
Confidential Informants

608.1 PURPOSE AND SCOPE

In many instances, a successful investigation cannot be conducted without the use of informants. To protect the integrity of the Orange County Sheriff's Department and personnel using informants, it shall be the policy of this Department to take appropriate precautions by developing sound informant handling policies.

Confidential Informants do not belong to an individual deputy or investigator, but they are agents of the Department and act on its behalf. As with any case management, it is important to maintain proper informant management to ensure officer safety, proper legal and ethical standards, and to limit civil liability to the Department and the informant handler.

608.2 INFORMANT FILE SYSTEM

The North Narcotics Unit Supervisor shall be responsible for maintaining informant files generated by personnel assigned to the Transit Operations Division, Special Operations Division, North Operations Division, Criminal Investigations Bureau and the Professional Services Command.

The South Narcotics Unit Supervisor shall be responsible for maintaining informant files generated by personnel assigned to the Southeast Operations Division and Southwest Operations Division.

The Custody Intelligence Unit Supervisor shall be responsible for maintaining informant files generated by personnel assigned to the Custody & Inmate Services Command and the Corrections & Court Operations Command.

Personnel assigned to the Special Investigations Bureau shall adhere to the informant handling policies and procedures as outlined in the Investigations Division, Special Investigations Bureau, Policy and Procedures Manual. Personnel assigned to the Custody Intelligence Unit shall adhere to the informant handling policies and procedures as outlined in the Custody and Court Operations Manual.

A separate file shall be maintained on each informant. Blank informant file packets can be obtained from the Narcotics Unit Supervisors.

608.2.1 FILE SYSTEM PROCEDURE

Each informant file shall be coded with an assigned Informant Control Number (ICN). The Special Investigations Bureau Captain or the Custody Intelligence Unit Captain shall assign the ICN from the Master Control Log. An informant history shall be prepared to correspond to each informant file. The informant file shall contain the following:

1. Completed Informant Packet
 - (a) Informant Cover Sheet
 - (b) Informant Checklist
 - (c) Signed Approval to Operate Informant

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Confidential Informants

- (d) Informant Personal History
- (e) Signed Informant Admonishment or Mercenary Informant Admonishment
- (f) Signed Informant Agreement
- (g) Informant Compensation Record
- (h) Informant Receipt of Payment
- (i) Informant Update/ Division Commander Yearly Audit
- (j) Informant Performance Record
- (k) Copy of informant's criminal history (CII / FBI / CCHRS / LARS / warrant checks);
- (l) DMV printouts to include driver's license, driver history, and vehicle registration;
- (m) Informant's photograph and fingerprints (If applicable);
- (n) Copy of informant's arrest report (If applicable);
- (o) Copy of the Orange County Cooperating Individual Index Card (DA-OCCII). The original OCCII card shall be forwarded to Orange County District Attorney's Narcotics Enforcement Team's Cooperating Individual Index Coordinator.
- (p) Informant Activity Log
- (q) Reports resulting from the Informant's work (if applicable)
- (r) Consideration Letter (if applicable)

The completed informant files shall be maintained and locked in a secure area. The Informant Files generated by personnel within the Special Investigations Bureau (North/ South Narcotics, North/ South GET and Special Operations), shall be maintained by the unit supervisor of the specific unit that generated the informant file.

The Informant Files generated outside the Special Investigations Bureau shall be maintained within the Custody Intelligence Unit or the appropriate North or South Narcotics Unit. These files shall be used to provide a source of background information about the informant, enable review and evaluation of information given by the informant, and minimize incidents that could be used to question the integrity of deputies/investigators or the reliability of the informant.

Access to the informant files shall be restricted to the Sheriff, the Undersheriff, the Investigations & Special Operations Command Assistant Sheriff, the Custody & Inmate Services Command Assistant Sheriff, the Corrections & Court Operations Command Assistant Sheriff, the Investigations Division Captain, the Special Investigations Bureau Captain, the Special Investigations Unit Supervisors, the Custody Intelligence Unit Supervisors, and the Informant Handler or their designees.

