

INTRADEPARTMENTAL CORRESPONDENCE

March 17, 2010
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TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: AMENDMENT TO MAJOR CRIMES DIVISION STANDARDS AND PROCEDURES

RECOMMENDED ACTIONS

1. That the Board of Police Commissioners (Board) REVIEW, APPROVE, and FORWARD to the Los Angeles City Council's Public Safety Committee the amended Major Crimes Division Standards and Procedures incorporating access of the Inspector General into the Secure Working Environment/Sensitive Compartmentalized Information Facility (SWE/SCIF).

DISCUSSION

The Los Angeles Police Department (LAPD) reached an agreement with the FBI to achieve a satisfactory level of civilian oversight relative to the LAPD SWE/SCIF as memorialized in the amended Major Crimes Division (MCD) Standards and Procedures. The amendments to the MCD Standards and Procedures include the following: Anti-Terrorism Division is now Major Crimes Division; The Board of Police Commissioners utilizes the Inspector General to conduct audits and ensure compliance with the standards and protocols; Section H (under Public Access to Information Standards and Procedures), page 33 and 34, and 35, has been added incorporating civilian oversight of the LAPD SWE/SCIF. Police Commission President John Mack and Police Commissioner Robert Saltzman have both reviewed this agreement and concur that it achieves a satisfactory level of civilian oversight. Additionally, the former LAPD Inspector General, Andre Birotte, who has since been appointed the United States Attorney for the Central District of California, has also reviewed and approved the agreement, believing it satisfies the Department and City's civilian oversight principle.

This agreement has also been memorialized in the Standard Operating Procedures and Physical Security Requirements for the Sensitive Working Environment/Sensitive Compartmentalized Information Facility (SWE/SCIF), a confidential document not intended for public disclosure. The proposed amendments address City Council Motion #09-0021 made on November 4, 2009 relative to civilian oversight and the Police Commission's purview over the LAPD SWE/SCIF.

The LAPD SWE/SCIF will be utilized by the Joint Terrorism Task Force (JTTF), which consists of Los Angeles Police Department and Federal Bureau of Investigation (FBI) personnel. The Inspector General, working on behalf of the Police Commission, will have the appropriate security clearances to access the LAPD SWE/SCIF and will be entitled to inspect, audit, and review documents to ensure proper oversight.

The Honorable Board of Police Commissioners

Page 2

1.15

The development of this SWE/SCIF will greatly improve communication and coordination among federal, state, and local organizations toward the common goal of enhancing the information sharing environment in support of the National Strategy for Information Sharing.

Respectfully,

A handwritten signature in black ink, appearing to read 'C. Beck', with a stylized, cursive flourish at the end.

CHARLIE BECK
Chief of Police

Attachments

**THE LOS ANGELES POLICE DEPARTMENT, MAJOR CRIMES
DIVISION STANDARDS AND PROCEDURES APPROVED BY THE
LOS ANGELES BOARD OF POLICE COMMISSIONERS ON:**

PREAMBLE

The Board of Police Commissioners (Board) recognizes terrorist activity as the existence in society of individuals and groups who plan, threaten, finance, aid/abet, attempt or perform unlawful acts, the results of which are intended to further their societal objectives, to influence societal action, or to harass on the basis of race, religion, national origin, or sexual orientation.

The right of public expression through demonstration is expressly recognized and shall not, absent the reasonable suspicion to believe that there may be a potential for a "significant disruption of the public order," as defined in these Standards and Procedures, be subject to Major Crimes Division investigation that involves the maintenance of intelligence files.

Recognizing that terrorist-related intelligence information, properly gathered, analyzed, stored, maintained and disseminated, is essential to the performance of the Department's mandated duty to protect the public through crime prevention, the Board establishes these Standards and Procedures to provide for the legitimate needs of law enforcement while, at the same time, steadfastly respecting all constitutional and statutory rights guaranteed to every individual.

Generally, the focus of an intelligence investigation is strategy oriented. It focuses on the goals or potential of an individual, group or enterprise rather than on specific violations of law. The objective is not arrest and prosecution of suspects but rather the detection, collection, analysis and dissemination of information for the purpose of developing a strategy for crime prevention. Criminal investigations are case-oriented and focus on specific violators of law and specific violations for the purpose of arrest and prosecution after a crime has been committed.

These Standards and Procedures pertain only to Major Crimes Division's Intelligence function. They do not pertain to any Department function that is primarily responsible for conducting criminal investigations and does not maintain "Intelligence Files" as defined in these Standards and Procedures.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

I. DEFINITION OF TERMS

Agent Provocateur: An individual employed, directed, encouraged or allowed to associate with target members or groups in order to incite them to illegal action.

Attempt: An act done with intent to commit a crime and tending to, but falling short of, its commission.

Dissemination: The communication of any Major Crimes Division Intelligence File information to any person not assigned to Major Crimes Division's direct chain of command. All disseminations must be based upon a right to know and need to know.

File: A collection of information including, but not limited to, reports, photographs, documents, printed materials, tape recordings, videotape, computer information or other writings that are kept separately from Intelligence Files. A File may include Initial Lead, Preliminary Investigation, Intelligence Control Center, or Terrorist Threat Assessment Center information.

Informant: Generally, an informant is a person who provides information on a recurring basis and/or in exchange for consideration regarding specific criminal activity and who acts under the direction of an investigator.

Initial Lead Investigation: The lowest level of intelligence investigative activity which allows a limited follow-up of initial lead information, generally received from the public but may include Department and other law enforcement sources; of such a nature that some follow-up as to the possibility of terrorist activity is warranted. The Initial Lead Investigation threshold need not rise to the reasonable suspicion standard of a Preliminary Investigation and shall be concluded within a 60-day period. Initial lead information shall be stored separately from intelligence files. Only information that meets the reasonable suspicion standard, based on reliable information, may be placed in intelligence files.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

Intelligence Control Center: A temporary function performed by Department personnel to gather and coordinate intelligence information during the course of a potential or actual unusual occurrence.

