

# Oakland Police Department

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## Audit of Search Warrants and Confidential Informant Files



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## **PURPOSE**

This audit was initiated by the City of Oakland Police Department to determine whether specified search warrants and confidential informant files are in conformance with Department policy and whether Department practices for training and supervision related to these files are consistent with industry standards and best practices.

## **BACKGROUND**

The City of Oakland serves search warrants and employs confidential informants as part of their on-going efforts to make Oakland a safe community. Serving search warrants and maintaining confidential informants are two of the most sensitive areas of police performance. By their nature, search warrants and confidential informants deal with the safety of the officer and the community; legal permissions and prohibitions; risk management and the integrity of the Department in performing within Constitutional boundaries. Because of prior issues that included the use of informants and the service of warrants, the Department proactively developed orders and auditing procedures through the Office of Inspector General.

Within any organization, the nature of culture and the need to do day to day work can obscure the ability to see other possible approaches to an issue. As part of the auditing process, the Department retained the services of an independent Auditor with police and audit expertise to determine the effectiveness, efficiency and integrity of such files. The review therefore is designed for compliance with the policy and for operational improvements that may exist.

## **SCOPE**

The scope of the audit was agreed upon and developed in collaboration with the City of Oakland Police Department. This audit provides the Oakland Police Department with a critical analysis of the present level of compliance with Department policy regarding search warrants and confidential informants. The analysis is based on existing practices and policies as codified in General Order 0-4 and Departmental Training Bulletin, Index I-F. The Department selected a variety of search warrants as the sample for this audit. The warrants were based on searches for drugs, weapons, computer files, phone records and other property or contraband normally associated with search warrants.

Recommendations are made at the end of this audit. They are designed to assist the Department in improving performance in those areas noted within the scope of the audit. Based on meetings with Captain Sean Whent and concerned staff in

November 2011, an audit scope was developed to provide focus to the Auditor pertaining to those areas of concern to Department staff. The audit scope was detailed in a memo to Captain Whent and included the following:

- Examine selected confidential informant files and search warrants for compliance with Department Order 0-4 regarding managing confidential informants and Department Training Bulletin Index I-F entitled “Obtaining a Search Warrant.”
- Review both General Order 0-4 and Department Training Bulletin entitled “Obtaining a Search Warrant” for all elements that provide sound technical guidance, insure supervisory oversight and mitigate risk to the officer and the Department.
- Examine Department policies related to supervising and managing confidential informant files and search warrants to determine if such policies protect individual rights, maintain file integrity and meet accepted industry benchmarks. This would also include maintaining operational consistency, adhering to standard management practice and meeting any P.O.S.T. recommendations relevant to the audit.
- Examine Departmental training standards to determine whether personnel managing informants and writing search warrants are provided sufficient background and training. This would include, but not be limited to, formal Department training plans for officers and supervisors and any other direction provided by management to insure that personnel understand the nature and implications of using informants and executing search warrants.
- Review Department policy for storing, accessing and retaining informant files and search warrants. This would include physical storage and location, permissions to access and any records retention schedule designed to maintain file integrity and manage risk.
- Examine Department philosophy as it relates to discretion given to personnel in maintaining confidential informants and writing warrants. This would include where such discretion exists, to what degree it exists and to what degree present Department structure is in line with best practices and protects the Department from unintended consequences.
- Interview concerned personnel for their insights into the current Department approach to both elements of this audit, emerging Department needs and future concerns

- Assess Department organizational structure to determine whether a more effective structure for search warrants and informant maintenance would be beneficial.
- Examine selected informant files and search warrant files to see if any patterns or themes emerge relative to productivity, mission orientation and general concerns noted by the Department.

