

November 20, 2015

Town of Wartrace, Tennessee
Ms. Laura P. Gentry
City Recorder
P.O. Box 158
Wartrace, Tennessee 37183

VIA ELECTRONIC MAIL

Dear Ms. Gentry:

Responsive to your request, please find enclosed the following sample policies for background checks:

- Franklin Tennessee – Background Checks
- Charlotte North Carolina – Pre-Employment Background Checks
- MTAS – Sample Criminal Check Background for Fire Departments
- Society of Human Resource Management - Background and Reference Check Policy: Sensitive Positions

Please be advised that Tennessee Code Annotated § 6-54-129 authorizes municipal pre-employment criminal history investigations to be conducted, and directs that the Tennessee Bureau of Investigation (TBI) perform such checks, on a fee basis, when engaged to do so by a municipality. The following link will take you to the TBI website for more information on the background check process:

<https://www.tn.gov/tbi/article/background-checks>

I have also enclosed a joint publication of the Equal Employment Opportunity Commission and the Federal Trade Commission titled *Background Checks – What Employers Need to Know*. In addition, a sample background screening/consent form used by the City of Fairview is enclosed for your information.

Please let me know if you have further questions regarding this matter.

Very truly yours,



Jeffrey J. Broughton
Municipal Management Consultant

City of Franklin Tennessee

Human Resources Manual

Article VI – Recruitment

Section K. Background Checks

The City shall conduct appropriate background checks on all final candidates for employment. The scope and nature of this background check may vary based upon the type of position being filled. After a conditional offer of employment, candidates for certain positions may be required to undergo a background check completed by an independent company under contract with the City.



Subject/Title

Pre-Employment Background Checks

Date Effective

October 2, 2006

Revision Date Effective

Code Number

HR19

Human Resources

Responsible Key Business

Samela A. Syfert
City Manager

Purpose: The City of Charlotte seeks to ensure the safety and security of employees and the public by ensuring that all final candidates for employment are subject to pre-employment background checks. Pre-employment background checks are important to ensure that candidates for employment with the City of Charlotte are qualified individuals and to verify the accuracy of the information provided by the candidate. A thorough pre-employment background check is also a preventative measure that enables employers to determine if a candidate's background indicates a possible safety threat to other employees or the public.

Policy: Background checks will be conducted on final internal or external candidate(s) applying for any position with the City of Charlotte. The type of information that will be collected as part of a background check includes, but is not limited to: reference checks, social security verification, education verification, criminal conviction record check, and, if applicable, a credit history check, sex offender registry and motor vehicle records check.

Background checks must be in compliance with all federal and state statutes, such as the Fair Credit Reporting Act (FCRA) and the Municipal Records Retention Schedule. The checks must be consistent with the guidelines set forth by these laws requiring organizations to obtain a candidate's written authorization before obtaining a criminal background report, motor vehicle records check or credit report; and to properly store and dispose of information derived from such reports.

The results of a background check cannot be used as a basis for denying employment, unless the denial of employment is determined to be due to job-related issues or business necessity. The following factors will be considered for those applicants with a history of criminal convictions in determining whether to hire the applicant: the nature of the crime and its relationship to the position; the time since the conviction; the number (if more than one) of convictions; and whether hiring the applicant would pose a risk to the business. The applicant will be given an opportunity to review the criminal background check results and submit an explanation.

Hiring Managers are reminded that arrest history information should not be used as a part of the hiring process and cannot be a basis for denying employment.

Key Business Units may establish additional pre-employment requirements unique to their individual business needs as long as the requirements are job related, consistently applied to all final candidates and are in compliance with all federal and state statutes, such as the Fair Credit Reporting Act (FCRA) and the Municipal Records Retention Schedule. These additional KBU pre-employment requirements are subject to approval by the Human Resources Key Business.

Pre-employment investigations and information obtained in pre-employment investigations must be reasonable and appropriate for the position for which the candidate is applying, taking in to

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consideration the nature of the offense, whether it is job-related, when it occurred and the candidate's conduct since the offense.

Although a disqualification is possible, in accordance with federal and state laws, a previous conviction does not automatically disqualify an applicant from consideration for employment with the City.

