



GENERAL ORDER

Loudoun County Sheriff's Office

Chapter: Operations

Section: 413.4

Subject: Records

Topic: Privacy & Security Act for Criminal History Information

Enacted: 07/30/2015

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I. PURPOSE

The purpose of this General Order is to provide guidelines for the release of criminal history information.

II. POLICY

The release of criminal history information to non-authorized persons is a criminal violation. It is the policy of the Loudoun County Sheriff's Office to establish and maintain privacy and security precautions for the release of criminal history information. These precautions are governed by §19.2-389, Code of Virginia, as amended.

III. PROCEDURES

A. Record Checks

1. Agencies authorized to obtain record checks
 - a. Criminal justice agencies may request and receive criminal history information from the Loudoun County Sheriff's Office on offenses both reportable and non-reportable to the Central Criminal Records Exchange (CCRE). This includes information concerning felonies and all misdemeanors.
 - b. Non-criminal justice agencies (including Loudoun County government departments or agencies) may receive only that criminal history record information that is non-reportable to CCRE (Class 3 and 4 misdemeanors). Non-reportable information consists of only "local" or Loudoun County Sheriff's Office arrests.
 - c. The Administrative and Technical Services Division Commander or in his/her absence, the duty supervisor shall be consulted if there is uncertainty whether a requesting agency is a criminal or non-criminal justice agency.
 - d. Arrest record checks will be furnished to those authorized agencies listed in Attachment A upon receipt of a signed request received through the U.S. Postal Service or presented in person by an individual bearing a valid identification card issued by or identifying the

agency/activity that the person is representing.

- e. After receiving proper identification, Records Section personnel shall complete a Criminal History Record Check (LCSO form 1.39). The completed form shall be reviewed to ensure compliance with this General Order. Records Section personnel may then release the information requested. A copy of the Criminal History Record Check form will be retained by the Sheriff's Office. The original form will be given to the requester.
- f. The completed form shall be filed alphabetically under the name of the subject whose record was searched, whether or not a record was found.
- g. Requests made to Emergency Communications Center personnel by other than Loudoun County Sheriff's Office employees shall be referred to the Records Section.

2. Other Agencies

- a. Whenever an individual, who is not employed with any of the authorized agencies, requests something other than a personal record check, Records Section personnel shall notify the Administrative and Technical Services Division Commander or, in his/her absence, any other division commander or duty supervisor, who shall handle the request. Under state law, the Sheriff's Office is prohibited from releasing any criminal history information unless the requesting agency is permitted access to such records.
- b. The individual shall be instructed to send or bring in, along with the record request, a copy of their agency's authority to have access to criminal history records.
- c. The Loudoun County Sheriff's Office will not release Class 3 or 4 misdemeanor criminal history record information, which pertains to an arrest that occurred more than one year prior to the date of the request, by an authorized non-criminal justice agency and for which no disposition has been recorded.
- d. No criminal history will be released for which no disposition has been recorded.

3. Juvenile Criminal History Information

- a. Personnel shall not release juvenile criminal history information to any of those agencies/activities listed in Attachment A. Loudoun County Sheriff's Office personnel, with a need to know, may request a juvenile

criminal history record information check and receive same by submitting a Criminal History Record Check.

- b. Should an outside individual request a juvenile criminal history record check, the Records Section clerk shall notify them that such requests must be made to the Loudoun County Juvenile and Domestic Relations Court, Loudoun County, Virginia.

4. Telephone Arrest Record Checks from Local Law Enforcement Agencies

- a. An Emergency Communications Center dispatcher, Adult Detention Center deputy, or Records Section clerk, who receives a telephone call requesting a record check shall:

- 1. Obtain the requester's name, position, and law enforcement agency
- 2. Ask the requester for their telephone number and inform them that their call will be returned
- 3. Verify the requester's employment by contacting the law enforcement agency on a telephone line other than the one provided by the requester
- 4. Once employment has been verified, contact the requester through the original telephone number. The clerk will obtain enough information from the requester to complete the Criminal History Record Check form. If the requester does not need the original copy of the Criminal History Record Check form, it will be destroyed.

5. In-House Record Checks

- a. A deputy sheriff with a need to know can request a local criminal history arrest record or a VCIN/CCH record request through the Emergency Communications Center, Adult Detention Center, or Records Section.
- b. While on patrol if a deputy requests a VCIN/CCH inquiry on an individual, only the fact that there is or is not a CCH record on the individual will be relayed to the requesting unit via radio. No reference to the name of the individual or to the contents of the CCH records will be transmitted via radio by the dispatcher under any circumstance.

