

The Good, The Bad and The Ugly.

How to Tell the Difference

Presented by Deborah Rose

dcr@isgu.com



Investigative Solutions Group, Unlimited

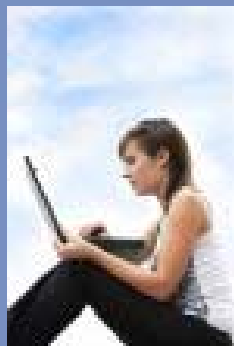
www.isgu.com



Disclaimer -

- “Information” is not the same as “legal advice” – defined as the application of information to an individual’s specific circumstances. This presentation does not provide legal services or legal advice.
- We try to make our information accurate and useful. You should consult a lawyer to interpret and apply this information to your particular situation.
- The information contained in this presentation is provided to you “AS IS”, and no claims, promises or guarantees about the accuracy, completeness, or adequacy of the information are being made and only support that this information is the result of research and observation.

The Good, the Bad, Who is your next employee?



Hiring people is easy, hiring the right people – not so easy.



- **Nearly 2 million persons are victims of workplace violence each year.**
- **Contrary to popular belief, the vast majority of individuals who abuse or are dependent on alcohol or other drugs “work.”**
- **Employers lose 72% of all negligent hiring suits.**

Keep your friends close, your employees closer?



- The U.S. Chamber of Commerce reports that \$50 billion dollars are lost annually due to employee theft and fraud.
- Also reported by The U.S. Chamber of Commerce - that 20% of all businesses fail due to internal theft and fraud.
- The Wall Street Journal reported that up to 75% of all employees steal at least once -- half of these, at least twice.
- **FBI reports that employee theft is the fastest growing crime in the U.S.**



Resumes tell you everything?

- Up to 30% of applications contain false material/information
- 40% of the information on résumé is misrepresented
- 45% of potential employees have either a criminal record, bad driving record, worker's compensation claim or a bad credit history.
- Sexual harassment has increased by over 130% from 1991 to 1997, an average of 15% annually.
- 40% of American drivers have a violation on their driving record, while 25% don't have insurance at all.

Background Check vs. Background Investigation



- All Secret Service positions require completion of a full background investigation before appointment. The time frame for completion of a background investigation varies depending on the history of the applicant. Typically, a full background investigation takes approximately six to nine months to complete. During this period, various information is verified, including employment history, police records, credit history, school transcripts, neighborhood references and military records.

What an online search doesn't tell you:



- The source of the records
- How often they update their databases
- How to interpret the information
- Details of the case and/or conviction
- That you have the correct person
- If the case is adjudicated, it isn't always removed. You could be held liable for utilizing that information

Even the government has it's flaws – REALLY!



- DPS spokesperson Tela Mange admits it doesn't help police if a lot of the records are missing.
- When asked about people recently convicted who are just plain missing off the database, "Well," Mange says, "We have not received that information from the reporting agencies."
- Those reporting agencies are the state's more than 200 counties who are responsible for reporting to the DPS about crimes in their jurisdiction. "We depend on local agencies", Mange says. "We don't have any control over what's sent to us."

Records vs. Investigation



It's not **JUST** the amount of information you have. It's how you interpret it that makes the difference.



What can you find in a background investigation?

- Driving records
- Vehicle registration
- Credit records
- Criminal/Sex Offenders
- Social Security No.
- Education records
- Court records
- Workers' comp
- Bankruptcy
- Bankruptcy
- References
- Neighbor interviews
- Medical records
- Property ownership
- Military records
- State licensing records
- Drug testing
- Past employers



- So how do you know what you need?



- Background checks are another way of describing due diligence

Due Diligence



- What is it?
- When do you need it?
- Who can provide it?

What is Due Diligence?



- Main Entry: due diligence
- Function: noun: the care that a reasonable person exercises under the circumstances to avoid harm to other persons or their property

How do you know?



"I [never met] the senior manager who knew what information was available for decisions. Very few senior executives have asked the question, "What information do I need to do my job?" In part because they've all been brought up with the accounting information that they understand. But the other type of information system, they don't understand."

