

 <b>Lexington Police Department</b>	<u>Subject: Vice, Drugs &amp; Organized Crime</u>				<u>Policy Number:</u>  <b>43A</b>	
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<u>By Order of:</u> Mark J. Corr, Chief of Police						

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## GENERAL CONSIDERATIONS AND GUIDELINES

The complexities of modern police service and the sophisticated methods of modern criminals often demand a specialized police response depending upon the problems and concerns of the particular community. Police sometimes rely on confidential informants, some who are known to be of dubious character and questionable motives. As a result, officers are assigned as undercover agents to oversee these informants and help guide an investigation (See Departmental policy entitled **42G - Use of Confidential Informants**).

Police undercover agents are officers that have undergone additional training and possess many important traits, characteristics and aptitude that allow them to confidentially solicit, collect and report criminal information pertaining to organized crime, vice or drug crimes. Undercover work requires intelligence which is a process that gathers criminal facts, figures, numbers and habits and transforms them into useful information for police purposes.

If called upon to work undercover, the primary task is to gather criminal information, and not to personally apprehend criminal offenders. The police undercover agent must concentrate on the investigation being conducted by the Lexington Police Department. Contact with agents from any other state, federal, or local law enforcement agency during the course of the undercover assignment must be reported and coordinated through the investigation commander.

Police undercover agents must be more concerned with overall criminal involvement than with individual criminal acts. The sensitive nature of their assignments requires that undercover agents report directly to the Chief of Police or a supervisory officer designated by the Chief. The Chief may prefer that their reports be made orally, rather than in writing as a necessary safeguard. Any written reports of undercover agents should be securely and confidentially filed under the direct control of the Chief.

Police undercover agents must be able to unobtrusively frequent places where known criminals congregate and to observe their activities and their associations (see Department policy **43B – Surveillance**). Police undercover work is an inherently dangerous assignment and must be carefully supervised and controlled by the Chief of Police. The specific duties and assignments of police undercover agents must be carefully shielded to protect their personal safety.

It is the policy of the Lexington Police Department that surveillance activities and undercover officers shall be used only as necessary to gather intelligence to suppress criminal activities.

## PROCEDURE

### A. Vice, Drug and Organized Crime Complaints

1. Receipt: All vice, drug and organized crime complaints shall be recorded as a Department preliminary investigation report. A record shall be made of the complaint received in the in-house computer system, which will then automatically assign a case number. [\[43.1.1\(a\)\(b\)\]](#)
2. Processing: The Commanding Officer at the time the complaint is received shall make a determination as to the need for immediate action to be taken.
3. A record shall be maintained of all information conveyed to and received from outside agencies. [\[43.1.1\(c\)\]](#)
4. The Chief of Police shall be briefed either in person or in writing by the Captain of Administration or Detective Bureau Commander of all active investigations. [\[43.1.1\(d\)\]](#)
5. Written reports and records must be physically or digitally secured outside of normal access and made accessible only to those persons who are authorized to receive such information. [\[43.1.2\]](#)

### B. Surveillance [\[43.1.5\]](#)

1. Reasons for Conducting Surveillance:
  - a. To detect and prevent crime;
  - b. To locate a wanted fugitive by observing known hangouts and associates;
  - c. To learn contacts and movements of a particular suspect or group;
  - d. To learn the identity of confederates;
  - e. To secure probable cause for the issuance of a search warrant;
  - f. To recover stolen property;

