

**INVESTIGATIONS DIRECTED AT FIRST AMENDMENT-RELATED INFORMATION**

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**I. PURPOSE**

This directive:

- A. identifies and explains types of investigations which implicate rights protected by the First Amendment to the Constitution, even though not undertaken for the purpose of effecting the exercise of First Amendment rights.
- B. establishes responsibilities, including the need for special authorizations, relative to investigations which implicate First Amendment rights. Department members will refer to the Special Order titled "Investigations Directed at First Amendment-Related Information" for information regarding specific methods, approvals and authorizations, and retention of documents.

**II. FIRST AMENDMENT POLICY****A. Proper and Permissible Police Action**

1. All police action will be conducted in accordance with the Constitution of the United States, including the First Amendment of the Constitution, in accordance with the law, and Department policy.
2. All police action will be conducted for a reasonable law enforcement purpose.
  - a. The First Amendment protects the right of free expression, including oral or written speech, broadcasts, or other communications. The First Amendment does not prohibit police personnel from initiating investigations into alleged criminal conduct involving expressive activity, provided that there is a reasonable law enforcement purpose for doing so.
  - b. A reasonable law enforcement purpose means that the investigation is intended to address unlawful conduct, either past, present, or future, including whether a person has knowledge of such past, present, or future unlawful conduct, or to address public safety issues, whether they amount to criminal conduct or not. A reasonable law enforcement purpose would include acquiring information or intelligence which may be useful in allocating resources for public safety and acquiring information or intelligence which may be useful for future criminal investigations.
  - c. An investigation implicating First Amendment rights which is undertaken for a reasonable law enforcement purpose must be reasonable in scope and must not be intended to punish, discriminate, or retaliate against any person on the basis of conduct protected by the First Amendment.
3. All permissible investigations will be conducted in a manner which is least likely to impact a person's First Amendment rights, so that less invasive methods will be used where possible.

**B. Prohibited Action: Under no circumstances will any sworn member or other employee of the Chicago Police Department:**

1. investigate, prosecute, disrupt, interfere with, or harass any person for the purpose of preventing that person from engaging in conduct protected by the First Amendment;

2. investigate, prosecute, disrupt, interfere with, or harass any person for the purpose of punishing or retaliating against that person for engaging in conduct protected by the First Amendment;
3. discriminate against any person on the basis of conduct protected by the First Amendment, except as may be permitted by law;
4. authorize, assist, or encourage any person to engage in conduct which violates Items II-B-1 through II-B-3.

### III. IMPERMISSIBLE INVESTIGATIONS

- A. It is not permissible to investigate someone solely because that person advocates a position in his or her speech or writings which is offensive or disagreeable. It is not permissible to investigate someone for the content of his or her speech if there is no reasonable law enforcement purpose, such as criminal conduct or public safety.
- B. Examples of Investigations Which Violate the First Amendment
  1. A police officer undertakes an investigation of a crime allegedly committed by a member of a race-based hate group. During the course of the investigation, the officer decides to interview the employer of an admitted member of the group, even though there is no indication that the employer has any knowledge of the crime. The officer conducts the interview because he feels that the employer should be aware that one of his employees is a member of this type of organization. Although the investigation into the crime is permissible, there is no appropriate law enforcement justification for the interview with the employer, and therefore, it violates the First Amendment.
  2. A police officer hears a CD which contains numerous songs with lyrics derogatory towards law enforcement, but none of the songs threaten violence. The officer decides to investigate the musical group because the officer is offended by the lyrics. The officer talks to the group's producer, manager, and record label about why the group puts out music with such lyrics. There is no appropriate law enforcement justification for this investigation, and therefore, it violates the First Amendment and is impermissible.

### IV. PERMISSIBLE INVESTIGATIONS WHICH REQUIRE NO SPECIAL AUTHORIZATION

- A. Investigations **not based on First Amendment** activity are permissible and require no special authorization under this directive. If an investigation is begun based on an articulable suspicion of criminal activity, such as illegal drug dealing, the unlawful use of weapons, or other illegal activity, this directive does not require special authorization for that investigation even if at some point it involves examination of speech or other expression. However, such an investigation will still comply with the First Amendment policy as set forth in Item II of this directive.
- B. Examples of Permissible Investigations Which Require No Special Authorization
  1. An officer receives information that a suspect is selling marijuana at a particular location. The officer goes undercover to purchase marijuana from the suspect in order to gather evidence to prosecute the suspect criminally. During the drug transaction, the suspect mentions that he thinks marijuana should be legal in the United States. The investigation was undertaken due to the reasonable suspicion that the suspect was selling drugs, not as a result of his speech or opinion. Therefore, this directive does not require special authorization for the investigation of the suspect's drug activity, even though the suspect engages in his First Amendment right to express his opinion that marijuana should be legal.

**NOTE:** If this investigation had been initiated based on the suspect advocating legalization of drugs, the investigation would have required special authorization as detailed in Item II of the Special Order entitled "Investigations Directed at First Amendment-Related Information."

