

## Informants

### 603.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for the use of informants.

#### 603.1.1 DEFINITIONS

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 La Mesa Police Department for law enforcement purposes. This also includes a person agreeing to supply information to the La Mesa Police Department for a benefit (e.g., a quid pro quo in the form of a reduced criminal penalty, money).

### 603.2 POLICY

The La Mesa 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 routinely audited and that payments to informants will be made according to the criteria outlined in this policy.

### 603.3 USE OF INFORMANTS

#### 603.3.1 INITIAL APPROVAL

Before using an individual as an informant, an officer must receive approval from his/her 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 age, maturity and risk of physical harm, as well as any indicators of his/her reliability and credibility.

Members of this Department should not guarantee absolute safety or confidentiality to an informant.

#### 603.3.2 JUVENILE INFORMANTS

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

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

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#### 603.3.3 INFORMANT AGREEMENTS

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.

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

#### 603.4 INFORMANT INTEGRITY

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

- (a) The identity of an informant acting in a confidential capacity shall not be withheld from the Chief of Police, Division Commander, Special Investigations 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 La Mesa 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.
  - (a) Members shall not become intimately involved with an informant.
  - (b) Social contact shall be avoided unless it is necessary to conduct an official investigation, and only with prior approval of the Special Investigations Unit supervisor.
  - (c) 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 public or private place unless accompanied by at least one additional officer or with prior approval of the Special Investigations Unit supervisor.
- (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.

#### 603.4.1 UNSUITABLE INFORMANTS

The suitability of any informant shall be considered before engaging him/her in any way in a covert or other investigative process. Any abnormal behavior, arrests, or any other unusual circumstance posed by the information must be documented and the SIU supervisor shall be notified immediately. The DIU supervisor will initiate a review to determine suitability. Until a

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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. The SIU Supervisor or the Services Lieutenant may, at their discretion, terminate the use of an informant based on the considerations listed below.

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.
- (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.

#### **603.5 INFORMANT FILES**

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 are confidential and will be kept in a secure cabinet under the control of the SIU Supervisor. When an officer or detective needs access to their informant's file, the SIU Supervisor shall allow access to the file. The file must be kept in the SIU office and shall not be removed from the SIU office unless the file is needed for court or for review by the District Attorney's Office. Informant files shall only be viewed by the handling officer/detective or by the SIU supervisor and the Services Lieutenant. If an officer/detective would like to view an informant file assigned to another officer/detective, the inquiring officer must have the handling officer's or SIU Supervisors permission to view the file.

Informant files will shall be audited by the SIU Supervisor on a regular basis to ensure the files are updated to conform to this policy. The Services Lieutenant may audit the informant files at any time to ensure the files are up to date and conform to department policy. If the SIU Supervisor or Services Lieutenant are replaced, the files will be audited before the new supervisor takes over

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management of the files. The purpose of the audit is to ensure compliance with file content and updating provisions of this policy.

#### **603.5.1 FILE SYSTEM PROCEDURE**

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
- (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

#### **603.6 INFORMANT PAYMENTS**

No informant will be told in advance or given an exact amount or percentage for his/her service. 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

All forms of benefit/payment to an informant must be documented and approved by the SIU supervisor and the Services Lieutenant prior to payment.

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#### 603.6.1 PAYMENT PROCESS

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

- (a) Payments of \$500 and under may be paid in cash from a Special Investigations Unit buy/expense fund.
  1. The Special Investigations Unit supervisor shall sign the voucher for cash payouts from the buy/expense fund.
- (b) Payments exceeding \$500 shall be made by issuance of a check, payable to the officer who will be delivering the payment.
  1. The check shall list the case numbers related to and supporting the payment.
  2. A written statement of the informant's involvement in the case shall be placed in the informant's file.
  3. The statement shall be signed by the informant verifying the statement as a true summary of his/her actions in the case.
  4. Authorization signatures from the Chief of Police and the City Manager are required for disbursement of the funds.
- (c) 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) La Mesa 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.