The City will ensure that all information attained from the reference and background check process will only be used as part of the employment process and kept strictly confidential according to FCRA. Hiring managers and administrative staff responsible for the pre-employment process are reminded that background check information falls under the FCRA disposal rules. Background check information kept as part of an employment hiring record, or used to make an employment decision, should be kept with the employee's personnel file in Human Resources. All applicant information no longer required for use should be sent in to Human Resources for appropriate disposal.

If an applicant is found to have deliberately withheld information with the intent to mislead or is found to have falsified information pertaining to previous convictions, education, employment history, or any information deemed pertinent to employment, the employee will be disqualified from further employment consideration in any position with the City due to falsification of an application; or if this is discovered post employment, the employee will be terminated.

The North Carolina Department of Justice sets the qualification for the employment and retention of police officers including but not limited to standards addressing the minimum age, education, physical standards and mental status, citizenship, and good moral character (N.C. General Statute §17C-10). In addition, Chapter 12 of the North Carolina Administrative Code controls the extent, scope and use of a background investigation and further places specific eligibility limitations on an applicant's prior criminal history. In the event one of the mandatory state standards conflicts with this policy, then the state standard shall control and shall be followed by the Charlotte-Mecklenburg Police Department.

Definitions:

1. Criminal Conviction Record – The record of an individual's criminal conviction(s) obtained from the states and counties where the applicant lives or has lived in the past seven years.
2. Motor Vehicle Record (MVR) – An individual's driving history obtained from the state where the applicant/employee driver's license is or was issued or through agencies with license to obtain these reports on the City's behalf.
3. Fair Credit Reporting Act (FCRA) – Federal regulations of the collection and use of information contained in consumer reports prepared and assembled by a consumer reporting agency.

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4. Municipal Records Retention and Disposition Schedule – This records schedule identifies and provides retention and disposition instructions for many records that have been identified as being produced and maintained in municipal administrative offices. These records are defined under Chapter 132 of the General Statutes of North Carolina. Chapter 121-5 mandates that these records be disposed of only in accordance with an official records retention schedule. Standard 13 of the Municipal Records Retention and Disposition Schedule addresses personnel records to include application and selection files.
5. Educational Verification – Confirmation that the final candidate has the degree or educational level required for the position; or confirmation that the candidate has the degree or educational level as stated on the application or resume.
6. Reference Check - A basic work profile from a professional reference provided by the applicant, generally consisting of: title, basic responsibilities, relationship, professional and interpersonal skills.
7. Sexual Offender Registry - This report will contain all information available in the applicant's state data repository.
8. Social Security Verification – This report will verify the issue date of the social security number, if the number has been reported deceased or not yet been issued. The report will also reveal other names used by the applicant, such as maiden names or aliases and addresses listed by subject when they have applied for credit.
9. Credit History - A profile of the applicant's credit history for the last seven years as reported by a major credit bureau. Charge offs, collection accounts, public records, tradelines, bankruptcies, judgments and monthly payment histories are included in a history.

Procedures:

1. The City of Charlotte Job Opportunity Bulletin will include the following statement: "Criminal Conviction Checks Required on final internal and external candidate(s) applying for positions with the City of Charlotte."
2. The City of Charlotte requires a criminal conviction record check for all full-time, part-time, temporary, intern or volunteer applicants prior to a conditional offer of employment being extended by the hiring manager.
3. Prior to conducting the pre-employment background check the following must be completed by the final candidate:
 - City of Charlotte application
 - Applicant Authorization and Consent for Release of Information form (Exhibit A)