608.3 USE OF INFORMANTS

In addition, before using an individual as an informant, the informant packet must be completed and approved by the Informant Handler's unit supervisor, the proper Narcotics or Special Investigations Unit Supervisor and the Special Investigations Bureau Captain or the Custody

Confidential Informants

Intelligence Supervisor and the Custody Intelligence Unit Captain. In the event a new, unsigned informant can provide information crucial to a major and quickly developing investigation, the informant packet shall be completed as soon as practical. However, unit supervisor approval is required.

608.3.1 CONFIDENTIAL INFORMANT DEFINITIONS

1. Anytime a person is directed by a deputy/investigator for any reason, whether on one occasion or on a continuous basis, to secure information on criminal activity;
2. Anytime a person is offered, promised or received compensation, either in the form of financial compensation or any other benefit, for information for any task performed;
3. Anytime a person is offered, promised or received a Letter of Consideration on a pending criminal case.

608.3.2 TYPES OF INFORMANTS

Confidential Informant: A Confidential Informant is an informant who requests to remain confidential, has yet to be tested and has usually not previously worked for law enforcement. This type of informant usually provides information for compensation.

Confidential Reliable Informant: A Confidential Reliable Informant is an informant whose reliability and credibility have already been established. The information given in the past was proven truthful and reliable, either on one occasion or on numerous occasions. Information received from a Confidential Reliable Informant of another law enforcement agency, through that agency, is deemed reliable.

Criminal Informant: A Criminal Informant is a person who has a criminal history and is usually motivated for personal reasons. The informant may be acting out of revenge or for monetary compensation.

Defendant Informant: A Defendant Informant is an informant who has a pending criminal matter, including probation and/or parole violations. A Defendant Informant also includes an individual who has been prosecuted, convicted and is awaiting sentencing. A Defendant Informant provides information for a benefit or consideration, such as a Letter of Consideration, in their pending criminal matter.

Confidential Jail Informant: A Confidential Jail Informant is an inmate who acts under the specific direction of a deputy/investigator to secure information related to inmate/ criminal activity or was offered, promised or received a benefit or any type of consideration for the information he/ she provides.

Citizen Informant: A Citizen Informant is a person who regularly or frequently provides information, outside the scope of their employment, to law enforcement. The Citizen Informant is motivated by a sense of good citizenship, not by benefit or consideration, and may act under the direction of a deputy or investigator. A Citizen Informant's information is automatically considered reliable without additional corroboration. A Citizen Informant may or may not choose to be confidential.

Confidential Informants

Citizens calling in or appearing in-person to provide information concerning criminal activity are not considered informants, as they are not acting at the direction of a law enforcement officer.

Anonymous Informant: Anonymous Informants are those individuals who refuse to identify themselves to law enforcement and their identity is not known. An Anonymous Informant is not a Citizen Informant and the information given may or may not be reliable. An Anonymous Informant does not fall under the requirements of this policy.

608.4 INFORMANTS REQUIRING SPECIAL REVIEW

Some persons being considered for use as informants may require special review for approval before being activated. These include juveniles, persons on probation or parole, or those who hold privileged positions, e.g., attorneys, doctors, clergy, reporters, persons in the Witness Protection Program and former law enforcement officers.

Persons on probation or parole present specific concerns. The Department cannot place a probationer or parolee in a position that violates the terms or conditions of their probation or parole. The Department has no authority to usurp the conditions set forth by a court or the authority of the controlling agency.

Guidance from County Counsel and the Orange County District Attorney's Narcotics Enforcement Team should be sought when persons of privileged status are being considered for use as informants.

