



DEPARTMENTAL
GENERAL
ORDER

O-4

Index as:

Informants

Effective Date:
06 Jun 14

Evaluation Coordinator:
Intelligence Section Supervisor

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TABLE OF CONTENTS

| | | |
|--------------|---|-----------|
| I. | DEFINITIONS AND TERMINOLOGY | 1 |
| | A. Informant..... | 1 |
| | B. Officer | 1 |
| | C. Managing Officer | 1 |
| | D. Managed Confidential Informant..... | 1 |
| | E. Temporary Confidential Informant..... | 2 |
| | F. Citizen Informant | 2 |
| | G. Informant Program Coordinator (IPC)..... | 2 |
| | H. Informant File..... | 2 |
| | I. Informant Forms | 3 |
| II. | POLICY | 3 |
| III. | PROCESSING INFORMANTS | 4 |
| IV. | DOCUMENTATION..... | 6 |
| V. | SUPERVISORY AND COMMAND RESPONSIBILITIES..... | 7 |
| VI. | INFORMANT CHRONOLOGICAL ACTIVITY RECORD | 9 |
| VII. | MANAGEMENT OF ACTIVE INFORMANTS | 10 |
| VIII. | PAYMENTS TO INFORMANTS | 11 |
| IX. | DE-ACTIVATION OF AN INFORMANT | 11 |
| X. | RE-ACTIVATION OF AN INFORMANT | 12 |
| XI. | REPORTING UNDESIRABLE/UNRELIABLE INFORMANTS..... | 12 |

XII. INFORMANT FILE MANAGEMENT 12

XIII. JUDICIAL PROCESSING OF INFORMANTS 13

 A. Physical Custody Phase 13

 B. Post-Charging..... 13

XIV. INSPECTIONS AND REPORTS 13

 A. Managing Officer- Quarterly Inquiries 13

 B. Managing Officer's Supervisor-Quarterly Review 14

 C. Intelligence Supervisor-Semi-Annual Review/Report..... 15

 D. Office of Inspector General-Semi-Annual Review/Report..... 15



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INFORMANTS

The purpose of this order is to establish Department policy and procedures for the control and management of informants.

I. DEFINITIONS AND TERMINOLOGY

A. Informant

An Informant is a person, not a member of law enforcement, who provides law enforcement with information and/or assistance regarding suspected criminal activity.

B. Officer

For the purpose of this order, the term "officer" shall include all sworn and reserve officers, sergeants and commanders of the Oakland Police Department.

C. Managing Officer

A Managing Officer is any officer using a Managed Confidential Informant, Temporary Confidential Informant, or a Citizen Informant.

D. Managed Confidential Informant (MCI)

A Managed Confidential Informant is an informant who is:

1. Acting as an agent of an Oakland Police Officer;
2. Providing information and/or assistance concerning criminal activity to law enforcement in *two or more* investigations; and

3. Assists law enforcement in exchange for financial compensation or consideration in a pending criminal case.

E. Temporary Confidential Informant (TCI)

A Temporary Confidential Informant is an informant who is:

1. Acting as an agent of an Oakland Police Officer;
2. Providing information and/or assistance concerning criminal activity to law enforcement in *one* investigation; and
3. Assists law enforcement in exchange for financial compensation or consideration in a pending criminal case.
4. A Citizen Informant acting as an agent of an Oakland Police Officer.

F. Citizen Informant

A Citizen Informant is an informant who is:

1. Not acting as an agent of an Oakland Police Officer;
2. Provides information and/or assistance concerning criminal activity to law enforcement in *at least one* investigation; and
3. Assists law enforcement for the sole purpose of reducing and/or solving criminal activity (not in exchange for compensation and/or consideration).

Example: A citizen calls 911 to report criminal activity. While the relationship between the officer and the citizen informant may be (or become) ongoing, the motivation is different than that of a Managed or Temporary Informant and there is no requirement to satisfy commitments necessary for case/monetary consideration.

G. Informant Program Coordinator (IPC)

The Intelligence Unit supervisor will serve as the Informant Program Coordinator (IPC) and shall be responsible for duties described herein.

H. Informant File

The Informant File is maintained by the IPC and contains every original form and document as provided by the informant's Managing Officer.

The IPC is responsible for maintaining and storing original paper documents and scanned copies electronically on a secure server. This file serves as the Department's informant file source for audits and inspections.

NOTE: The IPC is responsible for maintaining all informant files in a secure and locked location. Due to the inherent danger to public safety when handling an informant, Managing Officers shall secure their records in the same manner.

