



Board Agenda Item 43

DATE: November 5, 2019

TO: Board of Supervisors

SUBMITTED BY: Delfino E. Neira, Director, Department of Social Services

SUBJECT: Resolution to Conduct Criminal History Background Investigations for Department of Social Services' staff who have access to Federal Tax Information

RECOMMENDED ACTION(S):

1. **Adopt a Resolution authorizing the Department to transmit images of fingerprints of Departmental employees to the California Department of Justice and receive from said agency local, State, and Federal level criminal history records, to determine the suitability of individuals who may have access to Federal Tax Information.**
2. **Authorize the Department's Director or designee to establish the minimum suitability standards for Departmental employees to access Federal Tax Information.**
3. **Authorize the Department's Director or designee to determine the suitability of said Departmental employees based on their local, State, and Federal level criminal history obtained from the California Department of Justice.**
4. **Authorize the Department's Director or designee to submit an application to the California Department of Justice to send fingerprint records and receive confidential criminal history information, which is controlled by State and Federal statutes.**

Approval of the first recommended action authorizes the Department of Social Services to transmit fingerprint images to the California Department of Justice (DOJ), and receive in return local, State and Federal-level criminal history information for employment eligibility verification of individuals who may have access to Federal Tax Information (FTI).

Approval of the second and third recommended actions authorize the Department to implement the suitability standards and the Department's Director or designee to adjudicate criminal history information for individuals who have access to FTI, which the Department established in order to comply with the Internal Revenue Service (IRS) Publication 1075 §5.1.1, as stated in the Privacy and Security Agreement with the California Department of Social Services (CDSS), and the Medi-Cal Privacy and Security Agreement with the California Department of Health Care Services (DHCS).

Approval of the fourth recommended action authorizes the Department to establish the necessary agency relationship with the DOJ to submit and receive summary criminal history background information. The Resolutions will ensure the Department has continued access to Federal Tax Information (FTI) obtained for the administration of Social Services programs, and obligates the Department to safeguard the FTI.

ALTERNATIVE ACTION(S):

There is no viable alternative action. A favorably adjudicated local, State, and Federal criminal history background investigation is required by the IRS and the Social Security Administration (SSA) prior to the Department granting an employee access to client FTI. Failure to adopt the recommended Resolution would result in the Department losing access to information required to administer essential Social Services programs.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The estimated cost is \$784 for the first year and \$98 for each year thereafter, assuming a staff turnover rate of two positions per year. The cost for the Department to submit fingerprints to the DOJ for State and Federal criminal history background checks using a Department-owned Livescan machine is \$49 per employee, since the Department owns two Livescan machines. Currently, sixteen employees access FTI for the Department, and all of them will be required to submit their fingerprints to document compliance with IRS Publication 1075 §5.1.1. Reinvestigations are required every 10 years. Sufficient appropriations are included in the FY 2019-20 Adopted Budget for the Department of Social Services Org 5610, and will be included in subsequent budgets.

DISCUSSION:

The Department receives and utilizes FTI in its administration of Social Services programs primarily to determine eligibility and during administrative appeals. FTI is a specific type of Personally Identifying Information (PII) that is originally sourced from the IRS, and then provided to the Department through an authorized secondary source such as the SSA, or another entity acting on behalf of the IRS under IRC §6103(p)(2)(B).

On August 20, 2019, your Board approved a Medi-Cal Privacy and Security Agreement with DHCS and a Privacy and Security Agreement with CDSS. Both agreements require the County to comply with the Computer Matching and Privacy Protection Act (CMPPA) Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHSA). The CMPPA Agreement, between the Social Security Administration and the CHHSA requires compliance with the security and safeguarding requirements of the current revision of the Internal Revenue Service Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies (Pub 1075). Pub 1075 requires State and local agencies to establish a personnel security program that ensures that fingerprints for all employees who access client FTI are submitted to the DOJ for a criminal history background investigation.

The minimum requirements for a background investigation include:

- a review of the state and federal criminal history results for all 50 states;
- a check with local enforcement agencies where the subject of the background investigation has lived, or worked, or attended school within the last five years;
- citizenship/residency validation; and
- a reinvestigation of each individual with access to FTI at least every ten years from the date of the previous background investigation.

Pub 1075 permits the Department to develop its own standards specific to FTI access. The Department has developed a written policy requiring the successful completion of background investigations for all employees prior to permitting access to FTI. The written policy lists the specific crimes that render an individual's background unsuitable for employment in positions that involve access to FTI. The County has completed the Meet and Confer process with all impacted bargaining units.

When an employee's criminal conviction history includes a crime other than a minor traffic violation, the

Director or designee will make a suitability decision based on the relevance of the crime to the position sought, the nature of the work performed, the seriousness and circumstances of the conviction, and any other relevant information. If there is reasonable and convincing evidence to support the belief that the employee is of good character, the Director or designee shall provide a letter of exemption for the individual's departmental personnel file. The letter of exemption shall permit the individual to hold a position with access to FTI. Efforts may be made, on a case-by-case basis, to place any employee who is barred from working with FTI into an alternate position/assignment depending upon availability and the qualifications of the employee.

Once your Board has approved the Resolution, the Department will promptly implement a plan to fingerprint the existing sixteen employees who have access to FTI, and any prospective employee for those positions that involve access to FTI.

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - FTI Background Investigation Resolution

CAO ANALYST:

Ronald Alexander