

Rules and Procedures

Rule 333

March 1, 2006

Rule 333 - CONFIDENTIAL INFORMANT PROCEDURES

In conformance with Rule 112, Sec. 2, Special Order 96-31, "Confidential Informant Procedures," issued June 10, 1996, is hereby incorporated as Rule 333. The provisions of this Rule are effective February 1, 2006, and all previously issued Rules, Orders, Memorandums and Directives on this subject are hereby rescinded and replaced by its provisions.

PURPOSE:

To detail procedures relative to the recruitment and record keeping requirements connected with the use of confidential informants.

Sec. 1 GENERAL CONSIDERATIONS:

One of the most important responsibilities of any police officer is the recruitment and development of informants to the point where they regularly contribute information concerning criminal enterprises and become a valuable resource to the Department.

Although individual officers are responsible for recruiting informants, informants do not 'belong' to the officer, but represent a resource for the Department as a whole.

The specific procedures and requirements of this rule do not apply to persons providing information as anonymous participants in the "Crime Stoppers" program.

All reports and data relating to confidential informants and the information they supply that are required to be forwarded or transported to a particular unit or person in accordance with this rule, shall be hand-delivered in sealed envelopes and not placed in Department or U.S. Mail.

All references to information/documents being provided to a District/Division Commander by a Detective Supervisor are to be via the Detective Supervisor's chain of command.

In cases where there is disagreement between a District or Unit Commander and the Chief, Bureau of Investigative Services as to the appropriateness of any action or procedure being contemplated or performed in accordance with this rule, the Chief, Bureau of Investigative Services shall be the final arbiter of such disagreement and shall have complete authority to direct what actions or procedures shall be done or not done.

Sec. 2 DEFINITIONS:

Source of Information - a person or organization, not under the direction of a specific officer, who provides information without becoming a party to the investigation itself (e.g., a business firm furnishing information from its records; an employee of an organization who, through the routine course of his/her activities, obtains information of value to the Department; or a concerned citizen who witnesses an event of interest to the Department).

A **source of information** who seeks financial compensation shall be re-classified as a **paid confidential informant**. A **source of information** who becomes an active participant in the investigative process shall be re-classified as an **other informant**.

Paid Confidential Informant - a person who provides a police officer with information regarding a crime or criminal activity for monetary consideration and is compensated in any manner.

Defendant Informant - a person who provides a police officer with information regarding a crime or criminal activity in exchange for consideration in a pending criminal matter. Officers are not to enter into any agreement or promise with such a person without first notifying and receiving the approval of an Assistant District Attorney, Assistant U.S. Attorney or Assistant Attorney General. Upon receiving such approval, the officer shall complete a report that documents the date and time of such notification, what promises or considerations were made and who granted the approval. The original of such report shall be placed in the informant's District/Unit confidential informant file and a copy of the report shall be forwarded to the Chief, Bureau of Investigative Services, or his designee.

Other Informant - a person who has a criminal background, or who associates with a criminal element or with a person with a criminal background, who may or may not have a criminal case pending and who wishes to act as an informant. Possible motivations for such informants include, but are not limited to, the following:

- a. personal gratification, which may include collecting rewards;
- b. revenge;
- c. rivalry;
- d. avoiding criminal prosecution.

Significant Contact - any contact or communication with an informant, planned or unplanned, in which the informant provides information of any intelligence value to any law enforcement agency regarding criminal activity or which is used as the basis of a search or arrest warrant.

Code Number - the code number is a combination of numbers and letters which will consist of the last two numbers of the calendar year that the informant is entered, followed by the numerical number of the District/Unit, followed by the first and last initials of the recruiting

officer's name, followed by a sequential number. Thus, an informant entered in 1995 by the Drug Control Unit, Sergeant John Doe, would be coded 95-28-JD-01. Any reference to the confidential informant will be by the code number or alias. Informants identified as being used by multiple officers shall have a code number assigned by the Chief, Bureau of Investigative Services or his/her designee.

Sec. 3 INFORMANT RESTRICTIONS:

In addition to the definitions and categories described above, individuals fitting the criteria established below shall be subject to the additional requirements indicated:

Persons less than 18 years of age - may only be utilized with the written consent of their parent or legal guardian.

