

Informants

608.1 PURPOSE AND SCOPE

Best Practice MODIFIED

In some instances, a successful investigation cannot be conducted without the use of confidential informants (CIs). While the use of CIs can be an effective tool, it can be undermined by misconduct of the CI or improper management by the handler. The purpose of this policy is to provide guidelines for the proper use of confidential informants to avoid misconduct of the CI or improper management by the handler.

608.1.1 DEFINITIONS

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Definitions related to this policy include:

Informant - A person who covertly interacts with other individuals or suspects at the direction of, request of, or by agreement with, the Indio Police Department for law enforcement purposes. This also includes a person agreeing to supply information to the Indio Police Department for a benefit (e.g., a quid pro quo in the form of a reduced criminal penalty, money).

Confidential Informant (CI): An individual requiring anonymity who provides useful information, directed assistance, or both, that enhances criminal investigations and furthers the mission of the agency, usually in exchange for financial or other consideration.

Confidential Informant File: File maintained to document all information that pertains to a CI.

Unreliable Informant File: File containing information pertaining to an individual who has failed at following an established written CI agreement and has been determined to be generally unfit to serve as a CI.

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.

608.2 POLICY

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The Indio Police Department recognizes the value of informants to law enforcement efforts and will strive to protect the integrity of the informant process. It is the policy of this department that all funds related to informant payments will be audited quarterly and that payments to informants will be made according to the criteria outlined in this policy. In addition, this law enforcement agency shall take necessary precautions when utilizing CIs by developing sound informant control procedures.

608.3 USE OF INFORMANTS

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Indio Police Department

Indio PD Policy Manual

Informants

608.3.1 INITIAL APPROVAL

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Before using an individual as an informant, an officer must receive approval from his/her supervisor as well as the Street Crimes Unit supervisor. The officer shall compile sufficient information through a background investigation and experience with the informant in order to determine the suitability of the individual, including but not limited to the following;

- a. Age, sex, and residence
- b. Employment status or occupation
- c. Affiliation with legitimate businesses and illegal or suspicious enterprises
- d. Extent to which potential information, associations, or other assistance could benefit a present or future investigation
- e. Relationship with the target of an investigation
- f. Motivation in providing information or assistance
- g. Risk of adversely affecting an existing or future investigation
- h. Extent to which provided information can be corroborated
- i. Prior record as a witness
- j. Criminal history, to include whether he or she is the subject of a pending investigation, is under arrest, or has been charged with a crime
- k. Risk to the public or as a flight risk
- l. Substance abuse concerns
- m. Relationship to anyone in law enforcement
- n. Risk of physical harm to the potential CI or his or her immediate family or relatives for cooperating with law enforcement should the relationship be revealed
- o. Any prior or current service as a CI with this or another law enforcement organization
- p. Verification of the subjects reliability

Members of this department should not guarantee absolute safety or confidentiality to an informant. Prior to an individual's use as a CI, a supervisor or other designated authority shall review the Initial Suitability Report and determine if the individual is authorized to serve as a CI.

608.3.2 JUVENILE INFORMANTS

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The use of informants under the age of 13 is prohibited.

Indio Police Department

Indio PD Policy Manual

Informants

Except for the enforcement of laws related to the commercial sale of alcohol, marijuana or tobacco products, a juvenile 13 years of age or older may only be used as an informant with the written consent of each of the following:

- (a) The juvenile's parents or legal guardians
- (b) The juvenile's attorney, if any
- (c) The court in which the juvenile's case is being handled, if applicable (Penal Code § 701.5)
- (d) The Chief of Police or the authorized designee

608.3.3 INFORMANT AGREEMENTS

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All informants are required to sign and abide by the provisions of the designated department informant agreement. The officer using the informant shall discuss each of the provisions of the agreement with the informant, with particular emphasis on the following:

- a. CIs are not law enforcement officers. They have no arrest powers, are not permitted to conduct searches and seizures, and may not carry a weapon while performing activities as a CI.
- b. CIs found engaging in any illegal activity beyond what is authorized by the agency and conducted while under the supervision of a handler, will be subject to prosecution.
- c. CIs 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.
- d. CIs are prohibited from engaging in self-initiated information or intelligence gathering without agency direction and approval.
- e. Every reasonable effort will be taken to ensure the confidentiality of the CI but, upon judicial order, he or she may be required to testify in open court.
- f. CIs may be directed to wear a listening and recording device.
- g. CIs shall be required to submit to a search before and after a controlled purchase of weapons, stolen goods, or narcotics.

