

General Order

Houston Police Department



ISSUE DATE:

March 27, 2015

NO.

600-16

REFERENCE: Supersedes all prior conflicting Circulars and Directives, and General Order 600-16, dated December 2, 2010

SUBJECT: CONFIDENTIAL INFORMANTS AND OTHER SOURCES OF INFORMATION

POLICY

This General Order provides specific guidelines for documentation of confidential informants and other sources of information as well as compensation of confidential informants.

The procedures established in this policy shall:

- a. Protect the integrity of the department and individual officers who use confidential informants or other sources of information.
- b. Allow Houston police officers access to information available from confidential informants or other sources of information during investigations.
- c. Ensure the confidentiality of a confidential informant when applicable.
- d. Protect the relationship between individual officers and confidential informants or other sources of information.
- e. Ensure accountability and consistency in documenting, interacting with, or dispensing payments to confidential informants.
- f. Distinguish between confidential informants and other sources that provide information concerning criminal activity.

This General Order applies to classified employees only.

DEFINITIONS

The following definitions apply to this General Order only.

Adult Confidential Informant. A confidential informant who is 18 years of age or older.

Authorized Division. A division that is authorized to maintain CI files. The only divisions authorized to maintain CI files are the Auto Theft, Burglary and Theft, Criminal Intelligence, Gang, Homicide, Internal Affairs, Juvenile, Major Offenders, Narcotics, Robbery, and Vice divisions.

Confidential Informants (hereinafter referred to as "CI" or "CIs"). Individuals who maintain an ongoing relationship with an HPD investigator and who provide information concerning criminal activity and/or perform an investigative activity (e.g., "buy/walk") under the direction and control of the investigator authorized to handle the CI. CIs may or may not receive payment as set forth below. All CIs must be registered with the authorized *primary division*.

This definition does not apply to an arrested or detained suspect who is being interviewed or interrogated by an investigator about a specific crime in which the suspect is involved or has knowledge unless the suspect qualifies as a Defendant CI in item "b" below.

There are three categories of CIs outlined below: Regular Use CIs, Defendant CIs, and Restricted Use CIs.

- a. **Regular Use CIs.** Confidential informants who provide the department with information concerning criminal activity and/or perform an investigative activity (e.g., "buy/walk") under the direction and control of the investigator authorized to handle the CI and who do not meet the limiting criteria of a Defendant CI, Restricted Use CI, or other source of information (see section 3, *Other Sources*

of Information, of this General Order). A Regular Use CI may or may not receive payment.

b. **Defendant CIs.** Any persons who are under arrest and either have charges pending or are charged in a criminal investigation, and do one or more of the following:

1. Provide information on suspects or criminal activity unrelated to the case in which the CI is implicated.
2. Provide information on co-defendants about criminal activity related to the case in which the CI is implicated.
3. Perform an investigative activity (e.g., "buy/walk") under the direction and control of the investigator authorized to handle the Defendant CI.

Defendant CIs may also receive a Restricted Use CI designation based upon their activities or affiliations. No Defendant CI, including those having a Restricted Use CI designation, shall receive payment from the department.

c. **Restricted Use CIs.** Confidential informants who meet the criteria of a Regular Use CI or Defendant CI but based upon various factors require a higher level of authorization. Restricted Use CIs require the written approval of the authorized division captain and shall be subject to a greater degree of supervisory control. In assessing whether a confidential informant may be a Restricted Use CI, the investigator shall consider various factors such as whether the CI has a history of violence or alcohol or drug abuse, and the CI's reliability, truthfulness, motivation, and past performance as a CI.

If the investigator or a supervisor believes the CI's character, criminal histo-

ry, or past actions may compromise the credibility of the CI process, then the CI shall be considered a Restricted Use CI requiring written approval from the authorized division captain.

If any one of the below listed factors applies to a CI that meets the criteria of a Regular Use CI or Defendant CI, the approval of the division captain is required. The below factors are not all inclusive.

The investigator must obtain written approval from the division captain if a CI:

1. Is a previously deported criminal alien.
2. Is or has been a member of, associated with, or had ties to an extremist group, hate group, anti-government group or militia (e.g., Ku Klux Klan, American Nazi Party, New Black Panthers), or international or domestic terrorist organization such as Al-Qaeda, Hamas, or Earth Liberation Front.
3. Is a convicted sex offender.
4. Is currently charged with or has been convicted of perjury as a result of testimony in a criminal or civil proceeding.
5. Has a Magistrate's Order of Emergency Protection or Protective Order issued against the individual.
6. Has a history of or exhibits signs of a violent nature (e.g., violent criminal history).
7. Has a history of or exhibits signs of mental instability.
8. Is a documented problem CI that has been deactivated.
9. Is the subject of a continuing investigation.