Persons on probation or parole - all persons on parole shall be informed that the Department will seek permission to have them released from any conditions of their parole that prohibit them from acting as an informant. The following procedures will be utilized:

- i. **Federal Probation or Parole** - the Department shall seek authorization and approval from the United States Regional Parole Commissioner, in accordance with the provisions of the U.S. Parole Commission requirements governing the Use of Parolees and Mandatory Releases as Informants/Confidential Sources, S. 2.40 (05). If granted, a copy of the agreement between the Department and the U.S. Parole Commission shall be placed in the informant's file at the District or Unit and in the confidential informant central file;
- ii. **State Parole** - the Department shall seek authorization and approval from the informant's parole officer. If granted, a copy of the Commonwealth of Massachusetts Parole Board Confidential Waiver Agreement shall be kept in the informant's file at the District or Unit and in the confidential informant central file (see, Commonwealth of Massachusetts Parole board Manual of Policies and Procedures, Chapter 500 sec. 505.17);
- iii. **State Probation** - all persons on state probation shall be instructed that their use as an informant may create a conflict with their probation and that they should seek the advice of their Probation Officer.

Persons who have previously been disqualified as an informant - May only be utilized on a case by case basis with the concurrence of the Unit or District Commander and the written approval of the Chief, Bureau of Investigative Services, subject to such additional restrictions as he/she may require.

Sec. 3 INFORMANT RECRUITMENT PROCEDURES:

Recruiting/Control Officer's Responsibilities:

Officers who identify and recruit individuals that are willing to provide information to the Department must comply with the following proceedings for all individuals except those defined as a "**source of information**":

- A. Report any initial contact with a potential informant to the officer's Detective Supervisor;
- B. Conduct a criminal history check (BOP check; NCIC check; NLETS check);
- C. Set up an appointment with the officer's Detective Supervisor to meet the potential informant to determine his/her potential use, to evaluate his/her credibility and to ensure that he/she provides satisfactory documentation to positively verify his/her true identity;
- D. Fill out two Confidential Informant Cards, BPD form 2468, and make one photocopy of the card once it is completely filled out. Attach a recent photograph (i.e., recent ID photo or a Polaroid) to the original Confidential Informant Cards and to the photocopy.
- E. Read and explain the provisions of the Informant Working Agreement, BPD Form 2645, to the potential informant. If the potential informant agrees to abide by its conditions, have two originals of the agreement signed by the potential informant, the recruiting officer and the officer's Detective Supervisor and make one photocopy of it;
- F. Give the Detective Supervisor all documents gathered that help to identify the informant or establish his/her reliability, including criminal history checks and both the originals and photocopies of the Confidential Informant Card, with the photographs attached, and the Informant Working Agreement.
- G. If use of the informant is approved, assist the Detective Supervisor in conducting a complete initial debriefing of the informant.
- H. All planned meetings or significant contacts with the informant shall be documented by recording all records of payment, if any, **and** the filing of debriefing reports. Debriefing reports shall not identify an informant by true name but shall include the date of the meeting, the code number of the informant, the names of the officers who met with the informant, a summary of the information the informant supplied and what payment, if any, was made to the informant. The original of all debriefing reports, including debriefing, and all payment records and/or receipts shall be placed in the District/Unit Detective Commander's confidential informants file. A copy of all debriefing reports, including the initial debriefing, shall be kept in the Detective Supervisor's confidential informant file and a second copy shall be sent to the Chief, Bureau of Investigative Services, or his/her designee. Officers shall only hold planned meetings with an informant, or potential informant, with another officer present both for corroboration and for backup. Any exception must be authorized, in advance and in writing, by the Officer's Detective Supervisor.
- I. With the exception of the Confidential Informant Card and the Informant Working Agreement, all Department reports and/or forms shall refer to the informant only by his/her code number.
- J. Officers are not to have any business, personal or planned meetings with an informant, other than a **source of information**, unless it is directly related to the informant providing information.

- K. Officers shall immediately notify the Detective Supervisor, in writing, whenever they have reason to believe an informant has done any of the following:
- i. Failed to follow the instructions of a control officer;
 - ii. Knowingly violated any provision of the Informant Working Agreement;
 - iii. Knowingly provided false information;
 - iv. Engaged in any criminal conduct or enterprise that is not authorized by a control officer for the purpose of obtaining evidence.