#### 603.6.2 REPORTING OF PAYMENTS

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.

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#### 603.6.3 AUDIT OF PAYMENTS

The Special Investigations 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.

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.

#### **603.7 SAN DIEGO DISTRICT ATTORNEY'S OFFICE**

The scope of this policy follows the guidelines set forth by the San Diego County District Attorney's Office Confidential Informant (CI) Manual (2006 revision of CI Guidelines published in 1997 CI Manual).

This basic policy conforms within the guidelines of the San Diego County District Attorney's Office. Whenever there is a CI used in a case which is sent in for prosecution, the issuing Deputy District Attorney or a specific Deputy District Attorney (such as Narcotics) shall be notified as soon as possible.

[See attachment: San Diego District Attorneys Office CI Manual.pdf](#)

## **Attachments**

## **San Diego District Attorneys Office CI Manual.pdf**



## **“Hot Roll” Advisal**

(Tape record advisal and answers to avoid confusion and unintended benefits to PCI)

1. You (have been/could be) arrested for (describe offense/crime in plain words).
2. (I/You) asked to talk to (you/me) about your potential cooperation with law enforcement.
3. I want to explain some things before we talk. Please listen carefully.
4. I will decide whether or not to (arrest/book/charge) you for this offense after I determine your record and hear what you have to say.
5. Even if you cooperate with me now, or wish to do so in the future, you (will/may) be (arrested/booked/charged).
6. This case (will/may) be submitted to the District Attorney for prosecution.
7. The only promise I am making to you is that I will inform the District Attorney on this case of your cooperation (efforts/proffer).
8. The District Attorney determines the appropriate charges and settlement, if any, on your case.
9. The Court decides the final sentence and punishment.
10. Once you are arraigned, your attorney shall also be informed of your cooperation (effort/proffer).
11. Once you have an attorney in this matter, all communications about cooperation and the settlement of this case must go through your attorney and the District Attorney.
12. Do you understand each of these things I have explained?
13. Understanding these things, do you want to speak with me?

# FACTORS TO CONSIDER WITH POTENTIAL COOPERATING INDIVIDUALS (PCIs)

The endless combinations of CI issues fall within four general categories that haven't been tied to the practical acronym:

*Please (People) Take (Target) Percentage (Plan) Risks (Risks).*

The following specific "Factors to Consider" and CI Guidelines may be used as a checklist for issue-spotting. See also, Chapter 6, section C.

## I. PCI'S Criminal Background

### A. PCI'S Prior Record (Review all known case files and pbs reports)

1. Length of record
2. Acts of violence (CI Guideline 14)
  - a) Arrests
  - b) Convictions
  - c) Domestic violence

### B. Potential for Future Violence (CI Guideline 14)

1. Weapons history
2. Criminal organizations (e.g., street gangs)

### C. Sophistication (Mental and Criminal)

### D. Dishonesty

1. Charge related
2. Report related (e.g., lied to police)
3. PHS reports (e.g., lied to probation or court)
4. FTS's
5. Tax returns (false/omitted info)
6. Government benefits (false/omitted info)

### E. Record as a CI ("blackballed"?)

1. Successes and failures
2. References
3. CIBR's in Special Operations Division

### F. Control Issues

1. Continuing crime potential (e.g., DUI, addict, gang member, domestic violence, thief)

2. Logistics of release (e.g., housing, food, money, transport, work)
3. Flight potential

## **II PCI Tail**

- A. Probation (Formal or Informal; State/Federal)
  1. Probation officer's consent
  2. Notification (prosecutor/defense attorney/court)
  3. Conditions of probation
  4. Stayed sentences
  
- B. Parole (State/Federal)
  1. Local agent and supervisor's consent
  2. State level
  
