

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



June 30, 2011

The Honorable Vincent Gray
Mayor
District of Columbia
The John A. Wilson Building
Mayor's Correspondence Unit, Suite 316
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mayor Gray:

The Office of the Inspector General (OIG) is providing this Management Implication Report (MIR 11-A-01) to advise you of an internal control weakness involving the hiring process for District of Columbia (District) government employees. The OIG discovered this weakness during our Audit of Contracting Officer Qualifications (OIG No. 09-2-20PO) at the Office of Contracting and Procurement (OCP).

Specifically, we noted that the District Personnel Manual (DPM) did not authorize District of Columbia Department of Human Resources (DCHR) officials to require pre-employment criminal background checks for contracting officer (CO) applicants at OCP. COs are responsible for procuring goods and services for the District government that total over \$1 billion annually. We also noted that the DPM did not authorize DCHR officials to require criminal background checks for many sensitive and high risk positions, such as those responsible for the health, safety and welfare of the general public, including positions that involve handling cash, awarding grants, and receipt of cash donations. However, the DPM does provide DCHR officials authority to determine which positions in the District government have duties that would require an applicant to undergo a mandatory criminal background check.

The OIG considers this issue to be an internal control deficiency in the District's hiring process that poses a significant risk for fraud, waste, and abuse. Therefore, we recommend the issuance of a Mayor's directive to District subordinate agency heads that requires each to identify sensitive and high risk positions and to consult with DCHR to implement mandatory criminal background checks for those positions.

CRITERIA

District government policy states that the government shall "consider persons for employment who are suitable in efficiency, character, conduct, and reputation" DPM § 402.1. To that end, the DPM requires each personnel authority to determine whether a

person under consideration for District government employment “is or has been involved in any act that constitutes a reasonable basis for concluding that the person would not faithfully discharge the duties of the position for which he or she is being considered.” *Id.* § 402.3. The DPM requires each personnel authority to make this determination as part of its pre-employment checks and background checks and investigations. *Id.* Current DCHR procedures relative to pre-employment checks, background checks, and investigations are summarized below.

Pre-Employment Checks. Pre-employment checks are normally used for hiring District government employees. According to DPM § 405.2, objectives of pre-employment checks are to obtain the following information:

- dates of employment and the salary or compensation paid to a prospective employee;
- titles held, duties performed, reasons for leaving, and performance;
- college degrees and/or licenses, if a prerequisite for employment;
- miscellaneous checks such as professional standings and other inquiries, if determined necessary;
- three references on a prospective employee’s reputation, character, and other relevant personal qualities; and
- whether the prospective employee is recommended for the position considered.

Background Checks. These inquiries are performed in addition to pre-employment checks and are based on the sensitivity of the position being filled. DPM § 405.5 lists procedures used to conduct background checks, which include: additional reference checks; employment history for a specific number of years; highest level of education completed; credit and traffic records checks; and a newspaper, magazine, or media search.

Background Investigations. The objective of a background investigation is to inquire into the past and present conduct and behavior of an applicant to determine his or her suitability for employment. Mayor’s Order 2003-136, dated September 25, 2003, delegated personnel authority to subordinate heads to conduct background investigations for persons being considered for employment in Information Technology (IT) systems positions at their respective agencies. In turn, each subordinate agency head is required to inform the DCHR Director of the results of the investigation. DPM § 406.4.

Also, DPM § 406.1 states, “Background investigations shall be conducted for employees and persons being considered for employment in positions associated with the design, use, or operation of District government automated information technology systems.” DPM § 406.3 further states, “The Director of the DCHR shall develop procedures to set forth the policies, standards, and criteria for background investigations pursuant to this section, and publish the procedures in the District Personnel Manual (or any other procedural manual or manuals developed).”

We noted that with respect to IT systems positions, the DPM implements a heightened standard of suitability in regard to character, conduct, and reputation, in light of these

employees' access to systems that contain financial, proprietary, and/or sensitive personal data, and the potential threat to the District government's security that could arise from acts of misconduct perpetrated by these employees. *Id.* § 402.2. Consequently, the DPM requires a separate set of suitability investigations for IT systems employees.

CRIMINAL BACKGROUND CHECKS

The procedures used for pre-employment, background checks, and investigations are separate and distinct from provisions and processes for criminal background checks. Criminal background checks involve the investigations of a person's criminal history through Federal Bureau of Investigation or Metropolitan Police Department record systems. Currently, the District government requires criminal background checks for appointees who work directly with children and youth.

The Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (Child and Youth Safety Act), effective April 13, 2005 (D.C. Law 15-353) requires that criminal background checks be obtained to ensure that appointees, employees, and volunteers who work directly with children and youth are suitable to do so, and do not pose a danger to children and youth. Criminal background checks are required before an individual is hired (new hire), transferred, promoted, or reclassified (current employee) into a position that provides direct services affecting the health, safety, and welfare of children and youth. The determination of which positions have direct contact with children and youth is made by the appropriate personnel authority upon consultation with the agency heads.

A criminal background check will show arrests and convictions with the exception of those charges that have been legally expunged by a judge. According to Section 205 (c) (5) of the Child and Youth Safety Act, the District conducts a criminal background check to confirm whether an applicant's record contains any of the following felonies:

- Murder, attempted murder, manslaughter or arson;
- Assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm;
- Burglary;
- Robbery;
- Kidnapping;
- Theft, fraud, forgery, extortion, or blackmail;
- Illegal use or possession of a firearm;
- Trespass or injury to property;
- Sexual offenses;
- Child abuse or cruelty to children; and
- Unlawful distribution or possession of, or possession with intent to distribute, a controlled substance.

BENCHMARKING

The federal government conducts investigations of its civilian officers or employees prior to their appointment to a sensitive position. Also, as a result of recent legislation, agencies in Virginia identify positions that are sensitive and require an applicant for such positions to undergo a fingerprint-based criminal history check. Conversely, Maryland does not require criminal background checks for regular state employees.

Federal Government. In the interest of national security, Executive Order 10450, Security Requirements for Government Employment (Executive Order 10450) signed April 27, 1953, “require[s] that all persons privileged to be employed in the departments and agencies of the government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States....” In this regard, the appointment of each civilian employee in any department or agency of the government is subject to investigation. The scope of the investigation will vary, depending on the nature of the position and the degree of harm that an individual in that position could pose to the national security. However, the investigation must include an FBI fingerprint check and inquiries to local law enforcement agencies.

Executive Order 10450, Section 2, states:

The head of each department and agency of the Government shall be responsible for establishing and maintaining within its department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

Accordingly, the head of any department or agency designates a position that could, by virtue of the nature of the position, have an adverse effect on national security as a sensitive position.

Virginia. Agencies located in Virginia are required to identify positions that are “sensitive.” The Code of Virginia defines sensitive positions as “those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures.”¹ They are further required to conduct a fingerprint criminal history check on applicants when filling vacancies in those types of positions. Agency heads review their positions and determine which should be designated as sensitive for these purposes.

Maryland. Maryland’s Department of Budget and Management does not require a criminal background check for regular state employees. However, certain state agencies such as the Maryland Lottery, State Police, and the Department of Juvenile Justice conduct criminal

¹ VA. CODE ANN. § 2.2-1201.1. Critical infrastructures refers to public utility, communication, water, emergency management, law enforcement, public health, transportation, agribusiness, financial, and government systems that are essential to ensuring public safety, national security, and the economic stability of the state or nation.

background checks for their employees because of the nature of their work. Also, certain Department of Public Safety and Correctional Services employees are required to have criminal background checks.

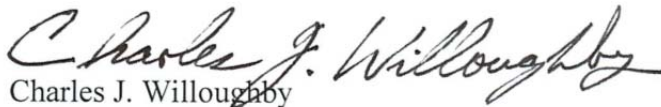
CONCLUSION

Presently, District-wide criminal background checks are not required for many sensitive and high risk positions such as those responsible for the health, safety and welfare of the general public. Consequently, the District government is placed in a vulnerable position for fraud, waste, and abuse by employees who occupy such positions and have not undergone a criminal background check. To improve internal control over the hiring process, we recommend that criminal background checks are conducted based upon the sensitivity of the position involved.

Currently, criminal background checks are performed for individuals, who by the nature of their position have direct contact with children and youth. However, positions that involve handling cash, awarding contracts, awarding grants, and receipt of cash donations should be considered as a sensitive or high risk position and require a criminal background check. Further, the results of our benchmarking offer support for our conclusion. Therefore, the OIG recommends the issuance of a Mayor's directive to District subordinate agency heads that requires each to identify sensitive and high risk positions and to consult with DCHR to implement mandatory criminal background checks for those positions.

If you have any questions, please call me or Ronald W. King, Assistant Inspector General for Audits, at (202) 727-2540.

Sincerely,



Charles J. Willoughby
Inspector General

CJW/rs

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