

**SAINT PAUL POLICE DEPARTMENT'S SIU POLICY AND GUIDELINES FOR
INVESTIGATIONS AND INFORMATION GATHERING OPERATIONS
INVOLVING FIRST AMENDMENT ACTIVITY**

I. STATEMENT OF POLICY

It is the policy of the St. Paul Police Department ("SPPD") that the Department will not initiate or participate in the investigations into groups or individuals based solely upon their lawful exercise of First Amendment Rights. Where the Department must initiate or participate in investigations involving First Amendment activity, this Department policy requires that those investigations conform to the guarantees of the Minnesota Constitution, The United State Constitution, state and federal law. The Saint Paul Police Department ("SPPD") must be proactive with developing sources of information to identify threats and illegal activities to carry out its mission of preventing the commission of unlawful activities and terrorist acts within or affecting the public safety for the City of Saint Paul, the State of Minnesota, or the United States.

The SPPD will not initiate nor participate with investigations or information gathering operations of groups or individuals based solely upon the lawful exercise of their constitutional rights. Department policy requires investigations or information gathering operations that involving the First Amendment activities of individuals or groups shall be based on an existing criminal predicate or the reasonable suspicion that unlawful acts have occurred or may occur.

II. GENERAL PRINCIPLES

First Amendment investigations or information gathering operations must conform to laws, rules and case law based on the constitutions of the United States and the State of Minnesota. Specifically, the investigations or information gathering operations shall comply with Title 28 Code of Federal Regulation, Part 23 and Minnesota Chapter 13 - Government Data Practices Act. In recognition of the serious nature of investigations and information gathering of this nature SPPD has instituted an integrity assurance process that includes management approval of all full investigations (as defined in Section 5c) that ensures integrity and accountability throughout the process.

The SPPD shall conduct pro-active criminal investigations and information gathering operations with the intent to detect, deter, or prevent unlawful and criminal activity. In the event oral or written communication advocates unlawful activity, or indicates an apparent intent to engage in unlawful conduct, particularly acts of violence, an investigation under these guidelines is warranted, unless it is readily apparent to a reasonable law enforcement officer that the individual or the organization lacks the means or ability to carry out such unlawful acts. Investigations shall be terminated when all logical leads have been exhausted and no legitimate law enforcement purpose justifies their continuance.

These guidelines apply only to investigations involving First Amendment activity. They do not apply to, or limit, other activities of the SPPD in the investigation or detection of unlawful conduct, the preservation of the peace and public safety, or other legitimate law enforcement

activities that do not involve First Amendment activity. These guidelines specifically do not apply to investigations focused on solving crimes.

These guidelines do not apply to investigations that have been designated to be handled by a member of SPPD when working under the direction of the FBI, Joint Terrorism Task Force.

III. ROLE OF THE SPECIAL INVESTIGATIONS UNIT

The Special Investigations Unit (SIU) shall be the primary unit in the Saint Paul Police Department that monitors the activities of groups involved in or planning demonstrations and counter-demonstrations which may affect public safety; violate state, local, or federal laws; or which may result in a public safety risk.

SIU will not seek or retain information about an individual or organizations solely on the basis of their religious, political, or social views or activities; their participation in a particular organization or event; or their race, ethnicity, citizenship, place of origin, age, disability, gender or sexual orientation, unless such information is:

1. Relevant to whether an individual or organization has engaged in, is engaged in, or is planning a criminal (including terrorist) activity; or
2. As needed by SIU to identify those individuals or groups in order for SIU or SPPD to operate effectively to provide services to the individual or accommodate an individual's religious, ethnic, or cultural requests or obligations.

SIU activities may be either self-initiated or initiated at the request of another Department unit. Nothing in the preceding paragraphs, however, is intended to prevent any member of the Department from reporting his or her observations of suspicious conduct which involves First Amendment activity to his or her chain of command and then to the SIU.

