



METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

Recommendation to the

Board of Directors

Proposed

Regulation for Pre-Employment Criminal History Checks

December 2012



Background

- The present pre-employment check conducted by the Airports Authority Public Safety Employee Standards Unit includes a broad view of the applicants' credit records, driving records, employment history and education records.
- Virginia law allows political subdivisions, including the Airports Authority, to enact a regulation which allows conducting criminal history background checks on applicants being considered for employment.
- The addition of this regulation will enhance the Airports Authority's desire to continuously improve hiring of personnel who meet an elevated level of professionalism and integrity.



Discussion

- On October 17, 2012, the Business Administration Committee authorized the President to give public notice of the proposed regulation.
- On November 4, 2012, the *Washington Post* published notice of the proposed regulation.



Discussion Continued

- The notice included that the Airports Authority would hold a public hearing on Wednesday, November 14, 2012, at 7:00 p.m. in Conference Room 1C of the Airports Authority Corporate Office Building, 1 Aviation Circle, Ronald Reagan Washington National Airport, and that written comments may be sent to the Office of General Counsel or to an e-mail address.
- The hearing was held and no one came to comment on the proposed regulation. No written or electronic comments have been received.



Conclusion

Staff requests that the Board of Directors adopt with the full force and effect of law the regulation for obtaining criminal history record checks of applicants receiving a conditional offer of employment with the Airports Authority.

**RECOMMENDATION PAPER
TO THE BOARD OF DIRECTORS**

**PROPOSED REGULATION FOR PRE-EMPLOYMENT
CRIMINAL HISTORY RECORD CHECKS**

DECEMBER 2012

RECOMMENDATION

That the Board of Directors adopt with the full force and effect of law the attached regulation for performing criminal history record checks of individuals receiving a conditional offer of employment with the Metropolitan Washington Airports Authority. The Business Administration Committee reviewed and recommended approval in October 2012. No comments were received during the regulatory public comment period.

BACKGROUND

The present process for pre-employment checks on applicants selected for Airports Authority positions falls into two main categories. The first is conducted by the Police Department's Employee Standards Unit and is known as "Suitability for Employment Investigation." This includes a broad review of applicants' credit records, driving records, employment histories, and education records.

The second is conducted by members of the Airports Authority's Pass and ID Offices as part of the badging process. An applicant's fingerprints are submitted to the Transportation Security Clearinghouse and through it to the Federal Bureau of Investigation (FBI). The FBI returns the criminal history information that is obtained from a review of the applicant's fingerprints to the Airport Security Coordinator (ASC), an Airports Authority employee in Operations who compares it to the Transportation Security Administration criminal history standards for access to secured areas of the airport. This check of the criminal history is limited to 36 specific crimes and eliminates potential employees who have been convicted or pled not guilty by reason of insanity to any of these crimes in the past ten years.

The Code of Virginia §19.2-389 (A)(7) provides that criminal history record information may be disseminated by the Virginia Central Criminal Records Exchange to agencies of any political subdivision of the Commonwealth for the conduct of investigations of applicants for employment whenever, in the interest of public welfare or safety and under a duly enacted ordinance, it is necessary to determine if past criminal conduct would be compatible with the nature of employment under consideration. The Airports Authority currently obtains criminal history record information from the Virginia Central Criminal

Records Exchange, but only for applicants for police officer positions. (Va. Code §19.2-389 (A)(1))

DISCUSSION

Virginia law allows political subdivisions acting under a duly enacted ordinance to conduct criminal background checks on applicants for employment when it finds that such checks are “in the interest of public welfare or safety.” Such checks are conducted through the Virginia Central Criminal Records Exchange. Management feels that conducting criminal background checks on all applicants for Airports Authority employment is an essential component of suitability for employment investigation conducted by the Police Department’s Employee Standards Unit and is an important tool in the continued efforts of the Airports Authority to hire employees who meet the desired level of professionalism and integrity.

Staff has included in the proposed regulation the standards in Virginia law (Va. Code § 15.2-1505.1) that are to be used by Virginia localities that choose to obtain fingerprint-based criminal history record information from the Virginia Central Criminal Records Exchange in determining whether to hire a person. The proposed regulation also requires that if an applicant is denied employment because of information appearing in his or her criminal history record, the applicant must be notified and given an opportunity to inspect the information and correct, clarify, explain, or deny it. The proposed regulation also authorizes the Police Department to share the criminal history record information with the Pass & ID Offices at each airport (as permitted by Va. Code § 19.2-389) to be used in determining whether the applicant has been convicted of any of the 36 crimes that would preclude the issuance of an airport badge.

On October 17, 2012, the Business Administration Committee authorized the President to give public notice of the proposed regulation. On November 4, 2012, *The Washington Post* published notice that the Airports Authority is considering adopting a regulation to authorize the Airports Authority Police Department to conduct criminal history record checks on all applicants to whom a conditional offer of employment with the Airports Authority has been made, to set the criteria for determining whether a criminal record relates to the position for which the person applied, and to require that the criminal history record information be kept confidential. The notice further stated that the Airports Authority would hold a public hearing on Wednesday, November 14, 2012, at 7:00 p.m. in Conference Room 1C of the Airports Authority’s Corporate Office Building, 1 Aviation Circle, Ronald Reagan Washington National Airport, and that written comments could be sent to the Office of General Counsel or to an e-mail address. The hearing was held and no one came to comment on the proposed regulation. No written or electronic comments have been received.

CONCLUSION

Staff requests that the Board of Directors adopt with the full force and effect of law the regulation set forth in Attachment A for obtaining criminal history record checks of applicants receiving a conditional offer of employment with the Airports Authority.

