

# **Audit Checklist for the Criminal Intelligence Function**



**September 2004**





# LAW ENFORCEMENT INTELLIGENCE UNIT

## FOREWORD

“The protection of individuals’ privacy and constitutional rights is an obligation of government officials and is crucial to the long-term success of criminal intelligence sharing. Protecting the privacy and constitutional rights of individuals, while at the same time providing for homeland security and public safety, will require a commitment from everyone in the system – from line officers to top management.”

– *National Criminal Intelligence Sharing Plan, p. 10*

The criminal intelligence function is an effective tool for deterring, preventing, and protecting the public from serious crime.<sup>i</sup> However, the information-gathering activities associated with the criminal intelligence process could also pose significant threats to the constitutional rights of individuals.<sup>ii</sup>

Serious consequences arise when an agency fails to protect the individual rights of those who may be the subject of the criminal intelligence process. In addition to the direct harm caused to the individuals whose civil liberties may be infringed upon, these serious consequences include a loss of public trust and confidence in the police, the inhibition of legitimate and lawful political activity, costly and time-consuming civil litigation, disbanding of the criminal intelligence function, and other harms.

Law enforcement agencies can effectively use a combination of accountability mechanisms to prevent these serious consequences from arising. As mentioned in the *National Criminal Intelligence Plan*, these accountability mechanisms help *eliminate* the unnecessary discretion in police decision-making processes, *guide* (or structure) the discretion that is needed, and *audit* (or check) the processes to ensure conformance with overall goals.<sup>iii</sup>

Clear policies and effective training, for example, can be used to prohibit improper practices (i.e., eliminating the unnecessary discretion), and to provide authorization and guidance to agency personnel for those actions that are necessary to carry out their duties (i.e., structuring the necessary discretion). Periodic audits and reviews serve as useful checks to ensure that the criminal intelligence function is being carried out in accordance with established ethical standards, regulations, and laws.

The attached checklist titled “Audit Checklist for the Criminal Intelligence Function” can assist law enforcement executives with conducting a review of their agency’s criminal intelligence function. Using this checklist, law enforcement agencies demonstrate their commitment to protecting the constitutional rights and the privacy of individuals, while ensuring the operational effectiveness of their criminal intelligence function.

## Development of this Checklist

This checklist was developed by the Law Enforcement Intelligence Unit (LEIU), in support of the National Criminal Intelligence Sharing Plan. Founded in 1956, LEIU is the oldest law enforcement association dedicated to the sharing of criminal intelligence and the advancement of professional criminal intelligence standards and practices. LEIU has led the way in establishing professional standards for the collection, maintenance, and dissemination of intelligence among law enforcement agencies.

In the 1970s, LEIU first developed a set of guidelines, known as the *LEIU File Guidelines*, for establishing and maintaining criminal intelligence files in law enforcement agencies. These guidelines were developed to provide protection of citizens' privacy and other constitutional rights, promote professionalism, and provide guidance to law enforcement agencies when collecting information in the pursuit of preventing and solving crimes. Over the years, the *LEIU File Guidelines* have been modified to reflect the most current standards for lawful and ethical criminal intelligence practices. Civil liberties groups, citizens, and government and police officials have agreed that the standards embodied by the *LEIU File Guidelines* are proper for collecting, maintaining, and disseminating criminal intelligence information.<sup>iv</sup>

In recent years, LEIU has worked closely with the International Association of Law Enforcement Intelligence Analysts (IALEIA), the International Association of Chiefs of Police (IACP), the Global Justice Information Sharing Initiative, and others to develop the National Criminal Intelligence Sharing Plan (NCISP). In fact, members of the LEIU Executive Board helped plan and conduct the IACP Criminal Intelligence Sharing Summit, served on Global's Intelligence Working Group, and contributed to the final publications from both initiatives (IACP's *Criminal Intelligence Sharing* report and Global's *NCISP*).

The NCISP recommends that law enforcement agencies use the *LEIU File Guidelines* as a model for criminal intelligence file maintenance. Additionally, the NCISP recommends periodic audits of criminal intelligence operations and files to ensure that these guidelines and other regulations are put into practice. LEIU has previously assisted local and state law enforcement agencies in conducting audits of their criminal intelligence function, and has now developed the attached checklist to assist agencies in conducting a self-assessment of their criminal intelligence function.