The Commander of the SIU shall inform and advise the Chief of Police every 180 days concerning the status of any work conducted pursuant to these guidelines if there are any active cases.

If SIU is going to conduct an authorized investigation into a person who happens to be of the mainstream Media (such as a reporter) investigators will consult with a prosecuting attorney for guidance regarding obtaining data, records or information that may include portions of their work product for such media outlet. The investigator and Supervisor shall be aware of the legal restrictions to such data collection as it applies to both State and Federal Law.

IV. GENERAL INFORMATION GATHERING ACTIVITIES

This section identifies a number of Department authorized activities or information gathering techniques that may further general information gathering activities that may occur prior to engaging in investigative functions such as checking of leads, preliminary inquiries, or full investigations, and are described as follows:

(Information gathering and investigative techniques used by SIU will be no more intrusive or broadscale than is necessary in the particular circumstances to gather information it is authorized to seek or retain.)

A. Information Systems

The SPPD is authorized to participate in the identifying, tracking, and operating of informational systems for identifying and locating persons involved with the planning and execution of unlawful activities, responding to risks and threats of unlawful activity, or otherwise detecting, prosecuting, or preventing unlawful activities.

B. Visiting Public Places and Events

For the purpose of detecting or preventing unlawful activities, as well as to assess the need for police planning related to lawful activities, the SPPD is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the general public. Still photographs and videotapes of public gatherings may be performed so long as the public gathering is not singled out on the basis of message. The Department may record a public event for a legitimate law enforcement purpose such as identifying suspicious activity, intelligence gathering, identifying unlawful activity, recording criminal acts, or training purposes.

No information obtained from such visits shall be retained unless it relates to potential unlawful activity or training purposes.

C. General Topical Research

The SPPD is authorized to carry out general topical research, including conducting online searches and accessing online sites and forums, as part of research on the terms and conditions, as members of the public generally. "General Topical Research" under this paragraph means research concerning subject areas that are relevant for the purpose of facilitating or supporting the discharge of policing and investigative responsibilities. This is also considered "open source" research.

D. Reports and Assessments

The SPPD is authorized to prepare general reports and assessments concerning all lawful and unlawful activities for purposes of strategic or operational planning, for the purposes of promoting public safety, or in support of other legitimate law enforcement activities and to assess for the needs of other city services. These product may include but are not limited to: briefings, intelligence products and operational plans and threat assessments

V. LEVELS OF INVESTIGATIONS

There will be times when general information gathering activities will not be sufficient to provide the Department with sufficient information to promote and ensure public safety. When the Department receives information, concerning a potential for unlawful actions related to First Amendment activities, those guidelines provide for the three levels of investigative activity to ascertain what response, if any, is appropriate. The creation of these below listed levels is intended to ensure that SPPD inquiries and investigations proceed using the least invasive techniques to obtain information while still providing the SPPD with the necessary flexibility to act well in advance of the commission of planned unlawful activity. If, however, the available information shows at the outset that the threshold standard for a preliminary inquiry or full investigation is satisfied, then the appropriate investigative activity may be initiated immediately, without progressing through more limited investigative stages.

A. Checking Of Leads

This level of investigative activity is the reasonably prompt and limited checking out of initial leads, which shall be undertaken whenever information is received of such a nature that some follow-up as to the possibility of unlawful activity is warranted. This limited activity shall be conducted to promptly determine whether further investigation (either a preliminary inquiry or a full investigation) should be conducted.

When checking leads, investigators shall employ techniques that are as minimally invasive as possible and yet can be reasonably effective. Investigators may gather information from either open source information or restricted or classified sources of information. Open source information is that which is readily available to the public. Restricted or classified sources include, but are not limited to, law enforcement agency records, credit bureaus, public utilities, banking and financial institutions records, within a legal foundation to access this information. In addition, investigators may interview individuals and make contact with informants who may be able to provide information relevant to the checking of leads.

