UTDBP3000 - Criminal Background Checks Policy

Policy Statement

1. Purpose

1.1. The University of Texas at Dallas (UT Dallas) is committed to promoting campus safety and the security of personal and university property, consistent with the requirements of law and prudent financial and programmatic practices. As part of this commitment, the university seeks information on the possible criminal history of all individuals under consideration for appointment to full time positions and all positions deemed "security sensitive" under Texas law and/or in accordance with an official university business purpose. The Texas Education Code, Ã‚Â§ 51.215(c) says: Security-sensitive positions shall be restricted to employees who handle currency, have access to a computer terminal, have access to a master key or who work in an area designated a security sensitive area. "Computer terminal" is construed to mean a computer. "Access" means possessing a university computer user identification (netid). It follows that virtually all positions are security sensitive. This policy defines the acquisition and use of such information by the university, implementing The University of Texas System (UT System) Systemwide Policy UTS124.

2. Classification of Security Sensitive Positions

2.1. All security sensitive positions will be classified to indicate the level of security check required, either Level 1 or Level 2. The general definitions of the levels are:

- 2.1.1 Level 1: all positions involving handling of cash, with access to a computer terminal, with access to a master key, or are in an area designated as a security sensitive area, that are not designated Level 2.
- 2.1.2 Level 2: all positions that present an increased risk at the university, including the risk for loss of property or risk to the overall safety of the campus or campus population considering factors such as those in 6.7.1.

3. When Criminal Background Checks are Required

3.1. For any applicant who is under final consideration for a full-time or part-time staff or faculty position, following normal screening and selection processes;

3.2. For a current employee, staff or faculty, who is under consideration for a transfer, promotion or reclassification from a non-security position to a security sensitive position;

3.3. For current employees for whom the university has not previously obtained a criminal background check;

3.4. For current employees, students, and volunteers at the discretion of the President, or the President's designee, if the requesting official determines that obtaining such information serves an official or business purpose. An example of business purpose includes but is not limited to, when the university engages in activities involving minors such as summer camps, research activities or educational outreach.

3.5. A criminal background check is not required when a position reclassification results in a title change with no change in current responsibilities, or for a promotion or other advancement that is part of an employee's normal career progression such as current faculty promoted to tenure, or from Associate Professor to Full Professor.

4. Criminal Background Check Sources

4.1. **Applicants for non-security sensitive positions:** the following sources may be used to obtain a criminal background check:

- 4.1.1. The Texas Department of Public Safety (DPS) Crime Records Service - Public Site or other publicly available local, state or federal criminal record sources.
- 4.1.2. Private vendors that offer criminal background check services that obtain information that is public record.

4.2. **Applicants for a security sensitive position not specifically designated Level 2 (as subject to a national criminal history record check):** the following sources may be utilized to obtain a criminal background check:

- 4.2.1 The DPS Crime Records Service - Secure Site.[1] This site may be used to obtain a name-based check or a national criminal history record information check, by using the consolidated response program or the electronic clearinghouse as authorized and made available by DPS. Currently a name-based search is used unless the applicant chooses to have a state-wide fingerprint based search.
- 4.2.2 Private vendors that offer national criminal background check services utilizing public information.
- 4.2.3 Other state, national, and international sites utilizing public information

4.3. **Applicants for level 2 Security sensitive positions (positions designated as subject to a national criminal history record check):**

- 4.3.1. The DPS Crime Records Service - Secure Site.[2] This site may be accessed to obtain a national criminal background check by using the consolidated response program or the electronic clearinghouse as authorized and made available by DPS. For national criminal history searches the DPS uses the FBI data service, which requires a finger-print based search.

4.4. **Current employees or individuals who are not applicants:** only the following sources may be used to obtain a criminal background check, except when authorized by law to use a secure site.

- 4.4.1. The Texas DPS Crime Records Service - Public Site or other publicly available local, state or federal criminal record sources.
- 4.4.2. Private licensed vendors that offer criminal background check services based on information in the public record.

