



Municipal Technical Advisory Service
INSTITUTE *for* PUBLIC SERVICE

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Printable Manuals

Dear Reader

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Drug Fund

Reference Number: MTAS-98

(NOTE: Content in this section was formerly distributed as the "Drug Fund Manual" publication. To print a copy of the entire section, click on the "PDF Version" link.)

The Drug Fund is a *special revenue fund*. A special revenue account exists outside the city's General Fund, and funds in the special revenue account do not revert to the General Fund at the end of the fiscal year. The Drug Fund special revenue account is similar to the special revenue accounts established for street aid funds and solid waste accounts.

The Drug Fund is where revenues and expenditures must be accounted for separately from the General Fund. There is no requirement that a city establish another checking account for the Drug Fund; however, a separate *confidential funds checking account* for expenditures for undercover operations is recommended. Funds for the confidential funds checking account come from the Drug Fund special revenue account. (See T.C.A. § 39-17-420.)

T.C.A. § 39-17-420 establishes the Drug Fund special revenue account and places it under the control of the city recorder. The same statute defines allowable expenditures from the Drug Fund special revenue account.

Sources of Revenue

Reference Number: MTAS-338

There are several sources of revenue for the Drug Fund special revenue account.

Click on the subheadings below for detailed information on each one.

Fines from Drug Offenses

Reference Number: MTAS-341

All fines from drug offenses must be turned over to the local government of the arresting agency. T.C.A. § 39-17-420. T.C.A. § 39-17-428(c)(1) requires that 50 percent of each fine go to the city's General Fund and 50 percent to the city's Drug Fund special revenue account.

Most state courts, including General Sessions and Criminal (Circuit) Courts, allow defendants to pay their fines and court costs on the easy monthly payment plan. The law requires the clerk to apply payments to satisfy state fees first, then court costs, and then the fine. The clerk will then begin forwarding the payments to the city. The proper action for the city recorder is to put 50 percent of each payment in the General Fund and the remainder of each payment in the Drug Fund special revenue account. T.C.A. § 39-17-420, T.C.A. § 39-17-428.

Forfeited Cash and Proceeds from Sale of Property

Reference Number: MTAS-342

Any cash that is forfeited to the city as well as the proceeds from the sale of any forfeited property (usually vehicles) go into the Drug Fund special revenue account. These funds are **not** split between the General Fund and the Drug Fund special revenue account. Revenue derived from the sale of vehicles seized for DUI or Driving on a Revoked Driver's License does **not** go to the drug fund. Those revenues, less the city's direct costs associate with the seizing, towing and storage of the vehicles, must be forwarded to the state Department of Mental Health.

Donations

Reference Number: MTAS-343

Funds can be donated to the Drug Fund from civic organizations, or a defendant may be ordered to donate funds to the Drug Fund in addition to paying the statutory minimum fine for a drug offense.

A defendant cannot be ordered or allowed to donate money to the Drug Fund without paying at least the minimum fine for the offense. In the past, some defendants were ordered, as a result of a plea bargain, to make a donation to the Drug Fund and pay something less than the minimum fine. In effect this circumvented the requirement to divide fine revenues between the General Fund and the Drug Fund. This action is improper. Op. Tenn. Atty. Gen., 2003.

