



Noncriminal Justice Online Policy Resource Dissemination of FBI Criminal History Record Information (CHRI) for Noncriminal Justice Purposes

Background

Since 1921, the FBI has been statutorily authorized to collect and disseminate criminal history record information (CHRI). In 1930, this authority was codified at Title 5, United States Code (U.S.C.), Section 340, which in turn was combined with Title 5, U.S.C., Section 300 as part of a statutory reorganization. This statutory reorganization resulted in the current codification at Title 28, U.S.C., Section 534, which provides for the acquisition, preservation, and exchange of identification records and information by the U.S. Attorney General.

The Interstate Identification Index (III) System is the cooperative federal-state system for the exchange of fingerprint-supported criminal history records, and includes the criminal history record repositories of the states and the FBI. The III, adopted in 1978, provides a decentralized means of indexing and maintaining criminal history records, as well as a means for conducting national criminal history record searches. In 1982, the FBI's Automated Identification Division System (later renamed the Identification Division Automated System [IDAS]) was approved for use in maintaining the III database. Subsequently, in 1989, the III and IDAS indexes were merged. In 1999, the IDAS was replaced by the III segment of the Integrated Automated Fingerprint Identification System, which in turn was retired as part of a transition to the Next Generation Identification (NGI) System in 2014. CHRI indexed and maintained as part of the III is accessed by name-based inquiries through the FBI's National Crime Information Center System and by fingerprint submissions through the FBI's NGI System.

Most states participating in the III have varying statutes or policies that restrict the dissemination of criminal history records for noncriminal justice purposes. Because of this, an agreement was needed between the states and the federal government to permit interstate dissemination of national criminal history records. The National Crime Prevention and Privacy Compact (Compact) Act was signed into law in 1998 and codified in pertinent part at Title 42, U.S.C., Sections 14611 through 14616. The Compact Act established the Compact Council, which has the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes.



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Legal and Policy Requirements

Title 28, U.S.C., Section 534, authorizes the FBI to exchange CHRI with, and for the official use of, authorized officials of the Federal Government, the States, Indian tribes, cities, and penal and other institutions. The exchange of CHRI made available pursuant to this authority is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

Title 28, Code of Federal Regulations (C.F.R.), Section 20.33 further specifies that CHRI contained in the III System may be made available for use in connection with licensing and employment pursuant to Public Law 92-544 or other federal legislation or law. This section of the C.F.R. reiterates the requirement that the exchange of CHRI is subject to cancellation if dissemination is made outside the receiving departments or related agencies. It also stipulates that CHRI shall be used only for the purpose requested and a current record should be requested when needed for a subsequent authorized use.

Title 28, C.F.R., Section 50.12 also sets forth requirements for the exchange of CHRI for noncriminal justice purposes authorized by federal law to include Public Law 92-544. This section of the C.F.R. mandates that CHRI obtained under these authorities may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities.

The Compact, pursuant to Title 42, U.S.C., Section 14616, Article IV(c), requires that any CHRI obtained under the Compact may be used only for the official purposes for which the CHRI was requested. Further, this section establishes procedures to protect the accuracy and privacy of CHRI by requiring that CHRI must only be used by authorized officials for authorized purposes and that subsequent record checks be requested to obtain current information whenever a new need arises.

The Compact Council established procedures at Title 28, C.F.R., Part 906, which stipulate CHRI may be made available to governmental agencies, private contractors, or other nongovernmental entities or organizations that perform activities or functions for authorized recipients of CHRI obtained for noncriminal justice purposes. The Security and Management Control Outsourcing Standard establishes specific provisions for use, dissemination, and security of CHRI that must be met in conjunction with such access.



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Discussion

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- ***Definition of CHRI***

The Compact at Title 42, U.S.C., Section 14616, Article I, includes the same statutory definition of CHRI as that established at Title 28, C.F.R., 20.3: information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release; the term does not include identification information such as fingerprint records if such information does not indicate the individual's involvement with the criminal justice system. In addition, the *CJIS Security Policy* defines CHRI as a subset of Criminal Justice Information consisting of any notations or other written or electronic evidence of an arrest, detention, complaint, indictment, information, or other formal criminal charge relating to an identifiable person that includes identifying information regarding the individual as well as the disposition of any charges.

