



AUDIT MEMORANDUM

October 12, 2007

TO: Stockton City Council
FROM: F. Michael Taylor, City Auditor
SUBJECT: Substantive Testing: Fingerprinting

In accordance with our 2007-2008 audit plan, we have completed an audit of the City's process for fingerprint background checks of City employees.

We found the City has designed a process to assure designated employees having direct contact with or authority over minor aged children are fingerprinted in accordance with State Code. In practice, however, procedures over the fingerprinting of employees who turn age 18 need to be strengthened. Also, "direct contact" needs to be clearly defined, allowing management to determine all City positions which require a fingerprint background check.

BACKGROUND:

Beginning July 24, 2006, employees holding positions that perform fiduciary duties, require entry onto private property, or have direct contact with children are required to be fingerprinted as part of the City of Stockton Mandatory Fingerprinting Program. The criminal offender record information ("CORI") is reviewed by the Human Resources Department to ensure that the candidate's or employee's background does not include certain Penal Code violations.

California Public Resources Code section 5164 and California Education Code section 10911.5 prohibit government entities that operate public recreation programs from employing individuals with specific Penal Code violations. These code sections relate to employees who have authority over or direct contact with minor children. The City is responsible for evaluating job classifications to determine which employees must comply with the fingerprint requirement.

Prior to July 24, 2006, the City limited fingerprinting to job candidates and existing City employees working in "designated" positions requiring direct contact with children. The designated positions, those with direct contact with minor children, were limited to Parks

and Recreation Department employees working in recreation programs, and some Library Services Department employees working on school campuses.

The City is currently working to clarify the definition of "direct contact," and will incorporate the definition into City policy, which should increase the number of employees required to submit to fingerprint background checks. Once establishment of the legal definition takes place, the City will need to evaluate whether current employees occupying designated positions may be legally required to have fingerprint background checks performed retroactively.

OBJECTIVES AND SCOPE:

The primary objective of our audit was to determine compliance with California Public Resources Code section 5164 and California Education Code section 10911.5. A secondary objective was to determine whether adequate controls were in place to assure all City employees currently required by state law have had fingerprint background checks performed. Another objective was to determine if the process for evaluating City positions that require compliance with the above California Law was adequate.

The scope of our work did not include evaluation of City employees who work for Police and Fire Departments. We also did not extend our scope to determine whether volunteers or contractors performing City business had fingerprint background checks performed.

METHODOLOGY:

To gain an understanding of system requirements, we reviewed applicable statutes and City policies and procedures. We interviewed City staff, observed daily operations, and reviewed related documentation maintained by the City.

We selected a sample of 30 City employees working for the Parks and Recreation Department, hired during the period January 1, 2003 through June 30, 2007. We reviewed records related to each employee to determine whether they had been fingerprinted and if the employee had a disqualifying California Penal Code violation.

Our audit was conducted in accordance with Generally Accepted Government Auditing Standards.

RESULTS:

Based on the results of our work, we conclude that the City has made reasonable attempts to comply with California Public Resources Code section 5164 and California Education Code section 10911.5. Processes are designed to allow the City to identify employees working with children, assure that fingerprint background checks are performed, and to prohibit City employees with disqualifying California Penal Code violations from being hired.

In practice, controls need to be strengthened to assure that City employees hired when they are minors are fingerprinted once they turn 18 years of age. Also, job classifications for employees that have not been fingerprinted should be reviewed to determine if their duties require fingerprint background checks to be performed.

Finding: Fingerprinting of Employees Turning Age 18

Parks & Recreation employees hired before turning age 18 are not legally required to be fingerprinted. When these individuals turn 18, state code requires they be fingerprinted before continuing to work with children. Weaknesses in the City's process for fingerprinting these employees have allowed individuals to avoid the fingerprinting process and remain on the payroll.

