

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE ORANGE COUNTY DISTRICT ATTORNEY-PUBLIC ADMINISTRATOR
AND THE ORANGE COUNTY SHERIFF-CORONER**

This Memorandum of Understanding ("MOU") between the Office of the Orange County District Attorney-Public Administrator ("OCDA"), and the Office of the Orange County Sheriff-Coroner ("OCSD") is entered to coordinate responsibilities for the communication and information exchange regarding Informants, Custodial Informants, and Sources of Information in the Orange County Jails.

Background

The District Attorney is the elected public prosecutor who initiates and conducts on behalf of the People of the State of California all prosecutions for public offenses in the County of Orange. (Govt. Code, § 26500.) The District Attorney may supervise or participate in any program to improve the administration of justice. (Govt. Code, § 26500.) He exercises his powers through deputies and staff assigned to OCDA.

The Sheriff is the elected peace officer charged with preserving the peace and is the sole and exclusive authority to keep the County jail and the prisoners in it. (Govt. Code, §§ 26600, 26605.) The Sheriff may supervise or participate in any program of crime prevention or rehabilitation of persons previously convicted of a crime. (Govt. Code, § 26600.) He exercises his powers through deputies and staff assigned to OCSD.

The United States Department of Justice ("USDOJ") investigated OCDA's and OCSD's use of custodial informants in criminal proceedings from 2007 through 2016. The USDOJ's investigation concluded it had reasonable cause to believe that during the investigated period the custodial informant practices of OCDA and OCSD resulted in systematic violations of criminal defendants' rights under the Sixth and Fourteenth Amendments of the United States Constitution.

The USDOJ's investigation recommended OCDA and OCSD undertake further remedial measures in their use of custodial informants to ensure the constitutional rights of criminal defendants are preserved. Among those recommendations was OCDA and OCSD developing and implementing a memorandum of understanding between the agencies setting forth the responsibilities of both agencies when custodial informants are used.

The District Attorney and the Sheriff are resolutely committed to protecting public safety, the constitutional rights of criminal defendants and crime victims, and the integrity of the criminal justice system. They enter this MOU to memorialize the coordination of their offices' custodial informant practices, including the sharing of information. This MOU reflects both elected officials' steadfast commitment to continue their collaborative efforts and maintain the integrity of Orange County's criminal justice system.

Definitions

“Benefit” means any consideration or advantage an Informant or Custodial Informant was offered, promised or received in exchange for information or testimony provided. It includes a benefit for the Informant or a benefit for another person at the Informant’s request.

“CIRC” means OCDA’s Cooperating Informant Review Committee.

“Custodial Informant,” as defined in OCDA’s Confidential Sources Policy Manual, means a person other than a co-defendant, percipient witness, accomplice, or co-conspirator whose statements are based upon statements made by the defendant while both the defendant and the custodial informant were held within a jail facility. For purposes of this MOU, this definition of “Custodial Informant” applies only to persons incarcerated in the Orange County Jails who provide information to OCSD.

“Informant,” as defined by OCSD Policy 608, means any person who knowingly provides information to law enforcement related to another’s criminal activity, whose motivations for doing so are other than that of an uninvolved witness, victim, or private citizen primarily acting through a sense of civic responsibility and who, as a general rule, but not necessarily, expects some form of benefit or advantage for himself, herself, or another person in return. For purposes of this MOU, this definition applies only to persons incarcerated in the Orange County Jails who provide information to OCSD.

“OCICS” means the Orange County Index of Confidential Sources.

“Orange County Jails” means OCSD-operated jails, including Central Men’s Jail, Central Women’s Jail, the Intake Release Center, the Theo Lacy Facility, and the James A. Musick Facility.

“Source of Information” means any inmate who provides information to OCSD regarding criminal activity, or any non-criminal activity related to jail security; but has not been directed to do so by OCSD, and, upon providing such information, the inmate has not requested or been offered, nor received any benefit or consideration in return for the information. An SOI is not an Informant, a victim or potential suspect.

Responsibilities

- I. Use of Informants/Custodial Informants in the Orange County Jails
 - A. Any use of a Custodial Informant by any member of the OCDA must be pre-approved by the District Attorney through the OCDA’s CIRC process in accordance with OCDA’s Confidential Sources Policy Manual..

1. The CIRC will review and make decisions on all requests by OCDA personnel to use Custodial Informants including, but not limited to, requests for benefits involving an Custodial Informants on a pending criminal case. No members of OCDA shall assist in offering or facilitating any Custodial Informants benefit unless it has been previously approved by the CIRC. All CIRC approvals will be in writing.
 2. OCDA will not accept any oral request by OCSD for benefits involving an Informant or Custodial Informant on a pending criminal case. All such requests for benefits must be in writing and approved, in writing, in accordance with OCSD's Informants/Source of Information Policy 608 ("Policy 608").
 3. OCDA will accept records relating to Informants and Sources of Information provided by OCSD pursuant to the terms of this MOU and OCSD Policy 608 and make any necessary disclosures in accordance with OCDA's legal obligations in accordance with OCDA's Confidential Sources Policy Manual.
- B. Any use of an Informant by a member of OCSD will be reviewed and approved by the Sheriff in accordance with OCSD Policy 608.
1. All OCSD requests for benefits involving an Informant on a pending criminal case must be in writing and approved in accordance with OCSD Policy 608.
 2. OCSD shall not make any promises or representations of any benefit, express or implied, to any Informant regarding his or her pending criminal matters, or those of any other person, without the written approval of OCDA.
 3. All OCSD operations with Informants and information exchanges with OCDA, including discovery, will be conducted in accordance with the law, OCSD Policies and Procedures, including but not limited to OCSD Policy 608.
 4. No personnel assigned to OCSD Custody Operations shall handle Informants.

