



STEVE BESHEAR
Governor

COMMONWEALTH OF KENTUCKY
KENTUCKY STATE POLICE
CRIMINAL IDENTIFICATION AND RECORDS BRANCH
1266 LOUISVILLE ROAD
FRANKFORT, KENTUCKY 40601

RODNEY BREWER
COMMISSIONER

June 25, 2012

Re: Non-Criminal Justice Government Entity Criminal History Record Information
User Agreement

Dear Sir or Madam:

Attached hereto is the current version of the Non-Criminal Justice Government Entity Criminal History Record Information User Agreement, which was developed pursuant to FBI CJIS guidelines and recommendations. The agreement provides guidance on your agency's responsibilities in receiving and handling criminal history record information. Please sign and return the attached user agreement to:

Kentucky State Police
Criminal Identification & Records Branch
Criminal Records Dissemination Section
1266 Louisville Road
Frankfort, KY 40601

Failure to comply with FBI CJIS requirements and guidelines may result in cancellation of your agency's access to criminal history record information. Should you have any questions or concerns regarding this matter, please do not hesitate to contact Arianh Faulkner, Criminal Records Dissemination Supervisor, at (502) 782-9794.

Sincerely,

Lt. Michael J. Kidd, KSP

Lt. Todd Kidd

Attachment

Non-Criminal Justice Government Entity Criminal History Record Information User Agreement

This User Agreement (Agreement) is entered into by and between the Kentucky State Police, (KSP) and Gallatin County Schools (User Agency). The purpose of this Agreement is to set forth the User Agency's responsibility when receiving, accessing and utilizing criminal history record information and to ensure the confidentiality of this information consistent with applicable guidelines and statutory mandates.

1. Definitions

For the purposes of this Agreement, the following terms shall mean:

- 1.1 "Adequate security" shall mean administrative, technical, and physical safeguards to insure the security and confidentiality of CHRI and to protect against system misuse and any anticipated threats or hazards to the security or integrity of CHRI.
- 1.2 "Applicant" shall mean an individual who is the subject of an initial and/or final fitness determination by User Agency pursuant to a criminal record background check authorized by state or federal law.
- 1.3 "Approved employees" shall mean User Agency employees who:
 - a. require access to CHRI to make fitness determinations; and
 - b. have signed an employee acknowledgement.
- 1.4 "CJIS" shall mean the Criminal Justice Information Services Division of the FBI.
- 1.5 "Challenge opportunity period" shall mean a reasonable amount of time after completion of the initial fitness determination to allow an applicant time to review, challenge, correct or complete KSP and FBI identification records, or decline to do so.
- 1.6 "Criminal history record information" or "CHRI" shall mean any of the following:
 - a. KSP and FBI rap sheets provided to User Agency pursuant to a criminal record background check authorized by state or federal law;
 - b. Cover letters/documents attached to KSP and FBI rap sheets ; and
 - c. Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records if such information does not indicate the individual's involvement with the criminal justice system.
- 1.7 "Disseminate" and "dissemination" shall mean the sale, lease, circulation, publication, distribution, broadcast or other means of making CHRI known or available to any individual, entity or group other than KSP, FBI or User Agency, whether or not for financial remuneration.
- 1.8 "Employee acknowledgement" shall mean a written statement signed by User Agency employees providing that they agree to be subject to the duties and responsibilities required of User Agency by this Agreement.

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1.9 "FBI" shall mean the Federal Bureau of Investigation.

1.10 "Final fitness determination" shall mean a conclusive determination by User Agency of whether an applicant is eligible for employment or licensing based on CHRI after the challenge opportunity period has expired.

1.10 "Herein", "hereto", "hereof" and "hereunder" shall be deemed to refer to this Agreement generally, and not to any particular provision of the Agreement.

1.11 "Include", "includes" and "including" shall be deemed to be followed by the phrase "but not necessarily limited to".

1.12 "Initial fitness determination" shall mean a preliminary decision by User Agency of whether an applicant is eligible for employment or licensing based on CHRI.

1.13 "System misuse" is the mishandling, misappropriation or exploitation, with or without financial remuneration, of CHRI and shall include:

- a. access or use without authorization;
- b. access exceeding authorization;
- c. access for an improper purpose; and
- d. use or dissemination for a purpose other than that authorized by this Agreement.

2. Section Headings

The section headings in this Agreement are for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement. The section headings shall not be construed to limit or extend the meaning of this Agreement.

3. Interpretation

This Agreement constitutes the entire agreement and understanding between the parties and supersedes and replaces any and all prior or contemporaneous proposals, agreements, understandings, commitments or representations of any kind, whether written or oral, relating to the subject matter hereof or the services to be performed hereunder. Both parties have read and agree to the specific language of this Agreement; therefore no conflict, ambiguity, or doubtful interpretation shall be construed against the drafter.

4. Applicable Law

This Agreement shall be governed by, construed and interpreted under the laws of the Commonwealth of Kentucky. The parties agree that the proper jurisdiction and venue for any legal action that is brought on the basis of this Agreement is the Franklin County Circuit Court of the Commonwealth of Kentucky.

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5. Non-Waiver

The failure or delay of either party to insist upon performance of any provision of this Agreement, or to exercise any right, remedy or option provided herein, shall neither be construed as a waiver of the right to assert any of the same or to rely on any such terms or conditions at any time thereafter, nor in any way affect the validity of this Agreement.