Intelligence File: An Intelligence File contains the investigative intelligence information gathered, received, developed, analyzed and maintained pursuant to an open Intelligence Investigation, for the purpose of identifying terrorist individuals, terrorists groups, and victims of terrorism.

Investigator's Working Folder: The Working Folder is retained by the assigned investigator and is specifically designated to contain the investigative materials gathered, received, and developed for the specific purpose of updating an approved ongoing Open Intelligence Investigation. However, the Working Folder shall not be part of the Open Intelligence File.

LAPD Sensitive Work Environment (SWE)/Sensitive Compartmented Information Facility (SCIF): A facility requiring a national security clearance for access, housed within the LAPD Police Administration Building, in which classified FBI Joint Terrorism Task Force (JTTF) directed intelligence investigations are processed and handled by JTTF members, assigned to CT 10.

Maintenance: The process of recording, collating, analyzing, evaluating, indexing, updating, securing, retaining, and purging Intelligence File information gathered pursuant to a Major Crimes Division Open Intelligence Investigation.

Monitoring: The short-term or preliminary act of observing or watching the activities of an individual or organization by Major Crimes Division Intelligence investigators for the purposes of gathering information relevant to an Initial Lead Investigation, Preliminary Intelligence Investigation or Open Intelligence Investigation. This short-term monitoring activity shall not rise to the level of "Surveillance" as defined in these Standards and Procedures.

Need to Know: A precondition for the communication of intelligence information to entities outside Major Crimes Division or its immediate chain of command.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

Open Investigation: An intelligence investigation which has met the reasonable suspicion standard, is based on reliable information and has been approved by the Commanding Officer, Major Crimes Division.

Organizations: Any association or group of individuals.

Pending Activity: A future event possibly requiring operational planning for policing or police services.

Plan: Organized activity by individuals in preparation for the accomplishment of an illegal action involving possible terrorist activity.

Preliminary Investigation: A limited intelligence investigation approved by the Commanding Officer, Major Crimes Division, to develop existing information to the point of reliability in order to establish reasonable suspicion based on reliable information.

Reasonable Suspicion: An honest belief, based on known articulable circumstances, which would cause a reasonable and trained law enforcement officer to believe that some activity, relating to a definable criminal activity or enterprise, may be occurring or has a potential to occur. (This term is in accordance with Department of Justice definition: 28 CFR Part 23).

Reliable Information: Information that is trustworthy or worthy of confidence.

Right to Know: The authority or privilege to receive Major Crimes Division Intelligence information.

Significant Disruption of the Public Order: Pertains only to public demonstrations involving unlawful acts which can reasonably be expected to result in death, serious bodily injury or property damage and which are intended to have such results to further societal objectives, to influence societal action or to harass on the basis of race, religion, national origin, or sexual orientation. The mere fact of a potentially large demonstration shall not, by itself, constitute a significant disruption of the public order.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

Storage/Storing: To provide a place in which any file is kept for the purpose of records retention and not for the purpose of updating. All stored information is kept separate from Open Intelligence Files.

Surveillance: The continuous or prolonged observation of a targeted individual or group by clandestine means for the purpose of collecting information material to an approved Preliminary Intelligence Investigation or Open Intelligence Investigation.

Target: The subject of an approved investigation.

Terrorist Activity: Individual(s) or group(s) who plan, threaten, finance, aid/abet, attempt or perform unlawful acts, the results of which are intended to further their societal objectives, to influence societal action, or to harass on the basis of race, religion, national origin, or sexual orientation.

Note: Activity as it relates to individuals involved in public demonstrations must rise to the level of "Significant Disruption of the Public Order" standard, as defined in these Standards and Procedures.

Terrorist Threat Assessment Center: A permanent entity of the Department, staffed by Major Crimes Division personnel to receive, analyze, investigate and communicate terrorist related information.

Threaten: The advocacy of, or a statement of intention to commit a criminal act where such advocacy appears to be a viable threat.

Undercover Investigation: An approved intelligence investigation involving the use of an undercover officer who clandestinely obtains information about individuals or organizations through the development of ongoing relationships with such individuals or organizations

Undercover Officer: A Los Angeles Police Officer who, pursuant to an approved terrorist investigation, clandestinely obtains information about individuals or organizations through the development of ongoing relationships with such individuals or organizations.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

Unusual Occurrence (UO): An event involving potential or actual personal injury and/or property damage arising from fire, flood, storm, earthquake, tidal wave, landslide, wreck, enemy action, civil disturbance, or other natural or man-caused incident necessitating the declaration of a Tactical Alert or Mobilization. (*Emergency Operations Policies & Procedures - Volume 1 of the LAPD Emergency Operations Guide 11*)

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

II. STATEMENT OF PRINCIPLE

- A. These Standards and Procedures govern the collection, maintenance, storage and dissemination of intelligence information by the Major Crimes Division intelligence function. These Guidelines also govern the collection, maintenance and dissemination of intelligence information by all other functions and personnel of LAPD when their primary responsibility is gathering intelligence information.

In establishing these Guidelines, the Board of Police Commissioners provides for the legitimate needs of law enforcement within limits created by constitutional and statutory protections which guarantee rights: (1) of privacy, (2) to receive, hold and express ideas, (3) to dissent freely, (4) to write and to publish, (5) to petition for the redress of grievances, (6) and to associate publicly and privately for any lawful purpose.

- B. In reaching the delicate balance of protecting the rights of individuals and providing for effective prevention of terrorist activity, community peace, and in recognizing that no other aspect of the Department's duties requires such detached and sensitive judgments on the part of individual peace officers and that nowhere else is reverence for the law more demanded, the Board affirms the following principles:

1. The Department has a policy of absolute prohibition against the use of illegal or unauthorized methods of collecting, maintaining or disseminating intelligence information; a policy which shall remain in full force and effect. The Commanding Officer, Major Crimes Division, shall report to the Chief of Police any intelligence activity reasonably believed to be contrary to the scrupulous observation of this principle.
2. The Department considers it both unnecessary and wrong to maintain an intelligence file on any individual or organization unless the reasonable suspicion standard for an Open Intelligence Investigation according to these Standards and Procedures has been met.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

3. Major Crimes Division Intelligence Section personnel shall not collect, maintain or disseminate information about an individual's sexual, political or religious activities, beliefs or opinions unless such information is material to an approved investigation.
4. Major Crimes Division Intelligence Section personnel shall exercise due caution and discretion in the use of information, collected, maintained and disseminated so as not to interfere with the lawfully exercised rights of any person.

