

TEXAS LOTTERY COMMISSION INTERNAL AUDIT DIVISION



An Internal Audit of BACKGROUND INVESTIGATIONS

IA #09-005
December 2008

James A. Cox, Jr.
Chairman

David J. Schenck
Commissioner

Mary Ann Williamson
Commissioner



TEXAS LOTTERY COMMISSION

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Philip D. Sanderson, *Charitable Bingo Operations Director*

December 11, 2008

Mr. James A. Cox, Jr.
Texas Lottery Commission
P.O. Box 16630
Austin, TX 78761-6630

Dear Chairman Cox:

The accompanying report details Internal Audit's recently completed review of Background Investigations. This audit was approved in the FY08 Internal Audit Activity Plan. The purpose of our audit was to evaluate the effectiveness of controls in place for ensuring policies, procedures and practices are in compliance with statutory requirements; background investigations are conducted in a consistent, efficient, effective, and fair manner; and records are adequately protected from inappropriate disclosure and unauthorized access. Our audit focused on background investigations of Charitable Bingo licensees and workers, lottery sales agents, and prospective and current employees.

Overall, we found current procedures and processes do not ensure background investigations are conducted consistently, efficiently, or fairly, nor do they ensure records are adequately protected. In addition, current background investigation efforts sometimes go beyond that which is supported by agency policy or statutory or administrative rule requirements.

Our report makes recommendations to assist the agency in strengthening its overall processes and controls related to the conduct of background investigations.

Agency management has expressed agreement with Internal Audit's conclusions and recommendations detailed in the report and has included corrective actions in its responses. If you desire further information concerning this review, please do not hesitate to contact me at 512/344-5488.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Catherine A. Melvin".

Catherine A. Melvin, CIA, CPA
Director, Internal Audit Division

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EXECUTIVE SUMMARY

Background investigations are an important means of protecting the security and integrity of the Texas Lottery and Charitable Bingo. Authority to conduct these investigations is granted under both the State Lottery Act and the Bingo Enabling Act. The Texas Lottery Commission's Enforcement Division is responsible for conducting background investigations of Texas Lottery sales agents; bingo workers; bingo licensees (conductors, commercial lessors, manufacturers, distributors; and system service providers); bingo advisory committee members; current and prospective Texas Lottery Commission employees; and vendors and vendor employees.

The purpose of our audit was to evaluate the effectiveness of controls in place for ensuring policies, procedures and practices are in compliance with statutory requirements; background investigations are conducted in a consistent, efficient, effective, and fair manner; and records are adequately protected from inappropriate disclosure and unauthorized access. Our audit focused on background investigations of Charitable Bingo licensees and workers, lottery sales agents, and prospective and current employees.

Based on the results of our review and testing, Internal Audit found that current procedures and processes do not ensure background investigations are conducted consistently, efficiently, or fairly, nor do they ensure records are adequately protected. In addition, current background investigation efforts sometimes go beyond that which is supported by agency policy or statutory or administrative rule requirements. Internal Audit recommends agency management strengthen policies, procedures and practices to improve controls over background investigations.

This audit was approved under the Fiscal Year 2008 Internal Audit Activity Plan. The scope of this audit did not include a review of the background investigation process of vendors and vendor employees. During the past year, Internal Audit participated as a consultative member on an agency workgroup which reviewed and drafted procedures regarding vendor and vendor employee background investigations. In addition, this audit did not address background investigations conducted during the course of an investigation addressing a possible violation of the State Lottery Act or Bingo Enabling Act.

Detailed results and recommendations of Internal Audit's review are presented in the "Detailed Review Results" section of this report.

Internal Audit wishes to express our appreciation to the Enforcement Division for their cooperation and assistance during this engagement. Their courtesy and responsiveness allowed us to complete our work effectively.

**MANAGEMENT'S OVERALL
RESPONSE**

Management agrees with all findings and recommendations.

DETAILED REVIEW RESULTS

The following review results and recommendations represent opportunities for the Enforcement Division to strengthen its overall processes and controls related to background investigations. In addition, while conducting our review, we noted additional items that we believe also require management's attention. We present these items for management's consideration later in this report.

