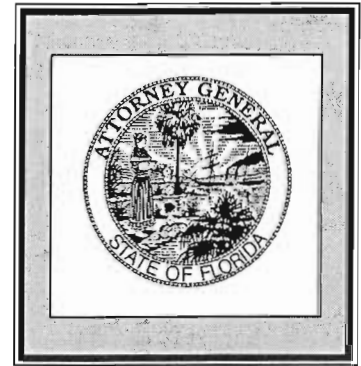


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*Department of Legal Affairs
Office of the Attorney General
Office of Inspector General*

Tallahassee Police Dept
Chiefs Office



September 11, 2008

Assignment No. 08-16

Introduction

This review was conducted as a result of a request made by Chief Dennis M. Jones of the Tallahassee Police Department (TPD). He made the request in the aftermath of the failed May 7, 2008 TPD Buy/Bust operation. He specifically requested an evaluation of the sufficiency of the relevant TPD General Orders and Standard Operating Procedures.

Scope and Objectives

The scope of this review was selected TPD general orders (G.O.) and standard operating procedures (S.O.P.) Specifically, Tallahassee Police Department (TPD) General Orders Manual 62 – Use and Control of Informants, TPD S.O.P. Vice, Narcotics, and Technical Support Unit Vice 6 - Use and Control of Informants, and TPD S.O.P. Vice, Narcotics, and Technical Support Unit Vice 10 - Undercover Investigations III Drug Buy Procedures and IV Buy/Busts.

The general objective of this limited review was to make recommendations to the TPD for additions, supplements, and enhancements to current TPD G.O.s and S.O.P.s regarding the use of confidential informants (CI) and Buy/Bust operations.

Methodology

We obtained TPD's reports pertaining to the incidents surrounding the May 7, 2008, Vice and Narcotics Buy/Bust Operation. We researched other sources/law enforcement agencies' general orders and standard operating procedures pertaining to confidential informants and buy/bust operations. We then compared G.O. 62, S.O.P. Vice 6, and S.O.P. Vice 10 to like directives from other sources.

In addition, we reviewed the Tallahassee Police Department Internal Affairs Unit Complaint Number S.I. 08-01 and TPD's September 9, 2008 policy revision response chart.

(Appendix A cites the other sources used in our review.)

Conclusion

As a result of our review, we have documented findings and made recommendations for improvement to G.O.s and S.O.P.s in the following categories:

- Enhancing confidential informant supervision requirements,
- Documenting supervisory approval of the suitability of confidential informants prior to use,

- Enhancing the criteria for deactivating confidential informants- specifically when a CI has compromised his/her identity,
- Suggestions for additional items to be used in the planning for drug buy-busts such as maps, information about suspects, photographs, descriptions of vehicles,
- Provisions for testing cell phone communication and providing backup equipment to be used if necessary,
- Establishing a code word to use to let monitoring officers know when there is danger,
- Recommending an outside compliance audit of Vice's operating practices as compared to G.O.s and S.O.P.s,
- Adding language to the "policy" and "definition" of confidential informants to better define their use,
- Obtaining cooperation with the Prosecutors/State Attorney's Office, and coordinating any offering of immunity to CIs,
- Adding Substantial Assistance Agreement definition to G.O. 62 and S.O.P. Vice 6,
- Enhancing the suitability criteria for CIs, for example, adding recruitment selection criteria including, when appropriate, psychological screening,
- Adding language to G.O.s and S.O.P.s regarding police officer disciplinary action as a result of non-compliance to stated TPD G.O.s and S.O.P.s.

Background

The TPD General Orders Manual, written directives system, provides written directives for the operation of the TPD. General Orders (G.O.) shall be issued to announce adoption or revision of department policies and/or to direct procedures for the indefinite future. General Orders shall be approved by the Chief of Police.¹

Standard Operating Procedures (S.O.P.) shall be issued by Units, Sections, Districts, or Divisions to describe the specific guidelines a member within that area shall follow. Standard Operating Procedures shall be approved by the Chief of Police or appropriate Bureau Commander.²

Members of the TPD shall follow these policies while conducting activities directed toward accomplishing department objectives.³

Summary of Review Results

We have found some insufficiencies with current GOs and SOPs and we have made corrective recommendations in the following areas:

- Supervision,
- Drug Buy-Bust,
- Compliance audits,
- Confidential Informant definition,
- Confidential Informant policy,
- Documentation of Confidential Informants, and
- Utilization of Confidential Informants.

