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THE IMPACT OF THE
SECURITY AND PRIVACY REGULATIONS

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AGENCIES COVERED

These regulations apply only to State and local agencies that have received LEAA funds for the collection, storage or dissemination of criminal history records in either manual or automated systems since July 1, 1973. Private organizations are not covered regardless of whether or not such organizations maintain files or other records that contain criminal history information.

INFORMATION COVERED

Criminal history information - The regulations apply to criminal history information only. Criminal history information consists of notations of arrest, detentions, indictments, informations or other formal criminal charges and any disposition stemming from such charges, including sentencing, correctional supervision and release. The term also includes records of dismissals or decisions to drop charges.

Intelligence/investigative, background/identification information - The regulations do not apply to intelligence or investigative information such as suspected criminal activity, association with criminal enterprises, financial information, ownership of property or other personal information. The regulations also do not apply to psychiatric records, social histories, or other evaluative types of data, or to identification information, such as fingerprint records or photographs, when such information does not indicate a specific involvement of the person in the criminal justice system. The regulations also do not apply to statistical data which do not identify particular individuals.

EXEMPTIONS: DOCUMENTS NOT COVERED BY THE REGULATIONS

The regulations specifically do not apply to criminal history information which is contained in the following sources:

- 1 Wanted posters
- 2 Original records of entry (such as police blotters) which are compiled and organized chronologically and required by law or custom to be public
- 3 Court records of public judicial proceedings
- 4 Published court opinions
- 5 Records of traffic offenses maintained for licensing purposes

The regulations impose no limits on the continued dissemination of data contained in exempted documents. The regulations also permit agencies to reply to specific inquiries about individuals no longer in the system - regardless of how dated the information is - when the information supplied is derived from exempted sources.

The exemption for court records applies to any file, automated or manual, maintained by the judiciary for the purpose of recording process and results of public court proceedings. The exemption applies to court registers, case files, docket listings, calendars, etc. and is applicable whether the file is maintained in alphabetical or chronological order.

The exemption for original records is restricted to files developed and accessed on a chronological basis and does not apply to files which are arranged alphabetically or to alphabetical indexes to chronological files.

CATEGORIES OF INFORMATION OPEN TO THE PUBLIC

The regulations do not limit dissemination of:

1. Conviction data (including records indicating pleas of nolo contendere and/or guilty).
2. Criminal history information about the offense for which an individual is currently under the jurisdiction of the criminal justice system. (See below).
3. Court records of public judicial proceedings (whether alphabetical or chronological).
4. Original entry documents that are compiled chronologically.

The regulations place no limits on the continued dissemination of criminal history information to criminal justice agencies for criminal justice activities or employment.

All criminal history information about the offense for which an individual is currently under the jurisdiction of the criminal justice system may be revealed to any member of the news media or public.

For these purposes, an individual is considered to be within the criminal justice system from the time of arrest through prosecution, court action, incarceration, parole and/or other forms of court ordered supervision. Under this provision, information may be disseminated regardless of the time lapse between the transaction and inquiry, provided only that the information relates to the offense for which the individual is within the system.

When the agency possesses an incomplete record and can obtain no information indicating that an individual is still within the system, it may disseminate the information for a period of one year

from the date of arrest. If, however, a period of more than one year has elapsed and the agency can obtain no current information indicating that prosecution is actively pending, or that the individual is a fugitive, information concerning the arrest must be classified as non-conviction data, and may only be released consistent with the limits on dissemination of non-conviction data discussed herein.

CATEGORIES OF INFORMATION CLOSED TO THE PUBLIC

Dissemination of non-conviction data

The regulations provide that after December 31, 1977, non-conviction data may only be disseminated to:

1. Public and private agencies authorized by state and federal statute, executive order, local ordinance or court rule or decision.
2. Criminal justice agencies for criminal justice activity and employment.
3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide criminal justice services.
4. Individuals and agencies engaged in research, evaluative or statistical activities.

For these purposes, non-conviction data includes: acquittals, dismissals, information that a matter was not referred for prosecution, that the prosecutor has not commenced criminal proceedings, that proceedings have been indefinitely postponed, and records of arrests, unaccompanied by disposition, that are more than one year old and in which no prosecution is actively pending.

COMPLETENESS

To be complete, a record must indicate the individual's passage through the criminal justice system. It must include the original arrest and every subsequent event that occurred as a result of that arrest including trial, verdict, sentencing, incarceration, parole or release. The completeness requirement deals with the completeness of a specific criminal event or transaction. To be complete, an agency's files need not contain information on every other arrest or criminal incident about an individual.

