

Defense Counterintelligence and Security Agency
Activities on Facilitating Access to Local Criminal Records Historical Data
pursuant to
Public Law 116-92, § 1625, National Defense Authorization Act for Fiscal Year 2020
Concept of Operations - Initial Report

Background

There are more than 18,000 law enforcement agencies (LEAs) in the United States, each housing criminal history record information (CHRI). This data is vital to the proper and full vetting of persons under suitability and fitness standards, standards for determining eligibility for access to national security classified information, assignment to positions with sensitive duties, or determinations under Homeland Security Presidential Directive 12 for Personal Identity Verification credentials to gain logical or physical access to government facilities and systems. Unfortunately, many LEAs lack the personnel, knowledge, technology, or funding to enable them to comply with their obligation to report CHRI in support of Federal vetting as set forth at Title 5, U.S. Code § 9101.

Based on statutory authority, delegations, and directions in Executive Order 13869, the Defense Counterintelligence and Security Agency (DCSA) conducts approximately 95 percent of all background investigations on behalf of the U.S. Government and its agencies.

DCSA, through its Law Enforcement Liaison Office (LELO), is working to address persistent challenges associated with Federal background investigators' access to State, local, tribal, and U.S. territory CHRI, both for its own purposes and on behalf of the approximately 20 other Federal agencies that conduct vetting investigations.

Objective

Pursuant to § 1625 of the National Defense Authorization Act for Fiscal Year 2020, the Director of DCSA will carry out a set of activities to reduce the time and cost of accessing State, local, tribal, and territorial CHRI for background investigations required for vetting current and prospective government employees, military service members, and contractor personnel. The activities carried out will include training, education, and direct assistance to State, local, tribal, and territorial LEAs needed for the purpose of streamlining access to historical CHRI data. These include:

1. Expand education, training, and outreach.
 - a. Provide education opportunities for:
 - i. LEAs, and
 - ii. Federal agencies that request and receive CHRI.
2. Provide expertise to LEAs to facilitate their ability to apply for grants directly from the Department of Homeland Security and the Department of Justice to modernize or otherwise improve their records infrastructure.

3. Make funding available to LEAs to facilitate the sharing of CHRI.
 - a. Provide funds directly to LEAs in lieu of disbursing to the State or other civilian oversight authority for distribution.
 - b. Require funds to be used for:
 - i. Automation of records and systems;
 - ii. Streamlining of processes, and
 - iii. Resource acquisition, to include personnel.

Strategy

Utilizing an existing federally-funded research and development center and, in conjunction with the Security, Suitability, and Credentialing Performance Accountability Council Program Management Office, DCSA LELO staff will focus on three areas:

1. Expanding outreach and education efforts with LEAs that house CHRI to emphasize the importance of complying with CHRI requests in a timely manner;
2. Identifying procedural and technical solutions that can be implemented to increase the timeliness, accuracy and completeness of CHRI to Federal vetting professionals; and
3. Providing direct funding to a few, targeted LEAs to enable them to better comply with their CHRI reporting and sharing requirements (Congressional assistance with authorities for managing a program of providing funds to LEA will be required, as DCSA's ability to directly fund in this manner does not currently exist).

Because of the large number of LEAs across the United States and the limited number of DCSA personnel during this first year, DCSA will take a measured approach in implementing the above strategy. DCSA will identify 25 State, local, tribal, and/or territorial LEAs that consistently struggle to make CHRI available for vetting purposes, either due to lack of resources or knowledge of its legal requirement, by:

1. Negotiating procedural solutions that can be implemented to facilitate improved information sharing;
2. Identifying opportunities for allowing direct access to police and/or court records (e.g., determine whether there are regional records management systems where investigators can access records on a "self-serve" basis); and
3. Gathering actionable items to work with LEAs to increase the flow of information made available for federal background checks.

This phased approach will enable the program to determine the most effective methods in assisting LEAs across the country and mature the program over time.

We have identified several non-compliant LEAs that wish to cooperate, but struggle with funding and other resource deficits. These specific agency shortfalls with CHRI collection do not rise to a priority for the State and thus the LEAs are not able to receive funding from their State to address them. Ideally, we would like to provide direct funding to these identified locales without that funding's being commingled

or absorbed into a larger State or county budget. Direct funding would enable these agencies to modernize their records systems and provide records that comply with 5 U.S.C. § 9101.

Conclusion

LELO engages in efforts to improve the sharing of CHRI for the purposes of vetting the Federal workforce through cooperation, resolution of impediments, funding strategies and assistance, and proactive outreach to cultivate new relationships and foster existing partnerships. The resources provided pursuant to the NDAA will enable us to expand these activities and set the stage for wider and more comprehensive actions.

Adherence by LEOs to the requirements of 5 U.S.C. § 9101 is critical to the ability of Federal agencies to collect CHRI. Continual training, education, and outreach are necessary to obtain the most complete records. Though DCSA conducts the vast majority of the Federal Government's vetting activities, our outreach activities ultimately benefit all Federal agencies seeking access to CHRI. Our forward-leaning efforts will build collaborative relationships across the Federal vetting community, forge strong and mutually beneficial partnerships with the law enforcement community, and improve the quality and quantity of CHRI collected as part of the Federal Government's vetting processes.

Taken together, these efforts will advance the Federal Government's ability to effectively vet its workforce, enhancing the safety and security of government facilities, information and people.