

From: "Terry D LINDSEY" <Terry.D.Lindsey@state.or.us>
To: "Kathaleen Kerr" <kjk@nrc.gov>
Date: 7/30/2007 2:50:09 PM
Subject: Re: RCPD-07-004, Agreement State Authority to Fingerprint - Response Requested

Kathleen,
Since RCPD-07-004 did not identify a point of contact for this response, I am replying directly to you. Attached is our Assistant Attorney General review and it does not appear that Oregon has authority to require licensees to submit requests to the FBI for fingerprint and background checks.

I am also not aware of any process that is currently in place for Agreement States to process fingerprints. It seems as though a process that can be used by all Agreement States first needs to be developed with appropriate identification required to process fingerprints and background information for this type of check on new or existing employees. /td

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|

>>> "Kathaleen Kerr" <kjk@nrc.gov> 6/21/2007 1:40 PM >>>

NON-PUBLICLY AVAILABLE DOCUMENT
Response requested by July 30, 2007.

The attached letter RCPD-07-004 is contained in the attached electronic file. The PDF version is provided for your convenience.
Please do not relay the attached document to individuals who do not have a "need to know." This document is not to be publicly released.

CC: <MLM1@nrc.gov>

Mail Envelope Properties (46AE32CB.FC6 : 4 : 12230)

Subject: Re: RCPD-07-004, Agreement State Authority to Fingerprint -
Response Requested
Creation Date 7/30/2007 2:48:42 PM
From: "Terry D LINDSEY" <Terry.D.Lindsey@state.or.us>
Created By: Terry.D.Lindsey@state.or.us

Recipients

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Files	Size	Date & Time
MESSAGE	1357	7/30/2007 2:48:42 PM
TEXT.htm	1848	
Mail		
Mime.822	19012	

Options

Expiration Date: None
Priority: Standard
ReplyRequested: No
Return Notification: None

Concealed Subject: No
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From: "OFallon Shannon" <shannon.ofallon@doj.state.or.us>
To: "LINDSEY Terry D" <Terry.D.Lindsey@state.or.us>
Date: 7/25/2007 7:17:45 PM
Subject: fingerprinting authority

Terry - You have asked whether RPS has the authority to require an entity that is licensed by RPS to do fingerprint based criminal background checks on certain employees. It appears there is federal authority for this requirement, but the real question is whether an Oregon employer is able, under state law, to obtain this kind of a

criminal background check on an employee. Apparently NRC has asked states to provide comments on whether there are state statutes, regulations, or other laws that may affect a State's ability to collect fingerprints or the use of information obtained as a result of the required FBI identification and criminal history records check.

The question, as presented by the NRC, assumes that the state's would do the background checks, however you have indicated that in fact, the idea is to require licensees to do the background checks. It is unclear whether that information would be sent to the state or the feds.

Under Oregon law, it does not appear that either RPS or its licensees can require or obtain FBI criminal history records checks.

ORS 181.537 permits DHS to require fingerprints for the purpose of conducting a state or nationwide criminal records check, but only for a licensee that "provides care". Care is defined as "the provision of care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, the elderly or persons with disabilities." RPS licensees do not provide care. RPS does not license entities or people that provide care.

Under ORS 181.555, an employer, with a properly executed authorization from an employee or potential employee, can request a background check from local law enforcement, but this will only include criminal history in Oregon. It does not authorize an FBI fingerprint check.

An authorized agency may request an FBI fingerprint check under ORS 181.534, but only on a "subject individual". DHS is an authorized agency, but a subject individual is "a person from whom an authorized agency may require fingerprints pursuant to statute for the purpose of enabling the authorized agency to request a state or nationwide criminal records check." There is no state statute that enables DHS/RPS to request a state or nationwide criminal records check.

In addition, OAR 257-015-0060 provides that FBI information available through Oregon's LEDS (Law Enforcement Data System), is restricted to criminal justice agencies, and RPS does not fall within the definition of a criminal justice agencies.

I also looked briefly at 28 CFR, Part 20, the federal regulations governing criminal justice information systems and I could not find any authority that would permit RPS or a RPS licensee to go directly to the FBI to obtain nationwide criminal records information. However, there could be more to this than I understand, or the authority of NRC might be the nexus that is needed.

Let me know if you would like to discuss this.

Shannon O'Fallon
Senior Assistant Attorney General

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Subject: fingerprinting authority
Creation Date 7/25/2007 7:17:45 PM
From: "OFallon Shannon" <shannon.ofallon@doj.state.or.us>

Created By: shannon.ofallon@doj.state.or.us

Recipients

state.or.us
Terry.D.Lindsey (LINDSEY Terry D)

Post Office

Route
state.or.us

Files	Size	Date & Time
MESSAGE	3718	7/25/2007 7:17:45 PM
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Header	2600	

Options

Expiration Date: None
Priority: Standard
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