¹ Tallahassee Police Department General Orders Manual, Written Directives System

² *ibid*

³ TPD General Orders Manual, Policy

Finding No. 1: Supervision

INSUFFICIENT

TPD G.O. 62 II C- Documentation of Confidential Informants: *The Vice, Narcotics and Technical Support Unit Lieutenant or designee shall review the informant documentation package and upon approval issue a confidential informant (CI) control number.*

We recommend: TPD should clearly define **when** the Vice, Narcotics and Technical Support Unit Lieutenant or designee shall review confidential informant packages prior to using a person as an informant, i.e. agency members shall obtain supervisory approval **prior to** using any person as an informant.

Consider adding language specifying the **quality of supervisors' oversight with respect to adherence to guidelines and procedures** regarding informant use by officers under his or her command and such supervisors' own adherence thereto, shall be factors in such supervisor's annual personnel performance evaluation.

Add the following language: The Vice, Narcotics, and Technical Support **Sergeant** shall review the informant documentation package, and the included *CI Suitability Evaluation*, and independently assess the informant's suitability and upon approval request issuance of a CI control number. The Vice, Narcotics, and Technical Support Unit **Lieutenant** shall review the informant documentation package and upon approval issue a CI control number. (See Finding No. 5.)

Reviewer's Note: The TPD addressed elements of supervision changes in their September 9, 2008 Attorney General Response policy revision, however; it is our opinion that the Vice Sergeant and Lieutenant's roles should be better defined to adequately reflect the appropriate level of responsibility.

Finding No. 2 Drug Buy/Bust

INSUFFICIENT

TPD Vice S.O.P. 10 Undercover Investigations III A Drug Buy Procedures: *Prior to all buy cases, there should be as much surveillance and information-gathering about the suspect, his accomplices, and the location of the buy(s) as possible. B. The undercover investigator in all buy situations should be aware of the capabilities of the team covering him: 1. The number of unit vehicles involved. 2. The ability to observe what is transpiring. 3. The ability to monitor they body bug. 4. Video or photograph transaction, if possible. C. Site Selection 1. Avoid crowded meeting locations, when practical. 2. If working a two-person team, maintain visual contact and make sure clear visual contact to the suspect is maintained.*

We recommend: TPD add stronger language to emphasize the potential dangers that exist with buy/bust operation and the consequences that may occur – "...buy-bust operations are common yet highly dangerous aspects of vice and organized crime enforcement. Operations must be well planned and supervised for the safety of officers, suspects, and other persons. Improper planning can cause embarrassment, ridicule, and most seriously, result in injury or death. All operations shall be conducted in a manner

consistent with good judgment and safety, exposing officers and other persons to a minimum of danger.”⁴

Reviewer’s Note: TPD addressed this area in their September 9, 2008 Attorney General Response policy revision and apparently utilized the Mahoning Valley source, as our review did.

TPD S.O.P. Vice 10 IA:

Methods of Identification (Subjects):

1. *Tag numbers of vehicles, addresses, names on mailboxes, names overheard in conversations, employer, names on mail in the suspect’s residence, etc.*
2. *Standard resources identification*
 - a. *Department records*
 - b. *Utilities*
 - c. *Uniformed officer contact*
 - d. *Electronic databases/Autotrak*
3. *Pictures, drivers license, jail photos, other agencies files*
4. *Through confidential informants*

We recommend other methods should include photographs and physical descriptions of the vehicles. Maps of the area should be distributed. Familiarity with the area is vital and can help to ensure potential escape routes are adequately covered and allows a degree of preparedness for the unexpected.

Information gathering about the suspects should specifically include methods of operations, habits, vehicles used and other pertinent information.

Constant surveillance should be conducted on the informant after the search preceding

⁴ Mahoning Valley Law Enforcement Task Force 156.001

the buy until he/she meets with surveillance officers after the buy.

All communications equipment (police radio channels, body bugs, electronic surveillance equipment) used in the operations should be prior tested.

(Consider using more inconspicuous transmitters.)⁵

If cell phone communications will be used, check to ensure that phones have strong signals in the area of operation and that service is dependable. Backup equipment should be readily available.

Add language specifying that TPD officers shall not promise, agree or even suggest any type of immunity from prosecution can be granted because no officer has the authority to make any such promise or commitment without the explicit authority of the appropriate prosecuting office.

