Attachment B

28 CFR Part 23

...a guideline

1. Compliance
2. What to Enter
3. Examples
4. Database Operation

Complying With

Requirements of 28 Code of Federal Regulations (CFR) Part 23

28 CFR Part 23 is a *guideline* for law enforcement agencies. It contains implementing standards for operating federally funded multijurisdictional criminal intelligence systems. It applies to systems operating through federal funding under the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

It provides guidelines for:

- Submission/Entry of Criminal Intelligence Information
- Security
- Inquiry
- Dissemination
- Review and Purge

It does not provide specific, detailed information on how the standards should be implemented by the operating agency.

Each agency develops its own operating policies and procedures, including who can have access to the information, submission format for entry of information, types of criminal activity to be maintained in the system, validation and purge procedures, security, audit and inspection, forms, participation agreements, and so forth.

These policies and procedures vary from agency to agency and, in some instances, may be more restrictive than 28 CFR Part 23 would require.

Agencies maintain reports, files, and databases (not operated with federal funding) which contain investigative or management information, some of which would meet 28 CFR Part 23 requirements and some of which would not. Information which meets 28 CFR Part 23 requirements may be gleaned from this documentation and entered into the intelligence database.

Single agency databases where no information is disseminated or shared outside the agency do not have to comply with 28 CFR Part 23 requirements. Agencies may collect information through their normal agency investigative processes and maintain that information in their agency files. As long as that information is only used within the agency, 28 CFR Part 23 does not apply. However, if the information is elevated to a multijurisdictional intelligence database where it will be shared with multiple agencies, then it must meet 28 CFR Part 23 requirements.

Interpretations

Because the 28 CFR Part 23 requirements are not precisely defined, the General Counsel's Office, Office of Justice Programs, U.S. Department of Justice, has rendered interpretations that govern the operation of these criminal intelligence systems. These interpretations are incorporated throughout this brochure.

COMPLIANCE

Entering Names of

Individuals and Organizations in the Database

The name of *any* individual, organization, group, or business *suspected of criminal activity* can be entered in the database.

- The officer submitting the information must have enough information from sources, observations, or other investigative efforts to believe the named subject (individual, organization, group, or business) is involved in criminal activity.
- The subject does not have to be the target of an investigation.
- The subject does not have to have been arrested.
- Officials of the Office of Justice Programs and the Bureau of Justice Assistance have interpreted this provision to apply to all names for which a record or file is created in the database:
  - Individuals
  - Associates
  - Relatives
  - Employers
  - Telephone subscribers
  - Organizations, groups, or gangs, including extremist groups
  - Businesses
  - Corporations, etc.
- Names of organizations, groups, and businesses which are part of a criminal enterprise or are a front for criminal activity can be entered.
- The suspected criminal activity of the subject (individual, organization, group, or business) should be listed in the database.
- Backup documentation supporting the determination of the suspected criminal activity of the subject must be kept in the submitting agency files.
- If an organization, group, or business is documented as a criminal enterprise or front, the members are considered to be reasonably suspected of involvement in the specified criminal activity and can be entered in the database.

Non-Criminal Identifying Information

- Under the following circumstances, names of individuals, organizations, groups, or businesses that are not suspected of criminal involvement but that provide descriptive, identifying information regarding the criminal suspect may be entered as "non-criminal identifying information":
  - The information must be labeled or contain a disclaimer that it is non-criminal identifying information.
  - The criminal suspect identified by this information must meet all requirements of 28 CFR Part 23.
  - The identifying information cannot be used independently to meet the reasonable suspicion requirement needed to create a record or file in the database.

What NOT to Enter

- Do not automatically enter names of all individual members of organizations, groups, or businesses without a determination that the organization, group, or business is a criminal enterprise or front.
- Do not create and maintain a record or file on an individual unless the individual is suspected of criminal activity.
- Do not enter names of individuals, organizations, groups, etc., not suspected of criminal activity unless clearly labeled as "non-criminal identifying information."
- No information about political, religious, or social views, associations, or activities can be entered unless the information relates to criminal activity and the subject is suspected of criminal activity.
- Information obtained in violation of federal, state, or local laws cannot be entered.

WHAT TO ENTER

Examples

EXAMPLES

Example 1.

If An individual is suspected of criminal activity.

The individual is believed to be a member of a street gang, but the gang is not suspected of involvement in the criminal activity.

Then The name of the individual may be entered in the database as a criminal suspect.

The name of the gang can only be entered as "non-criminal identifying information" relevant to the criminal suspect and must clearly be labeled as such.

Example 2.

If A gang member is arrested for narcotics violations.

The gang is known to be involved in interstate narcotics trafficking.

The gang member is arrested while driving a vehicle registered to his father. The father is not suspected of involvement in the gang activity or narcotics trafficking.

Then The name of the gang member and the name of the gang may be entered in the database.

The name of the father can only be entered as "non-criminal identifying information" relevant to the criminal suspect and must clearly be labeled as such.

Example 3.

If A surveillance on a criminal suspect shows the individual entering a place of business. The business is not suspected of involvement in the criminal activity of the suspect.

Then The name of the business can only be entered in the database as "non-criminal identifying information" relevant to the criminal suspect and must clearly be labeled as such.

Example 4.

If An individual is arrested for narcotics violations and is believed to be a member of an extremist group.

The extremist group is not suspected of being involved in the subject's narcotics activities.

Then The name of the individual may be entered in the database. The name of the extremist group can only be entered as "non-criminal identifying information" relevant to the criminal suspect and must clearly be labeled as such.