With 240 member agencies in four countries, LEIU remains a leader in promoting the professional trust, training, and communication required to facilitate the lawful and ethical sharing and use of criminal intelligence among law enforcement agencies.

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# INTRODUCTION

The purpose of this checklist is to provide law enforcement executives and senior- to mid-level law enforcement managers with a tool for conducting an audit or evaluation of their agency's criminal intelligence function. Specifically, this audit tool can help an agency ensure that it is carrying out the criminal intelligence function in accordance with applicable laws, regulations, and guidelines. The principles found in the checklist apply most directly to municipal, county, and state law enforcement agencies. Several introductory comments are appropriate.

**This checklist should be applied only to criminal intelligence files – not to other types of law enforcement records.** Some law enforcement officials fail to make the distinction between criminal intelligence files and other types of law enforcement records (e.g., investigative files). In the law enforcement context, however, these differences are important and must be recognized.

Investigation generally refers to the systematic examination of facts to determine if a crime has occurred and, if so, develop a case for prosecution. Generally, the term “investigative files” refers to information collected in the course of an investigation where there are reasonable grounds to suspect that a person has committed specific criminal acts.

On the other hand, the criminal intelligence process is an ongoing activity, and is not necessarily triggered by the investigation of any specific offense.<sup>v</sup> While investigation tends to be reactive in nature, criminal intelligence is proactive and used to identify and understand criminals operating in a particular area. Once individuals or groups are identified and their habits known, law enforcement authorities may begin to assess current trends in crime and to forecast, and possibly prevent, future criminal activities. Intelligence provides the knowledge on which to base decisions, and select appropriate targets (subjects, criminal groups or businesses) for investigations. Although criminal intelligence may be used to assist in investigations, surveillance operations, and prosecution of cases, it also provides law enforcement agencies with the ability to effectively manage resources, budget, and meet their responsibility to forecast community threats to prevent crime.

Criminal intelligence consists of pieces of raw information that when collected, evaluated, collated, and analyzed form meaningful and useful judgments that are both accurate and timely. Taking this raw information and turning it into intelligence can be described as a sequential process with multiple distinct phases. Following appropriate planning, the first phase is collection, which is obtaining raw information from various sources. Evaluation then occurs, which is determining the reliability of the source and the validity of the information. The third phase is collation and involves indexing, cross-referencing and filing of information. The fourth phase is analysis, which identifies trends, future developments and case building. The fifth phase is dissemination, which involves the actual dispensing of the intelligence information. A unit that does not complete each of these phases is not a criminal intelligence unit.

Ideally, this checklist is designed to be utilized by senior law enforcement managers who are not directly involved in the day-to-day operations of the agency's criminal intelligence function. This helps ensure that the audit is objective, and accurately identifies the function's strengths and weaknesses. However, the checklist can also be used as a self-assessment tool by personnel who are directly involved with the agency's criminal intelligence function. This type of an effort will help determine if the unit is acting in

accordance with the standard practices and procedures established by LEIU.

Historically, criminal intelligence units have experienced problems in the area of unit operating procedures, collection, collation, and dissemination; therefore, this checklist focuses on these four areas.

\*See References, page 10 for a detailed description of standards and guidelines for the Criminal Intelligence Function.





# Audit Checklist for the Criminal Intelligence Function

## Operating Procedures

Item	Question		
1	Does the criminal intelligence unit have a mission statement? If no, go to question 10.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2	Does the mission statement contain a concise, well-defined mandate describing the criminal intelligence unit?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3	Does the mission statement describe the use of the intelligence process in support of the criminal intelligence unit?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4	Does the statement focus toward criminal predicate?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5	Does the statement indicate that the criminal intelligence unit will provide the Chief Executive with criminal information and resulting analysis to counter and control criminal activities?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6	Does the statement identify the criminal intelligence unit's expected results?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7	Is the criminal intelligence unit staying within its mission?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8	Is the criminal intelligence unit assuming work beyond the authorized crime areas?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9	Is the statement reviewed on a periodic basis to insure that it is meeting the needs of the agency/organization?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10	Does the criminal intelligence unit have policy and procedures guidelines? If no, go to question 18.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11	Do the guidelines describe the criminal intelligence unit's operations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
12	Do the guidelines provide the criminal intelligence unit's mission statement?	<input type="checkbox"/> Yes	<input type="checkbox"/> No



