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5 U.S. Code § 9101 - Access to criminal history records for national security and other purposes

U.S. Code Notes Authorities (CFR)

(a) As used in this section:

(1) The term “criminal justice agency” means (A) any Federal, State, or local court, and (B) any Federal, State, or local agency, or any subunit thereof, which performs the administration of criminal justice pursuant to a statute or Executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(2) The term “criminal history record information” means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term includes those records of a State or locality sealed pursuant to law if such records are accessible by State and local criminal justice agencies for the purpose of conducting background checks.

(3) The term “classified information” means information or material designated pursuant to the provisions of a statute or Executive order as requiring protection against unauthorized disclosure for reasons of national security.

(4) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(5) The term “local” and “locality” means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal, or other local government level.

(6) The term “covered agency” means any of the following:

- (A)** The Department of Defense.
- (B)** The Department of State.
- (C)** The Department of Transportation.
- (D)** The Office of Personnel Management.
- (E)** The Central Intelligence Agency.
- (F)** The Federal Bureau of Investigation.
- (G)** The Department of Homeland Security.
- (H)** The Office of the Director of National Intelligence.
- (I)** An Executive agency that—

(i) is authorized to conduct background investigations under a Federal statute; or

(ii) is delegated authority to conduct background investigations in accordance with procedures established by the Security Executive Agent or the Suitability Executive Agent under subsection (b) or (c)(iv) of section 2.3 of Executive Order 13467 (73 Fed. Reg. 38103), or any successor thereto.

(J) A contractor that conducts a background investigation on behalf of an agency described in subparagraphs (A) through (I).

(7) The terms "Security Executive Agent" and "Suitability Executive Agent" mean the Security Executive Agent and the Suitability Executive Agent, respectively, established under Executive Order 13467 (73 Fed. Reg. 38103), or any successor thereto.

(b)

(1) Upon request by a covered agency, criminal justice agencies shall make available all criminal history record information regarding individuals under investigation by that covered agency, in accordance with Federal Investigative Standards jointly promulgated by the Suitability Executive Agent and Security Executive Agent, for the purpose of—

(A) determining eligibility for—

(i) access to classified information;

(ii) assignment to or retention in sensitive national security duties or positions;

(iii) acceptance or retention in the armed forces; or

(iv) appointment, retention, or assignment to a position of public trust while either employed by the Government or performing a Government contract; or

(B) conducting a basic suitability or fitness assessment for Federal or contractor employees, using Federal Investigative Standards jointly promulgated by the Security Executive Agent and the Suitability Executive Agent in accordance with—

(i) Executive Order [13467](#) (73 Fed. Reg. [38103](#)), or any successor thereto; and

(ii) the Office of Management and Budget Memorandum "Assignment of Functions Relating to Coverage of Contractor Employee Fitness in the Federal Investigative Standards", dated December 6, 2012;

(C) credentialing under the Homeland Security Presidential Directive 12 (dated August 27, 2004); and

(D) Federal Aviation Administration checks required under—

(i) the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (subtitle E of title VII of [Public Law 100-690](#); [102 Stat. 4424](#)) and the amendments made by that Act; or

(ii) [section 44710 of title 49](#).

(2)

(A) A [State](#) central criminal history record depository shall allow a [covered agency](#) to conduct both biometric and biographic searches of [criminal history record information](#).

(B) Nothing in subparagraph (A) shall be construed to prohibit the Federal Bureau of Investigation from requiring a request for [criminal history record information](#) to be accompanied by the fingerprints of the individual who is the subject of the request.

(3) Fees, if any, charged for providing [criminal history record information](#) pursuant to this subsection shall not exceed the reasonable cost of providing such information.

(4) This subsection shall apply notwithstanding any other provision of law or regulation of any [State](#) or of any [locality](#) within a [State](#), or any other law of the [United States](#).

(c) A [covered agency](#) shall not obtain [criminal history record information](#) pursuant to this section unless it has received written consent from the individual under investigation for the release of such information for the purposes set forth in paragraph (b)(1).

(d) Criminal history record information received under this section shall be disclosed or used only for the purposes set forth in paragraph (b)(1) or for national security or criminal justice purposes authorized by law, and such information shall be made available to the individual who is the subject of such information upon request.

(e)

(1) Automated information delivery systems shall be used to provide criminal history record information to a covered agency under subsection (b) whenever available.

(2) Fees, if any, charged for automated access through such systems may not exceed the reasonable cost of providing such access.

(3) The criminal justice agency providing the criminal history record information through such systems may not limit disclosure on the basis that the repository is accessed from outside the State.

(4) Information provided through such systems shall be the full and complete criminal history record.

(5) Criminal justice agencies shall accept and respond to requests for criminal history record information through such systems with printed or photocopied records when requested.

(6) If a criminal justice agency is able to provide the same information through more than 1 system described in paragraph (1), a covered agency may request information under subsection (b) from the criminal justice agency, and require the criminal justice agency to provide the information, using the system that is most cost-effective for the Federal Government.

(f) The authority provided under this section with respect to the Department of State may be exercised only so long as the Department of State continues to extend to its employees and applicants for employment, at a minimum, those procedural safeguards provided for as part of the security clearance process that were made available, as of May 1, 1987, pursuant to section 163.4 of volume 3 of the Foreign Affairs Manual.

(g) Upon request by a covered agency and in accordance with the applicable provisions of this section, the Deputy Assistant Secretary of State for Overseas Citizens Services shall make available criminal history record information collected

by the Deputy Assistant Secretary with respect to an individual who is under investigation by the covered agency regarding any interaction of the individual with a law enforcement agency or intelligence agency of a foreign country.

(h) If a contractor described in subsection (a)(6)(J) uses an automated information delivery system to request criminal history record information, the contractor shall comply with any necessary security requirements for access to that system.

(i) The Suitability and Security Clearance Performance Accountability Council established under Executive Order 13467 (73 Fed. Reg. 38103), or any successor thereto, shall submit to the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate, and the Committee on Armed Services, the Committee on Oversight and Government Reform, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives, an annual report that—

(1) describes efforts of the Council to integrate Federal, State, and local systems for sharing criminal history record information;

(2) analyzes the extent and effectiveness of Federal education programs regarding criminal history record information;

(3) provides an update on the implementation of best practices for sharing criminal history record information, including ongoing limitations experienced by investigators working for or on behalf of a covered agency with respect to access to State and local criminal history record information; and

(4) provides a description of limitations on the sharing of information relevant to a background investigation, other than criminal history record information, between—

(A) investigators working for or on behalf of a covered agency; and

(B) State and local law enforcement agencies.

(Added Pub. L. 99-169, title VIII, § 801(a), Dec. 4, 1985, 99 Stat. 1009; amended Pub. L. 99-569, title IV, § 402(a), Oct. 27, 1986, 100 Stat. 3196; Pub. L. 101-246, title I, § 114, Feb. 16, 1990, 104 Stat. 22; Pub. L. 106-398, § 1 [[div. A], title X, § 1076(a)–(e), (f)(2)(A)], Oct. 30, 2000, 114 Stat. 1654, 1654A-280 to 1654A-282; Pub. L. 114-92, div. A, title X, § 1086(f)(1)–(6)(A), (7), (8), (10), Nov. 25, 2015, 129 Stat. 1008–1011.)