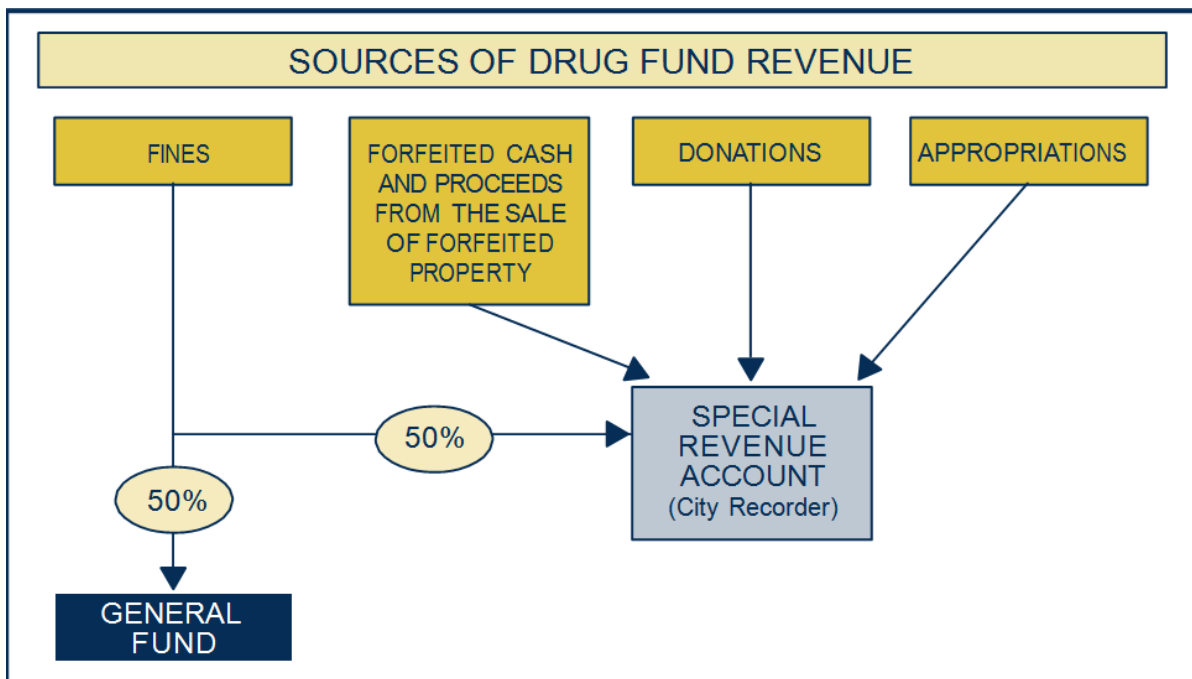
Appropriations

Reference Number: MTAS-344

The local governing body may make appropriations to the Drug Fund. In fact, some cities annually appropriate to the Drug Fund special revenue account the drug fine revenues that normally go to the General Fund.

Sources of Drug Fund Revenue Chart

Reference Number: MTAS-381



Legitimate Expenditures

Reference Number: MTAS-339

The topics listed below in this section contain more information.

Drug Treatment and Education Programs

Reference Number: MTAS-345

Local Drug Treatment Programs

Cities may spend money from the Drug Fund special revenue account to assist local drug treatment programs. There are no state standards defining what constitutes a qualifying local drug treatment program.

Drug Education Programs

Funds may be spent on drug education programs, but there are no specific standards that define a qualifying drug education program. Many agencies fund all or part of the D.A.R.E. programs with Drug Funds. Agencies also may use the funds to purchase anti-drug literature for distribution in the community or local schools or to fund an anti-drug seminar for local residents, P.T.A., or school children.

General Drug Enforcement Programs

Reference Number: MTAS-346

Drug enforcement expenditures are divided into two categories: general drug enforcement and cash transactions relating to undercover operations (confidential expenditures).

General Drug Enforcement

General drug enforcement expenditures include all drug enforcement expenditures that are not directly related to undercover operations. General drug enforcement expenditures include:

- Automobiles for drug investigators
- Maintenance and operational expenditures for a drug officer's automobile, including gasoline;
- Telephone charges, including cellular telephone charges;
- Office supplies and office equipment for drug enforcement officers;
- Drug identification kits for drug investigators and patrol;
- Drug enforcement training;
- Drug dogs and their maintenance, including food and veterinary service.

General drug enforcement expenditures are not confidential and must follow the city's purchasing guidelines. If the city has not adopted purchasing guidelines, it must follow the state purchasing guidelines for local governments.T.C.A. § 39-17-420.

