

# GENERAL ORDER



Title  
**Confidential Sources**

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**A**

## DISTRICT OF COLUMBIA

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### I. BACKGROUND

Confidential Sources have played a key role in assisting law enforcement agencies and have proven to be essential and effective in solving many major organized crime and drug cases. For these reasons, Confidential Sources continue to be widely used as a part of undercover investigations. (CALEA 42.2.9)

The degree to which officers may be held responsible for the safety of confidential sources changed dramatically with the United States Court of Appeals decision in Butera V. District of Columbia, et. al., 344 U.S. App. D.C. 265; 235 F.3d. 637 (2001). In that case a confidential source volunteered to assist detectives working on a multiple homicide investigation. The confidential source offered to buy drugs from persons who might have information concerning the homicides. The detectives gave the confidential source marked money and dropped him off in front of the drug dealers' hours. The confidential source was to enter the house through the rear door as was his normal practice. The detectives did not observe the confidential source enter the house. Unbeknownst to the detectives, the confidential source was not able to enter the house and was later found in an alley behind the house where he had been attacked and killed by several persons. The confidential source's mother filed suit against the involved detectives and the District of Columbia alleging that her son's constitutional right to have police protection was violated when the detectives failed to prevent third parties from killing him. After a jury verdict in favor of the plaintiff, the detectives and the District of Columbia appealed asserting among other things that they did not have a constitutional duty to protect the confidential source from private violence. The court examined the law on this issue in all fifty states and noted that this was the first time it arose in this jurisdiction. More importantly, the court found that other courts of appeals applied different tests to determine whether the actions of state employees amounted to constitutional violations. Accordingly, the court held that in December 1977, the confidential source's constitutional right to protection by the District of Columbia and its police officers from third-party violence was not clearly established. Thus, the officers did not violate the confidential source's constitutional right to have police protection. However, following this decision, all members are on notice that a confidential source may have a constitutional right to protection by officers, from danger that they create or enhance, that results in harm by third parties.

**II. POLICY**

The policy of the Metropolitan Police Department (MPD) is that members may develop and use Confidential Sources to assist in obtaining information in reference to on-going criminal activity, and/or to aid in completing criminal and internal investigations within the limits of current local and federal laws, and in compliance with the guidelines established herein.

**III. DEFINITIONS**

When used in this directive, the following terms shall have the meaning designated:

1. Confidential Source – For MPD purposes, any individual who provides useful and credible information to a member of the Department regarding criminal activities or performs other operational assistance, and from whom the Department expects or intends to obtain additional information or assistance in the future.
2. Confidential Source Coordinator - A member of the Special Investigation Division, Intelligence Section, designated to serve as the Department Confidential Source Coordinator; a member of a district or investigative unit designated to serve as the Unit Confidential Source Coordinator.
3. Control Officer – Usually, the district/division member who initially develops a confidential source; acts to arrange and coordinate activities involving the Confidential Source and the Department.
4. Master File — contains biographical and background information, including a criminal history, aliases, acquaintances, control number, and a supplemental report that includes any information the Confidential Source supplies.
5. Operational File — contains the Confidential Source's control number, all operational reports and other records that document the activities and contacts between the Confidential Source and the controlling officer. Information contained in this file that pertains to another unit or agency shall be forwarded accordingly.

**IV. RULES**

It is essential that the following basic rules and principles be followed:

1. The identity of Confidential Sources shall remain confidential.
2. A Confidential Source shall be given such police security and protection as the particular circumstances of involvement may allow or require.

3. Contacts between police officers and Confidential Sources shall be professional and related to ongoing investigations.
4. Members are prohibited from contacts with Confidential Sources that are social in nature.
5. Any expenditure to any Confidential Source shall be documented promptly and properly pursuant to General Order 304.5 (Confidential Fund) and this order. (CALEA 42.2.9)

**V. PROCEDURAL GUIDELINES**

**A. Objectives**

1. All information obtained from a Confidential Source shall be in accordance with current law and with recognition of the constitutional rights of all persons involved. Members must ensure that the information acquired is through universally accepted law enforcement standards and designed to establish the reliability of the information for appropriate use in criminal proceedings; See: *Illinois v. Gates*, 462 U.S. 213 (1983) ("totality of the circumstances" test in determining probable cause).
2. Confidential Sources are assets of the Department, but will operate under the full direction of the controlling officer; all files and documentation shall be maintained by the Confidential Source Coordinator.