6. Freedom of Information of Act (Virginia Code §2.2-3700 et seq.)
 - a. All verbal or written requests for information under the Freedom of Information Act will be made through or processed by the Administrative and Technical Services Division Commander or his designee. The designees for Records Section and Emergency Communications Center FOIA requests are the Records Section Program Manager and Administrative and Technical Services Division Assistant Division Commander – ECC Manager. The Loudoun County Attorney's Office will be the Sheriff's Office's liaison to answer any questions regarding the release of information to any individual.
 - b. If a request for information under the Freedom of Information Act has been made verbally, the requestor will be asked to reduce his/her request to written form. The written request will be used to verify residency status and to provide documentation of the date the request was made and received.
 - c. A FOIA request from a citizen of the Commonwealth, which must identify documents with reasonable specificity, or a civil court order will be the basis for complying with all requests for documents or records under the Freedom of Information Act.
 1. An initial response must be made within five (5) working days after the request is made. The records sought must be provided within the five (5) day time frame or one of the following four responses must be provided to the requester in writing:
 - a. The requested records will not be provided, citing the specific section of FOIA that exempts the records or any other statute that prohibits their release.
 - b. The requested records are being provided in part and withheld in part because the release of part of the records is prohibited by law or the custodian has exercised his discretion to withhold a portion of the records pursuant to FOIA. This response must include a written statement identifying the specific code section that authorizes the withholding of the records.
 - c. The requested records could not be found or do not exist. If it is known that the records are in the possession of another public body, the response must include contact information for the other public body.
 - d. It is not practically possible to provide the requested

records or determine if they are available within five working days. The condition making a response impossible must be stated. If the response is made within five (5) working days, an additional seven (7) is provided for a response.

1. If the request is for an extraordinary volume of records or will require an extraordinarily lengthy search that will prevent the Sheriff's Office from meeting its operational responsibilities, the Sheriff's Office may petition the appropriate court for additional time to respond. Prior to filing any such petition, reasonable effort must be made to reach an agreement with the requester concerning the production of the records.
- d. The Sheriff's Office may recover reasonable charges, not to exceed the *actual costs* associated with producing records from the requesting individual including a staff member's hourly wage for researching, locating, and duplicating the record(s) as well as the direct cost of photocopying the records.
 - e. Criminal incident information is requested frequently under FOIA. This is minimal information about an event. The following list is the type of information normally provided as criminal incident information:
 1. General description of the criminal activity reported
 2. The date and general location the alleged crime was committed
 3. Identity of the investigating officer
 4. A general description of any injuries suffered or property damaged or stolen
 - f. Criminal incident information requested through FOIA may be withheld in the following circumstances, however a final determination of whether the document shall be released shall be made in conjunction with the Office of the County Attorney:
 1. When an ongoing investigation or prosecution may be jeopardized
 2. When the safety of an individual may be jeopardized

3. When the release of information may cause a suspect to flee or evade detection
 4. When the release of information may result in the destruction of evidence
- g. In addition, some of the following records may be labeled as “protected information” and not released under FOIA. This determination will be made in conjunction with the Office of the County Attorney:
1. The identities of victims, witnesses, or undercover officers
 2. Investigative techniques or procedures
 3. Complaints, memoranda, correspondence, and evidence relating to a criminal investigation
 4. Non-criminal incidents or other investigative reports or materials containing identifying information of a personal, medical, or financial nature where the release of such information could jeopardize the safety or privacy of any person;
 5. Records of background investigations of applicants for law enforcement agency employment or other confidential administrative investigations
 6. Portions of records containing plans for or resources dedicated to undercover operations
 7. Personnel records, with the exception of salaries over \$10,000, including disciplinary actions
 8. Law enforcement agency records containing specific tactical plans, surveillance techniques, personnel deployments, security system, computer programs, etc. that would jeopardize the security of any courthouse, jail, law enforcement facility, law enforcement personnel, or the general public
 9. Information and records acquired during a review of any child death by the State Child Fatality Review Team
 10. Confidential records provided to staff of a rape crisis center or a program for battered spouses

11. Other specific records as cited within the Code of Virginia

B. An Individual's Right to Access Own Record

1. Motor Vehicle Traffic Requests

a. Requests for review of traffic records must be made in writing to the Division of Motor Vehicles.

2. Criminal History Requests

a. Requests for local/non-reportable (Class 3 or 4 misdemeanors) criminal history checks may be made in person to the Records Section by completing the Criminal History Record Check form. The Records Section clerk shall verify the individual's current address, inspect appropriate identification and ascertain whether the individual has ever been arrested in Loudoun County. Once the local criminal history check has been completed, the Criminal History Record Check form will be filed alphabetically by name.

b. Requests for all other criminal history checks ("Reportable"/Class 1 and 2 misdemeanors and all felonies) must be made through the Virginia State Police. A Criminal History Record Name Search Request must be completed, notarized and mailed to the Virginia State Police. The Virginia State Police will initiate a VCIN/CCH inquiry and mail back the results to the individual. The Loudoun County Sheriff's Office will not make VCIN/CCH inquiries for individuals.

