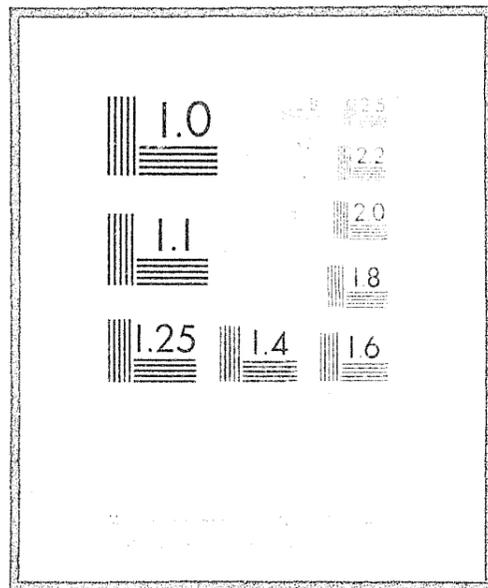


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Privacy and Security of Criminal History Information

A GUIDE TO DISSEMINATION

National Criminal Justice Information and Statistics Service
Law Enforcement Assistance Administration
Department of Justice
Washington, D.C. 20531

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A GUIDE TO DISSEMINATION

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NCJRS

MAR 23 1977

ACQUISITIONS

Preface

This guide was prepared by the Privacy and Security Staff of the National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration, to answer questions that are frequently raised about the public's access to criminal history information.

The first section of this four-part booklet summarizes regulations on criminal history information systems issued by the Department of Justice-Law Enforcement Assistance Administration. The second and third sections discuss the regulations' scope and impact. The final section consists of questions and answers about the regulations.

Additional information about the regulations, including requirements for audit procedures and data security, is found in the LEAA Privacy and Security Planning Instructions which may be obtained from the LEAA's National Criminal Justice Reference Service, P.O. Box 24036, Southwest Post Office, Washington, D.C. 20024.

Background

The Department of Justice-Law Enforcement Assistance Administration regulations which govern the privacy and security of criminal history information systems (28 CFR Part 20) implement Section 524(b) of the *Omnibus Crime Control and Safe Streets Act of 1968*, as amended. This section was added to the Act in August 1973. It provides that:

All criminal history information collected, stored, or disseminated through support under this title shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Administration shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this title, shall upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction.

The legislative history associated with the Act clearly indicates that the Congress expected LEAA to promulgate regulations to implement the Act.

The regulations were initially published in draft form, in the *Federal Register* on February 14, 1974. Extensive public hearings were held on the draft regulations. In all, formal testimony was received from more than 100 persons. Numerous written comments were also received.

On May 20, 1975, the regulations were issued in final form. They require that States develop and implement procedures to ensure the completeness and accuracy of information, impose limits on the dissemination of criminal history information contained in systems subject to the regulations, adopt adequate audit procedures, and ensure the right of individual access, review and challenge of information contained in a system.

The regulations require that each State submit to LEAA a State Plan describing procedures to be followed to achieve compliance with the regulations. The implementation of the procedures described in these plans is required by December 31, 1977.

Subsequent to the issuance of the final regulations, LEAA received numerous comments from representatives of the States, the public, and the news media.

In addition, it became apparent that Federal legislation in the area of privacy and security of criminal history systems, with which the regulations were intended to be consistent, would not be enacted in the immediate future.

As a result, the regulations were opened for reconsideration of the issues of "security" and "dissemination" of criminal history record information. Hearings were again held throughout the country and extensive public comments were again received.

The major concerns expressed at the hearings on "dissemination" were the need for conviction data by non-criminal justice agencies for employment, licensing, and other related purposes, and the potential conflict of the regulations with state "sunshine" laws.

At the "security" hearings a number of witnesses stressed the economic and operational problems associated with the "dedication" requirement and commented on the adequacy of alternative procedures to insure the security of data.

LEAA gave these comments extensive consideration and on March 19, 1976, the "dissemination" and "security" sections of the regulations were amended.

