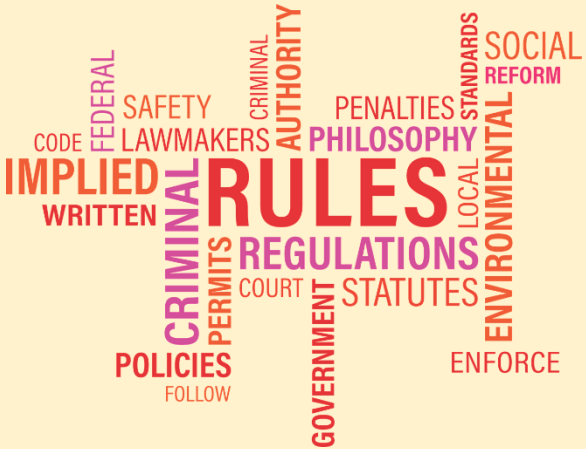
National Indian Gaming Commission

NIGC Fingerprint Program Update

Updated 2/24/2020

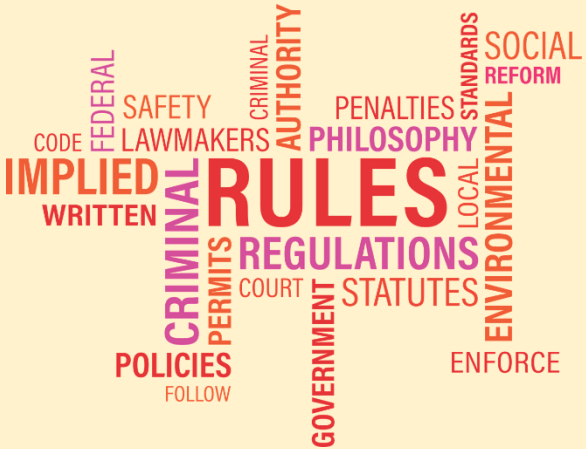
Today's Topics

- The History of the Fingerprint Based Criminal History Searches
- What is a Criminal History Report Information
- Who's Fingerprints can be submitted through the NIGC
- What FBI Notices are required to be given to gaming license applicants



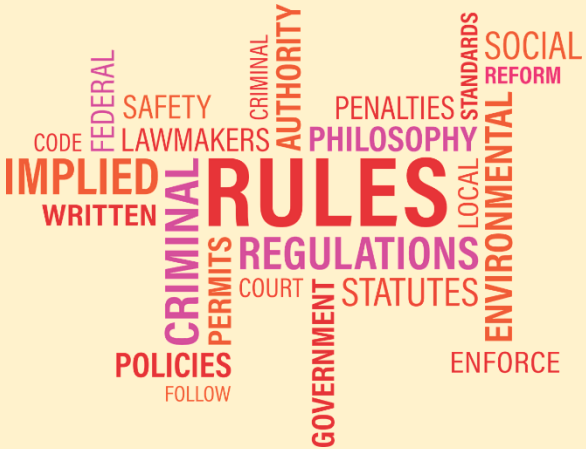
Today's Topics continued

- Policies required by FBI regarding applicant's rights
- FBI restrictions on re-use of CHRI
- Updated guidance on Not Licensed by Tribe notifications to the NIGC under 25 CFR 558.3(d)



History of FBI and Tribal Agreements

- NIGC and FBI entered into a MOU to process name searches – June 16, 1993.
- NIGC issues Bulletin 1993-2 Procedures for Submitting Fingerprints – June 22, 1993.
- FBI Policy on IGRA Submissions by NIGC, States and Tribes – circa 1993.



More History - The Compact Act

- The National Crime Prevention and Privacy Compact Act passes in 1998:
- Establish a uniform, nationwide standard governing the interstate dissemination of criminal history records for noncriminal justice purposes;
- Ensure the State and Federal agencies receive criminal records for authorized employment and licensing purposes; and
- Establish technology standards, supporting consistency and uniformity, increasing data sharing and integration.