Confidential Expenditures

Cash transactions relating to undercover operations are confidential expenditures. Examples of these expenditures include:

- Payments made to an informant for information
- Payments made to an independent undercover agent;
- Money spent to actually purchase drugs as part of an undercover operation;
- Gasoline or minor maintenance for an undercover vehicle or an informant's vehicle when used in undercover operations.

Office of the Comptroller *Procedures for Handling Cash Transactions Related to Undercover Investigative Operations of County and Municipal Drug Enforcement Programs* (2012). See <http://www.comptroller.tn.gov/la/pdf/2012ProceduresForCashTransactions.pdf>.

Nonrecurring General Law Enforcement

Reference Number: MTAS-347

Drug Fund money also can be spent for general law enforcement purposes. Unlike drug enforcement expenditures, general law enforcement expenditures must be *nonrecurring*. Generally, nonrecurring expenditures are capital expenditures, but not all qualifying expenditures will be capital expenditures. Basically, a city cannot spend Drug Fund money for ongoing, operational items.

Some examples of allowable nonrecurring, general law enforcement expenditures include:

- Patrol and administrative vehicles;
- Blue lights, sirens, radios, and radar units for the vehicles;
- Video cameras, both for vehicle units and camcorders and body cameras;
- Handguns but not ammunition (Ammunition for a drug enforcement officer is allowable as a drug enforcement expenditure.);
- Fax machines and copiers;
- Cellular telephones for general law enforcement and administrative officers, but not the monthly bill;
- Non-drug patrol dogs but not food or veterinary services.

Automated Fingerprint Machines

Reference Number: MTAS-348

While the purchase of automated fingerprint machines qualifies as nonrecurring general law enforcement expenditure, there are special statutory regulations pertaining to these purchases.

All agencies must set aside 20 percent of their Drug Fund revenues each year toward the purchase of an automated fingerprint machine until they actually purchase the machine or until they enter into an agreement with another agency that has a machine to do fingerprinting. These agreements most often occur between a city police department and a county sheriff's department. The 20 percent set aside can be accounted for in a separate reserve account, or it can be left in the Drug Fund special revenue account.

Once an automated fingerprint machine is purchased, or the city has entered into an agreement with an agency that has one of the machines, the city may use up to 20 percent of each year's Drug Fund revenues to pay for some operational costs of the fingerprint machine, including telephone line charges, software maintenance contracts and hardware maintenance contracts. These operational costs should be included in any agreement the city has with another agency to perform its fingerprinting.

Drug Fund Procedures

Reference Number: MTAS-340

The Special Revenue Account

The actual Drug Fund is a special revenue account under the control of the city recorder. It is accounted for in much the same way as street aid funds and the solid waste special revenue account. All Drug Fund revenues are deposited in the Drug Fund special revenue account, not the confidential funds account. All expenditures except cash transactions relating to undercover operations are made from the Drug Fund special revenue account.

The Budget

The police chief and the mayor, or the city manager in cities that have one, are to present a Drug Fund budget to the local governing body annually for approval. Funds cannot be expended beyond amounts approved in the budget. Additionally, funds not already in the account cannot be spent, even if approved in the Drug Fund budget.

Purchasing Guidelines

All expenditures except qualifying confidential expenditures must follow the city's purchasing guidelines. If the city has not

adopted a purchasing policy, the state purchasing law for local governments must be followed. Purchasing guidelines generally specify minimum monetary limits requiring bids or quotes. The guidelines also may specify purchasing processes, such as written requisitions and purchase orders. T.C.A. § 39-17-420.

Confidential Expenditures

Reference Number: MTAS-349

T.C.A. § 39-17-420 states that all cash transactions relating to undercover operations must follow guidelines established by the state comptroller's office. The comptroller's guidelines, *Procedures for Handling Cash Transactions Related to Undercover Investigative Operations of County and Municipal Drug Enforcement Programs*, have the authority of law.

The fund for confidential expenditures is actually a separate account under the control of the police chief or his or her designee. Funds for the confidential account are requested from the city recorder, then deposited in the confidential account. All Drug Fund revenues are deposited into the Drug Fund special revenue account, not into the confidential funds account.

