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Julie Butler
Division Administrator

NOTICE OF PUBLIC MEETING
Friday, June 10, 2016

The Notice of Public Meeting was called to order at 10:00 am on Friday, June 10, 2016. The staff members were present at the Gaming Control Board, 1919 College Parkway, Carson City, NV with video conferencing to the Gaming Control Board, 555 E Washington Ave, Suite 2450, Las Vegas, NV.

STAFF MEMBERS PRESENT:

Mindy McKay – Department of Public Safety General Services Division
Erica Souza-Llamas – Department of Public Safety General Services Division
Julie Butler – Department of Public Safety General Services Division
Katie Brady – Nevada Attorney General's Office
Rebecca McMenemy – Department of Public Safety General Services Division

OTHERS PRESENT:

Carson City NV:

PK O'Neill – Nevada State Assemblyman

Las Vegas NV:

Carmen Tarrats – Las Vegas Metropolitan Police Department
Terry Daus – City of Henderson
Bob Roshak – Nevada Sheriff's and Chief's Association
Nadine McDonald – Department of Public Safety General Services Division

Mindy McKay:

Agenda Item 1: Call to order and introduction of General Services Division representatives

Mindy McKay, the records Bureau Chief within the General Services Division of the Nevada Department of Public Safety, called the public hearing on proposed regulations for Nevada Administrative Code 179A to order on Friday, June 10, 2016 at 10:00 am. Ms. McKay introduced the representatives of the General Services Division: Julie Butler, Division Administrator for the General Services Division within in the Department of Public Safety; Deputy Attorney General, Katie Brady; and Erica Souza-Llamas, the Central Repository Manager within the General Services Division.

Participants were asked to be sure to sign-in on the roster provided, including their name and affiliation, if any, and were asked to state their full name and affiliation for the record when speaking.

Ms. McKay indicated that there should be a packet available on the way in. In that packet was the agenda, along with the small business impact, the notice to adopt and the proposed regulations. Ms. McKay indicated that the proposed regulations will be referenced from the packet throughout the meeting.

Mindy McKay:

Agenda Item 2: Opening Remarks

Ms. McKay explained that this is a public hearing on proposed regulations for Nevada Administrative Code 179A pursuant to Assembly Bill 224 from the 2015 legislative session as it relates to biometric identifiers. The Department of Public Safety, General Services Division requested that Assemblyman O'Neill bring forth this bill on behalf of the Criminal History Repository and statewide law enforcement as a housekeeping measure to allow Nevada to keep up with evolving technologies for the accurate identification of people. AB 224 amended NRS 179A.075 to authorize the division to submit to the FBI one or more of a person's fingerprints for the purposes of mobile identification, a complete set of fingerprints for criminal arrest booking purposes, or other biometric identifier of the person. The General Services Division is taking this opportunity to amend NAC chapter 179A in conformity with these statutory changes and to also amend other sections of this chapter as it relates to the revolving account to investigate background of volunteers who work with children. Everyone was provided a copy of the notice of public meeting, agenda, notice of intent to act upon regulation small business impact statement, and proposed regulations for reference.

Ms. McKay explained that for this public hearing, written comments were due on or before 5:00 pm on June 3, 2016 and no extensions were granted for the submission of additional written comments.

Ms. McKay indicated that the purpose of the public hearing is to solicit comments from interested persons on the following general topic that may be addressed in the proposed regulations:

Ms. McKay explained that the Division will discuss the establishment of revisions to and the addition of new regulations pursuant to Assembly Bill 224 regarding the governance of biometric identifiers and the information and data derived from biometric identifiers, including, without limitation:

- (1) Their collection, use, safeguarding, handling, retention, storage, dissemination and destruction; and
- (2) The methods by which a person may request the removal of his or her biometric identifiers from the Central Repository and any other agency where his or her biometric identifiers have been stored.

Ms. McKay further explained that the Division will also discuss the establishment of revisions to the regulations concerning the submission of fingerprints for the purposes of a background check of volunteers who work with children to allow for submission based on authorized federal and state authority.

