

**DU PAGE COUNTY STATE'S ATTORNEY'S
PROTOCOL AND PROCEDURE IN DEALING
WITH INFORMANT WITNESSES**



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DU PAGE COUNTY STATE'S ATTORNEY'S PROTOCOL AND PROCEDURE IN DEALING WITH INFORMANT WITNESSES

I. PURPOSE

This protocol is designed to ensure that law enforcement and prosecutors comply with their shared responsibility to protect the due process rights of the accused, by requiring that a flow of information is maintained between the various investigative personnel and the State's Attorney's Office sufficient to place within the State's Attorney's Office all material and information relevant to the accused and the offense charged. This protocol ensures compliance with the State's Attorney's obligation under Supreme Court Rule 412 pertaining to discovery, Illinois Code of Criminal Procedure pertaining to discovery in criminal cases under 725 ILCS 5/114-13(b), and case law including Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, and helps avoid allegations of outrageous governmental conduct.

Unfortunately, it is necessary to recruit less than model citizens as informants in order to effectively investigate and prosecute criminal activity. People v. Schillaci, 122 Ill.Dec.478 (4th Dist. 1988). The use of informants as witnesses in any criminal prosecution has the potential for creating issues at trial and on appeal as well as potential civil issues for prosecutors and police, which highlight the need for this protocol. The necessity for such regulation has been called for by the United States Supreme Court in the case of Giglio v. U.S., 405 U.S. 150 (1972). In Giglio, the United States Supreme Court, in addressing the issue of a prosecutor's failure to disclose information that would have affected the credibility of a witness, held that "whether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes to the Government." The Court went on to say, "To the extent this places a burden on the large prosecution offices, procedures and regulations can be established to carry that burden and insure communication of all relevant information on each case to every lawyer who deals with it," Giglio at 154. Thus, it is incumbent on the State's Attorney to adopt procedures for the proper handling of informants and the disclosure that must flow therefrom.

The collateral damage from an unscrupulous informant can have devastating effects on careers of police officers and prosecutors as well as the entire law enforcement community. The public must also be protected from additional crimes that may be perpetrated by informants who seek pretrial release or consideration on pending criminal cases in exchange for assistance on more serious criminal cases. Constitutional rights must also be ensured when dealing with defendants who are entitled to full disclosure of mitigating discovery under Brady v. Maryland, 373 U.S. 83 (1963). The Appellate Courts in Illinois and the Illinois Supreme Court have and will continue to reverse cases in which the State fails to adequately disclose informants or benefits obtained by witnesses. People v. Lewis, 57 Ill.2d 232, 311 N.E.2d 685 (1974). In Lewis, the Illinois Supreme Court affirmed the reversal of three cases in which informants were not appropriately disclosed. Additionally, in the case of People v. Barr, 51 Ill.2d 50, 280 N.E.2d 708 (1972), the Illinois Supreme Court held the disclosure of leniency is critical

to the integrity of the fact finding process. A defendant has the right to question a witness concerning any matter which would tend to discredit the witness, including evidence of actual or even perceived prosecutorial benefit, as it may show or tend to show bias, or motive to fabricate. See also, People v. Davis, 185 Ill. 2d 317 (1998).

Each Assistant State's Attorney, as well as every law enforcement agency in DuPage County, shall receive a copy of this protocol. This protocol is a summary and a guide. To ascertain the current state of the law, users should consult the appropriate statute or rule.

II. DEFINITIONS

- G. **Informant** – Any person that acts as a witness or provides law enforcement with incriminating information or evidence about another person in exchange for consideration on a pending criminal case against said informant, a pending criminal investigation in which said informant may be charged, or in exchange for anything of value including but not limited to money.
- H. **Consideration** – Any promise or guarantee of leniency as to the disposition of a pending criminal case, or bond on a pending criminal case; any promise or guarantee related to degree of charges or the promise of no charges related to any pending or future investigation; anything of value including money given by someone in law enforcement in exchange for incriminating information or evidence against another charged with a crime or under investigation.
- I. **Target Defendant** – Any person against whom an informant provides incriminating information, evidence, or testimony.
- J. **Informant Handler** – The assigned police officer responsible for working the informant to attain information during an investigation, and for maintaining contact with any informant while on pre-trial release through the completion of any target defendant's criminal prosecution.