## **METHODOLOGY**

The methodology for this audit includes the following elements:

- Examine selected search warrants and all confidential informant control files over five days. The Auditor and the Office of Inspector General previously agreed upon a sample of 28 search warrants that represented a variety of search warrant affidavits, crimes and property seizures<sup>1</sup>. This sample will be examined in more detail later in the audit in the section entitled “Search Warrants.”
- Interview Department command personnel, including the Chief of Police, to determine particular concerns, any Department history that influenced current practices and opinions regarding the manner in which Department structure could be changed to improve service delivery and insure the integrity of these files.
- Interview concerned Department personnel presently writing search warrants and maintaining confidential informant files for their insights and practical experiences using existing policy.
- Interview Office of Inspector General personnel for background on their responsibilities and how this audit may help them.
- Review audits completed by OIG personnel to determine the scope, methodology and style currently employed. Two such audits will be included as addenda.
- Examine the physical environment and manner for storing and retrieving search warrants and confidential informant files.

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<sup>1</sup> In order to get an adequate cross section and variety of search warrants, the OIG split up the 2011 search warrants into four categories based on which group prepared the warrant: 1) Gang Intelligence Task Force, 2) Youth and Family services Division, 3) Field Operations, and 4) Criminal Investigations Division. Seven search warrants were randomly selected using “Research Randomizer” from each category. The Gang Intelligence Task Force wrote a total of seven search warrants in 2011, so all seven were reviewed for that category. The sample included a total of 28 search warrants.

- Examine and discuss DGO-04 governing informants and Department Training Bulletin I-F.5 governing search warrants.

## **EXECUTIVE SUMMARY**

In January, 2012, this audit was initiated to determine Department compliance with DGO-04, Informants, and Training Bulletin I-F, Obtaining a Search Warrant. The audit was further designed to examine general policy, direction and specific files to determine how well the important and sensitive work of search warrants and informants is being done at the Oakland Police Department. In so doing, the audit revealed both the difficulties and challenges that face police officers engaged in such work. In Oakland, California, those challenges are sometimes dramatic and potentially dangerous. The intent of the Oakland Police Department is to have orders that insure the safety of the public and Department personnel, protect the integrity of the Department and serve the public in accordance with the Constitution and sound management practice.

While the body of the audit will detail specific files that have compliance discrepancies, the Department is in general conformity with the desired expectations and policy in handling informants and search warrants. There are some files where mandated signatures and/or processes were not completed, but they are few and will be delineated in the body of the audit. The Auditor found that Department supervision and management have done a good job in insuring that policy is being implemented and that all participants in the process are adhering to their job responsibilities.

The Auditor believes, however, that the significant issues that exist are in the orders themselves and the manner in which the Department has structured obtaining a search warrant and managing confidential informant files. Both orders DGO-04 and Training Bulletin I-F require changes to make the work more efficient for everyone in the process. The present approach is convoluted and often poses unintended barriers or difficulties for the line user. In a like theme, reviewing the product for adherence to policy and general quality is made more difficult than necessary by processes that do not take advantage of existing technology and Department expertise.

The integrity of the work, from the affidavit for the warrant to the manner of managing informants, must be a driving motive for the work. The present approach can and should be amended to emphasize safety for the line officer and credibility of the product. The audit found that the present Department approach in handling informants may be contributing to the relatively low number of informants currently working. The Auditor received feedback from line personnel that the cumbersome and rule oriented content of the order is an invitation for making mistakes. The order should hold those using informants accountable but not offer an obstacle course to getting the job done.

Of most concern in managing search warrants is an ambiguous standard for having a risk management plan in effect prior to serving the warrant. The Department should also remain vigilant in insuring that personnel receive sufficient time in patrol prior to reassignment to a specialty position. It is an investment in the officer's and the Department's future. There are other elements of this audit that will be explored in the body of the audit. The significant findings follow:

## **SIGNIFICANT FINDINGS**

During the course of any audit, a great deal of information is brought forth about the main issues motivating the audit. Because of the volume of such information, the Auditor must select and edit the information for those themes that are most relevant to the topic and for those that are most consistent with the scope of the audit. The Significant Findings represents information the Auditor believes best addresses the purpose of this audit.

### ***SEARCH WARRANT FILES***

As expressed in the Executive Summary, the dominant themes that emerged in this audit are less the adherence to existing policy, as noted in DGO-04 and Department Training Bulletin I-F, than the policy and work processes that are providing the backdrop for generating these files. It is a generally accepted maxim in auditing that "structure leads to content." That is, how an organization structures the work-not just the work ethic or quality of the worker-has a significant effect on the work itself. In this audit, the structure of the work requires attention not only to produce better work now but to preclude issues that could jeopardize Department reputation in the future.

