



ALAN WILSON  
ATTORNEY GENERAL

September 3, 2025

P.J. McCann, III  
Special Agent, Law Enforcement Liaison  
Defense Counterintelligence and Security Agency  
Law Enforcement Liaison Office  
1900 E. Street NW  
Washington, DC 20415

Dear Special Agent McCann:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. On behalf of the Defense Counterintelligence and Security Agency (DCSA), you seek assistance “to resolve issues that Federal Special Agents and Investigators are experiencing when trying to obtain Criminal History Record Information (CHRI) from Criminal Justice Agencies (CJA) throughout South Carolina.”

Housed within the United States Department of Defense, DCSA is the largest security agency in the federal government. As your letter explains:

DCSA conducts 3.8 to 4 million national security personnel vetting investigations each year safeguarding the integrity and trustworthiness of the federal workforce for over 140 federal agencies, including such personnel assigned to the U.S. Department of Justice, Drug Enforcement Administration; Bureau of Alcohol, Tobacco, Firearms and Explosives; and the United States Marshals Service. This includes any South Carolina State, Local, Campus, or Tribal law enforcement officer assigned to these agencies Federal task forces. DCSA connects, engages and protects 13,000+/- contractor facilities, companies and research educational institutions cleared for access to classified information (121 facilities in South Carolina, including Clemson University and the University of South Carolina) that collaborate with the U.S. Government’s defense involving critical technologies, research, production, and supply chains. Obtaining CHRI from Federal, State, and Local CJA is vital to the safety and security of our Nation, these facilities, and personnel.

All investigations are conducted with the knowledge and consent of the individual being investigated. Upon request, the Special Agent / Investigator is mandated by law to provide all CHRI repositories and CJA with a release of information document signed by the individual authorizing our agency to obtain the record information. Title 5 of the U.S. Code, Chapter 91, §9101 does not require any additional release or releases to be provided. Additionally, the standard release signed by the individual being investigated states that the individual authorizes any Investigator, Special Agent, or other duly accredited representative of *OPM, the Federal Bureau of Investigation, the Department of Defense, the Department of Homeland Security, the Office of the Director of National Intelligence, the Department of State*, and any other *authorized Federal agency*, to request criminal record information about the individual of investigation from CJA for the purpose of determining eligibility for assignment to, or retention in, a national security position, in accordance with Title 5 of the U.S. Code, Chapter 91, §9101.

You advise that when a covered agency requests CHRI about an individual, the request will only be for information that a criminal justice agency has on file regarding any arrests, detentions, or other contacts with the individual with respect to criminal activity. You specifically note that DCSA Special Agents and Investigators will not request a criminal justice agency to use any state or national databases to respond.

You report in your letter that eight police departments, five sheriff's offices, nine courts of record, and two state or county CJAs in South Carolina are not complying with requests made pursuant 5 U.S.C. Section 9101. You warn that when a CJA fails to comply with proper requests for CHRI, DCSA National Security investigations are incomplete and decisionmakers are forced to make risk determinations without needed information, "unnecessarily putting our Nation and communities at peril." Additionally, if DCSA is unable to resolve a CJA's lack of compliance, congressional mandate requires the noncompliance be reported to the Federal Senate and House oversight committees.

With this background in mind, you ask whether Criminal Justice Agencies in South Carolina "are authorized and required to release criminal history record information to covered federal agencies," including DCSA, under Title 5 of the United States Code Section 9101. As discussed more fully below, it is the opinion of this office that all South Carolina state and local Criminal Justice Agencies are authorized and required to comply with such requests.

#### Law/Analysis

This office is required to offer advisory opinions on the law to the Governor, the General Assembly, state officers, and the Public Service Commission. S.C. Code Ann. § 1-7-90 (Rev. 2005) (Attorney General required to provide advice and opinions on questions of law to the

General Assembly and Governor); S.C. Code Ann. § 1-7-100 (Rev. 2005) (Attorney General required to advise solicitors regarding the duties of their offices); S.C. Code Ann. § 1-7-110 (Rev. 2005) (Attorney General required to advise Secretary of State, State Treasurer, Adjutant General, Comptroller General, other state officers, and the Public Service Commission regarding legal questions related to their official business). Additionally, as a courtesy, this office provides advice and opinions on legal matters to local governments. Ordinarily, this office does not address issues of federal law. Op. S.C. Att’y Gen., 2023 WL 4918024 (July 26, 2023). However, because agencies across South Carolina routinely receive requests for criminal history record information pursuant to 5 U.S.C. § 9101, we offer this opinion to help guide those receiving such requests on how to respond.

