



Confidential Informants	Related Policies:
<i>This policy is for internal use only and does not enlarge an employee’s civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Arkansas Statute: Act 1012 of 2019	
CALEA Standard: 17.14.2; 43.1.3	
Date Implemented:	Review Date:

I. **Purpose:** The purpose of this policy is to direct the operations and investigations conducted by this department through the use of confidential informants.

II. **Policy:** It is the policy of this department to thoroughly and impartially investigate crime using all resources available including confidential informants. It is recognized that confidential informers may have various motivations for providing law enforcement with information. Additionally, it is the policy of this department to ensure that all information provided during investigations be from reliable sources and be corroborated through any investigative means available.

III. **Definitions**

A. **Anonymous Informant:** an informant who provides information through any medium (i.e. phone, letter, email, etc.) but who does not provide his/her identity and therefore is unknown to law enforcement.

B. **Confidential Informant (“CI”):** an informant who provides information to law enforcement based upon some motivation (i.e. paid informant or informant who has agreed to provide law enforcement with information upon an agreement with law enforcement and prosecutors for more lenient treatment related to the informant’s criminal charges).

C. **Established Confidential Informant:** A CI who has been approved by the Chief of Police or their designee following completion of the procedure for establishment set forth in this policy.

D. **Confidential Informant File:** A file maintained by the department, at the direction of the Chief of Police, for purposes of documenting all activity related to each confidential informant used by this department.

E. **Index File:** A file maintained by the Chief of Police or their designee, which contains an index of all confidential informants’ names and their corresponding CI number. This is a limited access file. This file also contains a list of CI’s who have been rejected or who have been terminated as informants due to unreliability or some other issue.

- F. **Good Citizen Informant:** Citizens, witnesses, and victims of crime whose identities are known to law enforcement and who have no motivation with respect to the information they provide to law enforcement.
- G. **Stale Information:** Information that is not timely such that it can no longer be considered useful for purposes of the seizure of contraband or evidence (i.e. the evidence or contraband is not likely to be found at the location where it had initially been observed).
- H. **Control Officer:** The officer responsible for controlling the informant at any given time while the CI is an established CI with this department.
- I. **Material Witness:** A witness who has significant information about the crime in question such that this information effects the outcome of the trial.

IV. Procedure

- A. **Anonymous Information:** Members of this department are directed that no law enforcement action will be taken based upon information provided by anonymous informants until and unless sufficiently detailed information has been provided by the informant and an officer from this department has corroborated the information provided (information which predicts future conduct of a subject which is then corroborated by law enforcement may sufficiently establish that the informant has intimate knowledge of the subject and thereby establish reasonable suspicion).
- B. Anonymous Information that merely provides an allegation: the description and location of a suspect is insufficient to justify law enforcement action even when such information is corroborated. One exception to this provision would be anonymous information of this type indicating that a person has a weapon in a school.
- C. Anonymous information regarding allegations of law enforcement officer misconduct shall be forwarded through the chain of command for review and/or investigation.
- D. Good Citizen Informants are generally considered reliable; however, officers should always investigate the possibility of a motivation with respect to information received. As with any form of information provided, officers should always take investigative steps in an attempt to corroborate information provided by informants where practicable and feasible.

- V. **Confidential Informers:** Due to the nature of confidential informants, members of this department should be vigilant in the investigation of every person who is used as a CI.

A. **Factors to be considered with all CI's**

- i. **Reliability:** Has the CI provided information in the past that was documented in the department's CI file; did the information provided prove reliable?
- ii. **Veracity:** Is the CI providing sufficiently detailed information that establishes that the CI has a sufficient basis of knowledge with respect to the information such that the integrity of the information is established?
- iii. **Stale:** Is the information provided by the informant with respect to the location of evidence or contraband stale such that it is unlikely that the evidence or

contraband will be found at the location where the informant believes it is located?

