

CHAPTER 7
REVIEW, APPROVAL, AND CLOSING DOCUMENTATION
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CHAPTER 7

REVIEW, APPROVAL, AND CLOSING DOCUMENTATION

1. INVESTIGATION FILE REVIEW.

a. Investigator Responsibilities. Once the discrimination complaint investigation file is complete, the lead investigator shall ensure the file is reviewed for accuracy and thoroughness prior to transmittal to the next level review.

(1) The lead investigator shall advise their assigned Equal Opportunity & Access Section (EOAS) analyst via e-mail of the date the investigation file is forwarded to the appropriate Division Commander for review.

(2) Once the Division Commander has reviewed and approved the investigation, the investigation shall be forwarded electronically to the

EOAS and notification made to the Division's assigned EOAS analyst.

b. Division Commander Responsibilities. The Division Commander shall review the investigation file for completeness, thoroughness, and proper documentation.

(1) If modifications are needed to the investigation file by the investigator, it should be expeditiously returned to the investigator. The assigned EOAS analyst shall be advised whenever the investigation file is transmitted between the investigator and the appropriate Division during the review/submission process.

(2) Once the investigation has been reviewed by the Division Commander, the initiating Division will forward the investigation, all exhibits within the investigative file, the Memorandum of Findings (MOF), and the Letter of Determination (LOD) to the EOAS within ten working days.

(3) After the investigation has been approved by the Department's Equal Employment Opportunity (EEO) Officer, approved closing documentation will be forwarded from EOAS to the Division Commander for service.

(4) If, at the conclusion of the investigation, inappropriate misconduct is found, appropriate action shall be taken.

c. The Equal Opportunity & Access Section. The EOAS will analyze each case for sufficiency and compliance with departmental policy and law. After reviewing the investigation in its entirety, EOAS may make recommendations regarding

amendments to the investigation. If necessary, the Division Chief will be notified if the investigation file is returned to the originating investigator and Division for correction. For an external complaint, the EOAS will prepare a response to the appropriate compliance agency based upon the findings of the investigation.

2. APPROVAL. As delegated by the Commissioner, the EEO Officer shall ensure the EEO investigation was conducted in a prompt, thorough, objective manner, and all parties were provided appropriate due process. The EEO Officer will make a determination if there was a violation of the Department's EEO policy based on the evidence presented in the investigation.

3. CLOSING DOCUMENTATION. After approval from the EEO Officer, the appropriate Division Commander, or their designee, shall issue the approved closing documentation by serving it to the appropriate parties.

a. Letter of Determination. At the conclusion of an internal EEO investigation, an LOD will be sent to the employee's home address via certified mail advising of the conclusion of the investigation, and of the findings and decisions rendered. See Annex A for a sample LOD. The LOD shall include retaliation admonishments, the right to file an external complaint, and advise of the appeal process.

(1) A copy of the LOD shall be filed in the EEO investigation file.

(2) For an externally filed complaint, the LOD will be provided by the originating compliance agency.

b. Memorandum of Findings. At the conclusion of the investigation, the respondent(s) shall be served an MOF that outlines the conclusion of the investigation. A copy of the signed and served MOF shall be forwarded to EOAS for inclusion in the investigation file. If the case was filed with an external compliance agency, the MOF will advise the results of the Department's investigation but will also reaffirm that the external compliance agency makes the final determination on externally filed complaints. See Annex B for a sample MOF. The MOF shall include retaliation admonishments.

(1) Exonerated. If the respondent(s) were exonerated of the allegations, the MOF shall be filed in the EEO investigation file.

(2) Sustained. If the respondents(s) actions were determined to be in violation of the Department's EEO policy, the signed and served MOF shall be filed in the EEO investigation file, as well as in the employee's personnel field folder for three years from the date of service. An employee shall be advised of their

right to file a written response in accordance and as specified in their bargaining unit's Memorandum of Understanding. Such written response shall be attached and accompany the MOF during its retention period.

4. FILING AND CONTROL PROCEDURES.

a. Filing of Documents.

