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| Policy Name: | ASSET FORFEITURE | | |
| Policy #: | OP 4.4 | Last Updated: | 2022-04-07 |
| Issued By: | INVESTIGATIVE SERVICES BUREAU | Approved By: | SURREY POLICE BOARD |
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RELATED POLICIES

OP 5.1 *Seized Property*

OP 5.2 *Retention of Property for Court Purposes (Form 5.2)*

1. PURPOSE

- 1.1. To provide Surrey Police Service (SPS) Members with guidance regarding the referral of seized property that is believed to be an instrument or proceeds of unlawful activity under the British Columbia *Civil Forfeiture Act*.
- 1.2. To outline reporting requirements when submitting a disclosure and referral package to the Civil Forfeiture Office (CFO).

2. SCOPE

- 2.1. This policy applies to all Members.

3. POLICY

- 3.1. While conducting a criminal investigation, Members may identify property that is, or believed to be, offence related property as defined in the *Criminal Code, Controlled Drugs and Substances Act (CDSA)* or other Act of Parliament or the property is believed to be an instrument or proceeds of unlawful activity as defined under the *Civil Forfeiture Act*. The most common examples of are cash and vehicles.
- 3.2. Members may seize this type property for investigation to determine if the property is offence related property or an instrument or proceeds of unlawful activity. However, prior to seizing the property, the Members must consider securing the property and seeking judicial authorization to search for and seize the property for investigation.

- 3.3. Members must complete a Form 5.2 *Report to Justice* upon seizure of any property for investigation.
- 3.4. Members must conduct a complete and thorough criminal investigation to determine if the seized property is deemed to be offence-related property under the *Criminal Code, Controlled Drugs and Substances Act (CDSA)* or another Act of Parliament.
- 3.5. Depending on the circumstances, Members may refer the seized property to the Director of the CFO (the Director). The *Civil Forfeiture Act* allows the Director to apply to the court for an order to restrain and forfeit any property or assets acquired through or used to engage in unlawful activity.
- 3.6. If the asset forfeiture referral is successful, all property and assets named in the referral are forfeited to the Province of British Columbia.
- 3.7. Members must not conduct investigations and seize property for the sole purpose of civil forfeiture.

4. PROCEDURE

- 4.1. Upon seizure of any property for investigation that is, or believed to be, offence related property or an instrument or proceeds of unlawful activity (with or without judicial authorization), Members must complete a Form 5.2 *Report to Justice* as soon as practicable. A Form 5.2 must be filed no later than 7 days after the execution of a Telewarrant (refer to OP 5.2 *Retention of Property for Court Purposes (Form 5.2)*).
- 4.2. During the investigation, Members must be aware of the following:
 - i. the original Form 5.2 will **expire 90 days** after the date of the initial property seizure;
 - ii. if Members believe the investigation will continue past 90 days, **Members must apply to the Provincial Court requesting an extension to detain the property for up to one (1) year**. This application must be made prior to the expiry of the original ninety (90) day period;
 - iii. if Members require more than one (1) year to complete their investigation (e.g., major projects, multiple accused, etc.), **Members will need to contact SPS General Counsel, Legal Services, for assistance in applying to BC Supreme Court requesting the detention of the seized property past one (1) year** (see OP 5.2 *Retention of Property for Court Purposes (Form 5.2)*);
 - iv. Members must apply for an Order For Return Of Things Seized to return property if Members determine that there is insufficient evidence for a potential referral of the property, or the referral package is denied by the Director of the Civil Forfeiture Office.

- 4.3. Members must consult the Sergeant or Member of the Civil Forfeiture Unit when practicable and provide details of the investigation and circumstances of the property seizure.
- 4.4. Upon completion of their investigation, Members have these options:
- i. submit the file to Crown Counsel for charge assessment. If Crown Counsel approves criminal charges, Members may refer the seized property to the Director of the CFO if the disclosure of the referral package does not adversely affect the criminal case against the accused (after a discussion with Crown Counsel). If Crown Counsel does not approve criminal charges, Members can prepare and submit a referral package to the Director of the CFO for consideration;
 - ii. if Members determine that there is not enough evidence to proceed with criminal charges, Members can prepare and submit a referral package to the Director of the CFO for consideration; or
 - iii. if the file has gone through the court process resulting in no criminal charges (e.g., acquittal or stay of proceedings), Members may prepare and submit a referral package to the Director of the CFO for consideration.

Contents of the CFO Referral Package

- 4.5. Referral packages to the CFO must contain:
- i. a cover letter that includes a brief investigative overview of the file, the name of the Primary Investigator (as the primary contact person); and
 - ii. a copy of the original investigative file that includes:
 - a. narrative of the investigation;
 - b. officer notes;
 - c. exhibit flowcharts/reports;
 - d. photographs;
 - e. PRIME and CPIC background information; and
 - f. other relevant file evidence (e.g., Health Canada Certificates of Analysis).
- 4.6. If the file is later assigned to the Civil Forfeiture Unit, an assigned Member of the Civil Forfeiture Unit will prepare the referral package to the CFO. The referral package prepared by the Member of the Civil Forfeiture Unit must contain:
- i. a cover letter that includes a brief investigative overview of the file, the name of the Member (as the primary contact person);
 - ii. a copy of the original investigative file that includes:
 - a. narrative of the investigation;
 - b. officer notes;
 - c. exhibit flowcharts/reports;
 - d. photographs;
 - e. PRIME and CPIC background information;
 - f. other relevant file evidence (e.g., Health Canada Certificates of Analysis); and

- iii. a copy of the investigative file conducted by the Member that includes:
 - a. a narrative of the investigation conducted by the Civil Forfeiture Unit that may include background queries, associated file numbers, previous history, and ion scan results;
 - b. officer notes;
 - c. photographs; and
 - d. other relevant file evidence that was not part of the original investigation.