III. FUNCTIONS AND OBJECTIVES

- A. The primary objective of Major Crimes Division's Intelligence Operation is the prevention of terrorist activity in the City of Los Angeles and environs by:
 1. Identifying terrorist trends.
 2. Examining terrorist tactics, developing terrorist profiles, assessing terrorist threats, and developing information to protect potential targets.
 3. Investigating, identifying and monitoring individuals and groups that may be engaged in terrorist activity.
 4. Maintaining intelligence files on individuals and groups that may be engaged in terrorist activity.
 5. Assessing and analyzing the capabilities of terrorist individuals or groups, and providing concerned Department entities with sufficient information to thwart their terrorist goals.
 6. Assisting other subdivisions of the Department and other law enforcement agencies to prevent terrorist activities.
- B. A secondary objective of Major Crimes Division Intelligence Section is to advise the Chief of Police and other executive management personnel about pending events which may require operational awareness or planning for policing or police services.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

- C. The focus of Major Crimes Division activity is on the safety of persons and protection of property through the prevention of terrorism in the City of Los Angeles. The Board is aware, however, that terrorists do not respect municipal boundaries. It is therefore appropriate to gather intelligence on international terrorists and other persons and organizations whose conduct can reasonably be expected to affect the City of Los Angeles. Similarly, information may be gathered with respect to persons residing in Los Angeles who may commit acts of violence elsewhere and then return. In fulfilling these responsibilities, Major Crimes Division may work with other agencies and pursue investigations into other jurisdictions.

IV. INTELLIGENCE INVESTIGATIVE ACTIVITY

Generally, the focus of an intelligence investigation, (usually of a long-term nature), is the group or individual enterprise, rather than just individual participants and specific unlawful acts. The immediate purpose of such an investigation is to obtain information concerning the nature and structure of a group or enterprise, including information relating to the group's membership, finances, geographical dimensions, past and future activities, and goals. This is done with a view toward detecting and preventing unlawful acts which are intended to have such results to further their societal objectives, to influence societal action or to harass on the basis of race, religion, national origin, or sexual orientation.

The objective of the Major Crimes Division intelligence investigation is not the arrest and prosecution of suspects, but rather the detection, collection, analysis and dissemination of information for the purpose of crime prevention.

A. LEVELS OF INTELLIGENCE INVESTIGATIVE ACTIVITY

The Standards and Procedures for Major Crimes Division provide for a graduated level of investigative activity and allow Major Crimes Division the necessary flexibility to act well in advance of the commission of a planned terrorist attack. The three levels of investigative activity are: (1) Initial Lead Investigations, (2) Preliminary Investigations, and (3) Open Investigations.

Whether it is appropriate to open an investigation immediately, or first to engage in a limited follow-up of lead information, depends on the circumstances presented. If the available information shows at the outset that the threshold standard for a Preliminary or Open Investigation is satisfied, then approval to conduct the appropriate investigative activity may be requested immediately, without progressing through the more limited investigative stage. However, if the reasonable suspicion standard has not been met, only an Initial Lead Investigation may go forward.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

Major Crimes Division personnel shall operate the Terrorist Threat Assessment Center which is responsible for the follow-up of Initial Lead Investigations involving possible terrorist-related information.

INITIAL LEAD INVESTIGATIONS

The lowest level of investigative activity is the prompt and limited follow-up of initial leads, many of which are initiated by the public. Checking of leads should be undertaken whenever information is received of such a nature that some follow-up as to the possibility of terrorist activity is warranted. This limited activity should be conducted with an emphasis toward promptly determining whether further investigation, either a Preliminary Investigation or an Open Investigation, should be conducted.

Many initial investigative leads from the public and other sources are expected to be somewhat vague and may not meet the reasonable suspicion standard for a Preliminary or Open Investigation. However, public safety demands a limited but prompt follow-up investigation. The authority to conduct inquiries, short of a Preliminary or Open Investigation, allow s Major Crimes Division to respond in a measured way to ambiguous or incomplete information.

INVESTIGATIVE TECHNIQUES FOR INITIAL LEAD INVESTIGATIONS

The following investigative techniques are authorized for Initial Lead Investigations:

- (a) Examination of records available to the public (open source);
- (b) Examination of LAPD records;
- (c) Examination of available federal, state, local government records, etc;
- (d) Interview of the person reporting;
- (e) Interview of the potential subject;
- (f) Interview of witnesses;
- (g) Monitoring.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

Initial Lead Investigations shall be completed within 60 days from the date of receipt of the specific lead. All materials collected during the Initial Lead Investigation shall be stored separately from Intelligence Files unless the initial investigation results in an approved Open Investigation.

PRELIMINARY INVESTIGATIONS

The next level of investigative activity, a Preliminary Investigation, should be undertaken when there is information or an allegation which indicates the possibility of terrorist activity. Preliminary Investigations are based on reasonable suspicion only and are for the purpose of determining whether or not the information or allegation can be developed to the point of reliability.

A Preliminary Investigation may be initiated when:

- Reasonable suspicion exists that an individual or organization may be planning, threatening, attempting, performing, aiding/abetting, or financing unlawful acts;
- The results of which are intended to further their societal objectives, influence societal action or harass on the basis of race, religion, national origin, or sexual orientation.

A Preliminary Investigation shall commence when the Commanding Officer, MCD, approves the request. The Preliminary Investigation shall not exceed 120 days.