Example 5.

If A participating agency determines that a motorcycle gang exists for the purpose of illegally manufacturing methamphetamine.

The agency submits the motorcycle gang name as a subject in the database based on the documentation of the criminal activity and purpose of the gang.

Then Once the motorcycle gang name is entered in the database, any individual identified as a member of the gang can be entered as reasonably suspected of involvement in the criminal activity (manufacturing methamphetamine) of the gang.

Database Operation

When Setting up the Database

- Provide for the following information to be listed for each criminal suspect (individual or organization) entered in the database:
  - Source reliability
    (Reliable; Usually Reliable; Unreliable; Unknown)
  - Content validity
    (Confirmed; Probable; Doubtful; Cannot be Judged)

    NOTE: Entering the combination of "Unknown Source" and "Content Cannot be Judged" would not meet 28 CFR Part 23 requirements and should be blocked from entry.
  - Submitting agency name
  - Submitting officer name
- Provide for all names (individuals and organizations) entered in the database as criminal suspects to be linked to a criminal activity. National Crime Information Center (NCIC) offenses are recommended as a standard, but may not be all inclusive for agency needs. The Office of General Counsel, Office of Justice Programs, has approved use of the following criminal activity descriptions in addition to the NCIC offenses:
  - Terrorism
  - Narcotics
  - Criminal gang
  - Street gang
  - Prison gang
  - Security threat group
  - RICO
  - Labor racketeering
  - Organized crime
- Provide for sufficient data to be entered to identify the subject (DOB, race, sex, etc.)
- Provide the capability to label or add appropriate disclaimers for each name (individual, organization, group, or business) entered in the database as strictly identifying information, carrying no criminal connotation. Non-criminal identifying information may only be entered as an addition to a criminal suspect's record existing in the database. It is permissible for these names to be searchable. Upon retrieval, it must be clear to the user that the information is non-criminal identifying information relevant to the criminal suspect, activity, or enterprise.
- Provide for entry of the submittal date or the purge date (or both) so that a determination can be made of how long the information has been in the system and when it is due for purge.
- Provide for capturing an audit trail of dissemination of information from the database. A record must be kept of who received the information, the date disseminated, and the reason for release of the information.

DATABASE OPERATION

Database Operation

Purging Data

- Provide for purging data in the database prior to the expiration of the retention period (no longer than five years).
- A policy may be adopted to purge submittals at the end of the retention period without any further review and validation, or a process may be adopted to validate and update the retention period of submittals which continue to comply with 28 CFR Part 23.
- The purge date of a record may be updated (extended) based on validation by the submitting agency/officer that the subject continues to be suspected of criminal activity.
- Agencies/officers in different jurisdictions may have information on and interest in the same subject(s). Each of the agencies may submit its own entry of the subject to the database. This would result in creating duplicate subject records that show different purge dates. Maintaining duplicate records would prevent the purge of subject information which may be of interest to agencies in more than one jurisdiction.

Administrative and Security Issues

- Provide for security of the system, including user identification, passwords, audit trails, or other security hardware and software, to prevent unauthorized access to the information.

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- Provide for a written agreement to be signed by each participating agency to certify willingness to comply with 28 CFR Part 23 standards and system requirements.
- Provide a process for audit and inspection of backup documentation supporting participating agency submittals to the database. This process can be conducted by mail utilizing a random sample of submittals and requesting the participating agency head certify compliance of the entry.
- Obtain approval from the Office of General Counsel, Office of Justice Programs, for remote terminal access by participants to the system.
- The agency operating the system must make assurances that there will be no harassment or interference with any lawful political activities as part of the intelligence operation and no violation of the Electronic Communications Privacy Act (Title III) or any applicable state statute related to wiretapping and surveillance.

DATABASE OPERATION

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28 CFR Part 23

Want to Read the Guideline?

The complete text for the 28 CFR Part 23 guideline and text of a policy clarification is on the World Wide Web at:

http://www.iir.com/28cfr/guideline.htm

Questions about 28 CFR Part 23? Interested in Training?

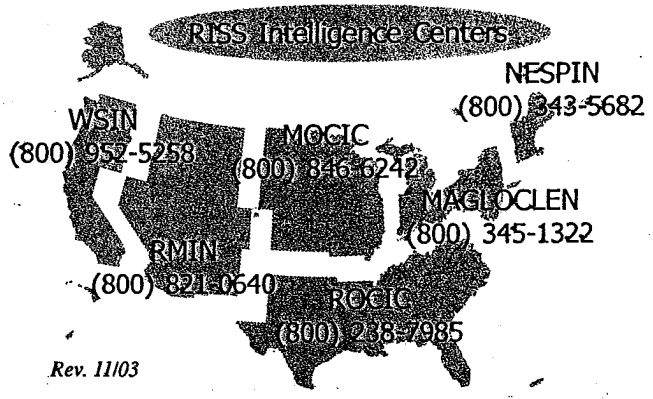
Contact the Institute for Intergovernmental Research (IIR) at:

phone: (850) 385-0600, ext. 235

e-mail: 28cfr23info@iir.com

online: www.iir.com/28cfr

You may also contact staff at one of the Regional Information Sharing Systems (RISS) centers (listed below) for answers to your questions about compliance. The RISS Program is funded by the Bureau of Justice Assistance, U.S. Department of Justice, and is designed to enhance the ability of local, state, and federal law enforcement member agencies to identify, target, and remove criminal conspirators. To accomplish this mission, each regional center maintains a centralized database on thousands of criminals. These databases comply with the 28 CFR Part 23 guideline.



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