



CITY OF PORTLAND
OFFICE OF MANAGEMENT AND FINANCE
BUREAU OF REVENUE AND FINANCIAL SERVICES

Ted Wheeler, Mayor
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February 24, 2020

Representative Paul Holvey, Chair
House Rules Committee
900 Court Street, NE
Salem, OR 97301

RE: SB 1531-A – Authorizing Background Checks for City of Portland Revenue Division Employees

Dear Chair Holvey and Members of the Committee:

The Revenue Division at the City of Portland does not currently have statutory authority to request background checks from the Oregon State Police (OSP), and must attain this authority to comply with federal guidelines. The City supports Sections 24-26 of SB 1531-A that provide for this authorization.

The City's Revenue Division uses Internal Revenue Service (IRS) Federal Taxpayer Information (FTI) to administer the tax code for the City of Portland and Multnomah County. The Revenue Division must comply with IRS Publication 1075 (Pub 1075) to receive IRS FTI data. Pub 1075 requires, among other provisions, a comprehensive employee background check – which includes a federal fingerprint check. The FBI has informed the City, through OSP and Portland Police Bureau (PPB), that they will conduct checks only for those agencies with state-level legislative authority (per Public Law 92-544).

City staff have exhausted every administrative possibility including other avenues of conducting background investigations (e.g., PPB or OSP acting on behalf of the Revenue Division). All efforts have been unsuccessful and have led back to the same conclusion: state-level legislative authority is the only known method to comply with this requirement of Pub 1075.

Attached with this testimony is a letter from OSP explaining in further detail why these background checks are not currently authorized in state statute and may not be conducted through the state or federal system, per City requests.

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The City of Portland respectfully urges your support for SB 1531-A. Sections 24-26 will: 1) narrowly adjust the definition of "Authorized Agency" in ORS 181A.195 to allow for necessary access for a municipal tax collection agency in a city with a population of 250,000 or more, 2) establish the municipal tax collection agency's authority to request federal background checks through OSP, and 3) direct a written agreement with OSP that will specify the scope of work and provide for reimbursement of costs.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Lannom", with a long horizontal flourish extending to the right.

Thomas Lannom, Director, Revenue Division
City of Portland



Oregon

Kate Brown, Governor

Department of State Police

Headquarters

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May 17, 2019

Chris Davis, Assistant Chief
Portland Police Bureau Services Branch
1111 SW 2nd Avenue
Portland, OR 97204



Assistant Chief Davis,

Regarding your question to perform criminal record background checks for employees on behalf of the City of Portland Revenue Department, such checks are not currently authorized and may not be conducted through state or federal systems as requested.

As you may know, the Internal Revenue Service Publication 1075 is an internal agency policy only and, while it contains specific requirements for agencies regarding conducting criminal record background checks on employees, those requirements are not supported by federal or state law. Additionally, many of the requirements included in IRS Publication 1075 may not be attainable for some revenue agencies without a change in state law where no current law is in place authorizing such checks for this specific purpose.

The Oregon State Police Criminal Justice Information Services Division (CJIS) is responsible for the state repository of Oregon Criminal Offender Record Information. Criminal offender information, which serves as the basis for criminal background checks, is confidential. Access to this data is limited by state and federal law for authorized criminal justice purposes only and for limited purposes when authorized by a state statute that has been approved by the US Attorney for non-criminal justice purposes.

The law which allows the States and the FBI to exchange fingerprint and criminal history information and to conduct nationwide fingerprint based non-criminal justice background checks is 42 U.S.C. § 14616, which is known as the National Crime Prevention and Privacy Compact. This compact, to which Oregon belongs, states that the "FBI shall provide on request criminal history records (excluding sealed records) to State criminal history record repositories for noncriminal justice purposes allowed by Federal statute, Federal Executive order or a State statute that has been approved by the Attorney General and that authorizes national indices checks."

In addition, the Portland Police Bureau is not authorized by either state or federal law to use LEADS, III or NCIC for non-criminal justice purposes and therefore cannot conduct state or federal level checks on behalf of the City of Portland Revenue Department.

OSP has been in contact with Steve Matteson, IRS Senior Technical Advisor in the Office of Safeguards. This representative has acknowledged there is a lack of legal basis for many revenue agencies throughout the county to comply with this requirement and that the IRS has essentially placed all of the burden on those agencies and their states to achieve state by state statutory authority, rather than seek a nationwide solution through congressional action.



According to the IRS, there are a total of 6 agencies within Oregon considered to be in-scope. With the exception of the City of Portland, all others are state agencies that already have statutory authority which covers the required checks.

In summary, and because there is no state statute enabling the City or Portland to conduct background checks for employees with access to tax information:

The Portland Police Bureau is not authorized to conduct state or federal checks on behalf of the City of Portland Revenue Department. The PPB may elect to provide name-based checks using city records, if authorized through city policy which may fulfill a portion of the IRS requirements for the Portland Revenue Department.

The Oregon State Police is not authorized to provide any fingerprint-based state or federal background check services for the City of Portland Revenue Department. Oregon law does allow for a city to conduct name-based statewide checks through the OSP, which may fulfill a portion of the IRS requirements.

The FBI is not authorized to conduct fingerprint-based background checks for the City of Portland Revenue Department without a state statute that has been approved by the US Attorney.

Included below are references to policy, rules, and laws regarding authority for non-criminal justice and regulatory background checks. This information may be helpful should the city elect to request background check authority through the Oregon State Legislature.

- Code of Federal Regulation (CFR 28) regarding access to criminal offender records and Public Law 92-544
<https://www.fbi.gov/file-repository/06222005-1.pdf/view>
- Oregon Administrative Rules for access to criminal offender information
<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=803>
- Oregon Revised Statute ORS 181A.195. Provides the template for obtaining authority to conduct criminal background checks for non-criminal justice purposes.
https://www.oregonlegislature.gov/bills_laws/ors/ors181A.html
- Sample of current Oregon law for the Oregon Department of Revenue authorizing criminal background checks (ORS 305.078) https://www.oregonlegislature.gov/bills_laws/ors/ors305.html

Please contact me if you need further assistance.

Sincerely,



Tom Worthy, Major
Public Safety Services Bureau

cc: Thomas Lannom, CPFO Revenue Division Director Portland Revenue Department