1

Content of Background Investigations – *Agency management should clearly define the purpose and content of background investigations to better ensure investigations are conducted consistently, efficiently, and in accordance with approved support (e.g., agency policy, statute, administrative rule).*

Definition of Background Investigation

The Enforcement Division is responsible for performing various background investigations at the request of several divisions within the agency, including the Lottery Operations Division, the Charitable Bingo Operations Division (CBOD), and the Human Resources Division. We found each type of background investigation involves a significantly different level of work. While some background investigations are more straightforward (e.g., criminal history checks), others involve extensive effort (e.g., on-site reviews). The spectrum and purpose of effort ranges from criminal history checks to eligibility and suitability determination. Suitability determination can include the assessment of character and whether a business is a going concern.

Ultimately, we found the definition of a background investigation depended upon the subject matter of the background investigation and the investigator conducting the review.

While it appears the Lottery Operations Division has worked with the Enforcement Division to narrowly define and specify the extent of a background investigation performed by the Enforcement Division for a potential lottery sales agent, it is unclear whether other divisions have had the same type of communications. Our review disclosed:

- Confusion between the requesting division and the Enforcement division regarding each other's role in determining eligibility;
- An evolution of the process to include investigation of information for which the agency does not appear to have statutory or approved policy support to review; and
- Inconsistencies and inefficiencies.

Without a clear understanding of the agency's expectation regarding background investigations, Enforcement staff are left to individually determine what information is necessary to obtain and verify. In addition, the Enforcement Division appears to be performing tasks that should be handled by the requesting division, which may be inappropriate and slows the process.

Approved Support

Information requested, obtained, and reviewed in connection with background investigations should be limited to what is approved by agency policy or supported by statutory requirement or administrative rule. The Enforcement Division accesses or requests information for which the agency may not have approved policy or other authority in place to disqualify an individual.

a) Approved Policy – TLC Employees

Enforcement staff perform in-depth reviews of prospective employees by requesting and verifying extensive information. While Texas Government Code §467.035 details some eligibility requirements for prospective and current employees of the agency, additional requirements are found in the Texas Lottery Commission's Personnel Handbook¹ regarding felony and misdemeanor convictions.

A form entitled Applicant Background Information is sent to all prospective employees, who are instructed to complete the form and submit any supporting documentation required. The form includes requests for information for which Internal Audit was not able to ascertain support. Internal Audit conducted testing of background investigations of prospective employees completed during 2007. Our testing revealed investigators seek information and review documentation in areas that are not supported by approved policy, such as:

- | |
|--|
| <p>Required information
<u>Applicant Background Information Form</u></p> <ul style="list-style-type: none">▪ Name and current address▪ Addresses for the past five years▪ Past and present professional gambling status▪ Arrest and conviction information▪ Marital status▪ Spouse's name▪ Spouse's convictions▪ Past and present professional gambling status of spouse▪ Military discharge paperwork▪ Volunteer organization information▪ Student loan defaults or other tax defaults to the State Comptroller of Public Accounts▪ Driver's license▪ Social Security card▪ Birth Certificate▪ Records showing highest level of education completed |
|--|

- Previous Arrests

Through the Applicant Background Information form, TLC requires arrest information from prospective employees. However, the State of Texas application only requires disclosure of convictions. Enforcement staff state arrest information is requested for "character referencing".

Spouse Information

Individuals are required to submit their spouse's conviction information, and professional gambler status. Enforcement staff state the information is requested to "determine the suitability of applicant".

- Outstanding Obligations

Prior to June 24, 2008, the Agency Personnel Handbook included employment eligibility requirements related to outstanding obligations. Individuals who were delinquent or in default on certain monies owed to the state were not eligible for employment. This requirement was modeled after retailer licensee requirements.

¹ See Appendix A

Enforcement staff state the information was requested “to determine the suitability of the applicant”, but is no longer requested. While agency management removed the requirement in June, investigators have continued to request this information in investigations as recent as September 2008.

