

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Authorizing Criminal Background Checks for County Employment Candidates Using the State Law Enforcement Data System)
)
)
)
)

ORDINANCE NO. 2003-8

The Board of County Commissioners for Columbia County, Oregon, ordains as follows:

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 2003-8.

SECTION 2. AUTHORITY.

This ordinance is adopted under the authority of ORS 203.035, 28 C.F.R. §20.21(b)(1) and (2), ORS 181.555(1), and OAR 257-010-0025(1)(a). This ordinance shall be governed by, and interpreted in accordance with the provisions of, 28 U.S.C. §534, 28 C.F.R. §20.21, ORS 181.511 to 181.580, OAR 257-010-0010 to 257-010-0100, and OAR 257-015-0000 to 257-015-0100.

SECTION 3. FINDINGS.

Columbia County adopts the following findings pursuant to the requirements of 28 C.F.R. §20.21:

- A. Completeness and Accuracy. 28 C.F.R. §20.21(a) requires criminal justice agencies to insure the criminal history record information is complete and accurate. This requirement applies to the information submitted to the central State repository for such information. Columbia County will not be submitting information pursuant to this ordinance and, therefore, is in compliance with this requirement.

- B. Limitations on Dissemination. 28 C.F.R. §20.21(b) requires criminal justice agencies to limit the dissemination of nonconviction data. Columbia County is a permitted recipient of nonconviction data pursuant to 28 C.F.R. §20.21(b), paragraphs (1): criminal justice agencies for purposes of the administration of criminal justice and criminal justice agency employment; and (2): individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by

appropriate State or local officials or agencies.

- C. General Policies on Use and Dissemination. 28 C.F.R. §20.21(c) requires the use of criminal justice information to be limited to the purpose for which it was given and not to be disseminated to persons or agencies not eligible to receive the information. This ordinance complies with that requirement.
- D. Juvenile Records. 28 C.F.R. §20.21(d) limits the dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need or [of] supervision to noncriminal justice agencies, except as authorized by a statute, court order, rule or court decision. Columbia County will not seek information regarding such juvenile records pursuant to this ordinance.
- E. Audit. 28 C.F.R. §20.21(e) requires the State to insure that annual audits or representative samples of State and local criminal justice agencies be chosen on a random basis to verify adherence to federal regulations and that appropriate records shall be retained to facilitate such audits. Columbia County shall cooperate with such audits and keep appropriate records to facilitate such audits.
- F. Security. Columbia County shall comply with the security requirements of 28 C.F.R. §20.21(f) in its implementation of this ordinance.
- G. Access and Review. Columbia County shall insure the access and review of the individual's criminal history is provided to eligible applicants and employees in a manner consistent with state law and administrative rules.

SECTION 4. PURPOSE.

- A. The Oregon Department of State Police ("OSP") has the authority to maintain and disseminate criminal offender information pursuant to OAR 257-010-0020. OAR 257-010-0025 provides that access to OSP criminal offender information by any means shall be limited to criminal justice agencies where, among other things, the information is required to implement a local ordinance that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct, or other demonstrated and legitimate needs.
- B. Columbia County is a criminal justice agency, as defined by OAR 257-015-0030(b), because it is a government agency which performs the administration of criminal justice pursuant to the Oregon Revised Statutes

and allocates a substantial part of its annual budget to the administration of criminal justice. In addition, the Columbia County Community Corrections Department is a criminal justice agency as defined by OAR 257-010-0025(7).

- C. Columbia County (the "County") has a responsibility, and a necessary, demonstrated and legitimate need to review the backgrounds of candidates for hire and current employees in certain positions to determine if they have engaged in criminal conduct incompatible with their positions or the safety of the public.
- D. The Community Corrections Department has entered into a User Agreement with OSP to allow it to access information maintained by OSP in the Law Enforcement Data System ("LEDS"). The Community Corrections obtains the data through a LEDS terminal maintained in its offices by authorized employees of the Department.
- E. It is appropriate and necessary that the County adopt an ordinance authorizing the use of OSP criminal offender information from LEDS to determine whether such candidates and employees have engaged in criminal conduct.

SECTION 5. CRIMINAL JUSTICE AGENCY - AUTHORITY.

