

INTRADEPARTMENTAL CORRESPONDENCE

September 18, 2012
16.2

TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: MAJOR CRIMES DIVISION INTELLIGENCE GUIDELINES FOR ANTI-TERRORISM INTELLIGENCE SECTION

RECOMMENDED ACTIONS

That the Board of Police Commissioners (Board) REVIEW and APPROVE the Intelligence Guidelines for the Anti-Terrorism Intelligence Section.

DISCUSSION

On August 28, 2012, the Board made recommendations concerning two sections within the guidelines which were the Initial Leads and the Auditing and Oversight. The guidelines have been modified to include the Board's recommendations.

If you have any questions regarding this correspondence, please contact Captain Steven S. Sambar, Commanding Officer, Major Crimes Division, at (213) 486-7220.

Respectfully,

A handwritten signature in black ink, appearing to be 'C. Beck', with a stylized, cursive script.

CHARLIE BECK
Chief of Police

Attachments

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PREAMBLE

The Board of Police Commissioners (Board) recognizes terrorist activity as the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. This is consistent with the Code of Federal Regulations (28 C.F.R. Section 0.85). Terrorist activity also includes individuals and groups who plan, threaten, finance, aid/abet, and attempt or perform unlawful acts in furtherance of terrorist activity.

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 Intelligence Guidelines, be subject to Anti-Terrorism Intelligence Section 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 Intelligence Guidelines 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 Intelligence Guidelines pertain only to Anti-Terrorism Intelligence Section's intelligence function. They do not pertain to any Department

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function that is primarily responsible for conducting criminal investigations and does not maintain "Intelligence Files" as defined in these Intelligence Guidelines.

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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.

Domestic Terrorism: Is the unlawful use, or threatened use, of force or violence by a group or individual based and operating entirely within the United States or Puerto Rico without foreign direction committed against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof in furtherance of political or social objectives.

Fictitious Online Persona: A fictitious identity created on the Internet for the purpose of developing online profiles.

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 or Intelligence Control Center information.

Full Terrorism Intelligence Investigation: An intelligence investigation which has met the reasonable suspicion standard and has been approved by the Commanding Officer, Counter-Terrorism and Special Operations Bureau (CTSOB), or his/her designee.

Informant: In accordance with the 2008 LAPD Informant Manual a person is considered an informant when the following circumstances exist:

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- Anytime a person is given specific direction by an officer, for any reason, whether on one occasion or many, in an attempt to secure information on criminal activity;
- Anytime a person requests compensation for information or tasks performed; or,
- Anytime a person requests a Letter of Accomplishment on a pending criminal case.

(Refer to the LAPD 2008 Informant Manual for exceptions and further information).

Initial Lead Investigation: The lowest level of 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, and shall be concluded within a 60-day period. Two 60-day extensions may be granted with the approval of the **Commanding Officer, Major Crimes Division**. Initial lead information shall be stored separately from Intelligence Files. Only information that meets the reasonable suspicion standard may be placed in Intelligence Files.

Note: A 60-day extension will only be granted with the approval of the Commanding Officer, Major Crimes Division when articulable circumstances exist that are beyond the control of the Investigating Officer that prevents ongoing investigative efforts.

Intelligence Control Center: A temporary function performed by Department personnel to collect and disseminate intelligence information during the course of a potential or actual unusual occurrence. The information sought in such an investigation shall be that needed to facilitate an adequate law enforcement response.

Intelligence File: An Intelligence File contains the investigative intelligence information gathered, received, developed, analyzed and maintained pursuant to a Full Terrorism Intelligence Investigation, for the

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purpose of identifying terrorist individuals, terrorist groups, and victims of terrorism. The contents of the Intelligence file documents the reasonable suspicion to open or continue a Full Terrorism Intelligence Investigation.

International Terrorism: Involves violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or any state, or that would be a criminal violation if committed within the jurisdiction of the United States or any state. These acts appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of a government by assassination or kidnapping. International terrorist acts occur outside the United States or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

Investigator's Working Folder: The Investigator's 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 Full Terrorism Intelligence Investigation. However, the Investigator's Working Folder is not part of the 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 an Anti-Terrorism Intelligence Section intelligence investigation.

Monitoring: The short-term or preliminary act of observing or watching the activities of an individual or organization by Anti-Terrorism Intelligence

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Section investigators for the purposes of gathering information relevant to an Initial Lead Investigation or Full Terrorism Intelligence Investigation. This short-term monitoring activity shall not rise to the level of "Surveillance" as defined in these Intelligence Guidelines.