The photograph and signature requirements of paragraphs (D) and (E) of this section may be waived by the District/Unit Detective Commander, with the concurrence of the Chief, Bureau of Investigative Services, or his/her designee, if such requirements would tend to hinder effective law enforcement due to the sensitive nature of the informant's position or source of information. All such waivers shall be in writing with the original of the waiver placed in the District/Unit Detective Commander's confidential informant's file and a copy placed in the confidential informant central file. In all such cases, the recruiting officer and the officer's Detective Supervisor shall ensure that the required two Confidential Informant Cards are filled out and document that the informant understands and has verbally agreed to abide by the conditions of the Informant Working Agreement.

Detective Supervisor's Responsibilities:

- A. Subject to any additional requirements listed under "Informant Restrictions", the Detective Supervisor is responsible for recommending the use of individuals as confidential informants after evaluating their suitability, potential usefulness, personal history and criminal record, if any. Detective Supervisors are responsible for ensuring that Board of Probation checks are performed on all active informants during each Tri-Annual Fitness reporting period and for forwarding the results of such checks to the central informant file. Detective Supervisors shall also be responsible for ensuring that satisfactory documentation has been provided that positively verifies an informant's true identity. All such recommendations and all documents gathered that help to establish the informant's identity and/or reliability shall be forwarded to the District/Unit Detective Commander for concurrence and approval. These documents shall include criminal history checks and both the originals and the photocopy of the Confidential Informant Card and the Informant Working Agreement.
- B. Detective Supervisors are authorized, but not required, to maintain a "working" file on informants utilized by officers under their command. References to documents being kept in the "Detective Supervisor's file" are made with the understanding that the keeping of such a file is optional. Whether individual Detective Supervisors choose to maintain a "working" file or not, they are responsible for ensuring that the District/Unit Detective Commander's confidential informant file is kept accurate and current.
- C. Once the individual is approved for use as a confidential informant, the Detective Supervisor is responsible for conducting a complete initial debriefing with the

assistance of the recruiting officer. The original of the initial debriefing report shall be placed in the informant's file at the District or Unit with one copy being kept in the Detective Supervisor's file and one copy forwarded to the Chief, Bureau of Investigative Services, or his/her designee.

- D. The Detective Supervisor is responsible for ensuring that all necessary entries are made on the Confidential Informant Card (BPD Form 2468) and that officers submit debriefing reports for all planned meetings or significant contacts that adequately summarize the intelligence or information gained from an informant. In addition, the Detective Supervisor is responsible for ensuring that copies of all debriefing reports are forwarded to the Chief, Bureau of Investigative Services, or his/her designee, as soon as practicable, but no more than seventy-two (72) hours after they are submitted.
- E. The Detective Supervisor is responsible for approving or rejecting all payments to an informant up to and including payments of \$250.00. Payments in excess of \$250.00 must be approved by the Chief, Bureau of Investigative Services. All payments in excess of \$25.00 must be approved in advance. Payments of \$25.00 or less that were not approved in advance shall be reimbursed only with the Detective Supervisor's approval. The Detective Supervisor shall keep track of the amount of money paid to each informant, note same on his/her copy of the Confidential Informant Card and provide the information to the District/Unit Detective Commander in a timely manner.

Personal funds are not to be utilized by officers for the procurement of evidence, to make controlled and/or undercover buys or for the purpose of paying informants.

The Detective Supervisor shall ensure that all payments to an informant, whether approved or not, are properly entered on the Confidential Informant Card (BPD Form 2468) and receipted for by the informant, who shall sign his/her alias or code name, on a Department receipt form (BPD Form 8) that is witnessed and co-signed by two officers. The copies of the receipt form and a Request for Funds Form (BPD form 2494) shall be placed in the District/Unit Detective Commander's Confidential Informant File with the originals being forwarded to the Bureau of Investigative Services Finance Officer.