A Parks & Recreation administrative employee identifies employees who are approaching their 18th birthday and notifies the employee's supervisor. The supervisor is expected to arrange for the fingerprint check. If the employee is not scheduled, or fails to appear for fingerprinting, there are no controls in place to assure that the employee stops working until the background check is performed. As a result, employees who turned 18 continued to work for Parks & Recreation without fingerprint background checks being performed. The lack of fingerprint checks on these employees places the City out of compliance with State law.

Management Action Plan:

As a result of the internal audit, Human Resources did review the Criminal Offense Record Information (CORI) database for all Parks and Recreation employees and identified each employee who had not been fingerprinted. To the extent that individual employees, full- and part-time, were assigned duties directly relating to children, those employees submitted fingerprints to the Department of Justice and, if found to have incurred a disqualifying violation, were either terminated from City service or reassigned to an area with no contact with children.

The CORI handler in Parks and Recreation has revised her procedures to allow for follow-up with managers and supervisors to ensure that each person identified as

having “direct contact” with children undergoes the CORI clearance process identified in the Administrative Directive.

At this time, due to the cost of fingerprinting of employees, Human Resources will not require the fingerprinting of minors due to the rate of turnover and return to service. Human Resources will continue to work with Parks and Recreation on the follow-up process developed by the CORI handler to assure all minor employees and volunteers are referred for fingerprinting prior to reaching their 18th birthday.

Target Date for Corrective Action: November 1, 2007

Finding: Employees Having Direct Contact With Minors

The City’s current Administrative Directive, HR-40 – “Fingerprinting of Applicants, Employees, and Volunteers Applying for and Holding Positions With the City of Stockton,” states that “It is the policy of the City of Stockton to obtain criminal history information for all prospective, as well as current, full-time (including provisional and temporary), part-time, volunteer, and contractual employees in the Parks and Recreation Department who supervise, discipline, or otherwise have direct contact with minors.”

This policy statement addresses only the Parks and Recreation Department, and does not include all City employees who are required by State code to be fingerprinted. The administrative directive does not define “direct contact” with minors, which makes monitoring and enforcement difficult.

A sample of Parks and Recreation employees identified parks workers that had not been fingerprinted. A follow-up analysis conducted by Human Resources identified 173 employees in Parks and Recreation that have not been fingerprinted. Absent a clear definition of “direct contact,” it is unclear how many employees in Parks and Recreation and other City departments have not been fingerprinted, but should have been based on their direct contact with minors. For instance, City library branches are frequented by minors and have areas devoted to children’s books and activities, which may be considered recreation centers.

Management Action Plan:

The revisions to HR-40 have been completed to: (1) provide CORI access by the City Auditor; (2) remove the 7-year restriction on certain violations; and (3) provide for a definition of “direct contact” (“the possibility of physical contact with, care, supervision, guidance, control of, talking face-to-face with, or within eye contact of children in the course of paid or unpaid work on more than an incidental and/or occasional basis”). The revised policy, along with the amendment to chapter 2 of the Stockton Municipal Code will be scheduled for Council action on or before November 13, 2007.

In addition, after the identification of employees who had not been fingerprinted, the CORI handler in Parks and Recreation scheduled the fingerprinting of all such employees and made follow-up contact with all managers and supervisors to ensure that employees and volunteers who have "direct contact" with children, as defined in the revised directive, have been properly cleared through the Department of Justice and Human Resources fingerprint procedure.

Since 2006, Human Resources has been fingerprinting all employees that fall within the designated parameters of HR-40; however, with respect to the retrospective fingerprinting of employees in the Library System, we have requested the City Attorney to render his opinion on whether a retrospective application is lawful under the circumstances. Human Resources' position is that, since Education Code section 10901(f) includes "libraries" in its definition of "recreation center," such employees would fall under the mandatory application provision and could, lawfully, be fingerprinted without undergoing the meet-and-confer process. There is the necessity, however, of scheduling impact discussions with the various bargaining units.

We will await the opinion of the City Attorney prior to implementing this recommendation.

Target Date for Corrective Action: November 30, 2007

We would like to express our appreciation to the staff of the Human Resources Department, Parks and Recreations Department, Library, and Administrative Services-Risk Management for their assistance during this audit.


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