4.5. When a criminal background check is required by a specific state or federal law using a specific source of criminal background check information and/or certain procedures, the university will comply with such laws.

4.6. If the applicant has not resided in Texas for seven years prior to the date of the application, the university will seek criminal history information from those states where the applicant has resided in that time.

5. Use of Information

Criminal record information will be used for the purpose of determining whether the individual is suited for the position at UT Dallas and does not pose a safety or security risk. A determination will be made on a case-by-case basis on factors such as the specific duties of the position; numbers of offenses; nature of each offense; length of time intervening between the offense and the employment decision; employment history; efforts at rehabilitation; and accuracy of the information that the individual provided on the employment application. The information will not be used to discriminate on the basis of race, color, national origin, religion, sex, disability, age or sexual orientation.

5.1. The results of a criminal background check may be grounds for termination according to university procedures.

5.2. The university will not make an adverse employment decision on the basis of criminal record information obtained under this policy without providing the person an opportunity to respond in accordance with Section 8 below.

6. Definitions

6.1. *Applicant:* An individual who applies for a position within UT Dallas, whether the individual is an outside candidate or current employee. This does not include an individual who receives a position reclassification that does not result in a title change with no change in responsibilities or an individual who receives a promotion or other similar advancement in their normal career path, such as current faculty promoted to tenure, or from Associate Professor to Full Professor.

6.2. *Controlled Substance:* This term has the meaning assigned in Texas Health & Safety Code Ã‚Â§ 481.002, as that section may be amended from time to time.

6.3. *Criminal Conviction Record Information:* Public information maintained by DPS, as provided in Texas Government Code Ã‚Â§ 411.135.

6.4. *National Criminal History Record Check (NCHRC):* A criminal history record check obtained from both the Texas DPS and the Federal Bureau of Investigation (FBI) based on fingerprint identification information, or a criminal record check obtained from a private vendor based on national criminal records.

6.5. *Hiring Official:* Administrative official seeking to fill a vacant position, such as the Dean in the Division of Academic Affairs, the Director or the Department Head in other divisions, or the faculty member in charge of a laboratory or other facility.

6.6. *Select Agent:* This term has the meaning assigned in *18 U.S.C. Ã‚Â§ 175b*, as that section may be amended from time to time.

6.7. *Security Sensitive Position or area:* Security sensitive positions or areas are those UT Dallas positions or areas described in *Texas Education Code Ã‚Â§ 51.215 (c)* and *Texas Government Code Ã‚Â§ 411.094 (a) (2)*, as those sections may be amended from time to time; positions that have responsibility for providing patient care or for providing childcare in a childcare facility, as that term is defined in *Texas Human Resources Code Ã‚Â§ 42.002 (3)*, as it may be amended from time to time; and positions that have direct access to, or responsibility for, pharmaceuticals, select agents, or controlled substances; or physical areas such as laboratories or facilities on the university campus that have been designated as security sensitive by the administrative officer or faculty member responsible for them.

- 6.7.1. In determining which specific positions to designate as Level 2 security sensitive, the Executive Vice President and Provost (Provost) and the Vice President for Administration will consider whether departments or other units perform functions that may pose increased risks at the university, considering factors including but not limited to the following:
    - 6.7.1.1. senior level administrative responsibilities;
    - 6.7.1.2. responsibility for the preparation, maintenance or approval of the financial, payroll, personnel or purchasing systems;
    - 6.7.1.3. access to, or responsibility for, cash, checks or university property, disbursement or receipts;
    - 6.7.1.4. significant inventory control responsibilities, including receipt and release of inventory;
    - 6.7.1.5. responsibility for execution or approval of financial transactions;
    - 6.7.1.6. direct responsibility for the care, safety of security of humans or the safety or security of personal university property;
    - 6.7.1.7. responsibility for operating or maintaining, in the course of normal job duties, university-owned or leased vehicles, machinery or toxic systems that could cause death, injury, or illness;
    - 6.7.1.8. responsibility for pharmaceuticals, select agents, or controlled substances;

- 6.7.1.9. access to, or responsibility, for classified information pertaining to the national defense;
- 6.7.1.10. access to data protected by Federal or State law or non-disclosure agreements, medical records, personnel records, other personnel data or confidential criminal justice information, or to critical data processing systems.

