



Resource Materials:

Outsourcing Standard for Non-Channelers

Version 1.0, June 2021

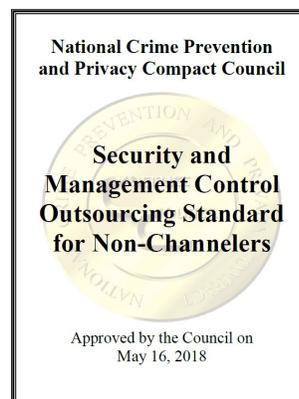
Goal

To provide adequate security and integrity for criminal history record information (CHRI) while under the control or management of an outsourced third party, the Contractor.

Important Information Regarding Outsourcing Requirements

The intent of the *Outsourcing Standard* is to require that the parties involved in an outsourcing agreement/contract maintain security practices consistent with federal and state laws, regulations, and standards (including the *FBI Criminal Justice Information Services [CJIS] Security Policy*) and with the rules, procedures, and standards established by the National Crime Prevention and Privacy Compact Council (Council) and the United States (U.S.) Attorney General. It is extremely important that each party review and understand the requirements outlined in the *Outsourcing Standard*. Failure to comply with the requirements outlined in the *Outsourcing Standard* may result in the approval to use a Contractor being terminated or an Authorized Recipient's access to CHRI being suspended.

- The most current version of the *Outsourcing Standard*, dated 05/16/2018, can be located at: <https://www.fbi.gov/file-repository/compact-council-security-and-management-control-outsourcing-standard-for-non-channelers.pdf/view>
- The *CJIS Security Policy*, dated 06/01/2020, can be located at: <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>



Applicant Notification and Privacy Requirements

The Authorized Recipient is responsible for ensuring that each applicant is provided certain notices and the results of the fingerprint-based background check are handled in a manner that protects the applicant's privacy. These obligations are pursuant to the Privacy Act of 1974, Title 5, U.S. Code, section 552a and Title 28, Code of Federal Regulation, (CFR) § section 50.12, among other authorities. The *Guiding Principles* provide additional information regarding the requirements and are available at the following links.

- “*Guiding Principles: Agency Privacy Requirements for Noncriminal Justice Applicants*” - This document addresses the applicant notification and privacy requirements from an Authorized Recipient's document perspective of the requirements. <https://www.fbi.gov/services/cjis/compact-council/guiding-principles-agency-privacy-requirements-for-noncriminal-justice-applicants>
- “*Guiding Principles: Noncriminal Justice Applicant's Privacy Rights*” - This document addresses the applicant notification and privacy requirements from the perspective of an applicant and is designed for an Authorized Recipient to provide to an applicant if they wish. <https://www.fbi.gov/services/cjis/compact-council/guiding-principles-noncriminal-justice-applicants-privacy-rights>

Each applicant must receive a copy of the FBI Privacy Act Statement (dated no later than 2013) when the applicant submits his/her fingerprints and associated personal information to the FBI. The most current FBI Privacy Act Statement can be located at: <https://www.fbi.gov/services/cjis/compact-council/privacy-act-statement>. If the subject of the record believes that the record contains incomplete or inaccurate information, he/she may request a change or correction by contacting the agency or agencies that submitted the information to the FBI; or he/she may submit a challenge request to the FBI's CJIS Division. Additional information and instructions can be located at: <https://www.fbi.gov/services/cjis/identity-history-summary-checks>.

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Important Terms

Prior to engaging in outsourcing any noncriminal justice administrative functions with a Contractor, an Authorized Recipient must request and receive written permission from the FBI Compact Officer.

Noncriminal Justice Administrative Functions include the routine noncriminal justice administrative functions relating to the processing of CHRI on behalf of the Authorized Recipient. This includes functions where the Contractor may not be reviewing the CHRI but would have the potential to access or view CHRI. This includes functions that do not require a direct connection to the FBI CJIS Wide Area Network (WAN) for submission of fingerprints and receipt of CHRI. Examples include making fitness determinations, processing, storing, or destroying documents, and providing information technology support functions. Noncriminal justice administrative functions only include functions that would be performed on behalf of the Authorized Recipient. Therefore, an Authorized Recipient may not leverage outsourcing to create an authority for the intended purpose of disseminating CHRI to a Contractor for the Contractor's own separate use.