- B. Confidential Informant File:** Any established CI that is used by members of this department shall be documented in the CI file. The file shall contain:
- i. An index number by which the CI shall be identified. The Chief of Police or their designee shall have a corresponding index which will include the names corresponding to the index numbers in the CI file;
 - ii. History summary of all cases in which the informer has provided information and the outcome of these cases and any indicators from the investigations which proved the informant reliable or unreliable; and
 - iii. Update on whether the CI is active or inactive.
- C. Establishing a CI:** An officer seeking to establish a CI shall follow the department chain of command and provide documentation for the CI to be approved by the Chief of Police or their designee.
- i. Initiating the establishment process requires the officer to document the following information:
 - a. Full set of fingerprints;
 - b. Photograph;
 - c. Current criminal history;
 - d. Biographical Information to include:
 1. Date of birth
 2. Descriptive Factors: Height, weight, eye and hair color, race, tattoos, etc.
 3. Vehicles owned
 4. FBI number if applicable
 5. Addresses for previous three years;
 - e. Known associates;
 - f. Prior contacts with this department including any prior information provided;
 - g. Prior or current status with any other law enforcement department as a CI;
 - h. Narrative outlining the CI motivation for becoming a CI (i.e. paid for information or criminal suspect/defendant seeking leniency on criminal charges);
 1. No member of this department shall offer any person leniency on criminal charges, without first conferring with the prosecutor through this department's chain of command, and upon agreement of the chief of police or his designee and the prosecutor that such leniency will be offered in exchange for the information.

- i. Signed Informant Agreement;
 - j. Narrative outlining information that the CI is expected to provide and any indicators known to the officer offering the informant as an established CI which would indicate the subject is reliable;
 - k. If the CI is currently on probation or parole, that fact will be detailed in the file. Additionally, the Chief of Police or their designee shall seek the input and approval of the parole/probation officer with respect to the subject's establishment as a CI; and
 - l. The Chief of Police or their designee is required to visually confirm the existence of each CI.
- ii. The Chief of Police or their designee shall review the documentation and cause the informant index to be reviewed so that a determination can be made as to whether the informant has ever been used in the past or whether the informant has ever been rejected or terminated as unreliable or other negative issue.
 - iii. Law enforcement action shall not be taken solely on information provided by a CI prior to the establishment of the CI by this department. With all information provided by informants of any type, officers of this department shall take investigative steps to corroborate the information to the extent practicable and feasible.
 - iv. A CI will not be considered established until such time as the establishment process has been completed and approved by the Chief of Police or their designee.
- D. Juveniles:** The use of a juvenile as a CI is discouraged.
- i. No juvenile shall be used as an informant unless a parent or guardian has given express written authorization and has co-signed the CI agreement and a waiver.
 - ii. No juvenile shall be used as a CI without the express consent of the Chief of Police or their designee.
 - iii. No juvenile shall be used as a CI in a manner that is contrary to state law.
- E. Maintaining Confidentiality:** It is recognized that a CI whose identity has been discovered may be at risk for retribution. As such, this department shall take all steps that are legal to maintain the confidentiality of any Established CI. **Act 1012 of 2019 of the Arkansas General Assembly shields certain identifying information of confidential informants from release under the Arkansas Freedom of Information Act.** Department personnel who become aware of the identity of a department CI shall not reveal any information related to the CI that may reveal their identity. The following exceptions apply to this provision and disclosure is appropriate under the following circumstances:
- i. Disclosure to other department personnel who have a need to know in order to perform official duties of this department: The control officer for the informant shall notify his/her supervisor that a disclosure was requested and he/she shall obtain authorization for such a disclosure.

- ii. Disclosure to other law enforcement agencies or governmental entities that have a need to know in order to perform their governmental function. The control officer shall, through the chain of command, get approval from the Chief of Police or his/her designee before this type of disclosure.
- iii. The CI has agreed or the CI is required to testify in a grand jury or judicial proceeding. It is noted that where appearance is required, the control officer shall notify the Chief of Police or their designee to determine the proper course of action in conjunction with the prosecutor.
- iv. If the CI's identity is required to be disclosed due to a decision of a court, prosecutor, or other governmental department with the authority to require disclosure, the department shall notify the established CI of the disclosure.
- v. Note: the use of a CI in a manner that makes the CI a material witness will lead to a required disclosure if a prosecution goes forward on the crime for which the CI is a material witness.

F. General Provisions

- i. Officers shall work within the boundaries of State and Federal Constitutional Law as well as complying with all departmental policies. It is noted however, that one of the basic functions in using a CI often requires the CI to commit an unlawful act and to report it to members of the Department. Recognizing this, under no circumstance will a CI be authorized to commit a crime that could foreseeably lead to the injury of a person. Rather, the CI's actions will be limited to crimes such as the purchase of contraband.
- ii. Officers shall seek the assistance of the prosecutor in cases where the officer is considering using a CI to obtain information from a defendant who has been formally charged or who has been formally charged and represented by counsel (i.e. Jailhouse CI). In cases where the 6th Amendment to the U.S. Constitution has attached, questioning of a defendant at the direction of law enforcement by a CI may violate the Constitution.
- iii. Officers shall not interfere with the arrest or attempt to influence the prosecution of a CI by this department or another department in a matter unrelated to an investigation the CI is working on at the behest of this department. Any action taken on behalf of a CI shall only be taken with the express authorization of the Chief of Police or their designee.
- iv. Officers shall not reveal department information to a CI that involves an independent investigation of the CI.
- v. Officers shall maintain an ethical relationship with a CI at all times. Officers shall not:
 - a. Engage in any personal or business financial deals with a CI;
 - b. Become romantically involved with a CI;
 - c. Give or receive gifts, gratuities, or loans from or to a CI;
 - d. Interact on a social website when not duty related; or
 - e. Engage in off-duty or social interaction with a CI.

