

Kentucky State Police Intelligence Memorandum of Understanding

The Kentucky State Police (KSP) and Lexington-Fayette Urban County Government on behalf of the Division of Police (User Agency) enter into this memorandum of understanding (Agreement) that outline the terms that govern the receipt, usage and security of personally identifiable information (PII) delivered to User Agency by KSP Intelligence personnel.

The Agreement memorializes

- 1) KSP's requirements from a requestor to fill a request;
- 2) The obligations of the requestor regarding the use of that information; and
- 3) The consequences that may flow from the User Agency's failure to adhere to this Agreement.

KSP Intelligence conducts its operation in conformity with 28 CFR pt. 23 and the LEIU Criminal Intelligence File Guidelines as recommended by the National Criminal Intelligence Sharing Plan (2005 version). The purpose of this MOU is to allow KSP to disseminate personally identifying information to "law enforcement authorities who shall agree to follow procedures regarding receipt, maintenance, [and] security" in accordance with 28 CFR pt. 23.20(f) to support criminal investigations.

1) DEFINITIONS

Right to know: The requestor has an official capacity and statutory authority to receive the information being sought.

Need to know: The information requested is pertinent and necessary to the requestor in initiating, furthering, or completing an investigation.

Law Enforcement Entity: Government agencies or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order and that exercises law enforcement or criminal investigation authority. State and federal Inspector General Offices are included as are offices of both Kentucky County and Commonwealth Attorneys. 502 KAR 30:10(1)(3)(b), 28 CFR 20.3(g), 28 CFR 23.3(b)(4).

Personally identifying information: Information traceable to the individual and that person's behavior including, but not limited to, name, address, telephone number, e-mail address, financial account number, government-issued identifier, and any other data used or intended to be used to identify, contact or precisely locate a person.

2. INITIAL REQUEST

User Agency understands that it must 1) establish a need and right to know information and 2) produce sufficient facts to demonstrate that a reasonable suspicion of criminal activity by a person or organization as a condition precedent to KSP dissemination of PII to User Agency requestor. 28 CFR pt 23.20. These conditions shall be met to the KSP Intelligence Analyst's satisfaction. The conditions in this paragraph need not be met for KSP to share PII with User Agency if dissemination is necessary to avoid imminent danger to life or property. 28 CFR pt. 23.20(f)(2).

Law enforcement entities (except Lexington and Louisville police departments) shall contact the Criminal Intelligence Analyst at the KSP Post in which the entity is located for support. Lexington and Louisville police departments, Federal, out of state and Kentucky state government entities located in Frankfort shall contact the KSP Intelligence Branch for support.

KSP shall only disseminate PII to User Agency via LEO e-mail, facsimile, or hand-delivery.

User Agency understands that information provided under this agreement is lead information only and must be corroborated before taking any action. **The Agency understands that data it receives under this agreement may contain errors.**

3. RETENTION

a) Information that User Agency receives under this agreement shall be destroyed when the purpose for which it was originally requested is complete. This provision shall be narrowly construed. User agency will destroy any information it receives that it subsequently determines to be misleading, obsolete or otherwise unreliable. 28 CFR pt 23.20(h).

Regardless of the original purpose, User Agency shall destroy any information that it obtains under this agreement at the end of 365 days. Destruction means shredding, burning or any other method that shall render the information unusable.

b) KSP is the custodian of any information that it gives to User Agency for the purposes of the Kentucky Open Records Act. Information that User Agency obtains from KSP under this agreement is generally exempt from disclosure as it is "intelligence" as used in KRS 17.150(2). User Agency shall inform KSP immediately upon receipt of an open records request that User Agency determines may apply to information that User Agency has received under this Agreement.

4. SECURITY

User Agency shall employ appropriate administrative, physical and technical safeguards to protect the information it receives from KSP to prevent unauthorized access.

5. DISSEMINATION

User agency shall not share information that it obtains under this agreement with another agency without obtaining permission from KSP. User agency understands that KSP will share any information with third party agencies it obtains from User agency under this agreement **UNLESS** User Agency informs KSP that its dissemination should be limited. User Agency gives its consent for KSP Criminal Intelligence Analysts to access any files that User Agency submits to the KyOPS database.

6. AUDIT

User Agency agrees to maintain an audit trail that documents any access by those with a need to know information provided under this agreement. User Agency will allow KSP to inspect the audit trail upon request.

7. SECURITY BREACH

Each party shall promptly notify the other of any event that may result in the unauthorized collection, access, use, or disclosure of PII subject to this Agreement ("Security Breach"). The parties shall make reasonable efforts to assist one another in relation to the investigation and remedy of any such Breach and any claim, allegation, action, suit, proceeding, or litigation with respect to the unauthorized access, use, or disclosure of PII.

8. CONSEQUENCES OF VIOLATION OF AGREEMENT

Violation of this agreement by User Agency may result in the immediate termination of User Agency's privilege of receiving service from KSP Intelligence as well as the imposition of civil and criminal sanctions against the User Agency and/or its employees for breach of the terms of this Agreement and/or the unlawful use or dissemination of information. User Agency acknowledges and agrees that use or disclosure of information in a manner inconsistent with this agreement will cause irreparable damage and in such event KSP shall have the right to equitable and injunctive relief as well as damages incurred by KSP as a result of the violation of the terms of this agreement by User Agency or its employees.

9. INDEMNITY

Except as otherwise prohibited by law and without waiving any defenses to which it may be entitled, User Agency shall indemnify and hold harmless KSP, the Commonwealth of Kentucky, and their employees, for any and all claims, damages, judgments, lawsuits, and other matters that may result from the User Agency's use or reliance upon the information it receives from KSP Intelligence personnel under the terms of this agreement. User Agency shall also indemnify and hold harmless the KSP, the Commonwealth of Kentucky, and their employees, for all damages, claims, costs, expenses, awards, or judgments of any nature, type or description, including attorneys'

fees, which might be asserted by any person or entity stemming from the negligence and/or fault of User Agency or its employees in the exercise or enjoyment of this agreement, including but not limited to, the dissemination of confidential information and/or erroneous information. **User Agency understands that information provided under this agreement is lead information only and must be corroborated by User Agency before taking any action.**

10. DISCLAIMER

KSP disclaims any warranty as to the validity of the information obtained under this Agreement. KSP shall not be liable to the User Agency, its designees, or any other third party for any damages arising from the use of said information obtained under this Agreement.

11. AGREEMENT PERIOD

This agreement is effective upon the last signature of the duly authorized representatives of the parties and remains in effect for three years.

12. APPLICABLE LAW/VENUE

This Agreement shall be governed by, construed and interpreted under the laws of the Commonwealth of Kentucky, without regard to its laws relating to conflict or choice of laws. The parties agree that the exclusive jurisdiction and venue for any legal action that is brought on the basis of this Agreement is the Franklin County Circuit Court of the Commonwealth of Kentucky.

User Agency Head agrees that he or she will ensure that User Agency personnel have read and understand the terms included herein prior to requesting support from KSP Intelligence.

Signature of Lexington-Fayette Urban County Government,

Linda Gorton Mayor

Date

Printed Name and E-mail address of User Agency Head