- C. Juvenile Wardship (PC 701.5)
  1. CYA parole
  2. Probation
  3. Placement

## **III. PCI's Status in Criminal Justice System**

- A. Defendant and non-defendant PCI's
  1. Motivation
  2. Limitations (e/g/, agency rules)
  3. Status of all cases in all jurisdictions (CI Guidelines 23)
  4. Impact on co-defendant case(s)
  5. Bail issues
    - a) bail source hold (Pen. Code, §1275)
    - b) impact on co-defendant(s) bail
    - c) bond agency issues
  6. Cases in which PCI is a Victim or Witness
    - a) pending cases
    - b) current or prior investigations
    - c) prior cases
  
- B. Sentenced Prisoner
  1. Exposure
  2. 90-day diagnostic (Pen. Code, §1203.03)
  3. 120-day recall (Pen. Code, § 1170(d))
  4. Appeal issues

- a) pending or possible appeal
- b) right to counsel

C. Striker Issues (CI Guideline 15)

- 1. Filed and unfiled
- 2. Sentence impact
  - a) one strike
  - b) two (or more) strikes
  - c) multiple counts
- 3. Victim/public relations
- 4. Impact on other strikers

D. In-custody/Jailhouse CIs  
(Special Rules)

- 1. Special Jury Instructions (PC § 1127a)
- 2. Prosecutor must file written statement listing all benefits
- 3. Notice Requirement to Victims of defendants who become in-custody informants, must be given before trial with in-custody informant testimony. (PC § 1191.25)
- 4. Monetary payment restrictions. (PC § 4001.1(a)), (CI Guidelines 16)
- 5. CI limited role against target. (in-custody/represented). (PC § 4001.1(b))

**IV. Other Status Issues**

A. Parental/Guardian Issues for Juveniles and Adults under Conservatorship

- 1. Knowledge
- 2. Shared legal or physical custody
- 3. Permission (parent, guardian, and court)

4. Parental and guardian criminal issues

- a) Pending criminal case
- b) record
- c) criminal ties (e.g., street gangs)
- 5. Agency policies regarding use of juvenile CI
- 6. Restrictions/prohibitions re informants under 18. (PC §701.5)

B. Immigration Status

- 1. Immigration “hold”
  - a) bail
  - b) physical location
- 2. AUSA involvement

3. Federal sentence matrix

C. Military Status (PCI in or wants to be in the military)

1. Impact of arrest
2. Impact of charge selection
3. Impact of conviction selection
4. Impact of sentence
5. Availability (transfer order)
6. Prosecutor confirmation of conviction/cooperation impact with military

**V. Legal Representation of PCI on All Matters (CI Guidelines 6, 7, 9, 10, 21, 22)**

A. PCI has Attorney

1. *Miranda v. Arizona* [(1966) 384 U.S. 436]
2. *Massiah v. United States* [(1964) 377 U.S. 201]
3. Rule 2-100 (California Rules of Professional Conduct)
4. PCI does not want defense attorney to know of cooperation (CI Guideline 11)
5. Defense attorney conflict of interest (e.g., represents target(s))
  - a) defense attorney knows of conflict
  - b) defense attorney does not know of conflict
6. Problem defense attorneys
  - a) does not cooperate with any client
  - b) questionable ethics or competence
  - c) refuses to make any record regarding cooperation
  - d) criminal investigation attorney
  - e) intrusive

B. PCI has no attorney

1. Limited window of opportunity
2. Agreements interpreted in favor of PCI (*People v. Hayes* (1988) 200 Cal. App.3d 400; *US v. Wilson* (2004) 392 F.3d 1055)

**VI. Goals (What can the PCI Produce?)**

A. Target Value

1. Target's prior record
2. Target's potential danger to the community
  - a) documented past
  - b) other sources
3. Target's own pending prosecution
  - a) strength of case with PCI help

- b) strength of case without PCI help
    - c) impact of PCI on target's co-defendant's case
  - 4. Likelihood of target arrest without PCI help
- B. PCI implicates other
  - 1. Co-defendant(s)
  - 2. Defendants' other cases
  - 3. Suspect(s)
  - 4. Organizations
  - 5. Mass operations
  - 6. Infiltrate (intelligence only) (CI Guideline 5)
  - 7. General good (e.g., cache of weapons with no defendants)
- C. PCI information exonerates others (Chapter III)
  - 1. Co-defendant(s)
  - 2. Defendants in other cases
  - 3. Suspect(s)
  - 4. Disclosure issues (*Brady v. Maryland* (1963) 373 U.S. 83; *Kyles v. Whitley* (1995) 514 U.S. 419.)