7. Procedures

7.1. The President has designated the Provost as the official responsible for designating which faculty positions or academic areas are security sensitive at levels 1 or 2 and the Vice President for Administration as the official responsible for designating which non-faculty positions or non-academic areas are security sensitive at levels 1or 2. Directors of administrative offices who wish to designate certain positions/areas as security sensitive at levels 2 should notify the Vice President for Administration; faculty or academic administrators responsible for positions/areas that they wish to designate as security sensitive at levels 2 should notify the Provost. The Vice President for Administration and the Provost will keep the Office of Human Resources Management (HRM) apprised as to positions/areas that have been designated as security-sensitive and HRM will identify security-sensitive positions as such in job descriptions and vacancy advertisements.

7.2. Only the Chief of Police is authorized to initiate requests on behalf of the university for criminal history record information or criminal conviction record information from the Texas DPS, other law enforcement agencies, or private agencies designated by the university for this purpose.

7.3. Applicants for security sensitive positions will sign the appropriate university authorization form(s), i.e. authorization, DPS Audit form, or both. Level 2 security sensitive positions requiring a national search will require a form that includes fingerprints for identification for the FBI national criminal records search. Searches using a private vendor require an Authorization and Disclosure form that complies with the Fair Credit Reporting Act (FCRA), and the rights of the applicant will be indicated as required by law.

7.4. Failure of an applicant to consent to a criminal background check or to timely provide identifying information required for a criminal background check, which may include full name, other names used, date of birth, sex, race, driver's license number or personal identification certificate number, social security number, street address, recent photograph and fingerprints, is grounds for rejection of the application. Falsification of an application or omission of criminal record information required to be reported is grounds to reject an applicant or discipline/ terminate an employee.

7.5. Hiring officials are responsible for requesting that an applicant who is the finalist for a security sensitive position complete the UT Dallas Criminal Background Check Form. The hiring official will forward the completed form and a copy of the criminal convictions section of the finalist's employment application to the UT Dallas Police Department. No offer of employment will be made until a criminal background check is satisfactorily completed. If circumstances require that an offer of employment be made before the completion of the criminal background check, the offer must be in writing and contain a statement that the offer is contingent on the completion of a satisfactory criminal background investigation.

7.6. Upon receipt of a request for criminal record information, with the accompanying release form, if required, the Chief of Police will promptly obtain and review the individual's criminal record information for at least the last seven years. The Chief will provide the hiring official with the results of the investigation and cause the UT Dallas Police Department section of the Criminal Background Check Form to be completed. No other notes are to be made on that form.

- 7.6.1. Applicants for security sensitive positions will sign the appropriate university release form. Release forms are as follows:
- 7.6.2. No form is required for a public records search on the public DPS site, but the applicant should be notified that such a search will be made.
- 7.6.3. UT System Systemwide Policy UTS124 requires a release form for the use of the DPS Secure Site. In addition, DPS requires the applicant to fill in an audit verification form acknowledging that they are applying for a position that requires a search in that site. The search can be a name-based search or a finger-print search. As required by DPS site rules, the results of a name based search cannot be disclosed to the person named. The results of a fingerprint based search can be disclosed. If a search returns adverse information on an applicant in a name based search, the applicant can be told that the results were adverse and that they can request a fingerprint based search. Applicants for a position for which a name-based search is considered sufficient by the hiring official may choose to have the fingerprint search instead.
- 7.6.4. A national search, requiring that FBI criminal records be accessed, requires fingerprint identification.
- 7.6.5. A search using a private vendor and accessing information in government agencies protected as confidential requires authorization under the Right to Privacy Act (1974) and the FCRA. What can be in the reports is governed by the FCRA. Information obtained under this provision must be disclosed to the applicant or employee concerned.