**B. Developing a Confidential Source**

1. It is essential for members to make use of vital criminal information provided by various sources that could lead to arrest or indictment of criminals. When patrol officers cultivate or are contacted by individuals who could potentially be a Confidential Source, members shall:
  - a. Seek advice or assistance from the Unit Confidential Source Coordinator or an official the rank of lieutenant or above before proceeding;
  - b. Arrange a meeting with the individual and a Confidential Source Coordinator for the initial interview; and
  - c. Complete a confidential source package according to Department procedures. (CALEA 42.2.9)

**NOTE:** Members may contact the Intelligence Section's Confidential Source Coordinator or an approved District Confidential Source Coordinator to assist with the interview.

2. If the individual meets the criteria set forth in the procedures, the information shall be forwarded to the District Confidential Source Coordinator so that the newly established source can be included in the master file. (CALEA 42.2.9)
3. The officer who first developed the Confidential Source, or a designated alternate officer, shall be assigned as the informant's controlling officer. At least one alternate shall be assigned to each Confidential Source. Subsequent contacts shall be made by the assigned officer, who shall be accompanied by another officer as a witness. The alternate officer may become acquainted with the Confidential Source by accompanying the controlling officer to meetings. This use of an alternate officer will facilitate necessary contacts any time controlling officer is not available. (CALEA 42.2.9)
4. Confidential Sources are necessary and can be the difference between the success and failure of an investigation. Members therefore, shall exercise the fullest control or direction when using a Confidential Source.

C. Precautions for Juveniles and Members of the Opposite Sex

1. Members must remember to exercise caution when interacting with a Confidential Source. Special precautions shall be taken with juveniles and members of the opposite sex. (CALEA 42.2.9)
2. Members shall not establish juveniles as a Confidential Source. This, of course, does not preclude members from eliciting information they may have about criminals or their activities. This information can be obtained through interviews when a juvenile is a victim or witness to a crime.
3. When members are interviewing and interacting with sources of the opposite sex, TWO members shall be present. If possible, one of the officers shall be of the opposite sex. Members are to restrict the conversation to gathering information for investigative purposes. This is to avoid any false claims of misconduct.

[REDACTED]

D. Information Gathering (CALEA 42.2.9)

1. Members should consult with other information sources in order to accurately evaluate and verify information gathered from a Confidential Source.
2. All interaction between members and a Confidential Source shall be documented from the initial contact to establish and maintain the

integrity of the information and to protect the identity of the source. Two officers shall be present at each contact.

- 3. Information gathered from any source must be related to an investigative objective and substantiated through investigative techniques, other information, and/or reliable Confidential Sources.
- 4. When information is collected and can be used by other members of this department or outside law enforcement agencies to initiate or further an ongoing investigation, the appropriate unit shall be notified and the notification documented.

E. Receiving Operational Assistance from a Confidential Source

1. General Provisions

a. A Confidential Source shall not be encouraged, sponsored, enlisted, or recruited to perform otherwise illegal activity as part of a clandestine police operation (e.g., sting, buy-back, undercover, surveillance, or stake-out) without specific authorization, in advance, by the Assistant Chief, Special Services Command, as applicable, or the Commander, Office of the Superintendent of Detectives or his/her designee, in accordance with Department standard operating procedures.

b. A Confidential Source shall never be authorized or permitted to:

- (1) [REDACTED]
- (2) [REDACTED]
- (3) [REDACTED]
- (4) [REDACTED]

2. Authorization

Otherwise illegal activity must be authorized in advance and in writing for a specified period, not to exceed 90 days, by:

- (1) The Assistant Chief, Special Services Command, or a designee, in consultation with the Assistant Chief, Office

of Professional Responsibility, where necessary or appropriate, and

- (2) The appropriate Supervisory Federal Prosecutor; or where applicable;
- (3) The Commander, Office of the Superintendent of the Detectives, as outlined in the Department Standard Operating Procedures (Confidential Informant Guidelines).