The Human Resources Director shall be considered part of the Community Corrections Department for the purposes of this ordinance. Subject to the requirements of this ordinance, and the federal and state statutes, rules and regulations cited in Section 2 of this ordinance, upon the written request of the Human Resources Director, the Community Corrections Department shall have the authority to utilize LEDS to provide OSP criminal offender information, if any, to the Human Resources Director on candidates for or employees in those positions or types of positions listed in Section 7 below. The Community Corrections Department shall provide, subject to Sections 9 and 10 below, to the Human Resources Director the OSP criminal offender information obtained from LEDS regarding the employee or candidate for employment. The criminal offender information provided shall not include information available from the National Crime Information Center ("NCIC") operated by the Federal Bureau of Information ("FBI") unless and until the OSP has given written approval to this ordinance. The criminal offender information provided shall not include juvenile records. The Human Resources Director shall not have authority pursuant to this ordinance to access the LEDS network directly.

SECTION 6. PRIOR WRITTEN CONSENT REQUIRED.

When the Human Resources Director requests criminal offender information about an individual pursuant to this ordinance, he or she shall provide documentation to the

Director of Community Corrections or his or her designee, that the individual gave prior written consent for the County to make a criminal offender record check.

SECTION 7. POSITIONS SUBJECT TO CRIMINAL BACKGROUND HISTORY CHECKS.

Pursuant to this ordinance, and subject to Sections 9 and 10 below, the Community Corrections Department may conduct criminal background history checks on the following positions:

- All positions heading a department or division;
- All quasi-law enforcement positions (e.g., building inspector, code enforcement officer, animal control officer, etc.);
- All positions which have authority to enter or inspect property within the County (e.g., property appraisers, building inspectors, surveyors, etc.);
- All positions which are required to operate a County-owned vehicle (e.g., road workers, etc.);
- All positions which have contact with minors as a regular job duty (e.g., park workers, etc.); and
- All positions which have access to or regularly handle money or receipts for the County (e.g., Accountant, deputy tax collector, etc.).

SECTION 8. CONFIDENTIALITY AND SECURITY.

Notwithstanding the provisions of ORS 192.410 to 192.505 relating to public records, the Human Resources Director shall keep the information received pursuant to this ordinance confidential and exempt from public inspection except as provided by this ordinance and ORS 181.540(a), (b) and (c). The Human Resources Director shall maintain any OSP criminal offender information received from LEDS in secure files, available only to the appointing authority making the employment decision strictly for the purpose of reviewing the backgrounds of candidates for hire and current employees in the positions described in Section 7 above to determine if they have engaged in criminal conduct incompatible with their positions or the safety of the public. The Human Resources Director shall treat such information in such a manner that the information does not become public information in any later proceeding, except through court order or as otherwise provided by law.

SECTION 9. COMPLIANCE WITH APPLICABLE PROVISIONS.

The Community Corrections Department shall, at all times, comply with the statutes, administrative rules, its LEDS User Agreement, the LEDS Operating Manual and any directives of the Oregon State Police with regard to criminal offender information obtained from LEDS and nothing in this ordinance shall be construed to supersede or override any

of such provisions.

SECTION 10. SUBMISSION TO THE DEPARTMENT OF STATE POLICE.

The Office of County Counsel is directed to submit this ordinance to the OSP for its review and approval. The Community Corrections Department shall comply with any recommendations or directives regarding this ordinance and such recommendations and directives shall supersede any of the provisions of this ordinance in conflict with such recommendations and directives.

SECTION 11. SEVERABILITY.

If any of the provisions of this ordinance are for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision and such holding shall not affect the remaining portions hereof.

SECTION 12. EMERGENCY CLAUSE.

This ordinance being immediately necessary to maintain the public health, safety and welfare, an emergency is declare to exist and this ordinance shall take effect on October 15, 2003.

DATED this 15th day of October, 2003.

Approved as to form

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: *Jackie Tyson*
Office of County Counsel

By: *Joe Corsiglia*
Chair

Attest:

By: *Not Present*
Commissioner

By: *Jan Suenkel*
Recording Secretary

By: _____
Commissioner

First Reading: 9-10-2003
Second Reading: 10-1-2003
Effective Date: October 15, 2003

S:\COUNSEL\ORDINANC\ORDINANCES\2003\2003-08 BACKGRND CHK.wpd