

CHAPTER 7
INFORMANT MANAGEMENT AND CONFIDENTIAL FUNDS

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CHAPTER 7

INFORMANT MANAGEMENT AND CONFIDENTIAL FUNDS

1. GENERAL.

a. Policy. The contents of this manual constitute policy which governs the overall administration and operation of the California Highway Patrol's (CHP) Informant Management and Confidential Funds programs.

b. Objective. This chapter establishes policies relative to management of informants and procedures for approving, disbursing, and accounting for the expense of confidential funds used in investigations.

2. DEFINITIONS.

a. Informant Management. The administrative and operational control of individuals providing information or assistance to the Department regarding criminal activities. These individuals will be referred to in this chapter as informants.

b. Confidential Funds. Monies drawn from the Department's subsidiary revolving fund and used by investigative personnel to further investigations. Confidential funds usually fall into one of the following categories:

(1) "Informant" Money. Money used by the investigator to purchase information from an informant. The amounts are usually small and the money is not considered recoverable. The information purchased with informant money is essential to an investigation.

(2) "Flash" Money. Money displayed by an investigator or controlled informant as a gesture of good faith towards the purchase of evidence. This money should not change hands and is totally reimbursed to the Department. The serial number of all bills shall be recorded and attached to the CHP 303C, Expenditure of Confidential Funds.

NOTE: All required forms can be located on the CHP Intranet Web site under the Forms tab.

(3) "Buy" Money. Money used by either an investigator or controlled informant to purchase or secure evidence for an arrest and/or prosecution of the suspect(s). If a stolen vehicle is purchased, the description and vehicle identification number (VIN) of the vehicle shall be recorded on the

CHP 303C. This includes buy bust and buy walk as described in paragraphs 2.c. and 2.d. of this chapter.

(4) "Incidental" Money. Monies used for miscellaneous expenses necessarily incurred in an investigation, including, but not limited to: the rental of cars, motel rooms, establishing of post office boxes and telephones under fictitious names, or other items immediately needed to conduct the investigation. Incidental monies are not to be used to bypass the normal procurement of equipment as outlined in Highway Patrol Manual 11.2, Materials Management Manual, Chapter 8, Equipment.

c. Buy Bust. An arrest usually made immediately after a transaction involving buy money. In some instances, the buy money is held as evidence of the purchase and is not recoverable until the case has been adjudicated. The serial numbers of all bills shall be recorded and attached to the CHP 303C.

d. Buy Walk. Money used to purchase evidence to show good faith and gain the confidence of suspects. In a buy walk, the buy money is not recovered, but the value of the evidence normally exceeds the amount spent.

e. Informant. An informant is a person, not a member of law enforcement, who provides law enforcement information or assistance concerning suspected criminal activity.

3. INFORMANT PROCEDURES.

a. Authorization to Use Informants. No officer shall use the services of an informant without the permission of the Division Investigative Services Unit (ISU) coordinator/Protective Services Division (PSD) coordinator, or their designee. Other commands may use the services of informants as authorized by the appropriate Commissioner.

b. Investigation and Confidential Agreements. Prior to the utilization of an informant, the investigating officer shall make every attempt to have the informant complete the CHP 303A, Investigation Agreement, and CHP 303B, Confidential Agreement, for approval by the ISU/PSD coordinator in conjunction with the CHP 303, Informant Identification Record. Completion of these forms shall be accomplished prior to providing any compensation to an informant. Even if the informant is being utilized by another law enforcement agency, the CHP forms shall be completed before the informant is compensated. The informant shall be properly identified and the identification shall be verified through law enforcement databases. There shall only be one copy of the informant file, which shall be retained under the control of the ISU/PSD coordinator. Each informant shall be

identified by an informant number. The informant number will be recorded on the CHP 303A and the CHP 303C associated with that informant, as well as in Section A of the CHP 136D, Confidential Fund Ledger. The informant number format shall be the last two digits of the calendar year the informant was signed up, followed by the Division or Area location code, followed by a sequential number issued by year. For example, the first informant signed up by Valley Division ISU in the year 2016 would be issued an informant number of 16-212-01. When completed, all forms will be filed in the appropriate informant's file, and stored under the supervision of the ISU/PSD coordinator. In instances where an informant file cannot be completed, a CHP 51WP, Confidential Memorandum, shall be submitted to the ISU/PSD coordinator explaining the circumstances.