What is CJI and why is it important

- Criminal Justice Information (CJI) is the term used to refer to all of the FBI Criminal Justice Information Services (CJIS) provided data necessary for law enforcement and civil agencies to perform their missions including, but not limited to biometric, identity history, biographic, property, and case/incident history data.

- Part of the CJI information is the CHRI report used for key employee and primary management official licensing.

What is a CHRI?

Criminal **H**istory **R**ecord **I**nformation

Often referred to as a

“RAP sheet”

CHRI, a subset of CJI, is information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release.

What else is considered CHRI?

Letters, emails, documents, notes, conversations in person/phone, and databases (including spreadsheets or tables) that contain:

Information transferred or reproduced directly from CHRI.

Information that confirms the existence or nonexistence of CHRI.

Regardless of its form, use, or method of dissemination, CHRI requires protection throughout its life cycle

FBI Fingerprints

- The FBI authorizes NIGC to disseminate CHRI to tribal gaming authorities solely for determining a PMO or KE applicant's eligibility for a gaming license.
- The FBI limits the dissemination of CHRI obtained through NIGC for only those applicants who will be employees of the gaming operation.
- CHRI must be reviewed before a final licensing decision is made.

Who gets a background and license?

- Key Employees of the gaming operation
- Primary Management Officials of the gaming operation

Applicant's CHRI Rights

PRIOR TO FINGERPRINTING

- Ensure applicant receives the Noncriminal Justice Applicant’s Privacy Rights Notice.

  www.fbi.gov/services/cjis/compact-council/guiding-principles-noncriminal-justice-applicants-privacy-rights

- Ensure applicant receives the FBI Privacy Act Statement.

  www.fbi.gov/services/cjis/compact-council/privacy-act-statement

Applicant's CHRI Rights cont.

CHRI POLICY

- TGRA must have a policy through which applicants may request and receive a copy of their CHRI.

- Applicants must be given time to correct or challenge information in the CHRI before the license eligibility determination is made.

CHRI Use Restrictions

- **Do not disseminate any form of CHRI outside of those directly involved in the licensing process at the Tribe and NIGC.**

- In most instances, CHRI obtained for PMO or KE licensing purposes cannot be provided to other entities for other purposes. CHRI cannot be provided to tribal leadership, other tribal agencies, state agencies, human resources, external auditors*, etc., for other purposes such as to save money or to meet tribal state gaming compact requirements.

Recent Notices from NIGC

- July 1, 2019 – Letter summarizing information above.

- July 19, 2019 – Letter requiring immediate discontinuation of fingerprinting of TGRA employees and Commissioners.

Not Licensed by Tribe

- 558.3(d) – If the tribe does not license an applicant:
  - Notify NIGC no license was issued; and
  - Forward the eligibility determination and NOR.

The background, eligibility determination and NOR are complete, but for any reason the applicant was not licensed, you must notify NIGC.