In order to frame the requirements associated with dissemination of CHRI, it is important to quantify what CHRI is, as well as what it is not. The definition of CHRI applied within the context of this policy resource is from the perspective of CHRI made available as a result of national fingerprint-based checks of criminal history records through the FBI's NGI System for noncriminal justice purposes.

Information is considered CHRI if it is transferred or reproduced directly from CHRI and associated with the subject of the record. This includes information such as conviction/disposition data as well as identifiers used to index records regardless of format. Examples of formal and informal products or verbalizations include: correspondence such as letters and e-mails; documents such as forms and hand-



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written notes; conversations either in person or by telephone; and data fields such as those stored in database tables or spreadsheets. However, information is not considered CHRI if it is obtained as a result of using CHRI received from a national FBI check as a lead to reach out to source record owners such as local courts or state criminal history record repositories. As a prerequisite, both the process used to obtain the source record information and the resulting source record information itself must not directly reference or be attributed to the national FBI check.

Information is considered CHRI if it confirms the existence or nonexistence of CHRI. This FBI policy is derived from and mirrors the general policy on dissemination found at Title 28, C.F.R., Section 20.21, directly relating to applicable state and local criminal history record information systems. This includes applicant status information, which is either directly attributed to or predominately based on a national FBI check, when no authority or inherent need exists for the release of such information.

- **General Considerations**

Dissemination of CHRI is broader in concept than the simple act of physically or electronically sending CHRI to a recipient. The concept of dissemination also applies to making CHRI available to recipients through physical or electronic access. The overarching requirements associated with dissemination of CHRI apply regardless of whether CHRI is “pushed” to recipients or “pulled” by recipients since the end result is the same. This policy resource focuses on the principles associated with determining if CHRI may be made available to would-be recipients and the high-level requirements associated with making that CHRI available. In addition, CHRI must always be maintained in such a manner as to not result in unauthorized access. An unauthorized dissemination can occur when “recipients” are given access to CHRI, regardless of whether or not the access was intentional. A typical example of unintentional residual access is contract cleaning crews that have unsupervised after-hours access to files containing CHRI. Another relevant example would be a state-level clearing house system which allows unintentional residual access to CHRI, by means of inappropriate account privilege settings, to noncriminal justice agencies not otherwise authorized to receive access. It is important to note that when access to CHRI is authorized, then such access or exchange must meet any applicable requirements of the *CJIS Security Policy*, such as agency user agreements, logging, and encryption.

In addition to the correlation between dissemination and access, a correlation also exists between dissemination and use. The requirements for dissemination and use are inherently related, because one agency’s dissemination of CHRI is another



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agency's use of CHRI. In order for dissemination to be authorized to a would-be recipient, the corresponding use by that recipient must be authorized. As with the use of CHRI, parameters for dissemination are derived from the specific federal statutory authority leveraged to obtain CHRI. CHRI may only be disseminated to entities that are authorized relative to the federal statutory authority used to submit a fingerprint check. For example:

- Dissemination is limited to officials of state and local governments for CHRI obtained pursuant to Public Law 92-544.
- Dissemination is limited to “authorized agencies” defined as a division or office of a state for CHRI obtained pursuant to the National Child Protection Act/Volunteers for Children Act (NCPA/VCA). However, dissemination of CHRI is extended to nongovernmental qualified entities if a Volunteer and Employee Criminal History System (VECHS) program is implemented.
- Dissemination is limited to the following entities for CHRI obtained pursuant to the Adam Walsh Child Protection and Safety Act (Adam Walsh Act): 1) child welfare agencies, which include states, local agencies, other public agencies, or any other private agencies under contract with a state or local agency responsible for licensing or approval of foster or adoptive parents; and 2) public or private elementary or secondary schools as well as state and local educational agencies.
- Dissemination is limited to governmental agencies for CHRI obtained pursuant to the Edward M. Kennedy Serve America Act.

It is important to recognize that state or local laws, ordinances, administrative rules, or procedures may not be more permissive regarding dissemination of CHRI relative to the federal authority used to obtain CHRI. However, states may be more restrictive and establish additional limitations on dissemination.