Confidential Fund Requirements

Reference Number: MTAS-350

In January 1991, the Comptroller of the Treasury for the State of Tennessee issued *required* cash handling procedures related to undercover investigative operations for county and municipal drug enforcement programs. The comptroller worked with the Tennessee Bureau of Investigation, the Tennessee Sheriff's Association, and the Tennessee Association of Chiefs of Police to develop routine cash handling procedures for undercover drug operations that would be applicable to all local government jurisdictions. The establishment of these standards also enables the independent auditor of the local government to perform a thorough audit of the operations activity without compromising the undercover officers, their informants, or their investigations.

Local Drug Funds are to have been established in accordance with T.C.A. § 53-11-415. In order to comply with this statute, the city recorder or finance officer of the municipality is to set up a separate fund to record the financial activity related to drug operations. Entitled "Drug Fund," this special revenue fund will be used to record all proceeds and expenditures related to drug enforcement for the local government in compliance with T.C.A. § 39-17-420.

In summary, these procedures require the fund to remain under the control of the city recorder or finance officer. However, upon the demand of the chief executive of the arresting law enforcement agency, the finance officer will distribute funds to pay for the drug enforcement program. The law enforcement agency should provide an accounting of these Drug Fund expenditures to the municipal finance officer.

General Applicability

It is important to emphasize that the following transaction guidelines are unique to *confidential* cash disbursements related to undercover drug investigations by the law enforcement agency. These guidelines do not pertain to normal, nonconfidential Drug Fund expenditures. Nonconfidential purchases and other disbursements from the Drug Fund are to be handled in the same manner as any other purchase or disbursement of the city in accordance with generally accepted accounting principals, the municipal charter, the Municipal Budget Law, the Municipal Purchasing Law of 1983, and any applicable municipal purchasing ordinance(s).

Of course, the procedures that follow are the *minimum* guidelines for Drug Fund confidential cash transactions. The chief law enforcement officer may require additional local procedures as deemed necessary.

Training

It is the responsibility of all chiefs of police and their agents involved in the handling of confidential Drug Funds to be familiar with these guidelines. Documentation affirming this fact is to be maintained in the law enforcement agency's office. Law enforcement officials are expected to be familiar with the guidelines concerning confidential Drug Fund cash transactions established by the state and to operate in compliance with these guidelines. Noncompliance may be itemized in audit findings by your internal auditor, which may initiate further action by the Department of Municipal Audit.

Requesting Funds for Confidential Operations

Reference Number: MTAS-351

There are two methods by which the chief of police shall account for confidential funds in the Drug Fund:

- A separate column in the cash journal;
- A separate bank account.

Depending on the size of the department, a separate confidential bank account may be the easier of the two. A separate checking account for confidential funds maintained by the police chief or a designee in the police department provides the agency immediate access to funds for law enforcement activities. This account also can be used to account for the money provided to agents.

To initiate available funds for confidential operations, an advance will be requested from the city recorder or finance director. These funds come from the Drug Fund special revenue account maintained in the office of the city recorder. Although the initial amount used to establish the account is left to the discretion of the police chief, it is recommended that

this amount be limited to what will be needed in the next 45 days.

Receipt, Deposit & Disbursing Confidential Funds

Reference Number: MTAS-352

Receipt and Deposit of Confidential Funds

As with any municipal cash transaction, pre-numbered receipts should be issued to record the distribution and return of cash for undercover operations. If the city recorder makes a cash advance to the police chief or designee for an undercover investigation activity (such as a drug buy), a receipt shall be issued to record the amount of the advance. Once the investigation activity has been completed and the cash is returned to the city recorder, another receipt shall be issued for the returned amount.

The returned cash shall be deposited into the Drug Fund checking account in a timely manner.