- In creating and serving search warrants, Department personnel are in excellent compliance with policy and training. In those instances where signatures were missing or clarity was required, Department management has so signified on the warrant and, in one case, it appears the warrant was revised to insure that the warrant and affidavit were signed (11-061). The Auditor found the general content of the warrants sound, meeting all of the requirements signified in the training bulletin and industry standards. The Search Warrant Approval and Tracking Sheet provided the affiant and his supervisor with clear direction and the Auditor with an equally clear means of reviewing the compliance aspect.
- While conformance to policy is high, the Auditor found that reviewing those areas for compliance was made difficult by the search warrant form itself. The Department is using more than one form for search warrants. While the forms meet a legal threshold, the Auditor noted that an important area such as a field noting "date and time of service" exists on one document but not on the other. This is an important dimension in

complying with the legal demand to serve the warrant and/or return it to the court within a specified time.

As a consequence, it is difficult to find when the warrant was actually served. On those forms that provide a clear date of service at the bottom of the warrant (11-83), the reader finds it at the bottom of the warrant itself. If the affiant is using a form that does not have this clear notation (11-129), the reviewer must assume that the date of service was the same date as the date when property was seized, which is noted on the Search Warrant Inventory form. If a search warrant was written, served and no property was seized, inferring date of service is made more difficult. Clearly the Department, given the issues that prompted the audit, should examine uniformity of forms and decide on one that suits legal requirements and Department needs. The Auditor believes that the warrant affidavit and subsequent service dates and approvals will make the warrant easier to review and audit.

- The Auditor found that many of the property reports were difficult to read because of the illegibility of the writing on the search warrant property inventory sheet. This is in contrast with the generally professional appearance of the affidavit and warrant. All of the warrants and affidavits were typed and the inventory sheets were generally handwritten. Similarly, the Search Warrant Tracking and Approval Sheet, while clear in who shall approve what, is diminished by signature fields that make it difficult to read the signature because of the imbedded direction, i.e., “signature required”, in the document. An asterisk or such notation directing the reader to a required signature should suffice. The warrant is a court document and should, if at all possible, be legible and professional in appearance.
- The warrant affidavit offers an insight into what might be considered a minor issue, i.e., time in patrol before eligibility for reassignment. In Department general orders, the section called Personnel, Assignments, Selection Processes and Transfers notes in Section III, A (1) that new officers shall be required to complete three years in Patrol before being eligible to transfer to a specialized assignment. This is prudent and designed to provide the new officer with the proper background and fundamental learning that is necessary. However, more than one search warrant affidavit suggests that the affiant had less than the specified level of experience before moving on to one of the many special enforcement units that the Department deploys.

The Auditor believes the order is sound and does much to provide the essential underpinnings of Constitutional policing. Though there is a great amount of narcotics related activity to address, the Department should safeguard the officer’s introduction to police work.

- Working with the Office of the Inspector General, the Auditor found that all of the search warrants reviewed for this audit met the legal requirement for return to the court with proper inventory forms if they were necessary. This is consistent with the other generally high level of legal and Department compliance the Auditor found.

***LIST OF SEARCH WARRANTS FILES***

The Auditor reviewed a total of 28 search warrants of various types for the audit. Chosen by the Office of the Inspector General, the Auditor believes they represent a good cross section of crimes, property and officer expertise. The following is the list of files provided to the Auditor. As noted in the prior section, the files were generally well written and almost all were in compliance with orders. The Auditor has elected to comment only on those warrants where there was a substantial lack of compliance, where the substance of the warrant raised questions about the training bulletin that guides its use or where the substance of the warrant raised questions about confidential informants:

2011-002	2011-066	2011-133
2011-005	2011-070	2011-134
2011-013	2011-072 (2)	2011-150
2011-021	2011-072 (3)	2011-158
2011-022	2011-083	2011-165 (1)
2011-030	2011-089	2011-165 (2)
2011-054 (1)	2011-092	2011-184
2011-054 (2)	2011-117	2011-202
2011-058	2011-122	2011-211
2011-061	2011-129	2011-216
2011-061 (revised)	2011-131 (1-7)	

***WARRANT EXAMPLES***

2011-002

In this warrant the IPC wrote that the warrant had no Operations Plan. The Auditor has noted that this element needs more clarity and specified boundaries for having a plan. In this warrant the affiant states that he has been an officer for four years, with a list of specialty assignments. This leads the readers to believe that he has not spent Department specified time in patrol prior to reassignment.