III. AUTHORIZATION FOR USE OF AN INFORMANT

A. No informant handler, police officer, or investigating agent has authority to make any promise or commitment that would prevent prosecution of an individual for criminal activity, or that would reduce a possible sentence of an informant for criminal charges. While the informant handler, police officer or investigating agent is permitted to tell a prospective informant that he or she will convey the informant's cooperation to the State's Attorney's Office, it is not a promise that the State's Attorney's Office will show leniency. The informant handler, police officer, or investigating agent should take the utmost care to avoid giving any person the erroneous impression that he or she has any such authority to offer leniency.

When appropriate, any law enforcement officer should ensure that a confidential informant is notified of witness protection funding.

B. No Assistant State's Attorney may authorize the use of an informant or offer consideration on a pending case or investigation without obtaining written authorization by either the State's Attorney, First Assistant, Chief of the Criminal Bureau, Deputy Chief of the Criminal Bureau or Unit Supervisor in the Criminal Bureau. Said approval shall be a signature on the Informant Authorization Form. A copy of the Informant Authorization Form shall be kept in the case files for the Target Defendant, the informant's criminal file, and if applicable, the Supervisor of Narcotics. The original shall be maintained by the Chief of the Criminal Bureau.

C. General Considerations - Factors that are considered in the determination to allow a person out on bond to act as an informant include:

- The nature of the offense under investigation versus the need to hold the informant criminally responsible.
- Risk to the public.
- Risk to re-offend.
- Risk to violate agency Informant agreement.
- Prior escape, resisting, fleeing and eluding charges, or obstructing charges.
- Prior warrants for non-appearance in court.
- History of violence.
- Prior attempts to cooperate in which the defendant became a fugitive.
- History of untruthfulness.
- History of mental illness.
- An uncontrolled drug addiction.
- Prior offenses while on bond.
- Theft or property damage against a private person, among other risk factors.

D. **High Risk Authorization** - As prosecutors, we recognize the inherent danger and risk associated with certain crimes and repeat offenders that pose potential danger to the community if they are allowed pre-dispositional release, or if their crimes continue without appropriate punishment. In light of these risks, there are differing levels of authorization that will be required given the level of risk involved with certain offenses. The following offenses will not be negotiated down as consideration unless there are very extenuating circumstances and the State's Attorney, First Assistant, Chief of the Criminal Bureau, or Deputy Chief of the Criminal Bureau has first approved in writing on the Informant Authorization Form:

- Driving Under the Influence of Alcohol and/or Drugs.
(misdemeanor or felony)
- Any Driving While License Suspended or Revoked that is based upon the following:
 - Driving Under the Influence of Alcohol or Drugs.
 - Statutory Summary Suspension.
 - Leaving the scene of a personal Injury Accident.
 - Reckless Homicide Involving a Car.
 - DUI, or other "risky" driving offenses."
- Domestic Battery.
- Violation of Order of Protection.
- Crimes of Violence against individual person or persons.
- Crimes against individual persons.
- Violent felony offenses.
- Offenses involving force, or threat of force.
- Residential burglary.
- Official Misconduct.
- Obstructing Justice.

E. **Very High Risk Authorization** - Prior offenses that bar an informant from cooperating unless approved by the State's Attorney include the following;

- Prior convictions against children.
- Felony sex offenses.
- Prior forcible felonies in which informant was sentenced to prison.