INVESTIGATIVE TECHNIQUES FOR PRELIMINARY INVESTIGATIONS

A Preliminary Investigation shall not involve the use of electronic surveillance that requires a court order. All other approved investigative methods are authorized.

OPEN INVESTIGATIONS

The commencement of each Open Investigation shall be approved by the Commanding Officer, MCD, who shall ensure the reasons for initiating the investigation meet the required threshold as stated below.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

An Open Investigation may be initiated when there exists, a reasonable and articulated suspicion based upon reliable information that an individual or organization may be:

- Planning, threatening, attempting, performing, aiding/ abetting, or financing unlawful acts;
- The results of which are intended to further their societal objectives, influence societal action or harass on the basis of race, religion, national origin, or sexual orientation.

INVESTIGATIVE TECHNIQUES FOR OPEN INVESTIGATIONS

All lawful investigative technique may be used in an Open Investigation.

B. PENDING ACTIVITY REPORTS

1. Major Crimes Division Intelligence Section personnel may collect and disseminate information regarding events significant to the City of Los Angeles. Such events include, but are not limited to: parades, demonstrations, dignitary visitations, and VIP appearances, which require operational awareness or planning for policing or police services.
2. Pending Activity Reports are subject to the constraints delineated in the Preamble to these Standards and Procedures and shall be stored separately from Major Crimes Division's Intelligence Files.
3. Pending Activity Reports shall be transmitted to the appropriate Department operational entities immediately upon completion and approval. A copy shall be filed at the Department Command Post. Major Crimes Division shall maintain a log of such reports for audit purposes.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

C. INTELLIGENCE CONTROL CENTER FUNCTION

1. The Intelligence Control Center collects and disseminates intelligence information gathered during an unusual occurrence or a potential unusual occurrence.
2. Major Crimes Division Intelligence Section personnel may be temporarily assigned to the Intelligence Control Center.
3. While completing the work of the Intelligence Control Center, members of Major Crimes Division are not subject to these Standards and Procedures.
4. All materials gathered, organized and produced during an Intelligence Control Center activation shall be stored separately from Major Crimes Division's intelligence files. Information obtained during an Intelligence Control Center Activation that may be material to an intelligence investigation may only be accessed with approval of the Commanding Officer, Major Crimes Division.

D. TERRORIST THREAT ASSESSMENT CENTER FUNCTION

1. The Department has established the Terrorist Threat Assessment Center as the permanent clearinghouse for terrorist-related information specific to the City of Los Angeles or that may impact the City of Los Angeles.
2. The Terrorist Threat Assessment Center shall be responsible for receiving, analyzing, disseminating and conducting a limited intelligence investigation of terrorist-related threats and information.
3. In order to facilitate the dissemination of terrorist-related threats, the Terrorist Threat Assessment Center shall maintain special liaison with appropriate Department and City functions, as well as the Los Angeles County Terrorism Early Warning Group, the California Anti Terrorism Information Center,

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

The United States Department of Homeland Security and the Federal Bureau of Investigation.

4. The Terrorist Threat Assessment Center shall be staffed by Major Crimes Division Intelligence Section personnel. While completing the work of the Terrorist Threat Assessment Center, Major Crimes Division Intelligence Section personnel are subject to these Standards and Procedures. All materials gathered, organized and produced during a Terrorist Threat Assessment Center investigation shall be stored separately from Major Crimes Division Intelligence Files unless the Initial Lead Investigation develops into an approved Open Intelligence Investigation.

E. MULTI-AGENCY TASK FORCE

Members of Major Crimes Division, with the approval of the Chief of Police, may be assigned to a multi-agency task force. Major Crimes Division personnel that are members of a multi-agency task force, headed by another agency, may engage in the investigative methods legally authorized for use by that agency, as long as those methods do not violate current laws.

V. LIMITATIONS AND PROHIBITIONS

Major Crimes Division Intelligence Section personnel shall recognize and abide by legal and policy limitations placed upon their investigations. In addition to the parameters established by these Standards and Procedures, the following specific limitations and prohibitions apply to Major Crimes Division Intelligence Section personnel and investigations:

- A. No member of Major Crimes Division may engage in any unlawful activity in the collection, maintenance or dissemination of intelligence data or information.
- B. No member of Major Crimes Division may knowingly employ or direct any individual to illegally engage in the collection, maintenance or dissemination of intelligence data or information.
- C. No member of Major Crimes Division may act or knowingly engage another individual to act as an agent provocateur.
- D. No member of Major Crimes Division may employ the use of restricted electronic surveillance equipment without conforming to policy as stated in the Department Manual.
- E. Initial Lead Investigations shall not exceed 60 days.
- F. A Preliminary Investigation shall not exceed 120 days.

VI. UNDERCOVER INVESTIGATIONS, SURVEILLANCE AND INFORMANTS

The Board of Police Commissioners recognizes its critical task in balancing the needs of law enforcement in its efforts to protect the broader society, versus the need to safeguard individual rights guaranteed by a democratic people. Necessarily involved in this process is the recognition that a few groups and individuals espouse, finance, aid or abet violence and/or the wanton destruction of property and that many such groups have attained a high level of criminal sophistication. It is that same criminal sophistication that causes law enforcement to resort to the use of undercover operations, surveillance and informants to counteract their progress. However, as serious as these concerns are, they do not outweigh the previously mentioned societal rights. It is imperative that constitutionally guaranteed rights remain the focal point when utilizing these investigative methods. The law enforcement intelligence community must therefore make optimum use of appropriate resources when available and maximize its capabilities while operating within legal and ethical constraints.

A. UNDERCOVER INVESTIGATIONS – SAFEGUARDS

An investigation involving the infiltration of an organization or the development of an ongoing relationship with an individual by an undercover officer is the most reliable tool for information gathering by law enforcement. The value of the information so obtained has been repeatedly demonstrated in the prevention of terrorist activity and other criminal acts.