The baseline requirements for dissemination described in the Legal and Policy Requirements section of this document provide a broad description of the types of organizations that may receive CHRI (receiving departments, related agencies, or other authorized entities). The subsequent sections of this policy guide provide further guidance on allowable dissemination within the context of that overarching requirement, as well as other specific topics related to dissemination. While the principles are discussed primarily from a state perspective, it is important to note that these principles also apply to federal and federally-regulated agencies that request, receive, and use CHRI for noncriminal justice purposes.

- **Receiving Departments**

States should designate primary authorized recipients responsible for accessing or receiving CHRI directly from the state repository for noncriminal justice purposes.



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These agencies typically have statutory authority or regulatory obligations associated with making fitness determinations and/or providing oversight of the employment or licensing processes for particular categories of applicants. States need to maintain visibility on the full spectrum of primary agencies to which they disseminate CHRI, as well as the specific purposes/authorities for which those primary agencies receive CHRI. This is especially significant given the requirements for states to execute agency user agreements and establish formal noncriminal justice audit programs in accordance with the *CJIS Security Policy*. States must ensure that primary receiving agencies fall within parameters established by the federal statutory authorities being leveraged for national criminal history checks. As previously discussed, CHRI may only be disseminated to entities that are authorized relative to the federal statutory authority used to obtain CHRI.

Depending upon the specific procedures used by a state, there may be multiple primary agency types with access to CHRI for a particular type of national criminal history check. For example, while one state's procedures may only include disseminating CHRI directly to a Department of Education for background checks of teachers, another state's procedures may include dissemination of CHRI directly to each local county school board. Still another state's procedures may include simultaneously disseminating CHRI directly to both the Department of Education and a local county school board.

The term "agency" encompasses offices, departments, bureaus, and other subdivisions associated with a particular agency's organizational structure. Although baseline dissemination requirements for CHRI are centered at the department and agency levels, as a best business practice, states should limit access to the minimum necessary sub-offices and personnel within a department or agency that are actually required for a particular use. While authorized receiving agencies may exercise some level of discretion and freedom of maneuver to distribute CHRI within their organizational structure, they should be able to demonstrate a reasonable need for doing so. For example, a local county school board may be designated as an authorized recipient of CHRI for the purpose of conducting background checks for prospective teachers. CHRI is stored as part of an electronic personnel records management system accessible by all school board employees. Although the school board is an authorized recipient, it is in the agency's best interests to limit access to CHRI on the system to only the personnel within the human resources department responsible for making fitness determinations. This will limit the school board's exposure to the inherent risks associated with unauthorized dissemination of CHRI.

Many statutory authorities leveraged for national criminal history record checks limit dissemination to governmental agencies. Most governmental agencies are readily



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identified, such as those statutorily designated, funded, and organized as part of a state's executive, legislative, and judicial branches. However, governmental entities, such as commissions and boards that may be comprised of political appointees, elected officials, and/or officials from private industry, may also qualify as authorized recipients of CHRI. Examples could include school boards and lottery commissions.

- **Related Agencies**

Two primary categories of related agency exist with respect to dissemination of CHRI. The categories are based on the use of CHRI for a single need versus multiple needs, and are derived from historical definitions of related agency doctrine as well as standing audit practices and legal interpretations.

- Dissemination of CHRI to related agencies for a single need/purpose. This type of dissemination of CHRI occurs when multiple agencies are involved in making a single fitness determination associated with an application for a specific authorized noncriminal justice purpose, such as a license, position of employment, or benefit. In many instances, this type of related agency is a secondary recipient of CHRI from a primary agency that receives CHRI directly from the state level. The intent is to allow some level of flexibility within the allowable parameters established by the federal statutory authority being leveraged for the national criminal history check. For example, with the state's consent, the Department of Education and local county school boards are both involved in adjudication of teacher employment applications. In addition, on an ad-hoc basis, some of these local county school boards make CHRI available to their local Sheriff's Office in order to answer questions regarding specific charges on criminal history records. Another example includes, with the state's consent, the Bureau of Professional Licensing and the Real Estate Commission are both involved in adjudication of real estate license applications.
- Dissemination of CHRI to related agencies for multiple needs/purposes. This type of dissemination of CHRI occurs when multiple agencies are involved in making fitness determinations for separate but related needs associated with multiple applications for specific authorized noncriminal justice purposes, such as a license, position of employment, or benefit. This type of dissemination directly correlates to the re-use of CHRI for related needs as described in the [Use of FBI CHRI for Noncriminal Justice Purposes](#) Policy Resource. For example, if established requirements are met, there are limited instances when CHRI may be disseminated between agencies pursuant to the Public Law 92-544 Article IV sharing initiative or the NCPA/VCA VECHS program.