As amended, the regulations do not impose limits on the dissemination of "conviction" data; provide that individual States shall establish the scope of dissemination of non-conviction data (through statutes, Executive Orders, ordinances or court decisions, orders, or rules), recognize the requirements of state "sunshine" laws; exempt all court records (regardless of whether organized on a chronological or alphabetical basis) and clarify the authority of criminal justice agencies to disseminate information about current offenses. Additionally, in the area of security, the requirement that equipment be "dedicated" to criminal justice uses is eliminated.

Scope

AGENCIES COVERED:

The 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 arrests, detentions, indictment, 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, where 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:

- "Wanted" posters
- Original records of entry (such as police blotters) which are compiled and organized chronologically and required by law or custom to be public
- Court records of public judicial proceedings
- Published court opinions
- 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.

Exemption For Court Records

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, therefore, to court registers, case files, docket listings, calendars, etc., and as indicated previously, is applicable regardless of whether the file is maintained in alphabetical or chronological order.

Exemption For Original Records

The exemption for original records is restricted to files developed and accessed on a *chronological* basis. The exemption reflects the fact that traditional records, such as police blotters and other arrest books, are generally kept open to protect against secret arrests and to inform the public about current police activity.

The exemption for original entry documents *does not* apply to files which are arranged alphabetically, or to alphabetical indexes to chronological files. Similarly, where police blotters have been eliminated in favor of computerized booking systems (permitting searches on the basis of names) the exemption would not apply where access is made on a name basis. The existence of a computer compilation and/or manual alpha-index, however, does not preclude continued open access on a chronological basis to documents pursuant to this exemption.

Impact

CATEGORIES OF INFORMATION OPEN TO PUBLIC

General

The regulations *do not limit* dissemination of

- Conviction data (including records indicating pleas of "Nolo Contendere" and/or "Guilty").
- Criminal history information about the offense for which an individual is currently under the jurisdiction of the criminal justice system.
- Court records of public judicial proceedings regardless of whether they are compiled and/or indexed alphabetically or chronologically.
- Original entry documents (such as police blotters or arrest books) that are compiled chronologically and are open to the public by law or custom.

DISSEMINATION TO CRIMINAL JUSTICE AGENCIES

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

Dissemination Of Information About Persons Within The System

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.

Dissemination Of Information To The Subject Individual

The regulations require that individuals have the right to access, review, and challenge criminal history information about themselves. This right does not extend to intelligence or other notations not classified as criminal history information.

Procedures to provide such access must be developed by each state and implemented at this time. Procedures must also be developed to ensure that inaccurate data is corrected and that administrative review is available when such changes are not made.

CATEGORIES OF INFORMATION CLOSED TO PUBLIC

Dissemination Of Non-Conviction Data

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

- Public and private agencies authorized by state and federal statute, executive order, local ordinance or court rule or decision.
- Criminal justice agencies for criminal justice activity and employment.
- Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide criminal justice services.
- 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.

"Dissemination" of data is defined as the disclosure of information to anyone outside of the criminal justice agency maintaining the information. The term does not include reporting of data to NCIC.

Dissemination of Juvenile Records

The regulations prohibit the disclosure of juvenile records except when a statute, court order, or research or service contract *specifically* provides that juvenile records shall be available for dissemination. Unlike adult records, a general statute such as a "sunshine" law would not be sufficient to support the dissemination of juvenile records.

It should be noted that this limitation applies only to those records about proceedings related to the adjudication of an individual as a delinquent or in need of supervision or the equivalent. It does not limit access to subsequent records developed for offenses in which the juvenile was tried as an adult or when juvenile charges have been referred to a court for adjudication as an adult.

IMPACT OF STATE POLICIES ON DISSEMINATION

Dissemination Pursuant To Statute, Executive Order, Ordinance, 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 court 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. For these purposes existing state "sunshine" or "open-record" statutes would be sufficient authority if so interpreted by the appropriate officials 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.