District/Unit Detective Commander's Responsibilities

- A. The District/Unit Detective Commander, or a Detective Supervisor so designated by the District/Division Commander, shall be responsible for approving or disapproving the recruitment of individuals as confidential informants that have been recommended for approval by Detective Supervisors under his/her command after determining that satisfactory documentation has been provided that verifies the informant's true identity.
- B. The District/Unit Detective Commander shall be responsible for ensuring that all Detective Supervisor's under his/her command maintain the Confidential Informant Cards appropriately and forward all required materials.
- C. Immediately upon approving a potential confidential informant for use, the District/Unit Detective Commander shall forward an original of the Confidential

Informant Card, with the photograph attached, an original of the Informant Working Agreement and a copy of any criminal history checks to the Chief, Bureau of Investigative Services or his/her designee. The other set of originals of such documents and all other documents relating to such confidential informant shall be kept in the District/Unit Detective Commander's confidential informant file.

- D. The District/Unit Detective Commander shall be responsible for maintaining custody of the District/Unit confidential informant files and shall ensure that all such files are kept in a secure, central location.

District/Division Commander's Responsibilities:

- A. The District/Division Commander shall, in conjunction with the Tri-Annual Fitness Report, audit the District/Unit Detective Commander's confidential informant files to ensure that the files are being properly maintained and that they appear to contain all necessary documentation.
- B. The District/Division Commander shall ensure that all Detective Supervisors in his/her command are in full compliance with the requirements of this rule.

Chief, Bureau of Investigative Services Responsibilities:

- A. The Chief, Bureau of Investigative Services, or his/her designee, shall be responsible for maintaining the confidential informant central file. This file shall contain individual files on each informant that include an original of the Confidential Informant Card (BPD form 2468), with a photograph attached, and an original of the Informant Working Agreement (BPD Form 2645) and copies of any other reports or documentation forwarded by the District/Unit Detective Commander.
In addition, the file shall contain copies of all debriefing reports submitted as well as copies of any reports that seek or grant approval from persons or outside agencies regarding the use of the informant, place restrictions on the use of the informant or change the informant's status.
- B. The Chief, Bureau of Investigative Services, or his/her designee, shall ensure that incoming confidential informant debriefing reports are analyzed and that any patterns, trends or criminal intelligence information that is discovered during such analysis is reported to those Bureaus, District or Units that could benefit from such knowledge.
- C. The Chief, Bureau of Investigative Services, or his/her designee, shall be responsible for deciding whether or not a carded informant will be permitted to be carded and/or used by a second officer or unit. Informants used by multiple officers shall have a code number assigned by the Chief, Bureau of Investigative Services or his/her designee.
- D. The Chief, Bureau of Investigative Services, or his designee, shall be responsible for immediately notifying all persons known to use a particular informant whenever that informant is disqualified for such use.
- E. Only the Chief, Bureau of Investigative Services may authorize a payment to a confidential informant that exceeds \$250.00.

Sec. 4 INFORMANT STATUS/DISQUALIFICATION PROCEDURES:

A. Informants shall be classified as follows:

Active - Informants currently providing information or who have done so within the last six months.

Inactive - Any informant who has not provided information within the last six month period shall be classified as inactive.

Disqualified - Any informant who has been determined to be unsuitable for any reason, including, but not limited to:

- § Fails to follow the instructions of a control officer;
- § Knowingly violates any provision of the Informant Working Agreement;
- § Knowingly provides false information;
- § Engages in any criminal conduct or enterprise other than that specifically authorized by a supervisor for the purpose of obtaining evidence in a specific investigation.

B. Status Change Procedures

Active to Inactive - A Detective Supervisor who becomes aware that an informant has not provided information within the last six month period shall reclassify such informant as "inactive" and shall forward a report of such reclassification to the District/Unit Detective Commander and to the Chief, Bureau of Investigative Services, or his/her designee.

Inactive to Active - An officer may request that his/her Detective Supervisor reactivate an informant who has had their status changed from active to inactive after first conducting a new criminal history check. The officer shall assist his/her Detective Supervisor in evaluating the informant's suitability, potential usefulness, personal history, criminal record and past history as an informant.

The Detective Supervisor shall make a recommendation concerning such reactivation to the District/Unit Detective Commander for his/her concurrence and approval. If the District/Unit Detective Commander approves of the reactivation, the supervisor shall complete a report documentation such re-activation for inclusion into the District/Unit Detective Commander's confidential informant file and forward a copy of such report to the Chief, Bureau of Investigative Services, or his/her designee.