Disbursing Confidential Funds

As mentioned previously regarding confidential funds, the law enforcement agency may use a second Drug Fund checking account as a confidential funds account under the control of the police chief or his or her designee. MTAS recommends use of a separate checking account as a "best practice." Disbursements are to be made either to the police chief or other employee(s) through the use of pre-numbered checks. A separate checking account simplifies the recording procedure. All checks issued from this account are to be signed by the chief of police or designee and shall be made payable to the person receiving the funds.

All employees who participate in cash transactions in any capacity shall have a fidelity bond to protect the law enforcement agency and the municipality. The annual employee bond should be issued in an amount that would equal at least the largest single cash transaction in which the employee would normally participate over the course of the year.

Before purchasing bonds on your employees, it is a good idea to check with your liability insurance carrier. It's possible that automatic coverage may already be in effect or may be available to insure the activities of employees who handle cash.

Purchasing Equipment and Supplies from Confidential Funds

Reference Number: MTAS-353

The Municipal Purchasing Law and local municipal purchasing ordinances apply also to normal purchases of supplies and materials from the Drug Fund special revenue account. However, if confidentiality is required for a purchase, these rules are suspended. Please note that there are specific procedures to follow even though other purchasing rules are not in effect. Documentation, including invoices and price quotes, shall be filed in support of the disbursement of funds to establish a paper trail of the use of cash. Care should be exercised in following proper procedures regarding these exceptional purchases.

It is popular opinion that the purchase of security recording devices is a confidential purchase. This view is incorrect. There is no reason the purchase of a briefcase camera or clandestine recording device would be confidential.

Drug Fund Records and Reports

Reference Number: MTAS-354

Annual Report of Drug Related Investigations and Cases Developed from Use of Local Drug Funds

A former statutory requirement that the law enforcement agency prepare an annual report to the district attorney general has been repealed. However, the police chief is accountable to the local legislative body for the proper disposition of the proceeds of goods seized and forfeited under the provisions of T.C.A. § 53-11-451 and for the fines imposed under T.C.A. § 39-17-428. An annual *audited* report of such funds shall be submitted by the chief of the municipal law enforcement department to the local legislative body. In years when the Office of the Comptroller of the Treasury conducts an audit, if any, the audit satisfies this requirement. If no audit is conducted by the Office of the Comptroller of the Treasury, *then an audit shall be performed by a certified public accountant to satisfy this requirement. The annual city audit satisfies this requirement.*

The governing body of the law enforcement agency responsible for the investigation and arrest that resulted in the drug conviction shall submit to the comptroller, by August 1 of each year, a report of funds collected and paid to the General Fund of the governing body pursuant to this section. This report shall show the amount of money spent on drug education and drug treatment.

Availability of Records and Reports for Audit

Activity of the confidential portion of the Drug Fund enjoys a certain amount of protection from the Open Records Law. However, this doesn't mean that the records are completely exempt from outside scrutiny during the annual audit. By law,

all of the books and records involving confidential funds shall be subject to inspection and audit by the Comptroller of the Treasury or his authorized representative *except* for informant files, tapes involving undercover operations and evidence. Of course, this right to inspection and audit extends to the independent public accountant performing an audit under a contract approved by the comptroller.

Unaccounted for Confidential Funds

Cash handling procedures for confidential funds are designed to account for all Drug Fund resources used by agents during drug investigations. Unfortunately, situations arise in which confidential funds are left unaccounted. In this event, the police chief must immediately inform the district attorney general of the missing funds. This notification must be in writing, and a copy should be filed with the Division of Local Government Audit with the Comptroller of the Treasury. Furthermore, it is the responsibility of the police chief to initiate action to collect any funds that are unaccounted for.

Maintaining Informant Files

Procedure requires the law enforcement agency to establish and maintain a separate file for each informant. The Summary Informant Payment Log, Form A-6, shall be kept in the file and made available for audit. Other information regarding the informant file normally is confidential.

