700.48 CONFIDENTIAL INFORMANTS

POLICY

The purpose of this policy is to inform Janesville Police Department personnel of how the recruitment, control, and use of confidential informants must occur.

DEFINITIONS

Compelling Public Interest: refers to a situation in which a 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 or CI: refers to an individual who provides information about criminal activity to a law enforcement agency. In their capacity as a CI, individuals may:

- make controlled buys or controlled sales of contraband, controlled substances, or other items that are material to a criminal investigation;
- supply information about suspected or actual criminal activities to law enforcement; or
- provide information pertinent to ongoing criminal intelligence gathering or criminal investigative efforts.

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

Confidential Informant File: means a file maintained to document all information that pertains to a confidential informant.

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

Overseeing Agent: means the peace officer primarily responsible for the supervision and management of a confidential informant.

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

PROCEDURES

INITIAL SUITABILITY DETERMINATION

An initial suitability determination and report must be completed on any individual who is being considered for a role as a CI. The report must be submitted to an individual who has proper delegated authority for determining whether a person may be a CI. The report must include sufficient detail regarding the risks and benefits of using the individual so that a sound determination may be made. The following information must be addressed in the report, when applicable:

- age, sex, and residence;
- employment status or occupation;
- affiliation with legitimate businesses and illegal or suspicious enterprises;
- extent to which potential information, associations, or other assistance could benefit a present or future investigation;
- relationship with the target of an investigation;
- motivation in providing information or assistance;
- risk of adversely affecting an existing or future investigation;
- extent to which provided information can be corroborated;
- prior record as a witness;
- criminal history, to include whether he or she is the subject of a pending investigation, is under arrest, or has been charged with a crime;
- risk to the public or as a flight risk;
- consultation with the individual's probation, parole, or supervised release agent, if any;
- consideration and documentation of the individual's diagnosis and history of mental illness, substance use disorder, traumatic brain injury, or disability;
- whether the individual has overdosed in the previous 12 months;
- relationship to anyone in law enforcement;
- risk of physical harm to the potential CI or their immediate family or relatives for cooperating with law enforcement; and
- prior or current service as a CI with this or another law enforcement organization.

Prior to approving an individual as a CI, an individual with the proper delegated authority must review the initial suitability determination report. Any prospective or current CI must be excluded from engaging in a controlled buy or sale if the prospective or current CI:

- is receiving in-patient treatment or partial-hospitalization treatment administered by a licensed service provider for a substance use disorder or mental illness, or
- is participating in a treatment-based drug court program or treatment court; except that the prospective or current CI may provide confidential information while

receiving treatment, participating in a treatment-based drug court program or treatment court.

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 to have experienced, or has reported experiencing, a drug overdose in the previous 12 months. 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. 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.

Each CI's suitability must be reviewed every 6 months, at a minimum, during which time the CI's overseeing agent must submit a Continuing Suitability Report addressing the foregoing issues in this section as applicable. An initial suitability determination must be conducted on a reactivated CI regardless of the length of inactivity. 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. Supervisors must review informant files regularly with the overseeing agent and must attend debriefings of CIs periodically as part of the informant management process. If a supervisor is unable to attend a CI briefing, another agent or investigatory partner must attend the meeting so 2 agents/peace officers are present. When a CI is active for more than 12 consecutive months, a supervisory meeting with the CI must be conducted without the overseeing agent. CI contracts must be terminated, and the CI file placed in inactive status when the CI has not been utilized for 6 months or more.

Exigent Confidential Informants. When an individual who has been arrested is willing to immediately cooperate and perform investigative activities under the direction of an overseeing agent, the initial suitability determination may be deferred. In these cases, the individual may be utilized as a CI for a period not to exceed 12 hours from the time of arrest. An exigent confidential informant may be used if all of the conditions listed below are met:

- the individual is not excluded from utilization as a CI per the conditions described in this policy;
- there is a compelling public interest or exigent circumstances that demand immediate utilization of the individual as a CI and any delay would significantly and negatively affect any investigation; and
- a supervisor has reviewed and approved the individual for utilization as a CI under these circumstances.

An initial suitability determination must be conducted after the 12-hour window if the CI decides to engage in any further investigative activities.

Special Confidential Informants. Certain individuals who are being considered for use as a CI require special review and approval. In all instances, the agency's CLEO or their designee and the office of the prosecutor or county attorney should be consulted prior to the use of these individuals as CIs. The following individuals are considered "special" confidential informants and require additional review and approval prior to taking on a CI role:

- juveniles,
- individuals obligated by legal privilege of confidentiality, and
- government officials.

A juvenile under the age of 18 may only participate in a controlled buy or sale if his or her parent(s) or guardian(s) have provided the agency or overseeing officer written permission. The use of a juvenile CI may only be granted by the supervising authority when there is a compelling public interest. Juveniles who are wards of the State may not be used as a CI.

The use of any special CI identified in this policy requires special review and approval by the supervising authority and the prosecutor's/county attorney's office.

STATUTORY REFERENCES

- MN STATUTE 626.8476 – Confidential Informants
- ADMINISTRATIVE RULE 6700.1615 – Required Agency Policies