3. Requirements for Checking an Individual's Record

a. Requests for access to local criminal history record information must be made in person. Only those individuals who maintain a current address within the County of Loudoun, who have been arrested within the County of Loudoun or ever resided in the county, may have access to their local criminal history information. Individuals not meeting this prerequisite shall be referred to the appropriate law enforcement agency, either where they reside or where they were arrested.

4. Identification of an Individual

a. The following are acceptable forms of positive identification:

1. A military identification card, driver's permit, passport, or identification card issued by the Division of Motor Vehicles for non-drivers, bearing a photograph of the bearer

2. A sworn, notarized statement, provided by the individual, supported by a copy of the individual's birth certificate

C. Individuals Desiring to Challenge Their Own Criminal History Record

1. Those individuals who desire to challenge their own criminal history record information must complete documentation provided by the criminal justice agency maintaining the record and forward it to the Central Criminal Records Exchange (CCRE) or the criminal justice agency maintaining the record. A duplicate copy of the form and the challenged record may be retained by the individual initiating the challenge or review. The individual's record concerning arrests for felonies and Class 1 and 2 misdemeanors may be challenged at the CCRE or the criminal justice agency maintaining the record. For offenses not required to be reported to the CCRE, the challenge shall be made at the arresting law-enforcement agency or the criminal justice agency maintaining the records. A challenge will be processed as described below:

a. Record maintained by the Central Criminal Records Exchange

1. Message flags. If the challenge is made of a record maintained by the CCRE, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." A challenged record shall carry this message when disseminated while under challenge.
2. Review at exchange. The CCRE shall compare the information contained in the repository files as reviewed by the individual with the original arrest or disposition form. If no error is located, the CCRE shall forward a copy of the challenge form, a copy of the CCRE record and other relevant information to the criminal justice agency or agencies which the CCRE records indicate as having originated the information under challenge, and shall request that they examine the relevant files to determine the validity of the challenge.
3. Examination. The criminal justice agency or agencies responsible for originating the challenged record shall conduct an examination of their source data, the contents of the challenge and the information supplied by the CCRE for any discrepancies or errors, and shall advise the CCRE of the results of the examination.
4. Correction. If any modification of a CCRE record is required, the Exchange shall modify the record and shall then notify the criminal justice agency in which the record was originally

reviewed of its action taken and supply that agency and any other agencies involved in the review with a copy of the corrected record.

5. Notification by CCRE. The CCRE shall also provide notification of the correction to all recipients of the record within the last 24 months.
6. Notification by other criminal justice agencies. Criminal justice agencies which have disseminated an erroneous or incomplete record shall in turn notify agencies which have received the disseminated record or portion of the record in the last two years from the date of the CCRE modifications of the records.

Notification shall consist of sending a copy of the original record, and corrections made, to the recipients of the erroneous record noted in the dissemination log for the two-year period prior to the date of correction by the CCRE. (See §9-192 C of the Code of Virginia.) The criminal justice agency in which the review and challenge occurred shall notify the individual or his attorney of the action of CCRE.

7. Appeal. The record subject or his/her attorney, upon being provided with the results of the record review, shall also be informed of his/her right to review and appeal those results.
- b. Record maintained by a criminal justice agency other than the CCRE.
1. Message flags. If a challenge is made of a record maintained by a criminal justice agency, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." A disseminated record shall contain this message while under challenge.
 2. Examination and correction agency. If the challenged record pertains to the criminal justice agency's arrest information, the arresting agency shall examine the relevant files to determine the validity of the challenge. If the review demonstrates that modification is in order, the modification shall be completed and the erroneous information destroyed. If the challenged record pertains to the disposition information, the arresting agency shall compare contents of the challenge with information originally supplied by the clerk of the court.
 3. Review by Clerk of Court. If no error is found in the criminal justice agency's records, the arresting agency shall forward the

challenge to the clerk of the court that submitted the original disposition. The clerk of the court shall examine the court records pursuant to the challenge and shall, in turn, notify the arresting agency of its findings. The arresting agency shall then proceed as described in subsection B 2 of this section.