IMPACT OF COMPLETENESS AND ACCURACY REQUIREMENT ON DISSEMINATION

The regulations permit information to be released, where consistent with limitations on dissemination, by any criminal justice agency holding the data. To ensure the accuracy, and hence the utility of the information disclosed, the regulations require that procedures be followed to ensure that released information is up-to-date and complete. Such procedures would, for example, include prior inquiry to a central repository if such agency existed and was technically capable of providing data within the time required for a reply. When no central repository exists or is to be established, however, other procedures must be followed to ensure completeness of data. Responsibility for compliance with such requirements rests, however, with the criminal justice agency disseminating the data rather than with the individual or agency requesting the information.

SUMMARY

The foregoing has been a brief summary of the basic provisions of the regulations as they impact on the dissemination of criminal history information to the public for non-criminal justice purposes. As indicated above, such non-criminal justice uses would include employment and licensing investigations, private police operations, and press inquiries.

The regulations specifically recognize the greater sensitivity associated with the release of non-conviction data and correspondingly, the particular interest of the individual states in regulating the scope of such dissemination. Accordingly, it is recommended that to obtain more specific information about the dissemination of non-conviction information further inquiry be made to the appropriate officials or agencies within the jurisdiction involved.

Questions and Answers

Q. What is "conviction" data?

A. Conviction data consists of all notations of criminal transactions related to an offense that has resulted in a conviction, guilty plea, or a plea of nolo contendere. These records are not subject to any limitations on dissemination under the regulations.

Q. What is "non-conviction" data?

A. Non-conviction data includes records of incidents that have resulted in either an acquittal or a dismissal of charges. The term also includes a decision by police not to transfer the matter to a prosecutor or a decision by a prosecutor not to commence criminal proceedings. Non-conviction data also includes records of criminal transactions with no final dispositions where no active prosecution is pending after one year and the individual is not a fugitive.

Q. Suppose a record contains only the arrest report and even after a query of the central repository no record of a final disposition is shown can the record be disseminated to the public or news media?

A. Yes. The regulations allow for the dissemination of data about an offense for which the individual is still within the system-regardless of whether a final disposition has been recorded. In addition, as it is often difficult to determine immediately the current status of a prosecution, there is a presumption that there is an active prosecution for a period of one year from the date of arrest. During this period the arrest record may be freely disseminated unless any inquiry reveals that prosecution is not pending.

Q. Does the reporting of a criminal justice transaction from the involved criminal justice agency to the next appropriate agency constitute a dissemination?

A. No. If the agencies are transferring the information pursuant to the administration of criminal justice this does not constitute a dissemination i.e., a police department upon making an arrest transfers the arrest reports to the appropriate prosecutor's office for subsequent action or a central repository as a regular procedure transfers criminal history record information to NCIC.

Q. When is a person currently within the criminal justice system?

A. A person is in the criminal justice system from the date of arrest to the date of final resolution of the matter, either through dropping or a dismissal of charges, or conviction, sentencing, and release. An individual is within the system while on bail, probation, parole, or if incarcerated.

- Q. *Who can qualify to receive non-conviction data under the exemption for persons or agencies authorized by statute, local ordinance, executive order, or court rule?*
- A. The answer to this question must be left to each state and/or municipality to decide according to its own interpretation of relevant statute, order or rule. Groups that could be covered include public defender agencies, private security agencies, state and local civil service commissions, private employers, and the news media.
- Q. *Would a state public records or "sunshine" law be sufficient authority to allow the dissemination of non-conviction data for non-criminal justice purposes?*
- A. This is a question that can only be answered by the appropriate state's authority after an interpretation of the relevant statutes.
- Q. *Do the limitations on the dissemination of non-conviction data apply to all criminal history records?*
- A. No. These limitations do not apply to documents that are exempted from the regulations e.g., court records of public judicial proceedings, police blotters, and original records of entry organized and accessed on a chronological basis, as well as published court opinions, traffic records, and "wanted" announcements.
- Q. *May states place stricter limitations on the dissemination of both conviction and non-conviction data?*
- A. Yes. These regulations provide outer limits for the dissemination of criminal history record information. States are free to enact more stringent limitations and, in fact, many states have. Therefore, it is important that local agencies be aware of relevant state policy.