- Volunteer work

Individuals are required to submit information regarding organizations for which they perform volunteer work. Enforcement staff state the information is required because volunteering for certain organizations is a “specific employment disqualifier”. However, while there are requirements for employees to limit conflicts of interest once employed by the agency, we were unable to find approved policy support for volunteer work performed prior to employment which would disqualify an individual from employment. In some cases, requesting volunteer information has led prospective employees to disclose protected EEO information, such as religious affiliations.

Internal Audit found most information requested and reviewed by investigators was used for “character referencing”. However, determining any person’s character is particularly subjective. Because most investigators detail each aspect of the items reviewed in their investigative reports, the situation is further complicated. The reports contain personal and EEO-protected information, such as birthdates and sometimes, religious affiliations. When hiring supervisors are allowed to review the reports prior to determining employment, this is especially tenuous. This could have the appearance of potentially biasing or influencing a supervisor’s opinion unfairly and places the agency at risk.

b) Statutory Support – Bingo Manufacturer and Distributor Licensees

Eligibility requirements for bingo manufacturer and distributor licensees are detailed under Texas Occupations Code, §2001.202 and §2001.207². Internal Audit was not always able to tie steps performed by Enforcement staff during background investigations of bingo manufacturers and distributors to eligibility requirements supported by statute or rule. For example, as required under Enforcement procedure EN-020, Enforcement staff perform the following steps which do not appear to be tied to statutory or administrative rule requirements:

- Determine the credit worthiness of the business.
- Review personal information for officers and directors, such as military information, organizational memberships, personal financial statements, and credit references.
- Determine the current standing of their business relationship by contacting a random sample of business associates.
- Determine the current standing of the business with the Texas Comptroller of Public Accounts and whether any outstanding payments are due to the State of Texas.

By requesting information beyond that supported in statute or administrative rule, it appears the agency has effectively expanded eligibility requirements without the due process and transparency afforded through formal statutory or rule-making processes.

² See Appendix A

Ultimately, without approved policy or statutory authority in place, examining additional factors to assess eligibility places the agency at risk. The additional information obtained can be subjective and open to differing opinions and interpretation. Further, the time and effort required to obtain the additional information may delay the process unnecessarily

Uniformity of Investigations

The Enforcement Division has 13 investigators and background specialists, each with a unique set of knowledge and skills acquired throughout their careers. We found investigations are performed differently among the staff, as some staff perform more extensive reviews than others.

a) Prospective Employees

Our testing revealed that prospective employee background investigations are conducted inconsistently. While some of the examples discussed below also highlight issues previously discussed in this report, we present the following to illustrate inconsistencies noted in background investigations conducted.

- Even when it is clear that over ten years has elapsed, some staff routinely investigate past offenses where ten or more years have elapsed since the termination of the sentence; while other staff do not investigate any of these past offenses. In addition, one investigator reviewed only one past offense listed on an applicant's criminal history records check, while not reviewing other similar past offenses.
- Two background specialists typically request conviction information for spouses on the applicant request form while the other background specialist typically does not.
- Background specialists sometimes require transcripts from all education sources, including high school and multiple colleges, while other times only requiring a transcript from the highest level of education completed.
- Public database information on spouses is sometimes reviewed.
- Income tax records are sometimes requested to assist with employment verification.
- Selective service checks are performed on some prospective male employees who are outside the 18 – 25 years of age range. The Texas Office of the Attorney General issued an opinion that requires only those males who are between the ages of 18 and 25 years (inclusive) to furnish proof of either selective service registration or exemption from selective service as a condition of state employment.³
- One background specialist did not use the standard cover letter sent to applicants in multiple cases so that she could request additional transcripts and W-2 information.

b) Bingo Manufacturers and Distributors

Investigations of bingo manufacturers and distributors are also not conducted consistently. It appears each investigator individually determines what information is necessary to review. For example, while some investigators reviewed business loan information or tax information,

³ Opinion, Texas Office of the Attorney General, No. JC-0183 (2000), obtained from Texas HR Management Inventory, State Auditor's Office 2008-2009 Biennium.

other investigators did not. It also appears comprehensive business searches were conducted through Accurant, a public database, for some businesses; however, not all.

c) Bingo Workers

Investigators are required by procedure to obtain court documents for any possible disqualifying convictions. In some cases, background specialists did not obtain written verification of the conviction disposition, instead accepting oral verification.

