.I. will be brought to the attention of the officer's component commander immediately upon their occurrence; followed by written documentation. Such occurrences will be considered in any decisions to terminate the use of the Informant/C.I.

- A. Repeated failures to keep appointments, return telephone calls, or follow through on legitimate requirements affecting the outcome of an investigation. The number, nature, and seriousness of each infraction will be considered.
- B. Violation of any portion of the Special Operative Agreement.
- C. The discovery of lies or any misrepresentation of fact by the Informant /C.I.
- D. Failure to follow instructions of case officers.
- E. Any other incident, circumstance or information which causes concern or alarm with respect to the actions of the Informant/C.I.

- F. Upon the termination of an Informant/C.I.'s services, a memorandum detailing the reasons for termination will be placed in the informant/C.I.'s file. To prevent a terminated Informant/C.I. from manipulating the department, a copy of the termination memorandum may be sent to all component commanders in charge of component informant files.

#### **15.90.060 Exigent Circumstances**

The policy on Informant/C.I.s will be strictly followed except under the following conditions:

- A. If exigent circumstances exist and it is in the best interest of the Metropolitan Police Department, the officer's division commander may grant an emergency variance and justify the same in writing, to be placed in the Informant/C.I.'s file.
- B. Examples:
  - 1. The potential Informant/C.I. is currently documented by another law enforcement agency and this can be verified; or
  - 2. The value of the information the Informant/C.I. gives becomes apparent during an ongoing investigation and time is of the essence for furtherance of an investigation.

#### **15.90.070 Purging Confidential Informant Files**

Once a year each authorized component commander or his/her designee will review all information contained in each of their component confidential informant files in order to determine if any files should be purged. Information contained in these files can be purged at the discretion of the component commander if after a review of the file documents indicate that no informant contacts have been made during the last five years. In addition to the time limitation, other factors can be considered: the nature of the offense(s) with which the confidential informant is associated, whether the confidential informant has an extensive criminal record on file and whether the information in the person's informant file could be used in the future by either the department or an outside agency.

Information contained in these files can be purged after verification that the informant is deceased.

After the authorized component commander has agreed to the purging of the material contained in those Confidential Informant Files meeting the criteria described above, he/she will purge the confidential informant's files

by mechanically shredding the file. A list of purged files, along with the date they were purged, will be maintained with the Informant/C.I. files.