Peter F. Drucker

CIO Magazine, Sept. 15, 1997

What it involves



- The *individual's identity*
- The *individual's financial health*
- The *credibility of the people*
- The *future potential* of the person

Mistakes vs. Integrity and Ability



- Due diligence means protecting yourself and others from harm.
- Integrity means being honest – honest people make mistakes.
- Having all the facts and information let's you make an informed decision in the hiring process.



Example

- Forty five year old applicant (male) has lived in the city he's applied for a position with your company for five years. For the past 20 years he has lived in five other states and 8 other countries total. Question: What constitutes a diligent criminal investigation?
- If the same applicant is a female- does that make a difference?



The Interview

Think about your average interview –
Can you see yourself asking the following
questions?

And if you did, how do you know about
the accuracy of the answers?

Can you ask the hard questions?



1. Are you financially sound?

Now ask it the question this way – have you filed bankruptcy in the past ten years and do you have enough money in the bank to pay your bills for the next 6 months?

2. Have you ever been arrested?

3. Why?



4. What type of businesses are your close relatives involved in?
5. What type of neighborhood do you live in?
7. How many vehicles do you own?
8. Are they paid for?
9. Have you ever sued someone or been sued?
10. What was the suit about?



11. What kind of records does your local police dept have about you? (This involves non criminal charges that were not filed.)
12. What do your neighbors think about you?
13. What kind of person do you think you are?
What are your strengths? What are your weaknesses?



13. What kind of driver are you?
14. How many accidents have you been involved in?
15. What are your hobbies and what kind of expense is involved in them?
16. Have you ever had another name or SS#? If yes, then why?

Sample Criminal Offenses



- ABDUCTION
- AGGRAVATED CRIMINAL SEXUAL ASSAULT/THREAT
- AGGRAVATED KIDNAPING/ARMED
- AGGRAVATED ROBBERY-DEADLY WEAPON
- AGRAVATED ASSAULT
- ANIMAL CRUELTY CRUEL NEGLECT
- ARMED ROBBERY
- AUTO THEFT
- BATTERY/ASSAULT(DOMESTIC)
- THEFT BY CHECK
- DESECRATE GRAVE
- DRIVING WHILE INTOXICATED
- FELONY ASSAULT
- FIRST DEGREE MURDER
- FIRST DEGREE RAPE
- FIRST DEGREE SEXUAL OFFENSE
- FLEEING/ATTEMPTING TO ELUDE
- FORGERY & COUNTERFEITING
- HIT AND RUN
- LEWD ACT
- MANSLAUGHTER,VEHICLE
- MURDER 2nd DEGREE
- MURDER/INTENT TO KILL/INJURE
- NARCOTIC POSSESS-TRANSPORT
- PETTY THEFT
- POSSESSION CONTROLLED SUBSTANCE W/INTENT TO SELL
- ROBBERY / WEAPON

Sample Criminal Offenses



Specific Crimes That Exclude Employment in Many Companies

AGGRAVATED CHILD ABUSE

CHILD ABUSE CHILD ABUSE 2ND DEGREE

FELONY CHILD ABUSE-SERIOUS INJURY

FIRST DEGREE CHILD MOLESTATION

RISK OF INJURY TO CHILD

SEXUAL ACTIVITY WITH A CHILD

SEXUAL CONDUCT WITH MINOR

SHOWING OBSCENE MATERIAL TO A MINOR



Criminal Record Sources



- Individuals with drug, assault, robbery, murder, theft, driving violations do not appear on a sex offender registry check.
- Be comfortable with your screening choices.

You may have to defend what background check tool you used and who has been checked.





Criminal Record Sources

- **Approximately 686,515 individuals are in state sex offender registries.¹**
- **Approximately 101 million people and 250 million records are contained in the National Criminal File.**
- **In 2009, the National Criminal File contained approximately 11.5 million sex related crimes.**
- **A check conducted through local or state law enforcement does not meet even the Little League minimum requirement as it checks only local and state records and is not a National Check.**

So what are the minimum requirements you need to make a good decision?