Need to Know: A precondition for the communication of intelligence information to entities outside Anti-Terrorism Intelligence Section or its immediate chain of command.

Online: Activity that occurs over the Internet.

Online Investigative Activity: The use of a fictitious online persona to engage in investigative activity existing exclusively over the Internet.

Online Undercover Activity: The use of a Fictitious Online Persona to engage in on-going interactive communication existing exclusively over the Internet with an identified person and is related to an ongoing Terrorism Intelligence Investigation.

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.

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 has occurred, may be occurring or has a potential to occur (This term is in accordance with Department of Justice definition: 28 CFR Part 23).

Right to Know: The authority or privilege to receive Anti-Terrorism Intelligence Section intelligence information.

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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.

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 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 Initial Lead or Full Terrorism Intelligence Investigation.

Target: The subject of an approved investigation.

Terrorism/Terrorist Activity: The unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives (28 C.F.R. Section 0.85). This definition includes individuals and groups who plan, threaten, finance, aid/abet, and attempt or perform unlawful acts in furtherance of terrorist activity.

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 Full Terrorism Intelligence Investigation involving the use of an undercover officer who clandestinely obtains information about individuals or organizations through the development of ongoing in person relationships with such individuals or organizations.

Undercover Investigation Committee: The President of the Board of Police Commissioners and another Commissioner designated by the

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

Undercover Officer: A Los Angeles Police Officer who, pursuant to an approved Full Terrorism Intelligence Investigation, clandestinely obtains information about individuals or organizations through the development of ongoing in person relationships with such individuals or organizations.

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).

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II. STATEMENT OF PRINCIPLE

A. These Intelligence Guidelines govern the collection, maintenance, storage and dissemination of intelligence information by the Anti-Terrorism Intelligence Section. 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: of privacy, to receive, hold and express ideas, to dissent freely, to write and to publish, to petition for the redress of grievances, 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 a Full Terrorism Intelligence Investigation, in accordance with these Intelligence Guidelines, has been met.

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3. Anti-Terrorism 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. Anti-Terrorism 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.

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III. FUNCTIONS AND OBJECTIVES

A. The primary objective of the Anti-Terrorism Intelligence Section's intelligence operation is the prevention of terrorist activity in the City of Los Angeles and environs by:

1. Identifying terrorist trends.
2. Identifying terrorist networks.
3. Examining terrorist tactics, developing terrorist profiles, assessing terrorist threats, and developing information to protect potential targets.
4. Investigating, identifying and monitoring individuals and groups for which reasonable suspicion exists to believe are engaged in terrorist activity.
5. Maintaining Intelligence Files on individuals and groups for which reasonable suspicion exists to believe are engaged in terrorist activity.
6. Assessing and analyzing the capabilities of terrorist individuals or groups, and providing concerned Department entities with sufficient information to thwart their terrorist goals.
7. Assisting other subdivisions of the Department and other law enforcement agencies to prevent terrorist activities.
8. Conducting and assisting in criminal investigations for the purpose of disrupting terrorist activity.

B. A secondary objective of Anti-Terrorism 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.

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C. The focus of Anti-Terrorism Intelligence Section 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, Anti-Terrorism Intelligence Section may work with other agencies and pursue investigations into other jurisdictions.

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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 Anti-Terrorism Intelligence Section intelligence investigation is not the 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.

A. LEVELS OF INTELLIGENCE INVESTIGATIVE ACTIVITY

The Intelligence Guidelines for Anti-Terrorism Intelligence Section allow for two types of investigative activity and allow the necessary flexibility to act well in advance of the commission of a planned terrorist attack. The levels of investigative activity are: (1) Initial Lead Investigations and (2) Full Terrorism Intelligence Investigations.

Whether it is appropriate to open an investigation immediately, or first engage in a limited follow-up of lead information, depends on the circumstances presented. If the available information demonstrates at the outset that the threshold standard for a Full Terrorism Intelligence 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.