608.4.1 INFORMANTS ON COUNTY PROBATION

The handling deputy/investigator shall determine if the person is on Summary (Informal) Probation or Formal Probation. If the person is on Formal Probation the handling deputy/investigator shall do the following:

1. Contact the court or probation officer to determine if the informants use will not violate the conditions of their probation;
2. Document the concerns if notification will jeopardize a major case investigation.

If the use of the informant is in conflict with the terms of their probation, the handling deputy/investigator can attempt to amend the terms of probation through the court. If the court requests written documentation, the handling deputy/investigator shall submit the request on Department letterhead with the proper Departmental approvals. A request should be made with the court to refrain from placing a copy of the letter in the probationer's file to preserve the confidentiality of the informant.

608.4.2 INFORMANTS ON FEDERAL PROBATION

The handling deputy/investigator shall contact the person's probation officer. Federal probationers can only be used as informants when the court of jurisdiction has been formally contacted and approved for use. A formal request to use a federal probationer as an informant shall be made on Department Letterhead with the proper Departmental approvals. If the request is approved, the

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Confidential Informants

probation officer shall complete and submit the necessary paperwork to the concerned federal court for approval.

608.4.3 INFORMANTS ON STATE PAROLE

The handling deputy/investigator shall contact the appropriate state agent to request to use the parolee as an informant. The name of the agent contacted shall be documented on the CI History form. If a written request is made by the agent, the handling deputy/investigator shall submit the request on Department letterhead with the proper Departmental approvals, describing in general details the activity in which the parolee will be used, the duration of use and any anticipated travel.

608.4.4 INFORMANTS ON FEDERAL PAROLE

Currently, the United States Parole Commission discourages the use of federal parolees as informants. If the use of a federal parolee is essential in a major case, the Assistant Sheriff commanding the Investigations & Special Operations Command shall submit a written request to the Chairperson of the United States Parole Commission for the use of that informant. If the Commission approves the request, the informant may be used for only 90 days. Extensions may only be requested by the Assistant Sheriff through the Commission.

608.4.5 JUVENILE INFORMANTS

The use of juvenile informants under the age of 13-years is prohibited. Except as provided for in the enforcement of the Tobacco Enforcement Act, Business & Professions Code Section 22950, et seq., the use of any juvenile informant between the ages of 13 and 18 years is only authorized by court order obtained pursuant to Penal Code Section 701.5.

For purposes of this policy, a "juvenile informant" means any juvenile who participates, on behalf of this Department, in a prearranged transaction or series of prearranged transactions with direct face-to-face contact with any party, when the juvenile's participation in the transaction is for the purpose of obtaining or attempting to obtain evidence of illegal activity by a third party and where the juvenile is participating in the transaction for the purpose of reducing or dismissing a pending juvenile petition against the juvenile.

608.5 GUIDELINES FOR HANDLING INFORMANTS

All informants are required to sign and abide by the provisions of the Department Informant Admonition form. The deputy/investigator 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 the unit supervisor before being finalized with the informant.

Members of the Department shall not make any promises or representations, express or implied, to any informant regarding his or her pending criminal matters, or those of any other person(s), without the concurrence of the OCII Coordinator.

608.5.1 RELATIONSHIPS WITH INFORMANTS

No Member of the Orange County Sheriff's Department shall knowingly maintain a social relationship with an informant while off duty, or otherwise become intimately involved with an

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Confidential Informants

informant. Members of the Orange County Sheriff's Department shall neither solicit nor accept gratuities nor engage in any private business transaction with an informant.

To maintain officer/informant integrity, the following must be adhered to:

1. Deputies/investigators shall not withhold the identity of an informant from their superiors;
2. Identities of informants shall otherwise be kept confidential;
3. Criminal activity by informants shall not be condoned;
4. Informants shall be told they are not acting as police officers, employees or agents of the Orange County Sheriff's Department and that they shall not represent themselves as such;
5. The relationship between deputies/investigators and informants shall always be ethical and professional;
6. Social contact shall be avoided unless necessary to conduct an official investigation, and only with prior approval of the appropriate Special Investigations or Custody Intelligence Unit supervisor;
7. Deputies/investigators shall not meet with informants of the opposite sex in a private place unless accompanied by at least one additional deputy/investigator or with prior approval of the appropriate Special Investigations or Custody Intelligence Unit Supervisor. When contacting informants of either sex for the purpose of making payments officers shall arrange for the presence of another deputy/investigator;
8. In all instances when Department funds are paid to informants, a voucher shall be completed in advance itemizing the expenses.

