

Title 28: Judicial Administration

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PART 23—CRIMINAL INTELLIGENCE SYSTEMS OPERATING POLICIES

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Authority: 42 U.S.C. 3782(a); 42 U.S.C. 3789g(c).

Source: 58 FR 48452, Sept. 16, 1993, unless otherwise noted.

§ 23.1 Purpose.

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The purpose of this regulation is to assure that all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 91-644, Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, Pub. L. 98-473, Pub. L. 99-570, Pub. L. 100-690, and Pub. L. 101-647), are utilized in conformance with the privacy and constitutional rights of individuals.

§ 23.2 Background.

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It is recognized that certain criminal activities including but not limited to loan sharking, drug trafficking, trafficking in stolen property, gambling, extortion, smuggling, bribery, and corruption of public officials often involve some degree of regular coordination and permanent organization involving a large number of participants over a broad geographical area. The exposure of such ongoing networks of criminal activity can be aided by the pooling of information about such activities. However, because the collection and exchange of intelligence data necessary to support control of serious criminal activity may represent potential threats to the privacy of individuals to whom such data relates, policy guidelines for Federally funded projects are required.

§ 23.20 Operating principles.

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(a) A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.

(b) A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.

(c) *Reasonable Suspicion* or *Criminal Predicate* is established when information exists which establishes sufficient facts to give a trained law enforcement or criminal investigative agency officer, investigator, or employee a basis to believe that there is a reasonable possibility that an individual or organization is involved in a definable criminal activity or enterprise. In an interjurisdictional intelligence system, the project is responsible for establishing the existence of reasonable suspicion of criminal activity either through examination of supporting information submitted by a participating agency or by delegation of this responsibility to a properly trained participating agency which is subject to routine inspection and audit procedures established by the project.

(d) A project shall not include in any criminal intelligence system information which has been obtained in violation of any applicable Federal, State, or local law or ordinance. In an interjurisdictional intelligence system, the project is responsible for establishing that no information is entered in violation of Federal, State, or local laws, either through examination of supporting information submitted by a participating agency or by delegation of this responsibility to a properly trained participating agency which is subject to routine inspection and audit procedures established by the project.

(e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.

(f)(1) Except as noted in paragraph (f)(2) of this section, a project shall disseminate criminal intelligence information only to law enforcement authorities who shall agree to follow procedures regarding information receipt, maintenance, security, and dissemination which are consistent with these principles.

(2) Paragraph (f)(1) of this section shall not limit the dissemination of an assessment of criminal intelligence information to a government official or to any other individual, when necessary, to avoid imminent danger to life or property.

(g) A project maintaining criminal intelligence information shall ensure that administrative, technical, and physical safeguards (including audit trails) are adopted to insure against unauthorized access and against intentional or unintentional damage. A record indicating who has been given information, the reason for release of the information, and the date of each dissemination outside the project shall be kept. Information shall be labeled to indicate levels of sensitivity, levels of confidence, and the identity of submitting agencies and control officials. Each project must establish written definitions for the need to know and right to know standards for dissemination to other agencies as provided in paragraph (e) of this section. The project is responsible for establishing the existence of an inquirer's need to know and right to know the information being requested either through inquiry or by delegation of this responsibility to a properly trained participating agency which is subject to routine inspection and audit procedures established by the project. Each intelligence project shall assure that the following security requirements are implemented:

(1) Where appropriate, projects must adopt effective and technologically advanced computer software and hardware designs to prevent unauthorized access to the information contained in the system;

(2) The project must restrict access to its facilities, operating environment and documentation to organizations and personnel authorized by the project;

(3) The project must store information in the system in a manner such that it cannot be modified, destroyed, accessed, or purged without authorization;

(4) The project must institute procedures to protect criminal intelligence information from unauthorized access, theft, sabotage, fire, flood, or other natural or manmade disaster;

(5) The project must promulgate rules and regulations based on good cause for implementing its authority to screen, reject for employment, transfer, or remove personnel authorized to have direct access to the system; and

(6) A project may authorize and utilize remote (off-premises) system data bases to the extent that they comply with these security requirements.

(h) All projects shall adopt procedures to assure that all information which is retained by a project has relevancy and importance. Such procedures shall provide for the periodic review of information and the destruction of any information which is misleading, obsolete or otherwise unreliable and shall require that any recipient agencies be advised of such changes which involve errors or corrections. All information retained as a result of this review must reflect the name of the reviewer, date of review and explanation of decision to retain. Information retained in the system must be reviewed and validated for continuing compliance with system submission criteria before the expiration of its retention period, which in no event shall be longer than five (5) years.

(i) If funds awarded under the Act are used to support the operation of an intelligence system, then:

(1) No project shall make direct remote terminal access to intelligence information available to system participants, except as specifically approved by the Office of Justice Programs (OJP) based on a determination that the system has adequate policies and procedures in place to insure that it is accessible only to authorized systems users; and

(2) A project shall undertake no major modifications to system design without prior grantor agency approval.

(ii) [Reserved]

(j) A project shall notify the grantor agency prior to initiation of formal information exchange procedures with any Federal, State, regional, or other information systems not indicated in the grant documents as initially approved at time of award.

(k) A project shall make assurances that there will be no purchase or use in the course of the project of any electronic, mechanical, or other device for surveillance purposes that is in violation of the provisions of the Electronic Communications Privacy Act of 1986, Public Law 99-508, 18 U.S.C. 2510-2520, 2701-2709 and 3121-3125, or any applicable State statute related to wiretapping and surveillance.

(l) A project shall make assurances that there will be no harassment or interference with any lawful political activities as part of the intelligence operation.

(m) A project shall adopt sanctions for unauthorized access, utilization, or disclosure of information contained in the system.

(n) A participating agency of an interjurisdictional intelligence system must maintain in its agency files information which documents each submission to the system and supports compliance with project entry criteria. Participating agency files supporting system submissions must be made available for reasonable audit and inspection by project representatives. Project representatives will conduct participating agency inspection and audit in such a manner so as to protect the confidentiality and sensitivity of participating agency intelligence records.

(o) The Attorney General or designee may waive, in whole or in part, the applicability of a particular requirement or requirements contained in this part with respect to a criminal intelligence system, or for a class of submitters or users of such system, upon a clear and convincing showing that such waiver would enhance the collection, maintenance or dissemination of information in the criminal intelligence system, while ensuring that such system would not be utilized in violation of the privacy and constitutional rights of individuals or any applicable state or federal law.

 661—81.4(692) Review of criminal intelligence files—purging.

81.4(1) The intelligence bureau of the department of public safety shall regularly review the information in criminal intelligence files for reclassification or purging. Decisions to retain, reclassify, or purge criminal intelligence files shall:

- a. Ensure that the information is current, accurate and relevant to the needs of the agency.
- b. Safeguard individual privacy interests protected by federal and state laws.
- c. Ensure that security classifications remain appropriate.

81.4(2) Information that is misleading, unreliable, or no longer useful shall be purged or reclassified when necessary, without delay and, in any event, within one business day of the discovery that the information is misleading, unreliable, or no longer useful. Any person or agency to which the criminal intelligence file was disseminated shall be notified of the reclassification or purge.

81.4(3) All information shall be reviewed within a five-year period of its submission to ensure compliance with subrule 81.4(1).

81.4(4) All information retained as a result of a review shall reflect the name of the reviewer, date of review, and an explanation of the decision to retain.

81.4(5) Information that is not retained in a criminal intelligence file after a review shall be deleted from the LEIN information system.