IV. BOND REDUCTION PROCEDURES

The following procedure shall be implemented county-wide in order to maintain conformity consistent with this protocol when dealing with bond reduction for potential cooperating informants:

- 1) When a police officer has an informant with a pending case, and the officer requests bond consideration on the informant's pending case, the officer shall:

- a. Contact the Assistant State's Attorney that has been assigned to prosecute the felony case. In cases of traffic or misdemeanor prosecutions the police shall contact the Deputy Chief in charge of the Traffic and Misdemeanor division.
 - b. Provide a complete criminal and driving history of the informant. This shall include all information contained by L.E.A.D.S. and a driving abstract from the Secretary of State and any uncharged cases, or pending investigations against the informant in which the officer is aware.
 - c. A list of targets, unless already identified, that the officer has identified. Every precaution should be made to ensure that the police, and not the informant, originate targets. This will help in moving up the criminal hierarchy, and avoid the informant setting up competitors to the informant's criminal conspiracy or underlings in the informant's criminal conspiracy.
 - d. The requesting officer is responsible for reporting to the assigned Assistant State's Attorney any violations of the terms of the Informant's release or bond conditions.
 - e. Notify the State's Attorney's Office of any consideration given to any potential witness.
- 2) The assigned Assistant State's Attorney shall then seek the authorization for the use of said informant from the appropriate Supervisor, Deputy Chief, Chief, First Assistant, or the State's Attorney. The assigned Assistant shall complete the Informant Authorization Form. Said form shall be maintained in the prosecution file for any Target Defendant, the Informant's criminal file if one exists, and if applicable, with the Supervisor of the Narcotics Prosecution Unit.
- 3) If it is prudent to allow an Informant/ Defendant to cooperate, the bond should be reduced to the highest amount that the defendant can post with the following conditions:
 - a. As an additional condition of bond, the defendant shall contact the officer assigned as the Informant Handler or his assignee every day, for the purpose of cooperation with law enforcement, to the personal satisfaction of said officer.
 - b. If the defendant violates any condition of his bond, the original bond amount may be reinstated and a warrant issued without notice to the defendant.
 - c. The case should be impounded when necessary to preserve the integrity of the investigation or to protect the identity of the informant, until further order of court. (see attached Order)
- 4) A copy of the court order shall be placed in the case file for the Informant, and the corresponding blue back should be appropriately documented as to the Informant's agreed cooperation.

- 4) When an Informant is susceptible a greater potential risk potential than is usual the assigned Assistant shall:
 - a. Consult a Deputy Chief, Chief, First Assistant or the State's Attorney as indicated above.
 - b. If authorization is granted, the following conditions of bond should be considered;
 - i. State's Attorneys Target Offender Program (S.T.O.P.)
 - ii. Random urine testing (Colors drug testing program)
 - c. Where there is a violation, file a motion to revoke bond.
(See Appendix C)

V. PROCEDURE FOR INFORMANT WITNESSES

In a high profile case or a case where a co-defendant is going to testify against a co-defendant or other defendant, the assistant should have the informant enter into a proffer agreement (Appendix D). Every effort should be made to conduct said proffer before an informant is allowed to cooperate.

Document when a potential witness has been given any consideration and disclose it to the Target Defendant in discovery.

VI. EAVESDROPS

Once an Informant has been approved to work, every effort should be made to obtain eavesdropping approval. For the protection of the Informant, Police, Prosecutors and Target Defendant, transactions should be recorded whenever practicable.

VII. DISCLOSURE FOR INFORMANT HANDLERS

- a) General Cases - Every informant handler, police officer, or investigating agent shall comply with Supreme Court Rule 412 pertaining to discovery, Illinois Code of Criminal Procedure pertaining to discovery in criminal cases under 725 ILCS 5/114-13(b), and case law including Brady v. Maryland, 373 U.S. 83 (1963). This requires that the State's Attorney's Office be sufficiently notified whenever there is an informant that is a transactional witness or has the potential for being a witness involved with a charged case. Roviaro v. United States, 353 U.S. 53 (U.S. 1957).
- b) Capital Cases - When dealing with an informant as defined in 725 ILCS 5/115-21(a) the law requires the following be disclosed:
 - (1) the criminal history of the informant;
 - (2) any deal, promise, inducement, or benefit that the offering party has made or will make in the future to the informant