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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. Investigation 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, such as a Full Terrorism Intelligence 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 Full Terrorism Intelligence Investigation. However, public safety demands a limited but prompt follow-up investigation. The authority to conduct inquiries short of a Full Terrorism Intelligence Investigation, allows Anti-Terrorism Intelligence Section 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:

- Examination of records available to the public (open source);
- Examination of LAPD records;
- Examination of available federal, state, local government records, etc;
- Interview of the person reporting;
- Interview of the potential subject;
- Interview of witnesses;

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- Monitoring;
- Photography/Videography;
- Informants;
 - The use of informants requires the approval of the President of the Board of Police Commissioners or if unavailable, the other member of the Undercover Committee. In the event of the absence of both members of the Undercover Committee, any other member of the Police Commission may grant approval.
- Surveillance;
 - Use of surveillance on an Initial Lead must be approved by the Commanding Officer, Major Crimes Division. The primary intent for the use of informants and/or surveillance while conducting an Initial Lead Investigation is to corroborate information. Use of informants and/or surveillance on Initial Leads should not be used if there is a less intrusive means to obtain the desired information.

Initial Lead Investigations shall be completed within 60 days from the date of receipt of the specific lead. Two 60-day extensions may be granted with the approval of the Commanding Officer, Major Crimes Division. All requests for extensions must be documented in the Initial Lead File. All materials collected during the Initial Lead Investigation shall be stored separately from Intelligence Files unless the initial investigation results in an approved Full Terrorism Intelligence Investigation.

Note: A 60-day extension will only be granted with the approval of the Commanding Officer, Major Crimes Division when articulable circumstances exist that are beyond the control of the Investigating Officer that prevents ongoing investigative efforts.

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Upon the closure of an Initial Lead Investigation that does not result in an approved Full Terrorism Intelligence Investigation, the following procedure shall be followed:

- The disposition shall be noted on an Initial Lead Investigation face sheet or automated equivalent (i.e. computerized reporting system) and an Initial Lead tracking spreadsheet for reference purposes. The Initial Lead face sheet and spreadsheet shall be retained for audit purposes.
- The ATIS supervisor who approves the disposition of the Initial Lead shall sign the Initial Lead face sheet or automated equivalent.
- All investigative material related to the lead other than the Initial Lead face sheet, shall be immediately collected and purged. Additionally, all personal identifying information shall be redacted from the Initial Lead sheet and tracking spreadsheet.

FULL TERRORISM INTELLIGENCE INVESTIGATIONS

The commencement of each Full Terrorism Intelligence Investigation shall be approved by the Commanding Officer, Counter-Terrorism and Special Operations Bureau (CTSOB), or his/her designee, who shall ensure the reasons for initiating the investigation meet the required threshold as stated below.

A Full Terrorism Intelligence Investigation may be initiated when there exists a reasonable and articulated suspicion 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.

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INVESTIGATIVE TECHNIQUES FOR FULL TERRORISM INTELLIGENCE INVESTIGATIONS

All lawful investigative techniques may be used in a Full Terrorism Intelligence Investigation.

B. PENDING ACTIVITY REPORTS

1. Anti-Terrorism Intelligence Section personnel often receive or discover 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. These events may require operational awareness. Anti-Terrorism Intelligence Section personnel have the responsibility to disseminate this information to the appropriate Department entity or outside agency. The purpose of this dissemination is to facilitate an adequate law enforcement response, to ensure public health and safety, and to protect the exercise of First Amendment Rights.
2. Pending Activity Reports are subject to the constraints delineated in the Preamble to these Intelligence Guidelines and shall be stored separately from Anti-Terrorism Intelligence Section Intelligence Files.
3. Pending Activity Reports shall be transmitted to the appropriate Department operational entities immediately upon completion and approval. Major Crimes Division shall maintain a log of such reports for audit purposes.

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. The information sought in such an investigation shall be that needed to facilitate an adequate law enforcement response.

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2. Major Crimes Division personnel may be temporarily assigned to the Intelligence Control Center. In the event of an unusual occurrence, Department personnel outside Major Crimes Division may be called upon to assist the functions of the Intelligence Control Center.
3. At the conclusion of an Intelligence Control Center activation, all materials gathered, organized and produced shall be stored separately from Anti-Terrorism Intelligence Section's Intelligence Files unless the information is material to a Full Terrorism Intelligence Investigation. Access to information and materials obtained through the Intelligence Control Center after it has been closed will only be allowed with approval of the Commanding Officer, Major Crimes Division.
4. Personnel assigned to the Intelligence Control Center shall conduct their investigations in a manner that supports the general principles of these Guidelines. While completing the work of the Intelligence Control Center, personnel are not required to adhere to the investigative procedures for Full Terrorism Intelligence Investigations as described in these Guidelines or Major Crimes Division's Divisional Orders. However, personnel shall follow all appropriate Department approved investigative techniques and procedures.