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However, just as CHRI must not be re-used for subsequent unrelated needs by the original requestor/recipient, it is imperative to recognize that CHRI must also not be disseminated to another recipient for subsequent unrelated re-use. In addition, CHRI may not be disseminated to another recipient for future anticipated uses, regardless of whether or not the needs are formally related.

Just as with the primary receiving agency, any related secondary recipient must also be authorized relative to the federal statutory authority used to obtain CHRI. For example, agencies related for the purpose of adjudicating an employment application for child day care pursuant to Public Law 92-544 must be governmental. Note that even though a private employer, such as a day care center, may be perceived as having a commonality of purpose, CHRI may not be disseminated to them by the governmental agency. States should be able to demonstrate a reasonable need for which they have designated agencies as related for the purpose of adjudicating a particular type of applicant.

In limited circumstances, government agencies may also be related for the purpose of simply serving as a pass-through for fingerprints and receipt of CHRI. This typically occurs in situations when a criminal justice agency, such as a police department, performs this specific function on behalf of an authorized recipient. The premise is that “access” to CHRI (view or make use of) is limited to such an extent to essentially consider it negligible for the purposes of formally categorizing it as access.

- **Other Authorized Entities**

The Compact Council established procedures at Title 28, C.F.R., Part 906, which stipulate CHRI may be made available to governmental agencies, private contractors, or other nongovernmental entities or organizations that perform activities or functions for authorized recipients of CHRI obtained for noncriminal justice purposes. However, authorized recipients of CHRI must not disseminate CHRI to private or governmental entities which perform administrative functions without either:

- Implementation of the Security and Management Control Outsourcing Standard for Non-Channelers. Implementation is applicable to noncriminal justice administrative functions that do not require a direct connection to the FBI Criminal Justice Information Services (CJIS) Wide Area Network (WAN) for submission of fingerprints and receipt of CHRI. Examples include making fitness determinations, processing, storing, or destroying documents, and maintaining IT platforms. Prior to implementation, authorized recipients must request and receive written permission from the State Compact Officer, Chief



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Administrator of the state's criminal history record repository, or the FBI Compact Officer, as applicable.

- *Implementation of the Security and Management Control Outsourcing Standard for Channelers.* Implementation is applicable only to Channeling functions performed by an FBI-approved Channeler that require a direct connection to the FBI CJIS WAN for submission of fingerprints and receipt of CHRI. Prior to implementation, authorized recipients, such as state repositories and federally chartered banks, must request and receive written permission from the FBI Compact Officer.
- *Implementation of a Management Control Agreement or a Security Addendum pursuant to Title 28, C.F.R., Section 20.33 (a) (6) or (7) and the CJIS Security Policy.* Although by regulation, implementation of a Management Control Agreement or the Security Addendum is applicable to criminal justice functions performed on behalf of criminal justice agencies, under very limited circumstances, implementation may also be applicable to criminal justice agencies that obtain and use CHRI for noncriminal justice purposes. Implementation for noncriminal justice purposes is only applicable when another governmental agency or private contractor performs both criminal justice and noncriminal justice administrative functions involving access to CHRI on behalf of the criminal justice agency. It is important to note that if the servicing governmental agency or private contractor solely performs noncriminal justice administrative functions, then implementation of the *Security and Management Control Outsourcing Standard for Non-Channelers* is required. For example, a gaming enforcement office within the state police is the agency responsible for the use of CHRI for the issuance of gaming permits pursuant to a Public Law 92-544 state statute. The gaming enforcement office, a criminal justice agency, uses a private contractor for off-site destruction of records associated with both criminal justice investigations and noncriminal justice adjudications. Since the gaming enforcement office implemented the Security Addendum for the contractor's access to CHRI for criminal justice purposes, the gaming enforcement office would not be required to also implement the *Security and Management Control Outsourcing Standard for Non-Channelers* for the contractor's access to CHRI for non-criminal justice purposes. However, if the gaming enforcement office leveraged the private contractor for only the destruction of noncriminal justice applicant case files, then the gaming enforcement office would be required to implement the *Security and Management Control Outsourcing Standard for Non-Channelers*.