- Q. *May information be disseminated in written form or may data be disclosed orally only?*
- A. Either, at the discretion of the disseminating agency. The regulations do not speak to this issue.
- Q. *Can an agency reply to the question, "Was X released from prison last month?"*
- A. Yes, information concerning transactions resulting from a conviction are included under conviction data and may be released under the regulations without limitation.
- Q. *Does the exemption for court records of public proceedings allow public access to both manual and automated court records?*
- A. Yes, However, the exemption merely authorizes the disclosure of records and does not require that a court make all records systems available. System access may also be restricted by state legislation and/or court rule.
- Q. *To what records does the "individual right of access" apply?*
- A. The regulations require that the individual must have the right to review and challenge criminal history information contained in record systems covered by the regulations. "The right of individual access and challenge" applies only to criminal history information. Where an individual requests to review records which contain information other than criminal history information, it will be the duty of the agency to separate those portions of the file that are not subject to review unless it decides to allow full review of the file.

Q. *May an individual request access to his/her file at any criminal justice agency?*

A. The regulations state that "any individual shall . . . be entitled to review without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual." What constitutes an undue burden for the agency is a question that must be answered by each state in finalizing its procedures.

Q. *If an error is detected what are the responsibilities of an agency, in terms of correction?*

A. Needless to say the agency's own record must be corrected. Additionally, it has a duty to notify all other criminal justice agencies that have received the record about the error.

At the individual's request, the agency must also provide to the individual a list of all non-criminal justice agencies that have received the record.

Q. *When is a criminal record complete?*

A. 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. It should be tied into some positive form of identification, such as fingerprinting. A system for linking the individual incidents that comprise a complete "rap sheet" should be developed and operational.

Q. *To be complete must an individual's record contain notations of every criminal incident in which an individual has been involved?*

A. No. The completeness requirement deals with the completeness of a specific criminal event or transaction. To be complete a local agency's files, need not contain information on every other arrest or other criminal incident of an individual.

Q. *How current must a criminal history file be?*

A. It is important that agencies maintaining records develop a reporting system that will insure that records are updated as quickly as possible. The regulations require that events must be reported to the *central repository* within 90 days. However, this is a minimum standard, and states are free to establish a more stringent requirement. When information is maintained and available for dissemination at a *local agency*, the regulations require that dispositions, at least from those in the local jurisdiction be available to the maximum extent feasible. Alternatively the requirement would be met if inquiries are made to the central repository prior to information dissemination.

Q. *Where must dispositions be reported?*

A. In the overwhelming majority of states it will be necessary to report dispositions only to the central repository, which will maintain complete files on all incidents and then disseminate them to local agencies on request.

There are two situations where procedures would be necessary to transmit dispositions back "down the line." Specifically: 1) when a state does not intend to maintain a central repository, and 2) when a central repository exists but a "query before dissemination" procedure has not yet been developed.

Q. *Is a state central repository required by the regulations?*

A. No. The decision as to whether or not to centralize criminal history records has been specifically left to the states. However, the Regulations can most effectively be implemented by states that do establish and operate a central repository. It is expected that practically all states will develop a central repository if, in fact, they have not done so already.

Q. *Must a local agency query the state central repository for up-to-date information prior to the public dissemination of a file?*

A. Yes. In most states with central repositories the reporting of criminal justice transactions will be primarily to the central repository and only secondarily to other local agencies maintaining information on related prior incidents. Therefore to disseminate the most complete record to the public it will be necessary for an agency to contact the central repository.

Q. *Does the "query before dissemination" procedure apply to releases of information to other criminal justice agencies?*

A. If the information is released outside the agency, even to another criminal justice agency, then the repository must be queried. No query is required however if the release is a reporting "up the line," of a transaction to the next appropriate agency i.e., the transferral of arrest reports to prosecutor's office, a reporting to NCIC, or if time limits preclude the possibility of an inquiry.

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END