### 3. Findings

a. The Assistant Chief, Special Services Command, or where applicable, the Commander, Office of the Superintendent of Detectives or a designee, when authorizing otherwise illegal activity must make a finding, which shall be documented in the file of the Confidential Source, that authorization for the Confidential Source to engage in the otherwise illegal activity is:

- (1) Necessary, either to:
  - (a) Obtain information or evidence essential for the success of an investigation that is not reasonably available without such authorization, or
  - (b) Prevent death, serious bodily injury, or significant damage to property.
- (2) In either case, the benefits to be obtained from the participation of the Confidential Source in the otherwise illegal activity outweigh the risks.

b. In making these findings, the authorizing official shall consider, among other things:

- (1) The risk that the Confidential Source might misunderstand or exceed the scope of his authorization;
- (2) The extent of participation by the Confidential Source in the otherwise illegal activity;
- (3) The risk that the MPD will not be able to closely supervise the participation of the Confidential Source in the otherwise illegal activity;
- (4) The risk of violence, physical injury, property damage, and financial loss to the Confidential Source or others; and

- (5) The risk that the MPD will not be able to ensure that the Confidential Source does not profit from his or her participation in the authorized otherwise illegal activity.

**4. Precautionary Measures**

- a. Whenever the MPD has authorized a Confidential Source to engage in otherwise illegal activity, all reasonable steps shall be taken to: (CALEA 42.2.9)

- (1) Closely supervise the illegal activities of the Confidential Source; precautionary steps may include, but are not limited to;

- (a) The use of district/unit members to assist with operational objectives where appropriate and/or available; and

- (b) The use of surveillance equipment or signaling devices as outlined in General Order 304.5 (Interception or Recording of Wire or Oral Communications).

- (2) Minimize the adverse impact of the authorized otherwise illegal activity on innocent individuals; and

- (3) Ensure that the Confidential Source does not profit from his or her participation in the authorized otherwise illegal activity.

- b. Unless the Assistant Chief, Special Services Command, or where applicable, the Commander, Office of the Superintendent of Detectives or designee determines otherwise, due to exigent or overriding circumstances, every situation in which the MPD participates with a Confidential Source in an otherwise illegal activity, shall be attended by no less than four MPD officers within a reasonable proximity of the situation.

**F. Documentation of Confidential Sources**

- 1. The initial use of a Confidential Source shall be approved by a unit Confidential Source Coordinator. A confidential source package shall be completed and a confidential source control number shall be issued for each approved Confidential Source.
- 2. The following files shall be prepared, maintained and housed at the controlling district of each Confidential Source by the Unit Confidential Source Coordinator: (CALEA 42.2.9)

- a. A Master File; and
  - b. An Operational File.
3. Besides completing the confidential source package, all members of the Department who are working with Confidential Sources shall be required to complete a memo titled "Confidential Source PSA Form".
  4. The Confidential Source PSA Form memo shall list the name of the controlling and alternate officers, their telephone numbers and/or pager numbers, the element assigned, and the Police Service Area(s) the source often frequents. This form does not identify the Confidential Source, but it will identify the area that the source frequents.
  5. A Confidential Source PSA Form memo shall be processed each time a Confidential Source is established or ended and when a PD Form 127 (Confidential Expenditure Report) is generated.
  6. The official who signs off on the confidential source package or the expenditure sheet, shall be responsible for forwarding a copy of the Confidential Source PSA Form memo to the Confidential Source Coordinator.
  7. If no activity is reported from the Confidential Source after one year, the file will be designated as "inactive." This shall not be interpreted to mean the source's status has been terminated.
  8. When a Confidential Source is classified as "unreliable", the file shall be deactivated and flagged in the WACIIS data bank to ensure that the person does not act as a Confidential Source in another district.
  9. Members not trained on WACIIS shall schedule training with the unit Training Coordinator and contact any WACIIS user or the Confidential Source Coordinator for Confidential Source information until they have been trained on WACIIS.
  10. The WACIIS Program Manager shall develop a Confidential Source Information/Patrol Service Area File that will be accessible to WACIIS trained members.
- G. Documentation of Confidential Source Payments
1. Whenever a member receives cash from the element's Confidential Fund he/she shall initial the appropriate column on PD Form 129 (Officer's Account Record).
  2. Whenever a member expends cash received from the element's Confidential Fund he/she shall, before checking off duty, prepare and



submit a PD Form 127 reporting the details of the expenditure of the money.