In addition, a **code word** should be established such that the informant can let the monitoring officers know if he or she has encountered a situation where there is personal danger.⁶

Finding No. 3 Audit

Our review did not find any current TPD directives which require a review or audit for compliance with said G.O.s and S.O.P.s.

We recommend: TPD consider implementing a GO/SOP mandating independent compliance audits/reviews to assess the Vice Division’s compliance to said TPD general orders and standard

⁵ *Informants and Undercover Investigations, A Practical Guide to Law, Policy, and Procedure*

⁶ FDLE Use and Control of Informants

operating procedures. These audits/reviews should be conducted biannually or additionally upon specific incidence of non-compliance. These audits/reviews should pay particular attention, but not be limited to, supervisor oversight in the approval of confidential informants, particularly the Sergeant and Lieutenant's review of eligibility of a confidential informant packages. These criteria are contained in General Orders 62 II C addressing review of confidential informant packages. Note: The current G.O. 62 II C states, "The Vice, Narcotics and Technical Support Unit supervisor or designee shall review the informant documentation package and **upon approval** issue a confidential informant (CI) control number." Our review recommends language should be strengthened to insure more than one level of approval of a confidential informants' suitability or eligibility before an informant is utilized by the TPD.

We further recommend these independent audits/reviews be conducted by a reviewer, such as the City Auditor's Office or a suitable replacement, outside the control of the TPD in order to maintain independence and to ensure the credibility and unquestionable objectivity of the audit/review process. The TPD Internal Affairs Unit should review the results of the independent audit/review and should conduct the follow-up on possible violations and ensure any suggested changes are implemented. The results of these periodic audits/reviews should be reported to the City Commission and the City Manager.

Reviewer's Note: The TPD made similar note of the need for annual inspections in their September 9, 2008 policy revision.

Finding No. 4 Definition of Confidential Informant

INSUFFICIENT

TPD G.O. 62 Definition and Vice S.O.P. 6 Definitions:

Confidential Informant: *Any non-law enforcement person who, by reason of their familiarity or close association with criminals, supplies regular or constant information about criminal activities to a member, or is paid to supply information, or receives a recommendation of reduced charges for confidential information or make a controlled "buy" (i.e. , stolen property, controlled substances, etc.).*

Confidential Source: *Any individual stipulating confidentiality, who is freely providing intelligence or investigative information on a "one-time" basis, or responding to questions during a field interview, or in a custody interview.*

Reliable Confidential Informant(RCI): *A confidential informant who has furnished information in two separate matters, is found to be reliable through independent sources and investigation and has satisfactorily fulfilled all other criteria.*

We recommend: Add to the Confidential Informants Definition – Persons who are participating in a Substantial Assistance Agreement, contractual or otherwise, with the approval of a prosecuting agency/office.

Define Substantial Assistance Agreement - a formal written contract between the prosecuting attorney and a defendant in which the government may move the sentencing court to reduce or suspend the sentence of a defendant who is convicted of a violation of criminal law and provides assistance to the government in identifying, arresting, or conviction of any of the

defendant's accomplices, accessories, co-conspirators, principals, or any other person engaged in violation of state law. The agency representative is merely the controlling agent in these agreements. He or she reports to the prosecuting attorney on either the successful conclusion of the agreement or the informant's unwillingness to fulfill it.

Finding No. 5 Policy

INSUFFICIENT

TPD G.O. 62 Policy and Vice S.O.P. 6 Policy: *The utilization of informants and confidential informants is lawful and often essential to the effectiveness of properly authorized law enforcement investigations. The Police Department recognizes that special care must be taken to carefully evaluate and closely supervise their use.*

We recommend: The TPD should supplement language stating officers who utilize confidential informants shall adhere to the general orders and standard operating procedures. **Failure** to adhere to the policies may result in **disciplinary action**.