Details of the agreement are to be approved in writing by a supervisor before being finalized with the informant.

608.4 INFORMANT INTEGRITY

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To maintain the integrity of the informant process, the following must be adhered to:

Indio Police Department

Indio PD Policy Manual

Informants

- (a) The identity of an informant acting in a confidential capacity shall not be withheld from the Chief of Police, Division Chief, Street Crimes Unit supervisor or their authorized designees.
 - 1. Identities of informants acting in a confidential capacity shall otherwise be kept confidential.
- (b) Criminal activity by informants shall not be condoned.
- (c) Informants shall be told they are not acting as police officers, employees or agents of the Indio Police Department, and that they shall not represent themselves as such.
- (d) The relationship between department members and informants shall always be ethical and professional.
 - 1. Members shall not become intimately involved with an informant.
 - 2. Social contact shall be avoided unless it is necessary to conduct an official investigation, and only with prior approval of the Street Crimes Unit supervisor.
 - 3. Members shall neither solicit nor accept gratuities or engage in any private business transaction with an informant.
- (e) Officers shall not meet with informants in a private place unless accompanied by at least one additional officer or with prior approval of the Street Crimes Unit supervisor.
 - 1. Officers may meet informants alone in an occupied public place, such as a restaurant.
- (f) When contacting informants for the purpose of making payments, officers shall arrange for the presence of another officer.
- (g) In all instances when department funds are paid to informants, a voucher shall be completed in advance, itemizing the expenses.
- (h) Since the decision rests with the appropriate prosecutor, officers shall not promise that the informant will receive any form of leniency or immunity from criminal prosecution.

608.4.1 UNSUITABLE INFORMANTS

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The suitability of any informant should be considered before engaging him/her in any way in a covert or other investigative process. Members who become aware that an informant may be unsuitable will notify the supervisor, who will initiate a review to determine suitability. Until a determination has been made by a supervisor, the informant should not be used by any member. The supervisor shall determine whether the informant should be used by the Department and, if so, what conditions will be placed on his/her participation or any information the informant provides. The supervisor shall document the decision and conditions in file notes and mark the file "unsuitable" when appropriate.

Considerations for determining whether an informant is unsuitable include, but are not limited to, the following:

- (a) The informant has provided untruthful or unreliable information in the past.

Indio Police Department

Indio PD Policy Manual

Informants

- (b) The informant behaves in a way that may endanger the safety of an officer.
- (c) The informant reveals to suspects the identity of an officer or the existence of an investigation.
- (d) The informant appears to be using his/her affiliation with this department to further criminal objectives.
- (e) The informant creates officer-safety issues by providing information to multiple law enforcement agencies simultaneously, without prior notification and approval of each agency.
- (f) The informant engages in any other behavior that could jeopardize the safety of officers or the integrity of a criminal investigation.
- (g) The informant commits criminal acts subsequent to entering into an informant agreement.

608.5 INFORMANT FILES

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Informant files shall be utilized as a source of background information about the informant, to enable review and evaluation of information provided by the informant, and to minimize incidents that could be used to question the integrity of department members or the reliability of the informant.

Informant files shall be maintained in a secure area within the Street Crimes Unit. The Street Crimes Unit supervisor or the authorized designee shall be responsible for maintaining informant files. Access to the informant files shall be restricted to the Chief of Police, Division Chief, Street Crimes Unit supervisor or their authorized designees.

The Investigative Services Division Chief should arrange for an audit using a representative sample of randomly selected informant files on a periodic basis, but no less than one time per year. If the Street Crimes Unit supervisor is replaced, the files will be audited before the new supervisor takes over management of the files. The purpose of the audit is to ensure compliance with file content and updating provisions of this policy. The audit should be conducted by the MCU Lieutenant who does not have normal access to the informant files.