When inconsistencies exist between investigators and even between investigations conducted by the same investigator, the agency is put at risk. These inconsistencies could result in disparate treatment among the subjects of the investigations.

Streamlining the Process

In reviewing Enforcement staff efforts related to background investigations, Internal Audit noted improvements which could be made to reduce inefficiencies. Some inefficiencies were the result of duplication of efforts, while others were the result of extraneous work conducted. Internal Audit noted the following:

a) Duplication of Work

The Enforcement staff perform some steps in the prospective employees background investigation process which are redundant or duplicated within other divisions. These practices create inefficiencies and the risk of differing conclusions for the agency.

- Birth Certificates

The Enforcement Division requests birth certificates “to determine positive identification”. However, all prospective employees are also required to provide fingerprints which Enforcement staff state “are positively linked to a person”. DPS officials state fingerprints are the only true way to identify a person since the applicant may provide falsified documentation. Because fingerprints are obtained, Internal Audit questions the need to also request birth certificates.

- Employment Eligibility

In addition to birth certificates, Enforcement staff also request social security cards to verify employment eligibility. This function, however, is also performed by Human Resources when completing a new employee’s Form I-9, Employment Eligibility Verification, on the first day of employment. The Form I-9 is used to document whether each new employee, both citizen and non-citizen, is authorized to work in the United States.

- Military Information

Enforcement staff state military discharge records are requested by Enforcement because of the State’s requirement for veterans’ preference in hiring and “to assist in determining applicant’s character for fulfilling military obligations satisfactorily.” However, the Human Resources Division is primarily responsible for ensuring the agency’s compliance with required veterans’ employment preference⁴.

⁴ Government Code §657

b) Other Inefficiencies

We also noted the following:

- Manufacturers and Distributor Requirements

It appears bingo manufacturer and distributor background investigations procedures have been modeled after the strict eligibility requirements of lottery sales agents. However, as previously noted, statutory support does not exist for some of the information requested and reviewed.

We found Enforcement staff perform extensive investigative work in assessing eligibility for potential bingo manufacturers and distributors. However, in the case of lottery sales agents, the Retailer Services section performs these efforts, leaving only criminal history review to the Enforcement Division.

Although CBOD makes the final determination regarding licensing, the Enforcement Division has performed the work to examine eligibility. Due to the significant difference in bingo knowledge between the Enforcement Division and the Charitable Bingo Operations Division, Internal Audit believes inefficiencies in the process could be reduced if CBOD maintained greater responsibility for eligibility assessment and determination.

- Social Security Card Verification for Prospective Employees

Enforcement staff review and verify information through various sources including public databases. Procedures EN-016 states “*The Background Specialist or Investigator will verify the social security number by checking Accurant or Autotrack.*” However, we found most investigators also obtain comprehensive reports from Accurant, rather than only utilizing the “person search” feature. In addition to costing more, comprehensive reports contain detailed information including previous addresses, possible associates, bankruptcy filings, licenses held, possible relatives and other information that is not relevant to determining eligibility for employment. Due to limitations in Accurant described later in this report, Internal Audit also questions whether utilizing Accurant is the most efficient and reliable method to verify social security numbers.

- Current Employees

Agency policies and procedures do not address instances in which a current employee is being considered for a different job within the agency. We found some investigators repeat full background investigations on current employees competing for job openings within the agency, requesting the same information as that of an external candidate. However, the only information typically in need of update would be criminal history. For most employees (see Additional Items later in this report) an automatic notification is set by DPS to alert the agency if an employee has subsequent arrests or convictions. Therefore, a detailed background investigation should not be necessary.