2011-013

No date of service for the warrant though the search warrant inventory form has a date. This is one of several examples where a lack of uniformity makes auditing difficult.

2011- 061

This search warrant was returned to the officer by the IPC because it lacked a signed affidavit and search warrant. This is one of several examples where supervision has caught an issue or raised questions in the warrant or the chronological log.

2011-066

The affidavit references the interview of three untested, confidential informants. In the section on confidential informants, the Auditor submits that no informant should be used without vetting. This warrant is an example where the affiant was following policy but the policy needed improvement.

2011-070

The warrant had an operations plan and risk assessment but the warrant appeared to be far less risky in nature than others without such plans. There appears to be a lack of consistency and clear understanding on when and why they are needed.

2011-129

The warrant states that a confidential tested informant was used but the informant registered number box on the tracking sheet was not marked. The affiant describes a meeting with the informant and relates that another officer was present but does not name the officer.

2011-133

The crime report used as part of the affidavit for this warrant indicates that the affiant, working undercover, made a drug buy which included entering the suspect's house. There is no mention that the officer was working on a team and had support. In fact, the report indicates that the suspect was not arrested for lack of an arrest team. If this is sanctioned behavior, the Department needs to review its approach to undercover work. The Auditor believes this does not meet industry standards.

## ***CONFIDENTIAL INFORMANT FILES***

The Auditor reviewed 26 informant files for compliance with DGO-04. In those files where discrepancies existed, they were caught and corrected through direction of Department supervision. The body of the audit will detail those files. Appropriate signatures were affixed according to policy and the overall themes of the policy were followed. Like the search warrant process, the approach to confidential informants, from initiation, to storage and retrieval of files, should be reviewed to improve officer safety, general file maintenance and overall security.

- Present policy allows for a control file, which is locked in the Investigative Commander's office, and a working file that may be kept by the managing officer or his supervisor in the field or office. (It is important to note that the Auditor did not review working files and was not provided them for this audit.) The present process poses significant operational problems for Department personnel. If a file requires strict security, and the Auditor believes it does, then a copy of that file should not be allowed out of the office. In reviewing these files and the search warrant files where the use of a confidential informant was needed (and noted in the warrant), the Auditor reviewed requests by the affiants that the informant's information be sealed to either avoid compromising an investigation or to avoid death or serious injury to the informant. This request is provided by law and those requests reviewed by the Auditor were granted by the magistrate.

These are sound reasons for not naming an informant, and these same reasons stress the importance of keeping the information on confidential informants secure. Working files are defined as copies of the control file and are also files that are considered more current by the Department. This is due to the existence of the mandated chronological log that is required of every managing officer. This log is the formal list of the contact the managing officer has had with the informant during that month and what occurred during those contacts (a more detailed examination of the chronological log will come later). The current order specifies that the chronological log is updated to the control file every 30 days. The update is reviewed by the managing officer's supervisor and manager before it is sent to the custodian of the control file

Therefore, the working file may be more current than the secured, control file. It is essential to note that many of the informant files contain information on automatic weapons, various types of illicit drugs for sale and, more often than not, suspects who have a long history of major crime and/or prison time served for violent offenses. The Auditor does not believe that there is a need for this information to be held outside a dedicated, secured location within the Department. The possibility of misplacing a file or mistakenly leaving it in a place that is less than secure,

could have consequences far beyond the utility the present approach suggests.