2. An officer has arrested several members of a street gang for violent criminal conduct. The officer wants to identify regular associates of these gang members, including searching the

Internet for evidence of the gang member's associates. This investigation is based upon reasonable suspicion that the associates of these gang members are engaging in illegal conduct and is not based upon speech or other expression. Therefore, no special authorization is required.

3. A police officer begins an investigation in response to a report that music is being played too loudly at a tavern. In addition, the tavern is known for playing music whose lyrics offend some members of the population. This investigation requires no special authorization under this directive, even though music is generally protected by the First Amendment, because the investigation is undertaken to determine if there has been a violation of an applicable anti-noise ordinance rather than based upon the musical lyrics.
4. An informant tells an officer that an anarchist group plans to deface the building of a large corporate headquarters located in downtown Chicago. Based upon this information, the officer begins an investigation of this group, including a review of the Internet sites and any writings of the group, to determine the credibility and any details of the alleged plot. This investigation is based upon a reasonable suspicion of criminal conduct, rather than the oral or written expressions of the group. Therefore, no special authorization is required.

**NOTE:** Had this investigation been initiated based on the writings of the anarchist group that "corporations are ruining the country and need to be stopped," rather than upon information of planned criminal conduct, the investigation would have required special authorization as detailed in Item II of the Special Order entitled "Investigations Directed at First Amendment-Related Information."

C. Investigating Hate Crimes Within the Confines of the First Amendment

To the extent that review of expression is necessary for the prosecution of criminal conduct under a "hate crime" law, the investigation is initiated due to the crime, and the review of expression is permissible as having a reasonable purpose related to the elements of the crime. Therefore, no special authorization is required.

V. **PERMISSIBLE INVESTIGATIONS REQUIRING SPECIAL AUTHORIZATION**

A. First Amendment Information Gathering Investigation Defined

A First Amendment information gathering investigation is the gathering and analysis of written or oral speech or other expression which is undertaken:

1. due to or on the basis of the content of the speech or other expression and;
2. for the purpose of preventing crime or for the purpose of aiding likely future investigations, even in the absence of an articulable suspicion to believe that a violation of law has occurred.

B. First Amendment Information Gathering Policy

1. Certain law enforcement investigations prompted by or based upon a person's speech or other expression, whether written or oral, are permitted provided that there is a reasonable law enforcement purpose, as detailed in Item II-A-2 of this directive, for doing so. If an investigation is prompted by or based upon a person's speech or other expression and will be conducted for a reasonable law enforcement purpose, the investigation is permissible but requires special authorization as outlined in Item II of the Special Order entitled "Investigations Directed at First Amendment-Related Information."
2. It is permissible to gather information consisting of speech or other expression that is expected to serve a reasonable law enforcement purpose in the future even if not based on an articulable suspicion that a violation of law has occurred, and even when the investigation is undertaken on the basis of speech or other conduct protected by the First Amendment. Information gathering is a legitimate law enforcement function provided it is conducted for reasonable law enforcement purposes, such as preventing crimes or providing information that may constitute useful future investigative leads. Information gathering investigations

undertaken in whole or part because of speech or other activity protected by the First Amendment require a reasonable law enforcement purpose and special authorization as provided in Item II of the Special Order entitled "Investigations Directed at First Amendment-Related Information."

3. Advocacy of violence or unlawful acts or expression of sympathy with violence or unlawful acts is protected by the First Amendment until such advocacy presents an imminent and credible threat. Nevertheless, law enforcement has a duty to gather information about groups and individuals who advocate law breaking or express sympathy with law breaking in order to determine whether these groups or individuals are engaged in or plan unlawful activities, as well as to obtain information that may be useful in future investigations and preventing crime.
  4. Debriefing or questioning arrestees regarding their social, political, or religious views is not permitted unless specifically related to criminal conduct necessary for investigation of illegal conduct or pursuant to an authorized First Amendment information gathering investigation. For instance, a demonstrator at a rally who is arrested for blocking traffic will not be interrogated as to his or her political views.
- C. Examples of First Amendment Information Gathering Investigations Permitted if Specially Authorized as Provided in this Directive
1. A person is standing on a street corner in the Loop, violating no laws, but is offering passers-by literature supporting the bombing of targets in the United States. A plainclothes officer accepts the literature. Based upon the literature, the officer initiates an investigation into the source of the literature, including all statements made by the source, to determine the source's intentions, capabilities, funding, and other information related to assessing future violence. This investigation was prompted by the expression contained in the literature but was undertaken for a proper law enforcement purpose and therefore constitutes proper gathering of First Amendment-related information if special authorization is received.
  2. A police officer discovers a site on the internet run by a hate group which espouses violence against government officials and lists the addresses and personal routines of certain government officials. The officer opens an investigation into the group and includes a request for undercover officers to attend meetings of the group. Although the investigation is not prompted by a reasonable suspicion of a specific crime, it is undertaken to determine the credibility of any threats and the future criminal plans of the hate group and is thereby permissible under this directive if special authorization is received. In this instance, placing an undercover officer in the meeting has a reasonable law enforcement purpose.
  3. An officer learns that a radical cleric has opened a place of worship in Chicago. This cleric preaches destruction of Western values and has a history of drawing persons involved in terrorist activities to places of worship that he organizes. Surveillance undertaken to determine if the cleric is drawing known terrorists to his place of worship has a reasonable law enforcement purpose even though not based upon reasonable suspicion of a specific crime and is therefore permissible under this directive if special authorization is received.
  4. A public rally is planned. One of the groups urging its members to attend is also speaking about the need to target and destroy certain symbols of corporate America. Although the investigation is based upon the speech of the group, sending an undercover officer to the meeting of this group to determine if any and what criminal activity is planned for the rally is a reasonable law enforcement purpose and therefore is permissible under this directive if special authorization is received.