- (3) the statements made by the accused;
- (4) the time and place of the statements, the time and place of their disclosure to law enforcement officials, and the names of all persons who were present when the statements were made;
- (5) whether at any time the informant recanted that testimony or statement and, if so, the time and place of the recantation, the nature of the recantation, and the names of the persons who were present at the recantation;
- (6) other cases in which the informant testified, provided that the existence of such testimony can be ascertained through reasonable inquiry and whether the informant received any promise, inducement, or benefit in exchange for or subsequent to that testimony or statement; and
- (7) any other information relevant to the informant's credibility

VIII. DISCLOSURE FOR STATE'S ATTORNEYS

c) General Cases

- i. All Transactional Witnesses – The State shall disclose all informants that are transactional witnesses and all information discoverable under Brady v. Maryland, 373 U.S. 83 (1963). This requires that the State's Attorney's Office be sufficiently notified whenever there is an informant who is a transactional witness or has the potential for being a witness involved with a charged case. Roviaro v. United States, 353 U.S. 53 (U.S. 1957). Only if the health or safety of an informant is in jeopardy and the State introduces sufficient evidence of that fact at a pre-trial hearing, may the State seek to withhold the informant's name and address. People v. Lewis, 57 Ill.2d 232, 311 N.E.2d 685 (Ill. 1974), People v. Gonzalez, 257 N.E.2d 236 (2nd Dist. 1970)
- ii. Delayed Discovery – When it becomes necessary to delay disclosure on a pending case, Supreme Court Rule 415(d) requires the State to show cause before deferring discovery. In order to present sufficient evidence to show cause, Supreme Court Rule 415(f) allows for an in camera record to be made.
- iii. Confidential Informants - The identity of a confidential informant should be protected at all times. Every effort should be made to avoid making a confidential informant a transactional witness.

Whenever a Target Defendant seeks the disclosure of a Confidential Informant, and such disclosure is protected under Illinois case law like People v. Rose, 794 N.E.2d 1004 (2nd Dist. 2003), People v. Raess, 146 Ill.App.3d at 390, 100 Ill.Dec. 121, 496 N.E.2d 1186 (1st Dist. 1986) and People v. Friend, 177 Ill.App.3d 1002, 533 N.E.2d 409 (2nd Dist. 1988), the State should file a written objection. (See Appendix F). When a judge has ordered the disclosure of an informant in violation of either Supreme Court Rule 412(j)(ii) or current case law, the Assistant assigned to prosecute the Target Defendant should immediately contact his/her supervisor and the Supervisor of Appeals for review to see if our office should refuse the order to disclose. This would normally lead to a dismissal of the case, or contempt. Therefore, the Chief of the Criminal Bureau and the State's Attorney should be notified if there is going to be a refusal to obey the court order to disclose.

- iv. Maintaining Informants - Informant Handlers shall keep track and maintain contact with informants until the criminal case is disposed. It shall be incumbent on the police and prosecutors to disclose those informants and make them available for trial when the informant's testimony tends to undermine the State's case. People v. Holmes, 135 Ill.2d 198, 552 N.E.2d 763 (1990). In Holmes, the Illinois Supreme Court sets out when it is appropriate to dismiss indictments where the State's informant is unavailable for trial. Thus, it is imperative that contact be kept with informants even after an investigation has concluded and a criminal case continues.

d) Capital Cases (Jail House Informants)- When dealing with an informant as defined in 725 ILCS 5/115-21(a) the State shall disclose the following:

- (1) the criminal history of the informant;
- (2) any deal, promise, inducement, or benefit that the offering party has made or will make in the future to the informant
- (3) the statements made by the accused;
- (4) the time and place of the statements, the time and place of their disclosure to law enforcement officials, and the names of all persons who were present when the statements were made;
- (5) whether at any time the informant recanted that testimony or statement and, if so, the time and place of the recantation, the nature of the recantation, and the names of the persons who were present at the recantation;
- (6) other cases in which the informant testified, provided that the existence of such testimony can be