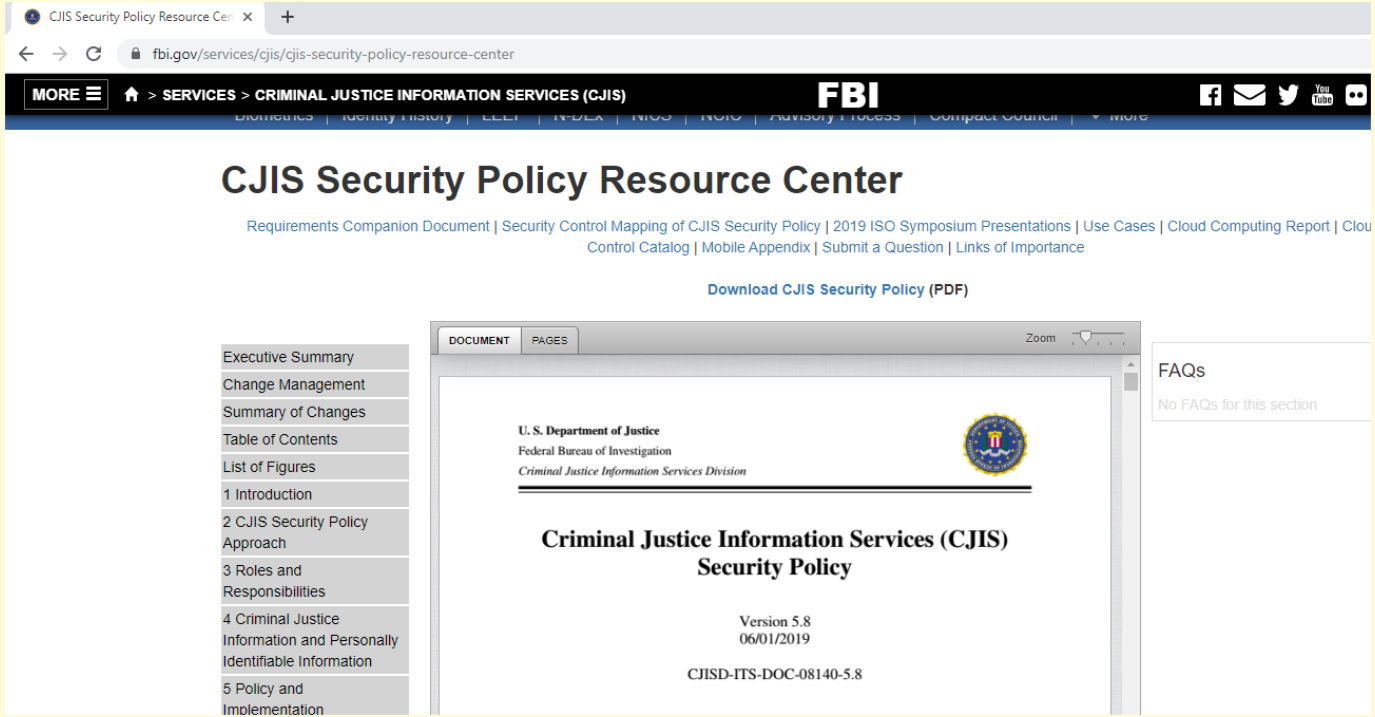
Can I still send in a NOR indicating not licensed even if we did not reach the eligibility determination stage? Yes, if you want to.

It will not consider it a missing NOR for 556 & 558 purposes if you do not.

