

**I. Purpose**

This policy establishes the responsibilities of a law enforcement agency relating to investigations affecting First Amendment activities and the rights of persons, groups, and organizations engaged in First Amendment activities. This policy does not apply to investigations that do not involve First Amendment activities.

**II. Policy**

Freedom of Association & Assembly Protection Act of 2009.

Legal Authority: MD Code Ann., Public Safety Art., § 3-701<sup>1</sup>  
28 Code of Federal Regulations, Part 23<sup>2</sup>

**III. Definitions**

In this policy, “covert investigation” means a surreptitious infiltration of or attempt to infiltrate a group or organization for the purpose of interfering with the group’s activities that involve freedom of speech or association, the exercise of religion, freedom of the press or the right to petition the government activities that may be protected by the First Amendment to the United States Constitution.

This policy does not apply to surreptitious or undercover investigations that do not involve protected First Amendment activities.

**A. Authorization**

1. The employees of this agency shall not conduct a covert investigation of a person, group or an organization involved in First Amendment activities, to the extent such activities are known to be protected, without the express written authorization of the Sheriff or his designee. The Sheriff or designee will authorize the investigation only if the investigation is justified because:
  - a. There is reasonable, articulable suspicion that the person, group or organization is planning or is engaged in criminal activity;<sup>3</sup> and;
  - b. A less intrusive means of investigation is not likely to yield satisfactory results.
2. If the Sheriff is unable to give prior authorization of the covert investigation, he shall, as soon as is practicable afterwards, make a written finding that the conditions above existed and justified the covert investigation.<sup>4</sup>

B. Procedures

1. Any covert investigation shall be done only for legitimate law enforcement objectives with a due regard for safeguarding the applicable constitutional rights and liberties of all persons who may be affected by the investigation. In every case, the least intrusive investigative methods should be used. The investigation shall conclude when all logical leads related to criminal activity have been exhausted, or when no legitimate law enforcement objective justifies continuing the investigation.<sup>5</sup>
2. To the extent that investigators engaged in a covert investigation collect information solely about the political beliefs, ideologies, and associations of the individuals, group or organization, the investigators shall not retain or maintain any such information unless:
  - a. The information is relevant to a criminal investigations; or
  - b. There is reasonable, articulable suspicion that the person, group or organization advocates, supports or encourages the violation of any federal, State or local criminal law that prohibits acts of terrorism, racketeering activity (as defined by 18 U.S.C. §1961) violence, extortion, destruction of property, intimidation, harassment, obstruction of justice, or fraud.<sup>6</sup>

C. Recordkeeping

1. Information entered into and maintained in a criminal intelligence file or database shall be evaluated for the reliability of the source of the information and the validity and accuracy of the information. If information is maintained in a computer database, that information shall be classified in a manner that clearly reflects the purpose for which the information has been collected and maintained, particularly information about a specific individual, group or organization that is suspected of engaging in specific crime(s).<sup>7</sup>
2. Such records may be disseminated only in accordance with existing agency procedures, including but not limited to those based on the Maryland Public Information Act. MD Code Ann., State Gov't Art., §10-601 et. seq. and 28 C.F.R. §23.3 (b)(3). The database shall be reviewed annually, beginning on January 1, 2011, and any information that has become moot, irrelevant, or is otherwise without law enforcement value shall be purged from the database.