

Legal Issues in ILP

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28 CFR Part 23

- The federal rule that governs or provides guidance for these issues.
- § 23.3 Applicability:
 - These policy standards are applicable to all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968.
 - Many comply without being required.

28 CFR Part 23

- Purpose, 23.1
 - The purpose of this regulation is to assure that all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968 are utilized in conformance with the privacy and constitutional rights of individuals.

§ 23.20 Operating principles.

- (a) A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.
- (b) A project shall not collect or maintain criminal intelligence information about *the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization* unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.

§ 23.20 Operating principles.

- (c) **Reasonable Suspicion** or Criminal Predicate is established when information exists which establishes sufficient facts to give a trained law enforcement officer... or employee a basis to believe that there is a reasonable possibility that an individual or organization is involved in a definable criminal activity or enterprise. In an interjurisdictional intelligence system, the project is responsible for establishing the existence of reasonable suspicion of criminal activity either through examination of supporting information submitted by a participating agency or by delegation of this responsibility to a properly trained participating agency which is subject to routine inspection and audit procedures established by the project.

§ 23.20 Operating principles.

- (d) A project shall not include in any criminal intelligence system information which has been obtained in violation of any applicable Federal, State, or local law or ordinance.
- the project is responsible for establishing that no information is entered in violation of Federal, State, or local laws,
- either **through examination of supporting information** submitted by a participating agency **or by delegation of this responsibility to a properly trained participating agency** which is subject to routine inspection and audit procedures established by the project.

§ 23.20 Operating principles.

- (e) A project or authorized recipient shall disseminate criminal intelligence information only where there is a need to know and a right to know the information in the performance of a law enforcement activity.

§ 23.20 Operating principles.

- (g) A project maintaining criminal intelligence information shall ensure that administrative, technical, and physical safeguards (including audit trails) are adopted to insure against unauthorized access and against intentional or unintentional damage.

§ 23.20 Operating principles.

- (g) A record indicating who has been given information, the reason for release of the information, and the date of each dissemination outside the project shall be kept.

§ 23.20 Operating principles.

- (h) All projects shall adopt procedures to assure that all information which is retained by a project has relevancy and importance.
- ... periodic review of information and the destruction of any information which is misleading, obsolete or otherwise unreliable and shall require that any recipient agencies be advised of such changes which involve errors or corrections.
- All information retained as a result of this review must reflect the name of the reviewer, date of review and explanation of decision to retain.
- Information retained in the system must be reviewed and validated for continuing compliance with system submission criteria before the expiration of its retention period, which in no event shall be longer than five (5) years.

In short

1. Information submission or collection
2. Secure storage
3. Inquiry and search capability
4. Controlled dissemination, and
5. Purge and review process

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The three most salient factors are these:

1. Policy- establishes the agency philosophy, standards, expectations, and decisionmaking boundaries of any organizational task and responsibility.
2. Training-specifies the method of performing, what must be done.
3. Supervision and accountability -are organizational mechanisms to ensure that policy is followed and performed in the manner specified by the training