- The present Department order governing informants requires a criminal update every three months. While this part of the order has sound intent, the result is that files are thick with repetitive information about the informant. The informant's criminal past and driving history will not change. The only change will be what has happened since the last contact with the managing officer. In short, the order needs amendment to derive the essential information only. Existing technology exists to allow this information, for example, to be scanned and stored as a .pdf file within a secure server and not in a hard file.

The physical issues of creating, maintaining, storing and updating confidential informant files could be enhanced by available technology. A secure dedicated server with appropriate read and write access could act as a hub for much of the paperwork and review that are an important part of the intent of this policy.

- Another fundamental aspect of confidential informants requires review. There is no Department experience or reasonable training standard for personnel desiring an informant. Similarly, confidential informants may be developed anywhere in the Department. In short, any sworn Department member may have an informant and informants can be managed anywhere within the Department. The Auditor believes that the nature of a confidential informant requires a narrower approach in both initiating, supervising and managing the process of using informants. By its nature, the present approach implies different levels of expertise at many levels of the process.

Confidential informants, and the Department's records certainly indicate such, are people who are either providing information for consideration in a present criminal proceeding, usually involving themselves, but not always. Or they are people who are providing information about criminal activity for monetary consideration. In any case, managing confidential informants is a risky business involving people who are experienced members of the criminal justice system. They are providing, in many cases, information that can result in serious criminal prosecutions. It is reasonable and prudent for the Department to take a more conservative posture in this matter and establish minimum experience and training thresholds for this aspect of the work.

- The order governing confidential informants provides that the managing officer maintain a chronological log of his or her contact with the informant, including, but not limited to, attempts at contact, checks for arrests or police contacts and any payments the informant may receive for work

being done on the Department's behalf. This chronological log must be submitted every thirty days to the managing officer's supervision and management. It is then submitted to the commanding officer of the Investigative Bureau for review and inclusion in the control file.

The Auditor believes that a thirty day interval for updating supervision and management on critical information related to informant activity is operationally unsound. While the more mundane aspects of the log, e.g., no contact, no arrests, citations or active cases, may not be critical or impact the safety of personnel or the security of the process, any contact with an informant should be related to appropriate supervision management as soon as is practical. At any rate, the Auditor believes that the managing officer should contact supervision within 24 hours.

The present policy allows a long incubation period for possible corruption and/or safety issues to develop. Given the nature of the information reviewed in the confidential informant files, officer safety issues exist that require communication with field personnel in a way that informs officers working those areas, but does compromise further investigative plans. Similarly, supervision needs to be aware of information in real time to make adjustment or changes to plans.

- The maintenance, supervision and on-going control of confidential informants is fundamentally an investigative responsibility. As these files indicate, the basis for much informant development is narcotics. Narcotic activity is so pervasive that if it is not the basis of the informant's contact with the Department, it is almost always a by-product. It is common that many departments locate the vetting, managing and maintenance of informants in an investigative section or division devoted to narcotics. In such a section, it is common to find very experienced investigators with the background to establish the necessary rapport with informants and the investigative skills to measure their worth. The Auditor was told that the Department disbanded its Narcotics Division several years ago over misconduct issues. The result has been that confidential informants can be developed anywhere in the Department, though they appear to be the by-product of specialized field units. At any rate, there is no order that says they cannot.

The control files, as they are called, are the responsibility of the Commander of the Criminal Investigations Division. The Auditor believes that the Department should give serious consideration to re-establishing a unit or section devoted to narcotics enforcement and/or violent crime. This section should be the clearing house for all confidential informants and manage all such informants. This does not preclude working with other investigative units who may have individuals seeking informant status. Permitting informant management anywhere in the Department

and by personnel with varying degrees of expertise should be changed. Managing confidential informants should be one of the most critical and sensitive areas of any department, let alone a large, urban department with the scope of activity confronting the Oakland Police Department. Despite the past, a highly centralized unit devoted to this task is a major missing piece of the process.

