



# Freedom of Association and Assembly

Section: 2.370  
Effective Date: October 26, 2010  
Amended Date: January 12, 2021

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## **2.370 COVERT INVESTIGATIONS - - FREEDOM OF ASSOCIATION & ASSEMBLY ACT OF 2009**

### **2.370.02 Covert Investigations**

- A. Based on the Maryland Annotated Code, Public Safety, Article c Safety Article § 3-701, 28 - - Code of Federal Regulations, Part 23, the University of Baltimore Police Department adopts the policy regarding “covert investigations.”
- B. “Covert Investigations”, as applicable to this policy, is defined as ***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.***
- C. This policy does not apply to surreptitious or undercover investigations that do not involve protected “First Amendment” activities.

### **2.370.04 Application of legislation**

- A. Members of this agency shall not conduct a covert investigation of a person, group or organization involved in “First Amendment” activities, to the extent such activities are known to be protected, without the express written authorization of the Chief of Police or a named designee.
- B. The Captain or the named designee will authorize the investigation, and only if the investigation is justified because:
  - 1. There is reasonable, articulable suspicion that the person, group or organization is planning or is engaged in criminal activity; and
  - 2. A less intrusive means of investigation is not likely to yield satisfactory results.
- C. Should the Captain be unable to give prior authorization of the covert investigation, a written finding that the conditions above existed and justified the covert investigation, shall be prepared as soon as is practicable afterwards

### **2.370.06 Investigation Protocol**

- A. A covert investigation shall be done only for legitimate law enforcement objectives with due regard for safeguarding the applicable constitutional rights and liberties of all persons who may be affected by the investigation.
  - 1. In every case, the least intrusive investigative methods should be used;
  - 2. The investigation shall conclude when all logical leads related to criminal activity have been exhausted; or

3. when no legitimate law enforcement objective justifies continuing the investigation.
- B. 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*:
  1. The information is relevant to a criminal investigation; or
  2. 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.
- C. 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.
- D. 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.
- E. 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).
- F. The database, if exists, 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.

#### **2.370.08 Applicable Law**

- A. Listed are additional laws which were referenced in the preparation of this protocol:
  1. Public Safety Art., § 3-701(m) requires that “on or before January 1, 2010, each law enforcement agency other than the [Maryland State Police] shall adopt a written, publicly available policy governing: (1) the conduct by the agency of covert investigations of persons, groups, or organizations engaged in First Amendment activities; and (2) each agency collection, dissemination, retention, database inclusion, purging, and auditing of intelligence information relations to persons, groups, or organizations engaged in First Amendment activities.”
  2. The regulations found at 28 C.F.R Part 23 apply to “all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §3711, *et seq.*”
  3. Membership or participation in a group or organization engaged in First Amendment activities does not alone constitute reasonable, articulable suspicion of criminal activity. *See also* 28 C.F.R. § 23.20 (c) defining reasonable suspicion or “criminal predicate.”
  4. Required accountability as the Captain being the “head of the government agency, is covered under, 28 C.F.R. § 23.30(c) establishes the required accountability by the “head of the government agency,” being the Captain or the named designee.