Ms. McKay advised that at the conclusion of the public comment hearing, the Division would discuss the potential adoption of the proposed regulations, referenced as LCB File No. R019-16 and LCB File No. R011-16.

I. PUBLIC COMMENT HEARING

Mindy McKay:

Agenda 3: Public Comment

Before starting, Ms. McKay asked if there was any public comment from the north or the south.

Terry Daus, Information Security Manager for the City of Henderson:

Mr. Daus wanted to draw everyone's attention to the last line in section 9, where it states that "each agency of criminal justice and authorized recipients shall provide means of collecting using, safe guarding, etc. in accordance with provisions of the security policy, administrative polices, and the state security policies and it's procedures." Mr. Daus explained that this would require all agencies of criminal justice in the state to comply with the state security policies. The state security policies are in conflict at some point or inconsistent and the state security policies are specifically for the executive branch. As NRS 242 states numerous times in sections 111 and 115, those policies do not apply to the Nevada Criminal Justice Information System. The City of Henderson and many other agencies are not a part of the executive branch. In addition, the City of Henderson and many other agencies all signed up to comply with NCJIS and Federal agencies and have no problem with that. But complying with the state security policies would override and undermine the individual agency's ability to authorize and develop security policies, making them subordinate to the state being published. It changes the individual states responsibilities under CJIS state record law, while removing their authority to independently meet the CJIS and NCJIS requirements in the manor best suited to all agency's environment, funding, and needs. Mr. Daus respectfully requested that the part of the sentence at the end of section nine be dropped; taking out any states security policies, standards and procedures established etc. and leaving it as originally, Mr. Daus believes that it wasn't intended that all law enforcement agencies in the state have to comply with these regulations according to the CJIS Security Policies and the Administrative Policies of the Nevada Criminal Justice Information System. Mr. Daus was available for any questions.

Mindy McKay:

Ms. McKay thanked Mr. Daus and explained that his concern was brought to their attention, on his behalf by the Department of Public Safety's Information Security Officer Jim Lemaire. Agenda item 4 e is specific to Mr. Daus' concern. Mr. Daus' concerns were noted for public record and were addressed later in the adoption section.

There were no other public comments.

Mindy McKay:

Agenda Item 4: For discussion and possible action - The proposed regulations, referenced as LCB File No. R019-16 and LCB File No. R011-16, contain the following proposed changes:

- a) Ms. McKay explained the LCB File No. R019-16 – Section 2. contains proposed regulatory language to define the term “Authorized Recipient” – The proposed regulatory language is located in the Revised Proposed Regulation of the Director of the Department of Public Safety section of the packet toward the back of the packet. There were no public comments on agenda item 4 a.
- b) Ms. McKay explained the LCB File No. R019-16 – Section 3. contains proposed regulatory language to define the term “Security Policy” - There were no public comments on agenda item 4 b.
- c) Ms. McKay explained the LCB File No. R019-16 – Section 4. provides for adoption by reference of the Federal Criminal Justice Information Services Security Policy - There were no public comments on agenda item 4 c.
- d) Ms. McKay explained the LCB File No. R019-16 – Section 5. provides for adoption by reference of the Nevada Criminal Justice Information System Administrative Policies - There were no public comments on agenda item 4 d.
- e) Ms. McKay explained the LCB File No. R019-16 – Section 6. provides for adoption by reference of the Nevada State Policies, Standards and Procedures – Ms. McKay advised of the comments from Mr. Daus representing the City of Henderson and explained they would be considered in the Adoption portion of this meeting. There were no other public comments on agenda item 4 e.
- f) Ms. McKay explained the LCB File No. R019-16 – Section 7. provides for adoption by reference of the Nevada State Library, Archives, and Public Records General Retention Schedule – There were no public comments on agenda item 4 f.
- g) Ms. McKay explained the LCB File No. R019-16 – Section 8. adds language to NAC 179A.020 to clarify which employment agencies would employ a “custodian of records” – There were no public comments on agenda item 4 g.
- h) Ms. McKay explained the LCB File No. R019-16 – Section 9. alters the language in NAC 179A.040 to meet the regulation requirements in NRS 179A.075 for the governance of biometric identifiers specific to collecting, using, safeguarding, handling, retaining, storing, disseminating, and destroying its records of criminal history in accordance with the Security Policy, the Administrative Policies, the State Security Policies, Standards, and Procedures, and the Nevada Revised Statutes - Mr. Daus advised this section applied to his comments from earlier as well. Ms. McKay thanked Mr. Daus, and explained his suggestion would be addressed in the adoption section. There were no other public comments on agenda item 4 h.