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4. Present the final candidate with the Summary of Rights Under the Fair Credit Reporting Act and Consumer Notification (Exhibits B and C).
5. All pre-employment background checks must be completed by one of the approved vendors under contract with the City of Charlotte. Human Resources will maintain the list of approved vendors.
6. Before taking an adverse action that is based in whole or in part on the information collected as part of the pre-employment background check, a copy of the adverse information and an Adverse Information Form must be sent to the candidate (Exhibit D).
7. To give the candidate time to respond to the adverse information, the employer must wait an appropriate length of time between notifying the candidate that an adverse action will be taken, and actually taking the adverse action. After a waiting period of five (5) business days following notification of the adverse information to the candidate, the Adverse Decision Form should be sent to the candidate (Exhibit E).
8. Candidates for employment where the job duties require driving authorization under the City's Driver's Permit Policy or other related duties will be subject to a Motor Vehicle Records check.
9. Candidates for employment where the job duties include responsibility for initiating or affecting financial transactions or other related duties will be subject to credit history check. The Key Business Unit is responsible for determining the job duties for which a credit history check is conducted, and is responsible for ensuring a job-related need for conducting the check.
10. Candidates for employment where the job duties include entering a private household, interaction with children or other related duties will be subject to sexual offender registry check.
11. Confirmation that the candidate has the degree or educational level required for the position, or as stated on the resume or application, can be conducted through the approved background checking vendors or the candidate can be required to submit an official transcript. Official transcripts must be received in a sealed envelope from the college, university or school system in question and must be a certified copy.

Responsibilities:

The Human Resources Key Business shall be responsible for the coordination of this Policy.

Key Business Executives and or their designees are responsible for ensuring that pre-employment background checks have been conducted on all final candidates prior to hiring.

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Exhibit A

**APPLICANT AUTHORIZATION AND CONSENT FOR
RELEASE OF INFORMATION**

This release and authorization acknowledges that the City of Charlotte may now, or at any time while I am employed, contact personal references, conduct a verification of my education and licenses/certifications, employment/work history, motor vehicle records, and receive any criminal history record information pertaining to me which may be in the files of any Federal, State or Local criminal justice agency, and to verify any other information deemed necessary to fulfill the job requirements. The results of this verification process will be used to make employment decisions pursuant to the City of Charlotte's employment policies. The City of Charlotte will not request credit reports without proper notification in compliance with the Fair Credit Reporting Act.

I authorize the City's current employment verification vendor and any of its associates, to disclose orally and in writing the results of this verification process to the designated authorized representative of the City of Charlotte. The City of Charlotte may at its discretion change the vendor and this release will remain in effect.

I have read and understand this release and consent, and I authorize the background verification. I authorize all persons, schools, current and former employers and other organizations and Agencies to provide the City's employment verification vendor, or its associates with all information that may be requested. I hereby release all of the persons and Agencies providing such information from any and all claims and damages connected with their release of any requested information. I agree that any copy of this document is as valid as the original.

I do hereby agree to release and discharge the City of Charlotte, the employment verification vendor and their associates to the full extent permitted by the law from any claims, damages, losses, liabilities, costs and expenses or any other charge or complaint filed with any Agency arising from the retrieving and reporting of information. According to the Fair Credit Reporting Act, I am entitled to know if employment was denied based on information obtained by my prospective employer and to receive a disclosure of the public record information and of the nature and scope of the investigative report. I have been given a summary of my rights under the Fair Credit Reporting Act.

Printed Name (Last, First, M.I)

Social Security Number

Signature

Date

Exhibit B

Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer ResponseCenter, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, got www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

You must be told if information in your file has been used against you. Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.

You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if: a person has taken adverse action against you because of information in your credit report; you are the victim of identify theft and place a fraud alert in your file; your file contains inaccurate information as a result of fraud; you are on public assistance; you are unemployed but expect to apply for employment within 60 days. In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.

You have the right to ask for a credit score. Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.

You have the right to dispute incomplete or inaccurate information. If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.

Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information. Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.

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Exhibit C

Consumer Notification

Dear _____ :

This is to inform you that a consumer report or an investigative consumer report will be requested from the City of Charlotte's vendor, _____ a Consumer Reporting Agency (CRA). This report is for the purpose of evaluating your eligibility for employment, promotion, reassignment or retention as an employee.

You have been asked to carefully read and sign an "Authorization for Release of Information" permitting the City's vendor to furnish the consumer report to us.

In accordance with the Fair Credit Reporting Act (15 U.S.C. §1681 et. seq.), you will be notified in writing before the City makes any adverse employment decision which is based in whole or in part on the consumer report.

Sincerely,

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Exhibit D

(Pre-Adverse Action)

Date

Applicant Name & Address

Dear :

We are writing to inform you that in evaluating your application for employment, promotion, reassignment or retention as an employee we have received the enclosed consumer report. This notification is provided because an adverse employment decision may be based, in whole or part, on this report.