### ***Department General Order 0-4: Informants***

This order was effective 08 December 2010 and evaluated 08 June 2011. The order has an automatic revision cycle every three years. It is essential that the Department has such an order and that it is written in a manner that ensures safety for the officer and the community, ease of use for those who will work with it and service for those who it intended to serve. The Auditor reviewed the order with those stakeholders in mind:

- The Department may reconsider having the Commander of the Criminal Investigations Division as the Informant Program Coordinator (IPC) in favor of someone who is closer to the field and who may not have as many administrative duties. Managing informants appears to be a functional responsibility more suited to mid-level management. The presence of a Narcotics Division, managed by a Lieutenant, has been discussed and seems to be a more logical fit. Concerned personnel have raised the issue of access to the IPC office when the IPC is gone. (Section I-B)
- In the Executive Summary, the Auditor submitted that the Department is not taking advantage of existing technology. Chronological logs are such an example, but there are others. Logs should be digitalized and their sensitive data reviewed in a timely manner. The presence of handwritten logs that lag behind the review of any supervisor for a month is not operationally sound and does not mandate that critical information is shared with supervision and management. Informant maintenance is a high risk behavior and writing a log to a dedicated, secure server with strict “read and write” access is an approach already in use. Section I-C, in the responsibilities of the IPC, already notes the presence of scanned documents on a secure server. The Department should carry that foundation forward to include the chronological log.
- Section I-C (2) defines the working file and its content. The Auditor believes the working file is not in the best interest of the Department or the community. Whatever the perceived utility of the file, it takes highly volatile information out of a secure environment and potentially outside the station. The contents of the control can be computerized and updates provided to concerned supervision within 24 hours or at least as soon as is practical.

- Section II-A specifies that Department employees shall not manage any informant. The Auditor interprets that “Department employees” mean non-sworn employees. However, for clarity and for outside viewers of the document, it may be more direct to say “Only sworn personnel may manage any informant.”
- Section III-D and E are in the section called “Processing Informants.” These subsections direct a managing officer to confer with the IPC as soon as practical to ascertain if the informant is being used or has been used as an informant. The Auditor believes this is a vague threshold for confirming this information. It is not uncommon for managing officers to learn that an individual is being used as an informant and the utilizing agency does not want to share the informant. Or, managing officers sometimes learn that an individual may be unreliable as an informant. This important information should be ascertained before an individual is used as an informant. Section III-E also directs the IPC to contact the Western States Intelligence Network (WSIN), within 14 days of being notified by the managing officer of his intent to use an informant in order to determine if the informant has been deemed unreliable. Once again, this information should be determined prior to using any informant.
- Section III-F finishes the section on processing informants by stating that “officers shall confer with the IPC as soon as possible,” but this requirement does not preclude use of an informant with the approval of a supervisor or commander. The Auditor believes that this is also a contradiction of intent and fundamentally changes the nature of the process. If any supervisor or commander can provide approval prior to any vetting through traditional means, the credibility of the process is altered.
- Section IV-D appears to contradict Section III-F by saying that only when the completed informant file has been reviewed and approved may the informant be used. It goes on to say that the managing officer has seven days to get the control file to the IPC office. It appears that a control file needs to be in the IPC office as soon as possible, not a week’s time.
- Section V deals with Supervisory and Command Responsibilities and allows the managing officer’s “supervisor/commander (or designee) shall personally witness...” If the confidential informant process is important enough to go through so many steps to insure appropriate utilization, it is also important that supervisory and command responsibility be as diligent. Absent some significant occurrence that cannot be avoided, the managing officer’s supervision should witness. Designee has not been defined here.

