



FTI- Background Check Policy

DEVELOPED: February 19, 2019

This document outlines the Department's processes for performing, evaluating, and acting upon the information produced during mandatory background checks of applicants for positions with job duties which require access to federal tax information (FTI).

Background investigations must be conducted for any candidate being considered for a position requiring access to FTI. Such investigations will be comprised of three parts:

- **FBI fingerprinting**: Review of Federal Bureau of Investigation (FBI) fingerprint results conducted to identify possible suitability issues.
- **Local law enforcement investigation**: Check of local law enforcement agencies where the individual has lived, worked, and/or attended school within the last 5 years and, if applicable, follow-up with the responding agency regarding any reported arrests.
- **Citizenship/residency**: Validation of the individual's eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization).

Positions which require access to FTI

Background investigations are required for all persons newly assigned to positions for which access to FTI is required.

The Public Health Department job titles for which access to FTI will be assumed to be required to perform job duties are:

- Public Health Director
- Assistant Public Health Director
- Supervising Public Health Nurse
- Public Health or Community Health Nurse
- Coordinated Children's Services Specialist
- Community Educator
- Business Manager
- Director of Finance
- Account Clerk Typist
- Senior Account Clerk Typist
- Principal Account Clerk Typist
- Emergency Preparedness Coordinator

This policy will apply equally to any other title when the position in question is assigned to the Montgomery County Public Health Department.

Access to FTI will not be granted to any contractor or subcontractor.

Prospective Employee(s)

“Prospective employee” refers to an outside applicant or to a current employee applying for a new position either in a title in the above list or that is assigned to the MCPHD.

Authorized Persons

In the context of this policy, the Public Health Director, Director of Finance and/or Business Manager will fulfill the roles of ‘Authorized Persons’ with respect to collecting the background check information and, in that connection, will serve as the Department’s Access Coordinators with respect to DCJS fingerprint-based criminal history check system.

Background Check Process

- I. Notification of the background investigation requirement will be included in vacancy postings, examination announcements, and transfer opportunities posted for positions within the MCPHD.
- II. During the Department of Public Health’s hiring process for positions which require access to FTI, the Authorized Persons will remind prospective employees of the FTI-related background check requirements, inform them that a criminal record will not necessarily disqualify them from employment, and explain that an individual determination will be made as to how the results from the background check will impact their suitability to handle FTI - and, thus, to their eligibility for appointment.

Prospective employees will be directed to complete and return the following forms:

- A. *Applicant Consent Form* for Fingerprinting for Criminal Background Check (CBC)
- B. *Authorization for Release of Personal Information* form
(each of the above forms to be provided by the Authorized Persons); and
- C. *USCIS Form I-9* (as part of their Day 1 onboarding orientation.)

Refusal or failure to comply with the background check requirement will be interpreted as a voluntary withdrawal from the hiring process.

III. **FBI fingerprinting/criminal conviction check**

1. Upon receipt of the completed Applicant Consent Form for Fingerprinting for Criminal Background Check (CBC) form, the Authorized Persons will register and refer the prospective employee to an IndentoGo location for fingerprinting.

The cost of the fingerprint background check will be paid by the Public Health Department.

2. An authorized person will receive the results of the fingerprint background check. If the fingerprint check reveals no criminal history, an Authorized Person will communicate that result to the Public Health Department Director, and the Prospective Employee. Otherwise, the Authorized Persons will forward information about any arrests or convictions to the Public Health Director for an assessment of risk.

IV. Local law enforcement investigation

1. Upon receipt of the Authorization for Release of Personal Information form, an Authorized Person will submit a copy to the local law enforcement agency in each such identified residence, employment, or school location, together with a request for information concerning any arrests of the prospective employee.
2. If a local agency's response identifies any arrests, an Authorized Person will follow up to request additional details.
3. An Authorized Person will convey the responses to the local law enforcement inquiries to the Commissioner for evaluation.

V. Federal employment eligibility check

1. The applicant will complete the USCIS Form I-9 to validate citizenship/residency eligibility to legally work in the United States during the Day 1 on-boarding orientation for new employees.
2. Within 3 workdays from the new employee's start date, an Authorized Person will confirm their employment eligibility using the I-9 information and the E-Verify system, and will notify the employee, and the Social Services Commissioner of the initial e-Verify results.
3. If a worker's employment eligibility has been assigned an expiration date, an Authorized Person will monitor that status. If the employment eligibility expires, an authorized Person will notify the same parties as above, and also the Human Resources Department, of that fact.

Evaluation of background check results

The Director of Public Health, Director of Finance/Business Manager and the Coordinator of Children with Special Health Care needs will evaluate the results of the background checks described in this policy, together with any additional information supplied by the applicant or any court or agency with information about the applicant's criminal history.

1. In determining the applicant's suitability for access to FTI, the evaluators shall consider the following factors:
 - a) The policy of this State, as expressed in Correction Law Article 23-a, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
 - b) The specific job duties and responsibilities necessarily related to the access to FTI by the applicant.
 - c) The bearing, if any, the criminal offense or offenses for which the applicant was previously convicted will have on his/her fitness and trustworthiness to access and safeguard confidential information, including FTI, and the potential risk of misuse of such information.
 - d) The time which has elapsed since the occurrence of the criminal offense or offenses.
 - e) The age of the applicant at the time of occurrence of the criminal offense or offenses.
 - f) The seriousness of the offense or offenses.

- g) Any information produced by the applicant, or produced on his/her behalf, respecting their rehabilitation and good conduct.
 - h) The legitimate interest of the district in safeguarding confidential information, including FTI.
2. The Evaluators shall make a written record of their findings, setting forth how each criterion was considered and the reasoning behind the final determination, and taking care to ensure that their determination is based solely on suitability for the position for which they are a prospect.
 3. If the Evaluators determine that an unreasonable risk of misuse of confidential information exists, they will notify the prospective employee in writing that, based on the results of their background check findings, the prospective employee was determined not to be suitable for appointment to the position they sought.

Administrative Review

At the written request of any prospective employee who has been determined to be unsuitable for access to FTI, the Social Services Commissioner shall provide, within thirty days of a request, a written statement setting forth the reasons for the determination and the process for requesting an administrative review.

Confidentiality and retention requirements for records concerning this process

All records containing background screening information and determination of suitability for access to FTI will be retained in a separate confidential file. The file shall all be marked “Confidential” and securely maintained within the Human Resources Department administrative office for a minimum of 10 years, or when an employee no longer has access to FTI: whichever event occurs first.

Disposal of all records obtained or created in connection with the background check process shall be conducted so as to maintain the confidentiality of that information.

References

- IRS Publication 1075, Section 5.1.1
- NYS State Corrections Law Correction Law Article 23-a

NYS OTDA directives:

- 14-LCM-15 Use and Protection of Confidential, Private, Personal and/or Sensitive Information
- 17-ADM-08 Background Investigations of Employees with Access to Federal Tax Information
- 18-LCM-02 Questions and Answers Regarding 17-ADM-08 “Background Investigations of Employees with Access to Federal Tax Information”