(1) Investigation. The final and approved investigation file will be maintained by EOAS in a secure manner, preventing access by unauthorized personnel. All related evidence shall be maintained in accordance with Chapter 6, Discrimination Complaint Investigations, of this manual.

(2) Closing Documentation. All LODs shall be filed with the investigation file and retained pursuant to paragraph 4.a.(1) above. All MOFs shall also be filed with the investigation file and retained in the same manner. Only those MOFs with a sustained finding shall also be retained in the respondent's personnel field folder for a period of three years from the date of service.

(3) Response from Employee. Findings and decisions of formal internal discrimination complaints may be appealed via the CHP 612A, Discrimination, Harassment, and/or Retaliation Complaint Appeal, with the Deputy Commissioner, through the EOAS, within 10 days of receipt of the LOD. The CHP 612A will be included and retained in the final investigation file. Any other documents received by the employee after the issuance of the LOD shall be retained in the same manner.

b. Retention of Documents.

(1) Investigation File. The final and approved investigation file will be retained by EOAS for five years after approved by the EEO Officer. In some instances, the Department may preserve the investigation file beyond five years, if the complaint has not been fully disposed of due to administrative proceedings, civil action, appeal, and/or related proceedings. In those instances, the Office of Legal Affairs will assist in determining the retention period.

(2) 612 Series Documents. The CHP 612, Formal Complaint of Discrimination, Harassment, and/or Retaliation; and the CHP 612A, Discrimination, Harassment, and/or Retaliation Complaint Appeal, shall be retained as part of the formal investigation as set forth in 4.b.(1). The CHP 612B, Informal Complaint of Discrimination, Harassment, and/or Retaliation, and CHP 612C, Informal Complaint of Discrimination, Harassment, and/or Retaliation Transmittal, shall be

retained by the EOAS for five years at the EOAS. These forms, if included as part of a formal investigation, shall also be retained as set forth in 4.b(1) above.

c. Release of EEO Complaints or Investigations.

(1) Generally, EEO complaints and/or investigations are not releasable to preserve confidentiality, to protect against retaliation, to protect the personal and/or medical privacy of the individuals involved, and to maintain the integrity of the investigation process.

(2) California Penal Code (PC) Section 13510.9 requires the Department to notify the Commission on Peace Officer Standards and Training of any complaint, charge, or allegation of conduct against a peace officer employed by that agency that could render a peace officer subject to suspension or revocation of certification by the commission pursuant to PC Section 13510.8.

(3) California PC Section 832.7 requires the Department to make the following records available for public inspection pursuant to the California Public Records Act (Division 10 [commencing with Section 7920.000] of Title 1 of the Government Code):

“(b)(1)(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.”

(4) Any inquiries regarding the release of information shall be coordinated with the Office of Legal Affairs and EOAS.

d. Related Disciplinary Action. When information is obtained during the course of a discrimination complaint investigation, and it has been determined that there has not been a violation of the Department’s discrimination policy, but other departmental policy has been violated, the related LOD and/or MOF issued by the respective Division Commander shall be included and used as the basis for an internal investigation based on guidelines set forth in HPM 10.2. Internal Investigations Manual.

ANNEX A

LETTER OF DETERMINATION



CALIFORNIA HIGHWAY PATROL

601 N 7th St, Sacramento, CA 95811 | 800-735-2929 (TT/TDD) | 800-735-2922 (Voice)

GAVIN NEWSOM, GOVERNOR

CALIFORNIA STATE TRANSPORTATION AGENCY

[Insert] Division
[Insert Address Line 1]
[Insert Address Line 2]
[Insert Phone Number]
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)

[Date]

File No.:

[Complainant Name]
[Address Line 1]
[Address Line 2]

SUBJECT: LETTER OF DETERMINATION

Dear [Insert Complainant name]:

On [date], you initiated an internal complaint with the California Highway Patrol alleging you were being [discriminated/harassed] based on [state which protected characteristic(s) or activity], [if applicable, add as well as being subjected to retaliation], by [insert name of respondent and rank], ID ~~xxxxx~~.

