
Policy Number: 107.071
Title: Confidential Informants – Office of Special Investigations – Fugitive Apprehension Unit
Effective Date: 9/16/2024

PURPOSE: To provide procedures and protocols that take necessary precautions concerning the recruitment, control, and use of confidential informants.

APPLICABILITY: Minnesota Department of Corrections (MN DOC) – Office of Special Investigations (OSI) – Fugitive Apprehension Unit (FAU)

DEFINITIONS:

Compelling public interest – for purposes of this policy, situations in which failure to act would result or likely result in loss of life, serious injury, or have some serious negative consequence for persons, property, or public safety and therefore demand action.

Confidential informant (CI) – a person who cooperates with the MN DOC OSI-FAU confidentially in order to protect the person or the agency’s intelligence gathering or investigative efforts and who:

1. Seeks to avoid arrest or prosecution for a crime, mitigate punishment for a crime in which a sentence will be or has been imposed, or receive a monetary or other benefit; and
2. Is able, by reason of the person’s familiarity or close association with suspected criminals, to:
 - a) Make a controlled buy or controlled sale of contraband, a controlled substance, or other items that are material to a criminal investigation;
 - b) Supply regular or constant information about suspected or actual criminal activities to MN DOC OSI-FAU; or
 - c) Otherwise provide information important to ongoing criminal intelligence gathering or criminal investigative efforts.

Confidential informant file – a file maintained to document all information that pertains to a confidential informant.

Controlled buy – the purchase of contraband, controlled substances, or other items that are material to a criminal investigation from a target person that is initiated, managed, overseen, or participated in by law enforcement personnel with the knowledge of a confidential informant.

Controlled sale – the sale of contraband, controlled substances, or other items that are material to a criminal investigation to a target person that is initiated, managed, overseen, or participated in by law enforcement personnel with the knowledge of a confidential informant.

Mental harm – a psychological injury that is not necessarily permanent but results in visibly demonstrable manifestations of a disorder of thought or mood that impairs a person’s judgment or behavior.

Overseeing agent – the fugitive apprehension unit member (FAUM) primarily responsible for supervision and management of a confidential informant.

Target person – the person suspected by law enforcement personnel to be implicated in criminal acts by the activities of a confidential informant.

Unreliable informant file – a file containing information pertaining to an individual who has failed at following an established written confidential informant agreement and has been determined to be generally unfit to serve as a confidential informant.

PROCEDURES:

A. Initial Suitability Determination

1. An initial suitability determination must be conducted on any individual being considered for a role as a confidential informant (CI). The initial suitability determination includes the following:
 - a) An overseeing agent requesting use of an individual as a CI must complete an FAU CI Initial Suitability Report and meet with the assistant director of the office of special investigations (OSI) fugitive apprehension unit (FAU) to review the report.
 - b) The report must include sufficient detail regarding the risks and benefits of using the individual so that a sound determination can be made. The following information must be addressed in the report, where applicable:
 - (1) Age, sex, and residence;
 - (2) Employment status or occupation;
 - (3) Affiliation with legitimate businesses and illegal or suspicious enterprises;
 - (4) Extent to which potential information, associations, or other assistance could benefit a present or future investigation;
 - (5) Relationship with the target of an investigation;
 - (6) Motivation in providing information or assistance;
 - (7) Risk of adversely affecting an existing or future investigation;
 - (8) Extent to which provided information can be corroborated;
 - (9) Prior record as a witness;
 - (10) Criminal history, to include whether they are the subject of a pending investigation, are under arrest, or have been charged with a crime;
 - (11) Risk to the public or as a flight risk;
 - (12) Consultation with the individual's probation, parole, or supervised release agent, if any;
 - (13) Consideration and documentation of the individual's diagnosis of mental illness, substance use disorder, traumatic brain injury, or disability; and consideration and documentation of the individual's history of mental illness, substance use disorder, traumatic brain injury or disability;
 - (14) Relationship to anyone in law enforcement;
 - (15) Risk of physical harm to the potential CI or their immediate family or relatives for cooperating with law enforcement; and
 - (16) Prior or current service as a CI with this or another law enforcement organization.
2. An initial suitability determination must be conducted on a reactivated CI regardless of the length of inactivity.
3. Prior to an individual's use as a CI, the assistant director of OSI-FAU must review the Personal History Report and determine if the individual is authorized to serve as a CI.
4. Any prospective or current CI must be excluded from engaging in a controlled buy or sale of a controlled substance if the prospective or current CI:
 - a) Is receiving in-patient treatment or partial-hospitalization treatment administered by a licensed service provider for a substance use disorder or mental illness; or

