

TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III - EMPLOYEES

Subpart H - Access to Criminal History Record Information

CHAPTER 91 - ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY AND OTHER PURPOSES

§ 9101. Access to criminal history records for national security and other purposes

(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 does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

(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.

(b) (1) Upon request by the head of a covered agency, criminal justice agencies shall make available criminal history record information regarding individuals under investigation by that covered agency for the purpose of determining eligibility for any of the following:

(A) Access to classified information.

(B) Assignment to or retention in sensitive national security duties.

(C) Acceptance or retention in the armed forces.

(D) Appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the Government or performing a Government contract.

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- (2) Such a request to a State central criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system.
- (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.
- (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.

(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.)

Amendments

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1076(f)(2)(A)], substituted “Access to criminal history records for national security and other purposes” for “Criminal history record information for national security purposes” in section catchline.

Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(e)(1)], substituted “means (A) any Federal, State, or local court, and (B) any Federal, State, or local agency, or any subunit thereof, which” for “includes Federal, State, and local agencies and means: (A) courts, or (B) a Government agency or any subunit thereof which”.

Subsec. (a)(4). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(e)(2)], inserted “the Commonwealth of” before “the Northern Mariana Islands” and struck out “the Trust Territory of the Pacific Islands,” after “American Samoa.”

Subsec. (a)(6). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(a)(1)], added par. (6).

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(c)], in first sentence of par. (1), inserted “any of the following:” after “eligibility for” and substituted subpars. (A) to (D) for “(A) access to classified information or (B) assignment to or retention in sensitive national security duties.”, designated second sentence of par. (1) as par. (2), designated third sentence of par. (1) as par. (3) and substituted a period for “, nor shall they in any event exceed those

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charged to State or local agencies other than criminal justice agencies for such information.”, and redesignated former par. (2) as (4).

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(a)(2)], substituted “by the head of a covered agency” for “by the Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation” and “that covered agency” for “such department, office, agency, or bureau”.

Subsec. (b)(3). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(b)], struck out par. (3) which related to agreements between Federal departments and agencies and States and localities to indemnify and hold harmless the States and localities from claims arising from the disclosure or use of criminal history record information.

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(a)(3)], substituted “A covered agency” for “The Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation”.

Subsecs. (e), (f). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(d)], added subsec. (e) and redesignated former subsec. (e) as (f).

1990—Subsecs. (b)(1), (3)(A), (B), (c). Pub. L. 101–246, § 114(1), inserted “the Department of State,” after “Defense,” wherever appearing.

Subsec. (e). Pub. L. 101–246, § 114(2), added subsec. (e).

1986—Subsecs. (b)(1), (3), (c). Pub. L. 99–569 inserted references to the Federal Bureau of Investigation and such bureau.

Effective Date of 1986 Amendment

Section 402(c) of Pub. L. 99–569 provided that: “The amendments made by this section [amending this section and provisions set out as a note under this section] shall become effective with respect to any inquiry which begins after the date of enactment of this Act [Oct. 27, 1986] conducted by the Federal Bureau of Investigation for purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code.”

Effective Date

Section 802 of Pub. L. 99–169 provided that: “The amendments made by section 801(a) of this Act [enacting this section] shall become effective with respect to any inquiry which begins after the date of enactment of this Act [Dec. 4, 1985] conducted by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, for the purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code, as added by this Act.”

Termination Date of Subsection (b)(3) of This Section

Pub. L. 100–453, title I, § 101(d), Sept. 29, 1988, 102 Stat. 1904, extended the expiration date provided in section 803(b) of Pub. L. 99–169, formerly set out below, until Dec. 31, 1989.

Section 803(b) of Pub. L. 99–169 provided that subsec. (b)(3) of this section expired three years after Dec. 4, 1985.

Report to Congressional Committees on Effect of Provisions for Indemnification Agreements

Section 803(a) of Pub. L. 99–169, as amended by Pub. L. 99–569, title IV, § 402(b), Oct. 27, 1986, 100 Stat. 3196, directed Department of Justice, within two years after Dec. 4, 1985, and after consultation with Department of Defense, Office of Personnel Management, Central Intelligence Agency, and Federal Bureau of Investigation, to report to appropriate committees of Congress concerning the effect of 5 U.S.C. 9101 (b)(3), as added by this Act, including the effect of the absence of indemnification agreements upon States and localities not eligible under 5 U.S.C. 9101 (b)(3) for such agreements.