- g. To develop information of an intelligence nature to justify or confirm suspicion;
  - h. To identify people and their affiliation with a person under investigation; and
  - i. To obtain information for use in interrogations.
2. Preparation for Surveillance
- a. The success of any surveillance operation depends on its covert nature. Preparation for such an undertaking should be as thorough as possible.
  - b. Consideration of the number of officers needed (both active and relief), together with the equipment needed, and must be decided in advance.
  - c. The use of code words, methods of summoning aid, methods of access and egress from the location and manner of dress should all be discussed.
  - d. Officers should make a preliminary survey of the task to prepare for contingencies that may suddenly arise by becoming familiar with all facts of the case and the purpose of the surveillance. Officers must understand their assignments and have knowledge of the planned communications methods.
  - e. A complete inventory and inspection of all equipment used for surveillance shall be made prior to and after the action to ensure its functionality and operational readiness [43.1.4; 17.5.3]
  - f. It is important that officers involved know:
    - i. The suspect's full name, nicknames and aliases;
    - ii. Residence and business addresses and telephone numbers;
    - iii. Subject's complete physical description;
    - iv. Information regarding his/her walking habits, mannerisms and peculiarities;
    - v. Types of clothing and color preferences;
    - vi. Jewelry, habits and haunts;
    - vii. Daily routine;
    - viii. Identities and descriptions of friends/associates, doctors/dentists and other associates (and their business and telephone numbers);
    - ix. Dining and recreation preferences;
    - x. Identity of types of vehicles the subject uses, including registration numbers, make, model, color, individual characteristics or any other distinctive marks;
    - xi. Subject's driving habits.
3. Surveillance of Places
- a. In criminal investigations, the crimes that usually require this type of surveillance are: gambling, prostitution, fencing operations, the

illegal sale of alcohol or controlled substances and certain scam operations.

- b. A careful survey of the surrounding area should precede any surveillance of a place. The character of the neighborhood, the residents and any transients should be noted. The observation point should be selected after careful study.
- c. Two types of place surveillance will suggest themselves:
  - i. Using a nearby location and remaining concealed.
  - ii. Posing as a person who would normally conduct business in such an area.

4. Tailing or Shadowing:

- a. A tail or tailing is the close observation of any individual or vehicle in movement from place to place. Tailing has the same connotation as shadowing.
- b. The following are the conventional requirements for an investigator selected to tail a person:
  - i. Average size, build and general appearance;
  - ii. No noticeable peculiarities in appearance or mannerism;
  - iii. No conspicuous jewelry or clothing;
  - iv. Perseverance and patience to wait (and wait and wait);
  - v. The appearance of attending strictly to his own business;
  - vi. Resourceful, versatile and quick wits;
  - vii. A good talker with the ability to improvise; and
  - viii. Training in one or two good “covers.”

5. Notes and Log Book

- a. Since the activities observed during surveillance may later become part of the evidence in a trial, or perhaps become the basis of a subsequent interrogation, it is highly important that a record of observations should be made.
- b. A log, or chronological record of the activities of both the officer and the target, shall be made for each surveillance session.

C. Undercover Operations [\[43.1.5\]](#)

1. Selection of Undercover Agents

- a. A Chief of Police must have complete confidence in any officer that (s) he selects and assigns to undercover duty.
- b. To be considered for such an assignment and the additional training required, a police officer must possess the traits, characteristics and aptitude including the following:
  - i. A high level of personal integrity;
  - ii. A high degree of intelligence and common sense;

- iii. Demonstrated reliability in the performance of previous police assignments;
- iv. A high standard of physical fitness and mental alertness;
- v. An observant, inquisitive nature and a retentive memory;
- vi. A high degree of self-assurance and self-reliance;
- vii. A persuasive, convincing manner, which wins the confidence of people;
- viii. The ability to blend into the surroundings without attracting undue attention; and
- ix. An exceptional ability to react effectively in unexpected situations.

2. Undercover Assignments

- a. Undercover assignments should be established only when there is a demonstrated need and should be maintained for only as long as that need is justified.
- b. The Lexington Police Department is more likely to require part-time undercover assignments to concentrate on a particular crime problem than full-time assignments.
- c. In a department the size of Lexington's, where all officers are generally well-known to the public, consideration should be given to obtaining the services of a police officer from another law enforcement agency to conduct necessary undercover operations for a specific purpose and for a limited period of time.

