
	GAITHERSBURG POLICE DEPARTMENT			
	Investigation of Protest or Advocacy Groups			
	GENERAL ORDER	611.2		Related CALEA Standards:
	Effective Date	12/13/2013		42.1.6, 42.2.1, 43.1.1, 43.1.5
Authorized by: Mark P. Sroka CHIEF OF POLICE		SIGNATURE	DATE	

I. PURPOSE

The purpose of this directive is to address legal concerns surrounding the collection of information and intelligence on persons and groups exercising their constitutional rights under the First Amendment. This directive reinforces current Department policies and publicly communicates the Department’s ongoing commitment to serve our community, the City, the Constitution of Maryland and the Constitution of the United States of America.

II. POLICY

The Department and its members are committed to defending the Constitution of Maryland and the Constitution of the United States of America. Members shall not employ techniques or practices that violate or are intended to circumvent the rights of the people. The collection, retention and dissemination of information on persons and groups shall be for legitimate law enforcement purposes and only conducted when it is reasonably believed there is a nexus between the information and criminal activity. Enhanced restrictions are placed on intelligence that is considered to be protected information under the provisions of the Freedom of Association and Assembly Protection Act of 2009.

III. DEFINITIONS

A. Covert Technique

Within the context of this directive, the term “covert technique” refers to the clandestine collection of information by a law enforcement agency in a manner that conceals the identity of the law enforcement agency or any of its officers, or the fact that the information is being collected. “Covert technique” includes mail covers, the opening of mail, physical, photographic and electronic surveillance, obtaining access to stored wire or electronic communications, the use of covert electronic mail addresses and the use of undercover law enforcement officers or agents.

B. Criminal Intelligence Information

Within the context of this directive, the term “criminal intelligence information” refers to information obtained by a law enforcement agency

in connection with a criminal investigation.

C. Protected Information

Within the context of this directive, the term “protected information” refers to information about the political, religious, or social views, associations, or First Amendment protected activities of any individual, group, corporation, business, partnership, or organization.

D. Protest or Advocacy Entity

Within the context of this directive, the term “protest or advocacy entity” refers to a group of individuals or an organization that considers, debates, and advocates points of view on issues of public policy. This term also includes an individual who belongs to such a group.

IV. PROCEDURE

A. General Provisions

1. The Maryland General Assembly enacted the Freedom of Association and Assembly Protection Act of 2009 (HB 182), effective October 1, 2009, codified in the Maryland Public Safety Article, § 3-701, et seq. This directive outlines the requirements of this legislation as they relate to the Department.
2. The provisions of this directive supplement, but do not replace, the provisions of other related Department directives.
3. Neither the Department nor its members may knowingly receive, disseminate, or maintain any information that has been obtained in violation of applicable federal, State, or local law, ordinance, or regulation.
4. The enhanced restrictions outlined in this directive do not apply to investigations not involving First Amendment protected activities.

B. Enhanced Restrictions

1. Neither the Department nor its members may employ an otherwise lawful covert technique to investigate or infiltrate a protest or advocacy entity without the express written authorization of the Chief of Police or his designee, prior to the covert technique being used. The Chief’s written authorization shall include a finding, based upon specific factual information, that use of the covert technique is justified because:

- a) There is reasonable, articulable suspicion of a planned or

present violation of the law; and

- b) A less intrusive method of investigation is not likely to yield satisfactory results.
2. Protected information shall not be collected, disseminated, or maintained in a criminal intelligence database unless there is a nexus between the information and activity that is reasonably believed to be criminal in nature and is under investigation.
 3. In order for information relating to a protest or advocacy entity to be entered and maintained in a Department investigative file, it must be accompanied by details concerning:
 - a) The reliability of the source of the information;
 - b) The believed validity and accuracy of the information; and
 - c) Whether a) and b) above have been corroborated.
 4. Any information maintained by the Department in a database that contains criminal intelligence information relating to protest or advocacy entities shall be:
 - a) Audited, on at least an annual basis, for relevance to criminal activity, timeliness, accuracy, and reliability; and
 - b) Purged:
 - 1) When no longer of legitimate value to an investigation; or
 - 2) If found to have been unlawfully or inappropriately entered; and
 - 3) By replacing the information with data that indicates the presence of a previous entry and the date it was removed.

C. Dissemination of Protected Information

1. Protected information lawfully obtained during the course of an authorized investigation may be disseminated to federal, State, or local law enforcement agencies only if the information:
 - a) Falls within the investigative or protective jurisdiction or

litigation related responsibility of the receiving agency;

- b) Is likely to assist in preventing an unlawful act, the use of violence, or any other conduct dangerous to human life; or
 - c) Is required to be disseminated by an interagency agreement, statute, or other law.
2. Each request made to the Department for the dissemination of protected information shall be evaluated and approved by the Chief of Police, or his designee, prior to releasing the information.
3. There shall be a written record of any dissemination of protected information. The record must indicate the nature of the information, date of dissemination and to whom it was disseminated.
- a) If dissemination is made in writing, a copy of the dissemination will suffice as a record;
 - b) If dissemination is made in a manner other than in writing, a memorandum describing the documents or protected information shall be prepared;
 - c) The written dissemination record shall be maintained with the associated criminal intelligence file, for a period of at least one year.
4. Protected information received, collected, or maintained by the Department shall not be disseminated to a non-law enforcement agency, department, group, organization, or individual, except as authorized by law.