c. Completion of Informant Records. The CHP 303, side 1, shall be filled out as completely as possible. The remarks section should include a summary to describe the motivation of the informant, for example, working for monetary compensation, consideration for pending criminal charges, etc. The CHP 303, side 2, shall be completed for each use of the informant to establish history and reliability. It should also indicate the date the informant was deemed inactive.

d. Informants with Pending Cases. No officer shall use the services of an informant who has a pending criminal case without the permission of the prosecutor or the agency responsible for the case against the informant, if the informant will be working for consideration on that case. The date and the name of the prosecutor giving such permission will be noted on the informant's CHP 303 by the ISU/PSD coordinator. Additionally, any conditions or restrictions placed on the informant by the prosecutor will be noted on the CHP 303, or on a CHP 51WP attached to the form. In some cases, a prosecutor will complete a contract with an informant when approval is given to work off a pending case. In those instances, a copy of the contract should be placed in the informant file.

e. Revealing the Identity of an Informant. The responsible prosecutor, in concurrence with the ISU/PSD coordinator, will determine whether the informant's identity should be revealed. No officer, without the previously stated approval, shall refuse to reveal the identity of an informant when testifying in court when ordered to do so by the presiding judge or magistrate. Officers may ask for an in-camera hearing on revealing the identity of an informant. If a conflict does arise, the matter will be resolved by the ISU/PSD coordinator or Special Services commander.

f. Use of Juveniles as Informants. The use of juveniles as informants shall be avoided. Penal Code Section 701.5 prohibits any peace officer or agent of a peace officer from using a person 12 years of age or younger as a minor informant, and

from using a person under the age of 18 years as a minor informant, except as authorized pursuant to the Stop Tobacco Access to Kids Enforcement Act.

(1) Penal Code Section 701.5 sets forth parameters that allow peace officers to use minors 13-17 years of age as informants if all specific conditions are met as follows:

(a) A peace officer or their agent is required to obtain parental or guardian consent, regardless of any exigent or emergency circumstances, unless the parent or guardian is a suspect in the criminal investigation.

(b) The court is required to find probable cause a minor committed the alleged offense before a minor can be used as a minor informant.

(c) The court must consider specific factors before consenting to the use of a minor informant, including the maturity of the minor, the severity of a minor's alleged offense, the safety of the public, the interests of justice, and whether the agreement is being entered into knowingly and voluntarily.

(d) The court is required to admonish the minor with the minimum and maximum sentence for the alleged offense, and to disclose the benefit a minor may obtain by cooperating with a peace officer or agent of a peace officer.

(2) If an investigation necessitates the use of a juvenile, prior approval shall be obtained from both the ISU/PSD coordinator and the Special Services commander. Further, approval must also be obtained from the court or parents/guardian, whichever is applicable. Upon this approval, the prosecutor's office of jurisdiction should be contacted for applicable laws and local policies.

g. Use of Parolees or Probationers as Informants. The use of parolees or probationers as informants must be approved by the ISU/PSD coordinator. The use of parolees as informants must also have the prior approval of the parole officer.

h. Relationship of Officers with Informants. Relationships between officers and informants shall be completely ethical and professional in nature. Officers shall not associate with an informant in any way other than in an official capacity. When contacting informants, officers shall have another officer or member of an allied agency present. Officers shall not accept any gifts or gratuities from an informant or engage in any business or financial dealings with the informant. Occasionally, officers will utilize informants who may be a relative or close personal friend. It is

not the intent of this manual to regulate such a relationship; however, if the relative's or friend's lifestyle is characteristic of someone involved in criminal activity, officers must be aware of the same concerns as when dealing with any other criminal informant.

i. Informant Files. Each informant will be identified by a photograph, physical description, and address. This information shall be documented on a CHP 303 in the ISU/PSD coordinator's files. In addition, the informant file shall include the following:

- (1) Informant Identification Record, including a photograph of the informant (CHP 303, page 1);
- (2) Informant Identification Record(s) (CHP 303, page 2);
- (3) Investigation Agreement (CHP 303A);
- (4) Confidential Agreement (CHP 303B);
- (5) Expenditures of Confidential Funds (CHP 303C);
- (6) Copies of the initial and most recent (updated quarterly) National Crime Information Center (NCIC) criminal history and local agency warrant inquiries and the date the inquiries were made;
- (7) Copies of the initial and most recent Department of Motor Vehicles (DMV) inquiries including both driver license and driving history inquiries and the date the inquiries were made;
- (8) Any correspondence or other relevant information concerning the informant.

j. Storage of Records. Informant files shall be maintained in a place of security within the ISU/PSD office. Access should be limited to the coordinator, supervisor, and investigating officers. Further, these files should be separated into active and inactive files. Active informant files should be moved to the inactive file after one year of inactivity. Inactive files may be purged after five years.

k. Quarterly Inquiries - Informants. The ISU/PSD coordinator shall ensure a quarterly DMV and warrant inquiry be completed on all active informants. This inquiry should include NCIC, California Law Enforcement Telecommunication System, local warrant checks, and a DMV printout for driver license status. Informants who do not possess a valid driver license shall not operate motor vehicles while engaged in investigations for the Department. The initial and most recent copies of the quarterly inquiries shall be maintained in the informant file.

I. Receipts. A CHP 303C shall be completed for all monies drawn from the fund. If evidence is purchased, a complete description of the evidence shall be documented. In the case of vehicles, the VIN number shall be included along with a vehicle description. Expenditure receipts for gasoline or meals obtained from service stations or restaurants must be signed by the informant and shall be attached to the CHP 303C. All receipts shall become a part of the concerned informant's file or incidental file.

4. CONFIDENTIAL FUNDS.

a. Procurement. The ISU/PSD coordinators may maintain up to \$10,000 in their confidential fund. However, when circumstances warrant, Division commanders may request, by memorandum, to the Assistant Commissioner, Field (ACF), authority to increase the fund to a maximum of \$25,000. This money is initially obtained from the Department's Fiscal Management Section (FMS)/Travel Unit by submitting a memorandum, which indicates the amount desired, or other amounts as designated by ACF, name and identification number of the designated custodian, and is signed by the Division chief. State Administrative Manual (SAM), Section 8111.2, identifies the custodian as personally responsible for the amount advanced from FMS's revolving fund.

b. Access. Confidential funds shall be kept in a place of security within the ISU/PSD office. Only the ISU/PSD coordinator or their designated alternate is authorized access to the confidential fund.

5. EXPENDITURES.

a. Approval. Confidential funds may be expended for the purchase of evidence, the payment for information and informant services, and payment for investigation expenses. The decision to expend confidential funds should be weighed against the potential for the arrest of the suspect(s) involved and the value of the purchased evidence. All requests for payment to informants and buy money must have approval as outlined below:

(1) Investigative Services Unit/Protective Services Division Coordinator. Requests for use of confidential funds in any amount must have the approval of the ISU/PSD coordinator or their alternate.

(2) Division Chief. Request for use of such funds in excess of \$2,000 shall have the added approval of the Division chief or their alternate.

(3) Assistant Commissioner. Request for use of funds in excess of \$4,000 shall have the additional approval of ACF.

NOTE: Monies shall not be drawn from the confidential fund on separate CHP 303Cs to circumvent the threshold approval amounts listed above.

- b. Payments of Informant Money and Buy Money. Informant money and buy money shall be obtained from the confidential fund with approval as outlined in paragraphs 5.a.(1), (2), and (3) of this chapter. The ISU/PSD coordinator shall be responsible for and control the expenditure of all informant and buy monies.

- c. Verification. The serial numbers of all bills drawn for buy money, flash money, or informant money purposes shall be recorded and a CHP 303C completed. The recording of serial numbers may be accomplished by photocopying, photographs, or writing down each serial number on the CHP 303C. All other expenditures, including incidental money, shall be recorded on a CHP 303C. All CHP 303Cs completed shall be signed by the investigator and supervisor. Additionally, any CHP 303C involving an informant shall be signed by the informant and a witness. The witness shall not be the primary investigating officer. In any instance where a confidential fund purchase results in the issuance of a receipt, the receipt shall be attached to the CHP 303C. Each time money is drawn from the confidential fund, the appropriate entry shall be made on the CHP 136D. A separate ledger entry shall be made for each transaction, which includes deposits, payments, money returned, or monthly fund confirmations. When practicable, a supervisor shall accompany the officer to the location where the money is to be used.