What is trust really about?

- We do business with people we like.
- We do business with people we are comfortable with.
- Like does not equal trust.
- Comfortable does not make them a good employee.



- How else can background investigations protect you?



- **Negligent hiring** lawsuits are on the rise. If an employee's actions hurt someone, the employer may be liable. The threat of liability gives employers reason to be cautious in checking an applicant's past. A bad decision can wreak havoc on a company's budget and reputation as well as ruin the career of the hiring official. Employers no longer feel secure in relying on their instinct as a basis to hire.



- **Child abuse and child abductions** in the news in recent years have resulted in new laws in almost every state that require criminal background checks for anyone who works with children. The move to protect children through criminal background checks now includes volunteers who serve as coaches for youth sports activities and scout troop leaders.



- **Terrorist acts of September 11, 2001**, have resulted in heightened security and identity-verification strategies by employers. Potential job candidates and long-time employees alike are being examined with a new eye following September 11, 2001.



- **Corporate executives, officers, and directors** now face a degree of scrutiny in both professional and private life unknown before the Enron debacle and other corporate scandals of 2002.
- This makes verifying financial information and personal/professional references more important than ever.



- **False or inflated information** supplied by job applicants is frequently in the news. Numerous studies and news articles, citing varying results, have been published on the topic of resume fraud. While study and survey results may vary, it is clear that human resources professionals are alert to the potential for embellished or outright falsehoods. Such reports make employers wary of accepting anyone's word at face value.



Lie Detector Tests

- **The Employee Polygraph Protection Act** prohibits most private employers from using lie detector tests, either for pre-employment screening or during the course of employment. The law includes a list of exceptions that apply to businesses that provide armored car services, alarm or guard services, or companies that manufacture, distribute, or dispense pharmaceuticals.



Basic Background Reports DO NOT Include:

- Bankruptcies after 10 years.
- Civil suits, civil judgments, and records of arrest, from date of entry, after seven years.
- Paid tax liens after seven years.
- Accounts placed for collection after seven years.
- Any other negative information (except criminal convictions) after seven years.
- *FCRA does not apply to jobs with an annual salary of \$75,000 or more a year. (FCRA §605(b)(3).*

Today's Situation



Lack of complete information such as:

- Incomplete names
- Inaccurate Date of Births
- Lack of background on the individual
- Incomplete records, or lack of any records verifying accuracy of the individual's statements

When Federal Laws Require Checks



- **Federal and state laws** require that background checks be conducted for certain jobs. For example, most states require criminal background checks for anyone who works with children, the elderly, or disabled. Many state and federal government jobs require a background check, and depending on the kind of job, may require an extensive investigation for a security clearance.



Restrictions

- **Workers Compensation**
(Some states, i.e. Texas)

- **Bankruptcies**

Bankruptcies are public record. However, employers cannot discriminate against applicants because they have filed for bankruptcy. (11 USC §525)



- **Education records.** Under both federal and California law; transcripts, recommendations, discipline records, and financial information are confidential. A school should not release student records without the authorization of the adult-age student or parent. However, a school may release "directory information," which can include name, address, dates of attendance, degrees earned, and activities, unless the student has given written notice otherwise. (20 USC §1232g)



- **Military service records.** Under the federal Privacy Act, service records are confidential and can only be released under limited circumstances. Inquiries not authorized by the subject of the records must be made under the Freedom of Information Act. Even without the applicant's consent, the military may release name, rank, salary, duty assignments, awards, and duty status. (5 USC §§552, 552a)



- **Medical records.** Most medical records are confidential. There are only a few instances when a medical record can be released without your knowledge or authorization. The FCRA also requires your specific permission for the release of medical records. If employers require physical examinations after they make a job offer, they will have access to the results. The Americans with Disabilities Act allows a potential employer to inquire only about your ability to perform specific job functions. (42 USC §12101)

What is a Hand Search and Why Would I Want to Pay for That?