Sergeant of the Civil Forfeiture Unit: Responsibilities

- 4.7. All referral packages must be submitted to the Sergeant of the Civil Forfeiture Unit for review and approval.
- 4.8. The Sergeant of the Civil Forfeiture Unit may re-assign the file to the primary investigator for further follow up or assign the investigation to a Member of the Civil Forfeiture Unit (if necessary).
- 4.9. The Sergeant of the Civil Forfeiture Unit will forward all approved referral packages to the Director of the CFO for review and consideration.

APPENDIX A: DEFINITIONS

“CFO” means the Civil Forfeiture Office.

“Director” means a person who is designated as the director of the Civil Forfeiture Office under section 21(1) of the *Civil Forfeiture Act*.

“Form 5.2” means a Form 5.2 Report to a Justice to document seizures under the *Criminal Code*, section 489.1. This section requires that where a peace officer seizes anything during the execution of their duties where either ownership is in dispute or the continued detention of the thing seized is required for the purposes of any investigation or court proceedings, the peace officer will report the items seized to a justice using a Form 5.2.

“GO” means General Occurrence Report submitted in the PRIME records management system.

“Member” means a sworn Police Officer appointed by the Surrey Police Board.

“Offence-related property” (for the purposes of the *Controlled Drugs and Substances Act*) means, with the exception of a controlled substance, any property, within or outside Canada,

- (a) by means of or in respect of which a designated substance offence is committed,
- (b) that is used in any manner in connection with the commission of a designated substance offence, or
- (c) that is intended for use for the purpose of committing a designated substance offence (*Controlled Drugs and Substances Act*, section 2).

“Offence-related property” (for the purposes of the *Criminal Code*) means any property, within or outside Canada,

- (a) by means or in respect of which an indictable offence under this Act or the *Corruption of Foreign Public Officials Act* is committed,
- (b) that is used in any manner in connection with the commission of such an offence, or
- (c) that is intended to be used for committing such an offence (*Criminal Code*, section 2)

“PRIME” means the Police Records Information Management Environment, the provincial police records management system, which is shared by 14 municipal police agencies and 135 RCMP detachments across BC.

“Proceeds of unlawful activity” means any of the following:

- (a) the whole or a portion of an interest in property if the whole or the portion of the interest, as the case may be, is acquired directly or indirectly as a result of unlawful activity;
- (b) the whole or a portion of an interest in property that is equivalent in value to the amount of an increase in value of the whole or the portion of the interest in property if the increase in value results directly or indirectly from unlawful activity;

- (c) the whole or a portion of an interest in property that is equivalent in value to the amount of a decrease in a debt obligation secured against the interest or the portion of the interest in property, if the decrease in debt obligation results directly or indirectly from unlawful activity;
- (d) property that is realized from the disposition of the whole or a portion of an interest in property described in paragraph (a), (b) or (c) under an order of the court under section 8 (3) (d) [*interim preservation order*] or 11.02 (3) (b) [*preliminary order to preserve property*].
(*Civil Forfeiture Act*, section 1)

"Property" means a parcel of real property or tangible or intangible personal property and, for greater certainty, includes cash (*Civil Forfeiture Act*, section 1).

"RTCC" means an investigational file with multiple reports, pages and notes sent through Police Crown Liaison to Crown Counsel for charge assessment.

"SPS" means Surrey Police Service.

"Unlawful activity" means an act or omission described in one of the following paragraphs:

- (a) if an act or omission occurs in British Columbia, the act or omission, at the time of occurrence, is an offence under an Act of Canada or British Columbia;
- (b) if an act or omission occurs in another province of Canada, the act or omission, at the time of occurrence,
 - i. is an offence under an Act of Canada or the other province, as applicable, and
 - ii. would be an offence in British Columbia, if the act or omission had occurred in British Columbia;
- (c) if an act or omission occurs in a jurisdiction outside of Canada, the act or omission, at the time of occurrence,
 - i. is an offence under an Act of the jurisdiction, and
 - ii. would be an offence in British Columbia, if the act or omission had occurred in British Columbia,but does not include an act or omission that is an offence;
- (d) under a regulation of a corporation, or
- (e) under an enactment of any jurisdiction if the enactment or the jurisdiction is prescribed under this Act. (*Civil Forfeiture Act*, section 1)

APPENDIX B: REFERENCES

Civil Forfeiture Act, S.B.C. 2005, c. 29

Controlled Drugs and Substances Act, S.C. 1996, c. 19

Criminal Code, R.S.C. 1985, c. C-46