If the checking of leads determines no possibility of unlawful activity, all records created should be destroyed except a chronological log of activity that indicates the officer involved, steps taken, reasons for the inquiry, and outcome of the lead checking. This chronological log will only indicate activity and will not indicate specific individuals or groups under investigation.

B. Preliminary Inquires

In cases where the SPPD receives information or an allegation indicating the possibility of unlawful activity and the responsible handling of the information would require some further scrutiny beyond the reasonably prompt and limited checking out of initial leads, the SPPD may initiate a preliminary inquiry in response to the information or allegation. In a preliminary inquiry, the information or allegation initially received does not warrant a full investigation because there is not yet reasonable suspicion of unlawful activity. Whether it is appropriate to open a preliminary inquiry immediately

or to first engage in a limited checking out of leads depends on the circumstances presented. In addition, a preliminary inquiry is not a required step when facts or circumstances reasonably indicate unlawful activity will occur in the future.

Except as stated herein, all lawful investigative techniques may be used in a preliminary inquiry. At the preliminary inquiry stage, undercover operations may only be used to attend meetings that are open to the public for observing the events. Undercover law enforcement officers may not seek to gain access to private meetings and shall not actively participate in meetings. At the preliminary inquiry stage, sources and informants should not be used to cultivate relationships with persons and/or groups that are the subject of the preliminary inquiry. Investigators may, however, obtain and accept information known to sources and informants.

Where a preliminary inquiry fails to disclose sufficient information to justify an investigation, the SPPD shall terminate the inquiry and make a record of the closing within a reasonable amount of time.

C. Full Investigation

A full investigation may be initiated when a good faith review of the totality of the facts or circumstances reasonably indicates an unlawful act is being or will be committed. The standard of reasonable suspicion is substantially lower than probable cause. In determining whether there is reasonable suspicion of an unlawful act, an investigator should take into account the facts or circumstances that a prudent investigator would consider. There must be an objective, articulable, factual basis for initiating the investigation; a mere hunch or subjective perception of a threat is insufficient. The standard for opening an investigation is satisfied when there is not yet a current substantive or preparatory unlawful act, but facts and circumstances reasonably indicate that such unlawful conduct will occur in the future.

Any lawful investigative technique may be used in a full investigation. The limitations outlined for a preliminary inquiry do not apply to full investigations. While full investigations may employ all legal techniques, the least intrusive methods of obtaining information shall be employed first when possible based upon the facts of the investigation as long as the less intrusive method will obtain the necessary information without compromising the efficiency of the investigation.

The Commander of the SIU must authorize a full investigation. The Chief of Police (or his/her designee) will be notified of the facts and reasons for this investigation and approve it. Request must be in the form of a written recommendation setting forth the facts or circumstances reasonably indicating that an unlawful act is being or will be committed. When exigent circumstances exist, a full investigation may commence upon the verbal authorization from the Commander of SIU or his/her designee. A written recommendation must be submitted to the Commander of SIU or his/her designee as soon as reasonably possible. Exigent circumstances are circumstances requiring action before authorization otherwise necessary under these guidelines can be reasonably obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction, or alteration of evidence; or to avoid other serious impairment or hindrance

of an investigation. In such a case, authorization for the continuance must be sought in writing and obtained as soon as reasonably possible.

VI. INVESTIGATIVE TECHNIQUES

Where the activity of an investigation, as described in this policy, presents a choice between using more or less intrusive methods, the SPPD shall consider whether the information could be obtained in a timely and effective way by the less intrusive means. Where possible, the less intrusive means shall be employed. The SPPD shall not, however, hesitate to use any lawful techniques consistent with these guidelines in an investigation, even if intrusive, where the intrusiveness is warranted in light of the seriousness of the investigation or the strength of the information indicating the possibility of unlawful activity.