- Section VI-A (3) calls for the managing officer to include in his chronological log whenever any e-mail/text messages or written correspondence occurs. While this is sound as far it goes, it is prudent not only to log it but to print out all e-mail, text message and written correspondence and send a copy to the file. It is possible for informants to manipulate data. It is also prudent for the Department to regularly audit phone calls to and from the informant and include that in the log as well. Subsection B details that the managing officer should include the purpose of any money paid to an informant. In reviewing the chronological log, it is clear that a separate log for informant payments to need to be developed. These payments should be detailed, with amount of money, reason, existing funds used, etc. An example of such a form will be included in the addenda.
- In Section VII-C (1), the managing officer is directed to have at least one law enforcement officer or officer of the court present for any planned meeting with a confidential informant.
  - This does not address female informants and the need to have a female officer present, in addition to another male officer or officer of the court as a witness. This anticipates accusations of misconduct and provides the managing officer with a higher degree of readiness.
  - The order does not stipulate the location of any such meeting. For safety and integrity concerns, all meeting should be in public places.
  - The Auditor understands the need for undercover operations and the need for an officer to meet with an informant in such a capacity. The order should reflect the mandate that such meetings have an operations plan and a team of officers on scene to guarantee the undercover officer's safety.
- Section IX-C (Mandatory De-Activation) should include a subsection for any informant who proves unreliable.
- Section XII-D deals with Reporting Undesirable/Unreliable Informants and states that the managing officer has seven days to hand deliver the appropriate notification and form to the IPC. The Auditor believes that this element needs to be reported as soon as practical.
- Section XIV deals with the review process for working files. This section will be redundant with the elimination of working files. Monthly reviews by supervision and unit commanders should be done via computer. The

control is the responsibility of the IPC, who should conduct a semi-annual review, along with the Office of the Inspector General.

As part of the audit, the Auditor reviewed available confidential informant control files for compliance with DGO-04. As noted, all of the files were in substantial compliance and affixed with proper signatures and dates. The Office of the Inspector General also conducted an audit of control and working files for similar information and had similar findings. The Auditor is attaching that audit to this document as addenda.

## **RECOMMENDATIONS**

In any audit, there are many questions that arise and issues that should be addressed. The Auditor believes that the recommendations should be reasonable in number, address key issues and directly impact the significant elements of safety, security and integrity. Search warrant recommendations are relatively few and can be accomplished with little change to the present structure. The process is essentially sound. The confidential informant recommendations deal with more fundamental issues and require more work. Therefore, recommendations pertaining to managing confidential informants are in order of importance with the most pressing in bold type.

### ***SEARCH WARRANTS***

1. Maintain Department standards on time needed in patrol before reassignment: with few exceptions, a police officer needs to spend time in the field handling calls, talking with a diverse community and observing qualified officers and supervisors in action. This is an important element in building the officer's foundation for both understanding and implementing Constitutional policing.
2. Decide on one Department search warrant form: the current practice of allowing more than one form does not provide the consistency, uniformity and ease of review necessary. The "one Department" concept is enhanced by eliminating competing forms.
3. Mandate that search warrant inventory sheets are completed with the use of a spreadsheet or on a computer using a word.doc format: the Auditor understands the legal necessity of providing an inventory of property taken when the warrant is served. However, the court copy should be done using the spreadsheet or word.doc format. Some inventory sheets that were reviewed were illegible and detracted from the overall professionalism seen elsewhere in the warrants.

4. Remove imbedded signature fields from the Search Warrant Tracking Sheet: Current process makes it difficult to read the supervisor's or manager's signature. A simple directive on the sheet should solve this issue.
5. Mandate an Operations Plan for specified warrants: There is no consistent direction on when an Operations Plan needs to be in place. Any warrant involving guns, drugs and/or subjects with significant criminal histories are involved should have an Operations Plan.
6. Change the Search Warrant Training Bulletin into a Department Order: although training bulletins carry the Department seal of approved behavior, the Auditor believes the non-training aspects of the bulletin, e.g., who shall approve, who can write a warrant, who shall audit, etc., should be an order.
7. Initiate a search warrant mentoring program: the present threshold for qualifying to write a warrant only requires that the affiant complete the on-line P.O.S.T course called "Search Warrant Fundamentals." The Department has experts who can develop other training. At a minimum, anyone who writes a warrant should have a mentor who guides them and coaches them before they write a warrant on their own. This recommendation was amplified by the comments the Auditor received from those personnel who regularly write warrants.