Five Hundred Known Felons were run through the Texas DPS system by an independent study. Results were:

- 44% came back as clear – no records
- 46% came back with only partial information
- 5% came back correct
- 3% came back with more information than expected
- 2% came back with contradictory information
- **CONCLUSION:** 90% of the records were erroneous on the Texas Dept of Public Safety database.

Look your applicant in the “Facebook”



Don't ignore social networking sites

- Facebook
- Twitter
- Myspace
- Yahoo and Google Groups
- Meetup.com
- LinkedIn

- Ask for their personal email address and user names

Since this is an Investigation.....



- An excellent resource of information is the utilizing the original source – the applicant themselves.



Personalities Matter

- Research proves when a person fails in their career, more than 90% of the time that failure is directly attributed to some aspect of human behavior. Individuals do not usually fail because of lack of education, experience, training, or skills. They fail because their personality is not compatible to the behavioral requirements of their career.

The Costs of Employee Turnover



- **Coca-Cola Retailing Research Council - \$3,637.00**
Estimated total direct and indirect costs of replacing a supermarket cashier earning \$6.50 per hour was at least \$3,637.
- **Workforce Magazine - FAX Facts Survey - \$10,000.00**
45% of responding companies indicated that turnover costs are more than \$10,000 per employee.
- **Louisiana State University Staff Senate - \$25,000.00**
Protective services includes police officers, correction staff, guards, Wildlife and Fisheries employees.



Costs Include:

- Temporary Replacements
- Recruitment Costs
- Training Costs
- Loss of Productivity
- Loss of Sales



What Can a Profile Do?

- **Applicant Screening:** Eliminate unqualified applicants early in the selection process.
- **Personnel Selection:** Select the best available applicant for every position in your organization.
- **Personnel Placement:** Place new employees with the most suitable manager and in the most compatible environment.
- **Promotion Decisions:** Identify individuals qualified for advancement.
- **Succession Planning:** Identify individuals to replace those promoted, transferred, retired, or terminated.
- **Reorganization Decisions:** Determine which employees will function most successfully in the reorganized unit.

Is this applicant a success orientated individual?



- Ambition: this trait score tells you if this person is a competitive, goal oriented person who has a strong desire to successful.
- Self-confidence: tells you if the applicant has supreme confidence in him or herself and truly believes they have what it takes to be successful.
- Conscientiousness: tells you if this person places the welfare of management and the organization before their own personal self-interest.

Will this person be a dedicated and cooperative employee?



- Coachability: will tell you if this person respects authority figures (their managers) and willingly accepts their leadership and direction.
- Recognition: indicates if this person has an internal motivation to be seen as a desirable person and will act appropriately to receive recognition.
- Trust: trusting individuals are not suspicious and defensive. They openly communicate and believe others are deserving of their trusting nature.
- Flexibility: tells you if this applicant will readily adapt to the company's methods of operation and decisions or be resistant and insist on their own.
- Contentment: lets you know if this is a happy person with a positive disposition, rather than someone who is disenchanting with their life.
- Responsibility: will this individual accept responsibility for the consequences of his or her words and actions or blame others instead.

What is this individual's interpersonal orientation?



- Leadership: tells you if this individual believes they are a leader and if they enjoy managing, motivating and being responsible for others.
- Sociability: discloses whether the applicant is a people-oriented extrovert or an introvert who focuses on "things" and avoids contact with others.
- Exhibition: reveals if this person enjoys being the center of attention, someone who is entertaining, demonstrative and a pleasure to be with.
- Nurturance: nurturing individuals are keenly aware of and sensitive to the emotional needs of others and readily respond with sympathy and support.

Does this applicant meet the intellectual requirements for an employee?



- Alertness: measures the applicant's inherent ability to learn quickly, understand complex situations and successfully solve problems.
- Structure: indicates how organized their thinking, planning and actions will be. They will be highly mentally structured and disciplined.
- Order: tells you if they will keep their physical surroundings, neat and orderly. They will have a place for everything and everything in its place.
- Control: will determine if they are impulsive and talk or act without thinking, or someone who will control their impulsive behavior.