- b) Is participating in a treatment-based drug court program or treatment court; except that
 - c) The prospective or current CI may provide confidential information while receiving treatment, participating in a treatment-based drug court program or treatment court.
5. Documentation and special consideration must be made of the risks involved in engaging a prospective or current CI in the controlled buy or sale of a controlled substance if the individual is known, or has reported, to have experienced a drug overdose in the previous 12 months. Fugitive apprehension unit members (FAUMs) are prohibited from using a CI for controlled buys or controlled sales unless working at the direction of another law enforcement agency who requested the assistance of the CI who is overseen by an FAUM.
 6. Any prospective or current CI who is known to abuse substances, or is at risk for abusing substances, should be provided referral to prevention or treatment services.
 7. Any prospective or current CI that has a physical or mental illness that impairs the ability of the individual to understand instructions and make informed decisions should be referred to a mental health professional or other appropriate medical professional, or a case manager/social worker from the county social services agency, or other substance abuse and mental health services.
 8. Each CI's suitability must be reviewed every six months, at a minimum, during which time the CI's overseeing agent must submit a Continuing Suitability Report to the assistant director of OSI-FAU addressing the foregoing issues in sections A.1.b) (1) through (16) and A.4. to A.7, above, where applicable.
 9. Any information that may negatively affect a CI's suitability during the course of their use must be documented in the CI's file and forwarded to the appropriate authorized personnel as soon as possible.
 10. The assistant director of OSI-FAU must review CI files regularly with the overseeing agents and must attend debriefings of CIs periodically as part of the informant management process. If a CI is active for more than 12 months, a supervisory meeting with the CI must be conducted without the overseeing agent.
 11. CI contracts must be terminated, and the CI file placed in inactive status when the CI has not been utilized for six months or more.

B. Exigent Confidential Informants

1. Certain circumstances arise when an individual who has been arrested is willing to immediately cooperate and perform investigative activities under the direction of an overseeing agent. In these circumstances, the initial suitability determination can be deferred and an individual may be utilized as a CI for a period not to exceed 12 hours from the time of arrest if:
 - a) The individual is not excluded from utilization as a CI under A.4. of this policy, above; and
 - b) There is compelling public interest or exigent circumstances exist that demand immediate utilization of the individual as a CI and any delay would significantly and negatively affect any investigation; and

- c) A supervisor has reviewed and approved the individual for utilization as a CI under these circumstances.
2. Upon the conclusion of the 12-hour window, or at any time before, an initial suitability determination must be conducted before the individual engages in any further CI activities.

C. Special CI Approval Requirements

Certain individuals who are being considered for use as a CI require special review and approval. In all instances, the director of OSI and the commissioner of corrections must be consulted prior to the use of these individuals as CIs. These individuals include the following:

1. Juveniles;
 - a) Use of a juvenile under the age of 18 for participating in a controlled buy or sale of a controlled substance or contraband may be undertaken only with the written authorization of the individual's parent(s) or guardian(s), except that the juvenile informant may provide confidential information.
 - b) Authorization for such use must only be granted when a compelling public interest can be demonstrated, except that juveniles under the guardianship of the State may not be used as CIs.
2. Individuals obligated by legal privilege of confidentiality.
3. Government officials.

D. General Guidelines for Overseeing CIs

1. CIs must be treated as assets of the agency, not the individual overseeing agent.
2. No promises or guarantees of preferential treatment within the criminal justice system may be made to any informant without prior approval from the prosecuting authority when a criminal matter is involved or from the commissioner of corrections should the CI be within the supervision system.
3. CIs must not be used without authorization of the agency through procedures identified in this policy.
4. CIs must not be used to gather information purely of a political nature or for other information-gathering efforts that are not connected with a criminal investigation.
5. Under no circumstances may an informant be allowed access to restricted areas or investigators' work areas within the MN DOC.
6. All CIs must sign and abide by the provisions of the agency's CI agreement.
7. Any physical or mental illness that impairs the CI's ability to knowingly contract or otherwise protect the informant's self-interest must be taken into consideration before the CI signs a CI agreement.
8. The CI's overseeing agent must discuss each of the provisions of the CI agreement with the CI, with particular emphasis on the following:
 - a) CIs may voluntarily initiate deactivation, whereupon the protocols outlined in section F of this policy must be followed.