I. Informant Forms

1. Informant Chronological Activity Record (ICAR) (TF-3278);
2. Informant Regulations Record (TF-3110);
3. Informant Agreement Record (TF-3276);
4. Prospective Informant Review (TF-3338);
5. Informant Personal Record (TF-3111);
6. Informant Payment Record (TF-3361);
7. Informant Accomplishment Record (TF-3362);
8. Unreliable/Undesirable Informant Notification Record (TF-3339);
and
9. Temporary Confidential Informant Record (TF-3363)

II. POLICY

- A. Only sworn officers may utilize a confidential informant. All informants are assets of the Department, not of the Managing Officer.
- B. Managing Officers shall maintain relationships with an informant in an ethical and professional manner at all times. A Managing Officer shall not have any off-duty fraternization or a personal or business relationship with their MCI or TCI.
- C. Any off-duty contact by a Managing Officer with their informant shall be documented in the ICAR (TF-3278) if that contact is pertinent to an investigation.

- D. Disclosure of the informant's identity shall be withheld until such disclosure is required by law or upon the direction of the Chief of Police.¹
- E. The use of an informant under 13 years of age is prohibited.
- F. Informants between 13 and 17 years of age require an order of the court and consent of a parent/guardian.²
- G. If the informant is on Federal probation or parole, the informant's probation officer shall be contacted for the purpose of arranging approval from the federal court or the United States Parole Commission.

III. PROCESSING INFORMANTS (Temporary, Citizen, Managed)

The Managing Officer shall verify the identity of the informant and shall evaluate the benefit and value of utilizing the person as an informant by considering the risk to the public, the informant's criminal history, circumstances of a current arrest or charges, and the informant's reliability and dependability

A. Temporary Confidential Informant (TCI)

- 1. The Managing officer is not required to complete an informant file for a temporary confidential informant. However, the Managing Officer is required to document the facts surrounding the informant's information and/or assistance on a Temporary Confidential Informant Record (TF-3363).
- 2. If the temporary confidential informant assists the Managing Officer in more than one investigation, the informant shall be reclassified as a managed informant. The Managing Officer is then required to complete an informant file and include the informant's Temporary Confidential Informant Record (TF-3363).

B. Citizen Informant

- 1. Citizen Informants are entitled to reward money and do not need to be treated as a managed informant as long as their motivation was in the interest of reducing and/or solving criminal activity. The Department regularly offers reward money for information leading to arrests of wanted individuals and/or recovery of contraband.

¹ Evidence Code Section 1041 provides that an officer can refuse to identify an informant when "disclosure of the identity of the informant is against public interest because there is a necessity for preserving the confidentiality of their identity that outweighs the necessity for disclosure in the interest of justice."

² Penal Code Section 701.5

The Department does not require an informant file in these instances. However, if the Citizen Informant receives reward money, the Managing Officer is required to document the facts surrounding the informant's information and/or assistance on a Temporary Confidential Informant Record (TF-3363).

2. If a Citizen Informant's motivation changes from solely wanting to reduce and/or solve criminal activity, the Managing Officer is required to reclassify the informant from a Citizen Informant to either a Temporary or Managed Informant and complete the applicable paperwork.

C. Managed Confidential Informants (MCI)

1. The Managing Officer shall prepare the file to include:
 - a. Informant Chronological Activity Record Log (TF-3278);
 - b. Informant Regulations Record (TF-3110);
 - c. Informant Agreement Record (TF-3276);
 - d. Prospective Informant Review Record (TF-3338);
 - e. Informant Personal Record (TF-3111);
 - f. Informant Payment Record (TF-3361);
 - g. Informant Accomplishment Record (TF-3362);
 - h. Unreliable/Undesirable Informant Notification Record (TF-3339); and
 - i. Temporary Confidential Informant Record (TF-3363)
 - j. Identity verification (e.g., CDL, CRIMS, CII) documentation in the ICAR (TF-3278);
 - k. Criminal history records (CRIMS, CII) documentation printouts;
 - l. Department of Motor Vehicles Printout; and
 - m. A current photograph of the informant.

2. The Managing Officer shall document the preparation in the ICAR (TF-3278).
3. The Managing Officer shall forward the completed informant file to their immediate supervisor for review and approval.
4. Whether approved or disapproved, the immediate supervisor shall forward the file to the IPC within **five (5)** calendar days for final review and approval.
5. Upon approval, the IPC shall provide the Managing Officer with a new or existing Informant File Number.