- i) Ms. McKay explained the LCB File No. R019-16 – Section 10. adds language to NAC 179A.060 to clarify which agencies must meet the standards established for employment as a custodian of records. It also adds language to specify that the standards are established pursuant to NAC 179A.070 and the Security Policy. In addition, it adds language requiring the agencies to instruct their personnel periodically on policies and procedures for handling records of criminal history. There were no public comments on agenda item 4 i.
- j) Ms. McKay explained the LCB File No. R019-16 – Section 11. adds language to NAC 179A.070 to clarify which agencies must adhere to this regulation as it relates to the appointment of a custodian of records – For the record: Julie Butler requested to modify Section 11.2.(b) to state “One fingerprint card”. This is due to the Central Repository having scanning technology which eliminates any need to require two fingerprint cards to conduct a background search. There were no public comments on agenda item 4 j.
- k) Ms. McKay explained the LCB File No. R019-16 – Section 12. adds language to NAC 179A.080 to clarify which agencies must adhere to this regulation as it relates to an audit by the Director of an informational system of Nevada records of criminal history. There were no public comments on agenda item 4 k.
- l) Ms. McKay explained the LCB File No. R019-16 – Section 13. repeals outdated language in NAC 179A.090 relating to the proper procedure for challenging the accuracy of a record of criminal history. There were no public comments on agenda item 4 l.
- m) Ms. McKay explained the LCB File No. R019-16 – Section 14. adds language to NAC 179A.150 to clarify that a state background check of a volunteer may be made pursuant to NRS 179A.100 or an authorized federal authority. Due to new federal authority being offered, language is being repealed to be consistent with the new background check authorities – For the record: Julie Butler requested to modify Section 14.1 to state “Before submitting a request to the Central Repository for a background check of a volunteer, a nonprofit agency may apply for a grant...” The permissive ‘may’ would replace the mandatory ‘must’ in this statement. The clarification was requested due to the grant money being an optional funding resource and not a mandatory funding resource. There were no other public comments on agenda item 4 m.
- n) Ms. McKay explained the LCB File No. R019-16 – Section 15. adds language to NAC 179A.160 to clarify that a state background check is authorized pursuant to NRS 179A.100 or an authorized federal authority. Due to new federal authority being offered, language is being repealed to be consistent with the new background check authorities. There were no public comments on agenda item 4 n.
- o) Ms. McKay explained the LCB File No. R019-16 – Section 16. repeals NAC 179A.050 due to the existence of duplicative language in NAC 179A.060. There were no public comments on agenda item 4 o.
- p) Ms. McKay explained the LCB File No. R011-16 - Section 1. contains proposed regulatory language to define the terms “Record of criminal history” and “biometric identifier” for reference purposes. There were no public comments on agenda item 4 p.

Mindy McKay:

Agenda Item 5: Public Comment – There were no public comments.

Mindy McKay:

Agenda Item 6: For discussion – The Division will discuss the potential for small business impact

Ms. McKay explained that the General Services Division, Central Repository determined that the small business would not be impacted in anyway due to the fact that one portion of the revision only impacts law enforcement agencies and the other portion of the revisions simply clarifies the authorized federal and state authority for submissions of fingerprints for background checks on volunteers who work with children through non-profit entities which already existed.

Mindy McKay:

Agenda Item 7: Public comment – There were no public comments. Ms. McKay closed out the public hearing portion of the meeting and handed the meeting over to Julie Butler, Division Administrator, who discussed the adoption portion of the meeting.