Group Draw System. A procedure in which operational money is issued from the division fund by a supervisor to investigators to conduct undercover operations.

Juvenile Confidential Informant. A confidential informant who is 10 years of age or older and less than 18 years of age. A juvenile confidential informant should be used only when a compelling public interest can be demonstrated and other investigative means are unsuccessful. In order for a juvenile confidential informant to be utilized, he or she must be approved for use by the authorized division's assistant chief and prior written authorization from the juvenile's parent or guardian must be obtained on the *Confidential Informant Code of Conduct Agreement* form.

Primary Division. The division that registers and maintains a confidential informant's file prior to any other division using that informant.

Purchase of Evidence. A payment for an item that is contraband or that may be used for evidentiary purposes.

Purchase of Information. A payment to a confidential informant for knowledge that is used in the investigation of criminal law violations or that assists in the gathering of intelligence.

Purchase of Service. A payment for an item or service as part of an investigation (e.g., drinks, motel room) that cannot be paid for through the City's procurement system without jeopardizing the investigation.

Secondary Division. A division actively using a confidential informant already registered by a *primary division*.

Significant Meeting. Any face-to-face meeting during which an investigator is informed by a confidential informant of criminal activity.

1 CONFIDENTIAL INFORMANTS ON PROBATION OR PAROLE

Use of confidential informants on probation or parole is prohibited unless the guidelines below are followed.

Confidential Informants on Probation

The investigator shall receive approval from the state agency supervising the probationer prior to allowing the probationer to work as a confidential informant.

The investigator must contact the criminal court having jurisdiction over the individual's case and notify the judge of the investigator's intention to use the individual as a CI. Only when the judge has given written permission, can the investigator register the individual as a CI.

Confidential Informants on Parole

The investigator shall receive approval from the state agency supervising the parolee prior to allowing the parolee to work as a confidential informant.

The investigator must obtain permission from the parole board prior to registering the individual as a CI. This can be accomplished by forwarding correspondence to the sanctioning parole board. If permission is granted, the investigator shall be required to follow the parole board's guidelines established for the parolee.

2 CONFIDENTIAL INFORMANTS AND CRIMINAL ACTIVITY

Confidential informants who are under arrest, have charges pending, or are currently charged in a criminal investigation, shall be permitted to operate only as Defendant CIs.

Defendant CIs are prohibited from receiving payment and cannot be released from custody to work with the investigator without a

written contract from a prosecuting attorney and prior authorization from the division captain as set forth below.

A written contract is required for any agreement between the District Attorney's Office and a Defendant CI, including one having a Restricted Use designation, if the CI is charged in a criminal investigation and does one or more of the following:

- a. Provides information on suspects or criminal activity unrelated to the case in which the CI is implicated in order to reduce or diminish the CI's culpability in his case.
- b. Provides information on co-defendants about criminal activity related to the case in which the CI is implicated in order to reduce or diminish the CI's culpability in the criminal activity.
- c. Performs an investigative activity (e.g., "buy/walk") under the direction and control of the investigator authorized to handle the Defendant CI in order to reduce or diminish the CI's culpability in his case.

The original written contract shall be provided to the District Attorney's Office for their case file and a copy shall be placed in the investigator's master case file.

If a Defendant CI, including one having a Restricted Use designation, provides information or performs an investigative activity but does not request reduced or diminished culpability in exchange for cooperation, a written contract is not required.

Defendant CIs, including those having a Restricted Use designation, shall not receive payment. However, the *purchase of services* or the *purchase of evidence* in the follow-up investigation involving the Defendant CI, including one having a Restricted Use designation, may be authorized in order to complete the criminal investigation

(e.g., "flash funds," props, purchase of stolen property). To document funds for these purposes, see section 10, *Confidential Informant Funds*, of this General Order.

If an investigator learns a registered Regular Use or Restricted Use CI subsequently is placed under arrest, has charges pending, or is charged in a criminal investigation, the investigator shall notify the captain or designee. The captain shall ensure the confidential informant is reclassified as a Defendant CI. A copy of the written contract (if applicable) and a copy of the criminal investigation master case implicating the individual shall be placed in the division's CI file. Such information shall be a factor considered in determining when to purge a CI file.

3 OTHER SOURCES OF INFORMATION

Persons considered other sources of information are not registered as confidential informants and shall not receive payment from the department. Payment to persons providing information through Crime Stoppers is documented by Crime Stoppers. Officers shall not circumvent the intent of this General Order by referring CIs to Crime Stoppers in order to avoid documenting the payment. Persons considered other sources of information shall not perform any investigative activity.

4 CODE OF CONDUCT FOR OFFICERS

Officers shall not engage in any activity or behavior with a CI that could challenge the integrity of or bring embarrassment to the officer or the department.

The following regulations are intended to govern the relationship between an officer and a confidential informant.