- ascertained through reasonable inquiry and whether the informant received any promise, inducement, or benefit in exchange for or subsequent to that testimony or statement; and
- (7) any other information relevant to the informant's credibility

e) Witness Inducements The following information must be disclosed in all capital cases. See 725 ILCS 5/115-22:

- (1) whether the witness has received or been promised anything, including pay, immunity from prosecution, leniency in prosecution, or personal advantage, in exchange for testimony;
- (2) any other case in which the witness testified or offered statements against an individual but was not called, and whether the statements were admitted in the case, and whether the witness received any deal, promise, inducement, or benefit in exchange for that testimony or statement; provided that the existence of such testimony can be ascertained through reasonable inquiry;
- (3) whether the witness has ever changed his or her testimony;
- (4) the criminal history of the witness; and
- (5) any other evidence relevant to the credibility of the witness.

***Note** – In order to comply with this Section's discovery obligation inquiry must be made of witnesses pre-trial regarding his/her past experience as a witness.

IX. APPENDIX

Attached or forms that are available when dealing with Informants. They include the following;

- A. Bond Order.
- B. Motion to Revoke Bond.
- C. Informant Authorization Form.
- D. Proffer Agreement.
- E. Informant Contract.
- F. Sample Response to Disclosure of a Confidential Informant

APPENDIX A

STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
 Plaintiff,)
 vs.) Case No.
)
)
 Defendant.)

INFORMANT BOND CONDITIONS ORDER

IT IS HEREBY ORDERED

- (1) As additional agreed condition of bond, the defendant shall contact Officer _____ of the _____ Police Department or his assignee, every day, for the purpose of cooperation with law enforcement, as directed by Officer _____.
- (2) If the defendant violates any condition of his bond, the original bond amount may be reinstated and a warrant issued without notice to the defendant. (3) The case is impounded until further order of court. (4) Bond is reduced to _____.

Name _____

DuPage Attorney No. _____

Attorney for _____

Address _____

City _____

Phone _____

Enter: _____

Date: _____

APPENDIX B

STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
Plaintiff,)	
)	
v.)	No. CF
)	
)	
Defendant.)	

VERIFIED APPLICATION FOR REVOCATION OF BAIL

Now Come the People of the State of Illinois, by and through JOSEPH E. BIRKETT, DuPage County State's Attorney, by his Assistant, , and make this application to this Honorable Court, pursuant to 725 ILCS 5/110-6(b), to revoke the defendant's bail. In support of their Application, the People state as follows:

1. The defendant was arrested in this case on approximately _____, 20___. He was held in custody on a \$_____ bond on this case until _____.
2. On _____ the State agreed to reduce the defendant's bond to _____. As a condition of this bond reduction the defendant was to maintain daily contact with agents of the DuPage Metropolitan Enforce Group (See Attachment "A").
3. The defendant has failed to cooperate with nor maintain daily contact with DuPage Metropolitan Enforcement Group Agents.
4. 725 ILCS 5/110-6(b), provides that where a defendant is on bail and the defendant violates a condition of his bail bond, this shall constitute grounds for this court to increase the defendant's bail.

WHEREFORE, the People of the State of Illinois request this Honorable Court to conduct a hearing on defendant's alleged violation of the conditions of this bail bond in accordance with 725 ILCS 5/110-6(b), and increase the defendant's bond to \$_____.

RESPECTFULLY SUBMITTED,

JOSEPH E. BIRKETT
State's Attorney
Attorney Number 50000

BY: _____

Assistant State's Attorney

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

Joseph A. Ruggiero, Assistant State's Attorney, being first duly sworn on oath,
deposes and says that he has read the foregoing Application for Revocation of Bail by
him subscribed, and the same is true.

Subscribed and Sworn to
before me this 12th day
of August, 1997.

