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June 26, 2015

The Honorable James B. Comey
Director
Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Ave. N.W.
Washington, DC 20535

Dear Director Comey,

We are writing to share our concerns about the accuracy and completeness of the Federal Bureau of Investigation (FBI)'s criminal history record information and their use in background checks for employment and licensing. This issue has received considerable attention in the media¹ and was recently the focus of a Government Accountability Office (GAO) report to Congress.² To help us better evaluate the issue, we are seeking specific information on current FBI policies and practices.

We recognize that the collection and distribution of criminal history information can serve important purposes for law enforcement, employers, and the general public. However, we also understand that the criminal history information collected and distributed by the FBI often fails to include important information about the disposition of criminal arrests and charges. According to a report by the Attorney General in 2006, the FBI was missing final disposition information for approximately 50 percent of its records.³

When these records are incomplete or inaccurate, employers may unfairly penalize current or prospective workers. This issue takes on special significance given the growing numbers of federal and state laws requiring criminal background checks for employment and

¹ Joe Palazzolo and Gary Fields, "Fight Grows to Stop Expunged Criminal Records Living On in Background Checks," *Wall Street Journal*, May 7, 2015, Gary Fields and John R. Emshwiller, "As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime," *Wall Street Journal*, Aug. 18, 2014; Madeline Neighly and Maurice Emsellem, *WANTED: Accurate FBI Background Checks for Employment*, The National Employment Law Project, July 2013.

² *Criminal History Records: Additional Actions Could Enhance the Completeness of Records Used for Employment-Related Background Checks*, U.S Government Accountability Office Report to Congressional Requestors, GAO-15-162, Feb. 2015.

³ U.S. Department of Justice, *The Attorney General's Report on Criminal History Background Checks* (2006).

licensing purposes, and more importantly the historic number of people who now have criminal records. Often these criminal records include convictions for minor offenses that pose no safety or security risk or criminal charges that were long ago dismissed entirely.

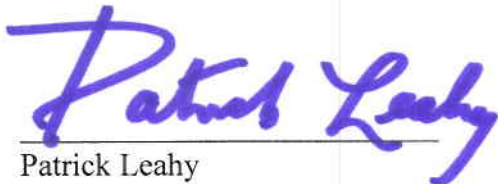
We understand that state and local law enforcement agencies need to provide accurate information to the FBI in a timely fashion and that private background check companies contribute to this problem when they fail to collect and distribute accurate information. We also understand that individuals can correct inaccuracies in their criminal history information. However, we are committed to exploring all reasonable steps that the FBI can take to address the issue directly. Given the magnitude and importance of this issue, we greatly appreciate the FBI's timely response to the questions listed below.

Questions

1. Please provide the total number of criminal history record information (CHRI) checks that FBI has provided for non-criminal justice purposes, including for employment and licensing, for each of the past five years (2010, 2011, 2012, 2013, 2014).
2. According to the recent GAO report, the Department of Justice provides funding to states through the National Criminal History Improvement Program (NCHIP) to enhance the quality, completeness, and accessibility of criminal history record information maintained by the states. The report suggests that these grants are "primarily intended to support state efforts to increase the number of felony records and criminal-related mental health records available for firearm background checks." Please provide detailed information regarding NCHIP grant awards for each of the past five years (2010, 2011, 2012, 2013, 2014). How many grants have been directed at improving the fairness and accuracy of collection and reporting for individuals who are seeking employment and licensing? Have these grants led to actual improvements in collection and reporting?
3. According to the GAO report, the FBI formed a Disposition Task Force in 2009 to address these issues, but "after more than 5 years, the task force has not issued best practices or national standards for collecting and reporting disposition information or developed a national strategy, even though disposition reporting has been a long-standing challenge." Please provide detailed information regarding the Task Force's plans and its efforts to establish best practices and national standards on this subject.
4. According to the GAO report, the FBI helps ensure the integrity of state criminal records through periodic audits. However, the GAO report indicates that "from 2011 through 2013, 12 of the 44 states that it had audited were noncompliant" with the requirements to provide accurate and timely reports. Please provide detailed information regarding these periodic state audits, including any information documenting the rates of incomplete or inaccurate records at the state level, for each of the past five years (2010, 2011, 2012, 2013, 2014).