The report was prepared by _____ and authorization signed by you at the time of application. A copy of the authorization and a summary of your rights as a consumer are enclosed. _____ is not responsible for any employment-related determination.

If you have any questions regarding this report or believe that it may contain incorrect information, you may contact this company and they will respond to your inquiry. Their mailing address and phone numbers are listed below:

Sincerely,

Enclosure: Consumer Report
 Copy of Authorization
 Consumer Rights Notification

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Exhibit E

(Adverse Action)

Date


Applicant Name & Address

Dear :

We are writing to inform you that we have decided not to offer you employment based upon the information we have received from a consumer report. The report was prepared by _____ pursuant to an authorization signed by you at the time of application. _____ is not responsible for any employment-related determination and are unable to provide the specific reasons regarding our decision.

You may receive a free copy of the consumer report from _____ during the 60 day period described in the Fair Credit Reporting Act "FCRA" (15 U.S.C §1681j). You may also dispute the accuracy or completeness of any information as pursuant to FCRA 15 U.S.C. §1681m (a). Their mailing address and phone numbers are listed below:

Sincerely,

THE UNIVERSITY of TENNESSEE 
INSTITUTE for PUBLIC SERVICE
MUNICIPAL TECHNICAL ADVISORY SERVICE

Chief Smokey Sparks
Anytown Fire Department
123 Main Street
Anytown, Tennessee 12345-6789

June 25, 2013

RE: Sample Criminal Background Check Policy

Dear Chief Sparks,

You asked for guidelines on how your department might implement a policy for conducting criminal background checks on current and potential employees and volunteers. Tennessee Code Annotated § 68-102-308 allows fire departments to conduct such checks on both current and potential employees and volunteers, provided the department has a written policy in place.

There are several reasons to conduct criminal background checks. The position of a firefighter is a public-safety-sensitive position. Time passes, and a background check is out of date as soon as it is completed. Pre-employment background checks are insufficient in catching criminal activity after the person is a member of the department. Routine background checks will make the department aware of potential problems and allow the department to take corrective action.

I have attached a draft policy that addresses your needs. The sample policy is a template. Adjust the provisions of the policy to meet local needs but do not adjust any portion of the policy that would result in a violation of state or federal law, and consult your city or department attorney for legal advice.

Sincerely,



Dennis Wolf
Fire Management Consultant
UT-MTAS

Sample Criminal Background Check Policy

Draft date: June 25, 2013

NOTE: This is a template based on TCA 68-102-308. Adjust the provisions of the policy and terms, such as “city,” to meet local needs but do not adjust any portion of the policy that would result in a violation of state or federal law. The sample policy requires that the cost of the background check will be borne by the applicant, but this is optional under TCA, and the city may decide to cover the cost of the background check.

POLICY

Because the position of firefighter is one of public trust and is public safety sensitive, it is the policy of the <Anytown> Fire Department to conduct background checks on all applicants and members in accordance with Tennessee Code Annotated (TCA) § 68-102-308. Anyone wishing to participate in the volunteer program shall complete the same requirements outlined for full time employment.

Unless otherwise provided by law, a criminal record will not automatically disqualify an applicant or member. Determinations of suitability based on criminal background checks will be made consistent with this policy and any applicable law or regulation.

DEFINITIONS

For the purpose of this policy, “member” means either a paid or a volunteer member of the department, and “applicant” means an individual who has been offered a position with the department in either a paid or a volunteer capacity.

REQUIREMENTS FOR MEMBERS AND APPLICANTS

Members and applicants shall, upon request:

1. Provide past work history and personal references to be checked by the city;
2. Agree to the release of information and investigative records to the city, or to any agency that contracts with the state, as may be necessary for the purpose of verifying whether the individual has been convicted of a felony or any theft or arson related conviction;
3. Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee Bureau of Investigation, the Federal Bureau of Investigation, other law enforcement agency, or any legally authorized entity; and
4. Agree to the release of any information required for a criminal background investigation by a professional background screening organization or criminal background check service or registry.

APPLICANTS

After the initial selection process, an applicant who is a potential new member will be offered either paid employment or membership as a volunteer conditional on passing a criminal background check before being hired as a paid employee or admitted to the department as a volunteer.