If an Authorized Recipient retains positive control of CHRI that is in a Contractor's possession and the Contractor does not have the ability to view or make use of the CHRI, then the Contractor does not have "access" and the Authorized Recipient would not be required to implement the *Outsourcing Standard*. This premise typically applies to contractors that perform the function of primary or backup record storage and includes encrypted media or locked containers for which the Authorized Recipient solely maintains the keys. However, the same logic is applied to similar services such as CHRI mailed through the U.S. Postal Service.

When submitting an outsourcing request to the FBI Compact Officer, Authorized Recipients must detail the specific noncriminal justice functions the Contractor will be performing. The request must also clearly identify how the Contractor will have access to, or the ability to access, CHRI while performing the identified functions. Failure to identify the specific functions or to clearly identify how the Contractor will have access to CHRI may delay the processing of the request. A new outsourcing request must be submitted if the Authorized Recipient wishes for the Contractor to perform any additional noncriminal justice administrative functions that were not included in the prior approval. In addition, if the Authorized Recipient opts to have a different Contractor perform noncriminal justice administrative functions involving Contractor access to or potential access to the FBI CHRI, a new request must be submitted to the FBI Compact Officer.

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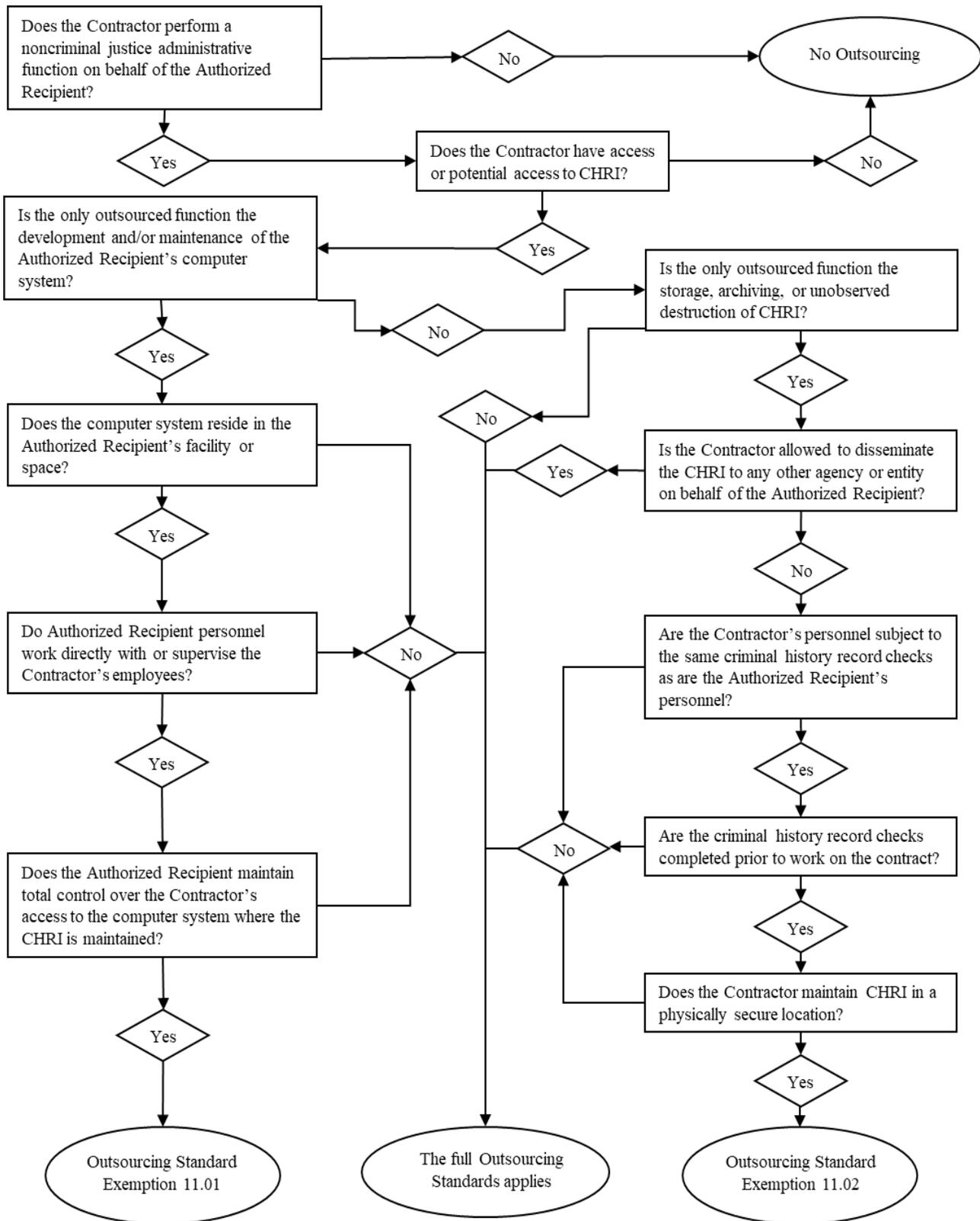
Compliance