4. Notification. The criminal justice agency in which the challenge occurred shall notify the individual or his attorney of the action taken, and shall notify the CCRE and other criminal justice agencies receiving the erroneous information of the necessary corrections if required, as well as the non-criminal justice agencies to which it has distributed the information in the last 24 months, as noted in its dissemination log.
5. Correction. The CCRE will correct its records, and notify agencies that received erroneous information within the past 24 months. The agencies will be requested to correct their files and to notify agencies which have the disseminated information, as provided in subsection A 6 of this section.
6. Appeal. The record subject or his/her attorney, upon receiving the results of the record review, shall be informed of the right to review and appeal.

c. Administrative review of challenge results.

1. Review by criminal justice agency head. If not satisfied with the results of the aforementioned review and challenge concerning a record, either in the CCRE or another criminal justice agency, the individual or his/her attorney may, within 30 days and in writing, request a review by the head of the criminal justice agency to which the challenge was made.
2. Thirty-day review. The criminal justice agency head or his/her designated official shall review the challenge by reviewing the action taken by the agency, the CCRE, and other criminal justice agencies, and shall notify the individual or his/her attorney in writing of the decision within 30 days of the receipt of the written request to review the challenge. The criminal justice agency head shall also notify the individual of the option to request an administrative appeal through the department within 30 days of the postmarked date of the notification of the decision. This notification of the appeal shall include the address of the Department of Criminal Justice Services.

3. Correction and notification. If required, correction and notification shall follow the procedures outlined in subsections A and B of this section.
 4. Notification to the department. A copy of the notice required in subsection C 2 of this section shall be forwarded to the department by the criminal justice agency at the same time it is provided to the individual.
- d. Administrative appeal
1. Departmental assessment. The individual or his/her attorney challenging his/her record may request that the Director of the Department of Criminal Justice Services review the challenge and conduct an informal hearing. The request for such review must be made within 30 days of the date of the postmark on the notification of the decision of the administrative review. The director may designate a hearing officer for this purpose.
 2. Determination of merits of case. The director or his/her designee shall contact the criminal justice agencies involved and request any and all information needed. Criminal justice agencies shall supply the information requested in a timely manner, in order to permit the department to respond to the individual within 30 days. The director will then rule on the merits of a hearing and notify the individual or his/her attorney whether a hearing will be held.
 3. Hearing. Any hearing shall be conducted within 30 days of the receipt of the request, and the decision of the hearing officer shall be communicated to the individual or his/her attorney within 30 days of the conclusion of the hearing.
 4. Finding. If the director or the hearing officer determines that correction and modification of the records are required, correction of the record and notification of all involved parties shall proceed according to the procedures outlined in subsections A and B of this section.
 5. Removal of a challenge designation. When records and relevant action taken by the criminal justice agencies involved are deemed to be correct, the department shall notify the affected criminal justice agencies to remove the challenge designation from their files.

- e. Department notification following corrections

For audit purposes, the CCRE shall annually forward the names and addresses of the agencies which originated erroneous record information or received erroneous information from the exchange in that year to the Department of Criminal Justice Services.

ATTACHMENT A

Dissemination of criminal history record information is based on information contained in §19.2-398, Code of Virginia, as amended. Criminal history information shall be disseminated, whether directly or through an intermediary, only to the following individuals or entities:

1. Authorized officers or employees of criminal justice agencies as defined by §9-169 for the purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state responsible inmates for the purpose of making parole determinations pursuant to subdivision 1,2,3, and 5 of §53.1-136 shall include collective dissemination by electronic means every thirty days.
2. Such other individuals and agencies which require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a non-criminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending.
3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data.
4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data.
5. Agencies of state or federal government which are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.
6. Individuals and agencies where authorized by court order or court rule.
7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for public employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration.
8. Public or private agencies when and as required by federal or state law or interstate compact

to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

9. To the extent permitted by federal law or regulation, public service companies as defined in §56-1,

for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration.
10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including but not limited to, issuing visas and passports.
11. A person requesting a copy of his own criminal history record information as defined in §9-169 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America, with a volunteer fire company or volunteer rescue squad, as a court-appointed special advocate, or with the Volunteer Emergency Families for Children.
12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in §63.1-195 for dissemination to the Commissioner of Social Services representative pursuant to §63.1-198 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §63.1-198.1, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.
13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment.
14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law.
15. Licensed nursing homes and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to §32.1-126.01 and home care organizations pursuant to §32.1-162.9:1, subject to the limitations set out in subsection E.
16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in

licensed homes for adults pursuant to §63.1-189.1, and in licensed adult day-care centers pursuant to §63.1-194.13, subject to the limitations set out in subsection F.

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in §4.1-103.1.
18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions.
19. The Commissioner of the Department of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning.
20. Other entities as otherwise provided by law.