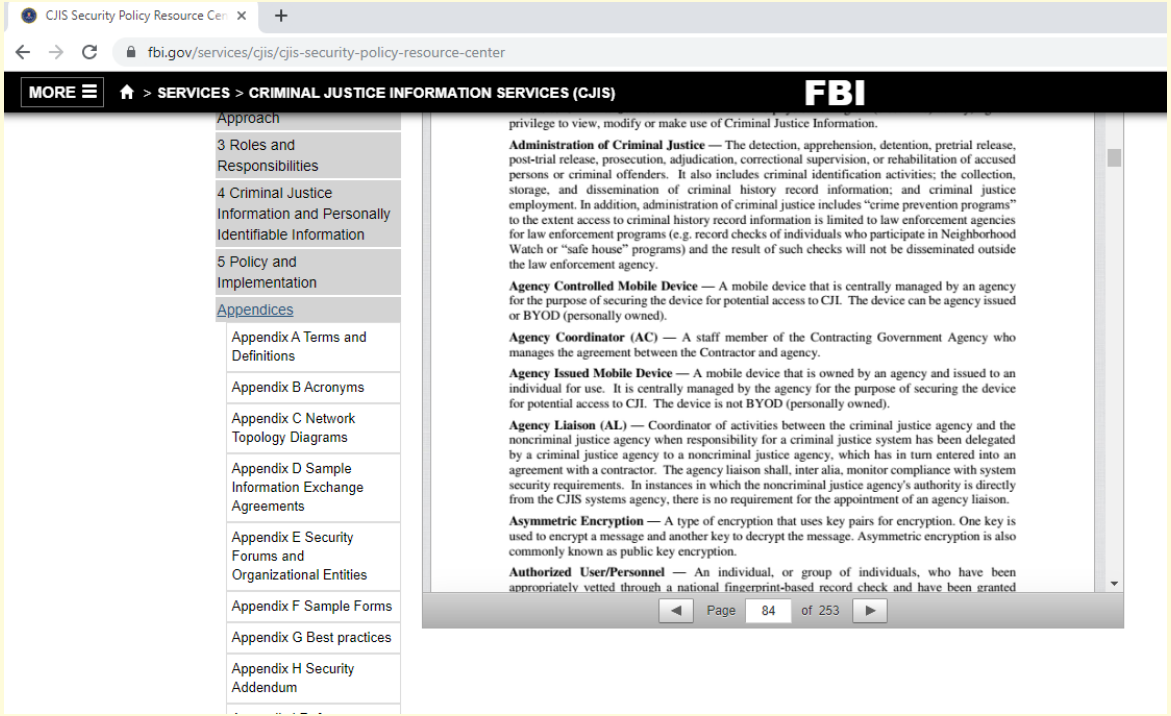
CJIS Security Policy

- More information on the Compact Council
  - https://www.fbi.gov/services/cjis/compact-council
- For a copy of the CJIS Security Policy
  - https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center

CJIS Security Policy



Security Policy Appendices



CJIS Security Policy – Key Documents

- Appendix G: Best Practices
  - Cloud, Mobile Devices, Encryption, BYOD, Setting Access and Incident Response.

- Appendix J of the Security Policy: Non-Criminal Justice Agency Supplemental Guidance
  - Lists out the main sections of the policy that apply to NCJAs.

CJIS Security Policy – Key Areas

- Agreements
- Dissemination
- Security Awareness Training
- Incident Response
- Auditing and Accountability
- Access Control
- Media Protection
- Physical Protection

Microsoft Word Document

Security Awareness Training

- Level 1: Baseline security awareness training for all personnel who have unescorted assess to a physically secure location.
- Level 2: Security awareness training for all authorized personnel with physical access to Criminal Justice Information (CJI).
- Level 3: Security awareness training for all authorized personnel with both physical and logical access to CJI.
- Level 4: Security awareness training for all Information Technology personnel (system administrators, security administrators, and network administrators, etc.).

Encryption

- Criminal Justice Information (CJI) must be encrypted:
  - When stored (at rest) outside the boundary of a physically secure location
    - When encryption is used for CJI at rest, it must be it must be FIPS 140-2 certified and use a symmetric cipher of at least 128 bit in strength or use the AES symmetric cipher at 256 bit strength.
  - Immediately when transmitted outside the boundary of a physically secure location (two exceptions: 5.13.1.2.2 and 5.10.2)
    - When encryption is used for CJI in transit, it must be FIPS 140-2 certified and use a symmetric cipher of at least 128 bit.

Encryption Execptions

- CJIS Security Policy Exceptions for Encryption In Transit
  - Two exceptions as written in sections 5.13.1.2.2 and 5.10.2 are detailed as follows:
    - Any cellular device used to transmit CJI via voice is exempt from the encryption and authentication requirements when an officer determines there is an immediate need for the CJI to further an investigation or situations affecting the safety of an officer or the general public.
    - CJI transmitted via a single or multi-function device (fax) over a standard telephone line is exempt from encryption requirements.

Outsourcing Agreements

- In order for any third party (including Tribe's IT) to have access to CHRI you must have an Outsourcing Agreement:
  - Send letter to CJIS Compliance Officer requesting approval.
  - Execute Contract.
  - Inspect in 90 days.