3. Procedural Safeguards

- a. Funds allocated for undercover operations must be carefully disbursed, recorded and controlled in accordance with procedures established by the Chief of Police. See Department policy **17A – Budget and Accounting**.
- b. Electronic Surveillance
  - i. In addition to the adoption of effective disguises and false identities, police undercover agents also utilize electronic surveillance and videotaping techniques. If sufficient funds are not available for the acquisition of this sophisticated equipment, the Chief of Police should contact the District Attorney's, the Attorney General's, the U.S. Attorney's office, the State Police or appropriate federal law enforcement agency to inquire about obtaining use of this equipment.
  - ii. All undercover operations utilizing electronic video surveillance should be closely coordinated with the office of the local District Attorney or U.S. Attorney, or Attorney General.
  - iii. All undercover operations utilizing electronic or mechanical devices to intercept, overhear, or record any oral or wire

communication must comply with the provisions of Chapter 272, section 99. Given the complicated provisions and intricate procedures set out in that statute, electronic or mechanical eavesdropping or surveillance should not be undertaken unless all devices and procedures have been reviewed by the office of the District Attorney, Attorney General, or the U.S. Attorney.

c. Undercover Activities

- i. A police undercover agent must guard against making any unethical arrangement, or any unlawful agreement, or in any way condoning the commission of a crime, in return for criminal information regardless of its potential value.
- ii. A police undercover agent must be careful not to compromise his/her position as a police officer or to discredit the reputation of the police department in carrying out his/her duties.
- iii. A police undercover agent must take care to avoid any allegations of entrapment in gathering criminal evidence. (Entrapment is defined as actions taken by a law enforcement officer to induce another person to commit a crime through persuasion or enticement when such other person was not predisposed to do so.)
- iv. Police undercover agents should be systematically rotated back to their regular duties every couple of years as too much time in this stressful position can attribute to burnout of the employee. This is particularly important in the case of officers assigned to undercover vice and narcotics investigations. Generally speaking, these assignments will last no more than three years.

d. Review of Undercover Operations

- i. Undercover operations shall be periodically analyzed to determine their effectiveness and to justify their continuance.
- ii. An undercover assignment should be terminated when its purpose has been achieved or when the specific crime problem can be controlled by regular police operations.
- iii. An undercover operation should be a means toward a specific goal and should not be permitted to become a self-perpetuating permanent assignment.

e. Disguises:

- i. While assuming and maintaining undercover identities, an officer may legally:
  - (a) Use a disguise;

- (b) Tell the suspect and others false information about his/her name and address;
- (c) Lie about his/her employment or background; and
- (d) Use other falsities, tricks and deception as are necessary to further his/her undercover identity.<sup>i</sup>

f. Constitutional Considerations

- i. Police undercover agents must keep in mind that they remain subject to constitutional constraints.
- ii. Once adversarial judicial proceedings have commenced against a suspect by arraignment, undercover agents shall not deliberately elicit information from the suspect regarding offenses for which the judicial proceeding has commenced.
- iii. The U.S. Supreme Court has carved out an exception to the Miranda requirement which allows an undercover law enforcement officer posing as a fellow inmate to ask questions that could elicit an incriminating response, without having to provide Miranda warnings.<sup>ii</sup> However, whether Massachusetts will adopt this exception is yet to be seen.
- iv. A police undercover agent in the presence of a subject/suspect and their attorney must remove him/herself if information about a current case is being discussed (attorney / client privilege).

D. Records [\[43.1.2\]](#)

- 1. Records for active vice, drug and organized crime investigations shall be physically or digitally secured outside of normal access and made accessible only to those persons who are authorized to receive such information. [\[43.1.2\]](#)
- 2. Access shall be limited to the following authorized personnel: Lieutenant Detective, Captain of Administration, Captain of Operations, and Chief of Police.

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<sup>i</sup>*Com. v. Miller*, 361 Mass. 644, 282 N.E.2d 394 (1972); *Com. v. D'Onofrio*, 396 Mass. 711, 488 N.E.2d 410 (1986)

<sup>ii</sup>*Illinois v. Perkins*, 496 U.S. 292, 110 S.Ct. 2394 (1990)