[REDACTED]

[REDACTED]

Verification Unit. CIs shall not be used until their identity has been verified unless written approval from the division captain is documented in the division CI file.

- c. All meetings between a CI and an officer shall be attended by two officers (e.g., officer and partner or officer and supervisor). Prior to meeting a CI, officers must advise their supervisor.

[REDACTED]

[REDACTED]

[REDACTED]

- e. Officers shall not socialize with CIs or their families.
- f. Officers shall not purchase items from or sell items to any CI.
- g. Officers shall not borrow money from or loan money to CIs.
- h. Officers shall not accept gifts or gratuities from CIs, CI family members, or their associates.
- i. Officers shall not enter into business relationships with CIs.

- e. If a current file for the confidential informant does exist, the officer shall check with the investigator on record regarding the availability of the CI before using the confidential informant.

- f. Confidential informants already on file with a *primary division* shall not be used by a *secondary division* without the approval of both division captains. If the *primary division* approves, CIs may be simultaneously used by two or more divisions. However, CI documents must be forwarded to the *primary division* as indicated in section 9, *Confidential Informant Files*, of this General Order.

5 CONFIDENTIAL INFORMANT REQUIREMENTS

The following additional requirements apply to the use of confidential informants:

- a. Supervisors are responsible for ensuring subordinates' adherence to confidential informant policies.

- g. Investigators wanting to use a new confidential informant shall complete a confidential informant registration index card that shall be forwarded to their CI file custodian for routing to CID.

[REDACTED]

- h. In accordance with section 10, subsection titled "Documenting Payments to CIs," officers shall not pay a confidential informant without the appropriate witness present.

- i. The documentation of a *significant meeting* between an investigator and a confidential informant shall be maintained on file by the CI file custodian.
- j. An investigator intending to use a confidential informant for the first time shall ensure the *Confidential Informant Code of Conduct Agreement* form is completed by the prospective informant and placed in the confidential informant's file. This department form is available on the HPD Intranet Portal.

6 DEACTIVATING PROBLEM CONFIDENTIAL INFORMANTS

Occasionally police officers shall encounter a confidential informant they consider a problem CI. Examples of when an individual is considered a problem CI include, but are not limited to, when:

- a. The CI is no longer willing to cooperate.
- b. The CI's cooperation has been determined to be unsatisfactory.
- c. The risk of using the CI outweighs the potential benefit to the department of using the CI.

When an individual is considered a problem CI, documentation stating why the person is classified as a problem CI shall be placed in that person's division confidential informant file and the problem CI shall be deactivated.

CID must be notified in writing when a CI is deactivated. Any future use of a deactivated CI shall require reactivation as a Restricted Use CI.

7 EVALUATION OF CONFIDENTIAL INFORMANTS

Supervisors shall evaluate the use of confidential informants on an annual basis. Addi-

tionally, perceptions as well as facts that may adversely affect the integrity or reputation of the department or the officer shall require an unscheduled review of the relationship between the officer and the CI. Captains shall have the authority to sever the relationship of an officer and a CI at their discretion.

8 TRAINING

Supervisors responsible for personnel using CIs shall ensure that their staff is trained in the procedures for handling confidential informants. Patrol officers and officers from other units who become involved in handling confidential informants shall be trained by supervisors in the *primary division* responsible for maintaining the CI's files.

9 CONFIDENTIAL INFORMANT FILES

Confidential informant files shall be maintained under the control and authority of the captains of only the Auto Theft, Burglary and Theft, Criminal Intelligence, Gang, Homicide, Internal Affairs, Juvenile, Major Offenders, Narcotics, Robbery, and Vice divisions. CI files shall be handled in accordance with the following procedures:

[REDACTED]

[REDACTED]

[REDACTED]

Third Ward), name of division maintaining confidential informant file, and name of investigator who has contact with the CI.

If officers need information to conduct a particular investigation, they may contact CID to determine the availability of any CIs who may be able to supply information regarding their investigation.

CID shall review the areas of expertise listed on the CIs' registration cards or in the central registration database and give the officer making the inquiry the name of the registering investigator who has contact with the CI. The requesting officer shall contact the registering investigator to determine whether the CI can assist with an additional investigation.

Patrol officers requesting information from the central registration file shall obtain approval from their immediate supervisor before the request is made.

Purging Confidential Informant Files

A division confidential informant file may be reviewed and purged at any time deemed necessary by the division captain (e.g., confidential informant is deceased, unfavorable supervisor evaluation).

Once a year, during the month of January, the captain of each authorized division shall review all information contained in each of their division confidential informant files to determine which files should be considered for purging.

Special consideration shall be given to those files that are five years old and older. Information contained in these files shall be destroyed if a review of the documents contained in the file indicates that no CI contacts have been made during the last five years.