Letter and Contract

REQUEST LETTER
FOR THE (Name) **TRIBAL GAMING COMMISSION** TO USE
(Contractor's Name) AS A CONTRACTOR
FOR NONCRIMINAL JUSTICE ADMINISTRATIVE FUNCTIONS

October 8, 2019

Mrs. Chasity S. Anderson
Compact Officer, FBI Module D3
1000 Custer Hollow Road
Clarksburg, WV 26306

Dear Mrs. Anderson:

The (Name) **Tribal Gaming Commission**, the Authorized Recipient, requests permission to use the **(Contractor's Name)** as a contractor to outsource noncriminal justice administrative functions relating to the processing of criminal history record information (CHRI) on its behalf. This would include **[insert all functions that may apply. For example, obtaining missing dispositions, making determinations and recommendations, off-site storage of criminal history record information and its corresponding fingerprint submissions, etc.]** The **(Tribe) Tribal Gaming Commission** and the **(Contractor's Name) are** considering entering into an agreement in which **(Contractor's Name)** will act on the **(Tribe) Tribal Gaming Commission's** behalf in accordance with the Security and Management Control Outsourcing Standard (Outsourcing Standard) for Non-Channelers. The (Tribe) Tribal Gaming Commission is authorized to perform background checks pursuant to Title 25, United States Code (U.S.C.), §2701, et seq, also referred to as the "Indian Gaming Regulatory Act (IGRA)." Specifically, the National Indian Gaming Commission (NIGC) is authorized to submit fingerprints to the FBI on behalf of the **(Tribe) Tribal Gaming Commission** for Class II and III primary management officials and key employees of the Tribal gaming enterprises. "Key employee" and "primary management official" are defined in Title 25, Code of Federal Regulations (C.F.R.), §§502.14 and 502.19 respectively.

The **(Tribe) Tribal Gaming Commission** will execute a contractual agreement with the Contractor, incorporating by reference the Outsourcing Standard for Non-Channelers and the Criminal Justice Information Services (CJIS) Security Policy. Execution of the agreement will commence upon receiving written approval from the FBI Compact Officer and, upon request from the FBI Compact Officer, receipt of a copy of the executed agreement. **The Authorized Recipient shall certify to the FBI Compact Officer that an audit was conducted with the Contractor within 90 days of the date the Contractor first receives CHRI under the approved outsourcing agreement.**

If for any reason the agreement is terminated by either the Authorized Recipient or the Contractor, the Authorized Recipient will provide written notification to the FBI Compact Officer as soon as possible. All records of the Authorized Recipient held by the Contractor will be returned or destroyed, in accordance with the Outsourcing Standard and the CJIS Security Policy, and employees of the Contractor will no longer be allowed access to the CHRI records of the Authorized Recipients.

Upon execution of the Contract, the **(Tribe) Tribal Gaming Commission** will take responsibility for **(Contractor's Name)** compliance with the terms of the Contract, to include the Outsourcing Standard for Non-Channelers, and will notify the FBI Compact Officer of any violations.

Sincerely,

[insert name]
[insert title]
[insert address]
[insert phone number]
[insert email address]

cc: fingerprint_admin@nigc.gov

CONTRACT BETWEEN
[AUTHORIZED RECIPIENT'S NAME]
AND
[CONTRACTOR'S NAME]
REGARDING OUTSOURCING
NONCRIMINAL JUSTICE ADMINISTRATIVE FUNCTIONS

This contract is entered into between **[insert Authorized Recipient's name and address]**, the Authorized Recipient, and **[insert Contractor's name and address]**, the Contractor, under the terms of which the Authorized Recipient is outsourcing the performance of noncriminal justice administrative functions involving the handling of criminal history record information (CHRI) pursuant to Title 28, Code of Federal Regulations, Part 906 and the Security and Management Control Outsourcing Standard (Outsourcing Standard)for Non-Channelers. The most current version of the Outsourcing Standard is incorporated by reference into this contract and appended hereto as Attachment "A".

The Authorized Recipient's authority to submit fingerprints for noncriminal justice purposes and obtain the results of the fingerprint search, which may contain CHRI, is Title 25, United States Code (U.S.C.), §2701, et seq, also referred to as the "Indian Gaming Regulatory Act (IGRA)". This authority requires or authorizes fingerprint-based background checks of Class II and III primary management officials and key employees of the Tribal gaming enterprises. "Key employee" and "primary management official" are defined in Title 25, Code of Federal Regulations (C.F.R.), §§502.14 and 502.19 respectively.