- Compliance with Restrictions on Employment

As mentioned earlier in this report, Enforcement staff request information about spouses of potential employees. Enforcement staff also cite Texas Government Code

§467.035 as their basis for requesting this information. Texas Government Code §467.035(b) restricts the agency from employing “*a person who is a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence who is*” a bingo commercial lessor, bingo distributor, bingo manufacturer, lottery sales agent, or lottery operator. However, Enforcement staff limit investigator research to spouses only. Ultimately, determination of this restriction may be more efficiently and effectively satisfied with a self-affirmation from the individual.

Recommendation

We recommend agency management clearly define the purpose of background investigations. The Enforcement Division should work with agency management to ensure clear direction is provided. After an assessment and determination of the purpose, we recommend Enforcement Division work with agency management to define the content of a background investigation and the extent of effort to be performed by the Enforcement Division to ensure alignment with the stated purpose. We recommend agency management consider agency-wide adoption of the model utilized for the Lottery Operations Division, limiting the extent of background investigation efforts performed by the Enforcement Division to criminal history records checks. In our opinion, other eligibility verifications and assessments are more appropriately determined by the requesting division.

If background investigation efforts performed by the Enforcement Division continue to extend beyond criminal history records checks, Internal Audit recommends the Enforcement Division:

- Focus employee background investigations efforts on TLC management’s defined criteria regarding potential criminal history disqualifications. However, Enforcement Division must seek direction from TLC management to ensure eligibility requirements for TLC positions are carefully defined, including potential criminal history disqualifications. By ensuring potential criminal history disqualifications are adequately defined, the agency minimizes the risk of subjectivity or inconsistency in employment decisions.
- Focus bingo manufacturer and distributor background investigations efforts on criteria which are supported by statute or administrative rule. However, Enforcement Division must seek direction from CBOD management to define the content and extent of background investigation efforts to be performed by Enforcement staff. Enforcement Division should ensure there is statutory support for information obtained and reviewed.
- Implement tools, additional training, or information sharing to facilitate consistency in performing background investigations. To develop more consistent methodologies for conducting background investigations, the Enforcement Division should:
 - Develop checklists with the basic steps of a background investigation by type. The checklists should only list those items which are supported through approved policy, statute, or administrative rule.
 - Share best practices among investigators during monthly staff meetings to distribute knowledge and experience among the entire staff.

- Work with requesting divisions to ensure eligibility review efforts are performed by the appropriate division and to reduce duplicate work conducted between divisions. We further recommend CBOD maintain greater responsibility for eligibility assessment and determination of bingo manufacturers and distributors.
- Research and implement more effective, reliable and efficient methods to verify needed information.

However, regardless of whether background investigations performed by Enforcement staff are limited to criminal history records checks, Internal Audit further recommends the following:

- Agency management should update the Applicant Background Information form to ensure only appropriate and supported information is requested of applicants. The updated form should be provided to Enforcement staff in a protected format to prevent modifications. We recommend the Enforcement Division work with the Human Resources Division in updating the form.
- Agency management should consider discontinuing the practice of repeating full background investigations on current employees who are considered for other positions within the agency.
- The Enforcement Division Director should closely monitor processes to ensure Enforcement staff do not expand their approved authority.
- The Enforcement Division Director should require his approval for any revisions or deviations from the approved standard cover letter and Applicant Background Information form.
- The Enforcement Division should ensure division operating policies and procedures are updated accordingly.

Management's Response

Management agrees with these recommendations. In addition, and although the audit did not address vendor or vendor employee background investigations, the Enforcement Division's investigative work for all background investigations will be limited to a criminal history check. A "criminal history check" will be defined as a combination of 1) a name-based criminal history background check using state criminal history records, and 2) obtaining the individual's fingerprints and checking the fingerprints against state or national criminal history records. (Note: Although the first check is referred to as "name-based", this check can also be performed using an individual's name, Social Security number, race, gender, and date of birth.) For all other eligibility and/or suitability requirements, individuals will either be required to sign a "self-affirmation/certification" statement confirming that the individual is in compliance with the cited eligibility requirements or the referring division will internally take additional steps to determine eligibility/suitability.