6. User Agency

6.1 User Agency shall not disseminate any CHRI.

6.2 User Agency hereby acknowledges that it has received a copy of, is familiar with, and shall comply with and be subject to the contents of the CJIS Security Policy and CJIS Security Addendum.

6.3 User Agency shall use adequate security for CHRI and maintain a security program consistent with federal and state laws, regulations, and standards, (including Title 28, Code of Federal Regulations, Part 20 and the CJIS Security Policy and Addendum in effect when the Agreement is executed), as well as with policies and standards established by the CJIS Advisory Policy Board.

6.4 User Agency shall immediately report to KSP any system misuse or breaches of adequate security and cooperate with any investigation of same.

6.5 User Agency agrees that KSP is not responsible for any initial or final fitness determinations or other decisions made, or actions taken, by User Agency in reliance on CHRI.

6.6 User Agency shall use CHRI only for fitness determinations.

6.7 User Agency shall limit access to CHRI to its approved employees.

6.8 User Agency shall direct its employees to comply with the terms of this Agreement.

6.9 User Agency agrees to retain employee acknowledgements during the term of this Agreement and provide copies of same to KSP upon request.

6.10 User Agency shall cooperate with any Law Information Network of Kentucky (LINK) and CJIS systems audit by KSP. User Agency further agrees that KSP and/or its employees shall not be required to sign or otherwise agree to a confidentiality agreement, acceptable use agreement or any other agreement prior to conducting an audit.

6.11 User Agency shall ensure that all fingerprints and background check requests are properly submitted to KSP to ensure appropriate fee payment and designation of the reason fingerprinted.

6.12 Notwithstanding the provisions of subsection 6.1, User Agency may provide a copy of an

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applicant's KSP and FBI rap sheets to the applicant upon completion of the initial fitness determination. User Agency shall establish policies and procedures for an identity verification process to ensure they are providing the KSP and FBI rap sheets to the subject of the record. User Agency shall maintain a written or electronic record showing the information that was released to the applicant and the date of release.

6.13 User Agency shall provide to applicants the following upon completion of the initial fitness determination :

- a. Notice that their fingerprints will be used to check the criminal history records of KSP and FBI;
- b. Opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record;
- c. Notice of the procedures for changing, correcting, or updating a FBI identification record as set forth in Title 28, C.F.R., § 16.34; and
- d. Notice of the procedures for requesting a review and/or challenge of a KSP identification record as set forth in 502 KAR 30:070.

6.14 Except as otherwise provided in this Agreement, User Agency shall not disseminate any CHRI other than stating that the denial of employment or licensing is due to disqualifiers found during a background investigation.

6.15 User Agency shall promptly destroy an applicant's CHRI (including scanned images, photographs, copies or other reproductions) after his or her final fitness determination is completed. The destruction of CHRI shall be performed by User Agency or under its supervision.

6.16 User Agency agrees that KSP shall not be liable in tort, contract, or otherwise, to User Agency or any other person for any damages or losses sustained, directly or indirectly, from use of CHRI.

7. Violation of Agreement

Violation of this Agreement by User Agency or its employees may result in the immediate termination of access to CHRI. User Agency hereby acknowledges and agrees that dissemination of CHRI or use of CHRI in a manner inconsistent with this Agreement will cause irreparable damage and in such event KSP shall have the right to equitable and injunctive relief, and to seek any other legal or equitable remedies available as a result of violation of the terms of this Agreement by User Agency or its employees.

8. Agreement Period

This Agreement shall commence on the date of the last signature of the duly authorized representatives of KSP and User Agency and remain in effect until terminated by either party.

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9. Termination

Either party may terminate this Agreement at any time for cause or may terminate without cause upon thirty (30) days written notice to the other party.

10. Modification

This Agreement may not be modified or altered except by written instrument duly executed by both parties.

11. Notice Requirements

11.1 Notice by KSP of termination of this Agreement shall be provided in writing by the KSP Commissioner or his designee to User Agency.

11.2 Notice by User Agency of termination of this Agreement shall be provided in writing by User Agency to the KSP Commissioner.

12. Miscellaneous

12.1 CHRI shall at all times remain the property of KSP, and no grant of any proprietary rights is hereby given or intended, including any express or implied license, other than the limited right of User Agency to use CHRI for fitness determinations.

12.2 In order for the KSP to maintain control and integrity of its records, User Agency agrees that any subpoena, Open Records Request pursuant to KRS 61.870, et seq., or Freedom of Information Act request seeking access to CHRI, will be referred for response to the KSP as the official custodian of the records.

12.3 User Agency shall not assign any portion of the work to be performed under this Agreement, or execute any contract or amendment thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written concurrence of the KSP.

12.4 Each party represents to the other that (i) it has read this Agreement, and agrees to all of its terms and conditions; (ii) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; (iii) the person executing this Agreement on its behalf has the authority to do so; (iv) upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and (v) the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the party.

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IN WITNESS WHEREOF, the parties hereto caused this agreement to be executed by the proper officers and officials:

Name and Title of User Agency's Representative (Please Print)

GALLATIN COUNTY SCHOOLS
75 BOARDWALK
WARSAW, KY 41095
KY930650Z

Signature of User Agency's Representative

Date of Signature

Signature of KSP Representative

Date of Signature