



CONFIDENTIAL INFORMANTS

Enforcement Division
Policy Number: LE 3.01.00

Effective Date: 2/1/08

POLICY

The Texas Alcoholic Beverage Commission (TABC) will utilize confidential informants in an efficient, cost-effective way to secure intelligence and information necessary to investigate violations involving the alcoholic beverage industry.

When working with confidential informants, the Enforcement Division will maintain the highest professional standards and will only utilize confidential informants to assist in the detection and prosecution of violations of the Alcoholic Beverage Code, Commission Rules, and applicable laws. Enforcement Division personnel will not solicit or accept anything of value from a confidential informant.

Note: This section does not apply to the participation of minors in minor or shoulder tap stings. Refer to Minor & Shoulder Tap Stings, § 1.02.03 of this manual, for policies and procedures.

PROCEDURES

a. Establishing a Confidential Informant.

1. When a CPO identifies a potential confidential informant (CI), the CPO will submit the full name and identifying data regarding the individual to his or her sergeant or immediate supervisor. CIs are identified by:
 - a recent photograph; and
 - an original set of fingerprints; or
 - state identification number (SID) or Federal Bureau of Investigation (FBI) number.
2. The CPO will determine whether the individual has been previously established or terminated by the TABC as a CI. If the individual has been previously established, the sergeant or supervisor will contact the CPO who previously established the individual as a CI to determine if there is any reason why the individual should not be reestablished as a CI.
3. The CPO should ask the individual if he or she has ever worked for another law enforcement agency as a confidential informant or another similar capacity. If so, the CPO should contact a representative of the law enforcement agency and determine if there is any reason that the individual should not be established as a CI.
4. If the supervisor approves the individual for establishment as a CI, the supervisor will ensure the completion of the *Confidential Informant Establishment Report* and will submit it up the chain of command to the chief of enforcement.

5. Additional Documentation Required for Establishing Certain Individuals.

- To establish an individual under the age of 17, the supervisor will additionally submit the following documents up the chain of command to the chief of enforcement:

(1) *Consent of Parent or Guardian*; and

(2) written justification* for establishing the individual as a CI.

** When time constraints prohibit submission of written justification, verbal communication and approval will be acceptable. The supervisor, however, must still submit written justification within a reasonable time period.*

- To establish an individual who is on probation, parole, or conditional release, the CPO will additionally acquire written approval* from the appropriate state or federal official. The CPO will submit this approval up the chain of command to the chief of enforcement. The approval should contain the following information:

(1) the name of the state or federal official from whom the approval was received;

(2) the name of the CPO who secured the approval; and

(3) any restrictions placed on the utilization of the CI.

** When time constraints prohibit submission of written approval, verbal communication and approval will be acceptable. Within a reasonable time period, the CPO must document the verbal approval, including the above information and attach it to the Confidential Informant Establishment Report.*

6. After the chief of enforcement has approved an individual for establishment as a CI, the establishing CPO and a supervisor will brief the individual. During this briefing, the CPO will:

- inform the individual of the possibility that, as a CI, he or she may be subject to subpoena and required to testify in judicial proceedings;
- document whether the individual is willing to testify in such proceedings; and
- ask the individual to read, complete, and sign a *Confidential Informant Agreement of Understanding*.

7. **Once the individual signs the *Confidential Informant Agreement of Understanding*, he or she is established as a CI.**

8. The supervisor will assign a confidential informant number to the CI. If the CI has been previously established as a CI, the supervisor will choose a new number.

9. The supervisor will create a file for each CI to maintain copies of documentation of the CI's establishment, status, and payments. Over time, this file will include:

- the *Confidential Informant Establishment Checklist*;

-
- the *Confidential Informant Agreement of Understanding*;
 - any *Confidential Informant Establishment Reports*;
 - any *Confidential Informant Status Reports*;
 - any *Confidential Informant Payment Records*; and
 - any other relevant documents.
10. The supervisor will ensure that the original copies of the following forms are sent to Enforcement Headquarters for secure storage:
- the *Confidential Informant Establishment Checklist*;
 - the *Confidential Informant Agreement of Understanding*;
 - any *Confidential Informant Establishment Reports*;
 - any *Confidential Informant Status Reports*; and
 - any *Confidential Informant Payment Records*.
11. All files related to the establishment, reestablishment, and updates regarding each CI will be maintained at Enforcement Headquarters in a separate, secure file. This file is administrative in nature and should not be used as a repository for investigative information.
- b. Utilizing Confidential Informants.**
1. The establishing CPO will periodically debrief the CI in order to assess the potential of the CI, to determine priorities, and to evaluate effectiveness. A supervisor will oversee the debriefing of CIs, but the supervisor need not be present during each debriefing.
 2. A supervisor will participate in at least one debriefing interview with each CI every six months.
 3. CPOs, if possible, will have at least two CPOs present when conducting interviews or meetings with a CI.
- c. Documenting Information Gathered from Confidential Informants.**
1. CPOs who utilize CIs will document all investigative activities resulting from the use of a CI. This includes information maintained for intelligence purposes or information used or intended for use in administrative or criminal proceedings.
 2. The supervisor will ensure that *Confidential Informant Status Reports* are created as necessary to update each CI's file.
 3. The CPO will complete *Confidential Informant Status Reports* to document the following for his or her CI(s):
 - additional intelligence provided;
-