- b) CIs are not law enforcement officers. They have no arrest powers, are not permitted to conduct searches and seizures, and may not carry a weapon while performing activities as a CI.
 - c) CIs found engaging in any illegal activity beyond what is authorized by the agency and conducted while under the supervision of an overseeing agent, will be subject to prosecution.
 - d) CIs are prohibited from engaging in actions or activities that could be deemed entrapment. The meaning of the term and implications of such actions must be explained to each CI.
 - e) CIs are prohibited from engaging in self-initiated information or intelligence gathering without agency direction and approval. The CI must not take any actions in furtherance of an investigation without receiving specific instructions from the overseeing agent or agency.
 - f) Every reasonable effort must be taken to ensure the confidentiality of the CI but, upon judicial order, they may be required to testify in open court.
 - g) CIs may be directed to wear a listening and recording device.
 - h) CIs must be required to submit to a search before and after a controlled purchase.
 - i) CIs who participate in unplanned or unanticipated activities or meet with a subject under investigation in a location outside of the jurisdictional boundary of the handling agency must promptly report that activity or meeting to their overseeing agent.
9. CI activity outside jurisdictional boundaries:
- a) Investigators handling CIs who engage in operational activity in locations outside the jurisdictional boundaries of the agency must coordinate with counterparts in law enforcement agencies that have jurisdiction in the location where the CI will operate before any activity occurs, or in a timely manner after unanticipated activity occurs and is brought to the attention of the overseeing agent.
 - b) Any decision to defer or delay notice to, or coordinate with, an outside agency having jurisdiction in the area where a CI has or may operate must be documented, reviewed, and approved by the assistant director of OSI-FAU.
10. FAUMs must take the utmost care to avoid conveying any confidential investigative information to a CI, such as the identity of other CIs, surveillance activities, or search warrants, other than what is necessary and appropriate for operational purposes.
11. No member of this agency must knowingly maintain a social relationship with a CI, or otherwise become personally involved with a CI beyond actions required in the performance of duty.
12. Members of this agency must not knowingly solicit, accept gratuities from, or engage in any private business transaction with a CI.

13. Meetings with a CI must be conducted in private with at least two FAUMs present and with at least one FAUM of the same sex, except when not practical. The meeting location should minimize the potential for discovery of the CI's cooperation and provide sufficient space to complete necessary administrative duties. The meetings must be documented and subsequently entered into the individual's CI file.
14. Overseeing agents must develop and follow a communications strategy and plan with the CI that minimizes, to the greatest extent possible, the risk of discovery or compromise of the relationship between the MN DOC and the CI. This plan should also aim to prevent the detection, compromise, or interception of communications between the overseeing agent and the CI.
15. Procedures must be instituted to assist CIs with concealing their identity and maintaining their safety. Care should be given not to expose CIs to unnecessary safety risks.
16. Preceding or following every buy or sale of controlled substances, an overseeing agent must screen the CI for any personal safety or mental health concerns, risk of substance abuse, and/or potential relapse in any substance abuse recovery.
 - a) At the request of the CI, or if the overseeing agent deems it necessary, reasonable efforts should be taken to provide the CI with referral to substance abuse and/or mental health services.
 - b) Overseeing agents must document:
 - (1) The screening;
 - (2) Any referral to services provided to, or requested by, the CI; and
 - (3) Any refusal by the CI to participate in the screening or any refusal by the CI to accept referral to services. Reasons for the CI's refusal must be documented, where applicable.
17. Reasonable protective measures must be provided for a CI when any member of the agency knows or should have known of a risk or threat of harm to a person serving as a CI and the risk or threat of harm is a result of the CI's service to this agency.
18. Overseeing agents must:
 - a) Evaluate and document the criminal history and propensity for violence of target persons; and
 - b) To the extent allowed, provide this information to the CI if there is a reasonable risk or threat of harm to the CI as a result of the CI's interaction with the target person.
19. Reasonable efforts and precautions must be made to help protect the identity of a CI during the time the person is acting as an informant.
20. Whenever possible, FAUMs must corroborate information provided by a CI and document efforts to do so.
21. The name of a CI must not be included in an affidavit for a warrant unless judicial authority is obtained to seal the document from the public record, or the CI is a subject of the investigation upon which the affidavit is based.

22. Overseeing agents are responsible for ensuring that information of potential value to other elements of the MN DOC is provided promptly to authorized supervisory personnel and other law enforcement agencies as appropriate.
23. Individuals leaving employment with the MN DOC have a continuing obligation to maintain as confidential the identity of any CI and the information they provided unless obligated to reveal such identity or information by law or court order.

