

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 Santa Ana Police Department for law enforcement purposes. This also includes a person agreeing to supply information to the Santa Ana Police Department for a benefit (e.g., a quid pro quo in the form of a reduced criminal penalty, money) DA's office involvement (Informant Integrity section of this policy).

603.2 POLICY

The Santa Ana 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 the 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 background investigation including experience with the informant 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 the Department should not guarantee absolute safety or confidentiality to any 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

Santa Ana Police Department

Santa Ana PD Policy Manual

Informants

603.3.3 INFORMANT AGREEMENTS

All informants are required to sign and abide by the provisions of an Informant Agreement. The officer using the informant shall discuss each of the provisions of the agreement with the informant in advance of the informant entering the agreement.

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, Bureau Commander, Crimes Against Persons/Special Investigations 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 Santa Ana 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 written approval of the 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 private place unless accompanied by at least one additional officer or with prior written approval of their supervisor.
 - 1. Officers may meet informants alone in an occupied public place, such as a restaurant.
- (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 "consideration" for the information provided, up to and including, release from custody, leniency or immunity from criminal prosecution or monetary compensation.

Santa Ana Police Department

Santa Ana PD Policy Manual

Informants

603.4.1 UNSUITABLE INFORMANTS

The suitability of any informant should be considered before engaging him/her in any way in a covert or other investigative process. Members who become aware that an informant may be unsuitable will notify the supervisor, who will initiate a review to determine suitability. Until a 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.

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 the 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 would question the integrity of department members or the reliability of the informant.

The Orange County Informant Index (O.C.I.I.) is a centralized informant index file system of informants who provide information for a benefit in their pending criminal matter (defendant informant) or a paid informant if their information is relied upon in support of an affidavit to secure a warrant. The index is maintained by the O.C.I.I. Coordinator assigned to the Narcotic Enforcement Team (N.E.T.) within the Orange County District Attorney's Office. The O.C.I.I. Coordinator is a Deputy District Attorney with extensive experience in this area. The index allows officers to help determine the reliability of an informant who has been used by another law enforcement agency. The O.C.I.I. index is valuable in identifying informants who have compromised officer safety, have provided false or misleading testimony, have failed to follow the directions of the handling officer, or who have acted outside the scope of their informant agreement.

Santa Ana Police Department

Santa Ana PD Policy Manual

Informants

Informant files shall be maintained in a secure area within the Special investigations Division. The Crimes Against Persons/Special Investigations Commander, supervisor or the authorized designee shall be responsible for maintaining informant files. Access to the informant files shall be restricted to the Chief of Police, Bureau Commander, Crimes Against Persons/Special Investigations supervisor or their authorized designees.

The Crimes Against Persons/Special Investigations Bureau Commander should arrange for an audit using a representative sample of randomly selected informant files on a periodic basis, but no less than one time per year. If the Crimes Against Persons/Special Investigations supervisor is replaced, the files will be audited before the new supervisor takes over management of the files. The purpose of the audit is to ensure compliance with file content and updating provisions of this policy. The audit should be conducted by a supervisor who does not have regular access to the informant files.

603.5.1 FILE SYSTEM PROCEDURE

A separate file shall be maintained for 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) Informant Identification Record Sheet
- (b) Informant Waiver Form
- (c) Informant Initial Debriefing Log - to include the DDA approving the use of the informant (if applicable); the Parole or Probation officer approving the use of the informant (if applicable); the name and signature of the handling officer's supervisor who initially approved the use of the informant and a statement that the potential informant has been checked through the O.C.I.I. system
- (d) Informant's Criminal History (RAP)
- (e) Briefs of information provided by the informant and his/her subsequent reliability
 - (a) If an informant is deemed unsuitable, the informant's file is to be marked "unsuitable" and notes that detail the issues resulting in this classification should be included.
- (f) Records check of informant (CLETS, in-house)
- (g) Current photograph of the informant
- (h) One fingerprint card of the informant
- (i) Copy of the O.C.I.I. card (if applicable)
- (j) Approval by the Commander of Crimes Against Persons or Special Investigations Division.
 - (a) Informants may not be used without the prior approval the Commander of Crimes Against Persons/Special Investigations Division. In extraordinary circumstances, temporary authorization may be obtained from the handling officer's Commander or Watch Commander. The authorizing Commander shall

Santa Ana Police Department

Santa Ana PD Policy Manual

Informants

notify the Crimes Against Persons Commander/Special Investigations Division Commander of such authorization at the earliest opportunity.

- (k) Name of the officer initiating use of the informant
- (l) Update on active or inactive status of informant

603.6 INFORMANT PAYMENTS

Members shall not advise informants in advance or provide an informant with an exact amount or percentage that will be provided for his/her service. The amount of funds paid to an informant will be evaluated with 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.

The supervisor approving the use of the informant will discuss the above criteria with the respective Commander and recommend the type and level of payment subject to approval by the Chief of Police.

603.6.1 PAYMENT PROCESS

Approved cash payments to an informant will be as follows:

- (a) Payments of \$500 or less may be paid in cash from a Crimes Against Persons/Special Investigations buy/expense fund.
 - (a) The 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.
 - (a) The check shall list the case numbers related to and supporting the payment.
 - (b) A written statement of the informant's involvement in the case shall be placed in the informant's file.
 - (c) The statement shall be signed by the informant verifying the statement as a true summary of his/her actions in the case.
 - (d) Authorization signatures from the Chief of Police 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.
 - (a) The cash transfer form shall include the following:

Santa Ana Police Department

Santa Ana PD Policy Manual

Informants

- (a) Date
 - (b) Payment amount
 - (c) Santa Ana Police Department case number
 - (d) A statement that the informant is receiving funds in payment for information voluntarily rendered.
- (b) The cash transfer form shall be signed by the informant.
 - (c) The cash transfer form will be retained 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 doing so could 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.

603.6.3 AUDIT OF PAYMENTS

The Crimes Against Persons/Special Investigations Commander 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.