NOTE: In the event a law enforcement response is necessary prior to the IPC's final review and approval, the MCI may be utilized with explicit and documented approval of the immediate supervisor.

D. Special Requirements

When any of the following individuals, **informing on a client**, is to be used as a managed informant, approval for use from a Deputy Chief of Police or higher rank is required after review and approval by the IPC:

1. Media personnel who meet the requirements for a press card, as specified in Oakland Municipal Code 5.70.010. The actual issuance of a press card is not required to meet the requirement;
2. Bona fide Clergy / religious practitioner;
3. Licensed Medical professional;
4. Licensed Therapist / Counselor; or
5. Licensed Attorney.

NOTE: The individuals listed above, when making notifications as required by current mandatory reporting laws, are not considered informants.

IV. DOCUMENTATION

- A. The Managing Officer shall complete all of the required informant forms and ensure the informant reads and signs the appropriate forms prior to performing services for the Department.

All signed original forms shall be placed in the informant file and forwarded to the immediate supervisor for review and approval.

1. Informant Regulations Record (TF-3110);
 2. Informant Agreement Record (TF-3276);
 3. Temporary Confidential Informant Record (TF-3363)
- B. The Managing Officer shall have a sworn officer personally witness the MCI review, and sign the Informant Agreement Record (TF-3276) and the Informant Regulations Record (TF-3110).
- C. The Managing Officer shall ensure the informant file includes the forms listed above **and** the following:
1. Informant Chronological Activity Record Log (TF-3278);
 2. Prospective Informant Review Record (TF-3338);
 3. Informant Personal Record (TF-3111);
 4. Informant Payment Record (TF-3361);
 5. Informant Accomplishment Record (TF-3362);
 6. Unreliable/Undesirable Informant Notification Record (TF-3339);
 7. Identity verification (e.g., CDL, CRIMS, CII) documentation in the ICAR (TF-3278);
 8. Criminal history records (CRIMS, CII) documentation printouts;
 9. Department of Motor Vehicles Printout; and
 10. A current photograph of the informant.

V. SUPERVISORY AND COMMAND RESPONSIBILITIES

- A. Supervisory Responsibilities:
1. The Managing Officer's supervisor shall evaluate the benefit and value of utilizing the person as an informant by considering the risk to the public, the informant's criminal history, circumstances of a current arrest or charges and the informant's reliability and dependability.

2. The supervisor shall consider the officer's ability in managing a confidential informant.
3. The Managing Officer's supervisor shall review the completed informant file to ensure all of the informant's information is complete, current, and forms are signed as required; prepare a Prospective Informant Review Record (TF-3338) indicating approval or denial; and forward the file to the IPC for final determination.
4. Review and audit monthly ICAR forms and forward to IPC for inclusion in the MCI file
5. Meet with the Managing Officer on a quarterly basis to review a current print out of Wanted Persons System (WPS), Department of Motor Vehicles (DMV), Consolidated Records Information Management System (CRIMS) and Criminal Identification and Information (CI&I) and discuss the cooperation agreement.

This meeting shall be documented in the March, June, September and December ICAR Logs (TF-3278).

6. The Managing Officer's supervisor shall forward the current copies of the WPS, DMV, CRIMS and CI&I print outs along with an ICAR log to the IPC for inclusion in the MCI file.

B. Unit Commander Responsibilities:

The Managing Officer's Unit Commander shall conduct a semi-annual review and inspection of the applicable informant files before 31 Jun and 31 Dec of each year. The Unit Commander shall complete a Semi-Annual report documenting this review and inspection and forward to the IPC.

C. IPC Responsibilities:

1. The IPC or designee shall contact the Western States Information Network (WSIN) to ascertain if the informant's standing has been identified as an "Unreliable" informant before approval of any managed confidential informant. The informant's WSIN standing shall be documented in the ICAR (TF-3278) by the IPC.
 - a. If the informant has been identified as "Unreliable" the approval for further use of the informant shall be denied.

- b. The IPC shall email (with read receipt) the Managing Officer and the approving supervisor advising them that further use of the informant is denied. A copy of the email shall be included in the MCI file and noted on the MCI database.
2. The IPC shall maintain a database of all Confidential Informants. The database will include the following;
 - a. Confidential Informant Number;
 - b. Confidential Informant's Name;
 - c. DOB;
 - d. Managing Officer's Name;
 - e. Approving Supervisor/Commander;
 - f. Activation and Deactivation Dates.