The specific noncriminal justice administrative function to be performed by the Contractor that involves access to CHRI on behalf of the Authorized Recipient is to **[insert specific noncriminal justice administrative functions to be performed; i.e., missing dispositions, fitness determinations, storing criminal history record check results, etc]**.

[Insert Contractor's name] will comply with the Outsourcing Standard requirements, to include the CJIS Security Policy, and other legal authorities to ensure adequate privacy and security of personally identifiable information (PII) and criminal history record check results related to this contract, and will ensure that all such data is returned to the Authorized Recipient as soon as no longer needed for the performance of contractual duties.

(Execute only after approval is received from FBI Compact Officer)

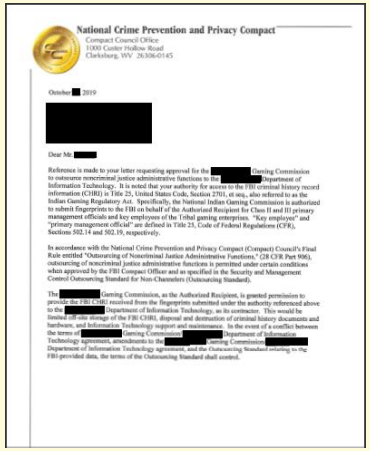
Authorized Recipient Rep. Printed/Signature/Date

(Execute only after approval is received from FBI Compact Officer)

Authorized Outsourcing Contractor Rep. Printed/Signature/Date

90 Day Audit

- Under Part 2.05 of the Outsourcing Standard, the TGRA shall conduct an audit of the contractor within 90 days of the date the contractor first receives the FBI CHRI under the approved agreement and shall certify to the FBI Compact Officer it was conducted.



National Crime Prevention and Privacy Compact
Compact Council Office
1000 Custer Hollow Road
Clarksburg, WV 26306-0145

October [redacted] 2019

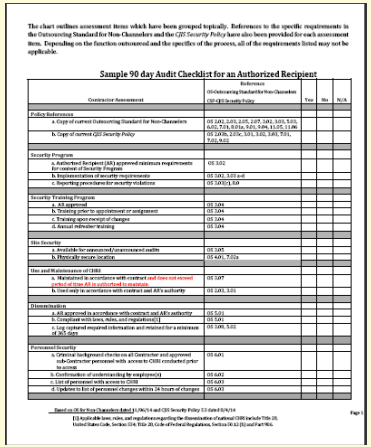
[redacted]

Dear Mr. [redacted]

Reference is made to your letter requesting approval for the [redacted] Gaming Commission to outsource noncriminal justice administrative functions to the [redacted] Department of Information Technology. It is noted that your authority for access to the FBI criminal history record information (CHRI) is Title 25, United States Code, Section 2701, et seq., also referred to as the Indian Gaming Regulatory Act. Specifically, the National Indian Gaming Commission is authorized to submit fingerprints to the FBI on behalf of the Authorized Recipient for Class II and III primary management officials and key employees of the Tribal gaming enterprises. "Key employee" and "primary management official" are defined in Title 25, Code of Federal Regulations (CFR), Sections 502.14 and 502.19, respectively.

In accordance with the National Crime Prevention and Privacy Compact (Compact) Council's Final Rule entitled "Outsourcing of Noncriminal Justice Administrative Functions," (28 CFR Part 906), outsourcing of noncriminal justice administrative functions is permitted under certain conditions when approved by the FBI Compact Officer and as specified in the Security and Management Control Outsourcing Standard for Non-Channelers (Outsourcing Standard).

The [redacted] Gaming Commission, as the Authorized Recipient, is granted permission to provide the FBI CHRI received from the fingerprints submitted under the authority referenced above to the [redacted] Department of Information Technology, as its contractor. This would be limited off-site storage of the FBI CHRI, disposal and destruction of criminal history documents and hardware, and Information Technology support and maintenance. In the event of a conflict between the terms of [redacted] Gaming Commission's [redacted] Department of Information Technology agreement, amendments to the [redacted] Gaming Commission [redacted] Department of Information Technology agreement, and the Outsourcing Standard relating to the FBI-provided data, the terms of the Outsourcing Standard shall control.