Notary Public

APPENDIX C
INFORMANT AUTHORIZATION FORM
(For use for potential informants seeking credit against charges.)

Informant Information

Informant Name:

Date of Birth:

Officer Name & Department:

Date of call/contact:

Informant's Pending Charges:

Is Informant seeking consideration on pending cases or bond on pending cases?
(If yes explain)

Criminal History:

Target Defendant:

Form of Cooperation (e.g. co-defendant testimony, drug buys, etc.):

Assigned Assistant must sign 1) or 2) or 3)

1) **Regular Informant Authorization** - The pending charge(s) in which the Informant seeks consideration on the bond or disposition is NOT a case involving the following; Domestic Violence, or Domestic Battery, or Violation of Order of Protection, or DUI, or DWLR or DWLS based on either DUI, Reckless Homicide, Leaving the Scene of Personal Injury Crash, or Statutory Summary Suspension, or, Residential Burglary, or a crime against an individual or individuals involving theft, damage to property, bodily injury, or threats of bodily injury. Except Aggravated Battery to an officer when officer personally consents to cooperation.

Assistant State's Attorney

Supervisor/Deputy Chief/Chief/First Assistant/State's Attorney

2) **High Risk Authorization** - The pending charge(s) in which the Informant seeks consideration on the bond or disposition is NOT a case involving the following; Crimes against a child, Felony sex offenses, Forcible Felonies with a prior pen sentence, but does not fall under #1 above.

Assistant State's Attorney

Deputy Chief/Chief/First Assistant/State's Attorney

3) **Very High Risk Authorization** - The pending charge(s) in which the Informant seeks consideration on the bond or disposition is a case involving the following; Crimes against a child, Felony sex offenses, Forcible Felonies with a prior pen sentence.

Assistant State's Attorney

State's Attorney

APPENDIX D

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
 Plaintiff,)
)
 vs.) No. CF
)
)
 Defendant.)

AGREED PROFFER AGREEMENT

Now come the People of the State of Illinois, by and through JOSEPH E. BIRKETT, State's Attorney in and for the County of DuPage, Illinois, through his Assistants and , and the defendant in his own proper person, and by and through his attorney to enter into this agreement pursuant to Supreme Court Rule 402 (f), and agree as follows;

1. (Hereinafter referred to as Defendant) has contacted the DuPage County State's Attorney, through his attorney in his desire to provide the DuPage County State's Attorney with mitigation by providing completely truthful information in regard to the above cited case and information surrounding the investigation of.
2. Defendant has not been given any offer of leniency prior to his providing such truthful information.
3. Defendant may refuse to give any information and stop giving information at any time.
4. Anything related to members of the DuPage County State's Attorney's Office, Police Department, DuPage County Sheriff's Office, or any other investigators assigned to above captioned case by the defendant during the proffer cannot and will not be used against him in the State's case-in-chief or in aggravation at any sentencing. However, the State is completely free to pursue any and all investigative leads derived in any way from the proffer, which could result in the acquisition of evidence admissible against the defendant.
5. Defendant agrees to take, cooperate with, and truthfully answer all questions put to him in any polygraph examination(s) requested by the State's Attorney Office or police.
6. This proffer is **NOT** part of any plea negotiation pursuant to Illinois Supreme Court Rule 402. Thus if the defendant should testify contrary to the substance

of the proffer, give inconsistent statements, or otherwise present a position inconsistent with the proffer, nothing shall prevent the State from using the substance of the proffer at sentencing, at trial for impeachment or in rebuttal testimony or other relevant hearings.

7. Defendant understands that he is **NOT** being offered immunity pursuant 725 ILCS 5/106-1, 106-2, or 106-2.5 in any way.

This proffer contains the entirety of the agreement. No other promise or agreement exists between you and the DuPage County State's Attorney's office regarding the proffer.