D. MULTI-AGENCY TASK FORCE

Members of Anti-Terrorism Intelligence Section, with the approval of the Chief of Police, may be assigned to a multi-agency task force.

Anti-Terrorism Intelligence Section personnel that are members of a multi-agency task force which is 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.

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V. LIMITATIONS AND PROHIBITIONS

Anti-Terrorism Intelligence Section personnel shall recognize and abide by legal and policy limitations placed upon their investigations. In addition to the parameters established by these Intelligence Guidelines, the following specific limitations and prohibitions apply to Anti-Terrorism Intelligence Section personnel and investigations:

- A. No member of Anti-Terrorism Intelligence Section may engage in any unlawful activity in the collection, maintenance or dissemination of intelligence data or information.
- B. No member of Anti-Terrorism Intelligence Section 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 Anti-Terrorism Intelligence Section may act or knowingly engage another individual to act as an agent provocateur.
- D. No member of Anti-Terrorism Intelligence Section may employ the use of restricted electronic surveillance equipment without conforming to policy as stated in the Department Manual.
- E. Initial Lead Investigations are authorized for 60 days with the possibility of two 60-day extensions. In no event shall an Initial Lead Investigation exceed 180 days.

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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 an in person infiltration of an organization or the development of an ongoing in person 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.

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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 Intelligence Guidelines establish the limits by which the conduct of Anti-Terrorism Intelligence Section personnel and undercover investigative techniques are controlled.

B. UNDERCOVER INVESTIGATION – AUTHORIZATION

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

1. The targeted individual(s) and/or organization have been approved for a Full Terrorism Intelligence Investigation.
2. No undercover investigation shall be commenced without the written approval of the Chief of Police and the Undercover Investigation 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 Investigation Committee is unavailable, an undercover investigation may be commenced with the approval of the Chief of Police. Telephonic notification to the Undercover Investigation Committee shall be made as soon as possible and written approval from the Undercover Investigation Committee shall be requested within 72 hours.

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- a. The undercover investigation application shall be signed by the Commanding Officer, Major Crimes Division, through the chain of command to the Chief of Police;
- b. 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).
- c. The application shall include information which bears upon:
 - 1) Whether there is reasonable suspicion to believe that the target individual or organization may be engaged in terrorist activity as defined;
 - 2) The expected results of the undercover operation in terms of prevention of terrorist activity;
 - 3) The anticipated manner in which the undercover operation will be conducted, including likely individuals and organizations who will be contacted;
 - 4) The authorized duration of the undercover investigation and the provision for periodic review;
 - 5) What other methods have been previously used and why Anti-Terrorism Intelligence Section believes that an undercover investigation is the only practical means to accomplish the objectives of the investigation;
 - 6) 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

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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.

3. The Undercover Investigation 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:
 - a. The application has been signed by the officials listed in subparagraph VI.B.2.a above;
 - b. All supporting assertions of fact are sworn to under oath;
 - c. The Undercover Investigation Committee has consulted with legal counsel for advice, if necessary;
 - d. The Undercover Investigation Committee shall maintain a written record of compliance with this subparagraph; and,
 - e. The Undercover Investigation Committee renders written findings that:
 - 1) There is an approved Full Terrorism Intelligence Investigation which meets the respective reasonable suspicion standard;
 - 2) Other means are unavailable or ineffective to achieve the investigative objectives of the Department; and,

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- 3) The interests of privacy and free expression are outweighed by the nature and magnitude of the likely harm.
- f. 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:
- 1) All other means of obtaining sufficient information on the target organization either have been tried without success or are not practical;
 - 2) There is a 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:
 - (a) Members of the target organization are also members of the non-target organization;
 - (b) The target organization recruits members from the active members of the non-target organization;
 - (c) Membership in the non-target organization is a condition of membership in the target organization; or
 - (d) There is a substantial link between the non-target organization and target organization, equal to those described in (a)-(c) 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 evidence that:

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- i. The non-target organization espouses or holds the same political, social or economic 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.
- 3) 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.
- 4. Where the Undercover Investigation Committee finds that the application for an undercover investigation meets the requirements set forth in section VI.B.3, it shall issue written authorization to conduct an undercover investigation under the following terms and conditions:
 - a. Specifying the individual or organization that is the target of the undercover investigation;
 - b. 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;
 - c. Imposing a time limit on the undercover investigation, which, however, shall not exceed a period of one year with a semi-

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annual status review by the Undercover Investigation Committee.