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- Use of a recognized alternate federal statutory authority which permits access to CHRI by private contractors. The most prevalent example is the use of the Adam Walsh Act which authorizes dissemination of CHRI to private agencies under contract with a state or local agency responsible for licensing or approval of foster or adoptive parents, thus formally designating them as authorized to receive CHRI.

It is important to recognize the distinction between authorized recipients, related agencies, and contractors. A related agency is essentially a specially designated authorized recipient with an inherent authority to access CHRI, and therefore does not require formal outsourcing implementation. However, a governmental or private contractor has no such inherent authority, and therefore does require formal outsourcing implementation. Authorized recipients may not leverage outsourcing to create an authority for the intended purpose of designating an entity as a related agency. For example, pursuant to Public Law 92-544, local county school boards are typically considered to be related to the Department of Education; however, private schools would not be considered related agencies, because they are nongovernmental. As such, the Department of Education could not implement outsourcing to designate a private school as a “contractor” to allow the private school access to CHRI for the purpose of making fitness determinations on the private school’s applicants. As an alternative, the state could consider leveraging the Adam Walsh Act or the NCPA/VCA VECHS program, both of which authorize dissemination to nongovernmental entities, thus designating such entities as authorized recipients.

In May 2010, the Compact Council modified the definition of “access to CHRI” and approved additional guidance relative to dissemination of CHRI to private and governmental contractors. If an authorized recipient retains positive control of CHRI that is in a contractor’s possession and the contractor does not have the ability to view or make use of the CHRI, then the contractor does not have “access” and the authorized recipient would not be required to implement the *Security and Management Control Outsourcing Standard for Non-Channelers*. This premise typically applies to contractors that perform the function of primary or backup record storage and includes encrypted media or locked containers for which the authorized recipient solely maintains the keys. However, the same logic is applied to similar services such as CHRI mailed through the U.S. Postal Service.

Other authorized entities also include agencies which require residual access based on oversight authority and responsibility, such as the review of case files by an inspector general’s office or regulatory auditors from outside the receiving organization. Such access should be limited to only the minimum level necessary to accomplish oversight



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responsibilities, and controls should be established to reasonably prevent unauthorized disclosure of CHRI.

- **Notifications**

As previously discussed, the definition of CHRI includes information that confirms the existence or nonexistence of CHRI. This includes applicant status information, which is either directly attributed to or predominately based on a national FBI check, when no authority or inherent need exists for the release of such information. However, if an inherent need does exist to advise a particular entity not otherwise authorized relevant to the federal statutory authority being leveraged for the national criminal history check, then it is acceptable to notify the entity of the outcome of applicant fitness determinations. Entities to which an applicant is seeking employment or licensing may receive status notifications which indicate the positive or negative outcome of fitness determinations. For example, a private day care center is not an authorized recipient of CHRI received pursuant to Public Law 92-544, but may be eligible to receive a status notification regarding an applicant who is seeking employment at the day care center (this assumes of course the approved state statute covers the employment type). States should be able to demonstrate the inherent need for which a particular entity is designated to receive status notifications. Status notifications must not contain CHRI to include confirming the existence or non-existence of CHRI. Generic “pass/fail” language must be used to the greatest extent possible, with the understanding that a reasonable balance must exist between the need to notify a potential employer and not indirectly confirming the existence or non-existence of CHRI. In addition, notification language should not directly reference that a national FBI check was conducted.

- **Public Access**

CHRI must not be disseminated to the general public. This includes maintaining CHRI in formats that are accessible by the public or within records that are subject to release through public record requests. However, CHRI may be disclosed as part of the adjudication process during a hearing that is open to the public if the agency demonstrates: 1) the hearing is based on a formally established requirement; 2) the applicant is aware prior to the hearing that CHRI may be disclosed; 3) the applicant is not prohibited from being present at the hearing; and 4) CHRI is not disclosed during the hearing if the applicant withdraws from the application process. For example, a board or commission may be authorized to access CHRI, and as part of regularly scheduled meetings, applicant appeals are discussed as standard agenda items. Even when the specific conditions are met to allow disclosure during a public hearing, the most preferable method for introducing CHRI is to enter into a closed session which



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limits participation by the public at large. States and local agencies should be able to reasonably demonstrate how the prerequisite criteria are being met for audit purposes.