Prepared by:
Office of Public Safety

December 2012

ATTACHMENT A

§ 9.11. Criminal History Records Check of Applicants for Authority Employment

- (1) In the interest of public welfare and safety, all applicants to whom a conditional offer of employment with the Authority has been made shall be investigated to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration. Accordingly, the President or his or her designee shall request from the Virginia Central Criminal Records Exchange and the Federal Bureau of Investigation, a criminal record check of each such applicant for Authority employment.
- (2) Each applicant required to undergo a criminal background check, upon receiving a conditional offer of employment, shall submit to fingerprinting and provide personal, descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant.
- (3) Criminal history record information considered in accordance with this section shall include outstanding warrants, pending criminal charges, and records of conviction.
- (4) The President or his or her designee shall review the criminal history record information to determine whether the conviction record, if any, of the applicant is compatible with the nature of the Authority employment under consideration. In making this determination and in determining whether a criminal conviction directly relates to a position, the President or his or her designee shall consider the following criteria:
 - (a) the nature and seriousness of the crime;
 - (b) the relationship of the crime to the work to be performed in the position applied for;
 - (c) the extent to which the position applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;
 - (d) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the position being sought;
 - (e) the extent and nature of the person's past criminal activity;
 - (f) the age of the person at the time of the commission of the crime;
 - (g) the amount of time that has elapsed since the person's last involvement in the commission of a crime;

- (h) the conduct and work activity of the person prior to and following the criminal activity; and
 - (i) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.
- (5) Any applicant who is denied employment on the basis of criminal history record information obtained pursuant to this section will be notified in writing and will be given an opportunity to inspect the information for the purpose of clarifying, explaining, or denying the information.
- (6) The criminal history record information provided in accordance with this section shall be confidential, shall be used solely to assess eligibility for Authority employment and for access to restricted areas of the Airports in compliance with 49 U.S.C. § 44936 and its implementing regulations, and shall not be disseminated except as provided in this section.

Proposed Resolution

Adopting a Metropolitan Washington Airports Regulation for Pre-Employment Criminal History Record Checks

WHEREAS, staff believes that conducting criminal background checks on all applicants for Airports Authority employment is an essential component of a suitability for employment investigation conducted by the Airports Authority Police department's Employee Standards Unit and is a crucial tool in the continued efforts of the Airports Authority to hire employees who meet the desired level of professionalism and integrity;

WHEREAS, on October 17, 2012, the Business Administration Committee authorized staff to initiate the process of adopting a new regulation to obtain criminal history record information based on an applicant's fingerprints from the Virginia Central Criminal Records Exchange for the conduct of investigations to determine an applicant's suitability for employment;

WHEREAS, on November 4, 2012, notice was published in *The Washington Post* that the Airports Authority is considering adopting a regulation to authorize the Airports Authority Police Department to conduct criminal history record checks on all applicants to whom a conditional offer of employment has been made, to set the criteria for determining whether a criminal record relates to the position for which the person applied, and to require that the criminal history record information be kept confidential;

WHEREAS, the November 4, 2012, notice also stated that the Airports Authority would hold a public hearing on the proposed regulation on November 14, 2012, at a specified location, and would accept written comments through November 19, 2012;

WHEREAS, the notice and the text of the proposed regulation was also posted on the Airports Authority's website;

WHEREAS, no individuals appeared at the public hearing on November 14, 2012, and no comments on the regulation were submitted;

WHEREAS, after considering the staff recommendation, the Board has determined that it is in the interest of the public welfare and safety to adopt the proposed regulation, as set forth below, with the force and effect of law; now, therefore, be it

RESOLVED, that a new Section 9.11 of the Metropolitan Washington Airports Regulations is hereby adopted and shall read as follows:

**§ 9.11. Criminal History Records Check of Applicants for Authority
Employment**

- (1) In the interest of public welfare and safety, all applicants to whom a conditional offer of employment with the Authority has been made shall be investigated to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration. Accordingly, the President or his or her designee shall request from the Virginia Central Criminal Records Exchange and the Federal Bureau of Investigation, a criminal record check of each such applicant for Authority employment.
- (2) Each applicant required to undergo a criminal background check, upon receiving a conditional offer of employment, shall submit to fingerprinting and provide personal, descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant.
- (3) Criminal history record information considered in accordance with this section shall include outstanding warrants, pending criminal charges, and records of conviction.
- (4) The President or his or her designee shall review the criminal history record information to determine whether the conviction record, if any, of the applicant is compatible with the nature of the Authority employment under consideration. In making this determination and in determining whether a criminal conviction directly relates to a position, the President or his or her designee shall consider the following criteria:
 - (a) the nature and seriousness of the crime;
 - (b) the relationship of the crime to the work to be performed in the position applied for;
 - (c) the extent to which the position applied for might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;

- (d) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the position being sought;
 - (e) the extent and nature of the person's past criminal activity;
 - (f) the age of the person at the time of the commission of the crime;
 - (g) the amount of time that has elapsed since the person's last involvement in the commission of a crime;
 - (h) the conduct and work activity of the person prior to and following the criminal activity; and
 - (i) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.
- (5) Any applicant who is denied employment on the basis of criminal history record information obtained pursuant to this section will be notified in writing and will be given an opportunity to inspect the information for the purpose of clarifying, explaining, or denying the information.
- (6) The criminal history record information provided in accordance with this section shall be confidential, shall be used solely to assess eligibility for Authority employment and for access to restricted areas of the Airports in compliance with 49 U.S.C. § 44936 and its implementing regulations, and shall not be disseminated except as provided in this section.

2. That this Resolution shall be effective upon its adoption.

Recommended by the Business Administration Committee on October 17, 2012
For consideration by the Board of Directors on December 12, 2012