The use of information gained in undercover operations is greatly diminished if the manner in which it is obtained casts aspersions upon the conduct of the undercover officer. The conduct of the officer and control of the investigation is therefore critical to minimize interference with lawfully exercised rights. The Chief of Police and the Board of Police Commissioners are charged with great responsibility in authorizing undercover investigations, and should do so only after all other reasonable investigative methods have been determined to be impractical or ineffective to accomplish the objectives of the investigation.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

It is most important that the selection, training, and oversight of undercover personnel receive the utmost attention. It is also imperative that undercover officers understand constitutional and statutory rights which govern their intelligence gathering limits.

The Chief of Police shall have the authority and responsibility to use all resources available to protect the identity and safety of an undercover officer and to protect the confidentiality of information obtained in an undercover investigation.

These Standards and Procedures establish the limits and guidelines by which the conduct of Major Crimes Division Intelligence Section personnel and undercover investigative techniques are controlled.

B. UNDERCOVER INVESTIGATION COMMITTEE

The President of the Board of Police Commissioners or another Commissioner designated by the President shall comprise the Undercover Investigation Committee. The Commissioner comprising that Committee shall serve a maximum of three consecutive years, and shall have the duties and assignments as prescribed by these Guidelines.

C. UNDERCOVER INVESTIGATION – AUTHORIZATION

1. Undercover investigations (i.e. use of an undercover officer) may be initiated subject to the following safeguards:

- a. The targeted individual(s) and/or organization have been approved for a Preliminary or Open Investigation.
- b. No undercover investigation shall be commenced without the written approval of the Chief of Police and the Committee. Prior to the actual commencement of any infiltration by an undercover officer, the requirements set forth below must be met:

Exception: In an emergency involving a life threatening situation where the Undercover Committee is unavailable, an undercover investigation may be commenced with the approval of

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

the Chief of Police. Telephonic notification to the Undercover Committee shall be made as soon as possible and written approval from the Undercover Committee shall be requested within 72 hours.

- 1) The undercover investigation application shall be signed by the Commanding Officer, Major Crimes Division, through the chain of command to the Chief of Police;
- 2) All supporting assertions of fact in the application shall be contained in affidavits (or declarations under oath); said affidavits or declarations may be based on hearsay evidence. The requirements for these affidavits shall meet the requirements of these Guidelines (and shall not be equated with the requirements for a search warrant).
- 3) The application shall include information which bears upon:
 - (a) Whether there is a reasonable suspicion to believe that the target individual or organization may be planning, threatening, financing, aiding/abetting, attempting or performing unlawful acts, the results of which are intended to further their societal objectives, to influence societal action, or to harass on the basis of race, religion, national origin, or sexual orientation;
 - (b) The expected results of the undercover operation in terms of prevention of terrorist activity;
 - (c) The anticipated manner in which the undercover operation will be conducted, including likely individuals and organizations who will be contacted;
 - (d) The authorized duration of the undercover investigation and the provision for periodic review;
 - (e) What other methods have been previously used and why Major Crimes Division believes that an undercover

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

investigation is the only practical means to accomplish the objectives of the investigation;

- (f) If the Department intends that the undercover officer shall infiltrate a non-target organization, then there shall be included additional information which clearly indicates the need to become a member of the non-target organization. No information on the non-target organization or its members will be reported in any intelligence file, unless there is reasonable suspicion to believe that the non-target organization, or members of the non-target organization, may be involved in terrorist activity or in cases of public demonstration, activities which may have the potential to significantly disrupt the public order.
- c. The Committee shall not issue written authorization initiating an undercover investigation of an individual or organization unless the Committee agrees that all of the following requirements have been met:
 - 1) The application has been signed by the officials listed in subparagraph C.1.b(1) above;
 - 2) All supporting assertions of fact are sworn to under oath; and
 - 3) The Committee has consulted with legal counsel for advice, as necessary.

The Committee shall maintain a written record of compliance with this subparagraph.

- 4) The Committee renders written findings that:
 - a. There is an approved Preliminary or Open Intelligence Investigation which meets the respective reasonable suspicion standard;

**PUBLIC ACCESS TO INFORMATION
STANDARDS AND PROCEDURES**

- b. That other means are unavailable or ineffective to achieve the investigative objectives of the Department; and
 - c. That the interests of privacy and free expression are outweighed by the nature and magnitude of the likely harm.
- 5) Where the Department seeks to infiltrate a non-target organization so that an undercover officer may infiltrate the target organization, the Committee shall render additional written findings that:
 - a. All other means of obtaining sufficient information on the target organization either have been tried without success or are not practical; and
 - b. There is reasonable basis for believing that the presence of the undercover officer in the non-target organization will enable him/her to infiltrate the target organization as evidenced by the fact that:
 - c. Members of the target organization are also members of the non-target organization;
 - i. That the target organization recruits members from the active members of the non-target organization;
 - ii. That membership in the non-target organization is a condition of membership in the target organization; or
 - iii. There is a substantial link between the non-target organization and target organization, equal to those described in (i)-(iii) above, which otherwise justifies the undercover officer's infiltration of the non-target organization; provided, however, that this substantial link shall not be based solely on the evidence that:
 - I. The non-target organization espouses or holds the same political, social or economic

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

positions as the target organization (e.g. a non-violent organization which opposes nuclear power plants shall not be infiltrated in order to infiltrate a target organization which opposes nuclear plants by violent means unless there are other factors present);

- II. The non-target organization shares the same racial, religious or other status or concerns with the target organization.
- d. The interests in privacy and free expression of the non-target organization are outweighed by the nature and magnitude of the likely harm by the target organization. In this regard, the Committee shall consider, in part, former and other current infiltrations by undercover officers of the non-target organization.
- e. Where the Committee finds that the application for an undercover investigation meets the requirements set forth in paragraph c.1-5 (Pages 16-17), it shall issue written authorization to conduct an undercover investigation under the following terms and conditions:
 - 1) Specifying the individual or organization that is the target of the undercover investigation;
 - 2) Setting forth limitations, if any, on the activities which can be engaged in by the undercover investigators with regard to the target individual or organization;
 - 3) Imposing a time limit on the undercover investigation, which, however, cannot exceed a period of one year with a semi- annual status review by the Undercover Committee;
 - 4) If the infiltration of a non-target organization also has been approved, the written confirmation shall include these additional terms and conditions:

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

- a) Specify the number of meetings of the non-target organization, which the undercover officer may attend without further approval of the Committee;
 - b) Set forth limitations, if any, on the activities which can be engaged in by the undercover officer in the non-target organization;
 - c) Require quarterly reports from Major Crimes Division regarding the steps taken by the undercover officer to infiltrate the target organization, estimates of the additional time necessary to infiltrate the target organization and an explanation of the reason why the target has not yet been infiltrated;
 - d) Require quarterly reviews by the Committee on whether the infiltration of the non-target organization still meets the requirements set forth in paragraph c.1-5 (Pages 16-17), above.
- f. The Committee shall make its decision within 72 hours of receipt of the application of the Department. In the event that the Committee is unable to render a decision within this time frame, the Chief of Police may present the matter to the full Board for a determination. The Board's determination shall be made in accordance with the Undercover Standards and Responsibilities Section of these Standards and Procedures.
- g. If the Department seeks to continue an undercover investigation after the initial one-year period, the Department shall request that the investigation be reviewed by the Committee.
- 1) The request for review shall include all information previously submitted and, in addition, shall contain information on all activities of the undercover officer during the preceding investigation, including all

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

organizations and individuals which were contacted by him/her in that time period.

- 2) The Committee shall issue written authorization to continue an undercover investigation of a target organization or individual only where in the preceding one-year period:
 - a) The undercover officer has obtained some reliable information that the target may still be a viable threat in terms of planning, threatening, financing, aiding/abetting, attempting or performing unlawful acts, the results of which are intended to further their societal objectives, to influence societal action, or to harass on the basis of race, religion, national origin, or sexual orientation.
 - b) The undercover officer has taken all reasonable steps to develop the necessary contacts with the target organization or individual so as to ascertain whether said target is conducting activities described in paragraph 2.a. above, but the undercover officer has been unable to develop such contacts through no fault of his/her own.
- h. Except as permitted in paragraph VI.C, no undercover investigation shall be conducted absent compliance with the above-mentioned procedures.
- i. Unless already approved under VI.C.L.c(4) above, during a duly authorized undercover investigation, an undercover officer may be present on two occasions in organizations which are not the subject of a Major Crimes Division Intelligence investigation. Once the undercover officer has attended two such meetings, functions, demonstrations or other activities (whether public or private), the attendance of the undercover officer at these

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

activities shall be reported in writing to the Commanding Officer, Major Crimes Division, the Chief of Police and the Committee. The undercover officer shall not attend any further meetings, functions, demonstrations or other activities of the non-target organization except under either of the following circumstances:

- 1) The failure of the undercover officer to attend such activities will expose him/her to immediate danger to his/her physical safety or jeopardize the fictitious identity of the undercover officer. In this event, the undercover officer's attendance at these additional activities of the non-target organization shall be reported in writing to the Commanding Officer, Major Crimes Division, the Chief of Police and the Committee.
- 2) The Committee gives written authorization for the undercover officer to attend further activities of the non-target organization for the purpose of maintaining a cover, but only in accordance with the guidelines and findings set forth in Section VI.C.lc(4).
- 3) The events and writings pertaining to (1) and (2) above shall be audited by the Commission pursuant to Section IX, infra, to ensure compliance with these Guidelines.

D. REVIEW BY THE BOARD OF POLICE COMMISSIONERS

1. Each member of the Board of Police Commissioners shall have the right to request a review by the entire Board of any decision by the Committee and to have access to such information as may be necessary to make a determination as to whether such a request is appropriate. In addition, in the event that the Committee does not confirm the infiltration by the undercover officer, the Chief of Police may request in writing that the proposed undercover investigation be reviewed by the entire Board. The Board in making its review shall:

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

- a. Consider each and all of the findings made by the Committee (including such other information as the Board may seek from the Committee);
- b. Prepare written findings if the Board rejects the decision of the committee. The written findings shall expressly recite the basis for, and facts upon which, the decision to override the Committee was made;
- c. Not override the Committee unless at least three votes in favor of said override are obtained; and
- d. Report to the public on an annual basis the number of decisions reviewed and the number of times the decision of the Committee was changed.

E. UNDERCOVER STANDARDS AND RESPONSIBILITIES

1. UNDERCOVER OFFICER STANDARDS

- a. **PRESENCE AT RELIGIOUS EVENTS:** Undercover officers shall take all reasonable steps to minimize any intrusion of religious ceremonies, meetings or discussions. Undercover officers shall not report on those events unless they relate to the undercover investigation.
- b. **PARTICIPATION IN PRIVILEGED INFORMATION EVENT:** Undercover officers shall, when possible, avoid attendance at a meeting which would involve information covered by California Evidence Code Sections 954 (Lawyer-Client Privilege), 980 (Privilege for Confidential Marital Communications), 992 (Confidential Communication Between Patient and Physician), 1012 (Confidential Communication Between Patient and Psychotherapist), and 1033 (Privilege of Penitent). If an undercover officer attends a meeting where privileged information is shared, the undercover officer shall not report or divulge the content of said meeting.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

NOTE: Undercover officers are exempt from this restriction if the holder of the privilege waives same as defined under California Evidence Code Sections 912, 956, 981, 997 and 1018.

- c. **PRESENCE AT EDUCATIONAL INSTITUTION:** If attendance by an undercover officer in an educational institution is required as part of the investigation, the officer shall not report on any activity associated with the institution which is not directly related to the investigation. The undercover officer shall take all reasonable steps to minimize any intrusion which his/her conduct might have in connection with the academic freedoms associated with the institution.
- d. **WRITTEN REPORTS:** Undercover officers shall not make written reports of their operations and activities.
- e. **TRAINING OF UNDERCOVER OFFICERS:** The Officer-in-Charge, Special Assignment Unit, shall ensure each undercover officer is familiar with these sections and is trained regarding acceptable standards of conduct.