The regulations require that events must be reported to the Central Repository within 90 days. However, this is a minimum standard and the State is free to establish a more stringent requirement.

DISSEMINATION

Although dissemination is a key concept in the regulations, the regulations do not define the term. However, it can be interpreted to apply to the release or transmission of criminal history information by an agency to another agency or individual. Use of the information by an employee or officer of the agency maintaining the records does not constitute dissemination for purposes of the regulations. Further, reporting the occurrence of and the circumstances of a criminal justice transaction is not dissemination. That is, the reporting of an arrest or other transaction, including dispositions, to the State Repository, or to the FBI, is not dissemination. Similarly, reporting data on a particular criminal charge to another criminal justice agency so as to permit the initiation of subsequent criminal justice proceedings is not considered to be dissemination. It must be stressed that this interpretation applies only if the information passed from one agency to another relates solely to the criminal charge that is in process. If information is included that relates to another charge (for example, if a defendant's entire rap sheet is included in the file given by a police department to a prosecutor) then a predissemination query of the central repository is necessary to insure that the information relating to other charges is up-to-date.

INSURING COMPLIANCE WITH THE DISSEMINATION RESTRICTIONS

The regulations require the State to insure that after December 31, 1977, the dissemination of non-conviction data has been limited, whether directly or through any intermediary, only to criminal justice agencies and the specified categories of legally authorized non-criminal justice agencies. Therefore, the Central Repository should set forth procedures to insure that criminal justice agencies will themselves comply with the limits on dissemination, and also that these limits will be observed by agencies and individuals to whom they disseminate records; that is, that secondary dissemination will conform to the regulations.

In practice, this means that whenever the Central Repository receives a request for a record that includes non-conviction data, the Repository must before releasing the record determine that the requesting agency or individual is (1) an eligible recipient and (2) aware of and subject to the limits on use and dissemination imposed by the regulations. Additionally, all non-criminal justice recipients must be aware of and subject to the provisions of the regulations restricting the use of criminal history records to the purposes for which they were made available. All recipients must also agree to enforce appropriate measures to insure the security and confidentiality of criminal history records.

The Central Repository has submitted a certification statement attesting to its awareness of the regulations. However, other criminal justice agencies are not required to submit a certification statement; none of the numerous non-criminal justice organizations

and individuals that may be eligible to receive criminal history information are directly covered by the regulations. Some method must be established to insure that the regulations, or equivalent limits and requirements, can be made applicable to these agencies and individuals.

By far the preferable means of accomplishing this would be the enactment of a comprehensive State statute covering all such record users and imposing upon them requirements and limits at least as stringent as those set out in the regulations, with sanctions and penalties for violations. Any non-certified agency or individual not covered by such a statute must be required to enter into a written user agreement with the Central Repository.

In summary, in order to receive criminal history records, agencies and individuals must be determined to be both eligible and subject to the regulations by virtue of certification, a State statute, or a user agreement.

User agreements should specify the basis of eligibility and the specific purposes for which the released records may be used, and should contain an acknowledgement by the recipient agency or individual that the records are subject to the limits on use and dissemination set out in the regulations and that violation of these limits will result in penalties or sanctions. The agreements should expressly state that the user agency or individual agrees to be bound on a continuing basis with respect to criminal history information that is received.

It is not required that each criminal justice agency execute a user agreement with every agency or individual to whom it disseminates information, if each such agency or individual has signed a user agreement with the Central Repository.

IMPACT OF STATE POLICIES ON DISSEMINATION

Dissemination pursuant to statute, executive order, ordinances, etc.

The regulations anticipate that the scope of non-criminal justice dissemination of non-conviction data will, in a majority of cases, be determined pursuant to State or local statute, executive order, or rule, decision or order.

Specifically, dissemination would be authorized whenever consistent with the provisions of such documents, as interpreted by the appropriate State or local individuals or agencies.

Impact of stricter State legislation, administrative procedures

As the regulations do not require that any data be disclosed except to the individual who is the subject of the data, dissemination of any information, including conviction, non-conviction, and/or otherwise exempted categories of information, may be further limited if consistent with appropriate State or local requirements. Similarly, although limits on the dissemination of non-conviction data are not required to be implemented until December 1977, limits may be imposed by states prior to this date, if so desired.

INDIVIDUAL ACCESS AND REVIEW

The individual access and review procedures that are outlined in the Criminal History Record Information Plan completely satisfy the regulations in the area. Therefore, it seems unnecessary to explain this section any further. As soon as the Security and Privacy Subcommittee is officially formed, then the review board will be available to hear appeals.