608.6 INFORMANT CONSIDERATION AND BENEFITS

A benefit includes any consideration or advantage an informant was offered, promised or received in exchange for information or testimony provided. It includes a benefit for the informant or a benefit for another person at the informant's request. Any and all benefits and consideration given to an informant will be recorded and documented in the informant's file.

Consideration and benefits include, but are not limited to, the following:

1. Financial – Monetary payments of any kind including, but not limited to, room and board, payment of debts, cash, meals, use of vehicles, cell phone bills or other informant expenses.
2. Release from custody – Leniency in an arrest or booking, assistance with an own-recognizance (OR) release or request for a lowering of bail.
3. Charging leniency – Leniency shown in the filing of charges and enhancements, including the non-filing of charges.
4. Delay – Continuances in arraignment, pre-trial motions and sentencing.

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Confidential Informants

5. Disposition – Dismissal or reduction in charges, custody time, probation terms or favorable input by a deputy district attorney or investigation deputy/investigator made directly to the court.
6. Favorable intervention – Favorable action taken on behalf of the informant with other governmental agencies, such as the Department of Motor Vehicles, the Department of Homeland Security, or employers.
7. In custody – A change in housing location, non-collect phone calls, extended visits, extra jail issue, extra food or placing money in an informant's jail account.
8. Immunity

608.6.1 INFORMANT PAYMENT PROCEDURES

The potential payment of large sums of money to any informant must be done in a manner respecting public opinion and scrutiny. Additionally, to maintain a good accounting of such funds requires a strict procedure for disbursements.

608.6.2 PAYMENT FORMULA

The amount of funds to be paid to any informant shall be evaluated against the following criteria:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The Informant Handler shall discuss the above factors with the appropriate Special Investigations or Custody Intelligence Unit Supervisor and arrive at a recommended payment. The fee paid to an informant shall be based on the type of information given and to what extent the information given assists in an investigation.

608.6.3 CASH DISBURSEMENT POLICY

The following establishes a cash disbursement policy for informants. No informant shall be told in advance or given an exact amount or percentage for services rendered.

[REDACTED]

Confidential Informants

608.6.4 PAYMENT PROCESS

Fees paid to informants and expenditures incurred during investigations shall comply with the following limitations and authorizations.

Informant fee limits:

\$1 - \$500: Special Investigations or Custody Intelligence Unit Supervisor approval

\$501 - \$1,500: Special Investigations Bureau Captain approval

\$1,501 - \$3,500: Investigations Division Captain approval

\$3,501+: Investigations & Special Operations Command Assistant Sheriff approval

Upon payment to the informant, the appropriate Special Investigations or Custody Intelligence Unit Supervisor shall complete an expense voucher. The Unit Supervisor shall give the payment amount to the Informant Handler. The deputy/investigator shall write the voucher number on the Informant Payment Receipt form. The voucher copies shall be disbursed in the proper manner and the Informant Payment Receipt form shall be placed in the informant file.

To complete the transaction, the Informant Handler and witness shall pay the informant. The informant shall sign the Receipt of Payment form indicating the amount received, the date received and the names of the deputies/investigators he/she received the funds from. The Informant Handler and witnessing deputy/investigator shall sign the Receipt of Payment form. The signed form shall be placed in the informant's file.

If the payment amount exceeds \$499.00, a statement of the informant's involvement in the case shall be memorialized on an Internal Memorandum, addressed to the Special Investigations Bureau Captain, and placed in the informant's file.