MEMBERS

To reduce the potential risk to the department, the city will conduct background checks on all members as per TCA § 68-102-308(b)(1) as follows:

1. Every five (5) years, or
2. Upon receiving notification and confirmation of the commission of a criminal offense

DATABASES CHECKED FOR CRIMINAL HISTORY

The background check shall include searching the following databases for a criminal history:

- TBI fingerprint search
- FBI fingerprint search
- TBI Criminal History Database
- Tennessee Sexual Offender Database
- Tennessee Orders of Protection Database

ACCESS TO BACKGROUND CHECK INFORMATION

Access to the contents of a background check report is limited to the fire chief, human resources director, and employee's supervisor. However, access by the employee's supervisor requires prior approval of both the fire chief and human resources director.

MAINTENANCE OF BACKGROUND CHECK INFORMATION

The information collected in the criminal background check shall not be part of the employee's personnel file. The city shall maintain criminal background check reports in a separate file under lock and key. The city shall maintain the criminal background check reports for the duration of employment plus one (1) year.

COST FOR BACKGROUND CHECKS

The applicant shall pay for the cost of the background check, as allowed by TCA § 68-102-308(d).

Background and Reference Check Policy: Sensitive Positions

3/20/2014

Practice Note

This sample policy applies to background investigations conducted during the course of an applicant selection process for positions considered to be sensitive. It specifies that the employer will use a third-party vendor to conduct the check. It designates the human resource department as having primary responsibility for the process, along with appropriate management personnel. It discusses the legal obligations of the employer under the [Fair Credit Reporting Act](#), including taking negative action based on information disclosed by the check. In the case of criminal records checks, the sample policy takes into account guidance from the [Equal Employment Opportunity Commission](#) on the exclusion of applicants with criminal records based on the results of the investigation. See, generally, [Conducting Background Investigations and Reference Checks](#). For restrictions on the use of criminal records, see [EEOC Guidance Encourages Individualized Assessment of Criminal Conduct in Background Screening](#), [Criminal Records/Background Checking Laws](#), and [A New Look at Job Applicants with Criminal Records](#).

Purpose

[Company Name] believes that hiring qualified individuals contributes to our overall strategic success. Background checks serve as an important part of the selection process. The information we collect helps [Company Name] promote a safe work environment for our current and future employees. Background checks also help us obtain information necessary to determine an applicant's overall employability and to ensure the protection of [Company Name]'s physical property, proprietary information and other assets. [Company Name] complies with all applicable federal, state and local laws, including fair employment practices and equal employment opportunity, when conducting background checks.

Procedure

At [Company Name] background checks will be conducted on all job applicants applying for sensitive positions. These include positions involving security and financial responsibilities, as well as other positions determined by [Company Name] to be sensitive. [Company Name] will use a third-party agency to conduct the background checks to verify the accuracy of the information provided by the applicant during the selection process. Information collected by the agency includes past employment, education, character, finances and reputation.

[Company Name] will ensure that all background checks are conducted in compliance with all applicable federal and state statutes, such as the Fair Credit Reporting Act and the Americans with Disabilities Act. The information that can be collected from previous employers and other sources will be limited to that which is job-related and pertains to the quality and quantity of work performed by the applicant and to the applicant's attendance record, education and other lawful, work-related inquiries. The human resource

department along with appropriate management personnel will be primarily responsible for the background check process.

Arrest and conviction records

[Company Name] may check criminal arrest and conviction records as part of the applicant selection process. In accord with the Equal Employment Opportunity Commission's current interpretation of Title VII of the Civil Rights Act of 1964, this information cannot be used as a basis for denying employment, unless it is determined to be job-related and consistent with business necessity.

Credit reports

[Company Name] may collect credit information on applicants consistent with the guidelines set forth by the federal Fair Credit Reporting Act (FCRA). The FCRA requires organizations to obtain a candidate's written authorization before obtaining a credit report. When doing this, the employer must:

- Certify to the consumer-reporting agency that the employer is in compliance with the FCRA and will not misuse the information it receives.
- Disclose to the applicant or employee, on a separate form, its plans to obtain a consumer or investigative consumer report and that the information received will be used solely for employment purposes.
- Inform the individual of his or her right to request additional information on the nature of the report and the means through which such information may be obtained.
- Inform the applicant that the report will include information about the individual's character, general reputation and personal characteristics.
- Provide the individual with a summary of his or her rights under the FCRA.