3. A copy of PD Form 127 shall be forwarded, through the squad sergeant, to the District Confidential Source Coordinator.
4. Any applicable receipt for expended money shall be attached to the PD Form 127.
5. The final determination regarding compensation shall be made by an official, at least the rank of lieutenant.
6. All payments to a Confidential Source will be recorded on a PD 153 (Receipt for Expended Advanced MPD Funds), signed by the Confidential Source acknowledging receipt and witnessed by another officer. Payments shall not be made during a one-on-one encounter with the Confidential Source. Documentation of payment shall be appropriately filed.
7. PD Form 153 shall be used by all elements as a receipt for funds received by any person who provides information and assistance. The completed PD Form 153 shall be attached to PD Form 127 to verify each entry and shall be retained at the element for three fiscal years or until after an audit, whichever is sooner, then shall be destroyed. See General Order 304.05 (Confidential Funds).

**H. Confidential Source Coordinator Responsibilities**

A Confidential Source Coordinator shall be an official, at the rank of lieutenant or above. Confidential Source Coordinators are responsible for ensuring that investigative activities conducted by members involving Confidential Sources are done according to the policy and procedures cited in this directive, and in any other directive that applies to the handling and usage of Confidential Sources. In particular, Confidential Source Coordinators shall:

1. Be fully conversant with the guidelines set forth in the U.S. Attorney's Guidelines on the Use of Informants (January 8, 2001) and any Operating Procedures developed by other MPD specialized units;
2. Inform members of the MPD policy and procedures concerning the use of Confidential Sources;
3. Oversee recruitment, selection, employment and orientation of the Confidential Source;
4. Monitor investigation status and contacts between the Confidential Source and any MPD member. Review and sign all reports generated from the contacts to ensure that activities are being properly documented and oriented toward achieving stated objectives;

5. Conduct all computer checks, enter and update information, and monitor the Confidential Source PSA File in WACIIS; and
6. Verify that the confidential source files are correct and properly secured and ensure that the appropriate forms are forwarded to the Confidential Source Coordinator.

**I. Commanding Officer Responsibilities**

Each Commanding Officer, or a designee, shall assure that members follow the operational procedures established in these guidelines. In addition, Commanding Officers shall:

1. Appoint an official, the rank of lieutenant or above, to act as the Unit Confidential Source Coordinator;
2. Ensure that all members are adequately informed of the contents of this directive and receive any needed advice or assistance before they are authorized to recruit Confidential Sources;
3. Ensure that the Confidential Sources identity and the information they provide are kept confidential and in a secure file; (CALEA 42.2.9)
4. Ensure that each Confidential Source is advised of his/her role and responsibilities in the investigation and the Department policy and procedures relating to the Confidential Source;
5. Act as a liaison in matters that require communication or cooperative effort between an organizational element of the Department and any other law enforcement agency; and
6. Oversee the purging or destruction of Confidential Source records and files when appropriate.

- J.** The Director, Institute of Police Science, in consultation with the Senior Executive Director, Office of Organizational Development, shall develop and conduct roll call and in-service training for all sworn members on the application of this policy to police practice, including legal aspects of drug/vice investigations.

VI. CROSS REFERENCES

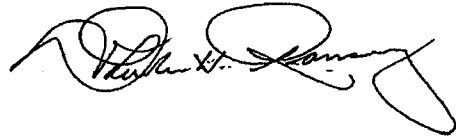
Illinois v. Gates, 462 U.S. 213 (1983)

Butera v. District of Columbia, et al., 344 U.S. App. D.C. 265; 235 F.3d 637 (2001)

U.S. Attorney's Guidelines on the Use of Confidential Informants (January 8, 2001)

General Order OPS-304.04 (Interception or Recording of Wire or Oral Communication)

General Order 304.05 (Confidential Fund)

A handwritten signature in black ink, appearing to read "Charles H. Ramsey". The signature is stylized with large loops and a long tail.

Charles H. Ramsey  
Chief of Police

Attachments

CHR:NMJ:MAR:pas