- d. If the infiltration of a non-target organization has also been approved, the written confirmation shall include these additional terms and conditions:
 - 1) Specify the number of meetings of the non-target organization which the undercover officer may attend without further approval of the Undercover Investigation Committee;
 - 2) Set forth limitations, if any, on the activities which can be engaged in by the undercover officer in the non-target organization;
 - 3) Require quarterly reports from Anti-Terrorism Intelligence Section 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;
 - 4) Require quarterly reviews by the Undercover Investigation Committee on whether the infiltration of the non-target organization still meets the requirements set forth in section VI.B.3, above.
5. The Undercover Investigation Committee shall make its decision within 72 hours of receipt of the application of the Department. In the event that one of the two Committee members is unavailable to make this decision, and where that (unavailable) Committee member has taken no part in reviewing the Department's application, the available Committee member may identify another Police Commissioner to serve as part of the Committee for a determination on the particular application. The Committee's determination shall be made in

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accordance with the Undercover Standards and Responsibilities Section of these Intelligence Guidelines (VI.C).

6. 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 Undercover Investigation Committee.

- a. 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 organizations and individuals which were contacted by him/her in that time period.
- b. The Undercover Investigation Committee shall issue written authorization to continue an undercover investigation of a target organization or individual only where in the preceding one-year period:
 - 1) 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.
 - 2) 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. c. 1) above, but the undercover officer has been unable to develop such contacts through no fault of his/her own.

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7. Except as permitted in paragraph VI.B, no undercover investigation shall be conducted absent compliance with the above-mentioned procedures.
8. Unless already approved under Section VI.B.2.c.6 above, during a duly authorized undercover investigation, an undercover officer may be present on two occasions at events of organizations which are not the subject of an Anti-Terrorism Intelligence Section 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 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:
 - a. 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.
 - b. 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.B.2.c.6.
 - c. The events and writings pertaining to (a) and (b) above shall be audited by the Commission pursuant to Section IX, to ensure compliance with these Guidelines.

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C. 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.

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.

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- d. **WRITTEN REPORTS:** Undercover officers shall not make written reports of their operations and activities.
- e. **TRAINING OF UNDERCOVER OFFICERS:** The Officer in Charge, Anti-Terrorism Intelligence Section, 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.B.8, VI.C.1.a, VI.C.1.b and VI.C.1.c shall report attendance to the investigative supervisor of the case.
- b. **SUPERVISOR'S RESPONSIBILITY:** An investigative supervisor who becomes aware that an undercover officer has attended a meeting as described in VI.B.8, VI.C.1.a, VI.C.1.b and VI.C.1.c 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 as described in VI.B.8, or any other function, demonstration or activity of organizations not approved for infiltration as described in VI.C.1.a, VI.C.1.b and VI.C.1.c shall report such activity to Major Crimes Division's immediate chain of command.

NOTE: In connection with activities described in VI.B.8, VI.C.1.a, VI.C.1.b and VI.C.1.c, no reporting beyond the Commanding Officer, Major Crimes Division, is required if the 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:

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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 the Commanding Officer, Counter-Terrorism and Special Operations Bureau, or his/her designee, the latter who shall authorize attendance at further activities for the purpose of maintaining cover.

3. APPROVAL OF THE UNDERCOVER INVESTIGATION COMMITTEE

Any request to modify current restrictions on acceptable conduct by undercover officers as provided in the Major Crimes Division Divisional Orders shall be reviewed and approved by the Undercover Investigation Committee.

D. ONLINE UNDERCOVER ACTIVITY

1. Online Investigative Activity shall not be subject to the Police Commission approval process as with Online Undercover Activity. However, Online Investigative Activity must adhere to the Major Crimes Division Divisional Orders regarding the code of conduct for undercover officers.
2. Once Online Investigative Activity escalates to the point of meeting the definition of Online Undercover Activity, the investigating officer shall obtain approval from the Board of Police Commissioners, Undercover Committee.
3. Fictitious Online Personas created for the purposes of identifying and examining terrorist trends and tactics, developing profiles, or conducting threat assessments does not constitute Online Undercover Activity.

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E. SURVEILLANCE AND INFORMANT OPERATIONS

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

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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 its 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 Anti-Terrorism Intelligence Section personnel shall not be maintained unless it is material to an investigation authorized under these Intelligence Guidelines. 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 Anti-Terrorism Intelligence Section, 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 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 may provide a copy of an intelligence report to anyone outside of Anti-Terrorism 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 Anti-Terrorism 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

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individual receiving, the reason for the dissemination, the information disseminated, and its reliability.