In accordance with California Highway Patrol Manual 10.12, *Equal Employment Opportunity Manual*, an investigation was conducted. [insert name of lead investigator], ID ~~xxxxx~~, a trained Equal Employment Opportunity investigator, was assigned to conduct the investigation. The investigation included interviews with the involved employee and pertinent witnesses, as well as a thorough review of relevant documents. The objective of the investigation was to assess the validity of your allegations, determine the appropriateness of the work environment in the [xxxxx] Area, and ensure you, as well as all other employees, were treated fairly and free from discrimination and harassment. The findings of the investigation were evaluated to assess compliance with existing departmental policies and/or legal requirements.

[insert one of the following three paragraphs, as appropriate:

The investigation determined there was insufficient evidence to establish a violation of the Department's Equal Employment Opportunity (EEO) policy.

OR

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ANNEX A

LETTER OF DETERMINATION (*continued*)

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The investigation determined there was insufficient evidence to establish a violation of the Department's discrimination policy. Any inappropriate or unprofessional conduct outside of EEO policy will be addressed separately.

OR

The investigation determined there was sufficient evidence to establish [*name of respondent*] violated the Department's Equal Employment Opportunity (EEO) policy. The investigation also revealed there was misconduct pertaining to other departmental policy and appropriate action will be taken.]

You have the right to appeal the findings and decisions articulated in this letter within ten working days of your receipt of this document. Your appeal must be submitted in writing and filed directly with Assistant Commissioner, [insert Field or Staff], through the Equal Opportunity & Access Section at EOAS@chp.ca.gov.

You also have the right to file with the California Civil Rights Department or the United States Equal Employment Opportunity Commission. Additional information related to the appeal process can be found in HPM 10.12, Chapter 6, Discrimination Complaint Procedures.

If you have questions regarding the appeal process, do not hesitate to contact me or the Equal Opportunity & Access Section at (916) 843-3190.

Sincerely,

~~xxxx~~ Chief
Border Division

cc: Equal Opportunity & Access Section
~~xxxx~~ Area

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ANNEX B

MEMORANDUM OF FINDINGS

State of California

Transportation Agency

Memorandum

C O N F I D E N T I A L

Date: [Date]

To: Rank and Respondent Name, ID xxxxx

From: **DEPARTMENT OF CALIFORNIA HIGHWAY PATROL**
Border Division

File No.:

Subject: MEMORANDUM OF FINDINGS

On [date], a complaint alleging [discrimination/harassment] based on [state which protected characteristic(s) or activity], [if applicable add as well as retaliation], was filed against you by [rank and name of complainant] ID xxxxxx.

In accordance with Highway Patrol Manual 10.12, *Equal Employment Opportunity Manual*, an investigation was conducted. The investigation included interviews with all involved parties as well as a review of all relevant documents. The purpose of this memorandum is to inform you of the findings of the investigation.

[insert one of the following three paragraphs, as appropriate:

The investigation determined there was insufficient evidence to establish you violated the Department's Equal Employment Opportunity (EEO) policy.

OR

The investigation determined there was insufficient evidence to establish you violated the Department's Equal Employment Opportunity (EEO) policy. Any inappropriate or unprofessional conduct on your part outside of EEO policy will be addressed separately.

OR

The investigation determined there was sufficient evidence to establish you violated the Department's Equal Employment Opportunity (EEO) policy. These violations as well as any inappropriate or unprofessional conduct on your part outside of EEO policy will be addressed separately.]

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ANNEX B

MEMORANDUM OF FINDINGS *(continued)*

Name
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Date

You are reminded that every employee is responsible for ensuring their activities convey commitment to the Department's EEO policies. Further, you are reminded that any retaliatory actions or conduct towards the complainant, or any employee who participated in any way in this complaint are prohibited, will constitute a violation of departmental policy and law. Any retaliatory action against the complainant or any involved parties is prohibited and may result in adverse action.

xxxxxxx, Chief
xxxxxxx Division

cc: Equal Opportunity & Access Section

I acknowledge receipt of this memorandum and have been provided a copy.

Respondent Name

Date