E. Establishment of an Informant File System.

An informant file system must be established as follows:

1. The director of OSI must be responsible for developing and maintaining master CI files and an indexing system.
2. A file must be maintained on each CI deemed suitable by the assistant director of OSI-FAU.
3. An additional unreliable informant file must be established for CIs deemed unsuitable during initial suitability determinations or at a later time.
4. Each file must be coded with an assigned informant control number for identification and must include the following information, where applicable:
 - a) Name, aliases, and date of birth;
 - b) Height, weight, hair color, eye color, race, sex, scars, tattoos, or other distinguishing features;
 - c) Emergency contact information;
 - d) Name of the FAUM initiating use of the informant and any subsequent overseeing agents;
 - e) Photograph and criminal history record;
 - f) Current home address and telephone number(s);
 - g) Current employer, position, address, and telephone number;
 - h) Social media accounts;
 - i) Marital status and number of children;
 - j) Vehicles owned and their registration numbers;
 - k) Places frequented;
 - l) Gang affiliations or other organizational affiliations;
 - m) Briefs of information provided by the CI and the CI's subsequent reliability;
 - n) Special skills and hobbies;
 - o) Special areas of criminal expertise or knowledge; and
 - p) A copy of the signed CI agreement.
5. All CI and inactive CI files must be maintained in a secured area.
6. The director of OSI and the assistant director of the OSI-FAU must ensure that information concerning CIs is strictly controlled and distributed only to FAUMs and other authorities who have a need for and a right to such information.
7. CI File Review
 - a) FAUMs may review an individual's CI file only upon the approval of the director of OSI. The requesting FAUM must submit a written request explaining the need for review. A copy of this request, with the FAUM's name, must be retained in the individual's CI file.
 - b) FAUMs must not remove, copy, or disseminate information from the CI file.

- c) CI files must be reviewed only in secure locations. Any records kept in hardcopy must be reviewed only in designated areas and returned as soon as possible to their secure file location.
- d) All disclosures or access to CI files must be recorded by the director of OSI, to include information such as the requesting FAUM, the purpose of access or disclosure, the information conveyed, and the date and time of access or dissemination.
- e) No portion of an individual's CI file may be entered into any electronic or related database without controls sufficient to exclude access to all but authorized personnel with a need and a right to know.

F. Deactivation of Confidential Informants

1. The overseeing agent must complete a deactivation form that includes, at minimum, the following:
 - a) The name of the agency;
 - b) The name of the CI;
 - c) The control number of the CI, where applicable;
 - d) The date of deactivation;
 - e) The reason for deactivation;
 - f) A notification that contractual agreements regarding monetary compensation, criminal justice assistance, or other considerations, specified or not, are terminated;
 - g) A notification that the agency will provide and assist the CI with referral to health services for assistance with any substance abuse disorder and/or physical, mental, or emotional health concerns, as requested or accepted by the CI;
 - h) A signature by the CI or documentation indicating the reason(s) why the CI was unable or unwilling to sign the form; and
 - i) A signature by the overseeing agent.
2. All reasonable efforts must be taken to maintain the safety and anonymity of the CI after deactivation.

G. Monetary Payments

Monetary payments to CIs

1. All monetary compensation paid to CIs must be commensurate with the value of the information or assistance provided to the agency.
2. All CI payments must be approved in advance by the assistant director of OSI – investigations or designee.
3. The assistant director of OSI – investigations must withdraw monies being utilized for payment to a CI, along with the FAUM requesting the monies. The receipt of the withdrawal must be placed in the CI file.
4. FAUMs are responsible for filling out a receipt when the monies are given to the CI and placing it in the CI file. Any documentation of monies paid or received should not contain the true identity of the informant but should use the CI's control number.
5. Two FAUMs must be present when making payments or providing funds to CIs.
6. The assistant director of OSI – investigations must ensure that the process for authorization, disbursement, and documentation of CI payments, as well as the accounting and conciliation of confidential funds, is consistent with agency policy.

7. If a CI is authorized to work with another law enforcement or prosecutorial agency, financial payments must be coordinated between the agencies in a manner that is proportionate to the assistance rendered to each agency and consistent with the provisions of this policy.
8. If a written record or receipt cannot be retained in the CI file, justification for the exception must be documented in the CI file.

INTERNAL CONTROLS:

- A. All documentation, including accounting for any payments to confidential informants, is retained in the CI file in a secure area within OSI.
- B. FAUM requests to review a CI file are retained in the individual's CI file.
- C. The director of OSI retains all documentation regarding disclosures or access to CI files.
- D. Documentation of withdrawal of funds for payment to a CI, the requesting FAUM and their receipt, and justification for any exception are retained in the CI file.

REFERENCES: Minn. Stat. § [626.8476](#)

REPLACES: All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: None

APPROVALS:

Deputy Commissioner, Chief of Staff
Deputy Commissioner, Client Services and Supports
Assistant Commissioner, Agency Services and Supports
Assistant Commissioner, Facilities
Assistant Commissioner, Facilities
Assistant Commissioner, Community Services and Reentry
Assistant Commissioner, Health, Recovery, and Programming