G. In the case of a joint investigation by Anti-Terrorism 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 these Intelligence Guidelines.

H. Members of Anti-Terrorism 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. The dissemination of any document prepared to summarize the status or activities of a Full Terrorism Intelligence Investigation, other than that placed in the Intelligence File or Investigator's Working Folder (such as generated for an Intelligence Briefing), shall be recorded in the Investigator's Working Folder. Upon the closure of a Full Terrorism Intelligence Investigation, the assigned investigating officer shall ascertain the status of any such documents. The findings shall be recorded in the Investigator's Working Folder to complete the closure process.

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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 Anti-Terrorism Intelligence Section Intelligence Guidelines shall be distributed to Major Crimes Division's chain of command and all subordinate personnel.
- C. Major Crimes Division's chain of command and Anti-Terrorism Intelligence Section personnel shall be required to acknowledge in writing, their receipt of these Intelligence Guidelines, and their agreement to abide by the purpose, procedures and spirit of its content.
- D. All Anti-Terrorism Intelligence Section personnel and the Major Crimes Division chain of command shall receive training regarding these Guidelines.
- E. As with any other Department guideline or regulation, any willful or negligent violation of or deviation from these Intelligence Guidelines will be viewed as misconduct and be subject to appropriate disciplinary action.

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IX. AUDITING AND OVERSIGHT

A. At least annually, the President of the Board of Police Commissioners shall appoint two Board members (hereinafter the "Audit Committee") to audit the operations of Major Crimes Division for compliance with these Intelligence Guidelines. The Audit Committee may enlist the assistance of the Inspector General and such support staff who shall be subject to a background examination and possess the requisite auditing and management expertise to ensure compliance with the Intelligence Guidelines.

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

1. A review of all Anti-Terrorism Intelligence Section intelligence regulations, rules and policies.
2. A review of all Anti-Terrorism Intelligence Section investigations conducted in the prior year.
3. A review of all materials gathered, received, developed or maintained by Anti-Terrorism Intelligence Section for intelligence purposes.
4. Conduct an oral interview of Anti-Terrorism Intelligence Section personnel assigned to task forces wherein another agency is the lead agency and is in possession of all work product. This interview is to ensure that Anti-Terrorism Intelligence Section personnel assigned to task force operations have an understanding of these Guidelines and are abiding by these Guidelines when not engaged in task force related investigations. This oral interview is to include Major Crimes Division personnel assigned to the LAPD SWE/SCIF (CT-10).
5. A written report setting forth the nature of the audit and the findings on compliance with these Intelligence Guidelines.
6. Written justification for the commencement of an intelligence investigation shall be retained within the intelligence file and reviewed by the Commission during the audit.

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B. The Audit Committee or its designated administrative auditor(s) may, at any time, conduct surprise audits or inspections as deemed appropriate to monitor compliance with these Intelligence Guidelines.

C. Based upon the audit, the administrative auditor(s), under the supervision of the Audit Committee, 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 preceding year's activities of Anti-Terrorism Intelligence Section.

E. Annually, the Commanding Officer, Major Crimes Division, shall provide written certification that all current Anti-Terrorism Intelligence Section intelligence investigations have been internally reviewed and that those investigations which are no longer viable have been closed.

F. The Undercover Investigation Committee shall have the right to review and approve Major Crimes Division's Divisional Orders pertaining to prohibitions on undercover officer conduct previously included in these Intelligence Guidelines. Any changes to those provisions shall receive prior approval from the Undercover Investigation Committee. Discussion of the contents of the Major Crimes Division Divisional Orders, as they pertain to undercover officers shall remain confidential.

G. Oversight and Auditing of Major Crimes Division's 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.
2. In accordance with existing Joint Terrorism Task Force (JTTF) protocols, it is understood that certain LAPD investigations will be

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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 (IG), 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 Counter Terrorism 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 carry out the auditing/oversight of LAPD personnel assigned to CT-10, the IG shall

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.

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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 files, 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 Agent or other federal employee, the IG will refer the matter to the FBI JTTF Assistant Special Agent in Charge for appropriate action.

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X. PUBLIC ACCESS TO INFORMATION

A. Anti-Terrorism Intelligence Section shall provide public access to all documents maintained or collected by Anti-Terrorism 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, Anti-Terrorism Intelligence Section shall evaluate each document within the scope of each such request on an individual document by document basis. Anti-Terrorism Intelligence Section shall search documents within each category of documents maintained by Anti-Terrorism 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.