VI. INFORMANT CHRONOLOGICAL ACTIVITY RECORD

- A. The ICAR (TF-3278) is a chronological listing of an informant's activity. The ICAR shall be maintained in the informant file. The Managing Officer shall maintain a separate ICAR with associated supporting documents for each month and shall submit the ICAR and any supporting documentation to their supervisor for review at the end of each month.
- B. After reviewing the monthly ICAR and supporting documents, the supervisors shall forward all documents to the IPC for inclusion into the MCI file.
- C. The Managing Officer shall make an ICAR entry within **seven (7) calendar** days whenever any of the following occur:
 1. Pertinent investigative contacts with the MCI, to include:
 - a. Face-to-face meetings (including persons present);
 - b. Phone calls; and
 - c. Email/text messages and written correspondence.

2. If the Managing Officer provides information from a MCI to an OPD officer or other law enforcement officer to act upon, the Managing Officer shall take the following steps:
 - a. Document in the ICAR (TF-3278) a summary of the information provided by the MCI establishing the **PROBABLE CAUSE** for the detention and/or arrest; and
 - b. Complete the required Departmental police report if warranted and include, at a minimum, the following information:
 - 1) A summary of the information provided by the informant;
 - 2) The informant file number;
 - 3) The Incident Number;
 - 4) The RD Number;
 - 5) Any corroborating information to support the informant's information; and
 - 6) Provide the officer(s) making the arrest/detention a copy of the completed Departmental report.
3. Any other pertinent activity that may assist the Managing Officer:
 - a. In future management of the MCI; and
 - b. In determining suitability for continued use of the MCI.

VII. MANAGEMENT OF ACTIVE INFORMANTS

- A. The Managing Officer shall contact a MCI at least once every 90 days to update and maintain the informant's "active" status. The informant need not be involved with a current investigation in order to maintain their "active" status.
- B. Planned in-person contacts between the Managing Officer and informants shall occur while in the presence of at least one (1) other law enforcement officer or an officer of the court in a public place.

- C. The Managing Officer shall not knowingly allow a MCI, who is not in the possession of a valid license, to operate a motor vehicle while engaged in an investigation.
- D. If the informant is non-English speaking, at least one (1) officer shall be proficient in the informant's language when an interview is conducted or personal contact is made.
- E. The IPC shall be notified if an informant's status is changed to inactive, unreliable, and/or undesirable.

VIII. PAYMENTS TO INFORMANTS

- A. An informant may be paid for information or assistance. Whenever an informant is paid, the Managing Officer shall ensure that at least one (1) other law enforcement officer is present to witness the payment. If the informant is non-English speaking, at least one (1) officer shall be proficient in the informant's language when payment is made.
- B. The Managing Officer shall document payments to an informant and shall also document the names of persons present who witness the payment in the Informant Payment Record (TF-3361) and/or on the Informant Chronological Activity Record Log (ICAR) (TF-3278).
- C. Confidential funds provided for in the Departmental budget shall be strictly administered and accounted for in accordance with Departmental General Order F-5, UNDERCOVER EXPENDITURES.
- D. The supervisor or commander in control of an Imprest Account used to fund payments shall approve informant payments.

IX. DE-ACTIVATION OF AN INFORMANT

- A. The Managing Officer shall be responsible for:
 - 1. Classifying an informant as "inactive," when appropriate; **and**
 - 2. Notifying the IPC of the change in status.
- B. The Managing Officer shall consider the following criteria in determining whether to de-activate an informant:
 - 1. The current investigation is completed;

2. The Agreement is terminated by the informant or the Managing Officer;
3. The informant is incarcerated;
4. There is no immediate use of the informant anticipated; and
5. The informant has been identified as being “Undesirable.”

C. Mandatory De-activation

The Managing Officer shall de-activate an informant:

1. When there has been no contact with the informant within 180 days;
2. Prior to the Managing Officer’s separation from the Department;
3. It is discovered that the informant is deceased; or
4. If the IPC deems the informant “Unreliable” or “Undesirable.”

X. RE-ACTIVATION OF AN INFORMANT

A prospective Managing Officer may re-activate an informant by contacting the IPC and updating the existing file with the database queries and current photo of the MCI. The informant will utilize the same informant number. An informant who has been previously declared as “Unreliable” will not be re-activated.