Once the decision is made to reactivate an informant, the officer and the Detective Supervisor shall conduct a complete debriefing, place the original of the debriefing report in the District/Unit Detective Commander's informant file, keep one copy for the Detective Supervisor's file and forward a copy of the report to the Chief, Bureau of Investigative Services, or his/her designee.

Active to Disqualified - An officer who has reason to believe that an informant may no longer be suitable for use as an informant shall make an immediate report of his/her recommendation, and the reasons therefore, to his/her Detective Supervisor.

A Detective Supervisor who receives a report recommending that an informant be disqualified for use as an informant, or who decides on his/her own authority that such recommendation is warranted, shall immediately notify the District/Unit Detective Commander of such recommendation in writing.

The District/Unit Detective Commander, after reviewing all reports and recommendations, shall approve or disapprove the request to disqualify an informant. Copies of all reports and recommendations concerning a request for disqualification shall immediately be forwarded to the Chief, Bureau of Investigative Services, or his/her designee, for inclusion in the confidential informant central file.

Disqualified to Active with Restrictions - Individuals who have been disqualified may only be utilized with the endorsement of the Chief, Bureau of Investigative Services. Requests for such utilization shall include a report from both the officer and his/her Detective Supervisor that evaluates the informant's suitability, potential usefulness, personal history, criminal record and past history as an informant. In addition, the report shall specifically address the issues that resulted in the informant's being disqualified and must state why such past misconduct should no longer preclude the individual's use as an informant. Before being forwarded to the Chief, Bureau of Investigative Services, all such requests must be approved by the District/Unit Detective Commander.

If approved, the Chief, Bureau of Investigative Services shall permit such informants to be utilized only on a case by case basis, subject to such additional restriction as he/she may require. The original of each such request, whether approved or disapproved, shall be placed in the District/Unit Detective Commander's informant's file and a copy forwarded to the Chief, Bureau of Investigative Services, or his/her designee, and placed in the confidential informant central file.

Once the decision is made to utilize such an informant, the officer and the Detective Supervisor shall conduct a complete debriefing of the informant. The original debriefing report shall be placed in the District/Unit Detective Commander's informant file with one copy being kept by the Detective Supervisor and an additional copy being forwarded to the Chief, Bureau of Investigative Services, or his/her designee.

Sec. 5 AUDIT:

The Auditing and Review Division shall conduct an annual audit of confidential informant files, both those kept at the District/Unit and the confidential informant central file. Such audit shall ensure that:

- A. Confidential informant files are properly maintained and include all necessary documentation, i.e., payment receipts, debriefing reports, confidential informant cards, photographs, informant working agreements, criminal history checks (BOP), etc.
- B. Documents required to be forwarded to the confidential informant central file and/or to the Chief, Bureau of Investigative Services, or his/her designee, are being delivered in a timely and prescribed manner.

Sec. 6 FEDERAL OR STATE MULTI-AGENCY TASK FORCES:

The provisions of this rule shall not apply to officers assigned to federal or state multi-agency task forces that have other written rules or procedures that govern the use of confidential informants by members of such task forces.

Sec. 7 DISCLOSURE OF CONFIDENTIAL INFORMANT INFORMATION:

All Department employees are reminded that, by definition, information concerning confidential informants is of a highly sensitive nature. Accordingly, Department employees shall be held strictly liable for the disclosure of any information in their possession, no matter how trivial, to any person or organization which may tend to confirm the existence of a particular confidential informant or otherwise tend to identify a particular confidential informant unless:

- A. As necessary, in the body of an affidavit filed in support of a search warrant;
- B. Ordered to do so in a judicial proceeding or by court order;
- C. Requested to do so, in writing, by a member of a law enforcement agency with a demonstrated need to know that particular informant and with the approval of a Detective Supervisor;
- D. As otherwise provided in this order.

In the event of uncertainty as to whether a member of any law enforcement agency, including a member of this Department, has adequately demonstrated a need to know informant information, the Chief, Bureau of Investigative Services, shall be the final arbiter as to whether the requisite need to know has been demonstrated.

Kathleen M. O'Toole
Police Commissioner