If the results of the credit check are negative, [Company Name] will inform the applicant before taking adverse action based on the results, provide the applicant with a Statement of Consumer Rights from the Federal Trade Commission, offer the applicant the opportunity to review a copy of the credit report, and advise the applicant of his or her rights to dispute inaccurate information. Applicants should be granted reasonable time to dispute the information (approximately three to five days).

Record-Keeping

[Company Name] assures applicants that all information obtained from the background check process will only be used as part of the employment process and will be kept strictly confidential. [Company Name] human resources will maintain a log that will include the position you are applying for, your name and the date of the background check. Only appropriate human resource personnel at [Company Name] will have access to this information. [Company Name] complies with all federal and state laws regarding the collection, storing and disposal of applicant information, such as the Fair and Accurate Credit Transactions Act (FACTA).

This material is for informational purposes only and not for the purpose of providing legal advice.

You should always contact your attorney to determine if this information, and your interpretation of it, is appropriate to your particular situation.

West's Tennessee Code Annotated

Title 6. Cities and Towns

Municipal Government Generally

Chapter 54. Municipal Powers Generally

Part 1. General Provisions

T. C. A. § 6-54-129

§ 6-54-129. Municipal pre-employment criminal history investigations; costs; exemptions

Effective: August 5, 2011

[Currentness](#)

(a) Prior to employment with a municipality, the municipality may require all persons to:

(1) Agree to the release of all investigative records to the municipality for the purpose of verifying the accuracy of criminal violation information contained on an employment application; and

(2) Supply a fingerprint sample and submit to a criminal history records check to be conducted by the Tennessee bureau of investigation. In addition, to the extent permitted by federal law, and at the discretion of the municipality, a check of such prints may be made against records maintained by the federal bureau of investigation.

(b) Any costs incurred by the Tennessee bureau of investigation or the federal bureau of investigation, as appropriate, in conducting such investigations of applicants shall be paid by the municipality requesting such investigation and information; provided, that the municipality may require an applicant to pay such costs if the applicant is offered and accepts a position with such municipality. Payment of such costs is to be made in accordance with [§ 38-6-103](#).

(c) A municipality may establish the job titles or classifications to which the requirements of this section apply; provided, however, that such classifications shall not supersede any mandatory fingerprint-based criminal history background requirements that may be applicable for any person who is seeking employment in a position in any program subject to licensure, approval or certification by any state agency.

Credits

[2000 Pub.Acts, c. 693, § 1, eff. May 9, 2000.](#)

T. C. A. § 6-54-129, TN ST § 6-54-129

Current through end of the 2015 First Reg. Sess.

End of Document

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Background Checks

What Employers Need to Know



When making personnel decisions — including hiring, retention, promotion, and reassignment — employers sometimes want to consider the backgrounds of applicants and employees. For example, some employers might try to find out about the person’s work history, education, criminal record, financial history, medical history, or use of social media. Except for certain restrictions related to medical and genetic information (see below), it’s not illegal for an employer to ask questions about an applicant’s or employee’s background, or to require a background check.

However, any time you use an applicant’s or employee’s background information to make an employment decision, regardless of how you got the information, you must comply with federal laws that protect applicants and employees from discrimination. That includes discrimination based on race, color, national origin, sex, or religion; disability; genetic information (including family medical history); and age (40 or older). These laws are enforced by the Equal Employment Opportunity Commission (EEOC).

In addition, when you run background checks through a company in the business of compiling background information, you must comply with the Fair Credit Reporting Act (FCRA). The Federal Trade Commission (FTC) enforces the FCRA. This publication explains how to comply with both the federal nondiscrimination laws and the FCRA. It’s also a good idea to review the laws of your state and municipality regarding background reports or information because some states and municipalities regulate the use of that information for employment purposes.