VII. UNDERCOVER OPERATIONS

Subject to the limitations already set forth, undercover operations, including confidential informants, may be used when such operations are warranted to obtain information effectively, taking into account all the circumstances of the investigation, including the need for the information and the seriousness of the threat. For the purposes of those guidelines, undercover operations involve more than just attending gatherings in plain clothes.

The Commander of SIU must authorize the use of undercover law enforcement officers and confidential informants in investigations covered by these guidelines prior to commencement of the undercover operation. The request to use undercover officers or confidential informants must be in writing and must include a description of the facts and circumstances on which the investigation is based and clearly identifying the role of the undercover officer and confidential informant. These operations will follow Department guidelines with proper supervision and operational plans

The use of an undercover officer or confidential informant will be approved for a period of 120 days and may be extended for additional periods of 120 days with the approval of the Chief of Police. Such extensions may be approved for as long as the investigation continues and the use of the undercover officer or confidential informant is warranted to effectively obtain information. The request to extend the use of undercover officers or confidential informants must be in writing and must include the reason for the extension.

Undercover officers and confidential informants are prohibited from engaging in any conduct in which the sole purpose is designed to disrupt the lawful exercise of First Amendment activity. The undercover officers and confidential informants are also forbidden from disrupting the lawful operations of an organization, from sowing seeds of distrust between members of an organization, or from instigating unlawful acts or engaging in unlawful or unauthorized investigative activities. Undercover officers shall not become so involved in a group that they are involved in directing the operations of a group, either by accepting a formal position in the hierarchy or by informally setting

the group's policy and priorities. An undercover officer must adhere scrupulously to the scope of the invitation granted by the individuals or the group under investigation.

Undercover officers are not required to identify themselves or leave a gathering if it is requested that law enforcement officers leave or identify themselves. In addition, the presence of legal counsel at a meeting does not require an undercover officer to avoid or leave the meeting or gathering. Whenever reasonably possible, and without exposing one's cover or compromising the investigation, undercover officers or confidential informants shall not attend meetings where legal counsel is discussing or preparing legal strategy for pending litigation.

(Investigations of First Amendment activity must proceed with a good faith purpose and should use the least intrusive investigatory means possible or available. See Presbyterian Church v. United States of America, 752 F.Supp. 1505, 1515 (D. Ariz. 1990).

VIII. MAINTENANCE AND DISSEMINATION OF INFORMATION

All information gathered under these guidelines shall be maintained by the SPPD SIU according to principles set forth in Section II. At a minimum, that system will allow data queries for individual names, group names, and related events. SIU will review all information gathered by the Department under this policy at least once every year to determine whether a legitimate law enforcement value still exists to maintain the information.

Dissemination of this information will be for the benefit of the receiving entity for public safety planning and security measures. The dissemination will only be given to an individual, with a clear understanding that there is a true legal "need to know" and a documented "right to know" the information, for the performance of a law enforcement activity.

The SIU will establish a system to track and control whom has access to the information gathered under this policy. The SIU will maintain information identifying any individual granted special access to information gathered under this policy, the date that the information was received, whether copies of information were removed from a secure storage location, and the reasons the information was accessed. These releases will be documented in writing. When information has no further value or meets the criteria for removal under applicable law, it will be purged, destroyed, deleted or returned to the submitting source. The SIU will not allow original materials gathered pursuant to this policy to be removed from the secure storage location unless necessary to be used as evidence in a criminal matter. This location will be in SIU that has a controlled access.

VIII. RESERVATION

These guidelines are set forth solely for the purpose of internal SPPD guidance. Adherence or departure from the guidelines outlined in this document should not be used as a basis for disciplinary or litigation matters, as each incident requires a review of what was reasonable or proper at the time of occurrence.

These guidelines apply only to investigations involving First Amendment activity. They do not apply to, or limit, other activities of the SPPD in the investigation or detection of unlawful conduct, the preservation of the peace and public safety, or other legitimate law enforcement activities that do not involve First Amendment activity.

Approved by Chief John Harrington 1-16-2008