## **VII. Disclosure Issues** (CI Guidelines 3)

- A. Testifying (CI Guidelines 17, 25)
  - 1. Benefit Record (Chapter V)
    - a) agency
    - b) D.A. (CIBR)
    - c) to defense (e.g., Pen. Code, §1127a(c))
  - 2. Jury instructions (e.g., Pen. Code, §1127a(b))
    - a) benefits
    - b) credibility
    - c) entrapment
  - 3. PCI right to counsel
  - 4. PCI immunity issues
  - 5. PCI baggage (e.g., record, crimes while cooperating)
  - 6. PCI protection
- B. Non-testifying (CI Guidelines 3,5)
  - 1. All reports and benefits list to prosecutor
  - 2. Confidentiality of CI identity and information (Evid. Code, §1040-§1042(d))
  - 3. Inquiry response
- C. Protection/Relocation issues (see Relocation Protocol)

- D. Timing of Disclosure (WHEN Disclosed)
- E. Disclosure Responsibility (WHO Discloses; PC 1054.7)
- F. Notification (HOW Disclosed; see Chapter III, section C)
  - 1. PCI (Before disclosure to target)
  - 2. Law Enforcement (e.g., control agent)
  - 3. Prosecution
  - 4. Court
  - 5. Defense
- G. Defense Requests to Interview PCI
  - 1. In-person interview
    - a) safety
    - b) control
  - 2. Telephonic interview or declination
  - 3. Interview
  - 4. Declination stipulation

## **VIII. Benefits**

- A. Benefits Broadly Defined (Chapter 1, section D; CI Guidelines 13,16)
- B. Beneficiaries other than PCI
  - 1. Co-defendants or defendants in other cases
    - a) aware of PCI cooperation/benefit
    - b) unaware of PCI cooperation/benefit
  - 2. Others
    - a) family (e.g., protection, relocation)
    - b) friend
    - c) uncharged suspect
    - d) miscellaneous
- C. Impact of Benefit
  - 1. Victim issues
    - a) notification (Pen. Code, §1191.25)
    - b) *Tarasoff* Warning (*Tarasoff v. Regents of UC* (1976) 17 Cal.3d 425; *Marsy's Law* (2009) Cal. Const., art. I, section 28(e).)
    - c) protection issues
  - 2. Disclosure issues
  - 3. Revocations, charged and uncharged

- a) PCI (CI Guidelines 10,12,13,25)
  - b) other defendant c) target
- 4. Sentencing
  - a) stay custody
  - b) 4<sup>th</sup> waiver

## **IX. Miscellaneous Issues**

- A. PCI (CI Guideline 3)
  - 1. Language
  - 2. Cultural or sexual bias
  - 3. Family and associates
    - a) risk to law enforcement (e.g., members of street gangs, target)
    - b) safety (See Relocation Protocol) (1) protection
      - (2) relocation
  - 4. Mercenary CI becomes defendant
    - B. Control Agent (PCI Handler)
      - 1. Experience (success and failures)
      - 2. Logistical support
      - 3. Commitment (CI Guideline 12)
- C. Public Relations Issues
  - 1. Media impact of CI use
  - 2. Law enforcement (e.g., police, other prosecutorial agencies)
    - a) PCI a problem/target
    - b) PCI use will impact agency workload
  - 3. Internal agency impact
- D. *Tarasoff* Warnings (*Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425.)
  - 1. Resulting in disclosure of PCI
  - 2. Triggering additional *Tarasoff* Warnings