Before You Get Background Information

EEOC

In all cases, make sure that you're treating everyone equally. It's illegal to check the background of applicants and employees when that decision is based on a person's race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older). For example, asking only people of a certain race about their financial histories or criminal records is evidence of discrimination.

Except in rare circumstances, don't try to get an applicant's or employee's genetic information, which includes family medical history. Even if you have that information, don't use it to make an employment decision. (For more information about this law, see the EEOC's publications explaining the Genetic Information Nondiscrimination Act, or GINA.) Don't ask any medical questions before a conditional job offer has been made. If the person has already started the job, don't ask medical questions unless you have objective evidence that he or she is unable to do the job or poses a safety risk because of a medical condition.

FTC

If you get background information (for example, a credit or criminal background report) from a company in the business of compiling background information, there are additional procedures the FCRA requires beforehand:

- Tell the applicant or employee you might use the information for decisions about his or her employment. This notice must be in writing and in a stand-alone format. The notice can't be in an employment application. You can include some minor additional information in the notice (like

a brief description of the nature of consumer reports), but only if it doesn't confuse or detract from the notice.

- If you are asking a company to provide an “investigative report” – a report based on personal interviews concerning a person’s character, general reputation, personal characteristics, and lifestyle – you must also tell the applicant or employee of his or her right to a description of the nature and scope of the investigation.
- Get the applicant’s or employee’s written permission to do the background check. This can be part of the document you use to notify the person that you will get the report. If you want the authorization to allow you to get background reports throughout the person’s employment, make sure you say so clearly and conspicuously.
- Certify to the company from which you are getting the report that you:
 - notified the applicant and got their permission to get a background report;
 - complied with all of the FCRA requirements; and
 - won’t discriminate against the applicant or employee, or otherwise misuse the information in violation of federal or state equal opportunity laws or regulations.

Using Background Information

EEOC

Any background information you receive from any source must not be used to discriminate in violation of federal law. This means that you should:

- Apply the same standards to everyone, regardless of their race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age (40 or older). For example, if you don't reject applicants of one ethnicity with certain financial histories or criminal records, you can't reject applicants of other ethnicities because they have the same or similar financial histories or criminal records.
- Take special care when basing employment decisions on background problems that may be more common among people of a certain race, color, national origin, sex, or religion; among people who have a disability; or among people age 40 or older. For example, employers should not use a policy or practice that excludes people with certain criminal records if the policy or practice significantly disadvantages individuals of a particular race, national origin, or another protected characteristic, and does not accurately predict who will be a responsible, reliable, or safe employee. In legal terms, the policy or practice has a "disparate impact" and is not "job related and consistent with business necessity."
- Be prepared to make exceptions for problems revealed during a background check that were caused by a disability. For example, if you are inclined not to hire a person because of a problem caused by a disability, you should allow the person to demonstrate his or her ability to do the job – despite the negative background information – unless doing so would cause significant financial or operational difficulty.

FTC

When taking an adverse action (for example, not hiring an applicant or firing an employee) **based on background information obtained through a company in the business of**

compiling background information, the FCRA has additional requirements:

- Before you take an adverse employment action, you must give the applicant or employee:
 - a notice that includes a copy of the consumer report you relied on to make your decision; and
 - a copy of “A Summary of Your Rights Under the Fair Credit Reporting Act,” which you should have received from the company that sold you the report.

By giving the person the notice in advance, the person has an opportunity to review the report and explain any negative information.

- After you take an adverse employment action, you must tell the applicant or employee (orally, in writing, or electronically):
 - that he or she was rejected because of information in the report;
 - the name, address, and phone number of the company that sold the report;
 - that the company selling the report didn’t make the hiring decision, and can’t give specific reasons for it; and
 - that he or she has a right to dispute the accuracy or completeness of the report, and to get an additional free report from the reporting company within 60 days.

Disposing of Background Information

EEOC

Any personnel or employment records you make or keep (including all application forms, regardless of whether the applicant was hired, and other records related to hiring) must be preserved for one year after the records were made, or after a personnel action was taken, whichever comes later. (The EEOC extends this requirement to two years for educational institutions and for state and local governments. The Department of Labor also extends this requirement to two years for federal contractors that have at least 150 employees and a government contract of at least \$150,000.) If the applicant or employee files a charge of discrimination, you must maintain the records until the case is concluded.