Assistant State's Attorney

Assistant State's Attorney

Defendant

Attorney for Defendant

APPENDIX E

SAMPLE INFORMANT CONTRACT

Date: Time:
Location:

I, _____ the undersigned
understand that while I am a Source of Information for the Police
Department, I am forbidden to do any of the following:

- A. Sell or deliver any Controlled Substance, dangerous drug, marijuana, or any substance purported to be same, to anyone other than as directed to and under the supervision of members of the above listed police department.
- B. Never sell or deliver or arrange or cause to be sold or delivered any Controlled Substance, dangerous drug, cannabis, or any substance purported to be same, to any person who would then in turn sell or deliver said Controlled Substance, dangerous drug, marijuana, or any substance purported to be same, to any member of the above listed police department any other person.
- C. Never use my sex, sexuality, or sexual activity to induce or persuade any individual to sell or deliver a Controlled Substance, dangerous drug, marijuana, or any other substance purported to be same to any member of the above listed police department or any other person.
- D. I further understand that I may never search any suspect, person, house, papers, or personal effects.
- E. I may never become involved in any activities that would constitute entrapment.
- F. I further understand that I may not engage in any illegal or improper conduct so long as I am working with the above listed police department as a Source of Information.

- G. Further, I understand that any violations rising from my actions in violation of the above circumstances will result in any investigation of matters and if the charges are substantiated, appropriate action (including the possibility of criminal prosecution) will be taken.
- H. I am agreeing to function as a Source of Information for the above listed police department agency of my own free will and accord, and not as a result of any intimidation or threats.
- I. I have been advised that all payments made to me by the above listed police department are considered taxable income and should be included on state and federal tax returns.
- J. I understand that I am not a "peace officer" as specified by law according to the Illinois Compiled Statutes 1996; Chapter 720, ACT5/2-13 "Peace officer means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrest for offenses, whether that duty extends to all offenses or is limited to specific offenses."

In agreeing to work as a Source of Information for the above listed police department, I understand that no officer of the above listed police department may make any explicit or implicit promises or predictions regarding the likely disposition of any criminal proceedings that are pending against me, but that officers of the above listed police department will make their best efforts to make the nature and extent of my cooperation known to the prosecutorial authorities.

Signed:

_____ Fictitious Name

Witness: _____

Signed:

True Name

Witness: _____

Time:

Date:

Place: _____

APPENDIX F

STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
 Plaintiff,)
))
) No. CF
))
))
 Defendant.)

**STATE'S MEMORANDUM IN OPPOSITION TO
DISCLOSURE OF CONFIDENTIAL INFORMANT**

Now come the People of the State of Illinois by and through Joseph E. Birkett, State's Attorney of DuPage County, through his assistant, and respond to Defendant's requests to produce and disclose the confidential informant as follows:

I. Introduction

Defendant has filed the following two motions: "Motion for Production of Confidential Informant and Disclosure of Relevant Criminal Background and Financial Information" and, "Motion to Produce Informant and to Compel Disclosure of True Identity, Criminal History and Last Known Address". The State objects to the disclosure of the confidential source utilized in this case. The identity of this informant is privileged under Supreme Court Rule 412 (j) (ii).

The police received information from this confidential informant, which resulted

in the police obtaining a valid search warrant to search Defendant's home. (See Attached Complaint for Search Warrant). The informant was not a witness to the execution of the search warrant, which resulted in the seizure of close to ____ kilograms of cocaine. Defendant is charged with the possession of this large amount of cocaine with the intent to deliver it.

II. Issue

The only issue in this case is whether Defendant has demonstrated the necessity for disclosure of the confidential informant in the case at bar. In the case at bar, the police obtained a search warrant to search the defendant's home located at _____. (See Attachment A) The police had obtained information about the house from a reliable confidential informant. Supreme Court Rule 412 (j)(ii) provides:

"Disclosure of an informant's identity shall not be required where his identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial."

The purpose of the informer's privilege is to protect the public interest in effective law enforcement. Roviaro v. United States, 353 U.S. 53, 59, 1 L.Ed.2d 639, 644 (1957). It recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation. Roviaro, 1 L.Ed.2d at 644.