7.7. If the criminal records check reveals a criminal record, the hiring official:

- 7.7.1. For a staff position: should consult with the Chief of Police, and the Assistant Vice President for Human Resources Management about whether the individual is acceptable for the position. If the Chief of Police or the Assistant Vice President for Human Resources Management is of the opinion that the individual may be unacceptable for the position or for continued employment, then the hiring official may not extend an offer to or continue employment of the individual without the prior written approval of the applicable Vice President or Provost.
- 7.7.2. For a faculty position: should consult with the Chief of Police and Provost about whether the individual is acceptable for the position. The hiring official may not extend an offer to or continue employment of the individual without the prior written approval of the Provost or his/her designee.

7.8. The criminal background check for security-sensitive positions will include sources that will provide information where the individual has been employed and resided for at least the seven years prior to application.

7.9. Questions regarding compliance and other issues related to security sensitive positions should be addressed to the Provost or to the Vice President for Administration, as appropriate.

8. Notifications and Opportunity to Respond

8.1. Pre-adverse Action Disclosure. If the university receives a report indicating that an applicant or a current employee has a criminal record the hiring official will notify the individual that such a report has been received and provide the individual with a copy of his or her report, when and as this is permitted by law and DPS policy or procedure. If the report is a factor in considering adverse employment action - denying a job application, denying a promotion, reassigning or terminating the employee - before any adverse action is taken, the individual will be notified of their right to challenge the accuracy and completeness of the report with the agency that provided the report.

8.2. When the university has used a third-party vendor credit reporting agency to conduct the criminal record checks, the resulting report is considered a "consumer report" under the FCRA.[3] If a consumer report is relied on to deny employment, deny a promotion, reassign or terminate an employee, the institution will provide the current employee with a specific pre-adverse action disclosure that includes a copy of the employee's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" - a document prescribed by the Federal Trade Commission. The credit reporting agency that furnishes the individual's report is required to give the institution the summary of consumer rights.

8.3. Opportunity to Respond for Staff Positions Within five business days following the receipt of the report as provided in 8.1, the employee may submit additional information to the hiring official/supervisor relating to the criminal record and why it should not affect an employment decision. Before the hiring official/supervisor makes a final employment decision he/she will review all information provided to him/her with an official(s) designated by the institution and obtain a recommendation from the designated official(s) about whether to proceed with an offer or adverse employment action. The decision of the hiring official is final and may not be appealed. However, if the individual is a current employee standard employee grievance procedures may be used.

8.4. Opportunity to Respond for Faculty Positions.

- 8.4.1. Outside Applicant. Within five business days following the receipt of the report as provided in 8.1., the individual may submit additional information to the hiring official relating to the criminal record and why it should not affect an employment decision. Before the hiring official makes a final employment decision, he/she will review all information provided to him/her with an official designated by the institution and obtain a recommendation from the designated official about whether to proceed with an offer. The decision of the hiring official is final and may not be appealed.
- 8.4.2. Current Faculty Member. Within five business days following their receipt of the report (unless an extension has been granted by the Dean because the faculty

member is on leave and unable to respond in the five day period) during their period of active employment (that is, excluding periods when they are not on salary, or are on leave), the current faculty member may submit additional information to the Dean of their school relating to the criminal record and why it should not affect their employment. If the current faculty member so requests in writing, before the employment decision is made, the Dean or designated official will review the information with an officially designated faculty committee and obtain a written recommendation from the committee about whether to proceed with an offer or adverse employment decision. The faculty committee will be constituted completely by tenured faculty appointed by the President from the list of faculty recommended by the Senate to serve on faculty hearing tribunals in accordance with Hearing Tribunal Selection Procedures UTDPP1055. After the panel makes its recommendation, the affected faculty member may present a grievance, in person or through a representative, as described in the university grievance procedure, Faculty Grievance Procedure The University of Texas at Dallas UTDPP1050. The chief academic officer shall meet with the faculty member and then issue a written determination on the grievance. The decision of the chief academic officer is final and shall not be subject to further review. A current faculty member may invoke the procedures available under RegentsÃ¯Â¿Â½ Rules and Regulations, Rule 31008 related to termination and non-renewal where applicable.

