

Revised Clarification on Submission of Outsourcing Agreements
October 7, 2020

On February 13, 2020, at the Oklahoma City Regional Training Course, clarification was requested by the TGRAs on which circumstances require TGRAs to request FBI Compact Officer approval to outsource non-criminal justice administrative functions¹ to a non-channeler. Specifically, when does escorting a contractor and encrypting electronic Criminal History Record Information (CHRI) remove the need to request FBI Compact Officer approval?

As a result of these questions, NIGC contacted the FBI Compact Officer for clarification. The FBI Compact Officer stated that fully escorting, such as in the case of document shredders, and encrypting CHRI, such as in the case of IT service contractors, does not relieve the requirement to request FBI Compact Officer approval for these contractors and their contracts. NIGC then memorialized this guidance in a document titled *Clarification on Submission of Outsourcing Agreements*, which was issued on March 3, 2020.²

Importantly, the FBI has now revised its view. On October 2, 2020, after FBI encouraged the withdrawal of multiple requests for outsourcing approvals for contractors shredding CHRI records under certain conditions, the FBI Compact Officer explained:

If the [contractor's] functions being performed involve '(A) storage (referred to as archiving in some states) of the CHRI at the Contractor's facility, (B) retrieval of the CHRI by the Contractor personnel on behalf of the Authorized Recipient with appropriate security measures in place to protect the CHRI; and/or (C) destruction of the CHRI by the Contractor personnel' and the contract staff is escorted by the Authorized Recipient staff the entire time they have access to CHRI, then it is no longer considered outsourcing. The Authorized Recipient is still subject to all of the requirements in the CJIS Security Policy, but outsourcing approval is not necessary.

This new stance means outsourcing approval is not needed when the shredding or storage of CHRI documents by contractors is fully observed and witnessed by authorized tribal personnel the entire time the contractors have access to the CHRI. Outsourcing approval also is not needed when contractors retrieve appropriately secured CHRI and that retrieval is fully observed and witnessed by authorized tribal personnel the entire time the contractors have access to it.

Given FBI's new position, NIGC will update the current NIGC CJIS Manual and training material for future training sessions. In addition, as mentioned in the March 3 guidance, further changes to the outsourcing requirements may be forthcoming since they have been proposed by the FBI Compact Officer and CJIS Audit staff. FBI had anticipated changes may be accepted for review and implementation starting in November of 2020. This has been delayed due to the COVID-19 pandemic, but is still underway. NIGC will update all parties should any changes be accepted and adopted by the Compact Council.

NIGC will continue to assist TGRAs in implementing the CJIS Security Policy and other related standards. We welcome your questions regarding the policy and continued feedback about the implementation process.

¹ Noncriminal Justice Administrative Functions means the routine noncriminal justice administrative functions relating to the processing of CHRI, including but not limited to: 1. Making fitness determinations/recommendations; 2. Obtaining missing dispositions; 3. Disseminating CHRI as authorized by Federal statute, Federal Executive Order, or State statute approved by the United States Attorney General; and 4. Other authorized activities relating to the general handling, use, and storage of CHRI.

² Attached hereto.

Clarification on Submission of Outsourcing Agreements

On February 13, 2020, during the Oklahoma City Regional Training Course, TGRAs requested clarification for when TGRAs are required to request FBI Compact Officer approval to outsource non-criminal justice administrative functions with a non-channeler. Specifically, when does escorting a contractor and encryption of electronic Criminal History Record Information (CHRI) remove the need to request FBI Compact Officer approval?

As a result of these questions, NIGC contacted the FBI Compact Officer for clarification. The FBI Compact Officer clarified that fully escorting, such as in the case with document shredders, and encrypting CHRI, such as in the case with IT service contracts, do not relieve the requirement to request FBI Compact Officer approval for contractors accessing CHRI.

However, if the contractor is fully escorted and if the contractor is providing limited IT services, some of the Security and Management Control Outsourcing Standard for Non-Channelers as identified in Sections 11.01 and 11.02 of that document are exempted. There are several conditions listed in both Section 11.01 and 11.02 that must be met to exempt these provisions within the Standard. However, even when all conditions are met, Section 2.01 - requiring FBI Compact Officer approval - remains a relevant portion of the Standard that must be incorporated into the contract. As such, outsourcing (e.g., IT services, shredding) that falls within these areas, must be formally approved by the FBI Compact Officer.

The effect of this clarification is TGRAs must submit request letters to the FBI Compact Officer for all contractors with physical or logical access to their CHRI for the purpose of conducting a non-criminal justice administrative function¹, regardless if they will be fully escorted or the steps that have been taken to secure the CHRI, such as encryption.

This clarification will result in the current NIGC CJIS Manual and training material being updated for the next RTC and future training sessions. TGRA are encouraged to continue to identify all contractors currently engaged for these administrative functions; prepare and submit request letters and copies of all proposed outsourcing agreements with such contractors to the FBI Compact Officer for approval, copying the NIGC ISO (iso@nigc.gov); and complete the required 90-day audit and required certification.

Both the FBI Compact Officer and CJIS Audit staff have informed NIGC that the desire to simplify and unify the outsourcing requirements for non-channelers, channeler, non-criminal justice agencies and criminal justice agencies under the CJIS Security Policy and Outsourcing Standards has led them to propose changes this year to the committee that drafts policy revisions for Compact Council approval. They anticipate changes may be accepted for review and implementation starting in November of 2020. NIGC will update all parties should any changes be accepted and adopted by the Compact Council affecting how NIGC and TGRAs identify and process requests for outsourcing non-criminal justice administrative functions with non-channelers and any new exemptions.

We have included a link here to the current version (2018) of the Security and Management Control Outsourcing Standard for Non-Channelers for your reference and review: <https://www.fbi.gov/file-repository/compact-council-security-and-management-control-outsourcing-standard-for-non-channelers.pdf/view>

Links to sample request letters and sample contracts for FBI Compact Officer approval can be found in the Outsourcing Agreements section on this page: <https://www.nigc.gov/compliance/CJIS-Training-Materials>

NIGC will continue to assist TGRAs in the implementation of the CJIS Security Policy and other related standard. We welcome your questions about the policy and continued feedback about the implementation process.

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