## Audit Checklist for the Criminal Intelligence Function

<b>Item</b>	<b>Question</b>		
13	Do the guidelines detail the criminal intelligence unit's methods of operation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
14	Do the guidelines outline the criminal intelligence unit's file guidelines?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
15	Do the guidelines establish the criminal intelligence unit's security procedures?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
16	Do the guidelines describe personnel responsibilities and assigned duties?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
17	Have the guidelines been provided to personnel?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
18	Are periodic security updates conducted for intelligence personnel on a regular basis?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
19	Is the criminal intelligence unit located in a physically secure location?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
20	Are unauthorized persons prevented from accessing the criminal intelligence unit's location?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
21	Is access terminated when personnel are on leave or cease to work in an intelligence capacity?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
22	Are there guidelines for transferring material to or from floppy disks?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
23	Does the criminal intelligence unit have access to the Chief Executive?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
24	Does the unit provide the Chief Executive with recommendations?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
25	Does the unit provide the agency with valuable strategic and tactical products?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
26	Do personnel receive appropriate training?	<input type="checkbox"/> Yes	<input type="checkbox"/> No



## Audit Checklist for the Criminal Intelligence Function

Item	Question		
27	Are there clear lines of responsibility and accountability for the functions of the intelligence unit?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
28	Is a regular security risk review of the intelligence unit and its systems conducted?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
29	Are procedures in place governing the criminal intelligence unit's use of special funds?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
30	Is the criminal intelligence unit's mission achievable with the number of assigned staff?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

### Collection

Item	Question		
31	Does a collection effort begin with the development of a written plan?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
32	Does the collection plan include a set of information requirements that specifies what data is needed by the agency or investigator (s)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
33	Does the collection plan comply with applicable local, state, and federal statutes and case law?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
34	Is the collection plan focused on identifying the nature and extent of criminal activity?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
35	Does the collection plan utilize all known available sources?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
36	Are the plan's objectives and requirements communicated to criminal intelligence unit staff?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
37	Has the Criminal Intelligence Function encouraged the development of a close working relationship between analysts and investigators?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
38	Have those assigned to the Criminal Intelligence Function received training in the right to privacy?	<input type="checkbox"/> Yes	<input type="checkbox"/> No



## Audit Checklist for the Criminal Intelligence Function

Item	Question		
39	Does the state in which your agency resides have laws that address the collection of criminal intelligence data?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
40	Do the methods used by information collectors fall within legal guidelines?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
41	Does your agency have informant guidelines in place? If no, go to question 44.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
42	Do these guidelines address informant control and management?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
43	Do these guidelines address the maintenance of informant files?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

### Collation

Item	Question		
44	Does the unit have criminal intelligence file guidelines?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
45	Is the criminal intelligence unit operating within the guidelines?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
46	Are files kept <u>ONLY</u> on individuals who are suspected of being involved in actual or attempted criminal acts; or suspected of being involved in criminal activities with known or suspected crime figures?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
47	Are files kept <u>ONLY</u> on organizations, businesses, and groups that are suspected of being involved in actual or attempted criminal acts; or are suspected of being operated, controlled, financed, or infiltrated by known or suspected crime figures?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
48	Do files include <u>ONLY</u> information that relates to a criminal predicate?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
49	Do the guidelines clearly delineate criteria for determining if information should be entered and retained in the files?	<input type="checkbox"/> Yes	<input type="checkbox"/> No



## Audit Checklist for the Criminal Intelligence Function

Item	Question		
50	Is the information stored in criminal intelligence files evaluated according to source reliability and content validity before it is included in a criminal intelligence file?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
51	Is there a clearly articulated system for assessing source reliability and content validity?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Item	Question		
52	Is a distinction made between permanent, temporary, and working files along with appropriate retention periods?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
53	Is the information stored in criminal intelligence files classified in order to protect sources, investigators, and the individual's right to privacy?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
54	Are files clearly marked with appropriate classification?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
55	Is information maintained in the criminal intelligence file reviewed for reclassification or purge on a periodic basis to ensure that it is current, accurate, safeguards an individual's right to privacy, and is classified at an appropriate security level?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
56	Is information maintained in the criminal intelligence file reviewed on a periodic basis for utility, timeliness, appropriateness, accuracy, and completeness?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
57	Do the criminal intelligence unit's purge policies comply with local, and/or state law regarding records retention?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
58	Is there a specific staff member(s) who is responsible for purging files?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
59	Are procedures in place to govern the storage, handling, and security of hard copy source material?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
60	Does the criminal intelligence unit retain hard copies of source documents? If no, go to question 63.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
61	Are these documents stored in a safe and secure location?	<input type="checkbox"/> Yes	<input type="checkbox"/> No