II. ADOPTION MEETING

Julie Butler, Division Administrator for the Department of Public Safety, General Services Division:

Agenda Item 1: For discussion and possible action – The Division discussed the public comments and advised that possible action could be taken to alter the proposed regulations referenced as LCB File No. R019-16 and LCB File No. R011-16

Ms. Butler explained the LCB File No. R019-16 – Section 6. provides for adoption by reference of the Nevada State Policies, Standards and Procedures – This proposed change was adding a new NAC to adopt by reference the Nevada State Policies, Standards and Procedures which exists as one of the governing policies of records of criminal history to include biometric identifiers. However, after receiving comments from the City of Henderson’s Security Manager by way of our Information Security Officer, Jim Lemaire, this section will be stricken as will the reference to the Nevada State Policies, Standards and Procedures in Section 9 which governs collecting, using, safeguarding, handling, retaining, storing, disseminating and destroying records of criminal history. Ms. Butler explained that it was unintentional to try to make it such that each agency of criminal justice and authorized recipient is held to these policies, standards and procedures meant specifically for state governmental agencies thus the reason for striking it. Per the inter-local user agreements, the authorized users are responsible for compliance with the FBI CJIS and NCJIS only. Nowhere in that agreement does it reference compliance with the Nevada State Policies, Standards and Procedures.

Ms. Butler explained the LCB File No. R019-16 – Section 7. provides for adoption by reference of the Nevada State Library, Archives, and Public Records General Retention Schedule - This proposed change was adding a new NAC to adopt by reference the Nevada State Library, Archives, and Public Records General Retention Schedule which exists as one of the governing policies of records of criminal history to include biometric identifiers. However, after receiving comments specific to Section 6 prompting the request to be stricken, it brought to the Division’s attention that Section 7 should also be stricken. While section 7 was only meant to apply to the Central Repository, it seemed that its inclusion could cause confusion. Moreover, its inclusion is not necessary as the Central Repository is already bound by the General Retention Schedule and all other references to the General Retention Schedule in the regulations have been removed.

Ms. Butler explained the LCB File No. R019-16 – Section 11. adds language to NAC 179A.070 to clarify which agencies must adhere to this regulation as it relates to the appointment of a custodian of records – Julie Butler requested to modify Section 11.2.(b) to state “One fingerprint card”. This was due to the Central Repository having scanning technology which no longer requires two fingerprint cards.

Ms. Butler explained the LCB File No. R019-16 – Section 14. adds language to NAC 179A.150 to clarify that a state background check of a volunteer may be made pursuant to NRS 179A.100 or an authorized federal authority. Due to new federal authority being offered, language is being repealed to be consistent with the new background check authorities – Ms. Butler requested to modify Section 14.1 to state “Before submitting a request to the Central Repository for a background check of a volunteer, a nonprofit agency may apply for a grant...” This was due to the grant money being an optional funding resource and not a mandatory funding resource.

Julie Butler:

Agenda Item 2: Public comment – Ms. Butler asked if there were any public comments from the north or the south.

Mr. Daus thanked the Board for recognizing the issue and remediating it promptly. There were no other public comments.

Julie Butler:

Agenda Item 3: For discussion and possible action – Ms. Butler explained the Division may act to adopt the proposed regulations, referenced as LCB File No. R019-16 and LCB File No. R011-16, with or without alterations.

Ms. Butler further explained due to the multiple modifications, the proposed regulations will need to be sent back to LCB for one last review and draft. After the final proposed regulations are received, a final public hearing will be scheduled and notifications will be posted. Therefore, the Division will not adopt the proposed regulations today.

Julie Butler:

Agenda Item 4: Public comment – There were no public comments.

Julie Butler:

Agenda Item 5: Adjournment – Ms. Butler advised that she appreciated all those in attendance today and wanted to recognize her staff: Mindy McKay, Records Bureau Chief; Erica Souza-Llamas, Repository Manager; and Deputy Attorney General, Katie Brady for the numerous hours and hard work they have put in thus far. Ms. Butler apologized that the Board was not able to adopt the regulations today but said they will be in touch with Public Notices as soon as they get the revised-revised draft back from Legislative Counsel Bureau and they will move to adopt those regulations at that time. The meeting was adjourned.