A division captain may delay the purging of a CI file by placing written authorization in

the CI file that explains why the file was not purged (e.g., productive CI has been in prison past five years).

In addition to this consideration, other factors should be examined, for example, the nature of the offenses with which the CI is associated, whether the CI has an extensive criminal record or recent criminal activity, and whether the CI file contains information that could be used in the future by either the department or an outside agency.

After a division captain has decided to purge material contained in the division's CI files, the removed files shall be destroyed and the captain of CID shall be notified to destroy the concerned CI's central registration file.

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- a. Sergeant: Up to and including \$250
- b. Lieutenant: Up to and including \$2,500
- c. Captain: Up to and including \$7,500
- d. Assistant Chief: More than \$7,500

[Redacted]

[Redacted]

[Redacted]

- a. Name of division initiating the payment.
- b. Confidential informant's signature as an agreement that the payment was received.
- c. Confidential informant's control number as assigned in the central registration file.
- d. Amount of payment, both in numerical and script form.
- e. Date on which the payment was made.

- f. Signature of the investigator making the payment.
- g. Signature of at least one other officer witnessing the payment and the name of the agency employing that officer.
- h. Signature of the first-line supervisor witnessing the payment if the payment exceeds \$50.

Upon payment to the confidential informant, the completed *Confidential Informant Receipt for Funds* form shall be maintained in the confidential informant's CI file.

Monthly CI Fund Expense Report

At the beginning of each month, captains of divisions authorized to use CI funds shall submit to the Office of Budget and Finance via their chain of command through the executive assistant chief level, correspondence that includes a monthly CI fund expense report depicting the following information from the previous month in order to reconcile any expended CI funds:

- a. Beginning balance on the first day of the month
+ Monthly draw
Total funds available
- b. Officers' draw
- Officers' return
Amount Spent
- c. Total funds available
- Amount spent
Ending balance on the last day of the month
- d. Amount spent fiscal year to date

Captains of authorized divisions (except Internal Affairs Division) shall also include with the above correspondence, expense affidavits completed by the investigators (see below). The expense affidavits shall be reviewed by the assistant chief, removed

from the correspondence, and returned to the concerned division for filing.

Monthly Investigators' Expense Affidavit

At the end of each month, investigators issued CI funds shall submit to their captains either a signed and notarized expense affidavit listing that month's withdrawals, expenditures, and returns of CI funds, or an individually prepared, signed, and notarized expense affidavit for each withdrawal, expenditure, or return of CI funds during the month.

The investigator shall submit information depicting every transaction involving the expenditure of CI funds. All purchases shall be categorized on an expense affidavit as a purchase of evidence (PE), purchase of service (PS), or purchase of information (PI).

The investigators' expense affidavits shall be included with the monthly CI fund expense report outlined in the above subsection. Internal Affairs Division is exempt from forwarding investigators' expense affidavits to their assistant chief.

Expense Affidavit of Purchases of Evidence or Services

The documentation on an expense affidavit of *purchases of evidence or services* shall include the payments, date, City of Houston receipt number, incident number, amount spent, description of evidence or service purchased, location where funds were spent, and location where the evidence or item is stored. The name of the bankcard shall be documented when charging services or items.

An investigator shall obtain business receipts for service expenditures. The business receipts shall be attached to the investigator's expense affidavit and forwarded monthly to the authorizing supervisor to be maintained in the division.

Business receipts are not required if obtaining a receipt would jeopardize the investigator's undercover status or the integrity of the investigation.

Expense Affidavit of Purchases of Information

The documentation on an expense affidavit of *purchases of information* shall include the payments, date of the expense, City of Houston receipt number, amount spent, incident number, and the CI's central registration control number.

11 AUDITING PROCEDURES

An internal administrative financial audit of investigators' expense affidavits and each authorized division's monthly CI fund expense report shall be performed by HPD's Office of Budget and Finance biannually or as directed by the appropriate assistant chief. A report on this audit shall be sent to the Chief of Police.

12 STANDARD OPERATING PROCEDURES

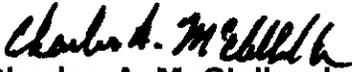
Each division using confidential informants shall develop and adhere to standard operating procedures (SOPs) specific to that division's use of confidential informant funds and that address the following:

- a. Acquisition and security of CI funds
- b. Investigator's expense affidavits
- c. Routing of monthly CI fund expense reports
- d. Use of *Confidential Informant Receipt for Funds* forms
- e. Personnel authorized to access the division safe
- f. Use of "flash funds"

- g. Use of group draws (for divisions using a *group draw system*)
- h. Use of a division ledger or a secure database to document the withdrawal and return of funds to the division safe

13 RELATED GENERAL ORDER

100-07, Standard Operating Procedures


Charles A. McClelland, Jr.
Chief of Police