2. UNDERCOVER RESPONSIBILITY

- a. **OFFICER'S RESPONSIBILITY:** An undercover officer who attends a meeting as described in VI.E.1.a and VI.E.1.b shall report attendance to an investigative or Special Assignment Unit supervisor.
- b. **SUPERVISOR'S RESPONSIBILITY:** An investigative or Special Assignment Unit Supervisor who becomes aware that an undercover officer has attended a meeting as described in VI.E.1.a. shall report such attendance to the Commanding Officer, Major Crimes Division.
- c. **COMMANDING OFFICER'S RESPONSIBILITY:** The Commanding Officer, Major Crimes Division, when notified that an undercover officer has attended two meetings, functions, demonstrations or other activities of any organization not

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

approved for infiltration, shall report such activity to Major Crimes Division's immediate chain of command.

NOTE: In connection with religious ceremonies, no reporting beyond the Commanding Officer, Major Crimes Division, is required if the religious nature of the group was considered at the time the undercover operation was approved. The undercover officer shall be directed not to attend any further such meetings, functions, demonstrations or activities of any organization not approved for infiltration unless:

Failure of the undercover officer to attend such activities will pose an immediate danger to the physical safety of the officer or jeopardize his/her identity. In this event, the undercover officer's attendance at these additional activities shall be reported to the Commanding Officer, Major Crimes Division, and Major Crimes Division's immediate chain of command who shall authorize attendance at further activities for the purpose of maintaining cover.

3. APPROVAL OF THE BOARD

Any request to modify current restrictions on acceptable conduct by undercover officers as cited in the Major Crimes Division confidential Procedural Manual shall be considered during an Executive Session of the Board in compliance with the Ralph M. Brown Act.

F. SURVEILLANCE AND INFORMANT OPERATIONS

Surveillance and informant operations are discussed in Major Crimes Division's confidential Procedural Manual. Inclusion of those operations in these Guidelines would have a detrimental effect on operational effectiveness and could jeopardize the safety of officers and informants.

VII. CONTROL OF INTELLIGENCE FILES

- A. The Commanding Officer, Major Crimes Division, shall be responsible for the establishment of written procedures to ensure the security of intelligence files. These procedures shall be made available to the Commission's Audit Committee or designee at any time to monitor compliance with these Guidelines.
- B. The Commanding Officer, Major Crimes Division, shall review all intelligence reports and pending activity reports, prior to their storage.
- C. Information collected by Major Crimes Division Intelligence Section personnel shall not be maintained unless it is material to an investigation authorized under these Standards and Procedures. However, recognizing a determination of materiality is not always possible when information is originally received, an investigator may record information until such time as a determination can be made. Such information shall not become part of the files maintained by Major Crimes Division, and shall be destroyed in accordance with record keeping procedures when it is determined that the information is not material. Initial inquiries and contacts, the working investigation notes, drafts or other writings shall be maintained in the investigator's working folder.
- D. No member of Major Crimes Division Intelligence Section may disseminate information from Major Crimes Division files to any individual or agency that does not have both a need and a right to the information.
- E. No member of Major Crimes Division Intelligence Section may provide a copy of an intelligence report to anyone outside of Major Crimes Division Intelligence Section and Major Crimes Division's immediate chain of command without the prior approval of the Commanding Officer, Major Crimes Division, or the Major Crimes Division Custodian of Records.
- F. Any member of Major Crimes Division Intelligence Section who copies, permits inspection of, or disseminates intelligence information from intelligence files shall record the date, name of officer disseminating, name of the individual receiving, the reason for the dissemination, the information disseminated, and its reliability.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

- G. In the case of a joint investigation by Major Crimes Division Intelligence Section and another law enforcement agency, the Commanding Officer, Major Crimes Division, may authorize a free flow of information on the particular individual(s) and organization(s) being investigated, consistent with the Standards and Procedures of Major Crimes Division.
- H. Members of Major Crimes Division Intelligence Section shall not maintain or utilize the Division's intelligence materials outside of their official work location without the written approval of the Commanding Officer, Major Crimes Division.
- I. Any writing prepared to summarize the status or activities of an investigation other than that placed on LAPD Form 1.89 (Intelligence Report), shall be recorded on a LAPD Form 15.7 (Employee's Report). The Employee's Report shall be retained and filed by the Commanding Officer, Major Crimes Division, for a period of one-year, after which time it shall be purged at the discretion of the Commanding Officer.

VIII. PERSONNEL ADMINISTRATION

- A. Recognizing the importance and sensitivity of the duties performed by Major Crimes Division, the Department will exercise special care and attention to the selection, development, training, and retention of all personnel assigned to Major Crimes Division.
- B. These Standards and Procedures shall be distributed to, and made the subject of training for, all Major Crimes Division Intelligence Section personnel.
- C. All Major Crimes Division Intelligence personnel shall be required to acknowledge, in writing, their receipt of a copy of these Standards and Procedures, and their willingness to abide by the purpose, procedures, and spirit of its content.
- D. As with any other Department guideline or regulation, any willful or negligent violation of or deviation from these Standards and Procedures will be viewed as misconduct and be subject to appropriate disciplinary action.

IX. AUDITING AND OVERSIGHT

- A. At least annually, the Inspector General (IG), on behalf of the Board of Police Commissioners, shall audit the operations of Major Crimes Division for compliance with these Standards and Procedures. The IG may enlist the assistance of one administrative support staff member who shall be subject to a background examination and possess the requisite auditing and management expertise to ensure compliance with the Standards and Procedures.

