



FLOYD COUNTY BOARD OF EDUCATION
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Dr. Chandra Varia, Member - District 2
Keith Smallwood, Member - District 4
Steve Slone, Member - District 5

Consent Agenda Item (Action Item): Consider/Approve the Non-Criminal Justice Government Entity Criminal History Record Information User Agreement. Between the Kentucky State Police and the Floyd County Schools

Applicable State or Regulations: BOE Policy 0.11 Powers and Duties of the Local Board of Education.

Fiscal/Budgetary Impact: N/A

History/Background: 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.

Recommended Action: Approve as presented

Contact Person(s): Angela Duncan

N/A
Principal

Angela Duncan
Director

Anna Shepherd
Superintendent

Date: 4-27-22

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 Floyd County Board of Education (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 definitions listed in this section shall represent the common and exclusive understanding of the parties hereto. The singular and plural form, as well as the small or upper case, of any defined term can be used interchangeably regardless of whether the definition refers to the singular or plural term, or uses the small or upper case.

1.1 "Adequate security" shall mean administrative, technical, and physical, safeguards to ensure the security and confidentiality of CHRI, protect against system misuse and any anticipated threats or hazards to the security of CHRI.

1.2 "Applicant" shall mean an individual who is the subject of a fitness determination by User Agency pursuant to a criminal record background check authorized by state or federal law.

1.3 "Approved employee" shall mean an User Agency employee that:

- a. requires access to CHRI to make fitness determinations; and
- b. has signed an employee acknowledgement.

1.4 "CJIS" shall mean the Criminal Justice Information Services Division of the FBI.

1.5 "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.

1.6 "Disclose" and "disclosure" shall mean the sale, lease, circulation, release, publication, distribution, dissemination, broadcast or other means of making CHRI known, or available, to any individual, entity, or group, other than KSP, FBI, and or User Agency.

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1.7 “Employee acknowledgement” shall mean a written statement signed by a User Agency employee providing that he or she agrees to be subject to the duties and responsibilities required of User Agency by this Agreement.

1.8 “FBI” shall mean the Federal Bureau of Investigation.

1.9 “Fitness determination” shall mean a determination by User Agency of whether an applicant is eligible for employment or licensing based on CHRI.

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

- a. access, disclosure, or use, without authorization;
- b. access, disclosure, or use, exceeding authorization;
- c. access, disclosure, or use, for an improper purpose; or
- d. use, or disclosure, 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 relating to 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 disclose 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 policies and standards established by the CJIS Advisory Policy Board.

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

6.5 User Agency agrees that KSP is not responsible for any fitness determinations, hiring, 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 agrees that it shall not allow access to CHRI to anyone other than KSP, FBI, or an approved employee.

6.8 User Agency shall direct its employees to comply with the terms of this Agreement, as well as the contents of the CJIS Security Policy and CJIS Security Addendum.

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

6.10 User Agency shall cooperate with any Law Information Network of Kentucky (LINK) and CJIS systems audit by KSP, or FBI. User Agency further agrees that KSP and 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.

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6.12 Notwithstanding the provisions of this Agreement, User Agency may provide a copy of an applicant's KSP and FBI rap sheets to the applicant upon completion of the 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 Prior to fingerprinting, User Agency shall provide to applicants:

- 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 within thirty (30) days;
- 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, 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 disclose any CHRI other than stating that the denial of employment or licensing is due to disqualifiers found during a criminal record background check.

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. In lieu of destruction, User Agency may retain CHRI in accordance with the CJIS Security Policy and Addendum. User Agency agrees to ensure that its agency retention schedule is revised to accommodate this provision.

6.16 User Agency agrees that CHRI is confidential pursuant to KRS 17.150 and KRS 61.878(1)(1) and agrees not to release CHRI pursuant to a subpoena, an Open Records Request pursuant to KRS 61.870, et seq., or Freedom of Information Act or similar request under the laws of another jurisdiction.

6.17 To the extent permitted by the laws of the Commonwealth of Kentucky, 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.

6.18 Within thirty (30) days of the effective date of this Agreement, User Agency shall provide KSP with a copy of:

- a. its CHRI storage, sharing, and transmission methodology;
- b. photographs, and diagrams, of the site where CHRI is stored, including the placement of any computers and servers; and

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- c. its network diagram showing the structure, layout, and data flow, of the computer network on which CHRI will be stored or transmitted.

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 disclosure 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.

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 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.

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12.3 User Agency shall not assign any portion of the work to be performed under this Agreement, 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 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.

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

Anna W. Shepherd

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

Signature of User Agency's Representative

Date of Signature

Signature of KSP Representative

Date of Signature