- investigations initiated;
 - cases initiated;
 - monies paid;
 - documentation of supervisory participation in the debriefing of a CI;
 - any recommendations regarding change in CI status, including termination; and
 - if the CI is a defendant in a criminal proceeding, a description of any changes in the disposition of the case.
4. Supervisors will ensure that a *Confidential Informant Status Report* is completed every twelve months for each CI. If this report is not submitted prior to the end of the twelve-month period, the CI will automatically change to inactive status. CIs may remain inactive for an indefinite period of time. Once a CI becomes inactive, he or she must be reestablished prior to further utilization.
5. When preparing reports CPOs should refer to a CI by his or her CI number.
- d. **Legal or Administrative Proceedings Involving Confidential Informants.**
1. The TABC authorizes CPOs to communicate with federal, state and county prosecutors to explain the extent of cooperation rendered by a CI.
 2. If a CPO makes representations on behalf of a CI in any legal proceeding, the CPO will notify his or her supervisor and coordinate such representations with other affected agencies and prosecutors.
 3. A CPO will document details of any TABC personnel appearing in a legal proceeding on behalf of a CI by creating an IOC and submitting it to the supervisor. The supervisor will file a copy in the CI's district office file and will send the original copy to Enforcement Headquarters to be filed.
- e. **Payments to Confidential Informants.**
1. Payments for confidential information or expenses incurred during the gathering of confidential information will be made only to individuals established as confidential informants.
 2. Types of Payments. Payments to confidential informants generally fall into one of the following two categories:
 - **Payments for Information.** This category includes payments for information necessary to the development of a case or to the maintenance of general intelligence information.
 - **Payments for Expenses.** Payments for expenses will be made in reasonable amounts at the discretion of the chief of enforcement. These expenses include:
 - (1) travel while gathering information for TABC; and

- (2) living expenses for a definite period of time, if the confidential informant obtains new employment at a lower salary level to obtain better confidential information.
3. When a CPO believes that a CI should receive payment, the CPO will notify the supervising assistant chief of the recommended payment and the justification for it.
4. If the assistant chief approves the payment, he or she will acquire payment in the form of a check and forward it to the supervising captain. The captain will cash the check and ensure that the supervisor or his or her designee pays the CI and that the CI signs a receipt.
5. All payments to CI's must be made by a CPO and in the presence of a second CPO.
6. The supervisor will place a copy of the receipt in the CI's file and will document the payment on the *Confidential Informant Payment Record* in the CI's file.
7. The supervisor will send the original receipt to the supervising assistant chief. The assistant chief will place the receipt in the CI's file and will document the payment on the *Confidential Informant Payment Record* in the CI's file.

f. Prohibited Behavior.

1. Enforcement Division personnel will not solicit or accept anything of value from a confidential informant.
2. Enforcement Division personnel will not participate in off-duty fraternizing or have any other social interaction with a CI. Examples of prohibited behavior include, but are not limited to the following:
 - participating in any business or personal financial transactions with a CI;
 - engaging in an intimate relationship with a CI, including sexual relationships, intimate friendships, and cohabitation;
 - giving or receiving any thing of value to or from a CI; and
 - interacting with a CI for reasons that are not duty-related.
3. Enforcement Division personnel will not suggest, condone, or knowingly allow the involvement of a CI in illegal activities outside the scope of an approved investigation. A CI who commits a crime outside the scope of an approved criminal investigation will risk criminal prosecution. In furtherance of an ongoing investigation, CPOs in control of the investigation may direct a CI to violate laws. Examples include, but are not limited to:
 - purchasing or possessing illicit alcoholic beverages or drugs, stolen property, or other contraband; and
 - illegal gambling.

g. Reestablishing a Confidential Informant.

1. CIs who are changed to inactive status or are terminated must be *reestablished* in

-
- order to resume acting as a CI.
2. When a CPO seeks to reestablish a CI, the CPO must completely repeat the establishment process. See procedures above for *Establishing a Confidential Informant*.
 3. To establish an individual who was arrested for a state or federal felony while acting as a CI for the TABC, the supervisor will additionally submit written justification* for establishing the individual as a CI up the chain of command to the chief of enforcement.

** When time constraints prohibit submission of written justification, verbal communication and approval will be acceptable. The supervisor, however, must still submit written justification within a reasonable time period.*

FORMS & EXHIBITS

Confidential Informant Checklist
Confidential Informant Establishment Report
Confidential Informant Agreement of Understanding
Confidential Informant Payment Record
Confidential Informant Payment Guide