Each informant receiving a cash payment shall be informed of his or her responsibility to report the cash to the Internal Revenue Service (IRS) as income.

608.7 INACTIVATING INFORMANTS

Informants may be inactivated at any time. There are several reasons detailed in the Informant Update form. When the handling deputy/investigator determines the informant should be inactivated, he/she shall submit an Informant Update form stating the reason and submit it to the appropriate Special Investigations or Custody Intelligence Unit Supervisor for his/her approval. If approved, the unit supervisor shall place the informant packet into the "inactive" file. Inactive files shall be kept for three (3) years and then destroyed.

When an investigator suspects that an informant is undesirable or unreliable, the handling deputy/investigator shall complete the Informant Update form checking the unreliable box stating the reason, then submit it to the appropriate Special Investigations or Custody Intelligence Unit

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Confidential Informants

Supervisor for approval. If approved, the form shall be placed in the beginning of the informant packet and the packet shall be placed into the Undesirable/Unreliable file.

The investigator shall then notify the informant as to their change in status and make it clear to the informant he/she shall no longer be providing services to the Department. The Special Investigations Bureau Captain or Custody Intelligence Unit Captain shall be advised and the proper notation shall be made in the respective Master Informant Control Log.

In all cases, the OCCII Coordinator at the District Attorney's Office shall be notified whenever a Confidential Informant is classified as undesirable and/ or unreliable. Additionally, if a Confidential Informant was used in a criminal case that was filed by the District Attorney's Office and it was later determined the CI was untruthful and/ or unreliable, the handling Deputy District Attorney on the criminal case shall be notified.

608.8 NOTIFICATION TO DISTRICT ATTORNEY

It is essential that deputies and investigators inform the District Attorney's Office when a case involves an informant in any capacity. This is vital in order to ensure the proper evaluation of discovery and any Brady (**Brady v. Maryland** (1963) 373 US 83, at p. 87) issues at the earliest possible time, and to determine the best effective filing strategy. For example, if the information is known by the filing District Attorney, a case may be filed differently to better protect and ensure the confidentiality of the informant.

608.9 IN-CUSTODY CONFIDENTIAL INFORMANTS

Confidential Informants and operations involving informants within the Custody & Inmate Services Command or the Corrections & Court Operations Command shall adhere to the additional informant policies and procedures as outlined in the Custody and Court Operations Manual (C.C.O.M) section 2800.

608.10 INFORMANT AUDITS

Informant file audits shall be performed on a yearly basis by the Special Investigations Bureau Captain and the Custody Intelligence Unit Captain. The unit Supervisors shall obtain all updated material and information from the deputies and investigators who manage the informants. The unit Supervisor shall review the material for completeness and thoroughness prior to the audit and sign the Informant Update Sheet. The approved form and material shall be forwarded to the Special Investigations Bureau Captain or the Custody Intelligence Unit Captain for approval. The appropriate Bureau Captain shall place the update form and material into the informant packet file.

The Bureau Captain shall ensure all informant files in the "active file" are up to date. The Bureau Captain shall also review those informant packets in the "inactive file." Those that have not been active for three (3) years shall be destroyed.

Information/action to be included in the yearly audit shall include:

1. Informant Update Form;

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Confidential Informants

2. Updated copy of criminal history (CII/FBI/CCHRS/LARS/warrant checks);
3. Updated copy of DMV inquiries to include driver's license, driving history and vehicle registration;
4. Informant Performance Record;
5. Informant Compensation Record and Receipt of Payment Form;
6. Copy of Letter(s) of Consideration, if appropriate;
7. New informant photograph if older than two (2) years.
8. Supervisor's Annual Audit. This audit shall be conducted of Active CI's who have been active for twelve (12) months or more. The audit includes questions that shall be asked of each active informant. Responses should be documented on the Audit form and maintained inside the CI folder.