5. A federal regulation (28 C.F.R Section 20.37) requires states to submit all dispositional information related to an arrest “so that all such records shall contain to the maximum extent feasible dispositions for all arrest data” and states that such dispositions “should be submitted” within 120 days after the date of disposition. Nevertheless, the GAO report notes that in 2012, 10 states reported that 50 percent or less of their arrest records had final dispositions, and a 2012 FBI audit found that one state was submitting dispositions only twice a year. Please explain FBI’s interpretation of this regulation. Has the FBI explored any avenues to enforce this requirement, especially against states that consistently fail to comply with its mandate? What penalties, if any, are available to the FBI if a state is found to be consistently out of compliance with this requirement?
6. We understand that there may be concerns about the accuracy and timeliness of criminal history record information being collected from federal law enforcement agencies. Are there any federal regulations or requirements related to the reporting of criminal history record information from federal law enforcement agencies? Has the FBI conducted any audits or analyses related to the collection and distribution of these records? Please explain what specific steps, if any, the FBI is taking to address this issue.
7. According to the GAO report, officials cited three key areas affecting the completeness of state criminal records: (1) prosecutors not reporting final dispositions; (2) a lack of records for “cite-and-release” practices, and (3) case number coordination issues. The GAO report suggests that assistance programs have helped to address these areas. Please indicate how assistance programs have helped to address these areas. For example, how many NCHIP grants have been directed to these areas?
8. According to the GAO report, the FBI is not appropriately incorporating information related to inaccurate and incomplete criminal histories that is developed by the Office of Personnel Management in connection with investigations of applicants for federal employment. Please explain what specific steps are being taken to address this issue.
9. According to the GAO report, FBI audit findings show that states generally do not provide job applicants with sufficient information about an individual’s ability to correct or complete his or her criminal history. The GAO report encouraged the FBI to take additional action to encourage states to comply with these requirements. Please identify any steps the FBI has taken or intends to take to address this issue.
10. Please provide the total number of public requests received by FBI to correct CHRI and the number of CHRI records that were updated as a result of these public requests, for each of the past five years (2010, 2011, 2012, 2013, 2014). Please also provide information on any audits or analysis of these public requests, including the timing and cost of responses to these requests.

11. A recent article in the *Wall Street Journal* (referenced in Footnote 1) suggests that background-check companies are inappropriately collecting and distributing criminal history information records related to expunged criminal records. How does the FBI handle expunged criminal records? Does the FBI collect and distribute information related to arrests that were dismissed or nolle prossed? Does the FBI collect and distribute information related to arrests that resulted in a not-guilty verdict by a judge or jury? When the FBI distributes criminal history record information for employment and licensing purposes, does it delete on its own initiative records related to arrests that were dismissed or nolle prossed or that resulted in a not-guilty verdict by a judge or jury? If not, why not?
12. The National Employment Law Project suggests that to improve the criminal background check process for employment and licensing, the federal government should implement a system similar to the “Brady check” process for criminal background checks for firearm purchases, known as the National Instant Background Check System (NICS). Please provide the total number of NICS requests, the total number of CHRI’s generated for NICS purposes, and the total number of incomplete offenses that required additional investigation for each of the past five years (2010, 2011, 2012, 2013, 2014). Has the FBI conducted any audits or analyses of the NICS process, particularly with regard to the accuracy and completeness of CHRI in that context? For instance, what is the average cost of searching for incomplete offense information? How many FBI personnel are involved in this process for Brady background checks? How often does the FBI track down incomplete offense information in the prescribed three-business-day time period? Has the FBI considered the feasibility of such a process for employment and licensing?
13. A federal regulation [20 CFR Section 20.32(b)] appears to limit the FBI’s ability to collect and distribute information related to “nonserious offenses.” Please explain the FBI’s interpretation of this requirement. Please also explain the status of the proposed regulation 71 Fed. Reg. 52302 (dated September 5, 2006), which apparently sought to eliminate this exception for “nonserious” offenses. Does the FBI decline to collect or distribute criminal history information for “nonserious offenses?” Or does the FBI collect and distribute all information provided by states without conducting any review of the nature of the reported offenses? Has the FBI conducted any audits or analysis related to the collection and distribution of information related to “nonserious offenses?” If so, please provide them.



Patrick Leahy
Ranking Member
Senate Judiciary Committee



Charles E. Grassley
Chairman
Senate Judiciary Committee