It should be remembered that these procedures should have been implemented on the date the plan was submitted to the Washington office of LEAA. That date was July 1976. Consequently, until the Central Repository takes the necessary steps to do this, the State of Rhode Island will be in technical violation of the regulations and subject to appropriate penalties.

OBTAINING A COPY OF ONE'S OWN CRIMINAL HISTORY RECORD

The central repository should specify the conditions under which a copy of an individual's record will be provided to him. Such copy should be prominently marked or stamped to indicate that the copy is for review and challenge only and that any other use thereof would be a violation of 42 USC Sec. 3771. The commentary to this subsection of the regulations states that "a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge." This means that the individual bears the burden of showing his need for the copy. The individual should be given a copy of his record if after review he actually initiates a challenge and indicates that he needs a copy to pursue the challenge. It is necessary to release only a copy of that portion of the record that is challenged.

Any attempt by employees to subvert the restrictions on dissemination by requiring prospective employees to obtain a copy of their criminal history record can thus be discouraged by making it a practice only to give the subject a copy of that portion of the record which is to be challenged, and then only after the challenge process is actually initiated. Furthermore, the regulations do not require any written documentation to be given to an individual attesting to the lack of a record. Such a good character letter would be confirmation of the existence or non-existence of a criminal history record, is defined to be dissemination, and is therefore limited by the regulations.

CRIMINAL RECORD INFORMATION FOR RESEARCH PURPOSES

A researcher wishing to access criminal history record information from the State Central Repository is permitted to access such information for the express purpose of research, evaluation or statistical purposes pursuant to an agreement with the Repository. The agreement must specifically limit the use of data to research, evaluative or statistical purposes and insure the confidentiality and security of the data.

AUDITS AND QUALITY CONTROL

The regulations call for two different forms of auditing. The systematic audit is required for the Central State Repository as a means of guaranteeing the completeness and accuracy of the records. This audit is actually a quality control mechanism which should be a part of the systems and procedures for the Central State Repository. The annual audit is an examination, by an outside agency, of the extent to which the Repository or user of the Repository is complying with the regulations.

SYSTEMATIC AUDIT

This process refers to the combination of systems and procedures employed both to insure completeness and to verify accuracy. Procedures dealing with checking on completeness should provide a means for monitoring the submission of disposition data. Ideally, the Repository should institute a delinquent disposition monitoring system. If an expected disposition is not received by the estimated due date, staff is notified and begins to make appropriate contacts to obtain the delinquent data.

A requirement for delinquent disposition report monitoring applies to both manual and computerized systems.

Accuracy checks require controls and inspections on the input to the system. In both manual and computerized systems, the auditing function should insure that all record entries are verified and appropriately edited prior to entry, and that source documents are properly interpreted. Audit procedures should include random inspection of the records compared against source documents to determine if data handling procedures are being correctly followed.

An audit trail should be established which will allow for the tracing of specific data elements back to the source document. This audit trail should encompass all participating agencies in the criminal histories record system. It is imperative that provisions be made to provide a clear and specific trail for staff personnel from the central repository to insure that a maximum level of system accuracy is maintained.

DISSEMINATION LOGS

The audit trail covering input to the system must be followed by records of transactions in disseminating data through the system so that accountability can be maintained over the full cycle of collection, storage, and dissemination of criminal history record information. Logging is required for the support of the audit process and also as a means of correcting erroneous dissemination.

The regulations state that criminal justice agencies "upon finding inaccurate information of a material nature shall notify all criminal justice agencies known to have received such information." The central repository should establish procedures for maintaining a listing of agencies of individuals both in and outside the State to which criminal history information is released. This listing should be preserved for a period of not less than one year from the date of release. Such a listing should indicate the agency or individual to which information was released, the date of release, the individual to whom the information relates and the items of information released. The listing should include specific numeric identifiers to provide positive identification links between information which is disseminated and the record from which the information was extracted.

Procedures should be established to provide for immediately notifying agencies known to have received the criminal history information after the inaccurate data had been entered on the record. Corrections to records should be forwarded immediately to all appropriate agencies and procedures should be established for recording the agencies to which corrections were sent and the date corrections were released.

ANNUAL AUDIT

The Central Repository should establish procedures that insure that annual audits of a representative sample of State and local criminal justice agencies chosen on a random basis shall be conducted by the State to verify adherence to these regulations and that appropriate records shall be retained to facilitate such audits. Since the audit of each agency would be prohibitive, a representative sample is intended to provide a statistically significant examination of the accuracy and completeness of the data that is maintained in the repository and to insure that other provisions of the regulations are upheld. Audit of the Central Repository should be performed by an outside agency.