### ***CONFIDENTIAL INFORMANTS***

1. **Eliminate the working file:** instances where an officer may need information from the control file can be obtained in ways other than having extremely sensitive information outside the control file where misplacement or loss could have serious consequences.
2. **Deploy available technology to capture, maintain and update mandated informant information:** essential elements such as the Informant Chronological Activity and Payment Log and supervisory reviews should be written to a dedicated, secure server with strict "read and write" permissions. In no case, should a managing officer have a hard, written log in a file.
3. **Change the update requirements for the Informant Chronological Activity and Payment Log:** present policy mandates that this log be updated and forwarded to the IPC every thirty days. Information in this log can be extremely sensitive and effect officer safety and Department reputation. It needs to be

updated within 24 hours of the contact or event. Department supervision, i.e., IPC, managing officer's Division Commander and Supervisor should be required to log onto the secure server daily.

4. **Develop reasonable experience and training levels for managing a confidential informant:** the present order does not mandate any such experience or training requirements leading the Auditor to believe that anyone can become a managing officer. This contradicts sound management practice.
5. **Develop a mentoring program for managing confidential informants:** along with minimum training requirements, managing officers should be mentored in the process to insure safety, integrity and consistency of the work product. The Department has experts to do this.
6. **Create a Narcotics Unit and place it in the Criminal Investigations Division:** much of the information provided by confidential informants involves narcotics. Similarly, many search warrants also, in some way, involve narcotics. The Department needs a division where experienced investigators with specific technical expertise can work together and provide a concentrated approach to drugs in the City.
7. **Manage confidential informants from the Narcotics Unit:** Given the ideas in Recommendation #6, it is both logical and sound management to localize the management of informants to the division whose personnel should have the most expertise. This does not preclude an officer with well-established expertise from being a managing officer. Such occurrences should be accommodated with the concurrence of supervision.
8. **Restrict managing confidential informants to select members of the Investigative Division:** Not everyone can or should manage confidential informants. Restricting access recognizes its significance, facilitates consistency and reduces risk associated with letting less experienced personnel engage informants.
9. **Eliminate the practice of using any informant before proper vetting:** No informant should be used before vetting through WSIN or other industry standard and before doing the research on the informant currently in place in DGO-04. No supervisor or commander should be able to override this provision.
10. **Change the language in DGO-04 (Supervisory and Command Responsibilities):** Present language allows a "designee" to witness

the informant review and sign the Agreement Regarding Cooperation. The designee should be someone of equal or greater rank.

11. Include in the chronological log and upload to the dedicated server a copy of all e-mail, text messages and phone logs for communication between any managing officer and informant: Any communication can be purposefully manipulated. The Department needs to audit all communication, not merely log it.
12. Insure planned contacts with female informants have a female officer present: Female informants pose risk management issues that are separate from male informants. At a minimum, a female officer should be present.
13. Insure all planned meetings with confidential informants are in public places: The safety of Department personnel is paramount. This should be written in the policy.
14. Change policy to reflect that any informant who is deemed unreliable is subject to mandatory deactivation: This element is not present in current policy.
15. Amend present policy and develop a computerized check sheet for quarterly reports on desirability and reliability of confidential informants: The files are thick with redundant and unnecessary duplicates of RAPS, driving histories, et al.

## **CONCLUSION**

The audit indicated that the Oakland Police Department is in substantial compliance with internal orders regarding search warrants and confidential informants. As in many police organizations, the business of policing can be improved by reviewing the manner in which the work gets done. In this case, the audit indicated that substantial progress can be made in efficiency, safety and supportiveness by changing key links in the process chain. These can be accomplished without diminishing any level of accountability or integrity. The Auditor believes both of those elements will be enhanced.

It is clear that the Oakland Police Department has many fine and dedicated employees. The Auditor was impressed by the scope and quality of their work. Interviews with Oakland Police Department personnel indicated that there is pride, caring and a drive to improve the quality of service to the community. The Auditor thanks all of those who assisted with this sensitive task. In particular, the Auditor wishes to thank the Office of the Inspector General for its help in organizing and preparing the audit.

Any audit can bring apprehensiveness and questioning by those being audited. This is especially true in an audit done by an outside consultant. Given the nature of the audit, it would natural for this type of feeling to exist. However, the Auditor would like to acknowledge the fact that Oakland Police Department personnel were excited and welcomed the chance to improve the process. The Auditor received candid and open responses to the sensitive questions that such must pose.

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