## Audit Checklist for the Criminal Intelligence Function

Item	Question		
62	Is access to these documents restricted?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
63	Are procedures in place to govern the storage, handling, and security of source material in an electronic database?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Item	Question		
64	Is access to the file database restricted?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
65	Is a specific employee(s) responsible for controlling automated access?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
66	Are automated access audits conducted periodically?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
67	Is a record of audits maintained?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
68	Is automated access immediately deleted when personnel leave or transfer?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
69	Are files adequately safeguarded through back up and recovery routines, and off-site storage of critical files, programs, and systems?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
70	Is the system isolated from other networks or protected by a firewall to restrict unauthorized access?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
71	Are files (either hard or electronic copy) indexed in an organized fashion?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
72	Is a file locator system in place?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
73	Is a particular employee(s) responsible for overseeing the criminal intelligence file system so that it is operating within the guidelines of all applicable laws?	<input type="checkbox"/> Yes	<input type="checkbox"/> No



## Audit Checklist for the Criminal Intelligence Function

Item	Question		
74	Are purged documents destroyed in a secure and appropriate manner according to all applicable laws?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
75	Is information regarding political, religious, or social views of an individual or group prohibited from inclusion in a criminal intelligence file unless it directly relates to criminal conduct or activity?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

### Dissemination

Item	Question		
76	Are procedures in place for responding to requests for information?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
77	Are records kept of requests for information and responses? If no, go to question 79.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
78	Are these records audited periodically?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
79	Are there procedures in place governing the methods of enveloping, dispatching, and recording the dissemination of law enforcement sensitive material?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
80	Is criminal intelligence information released only to those who have demonstrated a right-to-know and a need-to-know?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
81	Is there an audit trail to determine who has accessed criminal intelligence files?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
82	Has the criminal intelligence unit established a policy prohibiting third-party dissemination?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
83	Has the agency identified legal resources that are familiar with criminal intelligence issues and procedures and can adequately represent the agency in legal matters?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

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- Audit Factors for the Law Enforcement Intelligence Function. Prepared by David L. Carter (2004).
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### **Past Problems with Domestic Intelligence Operations**

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## ENDNOTES

<sup>i</sup> Geller, William A. and Norval Morris. 1992. "Relations Between Federal and Local Police." In Michael Tonry and Norval Morris (Eds.), *Modern Policing: Crime and Justice – A Review of Research, Volume 15*. Chicago, IL: The University of Chicago Press, pp. 231-348. Campbell, Kurt M. and Michèle A. Flournoy (Principal Authors). 2001. *To Prevail: An American Strategy for the Campaign Against Terrorism*. Washington, DC: The CSIS Press, at p. 77.

<sup>ii</sup> American Friends Service Committee. 1979. *The Police Threat to Political Liberty*. Philadelphia, PA: American Friends Service Committee. Donner, Frank J. 1991. *Protectors of Privilege*. Berkeley, CA: University of California Press.

<sup>iii</sup> The framework for regulating discretionary decisions (i.e., eliminating unnecessary discretion, and confining, structuring, and checking necessary discretion) through administrative rule making and agency policies is derived from Kenneth Culp Davis. See Kenneth Culp Davis (1971), *Discretionary Justice: A Preliminary Inquiry*. Urbana, IL: University of Illinois; and (Davis, 1975 Kenneth Culp Davis (1975), *Police Discretion*. St. Paul, MN: West Publishing Company.

<sup>iv</sup> See the "Settlement Agreement and Release" entered into by and between *Joseph N. Riggs III, Alice Hector, Peter Cubra, James R. Toulouse, Tova Indritz, Randi McGinn, Nancy Hollander, Sigmund Bloom, Hank Farrah, Joe Fine, Dorie Bunting, Allen Cooper, Richard Moore, The American Civil Liberties Union of New Mexico, and The New Mexico Chapter of the National Lawyers Guild, and the City of Albuquerque*, dated September 29, 1993, resolving Cause No. Civ. No 88-1141 JP/RWM in the United States District Court for the District of New Mexico, and CV-91-07599, Second Judicial District Court, County of Bernalillo, State of New Mexico.

<sup>v</sup> White, *supra*,; *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1317-13 17.