FTC

Once you've satisfied all applicable recordkeeping requirements, you may dispose of any background reports you received. However, the law requires that you dispose of the reports – and any information gathered from them – securely. That can include burning, pulverizing, or shredding paper documents and disposing of electronic information so that it can't be read or reconstructed. For more information, see "*Disposing of Consumer Report Information? Rule Tells How*" at www.business.ftc.gov/documents/disposing-consumer-report-information-rule-tells-how.

Further Information

EEOC

To find out more about federal antidiscrimination laws, visit www.eeoc.gov, or call the EEOC toll-free, 800-669-4000 (voice); TTY: 800-669-6820. The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. The EEOC investigates, conciliates, and mediates charges of employment discrimination, and also files lawsuits in the public interest. For specific information on:

- **Preemployment medical inquiries:** see *Preemployment Disability-Related Questions and Medical Examinations* at www.eeoc.gov/policy/docs/preemp.html.
- **Medical inquiries during employment:** see *Questions and Answers: Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA)* at www.eeoc.gov/policy/docs/qanda-inquiries.html.
- **Genetic inquiries, including inquiries about family medical history:** see *Background Information for EEOC Final Rule on Title II of the Genetic Information Nondiscrimination Act of 2008* at www.eeoc.gov/laws/regulations/gina-background.cfm.
- **EEOC recordkeeping requirements:** see *Summary of Selected Recordkeeping Obligations in 29 C.F.R. Part 1602* at www.eeoc.gov/employers/recordkeepingobligations.cfm.

- **Using arrest and conviction records to make employment decisions:** see *Questions and Answers about EEOC's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII* at www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm.
- **Whether arrest and conviction records act as an automatic bar to all employment:** see *Reentry Myth Buster: On Hiring/Criminal Records Guidance* at csgjusticecenter.org/wp-content/uploads/2012/11/Reentry_Council_Mythbuster_Employment.pdf.
- **Background on the EEOC for small businesses:** see *Get the Facts Series: Small Business Information*, www.eeoc.gov/eeoc/publications/smallbusiness.cfm.

FTC

To find out more about federal laws relating to background reports, visit www.business.ftc.gov, or call the FTC toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. For specific information on employment background reports, see:

- **Using Consumer Reports: What Employers Need to Know** at www.business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know
- **The Fair Credit Reporting Act & social media: What businesses should know** at www.business.ftc.gov/blog/2011/06/fair-credit-reporting-act-social-media-what-businesses-should-know

- **Background screening reports and the FCRA: Just saying you're not a consumer reporting agency isn't enough** at www.business.ftc.gov/blog/2013/01/background-screening-reports-and-fcra-just-saying-youre-not-consumer-reporting-agency-i
- **Reentry Myth Buster: Criminal Histories and Employment Background Checks** at csgjusticecenter.org/wpcontent/uploads/2012/11/Reentry_Council_Mythbuster_FCRA_Employment.pdf.

The FTC works to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to businesses to help them comply with the law.





A joint publication of the Equal Employment Opportunity Commission
and the Federal Trade Commission

CITY OF FAIRVIEW, TENNESSEE
BACKGROUND SCREENING CONSENT/RELEASE FORM

Applicant's Name (Printed):

Applicant's Social Security Number:

Applicant's Date of Birth:

Applicant's Address:

City: _____, State _____, Zip _____

I, _____, authorize and give my consent for the City of Fairview, Tennessee to obtain information regarding myself. This includes the following:

Criminal Background records/information
Sex Offender registry Checks
Credit Bureau/reporting agency checks

I, the undersigned, authorize this information to be obtained by or on behalf of the City of Fairview, Tennessee either in writing or via telephone in connection with my application for employment with the City of Fairview, Tennessee. Any person, firm or organization providing information or records in accordance with this authorization is released by me my heirs and or assigns from any and all claims of liability for compliance. Such information will be held in confidence in accordance with the City of Fairview's guidelines. I do understand; however, that any information released to the City of Fairview, Tennessee by the authority of this consent/release form is subject to the Tennessee Open Records Act, available to the public upon proper request and the information so obtained would be treated accordingly.

Applicant's Signature: _____

Date: _____