8.5. **Post-Decision Disclosure When Private Vendor Services Used To Conduct Criminal Background Check.** If a consumer report has been relied on to deny employment, deny a promotion, reassign or terminate an employee after the institution has taken an adverse action, the individual must be given notice Ã¯Â¿Â½ orally, in writing, or electronically - that the action has been taken. It must include:

- 8.5.1. the name, address, and phone number of the credit reporting agency that supplied the report;
- 8.5.2. a statement that the credit reporting agency that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it; and
- 8.5.3. a notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days.

9. When Self-Report of Charges or Convictions is Required

9.1. **Applicants.** Applicants must report to the hiring official any criminal charges or convictions, excluding misdemeanor offenses punishable only by fine, occurring after the date of application. Failure to do so may lead to disqualification from eligibility.

9.2. **Current Employees.** Continuing UT Dallas employees must report to their supervisor in writing, within five business days, any criminal convictions, excluding misdemeanor offenses punishable only by fine. Failure to do so is a violation of UT System policy and may lead to disqualification from eligibility for their position or disciplinary action as appropriate. Such disqualification or disciplinary action will be subject to standard appeal or grievance

procedures as applicable. Information provided by self-report will be subject to verification from the sources listed in Section 4, as appropriate.

9.3. **Hiring Official/Supervisor Obligation.** A hiring official and/or supervisor receiving a self-report as required under this section must provide the information to the Vice President for Administration (in the case of staff) or Provost (in the case of faculty) or his/her designee who will analyze the information for a determination regarding the individual's suitability for the position.

10. Retention of Criminal Background Check Records

10.1. **Confidential Records.** All criminal background check information obtained from a criminal background check database will be regarded as confidential as required by law and will not be made a part of the applicant's file or the employee's personnel file. The information must be kept in a separate secure file and will not be communicated to any unauthorized person.

10.2. **Criminal History Record Information.** Under Texas Government Code Ã‚Â§ 411.085, the unauthorized release of criminal history record information, information obtained from the Texas DPS secure site consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions, is a criminal offense and, consequently, the institution should seek legal advice with respect to any requested release of such information.

10.3. **Destruction of Criminal History Record Information and Specific Criminal Background Check Information.** The chief of police of the institution shall destroy all criminal history record information and specific criminal background check information that the institution obtained about the individual six months after it is obtained.

10.4. **Self Reports.** Self-reports of charges or convictions as required by this policy will be maintained with the employee's personnel file in accordance with the university's record retention policy.

11. Authority

11.1. Texas Education Code Ã‚Â§ 51.215 Access to Police Records of Employment Applicants

11.2. Texas Government Code Ã‚Â§ 411.094 Access to Criminal History Record Information: Institution of Higher Education

11.3. Texas Government Code Ã‚Â§ 411.135 Access to Certain Information by Public

11.4. The University of Texas System Systemwide Policy UTS124

Notes

[1] This source may be accessed to perform a criminal background check on an **applicant for a security sensitive position.** This database shall not be accessed to perform a criminal background check on an applicant for a non-security sensitive position or on a current employee who is not an applicant for a security sensitive position unless permitted by state law.
[2] See footnote 1 above.
[3] The institution using a credit reporting agency for this purpose must have a procedure in place in accordance with the UT System Office of General Counsel issued model policy for addressing notice of address discrepancies received from a credit reporting agency regarding the subject of a report.

Policy History

- Issued: April 24, 2011
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Policy Links

- Permalink for this policy: http://policy.utdallas.edu/utdbp3000
- Link to PDF version: http://policy.utdallas.edu/pdf/utdbp3000
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