- d. Reimbursement. To replace monies that are spent, the ISU/PSD coordinator shall submit a CHP 262, Travel Expense Claim, to FMS through normal channels. The CHP 262 should be completed monthly, or as reasonably necessary to maintain the fund balance. The ISU/PSD coordinator should be aware that financial institutions are mandated to submit a Currency Transaction Report on all transactions of \$10,000 or more. The ISU/PSD coordinator is encouraged to submit CHP 262s at amounts less than \$10,000. Photocopies of the CHP 262, reimbursement check(s), and receipt for reimbursement check(s) cashed shall be maintained with the confidential fund files. The CHP 262 should contain the following information:
 - (1) Name and address of the fund custodian.
 - (2) "Confidential Fund" clearly marked in bold writing.
 - (3) Total amount of money expended.
 - (4) The Division or associated case number.

(5) Confidential funds utilized in Cargo Theft Interdiction Program (CTIP) cases must be submitted on a separate CHP 262 to the CTIP coordinator, in Field Support Section, for approval. Upon approval, the CTIP coordinator will submit the CHP 262 to FMS for reimbursement.

e. Flash Money. Flash money shall be obtained from the confidential fund and be subject to the same approval requirements as informant and buy monies. The ISU/PSD coordinator shall be responsible for the control of flash monies.

f. Incidental File. All CHP 303Cs not associated with an informant file shall be maintained in an incidental file. This includes the CHP 303Cs completed for flash money, buy money, and incidental money. The file shall be maintained in a place of security within the Division office. The incidental file shall be maintained in the ISU/PSD coordinator's file next to the informant file.

6. RECOVERED OR RETURNED CONFIDENTIAL FUND MONEY.

a. When buy money or flash money is recovered or returned, it shall be counted and the serial numbers verified. Upon the recovery of any confidential fund money, the date, time, and amount shall be recorded in the detail section of the original CHP 303C and signed by a unit supervisor. A separate entry for the amount returned shall also be recorded in the "Deposit" section on the confidential fund ledger.

b. Money replaced through reimbursement via a CHP 262 shall be recorded in Section E on the CHP 136D. Should the occasion occur where one reimbursement check contains reimbursement for more than one CHP 262, indicate the amounts separately, with dates the CHP 262s were sent to FMS, in addition to the total deposit.

7. RECORDS.

a. Confidentiality. All records shall be retained in a manner that will prevent their disclosure to unauthorized persons.

b. Retention. All records pertaining to informant maintenance and confidential funds shall be retained for the current year, plus four years, after the case becomes inactive. After this period of time, if no further activity occurs, the record may be purged.

c. Records Management. All confidential fund records should be divided by record type and calendar year. For example, all CHP 262s, photocopies of the reimbursement checks, and reimbursement check cashing receipts should be

maintained together, but separated by calendar year. The same process should be used for the CHP 136Ds, CHP 303Cs and receipts, and the confidential fund confirmations. In most cases, a three-ring binder is the most efficient means to maintain these records in a single location.

8. SECURITY OF FUNDS.

a. Accountability. Confidential funds are subject to the same provisions as any other state monies in accordance with the SAM, Sections 8070, 8072, and 8111.2. These Sections hold state employees entrusted with state funds strictly accountable for their security and provide for reimbursement, if appropriate.

b. Reporting. In accordance with the SAM, Section 8111.2, the confidential fund is to be counted by a person (auditor) other than the fund custodian and reported to the accounting officer at the close of each month. Within five days following the end of each month, the fund custodian and the auditor will complete and sign a CHP 155, Confidential Fund, and route it to headquarters FMS, Travel Unit. The confidential fund confirmation shall be recorded on the CHP 136D as a separate entry and shall include the names or initials of the auditor and custodian, along with their identification numbers. A copy of the confidential fund confirmation shall be maintained with the confidential fund files.

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