The proper application of the informer's privilege involves balancing the public interest in protecting the flow of information against the defendant's need for disclosure in order to prepare his defense. Roviaro, 1 L.Ed.2d at 646. People v. Taylor, 646 N.E.2d 1280, 269 Ill.App3d 772 (1st Dist. 1995). The balancing depends on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors. Id.

Numerous factors are considered by Illinois courts in determining whether the defendant's constitutional right to intelligently prepare a defense and to receive a fair trial necessitate disclosure of information regarding the informant's identity. People v. Raess, 146 Ill.App.3d at 390, 100 Ill.Dec. 121, 496 N.E.2d 1186 (1st Dist. 1986). Those factors include (1) whether the request for disclosure relates to the fundamental question of guilt or innocence rather than to the preliminary issue of probable cause; (2) whether the informant played an active role in the criminal act by participating in and/or witnessing the offense; (3) whether the informant assisted in setting up its commission as opposed to being merely a tipster; and (4) whether it has been shown that the informant's life or safety would likely be jeopardized by disclosure of his identity. People v. Rose, 794 N.E.2d 1004 (2nd Dist. 2003), People v. Raess, 146 Ill.App.3d at 390. The burden of showing the need for disclosure is on the defendant. People v. Taylor, 646 N.E.2d 1280 (1995).

Factor number (1). The defendant in this case, who has the burden to demonstrate the need for disclosure, has shown and demonstrated nothing. The disclosure of this informant's identity has nothing to do with the defendant's guilt or innocence. Defendant has not alleged that she was entrapped. Although a defendant is entitled to disclosure of information regarding the informant for the purpose of preparing a defense founded on the entrapment theory Raess, at 392, there is no indication in this case that an entrapment defense is available. The informant was merely a tipster. In no way did the informant participate in the search of the house or in any crime for which defendant was arrested. If the issue is one of probable cause, and guilt or innocence is not at stake, the nondisclosure of an informer's identity is not error. People v. Orsby, 675 N.E.2d 237 at 240 (2nd Dist. 1996).

Factors (2) and (3). As stated above, the informant played no active role in the criminal act by participating in and/or witnessing the offense. The confidential informant in this case acted as a tipster. Defendant is charged for a crime that occurred on _____. The informant in the case at bar merely provided information regarding an illegal incident that occurred on dates previous to that date. Therefore, the confidential informant is not a material witness. People v. Deveau, 561 N.E. 2d 1259, 204

Ill.App.3d 392 (1st Dist. 1990). The court in Deveaux dealt with facts similar to the facts in the case at bar. In Deveaux the court stated,

“In the present case, the confidential informant was not a material witness to anything that transpired on November 3, 1986. He merely provided information regarding an illegal incident occurring on November 2, 1986, for which defendant had not been charged. Though that information formed the basis for the search warrant executed on November 3, that fact does not make the informant a material witness to the crimes committed on that date.” Id.

Factor (4). This court is aware of the dangers faced by informers who turn in drug dealers. In this case we have a Defendant who dealt with millions of dollars worth of cocaine. Over \$57,000.00 of drug money was seized. When the stakes are this high, there is a tremendous danger to informants who turn over large drug dealers to the State.

III. Conclusion

The defendant has made no demonstration as to the necessity for disclosure in this case. This case does not warrant the disclosure of the confidential informant who in this case who was merely acting as a tipster. This informant was not a witness to the charged offense. This informant did not arrange or set up the commission of this offense. Moreover, this informant will not be a witness to the charged offense, which occurred on the date the search warrant was executed.

Any disclosure of this informant would act as a deterrent to any future citizen who has information helpful to law enforcement. Disclosure would also put this informant's life in danger.

Wherefore, the People pray that this Honorable Court deny Defendant's request for the State to disclose the identity of the confidential informant.

Respectfully Submitted,

Assistant States Attorney