Does this applicant have the required emotional maturity and discipline?



- Composure: predicts their ability to remain calm and to function normally when problems occur and emotional stress is encountered.
- Tough-mindedness: enables a person to cope with challenges, function in uncomfortable environments and recover quickly from disappointments.
- Autonomy: will disclose if this is a team oriented or team dependent individual, will they contribute and be cooperative or avoid contact with others.

Resources Available



- Access Database customized to needs of private industry
- Personal, hand searches in each county
- Address histories also verify SS# and the names associated with it. This provides more accurate search criteria
- Credit reports reduce false applications
- Personality profiles matching the right person to the right job

FCRA



- The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records).

Consumer Report = Background Check



- **Consumer Reporting Agency** - A Consumer Report is much broader in scope than just a credit report. It affects a wide variety of information obtained concerning job applicants. A Consumer Report includes criminal and civil records, driving records, civil lawsuits, reference checks and any other information obtained by a Consumer Reporting Agency. A licensed, private investigative company falls under these guidelines.



What is a Consumer Report?

- A consumer report contains information about personal and credit characteristics, character, general reputation, and lifestyle. To be covered by the FCRA, a report must be prepared by a consumer reporting agency (CRA) — a business that assembles such reports for other businesses.

When Ordering a Consumer Report



- That the employer will use the information for employment purposes only.
- That the employer will not use the information in violation of any federal or state equal opportunity law.
- That the employer will obtain all the necessary disclosures and consents as discussed below.
- That the employer will give the appropriate notices in the event that an adverse action is taken against an applicant based in whole or in part on the contents of the Consumer Report.
- That if a special type of consumer report is requested, called an Investigative Consumer Report, that the employer will give the additional information required by law.



Written Authorization Required

- Before you can get a consumer report for employment purposes, you must notify the individual in writing — in a document consisting solely of this notice — that a report may be used. You also must get the person's written authorization before you ask a CRA for the report.
- This CAN NOT be part of the general employment application form.

Adverse Actions Require:



- If you rely on a consumer report for an "adverse action" - denying a job application, reassigning or terminating an employee, or denying a promotion — be aware that:

Your Duty to the Individual You just Investigated



- **Step 1: Before** you take the adverse action, you must give the individual a pre-adverse action disclosure that includes a copy of the individual'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 CRA that furnishes the individual's report will give you the summary of consumer rights.



- **Step 2:** You must give the individual notice — orally, in writing, or electronically — that the action has been taken in an adverse action notice. It must include:



CRA – Individual's Rights

- The name, address, and phone number of the CRA that supplied the report;
- A statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it; and
- 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.



Noncompliance Consequences

- The FCRA allows individuals to sue employers for damages in federal court. A person who successfully sues is entitled to recover court costs and reasonable legal fees. The law also allows individuals to seek punitive damages for deliberate violations. In addition, the Federal Trade Commission, other federal agencies, and the states may sue employers for noncompliance and obtain civil penalties



Financial Records

- The Financial Modernization Act of 1999 alternatively called the Gramm-Leach-Bliley Act (GLB Act). The GLB Act aims at protecting the personal information of consumers, especially financial records and details of these records that are kept by the financial institutions in the U.S. The privacy provision of this act covers three important main parts. The ‘Safeguards Rule’, the ‘Financial Privacy Rule’, and the provisions to prevent “pretexting”.

When Financial Records Are Accessible



- Signed authorization for credit report
- Court ordered in the pursuit of collecting a judgment or during the course of litigation
- Pretexting of any kind is a violation of the GLB Act.

Due Diligence in the Selection of Background Screening Service Providers



- When selecting a third-party service provider for background screening of potential employees, due diligence should be used, just as with selecting any other service provider.

Deborah Rose - Presenter

Investigative Solutions Group, Unlimited
www.isgu.com

