



APPLICANT FINGERPRINT RESPONSE SUBSCRIBER AGREEMENT

SECURITY OF CRIMINAL OFFENDER RECORD INFORMATION

Criminal Offender Record Information (CORI) is information identified through fingerprint submission to the Department of Justice (DOJ) with a criminal record or "No Record". It is confidential information disseminated to applicant agencies authorized by California statute for the purposes of employment, licensing, certification, and volunteer clearances. The following information describes each agency's responsibility toward accessing, storage, handling, dissemination, and destruction of CORI.

Background

Penal Code sections 11105 and 13300 identify who may have access to criminal history information and under what circumstances it may be released.

The DOJ maintains the California Law Enforcement Telecommunications System (CLETS) that provides law enforcement agencies with information directly from federal, state, and local computerized information files. However, restrictions have been placed on the user to ensure that the rights of all citizens of California are properly protected.

Article 1, section 1 of the California Constitution grants California citizens an absolute right to privacy. Individuals or agencies violating these privacy rights place themselves at both criminal and civil liability. Laws governing Californians' right-to-privacy were created to curb, among other things, the excessive collection and retention of personal information by government agencies, the improper use of information properly obtained for a proper purpose, and lack of a reasonable check on the accuracy of existing records. (*White v. Davis* (1975) 13 Cal. 3d 757,775.)

Employment Background Checks

It is only through the submission of fingerprints to the DOJ that the true identity of an individual can be established. In a 1977 lawsuit (*Central Valley v. Younger*), the court ruled that only arrest entries resulting in conviction, and arrest entries that indicate active prosecution, may be provided for evaluation for employment, licensing, or certification purposes.

Exceptions

Some statutory provisions, such as those relating to youth organizations, schools, and financial institutions, further limit information dissemination to conviction for specific offenses. Records provided for criminal justice agency employment as defined in Section 13101 of the Penal Code are exempt from these limitations. In addition, arrest information for certain narcotic and sex crimes, irrespective of disposition, will be provided for employment with a human resource agency as defined in section 1250 of the Health and Safety Code. Other exceptions are listed in the CLETS Policies, Practices, and Procedures (section 1.6.1).



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Unauthorized Access and Misuse

The unauthorized access and misuse of CORI may affect an individual's civil rights. Additionally, any person intentionally disclosing information obtained from personal or confidential records maintained by a state agency or from records within a system of records maintained by a governmental agency has violated various California statutes. There are several code sections that provide penalties for misuse or unauthorized use of CORI.

Authorized Access

CORI shall be accessible only to the Records Custodian and/or hiring authority charged with determining the suitability for employment or licensing of an applicant. The information received shall be used by the requesting agency solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any other employment or licensing agency.

The retention and sharing of information between employing and licensing agencies are strictly prohibited. Retention and sharing of information infringes upon the right of privacy as defined in the California Constitution, and fails to meet the compelling state interest defined in *Loder v. Municipal Court* (1976) 17 Cal. 3d 859. In addition, maintenance of CORI separate from the information maintained by the DOJ precludes subsequent record updates and makes it impossible for the DOJ to control dissemination of CORI as outlined in section 11105 of the Penal Code.

CLETS Policies, Practices, and Procedures state that any information transmitted or received via CLETS is confidential and for official use only by authorized personnel (section 1.6.4). The California Code of Regulations, Article 1, section 703, addresses the "right and need" to know CLETS-provided information.

The Bureau of Criminal Information and Analysis (BCIA) recommends that state summary criminal history records, obtained for employment, licensing, or certification purposes, be destroyed once a decision is made to employ, license, or certify the subject of the record. Agencies that either are mandated or permitted by California statute to receive subsequent arrest notifications pursuant to Penal Code (PC) section 11105.2 must complete a Contract for Subsequent Arrest Notification Service (BCII 8049).

Retention of criminal history records beyond this time should be based on documented legal authority and need. Any records retained must be stored in a secured, confidential file. The agency should designate a specific person responsible for the confidentiality of the record and have procedures to prevent further dissemination of the record, unless such dissemination is specifically provided for by law or regulation.



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As an agency receiving background clearance information in response to the submission of applicant fingerprint cards to the DOJ, you are aware of the regulations regarding the security of the hard copy information that you currently receive. The purpose of this Subscriber Agreement is to restate existing regulations and clarify how they apply to the electronic receipt of this same information via fax or e-mail. There are no new regulations. Items 1, 2, 4, 5, and 7 restate existing regulations relative to receiving hard copy information. Item 2 has been expanded to include electronic information. Items 3 and 6 are intended to clarify these regulations relative to electronic information.

In accordance with section 11077 of the Penal Code, the Attorney General is responsible for the security of criminal offender record information. Section 707(a) of the California Code of Regulations requires that **"Automated systems handling criminal offender record information and the information derived therefrom shall be secure from unauthorized access, alteration, deletion, or release. The computer terminals shall be located in secure premises."**

SUBSCRIBER AGREEMENT

This agreement is between the _____ :
and the Department of Justice for the purposes of the exchange of criminal offender record information.
The above agrees that:

1. Criminal offender record information and the information derived therefrom shall be accessible only to the records custodian and/or hiring authority charged with determining the suitability of the applicant.
2. Confidential information received electronically or via mail shall be used solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any other employment or licensing agency.
3. Retention of CORI is permissible if, after making its initial employment, licensing, or certification decision, the agency has legitimate business need for the information and there are no statutory requirements to destroy such information. Any record information that is retained by the applicant agency must be stored in a secure and confidential file.
4. Criminal history background checks have been completed on all individuals with access or proximity to terminals or fax machines receiving criminal offender record information.
5. Staff with access to criminal offender record information have received training and counseling on the handling of criminal offender record information and have signed employment statement forms acknowledging and understanding of the criminal penalties for the misuse of criminal offender record information (Penal Code sections 502, 11142, and 11143).



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6. Reasonable measures shall be taken to locate terminals and fax machines in a secure area to provide protection from unauthorized access to criminal offender record information by other than authorized personnel. Access is defined as the ability to view criminal offender record information on a terminal or on paper.
7. Pursuant to section 702 of the California Code of Regulations, authorized agencies violating this agreement may lose direct access to criminal offender record information maintained by the Department of Justice.

Contributing Agency Name: _____

Mailing Address: _____

City, State, Zip Code: _____

Phone Number: _____

Signature of Agency Official _____

Printed Name of Agency Official _____

Title of Agency Official _____

Date _____