II. Documenting Informants in the Orange County Jails

A. OCSD Informant Documentation & Information Sharing

1. OCSD shall maintain Informant files within its Custody Intelligence Unit.
2. For each Informant, a separate file shall be assigned an Informant Control Number and maintained in a locked, secured area.
3. The file shall contain OCSD's complete set of records about OCSD's use of the Informant to enable review and evaluation of information given by the Informant and to be available for discovery purposes when legal authority is provided.
4. The file shall contain a complete record of the Informant's activity over time.
5. OCSD shall retain an Informant's file for 99 years from the date of the Informant's inactivation.
6. OCSD shall notify OCDA of the existence of any Informant by providing OCDA with an OCICS card at the first possible opportunity, but no later than five business days from the date the Informant Admonishment and Informant Agreement forms were signed by the Informant in accordance with OCSD Policy 608.
7. OCSD shall provide OCDA with any additional records and information regarding any Informant when legally required upon request.
8. OCSD shall notify OCDA whenever OCSD classifies an Informant as undesirable and/or unreliable in accordance with OCSD Policy 608. If OCSD later determines that an Informant used in an OCDA prosecution was untruthful and/or unreliable, OCSD shall also notify the handling prosecutor on that case.

B. OCDA Informant Documentation

1. Upon receipt of an OCICS card regarding an Informant by OCSD, OCDA will enter the Informant information into the OCICS database.
2. OCICS entry is required whenever an Informant is involved in an investigation, including criminal cases that are not filed and prosecutions where an Informant is not used.

III. Documenting Sources of Information in the Orange County Jails

A. OCSD's Source of Information ("SOI") Documentation & Information Sharing

1. Every instance in which OCSD staff is contacted by a potential SOI will fall strictly under OCSD Policy 608.
2. No deputy will obtain information from a potential SOI who requests a benefit after being read the SOI admonishment.
3. OCSD shall not make any promises or representations, express or implied, to any SOI.
4. All SOIs will be issued a Source Control Number (SCN). This is a permanent number that is specific to the individual SOI and shall be used anytime an SOI provides information.
5. The file shall contain a complete record of the SOI's activity over time.
6. OCSD shall retain an SOI's file for 99 years from the date of the SOI's inactivation.
8. OCSD shall notify OCDA of the existence of any SOI by providing OCDA with an SOI card at the first possible opportunity, but no later than five business days from the date the SOI provided information to OCSD.
9. OCSD shall provide OCDA with any additional records and information regarding any SOI when legally required and/or upon request.

B. OCDA's Source of Information ("SOI") Documentation

1. Upon receipt of an OCSD SOI card OCDA will enter the SOI information into the OCICS database.
2. OCICS entry is required whenever an SOI is involved in an investigation, including criminal cases that are not filed and prosecutions where an SOI is not used.

IV. Joint Annual Audit


- A. Annually, OCDA and OCSD will perform a joint audit of OCSD's use of Informants and SOIs. As a part of that audit:

1. OCSD shall provide to OCDA, no later than January 15 of each calendar year, a list of all Informant and SOI files created by OCSD in the preceding year.
 2. Within 10 business days of OCDA's receipt of OCSD's list of Informants and SOIs, the OCDA OCICS Coordinator will identify any errors or omissions in OCSD's submission. OCDA and OCSD will collaborate to reconcile their records and resolve any errors or omissions so that the OCDA OCICS Coordinator can verify OCSD's list.
- B. Upon verification of OCSD's list of Informants and SOIs, the OCDA OCICS Coordinator shall sign the Joint Annual Audit Form and hand deliver a copy to OCSD's Special Investigations Bureau Captain.

General Provisions

- I. Failure of either agency to follow the protocols of the CIRC process or this MOU likely jeopardizes OCDA's ability to proceed with a criminal prosecution.
- II. The CIRC serves as the available resource for OCDA and OCSD personnel to ensure that proper legal standards are maintained and followed throughout the criminal justice process. OCSD shall consult with the CIRC as necessary, and the CIRC shall provide OCSD with guidance on any questions or concerns OCSD has in relation to Informants or Custodial Informants.
- III. Any modification to the provisions of this MOU by OCDA or OCSD will be in writing. There can be no oral modifications to this agreement.
- IV. In the event either party identifies that a term of this agreement has not been followed, the respective agency will provide written notice to the other elected official within 30 calendar days of identification. Both OCDA and OCSD commit to work together in good faith to resolve any concerns in a timely manner and, in any event, within 90 calendar days of receiving written notice. The outcome of this exchange, including a summary of unresolved issues, if any, will be memorialized in writing within 120 calendar days of receiving the initial written notice and provided to the other elected official. OCDA and OCSD do not waive any applicable legal privileges or confidentiality that may exist concerning documents relied upon or prepared in accordance with this provision. Both undersigned agree to confer regarding the confidentiality of records before releasing any information to third parties.
- V. Both undersigned elected officials commit to holding accountable their respective staff for deviations of their agencies' policies.
- VI. Both undersigned elected officials commit to follow the terms of this MOU through the end of their current elected terms and any subsequent terms.

VII. If either elected official does not remain in office for their full term or does not continue in a new term of office, OCDA and OCSD staff will inform the successor(s) about the vital importance of protecting the constitutional rights of those incarcerated, lessons learned regarding the use of Informants, and encourage entering into another MOU between the two agencies.



Todd Spitzer
District Attorney - Public Administrator



Don Barnes,
Sheriff-Coroner

Date: January 9th, 2025

Date: 1/10/2025