Originally enacted in 1985, 5 U.S.C. Section 9101 outlines access to criminal history records for national security and other purposes. A report regarding the need for the legislation noted that a majority of states and local governments were already cooperating by voluntarily providing CHRI when requested by the relevant federal agencies, but some were not cooperating either because of policy or state laws limiting access to such information. H.R. Conf. Rep. No. 99-373 at 24, 25 (1985). The statute was designed “provide a mandatory mechanism” for access to criminal history record information needed for national security purposes without discouraging existing voluntary cooperation. Id. at 25. The statute provides that “[u]pon request by a covered agency, criminal justice agencies shall make available all criminal history record information regarding individuals under investigation by that covered agency. . . .” 5 U.S.C. § 9101(b)(1). To emphasize the need for covered agencies to gather the requested information, the statute contains a clear expression that it is intended to preempt any state or local law. 5 U.S.C. § 9101(b)(4).

Requests are made by a covered agency, which can be any of the following:

- (A) The Department of Defense.
- (B) The Department of State.
- (C) The Department of Transportation.
- (D) The Office of Personnel Management.
- (E) The Central Intelligence Agency.
- (F) The Federal Bureau of Investigation.
- (G) The Department of Homeland Security.
- (H) The Office of the Director of National Intelligence.
- (I) An Executive agency that--
  - (i) is authorized to conduct background investigations under a Federal statute; or
  - (ii) is delegated authority to conduct background investigations in accordance with procedures established by the Security Executive Agent or the Suitability Executive Agent under subsection (b) or (c)(iv) of section 2.3 of Executive Order 13467 (73 Fed. Reg. 38103), or any successor thereto.
- (J) A contractor that conducts a background investigation on behalf of an agency described in subparagraphs (A) through (I).

5 U.S.C. § 9101(a)(6). Criminal justice agencies that receive the requests include state and local courts and any state or local agency, or subunit thereof, “which performs the administration of criminal justice pursuant to a statute or Executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.” 5 U.S.C. § 9101(a)(1). Criminal history record information, or CHRI, is defined in the statute as “information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release.” 5 U.S.C. § 9101(a)(2).

When a South Carolina law enforcement agency, court, or other criminal justice agency receives a request for CHRI from a covered agency, it must comply. 5 U.S.C. § 9101(a)(1). A covered agency will only request CHRI on a subject after receiving that person’s written consent. 5 U.S.C. § 9101(c). It is our understanding the consent is customarily presented with the request, but if not the state or local agency is entitled to ask for a copy. If the state or local agency chooses to charge a fee for the requested information, the fee must not exceed the reasonable cost of providing the information. 5 U.S.C. § 9101(b)(3). Once the information is shared, the covered agency may only disclose or use it for the purposes approved in the statute,<sup>1</sup> but can also share it with the subject of the information on request. 5 U.S.C. § 9101(d).

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<sup>1</sup> Requests for CHRI are made for the purpose of:

- (A) determining eligibility for--
  - (i) access to classified information;
  - (ii) assignment to or retention in sensitive national security duties or positions;
  - (iii) acceptance or retention in the armed forces; or
  - (iv) appointment, retention, or assignment to a position of public trust while either employed by the Government or performing a Government contract; or
- (B) conducting a basic suitability or fitness assessment for Federal or contractor employees. . . .
- (C) credentialing under the Homeland Security Presidential Directive 12 (dated August 27, 2004); and
- (D) Federal Aviation Administration checks. . . .

5 U.S.C. § 9101(b)(1).

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**Conclusion**

South Carolina's state and local law enforcement agencies, courts, and other criminal justice agencies are authorized and required to comply with any request for criminal history record information made by a covered federal agency provided that the subject of the information has provided written consent.

Sincerely,



Sabrina C. Todd  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General Emeritus