XI. REPORTING UNDESIRABLE/UNRELIABLE INFORMANTS

In the event a Managing Officer determines that an informant is unreliable or undesirable, he/she shall:

- A. Prepare an Unreliable/Undesirable Informant Notification Record (TF-3339) detailing the circumstances;
- B. Hand-deliver the Unreliable/Undesirable Informant Notification Record (TF-3339) to the IPC immediately.

XII. INFORMANT FILE MANAGEMENT

- A. Informant files shall not be accessed or removed from the IPC’s unit without prior approval of the IPC. Approval shall be documented in the ICAR (TF-3278).

- B. The IPC shall document access to informant files in the ICAR (TF-3278), to include the date, time and name of person accessing file.
- C. All informant files shall be maintained in a secure location under the control of the IPC.
- D. The IPC shall assign the MCI Number and the TCI Number. The format shall be Year and CI in chronological order (i.e. MCI 13-01 or TCI 13-01)
- E. The IPC shall maintain a secured drop box outside of the Intelligence Unit's office (Room 400) where officers may drop their paperwork.
- F. The IPC shall maintain hard copies of all original files for a period of five years.

XIII. JUDICIAL PROCESSING OF INFORMANTS

- A. Physical Custody Phase
 - 1. Prior to releasing a person from physical custody, for the purpose of becoming an informant, a Managing Officer shall:
 - a. Notify the arresting officer, if practical; or
 - b. In the arresting officer's absence, the arresting officer's supervisor/commander.The notification shall outline the details of the potential release.
 - 2. In the event of conflicting interests regarding a release, the immediate supervisors or commanders shall consult to resolve the issue. The IPC shall have the final authority to resolve any conflicts.

NOTE: If an informant is released pursuant to 849(b) P.C., an arrest warrant is required to re-arrest the person for the original offense.

- B. Post-Charging

A Managing Officer shall obtain the approval from the prosecuting agency (e.g., County District Attorney's Office or U.S. Attorney) in order to use a charged case as consideration for an informant.

XIV. INSPECTIONS AND REPORTS

- A. Managing Officer - Quarterly Inquiries
 - 1. The Managing Officer shall conduct quarterly inquiries in:

- a. Wanted Persons System (WPS)
 - b. Department of Motor Vehicles (DMV)
 - c. Consolidated Records Information Management System (CRIMS)
 - d. Criminal Identification and Information (CI&I)
2. Document all inquiries in the ICAR (TF-3278). Quarterly inquiries shall be printed out and delivered to the IPC to replace the previous quarterly inquiry in the informant file.
 3. When information is discovered that may impact an informant's status, the Managing Officer shall confer with their supervisor to consider the eligibility of the informant. The supervisor shall document the conference in the ICAR (TF-3278).
 4. When a Managing Officer becomes aware of an outstanding arrest warrant for an informant, if possible, the informant shall be arrested or cited and released, if applicable.³ Although the existence of an outstanding arrest warrant shall be considered in the eligibility of the informant, it does not automatically disqualify the use of the prospective informant.
- B. Managing Officer's Supervisor
1. Monthly Reviews

The Managing Officer's supervisor shall review monthly MCI ICAR's with associated supporting documents, sign the ICAR and forward the ICAR and all supporting documents to the IPC for inclusion into the MCI file.
 2. Quarterly Reviews
 - a. The Managing Officer's supervisor shall review updated Wanted Persons System (WPS), Department of Motor Vehicles (DMV), Consolidated Records Information Management System (CRIMS) and Criminal Identification and Information (CI&I) print-outs.

³ Penal Code Section 142

- b. The Managing Officer's supervisor shall discuss the updated print-outs and the informant's progress in regards to the cooperation agreement with the Managing Officer.
- c. This meeting shall be documented in the March, June, September and December ICAR Logs (TF-3278). All documents shall be forwarded to the IPC for inclusion in the MCI file.

C. Intelligence Supervisor – Semiannual Review/Report

- 1. The Intelligence Supervisor shall review informant files semi-annually before 30 Jun and 31 Dec of each year to ensure the files are complete and current.
- 2. The Intelligence Supervisor shall then prepare and forward a Semi-Annual Report to the Office of Inspector General (OIG) who shall retain the report for a period of five (5) years.

D. Office of Inspector General (OIG) - Semiannual Review/Report

The OIG shall conduct a review and inspection of informant files and prepare a consolidated report for the Chief of Police before 01 Sep and 01 Mar.

By Order of



Sean Whent
Chief of Police

Date Signed: 6-12-14