

DEPARTMENT OF JUSTICE

[Docket No. OLP 100]

Criminal History Background Checks; Request for Comments

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: Section 6403 of the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 118 Stat. 3638, 3758-60 (2004) requires the Attorney General to report to Congress on statutorily required criminal history record checks conducted by the Department of Justice. As part of this report, the Attorney General is required to make certain recommendations to Congress for improving, standardizing, and consolidating the existing statutory authorizations, programs, and procedures for the conduct of criminal history record checks for non-criminal justice purposes, such as licensing and employment. In developing this report, the Attorney General must consult with representatives of state criminal history repositories, the National Crime Prevention and Privacy Compact Council, appropriate representatives of private industry, and representatives of labor.

Therefore, to provide a means of input to these named parties, and to allow for broader public input on the issues that will be addressed in the report, the Department of Justice is publishing this notice seeking public comment on the development of the required report.

DATES: All comments must be received no later than August 5, 2005.

ADDRESSES: Comments may be mailed to Richard A. Hertling, Deputy Assistant Attorney General, Office of Legal Policy, 4234 Robert F. Kennedy Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530. To ensure proper handling, please reference OLP Docket No. 100 on your correspondence. You also may comment via the Internet to the Justice Department's Office of Legal Policy (OLP) at [olpregs@usdoj.gov](mailto:olpregs@usdoj.gov). When submitting comments electronically, you must include ``OLP Docket No. 100'' as the sole heading in the subject box.

SUPPLEMENTARY INFORMATION: On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (hereinafter the ``Act''), Pub. L. 108-458, 118 Stat. 3638 (2004). Section 6403

of the Act requires the Attorney General to report to Congress on a number of matters associated with record checks using Department of Justice-maintained criminal history information. For example, the Act requires the Department of Justice to provide information regarding the number of criminal history record checks requested, the type of information requested, the usage of different terms and definitions regarding criminal history information, and the variation in fees charged for such information and who pays such fees.

In addition, the Department of Justice also is required to ``make recommendations to Congress for improving, standardizing, and consolidating the existing statutory authorizations, programs, and procedures for the conduct of criminal history record checks for non-criminal justice purposes.'' Section 6403(d), 118 Stat. 3638, 3759 (2004). Pursuant to section 6403(d) of the Act, the Department of Justice is to consider the following fifteen factors in making the recommendations:

(1) The effectiveness and efficiency of utilizing commercially available databases as a supplement to IAFIS [the Integrated Automated Fingerprint Identification System] criminal history information checks;

(2) Any security concerns created by the existence of these commercially available databases concerning their ability to provide sensitive information that is not readily available about law enforcement or intelligence officials, including their identity, residence, and financial status;

(3) The effectiveness of utilizing State databases;

(4) Any feasibility studies by the Department of Justice of the resources and structure of the Federal Bureau of Investigation to establish a system to provide criminal history information;

(5) Privacy rights and other employee protections, including--

(A) Employee consent;

(B) Access to the records used if employment was denied;

(C) The disposition of the fingerprint submissions after the records are searched;

(D) An appeal mechanism; and

(E) Penalties for misuse of the information;

(6) The scope and means of processing background checks for private employers utilizing data maintained by the Federal Bureau of Investigation that the Attorney General should be allowed to authorize in cases

where the authority for such checks is not available at the State level;

(7) Any restrictions that should be placed on the ability of an employer to charge an employee or prospective employee for the cost

associated with the background check;

(8) Which requirements should apply to the handling of incomplete records;

(9) The circumstances under which the criminal history information should be disseminated to the employer;

(10) The type of restrictions that should be prescribed for the handling of criminal history information by an employer;

(11) The range of Federal and State fees that might apply to such background check requests;

(12) Any requirements that should be imposed concerning the time for responding to such background check requests;

(13) Any infrastructure that may need to be developed to support the processing of such checks, including--

(A) The means by which information is collected and submitted in support of the checks; and

(B) The system capacity needed to process such checks at the Federal and State level;

(14) The role that States should play; and

(15) Any other factors that the Attorney General determines to be relevant to the subject of the report.

Congress has instructed the Department of Justice to consult with certain parties in developing the report. In accordance with section 6403(e) of the Act, the Department of Justice must consult with representatives of State criminal history record repositories, the National Crime Prevention and Privacy Compact Council, appropriate representatives of private industry, and representatives of labor, as determined appropriate by the Attorney General.

#### Comments Sought

The Department of Justice seeks public comment on all of the reporting requirements described in section 6403 of the Act. In particular, the Department is seeking comments responsive to the fifteen factors it must consider when making recommendations to Congress. The Department welcomes comments not just from the specific parties identified in section 6403(e) of the Act, but from any person who may be able to provide responsive information that the Department may consider when drafting the report.

Dated: May 31, 2005.

Rachel Brand,

Acting Assistant Attorney General.

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