Use of Funds by a Secondary Agency

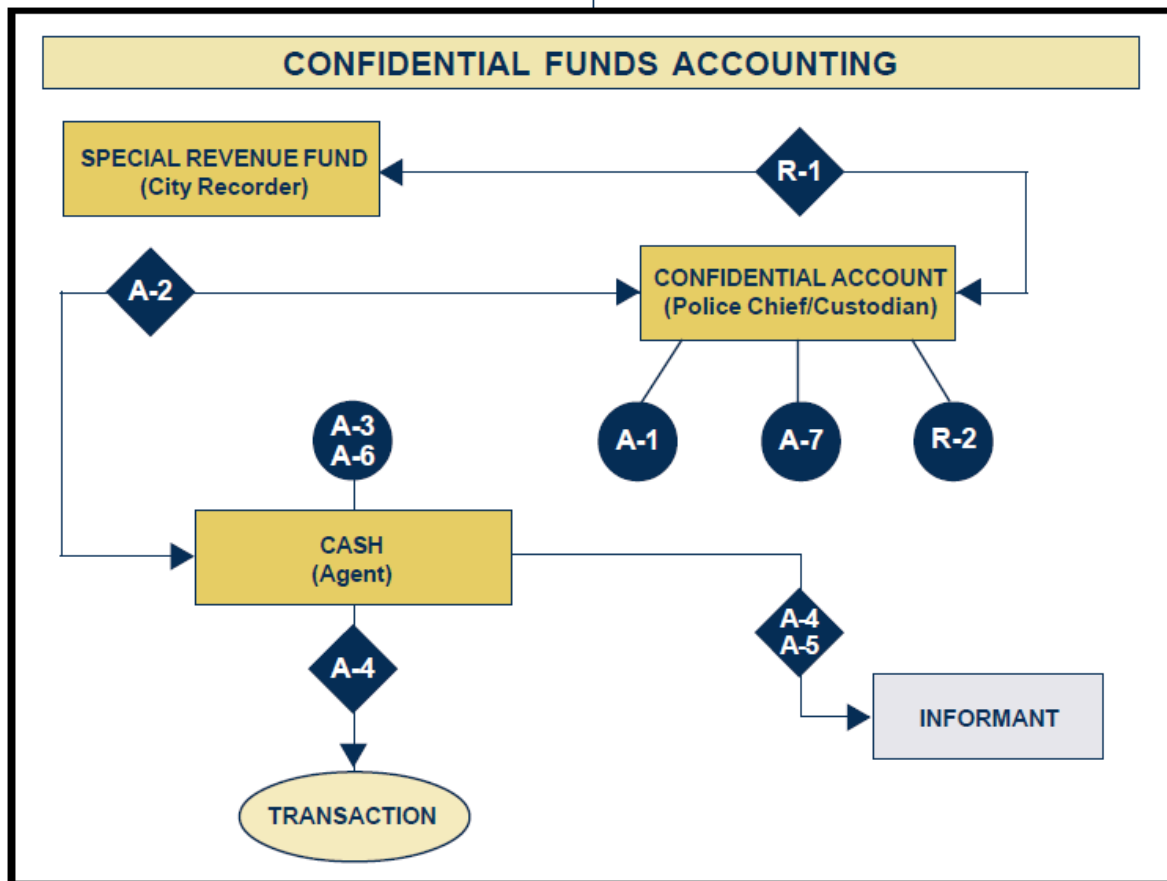
From time to time, one law enforcement agency may seek the assistance of another agency while performing drug investigations. This may involve the need to transfer Drug Fund resources from one agency to another. This practice is acceptable when the agency providing confidential funds receives a contract or other written document from the receiving agency acknowledging receipt of the funds and accepting responsibility for the proceeds. This written acknowledgment shall be signed by the police chief or designee of both the agency receiving the funds and the agency providing the funds. Copies of all such agreements shall be retained for audit by both agencies.

Confidential Fund Accounting and Forms

Reference Number: MTAS-383

Most municipal transactions produce stacks of documentation. There may be requisitions, purchase orders, invoices, receipts and cancelled checks. Confidential cash transactions do not produce any such normal documentation. The integrity of the entire confidential funds process is dependant on documentation prepared by the police officers.