The audit shall consist of, but not be limited to, the following:

- a. A review of all Major Crimes Division Intelligence regulations, rules and policies.
 - b. A review of all Major Crimes Division Intelligence investigations conducted in the prior year.
 - c. A review of all materials gathered, received, developed or maintained by Major Crimes Division Intelligence Section for intelligence purposes.
 - d. An oral interview of Major Crimes Division Intelligence Section personnel assigned to task forces wherein another agency is the lead agency and is in possession of all work product, to ensure that Major Crimes Division personnel are in compliance with these Standards and Procedures. This oral interview is to include MCD Intelligence Section personnel assigned to the LAPD SWE/SCIF (CT-10).
 - e. A written report setting forth the nature of the audit and the findings on compliance with these Standards and Procedures.
- B. The IG or his/her designated administrative auditor(s) may, at any time, conduct surprise audits or inspections as deemed appropriate to monitor compliance with these Standards and Procedures.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

- C. Based upon the audit, the administrative auditor(s), under the supervision of the IG, shall prepare a confidential written report for the entire Board.
- D. From the above confidential report, the Police Commission shall prepare annually, a public report of the audit on the preceeding year's activities of Major Crimes Division.
- E. Annually, the Commanding Officer, Major Crimes Division, shall provide written certification that all current Major Crimes Division intelligence investigations have been internally reviewed and that those Major Crimes Division investigations which are no longer viable have been closed.
- F. The written justification for the commencement of an intelligence investigation shall be retained and reviewed by the Commission during the audit described in Section IX.
- G. The Board shall have the right to review the Major Crimes Division confidential Procedural Manual and approve those portions which pertain to prohibitions on undercover officer conduct previously included in these Standards and Procedures. Any changes to those provisions shall receive prior approval of the full Board, upon recommendation of the Intelligence Committee. Discussion of the contents of the confidential Procedural Manual shall be held in Executive Session of the Board, and shall remain confidential.
- H. Oversight and Auditing of Major Crimes Division Intelligence Section personnel assigned to the LAPD SWE/SCIF (CT-10) (see also, Standard Operating Procedures and Physical Security Requirements - SCIF).
 - 1. Upon receipt of the necessary security clearance(s), the Inspector General for the Los Angeles Board of Police Commissioners will be provided access to the LAPD SWE/SCIF for the purpose of oversight directed at LAPD CT-10 personnel.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

2. In accordance with existing Joint Terrorism Task Force (JTTF) protocols, it is understood that certain LAPD investigations will be converted by the FBI into FBI JTTF investigations when the FBI determines that those investigations meet investigative thresholds under the United States Attorney General Guidelines and the FBI's Domestic Investigations and Operations Guide. These investigations and records pertaining thereto will be maintained within the LAPD SWE/SCIF and are subject to FBI and United States Department of Justice (DOJ) internal inspection and/or auditing processes.¹
3. In order to meet the objectives of ensuring adherence to federal law pertaining to the confidentiality of files under the control of the FBI, while also accomplishing oversight responsibilities vested in the LAPD Inspector General, the LAPD IG will, in conformance with federal laws and regulations (and with the necessary clearance[s]), have access to audits or inspections conducted by the federal government concerning LAPD CT-10 personnel.
4. Additionally, where the LAPD IG determines that an inspection or audit of a particular facet of LAPD CT-10 personnel is necessary, the Special Agent in Charge of the FBI's Counterterrorism Division (CT SAC), will audit or inspect the particular facet and create a written report for the LAPD IG.
5. Should the IG determine that it is necessary to review classified investigative records/information in order to

¹ Specifically, primary oversight for compliance with the United States Attorney General's Guidelines for Domestic FBI Operations (AGG-Dom) and the FBI's Domestic Investigations and Operations Guide (DIOG) lies with the United States Justice Department's National Security Division and the FBI's Inspection Division, Office of General Counsel, and Office of Integrity and Compliance. Congressional Oversight is conducted by various committees of the United States Congress, but primarily by the Judiciary and Intelligence Committees. The Intelligence Oversight Board (IOB), comprised of members from the President's Intelligence Advisory Board (PIAB), also conducts oversight of the FBI. Among its other responsibilities, the IOB reviews violations of the Constitution, national security law, Executive Orders and Presidential Decision Directives by the FBI and issues reports thereon to the President and the Attorney General.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

carry out the auditing/oversight of LAPD personnel assigned to CT-10, the IG shall coordinate access to such records and investigations with the CT SAC.

6. At the conclusion of the IG's review of any "classified" inspection/audit, the IG shall prepare a confidential declassified report to the Board of Police Commissioners in which the IG shall assess compliance by LAPD CT-10 personnel with applicable laws, rules, and standards and procedures. Any use of information from an FBI JTTF file, in either its original format or derived there from, must comply with federal laws and regulations. The IG may not reveal classified information in an LAPD IG report. If the information is vital to the report, the IG shall seek permission from the FBI to use that information in a declassified form. Only the FBI can determine whether classified information can be declassified. The IG will consult and gain the concurrence of the FBI's CT SAC prior to any dissemination of information derived from the FBI.
7. If the LAPD IG determines that there is a potential violation of federal law or regulation by an FBI or other federal employee, the IG will refer the matter to the FBI JTTF Assistant Special Agent in Charge for appropriate action.

PUBLIC ACCESS TO INFORMATION STANDARDS AND PROCEDURES

X. PUBLIC ACCESS TO INFORMATION

- A. Major Crimes Division Intelligence Section shall provide public access to all documents maintained or collected by Major Crimes Division Intelligence Section in accordance with the provisions of the Freedom of Information Ordinance (FOIO) of the City of Los Angeles, as interpreted in the opinion of the City Attorney, dated July 8, 1983, and in accordance with any state or local laws which may require or permit greater disclosure of information.
- B. In providing disclosure pursuant to requests made under this section, or other applicable laws, Major Crimes Division Intelligence Section shall evaluate each document within the scope of each such request on an individual document by document basis. Major Crimes Division Intelligence Section shall search documents within each category of documents maintained by Major Crimes Division Intelligence Section (and created after the effective date of these Guidelines) and shall, to the extent reasonably possible, maintain documents in a manner which enables their production in response to such requests.
- C. The Department shall apply the test set forth in subsection "o" of the FOIO to any requests and shall consult with the Office of the City Attorney, as necessary.