Certain vendors and/or vendor employees identified by the agency may be subject to additional eligibility and/or suitability checks by the Enforcement Division or Department of Public Safety (DPS) if the services provided to the agency are determined to be unique in nature and/or can significantly affect the integrity or security of the lottery. These vendors and the accompanying background checks will be identified and managed on a case-by-case basis.

The Enforcement Division, with the agreement of the Human Resources Division, has revised the Applicant Background Information form (Procedure EN-016 Employee Background Investigations, Exhibit B). The information requested in the form is supported by statute and the TLC Policy Handbook. The form has been put in PDF format to prevent unauthorized modifications.

Enforcement will no longer conduct criminal history checks on current employees who are being considered for other positions within the agency. Procedure EN-016 (Employee Background Investigations) will be revised to reflect this change.

With Enforcement's role in background investigations being limited to criminal history checks, the Enforcement Director will be able to readily identify any unauthorized, expanded investigative research in the review and approval of investigative reports. In addition, the investigative case load of the team coordinators has been reduced to allow them to focus more on administrative duties, including the review and approval of investigative case reports. Finally, a random sampling of background investigative reports will be reviewed each month as an added quality control measure. A procedure is currently being created to address the monthly review process.

Procedure EN-016 (Employee Background Investigations) will be revised to include the requirement of the Enforcement Director's approval prior to the modification of the cover letter and Applicant Background Information form. Additionally, all Enforcement background forms will be placed in PDF format to prevent unauthorized alterations.

The Enforcement Division will continue the practice of reviewing divisional procedures on an ongoing basis, but will employ a more analytical approach in their evaluation by questioning the appropriateness of the processes and the supporting authority in either statute or policy.

Due Date: February 1, 2009.

2

Report Consistency – Background investigation reports should be consistent in both style and content.

While background investigation reports contain the same general style for presenting information, the content of these reports varies widely between investigators. All reports include a synopsis section, a details section, and a conclusion section; however, the content of these sections contain varying types of information. In addition, some investigators include information in their reports which has been taken verbatim from the DPS Computerized Criminal History (CCH).

a) Synopsis Section

In the event a background investigation reveals potential disqualifications, investigators summarize their results in the synopsis section differently. Some investigators detail the specific potential disqualification (e.g., detailed conviction information). Others simply state the candidate is potentially disqualified. Still others state "referred to division" in the synopsis section, without summarizing any information related to potential disqualifications.

b) Details Section

Our review of background investigation reports noted variations in the type and extent of information included in the details section of the reports. Our testing revealed some investigators:

- Chronologically list daily activities such as the date an investigation was assigned, phone calls made, letters sent, and investigative activities conducted.
- Enter detailed information (sometimes verbatim) found on the DPS Computerized Criminal History (CCH) and information contained in any applicable court documents or police reports.
- Report past offenses when it is clear more than 10 years has elapsed since termination of sentence.
- Report information which may be considered sensitive to a candidate such as bankruptcy data or delinquent obligations information.
- Report protected information such as birthdates and religious affiliations.
- Report information relating to marital status and convictions of a prospective employee's spouse.

Including this level of detail in the reports could influence or bias, or appear to influence or bias, the reader of the reports with information that would not potentially disqualify an applicant. In cases of prospective employees, the reader may be the hiring supervisor. The agency could be at risk if denial of licensing or employment is not consistently applied. Texas Lottery Commission Legal Division states it has advised investigators to limit the amount of information placed in investigative reports due to issues with public information requests; however, the reports continue to be detailed. In the event of a Public Information Act request, information which may be potentially embarrassing or sensitive to the individual may not be able to be redacted from these investigative reports.

c) Conclusion Section

We did not note significant variations in the conclusion sections of reports reviewed. However, the conclusion section of the report typically contains information which has been included in other sections of the report.