The comptroller's office has developed several forms to document the various types of confidential cash transactions and are covered on subsequent pages. The flowchart below should serve as a "roadmap" for use of the various forms required by the comptroller's office when accounting for cash transactions relating to undercover operations. Diamonds indicate the form to be completed for each transaction. Circles indicate cumulative or periodic reports.



A1 - Custodian's Activity Log for Confidential Funds

Reference Number: MTAS-385

Maintained by the custodian, this form is used for every transaction involving the custodian. This log records payments into and out of the confidential account, the type of transaction, key details about the transaction, and a running balance of the confidential account. The log is cumulative and tracks multiple transactions over time.

Form A-2

TRANSACTION RECORD OF EACH ADVANCE AND RETURN OF CONFIDENTIAL FUNDS

ADVANCE

Transaction Number _____

Agent's name _____ ID number _____

Unit _____

Amount of advance \$ _____ Case or reference # _____

Intended purpose: Investigative advance Use as a flash roll *

Advance approved by _____
Signature of chief law enforcement official or designee Date

Advance received by _____
Agent's signature Date

Check # _____ Date _____

* Flash rolls shall be returned within 72 hours unless extended for an additional 48-hour period.

RETURN

Transaction Number _____

Agent's name _____ ID number _____

Unit _____

Amount returned \$ _____ Case or reference # _____

Advance returned by _____
Agent's signature Date

Advance returned to _____
Signature of chief law enforcement official or designee Date

Receipt # _____ Date _____

Original: Filed with Fund Custodian

Copy: Retained by Agent

A3 - Agents Activity Log for Confidential Funds

Reference Number: MTAS-387

Maintained by the agent, this form tracks every transaction an agent makes in paying informants, buying drugs and incurring miscellaneous confidential expenses. It is cumulative and tracks multiple transactions over time. It also maintains a running balance of funds in the custody of the agent.

Form A-4

ACCOUNTABILITY OF CONFIDENTIAL FUNDS

Case # _____

FUNDS EXPENDED

Transaction Number _____

EVIDENCE:

Type and quantity _____

Date _____ Amount spent \$ _____

UNDERCOVER MOTOR VEHICLE:

Gasoline and Oil

Date _____ Amount spent \$ _____

Station/store _____

Date _____ Amount spent \$ _____

Station/store _____

Date _____ Amount spent \$ _____

Station/store _____

INFORMANT EXPENSES:

Code name _____ CI # _____

Date _____ Receipt - Yes [] No [] Amount \$ _____

MISCELLANEOUS:

Explanation _____ Date _____ Amount \$ _____

Explanation _____ Date _____ Amount \$ _____

I certify that the above expenditures are true and correct.

Agent's signature

Date

Original: Filed with Fund Custodian

Copy: Retained by Agent

This

form is completed by the agent for each transaction and provides documentation of the agent's expenses.

A5 - Receipt for Payment to Informant

Reference Number: MTAS-389

This form should be completed by the agent each time he or she pays an informant for information or for services performed, including the purchase of drugs. It should be signed by the informant, using a pre-assigned code name. The receipt also should be witnessed by another officer.

Form R-1

REPORT OF CONFIDENTIAL FUNDS REQUESTED OR RETURNED

To: _____
City recorder/finance director

I am requesting funds in the amount of \$ _____ for use in the drug enforcement program.

I am returning funds of \$ _____ that have accumulated in the drug control (confidential funds) account.

LAW ENFORCEMENT AGENCY'S CERTIFICATION:

Submitted by _____
Chief law enforcement official

Title _____

Date _____

CITY RECORDER/FINANCE DIRECTOR CERTIFICATION OF RECEIPT OR PAYMENT

Amount Received \$ _____ Receipt # _____

Amount Paid \$ _____ Warrant or Check # _____

By _____

Title _____

Date _____