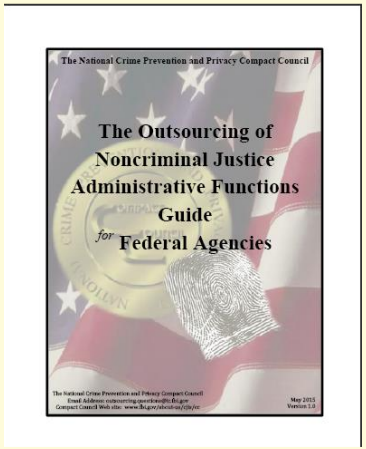
The chart outlines assessment items which have been grouped topically. References to the specific requirements in the Outsourcing Standard for Non-Channelers and the *CJIS Security Policy* have also been provided for each assessment item. Depending on the function outsourced and the specifics of the process, all of the requirements listed may not be applicable.

Sample 90 day Audit Checklist for an Authorized Recipient

Contractor Assessment	Reference Outsourcing Standard for Non-Channelers CJIS Security Policy	Yes	No	N/A
Policy Reference				
a. Copy of current Outsourcing Standard for Non-Channelers	05.10(1, 2.03, 2.05, 2.07, 3.01, 3.03, 5.03, 6.02, 7.01, 8.01a, 9.01, 9.04, 11.01, 11.04)			
b. Copy of current *CJIS Security Policy*	05.10(1b, 2.03c, 3.01, 3.02, 3.03, 7.01, 9.01, 9.02)			
Security Program				
a. Authorized Recipient (AR) approved minimum requirements for contract of Security Program	05.3.02			
b. Implementation of security requirements	05.3.03, 3.03 a-d			
c. Reporting procedures for security violations	05.3.07(2), 5.0			
Security Training Program				
a. All approved	05.3.04			
b. Training prior to appointment or assignment	05.3.04			
c. Training upon receipt of changes	05.3.04			
d. Annual refresher training	05.3.04			
Site Security				
a. Available for announced/unannounced audits	05.3.05			
b. Physically secure location	05.4.01, 7.02a			
Use and Maintenance of CHRI				
a. Maintained in accordance with contract and does not exceed period of time AR is authorized to maintain	05.3.07			
b. Used only in accordance with contract and AR's authority	05.3.03, 3.01			
Dissemination				
a. All approved in accordance with contract and AR's authority	05.3.01			
b. Compliant with laws, rules, and regulations[1]	05.3.01			
c. Log captured required information and retained for a minimum of 365 days	05.3.06, 5.02			
Personnel Security				
a. Criminal background checks on all Contractor and approved sub-Contractor personnel with access to CHRI conducted prior to access	05.6.01			
b. Confirmation of understanding by employee(s)	05.6.02			
c. List of personnel with access to CHRI	05.6.03			
d. Updates to list of personnel changes within 24 hours of changes	05.6.03			

Based on CJIS Security Policy 5.5 dated 8/9/16

[1] Applicable laws, rules, and regulations regarding the dissemination of national CHRI include Title 28, United States Code, Section 534; Title 28, Code of Federal Regulations, Section 50.12 (b) and Part 906.



The Cloud

- At https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center:
  - Cloud Computing Report
    - Recommendations for Implementation
  - Cloud Report
- Appendix G of CJIS SP
  - See Cloud Computing

Important Point to Remember

Over the next two years, the NIGC and the FBI will be working to migrate the NIGC's policies on the use and dissemination of CHRI from our last/previous agreement with the FBI established in 1993 to include additional applicable standards and protocols established under the National Crime Prevention and Privacy Compact Act of 1998, the National Crime Prevention and Privacy Compact Council and the CJIS Security Policy.

Questions?

Contact Information:

TrainingInfo@nigc.gov