Pursuant to the *Outsourcing Standard*, the Authorized Recipient is responsible for the actions of the Contractor and shall monitor the Contractor's compliance to the terms and conditions of the *Outsourcing Standard* and the *CJIS Security Policy*. In addition, Part 2.05 of the *Outsourcing Standard* requires the Authorized Recipient to conduct an audit of the contractor within 90 days of the date the Contractor first receives the FBI CHRI under the approved outsourcing agreement and to certify to the FBI Compact Officer that the audit was conducted. However, this provision may not be applicable if the Authorized Recipient meets certain conditions under Parts 11.01 or 11.02 of the *Outsourcing Standard*. The Authorized Recipient is responsible for reviewing the *Outsourcing Standard* and determining if it meets the conditions for exclusion. Please review the diagram on the next page to assist with making the determination.

Further, as provided in footnote 2 of the *Outsourcing Standard*, the FBI will triennially audit a representative sample of Contractors and ARs. If selected for an audit, representatives from the FBI's CJIS Audit Unit will contact the Authorized Recipient to schedule the audit and discuss the audit

For additional information regarding Outsourcing or any questions, please contact the FBI Outsourcing Team at outsourcing.question@fbi.gov.

Which Outsourcing Standard for Non-Channelers Requirements Apply?



In the event of a conflict between the terms of the contract between the Authorized Recipient and the Contractor, amendments to the contract, and the Outsourcing Standard relating to the FBI-provided data, the terms of the Outsourcing Standard shall control.

Important Terms (continued)

CHRI, as referred to in Article I(4) of the National Crime Prevention and Privacy Compact Act (Compact), means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; but does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

Information is considered CHRI if it is transferred or reproduced directly from CHRI and associated with the subject of the record. This includes information such as conviction/disposition data as well as identifiers used to index records regardless of format. Examples of formal and informal products or verbalizations include correspondence such as letters and e-mails; documents such as forms and hand-written notes; conversations either in person or by telephone; and data fields such as those stored in database tables or spreadsheets. However, information is not considered CHRI if it is obtained as a result of using CHRI received from a national FBI check as a lead to reach out to source record owners such as local courts or state criminal history record repositories. As a prerequisite, both the process used to obtain the source record information and the resulting source record information itself must not directly reference or be attributed to the national FBI check.

Information is considered CHRI if it confirms the existence or nonexistence of CHRI. This FBI policy is derived from and mirrors the general policy on dissemination found at Title 28, C.F.R., section 20.21 28 CFR § 20.21, directly relating to applicable state and local criminal history record information systems. This includes applicant status information, which is either directly attributed to or predominately based on a national FBI check, when no authority or inherent need exists for the release of such information.

The Compact Council

On October 9, 1998, President Clinton signed into law the Compact Act of 1998, establishing an infrastructure by which states can exchange criminal records for noncriminal justice purposes according to the laws of the requesting state and provide reciprocity among the states to share records without charging each other for the information. The Compact became effective April 28, 1999, after Montana and Georgia became the first two states to ratify it, respectively. To date, 34 states have ratified the Compact.

The Compact Act of 1998 establishes a Council to promulgate rules and procedures for the effective use of the Interstate Identification Index (III) System for noncriminal justice purposes.

The Compact Council's goal is to make available the most complete and up-to date records possible for noncriminal justice purposes.

The Compact Council's mission is to enhance public safety through noncriminal justice background checks based on positive identification, while protecting individual privacy rights.

The outsourcing of noncriminal justice administrative functions was authorized by the Compact Council in 2005 with the approval of the Outsourcing of Noncriminal Justice Administrative Functions final rule, which is codified at 28 CFR Part 906. The *Outsourcing Standard* requirements discussed in this document were adopted by the Compact Council pursuant to this rule.

For additional information regarding the Compact Council, please visit the Compact Council's website at <https://www.fbi.gov/services/cjis/compact-council>.



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