Finding No. 6: Documentation of Confidential Informants

INSUFFICIENT

TPD G. O. 62 I A: *It is the responsibility of the Homeland Security and Special Investigations Division Commander or designee to ensure that all confidential informant information is kept in a secure manner that rigidly protects the confidentiality of the confidential informant.*

TPD Vice S.O.P. 6 I A: *The Vice, Narcotics and Technical Support Unit shall*

*be responsible for the maintenance of all confidential informant files for the department. A **documentation file shall be established** for each informant and placed into this master file.*

TPD G.O. 62 II A: *Members shall document any persons intended to be utilized as a confidential informant or who are currently being utilized as a confidential informant following the prescribed procedures, as soon as practical.*

B. *A member seeking to document a confidential informant must have the approval of their supervisor and shall then complete an informant documentation package containing the following items:*

- 1. Confidential Informant Worksheet containing personal **background** and biographical information.*
- 2. Photographs and fingerprints.*
- 3. A Confidential Informant **Code of Conduct**.*
- 4. Permission to Intercept Oral Communications waiver form.*
- 5. Confidential Informant Contact Log.*
- 6. Informant Documentation Check List for checks of a prior criminal history, indictments, probation/parole status and outstanding warrants.*
- 7. Informant File Update Sheet.*

C. *The Vice, Narcotics and Technical Support Unit Lieutenant or designee shall review the information documentation package and upon approval issue a Confidential Informant (CI) control number.*

D. *The CI control number shall be utilized for the documentation of payments, tracking of the CI activities, and as appropriate within other reports and documents.*

E. *If it is determined that the confidential informant is currently assisting another agency, at the agency shall be contacted to*

We recommend: TPD add language specifying that once a confidential informant has **revealed their identity**, they should not be utilized further i.e. sources shall be instructed to furnish information exclusively to TPD and not reveal their identity or source to anyone.

Add language to the deactivation clause describing **when a CI should be dismissed** from service such as dismissal criteria: Among the more common reasons for dismissal are: 1) Ineptitude or unreliability, 2) Compromise of identity, 3) Security risk, 4) Criminal risk, 5) (the subject) furnished false information, or 6) Emotional instability.⁷

Add a section **evaluating the suitability of the informant**. Consideration of the suitability should include the person's age, the risk that the person might adversely affect a present or potential investigation or prosecution; whether the person is a substance abuser or has a history of substance abuse; the risk of physical harm that may occur to the person or his or her immediate family or close associates as a result of providing information or assistance.⁸

Add language requiring an affirmative check as to whether the informant has shown any indication of emotional instability, unreliability, or of furnishing false information.⁹

Add *precautionary measure* language to the procedure to insure that when a CI is authorized to engage in illegal activity, the department must take all reasonable steps

⁷ Leon County Sheriff's Office G.O. 43.6

⁸ US AG suitability determination

⁹ *Informants and Undercover Investigations A Practical Guide to Law, Policy, and Procedure*

to (a) **closely supervise the illegal activities of the CI** (b) minimize the adverse effect of the authorized *Otherwise Illegal Activity* on innocent individuals, and (c) ensure that the CI does not profit from his/her participation or activity¹⁰.

Add language to informant buy policy such that after the informant is given the funds and has been searched preceding the buy of any contraband, constant surveillance will be maintained/conducted on the informant. Language should be added requiring that informants be told that **any deviation from the officer's instructions may result in the recommendation that all previously authorized agreements be cancelled.**

¹⁰ US AG Precautionary Measures

Appendix A - Outside sources of information for our review:

1. *Informants and Undercover Investigations A Practical Guide to Law, Policy, and Procedure*
2. Mahoning Valley Law Enforcement Task Force 156.001 (Ohio)
3. The U.S. Attorney General's Guidelines Regarding the Use of Confidential Informants August 25, 2008
4. Los Angeles Police Commission Review of Audit Division's Confidential Informant Control Package Audit
5. City of Miami Criminal Investigations Confidential Informants Dept. Order 9 Chapter 12,
6. Palm Bay Police Department General Order No. 607 Confidential Informants
7. Orange County Sheriff's Office General Order 16.1.7 Informants
8. Lincoln, Nebraska Police Department General Orders 1750
9. Denver, Colorado Police Department Operations Manual 307 Confidential Informants
10. Peoria, Arizona Police Department Policy and Procedure Manual Policy 4.22 Confidential Funds/Informants
11. Beaverton, Oregon Police Department General Order 10.02.01 Confidential Informants
12. Olympia, Washington Police Department General Order 42.2 Investigations
13. Leon County Sheriff's Office G.O. 43.6 Confidential Source Management and Control
14. Office of the Inspector General Los Angeles Police Department (various relevant webpage content)
15. F.D.L.E. The Use and Control of Informants A Patrol Officers' Primer