- vi. During all meetings/debriefings of a CI, at least two officers shall be present unless some exigent circumstance exists in which case the officer shall notify their supervisor of the meeting as soon as practicable.
- vii. Two officers must be present at any meeting where the CI is of the opposite sex of the controlling officer or in the case where the CI is a juvenile.
- viii. Payments to CI shall never be made unless two officers are present to witness the payment.
- ix. Officers shall not make prosecution recommendations on behalf of any informant without the express consent of the Chief of Police or his/her designee.
- x. Officers shall not make appearances on behalf of any informant in an official proceeding without the express authorization of the Chief of Police or their designee.

G. Information in Exchange for Leniency on Criminal Charges

- i. Officers are not authorized by this policy or law to offer unilateral leniency or immunity to any person.
- ii. Any offer of leniency or immunity must be approved by the prosecutor(s) having jurisdiction over the crimes at issue, and the Chief of Police.
- iii. There is an absolute obligation to inform prosecutors who may be using the CI or information from a CI of any agreement, leniency, offer, or any type of reward that that the CI received for their cooperation.

H. Monetary Payments to Established CI

- i. All payments to CI are to be approved by the Chief of Police or their designee.
- ii. Payments shall not be contingent upon the conviction or punishment of the person for whom the CI provides information.
- iii. All payments shall be documented in the CI file under the CI's number. Documentation shall include:
 - a. Amount Paid;
 - b. Narrative summary of information provided which led to the payment;
 - c. The two officers who witnessed the payment; and
 - d. Running cumulative total of amount paid to this informant in the calendar year.

I. Expenses related to informants:

- i. All expenses related to informants shall be documented with receipts which shall be forwarded to the CI file and include a department case number or short narrative detailing the need for the expenditure.
- ii. The control officer's supervisor is responsible for ensuring that all expenses are properly documented in the CI file and accompanied by a receipt.

J. Informant Rules: All CI's shall be informed of the following and shall sign an Informant Agreement acknowledging:

- i. A CI is not a member of this department and has no legal authority as a result of their position as a CI including no law enforcement powers;
 - ii. Status as a CI may be dangerous. This department does not in any way assure the CI's safety from harm caused as a result of their status as a CI;
 - iii. CI's are not authorized by this department to carry firearms;
 - iv. Any paid CI is an independent contractor to this department and thus not entitled to Workman's Compensation or Unemployment Compensation;
 - v. The department is not responsible for any injury or death suffered by the CI in the course of their association with this department;
 - vi. The CI is responsible for reporting and paying taxes related to any payments made to the CI by this department;
 - vii. The CI may be arrested for any crime committed not related to their function as a CI and while under the direct control of the control officer;
 - viii. The CI shall maintain the confidentiality of any law enforcement information which comes into their basis of knowledge due to their association with this department; and
 - ix. Any violation of these rules may lead to the termination of any association between this department and the CI.
- K. Supervisory Audit:** If resources allow the Chief of Police or their designee shall cause a quarterly audit of all CI activity. In no case shall such audits be done less than annually. This audit shall specifically include:
- i. Audit of the index file and the CI file to ensure that all documentation for each active CI is up to date and contained within their respective files;
 - ii. The Chief or their designee shall cause the criminal history of each active informant to be reviewed and updated in the file;
 - iii. Audit of all payments to CI for a determination that all monies are accounted for and that proper documentation for monies expended is contained within the files;
 - iv. Audit of all expense money used for purposes of investigations involving a CI, including but not limited to such items as expense money (i.e. fuel, rent, food, etc.), buy money, and any other money expended during these operations;
 - v. Audit probable cause affidavits of investigations involving a CI to ensure that the CI in such affidavits are fully documented in the CI file, Index file and any other file.; and
 - vi. The Chief of Police or their designee should randomly choose CI's to meet with and verify their involvement in the case for which they are cited.