

Use of hotline information for screening applicants

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Mr. Richard Doran
General Counsel
Department of Children and
Family Services
1317 Winewood Boulevard
Tallahassee, Florida 32399-0700

Dear Mr. Doran:

You ask whether the Department of Children and Family Services (department) may search the records of the Florida Abuse Hotline Information Services while conducting a background screening of an applicant seeking a position in a department program providing care to children.

Section 110.1127(3)(a), Florida Statutes (1996 Supplement), provides:

"Within the Department of Health and Rehabilitative Services (now the Department of Children and Family Services) and the Department of Elderly Affairs, *all positions in programs providing care to children*, the developmentally disabled, disabled adults, or elderly persons for 15 hours or more per week; all permanent and temporary employee positions of the central abuse hotline; and all persons working under contract who have access to abuse records are deemed to be persons and positions of special trust or responsibility, and require employment screening pursuant to chapter 435, using the level 2 standards set forth in that chapter." (e.s.)

Section 110.1127(3)(c), Florida Statutes (1996 Supplement), requires all persons and employees in such positions of trust or responsibility to undergo security background investigations as a condition of employment and continued employment. Section 435.04(1), Florida Statutes (1996 Supplement), provides that the security background check

"*shall include, but not be limited to*, employment history checks, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies." (e.s.)

The security background investigation is to ensure that no person in a position of trust or responsibility has been found guilty of the types of offenses listed in section 435.04(2), Florida Statutes (1996 Supplement).[1] For employees or employers licensed under Chapter 400, Florida Statutes, the person must not have a confirmed report of abuse, neglect, or exploitation which has been uncontested or upheld, nor committed an act that constitutes domestic violence.

While section 435.04, Florida Statutes (1996 Supplement), does not expressly refer to checks of

the central abuse hotline, the chapter contemplates that, at least in some instances, a check of the central abuse hotline will be conducted. Section 435.09, Florida Statutes (1996 Supplement), states:

"No criminal, juvenile, or *abuse hotline information obtained under this section* may be used for any purpose other than determining whether persons meet the minimum standards for employment or for an owner or director of a covered service provider. . . ."[2] (e.s.)

Section 415.504(4)(e), Florida Statutes (1996 Supplement), which provides for the mandatory reporting of child abuse and neglect to the department's central abuse hotline, however, states:

"Information in the central abuse hotline may not be used for employment screening. Access to the information shall only be granted as set forth in s. 415.51."

Chapter 435, Florida Statutes, and the above language of section 415.504(4)(e), Florida Statutes (1996 Supplement), were added by Chapter 95-228, Laws of Florida.[3]

You state that despite the prohibition contained in the first sentence of section 415.504(4)(e), Florida Statutes (1996 Supplement), the examination of central abuse hotline records for screening is authorized for the screening of certain persons such as home health agency personnel, nurse registry personnel, and persons registered under s. 400.509, Florida Statutes.[4]

The department, however, has not been specifically authorized to check the central abuse hotline to screen its job applicants.[5] Thus, the Legislature has prohibited the use of central abuse hotline information for general employment screening and has not expressly authorized the department to obtain such information when conducting screening for employment with the department.

The law which precludes the use of such information for state employment screening provides little or no protection against damages being assessed for the negligent hiring of employees and leaves the potential victims, the children with whom such employees will work, potentially vulnerable. Such a situation ought to be clarified by the Legislature.

Until such time, however, it may be appropriate under these circumstances for the department to request job applicants in these sensitive positions sign a waiver of this statutory confidentiality. While failure to sign a waiver may not be sufficient to deny an applicant employment, it may warrant additional investigation prior to the employment of the individual applicant.

I hope that these informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Director, Division of Opinions
Assistant Attorney General

[1] See *also* s. 435.06, Fla. Stat., providing for exclusion from employment; and s. 435.07, Fla. Stat., providing exemptions from disqualification.

[2] See *also* s. 435.08, Fla. Stat. (when a search of the central abuse hotline is required, payment shall be submitted by separate check to the department); and s. 435.05(1)(c), Fla. Stat., (for a level 2 screening, when required, the employer or licensing agency must also submit sufficient information to the department to complete a check of its records).

[3] See, ss. 44 and 47, Ch. 95-228, Laws of Florida.

[4] See, *e.g.*, s. 400.462(10), Fla. Stat., defining screening of home health agency personnel, nurse registry personnel, and persons registered under s. 400.509, Fla. Stat., to include, among other things, records checks of the department's central abuse hotline under Chapter 415 relating to vulnerable adults; and s. 400.512(3), Fla. Stat. (1996 Supp.), providing that as a prerequisite to operating as a home health agency, or sitter, companion, or homemaker service, the administrator must submit to the Agency for Health Care Administration sufficient information for the agency to access the department's abuse hotline for state processing. *And see* s. 409.175(11)(b)2., Fla. Stat. (1996 Supp.), which prohibits any person, agency, summer day camp, or summer 24-hour camp providing care to children to:

"Use information from the criminal records or central abuse registry obtained under this section for any purpose other than screening a person for employment as specified in this section or to release such information to any other person for any purpose other than screening for employment as specified in this section."

[5] *Compare* s. 415.51(2)(h), Florida Statutes, authorizing access to reports to the central abuse hotline, excluding the name of the person reporting the abuse, by:

"Any appropriate official of the department responsible for:

* * *

2. Taking appropriate administrative action concerning an employee of the department alleged to have perpetrated institutional child abuse or neglect."

And see s. 415.503(10), Fla. Stat. (1996 Supp.), defining "Institutional child abuse or neglect"; Op. Att'y Gen. Fla. 79-100 (1979).