- **Jurisdictional Control**

Agencies outside of a state's jurisdiction cannot be designated as related agencies, even when a congruent related need appears to exist for the use of CHRI. The dissemination restriction primarily centers on each state's individual authority and obligation to administer access to CHRI. Each state has the authority to determine whether or not to conduct particular types of noncriminal justice background checks, and each state is responsible for establishing the mechanisms and procedures for those checks within its jurisdiction. In addition, each state possess limited authority to meet obligations for maintaining appropriate controls, such as user agreements and audits, outside of its jurisdiction, especially with respect to another state's governmental agencies. In conjunction with the more obvious jurisdictional concerns associated with one state's governmental agency leveraging another state's statutes under Public Law 92-544, similar jurisdictional concerns also exist with the use of other statutory authorities such as the Adam Walsh Act or the NCPA/VCA. Examples of unauthorized dissemination include:

- One state governmental agency sharing CHRI with another state's governmental agency for adoption purposes when the child and prospective parents reside in different states, even if both states have approved Public Law 92-544 state statutes.
- Criminal history sharing initiatives involving participation in national compacts, associations, or databases such as those for child placement or employment/licensing in the health care industry.

This dissemination restriction is not intended to limit a state from making CHRI available in very limited situations to certain nongovernmental entities outside of the state's geographical boundaries when such dissemination is specifically authorized and formal jurisdictional authority is established to maintain adequate controls. It is very important to recognize that in order for dissemination to occur beyond a state's geographical boundaries, there must first be an approved statutory authority which allows nongovernmental entities access to CHRI within the state's geographical boundaries. There must also be a recognized authority and obligation to formally establish security controls over the nongovernmental entities. For example, it is acceptable for a state to leverage an out-of-state private contractor for record archiving and destruction, since access to CHRI by private contractors is authorized pursuant to Title 28, C.F.R., Part 906, and jurisdictional authority for controls such as audits would be formally established through implementation of the *Security and Management Control Outsourcing Standard for Non-Channelers*.



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- **Subject of the Record**

Agencies may disseminate fingerprint-based CHRI obtained for noncriminal justice purposes to the subject of the record. It is important to note that agencies are under no direct obligation to provide CHRI to the subject, and dissemination of CHRI by local agencies to the subject may be limited at the state's discretion. As a best business practice, agencies that disseminate CHRI to the subject of the record should verify the subject's identity prior to dissemination and document each occurrence. Also, in order to limit potential risks associated with a subject's subsequent use of a criminal history record, agencies may wish to consider marking the record in some manner to distinguish it as not an original copy. Agencies must not initiate national criminal history record checks for the sole intended purpose of providing a subject a copy of his/her record for review or challenge, as Departmental Order 556-73 processing currently resides with the FBI, and to a lesser extent FBI-approved channelers.

CHRI may not be disseminated to spouses or other household or family members, even at the subject's request. Further, CHRI may not be disseminated to other parties such as potential employers on behalf of the subject. However, although the preference is to disseminate directly to the subject of the record, a subject may request that their record be accessed by an attorney acting on the subject's behalf. This scenario could potentially be encountered when an applicant challenges the outcome of an agency's fitness determination as part of a formal appeal process.



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References

- [Title 28, U.S.C., Section 534, Acquisition, preservation, and exchange of identification records and information](#)
- [Title 42, U.S.C., Section 14616, National Crime Prevention and Privacy Compact](#)
- [Title 28, C.F.R., Section 20.3, Definitions](#)
- [Title 28, C.F.R., Section 20.33, Dissemination of Criminal History Record Information](#)
- [Title 28, C.F.R., Section 50.12, Exchange of FBI Identification Records](#)
- [Title 28, C.F.R., Part 906, Outsourcing of Noncriminal Justice Administrative Functions](#)