## VI. METHODS OF FIRST AMENDMENT INFORMATION GATHERING: USE OF CONFIDENTIAL SOURCES, UNDERCOVER OFFICERS, AND INFILTRATORS

### A. General Policy on Undercover Investigative Methods

The use of confidential sources, undercover officers, and infiltrators to investigate individuals, groups, or organizations involved in social or political activity have the potential to substantially impact protected First Amendment rights, with infiltrators posing the highest risk of such impact. The use of these investigative methods is not prohibited by the First Amendment, but these methods should be

used only to the extent necessary and in a manner designed to have the least impact upon First Amendment rights and should be closely monitored to ensure that the method is used only when and to the extent reasonable under the circumstances and for proper purposes.

B. Undercover investigative methods include the use of a confidential source, an undercover officer, or an infiltrator in the investigation.

1. Confidential Source

A confidential source is a person, not a police officer, who is providing information not publicly available to the police about other individuals, groups of individuals, or organizations.

**EXAMPLE:** A member of an organization contacts the police and informs an officer that at a private meeting held at an organizer's home, the organization discussed the possible bombing of a government building. The member tells the officer that he receives updates of activities and notices of meetings. The officer asks the member to provide him with a copy of the updates and notices. The member of the organization is a confidential source.

2. Undercover Officer

An undercover officer is an officer who attends meetings or activities of the group or organization under investigation without disclosing his or her identity for the purpose of gathering information, but who does not become a part of the group for the purpose of influencing or directing the organization.

**EXAMPLE:** The confidential source provides the officer with a notice of an upcoming meeting open to the public. The officer plans to attend to learn the identity of and observe the organizers. The officer, dressed in casual street clothes, attends the meeting but does not disclose his real identity. The officer listens and may express support for the group but does not influence or direct any specific activities. The officer is an undercover officer.

3. Infiltrator

An infiltrator is an officer who, without disclosing his or her real identity, affirmatively identifies himself or herself as a member or participant in the group or organization and acts in a manner which influences or directs the organization.

**EXAMPLE:** After attending several meetings undercover, the officer becomes friendly with the organizers and is invited to private meetings at an organizer's home. He attends and persuades the group to take specific action by influencing or directing the group. The officer is now an infiltrator.

**NOTE:** Confidential sources, undercover officers, or infiltrators require special approval and authorization described in Item II of the Special Order entitled "Investigations Directed at First Amendment-Related Information."

## VII. PUBLIC GATHERINGS AND FIRST AMENDMENT CONDUCT

A. Public Speech and Public Gatherings and First Amendment Conduct

An event or gathering in public may be held for the purpose of or concerning the expression ideas or beliefs about public or social policy, or political, educational, cultural, economic, philosophical, or religious matters. However, the First Amendment does not necessarily apply to gatherings or public assemblies unrelated to the right to hold and express the ideas and beliefs. For example, a public fireworks display need not have any First Amendment significance.

B. Policy Regarding Public Speech and Public Gatherings

All Department members present at public gatherings will be courteous and respectful. Members will not harass, intimidate, or make comments about the views expressed by persons attending public gatherings. Members will not interrogate or otherwise question participants concerning their views unless essential to an investigation of an apparent violation of law or as part of an investigation directed toward First Amendment-related information that has been authorized as provided below.

C. Any sworn Department member may initiate a preliminary investigation of a public gathering for public safety purposes without requiring authorization as outlined in this directive, as follows:

1. Members may gather publicly available information about public gatherings, including information available on internet sites. Members may investigate publicly available information on prior public gatherings when useful to determine what police resources will be necessary to adequately protect demonstrators, bystanders, the general public, and to enforce all applicable laws.
2. Members may communicate overtly with any person involved in a public gathering regarding the number of persons expected to participate and similar information regarding the time, place, route, and manner of a public gathering and may review documents submitted for such purpose, such as parade permit applications.
3. Members may attend public rallies and walk in public parades without disclosing their identity provided that their purpose is solely to monitor the rally or parade for public safety and criminal conduct issues and that they do not direct or influence the participants of the rally or parade or do not affirmatively represent themselves to be members of a specific participating organization.

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