In addition, unit supervisors shall attend debriefings of CIs periodically as part of the informant management process. 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. Inactive CIs may be reactivated as needed.

608.5.1 FILE SYSTEM PROCEDURE

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A separate file shall be maintained on each informant and shall be coded with an assigned informant control number. An informant history that includes the following information shall be prepared for each file:

- (a) Name and aliases
- (b) Date of birth

Indio Police Department

Indio PD Policy Manual

Informants

- (c) Physical description: sex, race, height, weight, hair color, eye color, scars, tattoos or other distinguishing features
- (d) Photograph
- (e) Current home address and telephone numbers
- (f) Current employers, positions, addresses and telephone numbers
- (g) Vehicles owned and registration information
- (h) Places frequented
- (i) Briefs of information provided by the informant and his/her subsequent reliability
 1. If an informant is determined to be unsuitable, the informant's file is to be marked "unsuitable" and notations included detailing the issues that caused this classification.
- (j) Name of the officer initiating use of the informant
- (k) Signed informant agreement
- (l) Update on active or inactive status of informant

608.6 INFORMANT PAYMENTS

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No informant will be told in advance or given an exact amount or percentage for his/her service. All CI payments shall be approved in advance by the officer in charge of confidential funds. The amount of funds to be paid to any informant will be evaluated against the following criteria:

- The extent of the informant's personal involvement in the case
- The significance, value or effect on crime
- The value of assets seized
- The quantity of the drugs or other contraband seized
- The informant's previous criminal activity
- The level of risk taken by the informant
- Officers shall provide accounting of monies received and documentation for confidential funds expended.
- Two officers shall be present when making payments or providing funds to CIs.
- The appropriate individual, as designated by the agency chief executive 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 agency policy.
- 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 before an operation ensues.

Indio Police Department

Indio PD Policy Manual

Informants

The Street Crimes Unit supervisor will discuss the above factors with the handling officer and recommend the type and level of payment. Payments made in excess of \$500 will be made subject to approval by the Investigation Services Division Lieutenant.

608.6.1 PAYMENT PROCESS

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Approved payments to an informant should be in cash using the following process:

Payments may be paid in cash from the Street Crimes Unit buy/expense fund.

The Street Crimes Unit supervisor shall sign the voucher for cash payouts from the buy/expense fund.

- (a) To complete the payment process for any amount, the officer delivering the payment shall complete a cash transfer form.
 1. The cash transfer form shall include the following:
 - (a) Date
 - (b) Payment amount
 - (c) Indio Police Department case number
 - (d) A statement that the informant is receiving funds in payment for information voluntarily rendered.
 2. The cash transfer form shall be signed by the informant.
 3. The cash transfer form will be kept in the informant's file.

608.6.2 REPORTING OF PAYMENTS

Federal

Each informant receiving a cash payment shall be advised of his/her responsibility to report the cash to the Internal Revenue Service (IRS) as income. If funds distributed exceed \$600 in any reporting year, the informant should be provided IRS Form 1099 (26 CFR 1.6041-1). If such documentation or reporting may reveal the identity of the informant and by doing so jeopardize any investigation, the safety of officers or the safety of the informant (26 CFR 1.6041-3), then IRS Form 1099 should not be issued.

In such cases, the informant shall be provided a letter identifying the amount he/she must report on a tax return as "other income" and shall be required to provide a signed acknowledgement of receipt of the letter. The completed acknowledgement form and a copy of the letter shall be retained in the informant's file.

608.6.3 AUDIT OF PAYMENTS

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The Street Crimes Unit supervisor or the authorized designee shall be responsible for compliance with any audit requirements associated with grant provisions and applicable state and federal law.

Indio Police Department

Indio PD Policy Manual

Informants

At least once every six months, the Chief of Police or the authorized designee should conduct an audit of all informant funds for the purpose of accountability and security of the funds. The funds and related documents (e.g., buy/expense fund records, cash transfer forms, invoices, receipts and logs) will assist with the audit process.