The background investigation report is made available to requesting divisions. The report appears to serve two purposes - to provide a summary of investigative work performed and to provide a conclusion as to whether any potential disqualifications were found.

Recommendation

To standardize background investigations reports in both style and content, Internal Audit recommends the following:

- The information contained within the report should be limited to only that which is necessary. Results or conclusion of the investigation should be objectively and concisely stated. The report should not contain information from the CCH as this may negatively

affect the agency's integrity for ensuring CCH information is secured and not exposed to public release.

- The Enforcement Division should consider providing a report to the requesting division which only provides the conclusion or results of the investigation. A separate document can be prepared for the investigation file which provides a summary of work performed.
- The Enforcement Division should work closely with requesting divisions to ensure background investigation reports minimize risk yet provide needed information.

Internal Audit further recommends limiting access and review of background investigation reports of prospective employees to the Human Resources (HR) Division. The HR Division is the requesting division in these cases and holds primary responsibility for determining eligibility for employment.

Management's Response

Management agrees with these recommendations.

The information contained within background investigative reports shall be limited to that information necessary to support the closing recommendation. Procedures EN-004 (Lottery Operator and Certain Other Vendor Employee Background Investigations), EN-020 (Bingo Manufacturer, Distributor and System Service Provider Background Investigations), EN-024 (Bingo Conductor, Worker, Unit Manager and Lessor Background Investigations), EN-026 (Retailer Background Investigations), EN-029 (Vendor Background Investigations), and EN-031 (Vendor Employee Background Investigation Process) will be revised to include the necessary language.

The Enforcement Division will work closely with the requesting division to minimize the risk that background investigation reports will contain sensitive or inappropriate information.

"High Risk" Vendor Employee investigative reports will document only criminal convictions that could affect the applicant's eligibility. Arrests that did not result in a conviction and those convictions that exceed the ten (10) year period will be placed in the "background" tab section of the electronic CAMP case. The information in the "background" tab area does not appear on the hard copy of the report nor is it viewable by anyone outside the Enforcement Division. Procedure EN-031 (Vendor Employee Background Investigation Process) and EN-016 (Employee Background Investigations) will be revised to reflect these changes.

For background investigative reports that specify certain criminal convictions to be disqualifiers, i.e. Bingo worker, Lottery retailer, Employee Background Investigations, etc., only disqualifying convictions shall be recorded in the investigative report. Any arrest or criminal conviction for a non-disqualifying offense, or criminal conviction for a disqualifying offense which has exceeded the ten (10) year period, will be documented in the "background" tab section of the electronic CAMP case but will not appear in the hard copy of the report. Procedures EN-004 (Lottery Operator and Certain Other Vendor Employee Background Investigations), EN-020 (Bingo Manufacturer, Distributor and System Service Provider Background Investigations), EN-024 (Bingo Conductor, Worker, Unit Manager and Lessor Background Investigations), EN-026 (Retailer Background Investigations), and EN-029 (Vendor Background Investigations), will be revised to reflect these changes.

Procedure EN-016 (Employee Background Investigations) will be further revised to reflect that the Human Resources Division will have sole access to the results of background investigation reports prepared by the Enforcement Division on prospective employees.

Due Date: February 1, 2009.

3

Review Process – *The review process should be strengthened to ensure accuracy, completeness and appropriateness of investigations.*

a) Applicants with criminal history

The Enforcement Division has established a review process to ensure accuracy, completeness and appropriateness of investigative reports prior to their release. However, our testing revealed reports on bingo workers, bingo manufacturers and distributors, and prospective employees contained errors that were not discovered during the review process. Errors included:

- Conflicting information

The most important element of the report is a statement from the investigator that the investigation did or did not reveal any information that would disqualify the individual. Our testing revealed two instances where a statement was made in the synopsis section that the individual was not qualified; however, the detail section contained a contradictory statement that the individual was qualified. This leads to confusion by the requesting division and requires additional time and further explanations from the Enforcement Division. The Legal Division stated this has occurred previously. In that instance, a disqualified applicant requested a copy of her background investigation report, discovered the error, and questioned her ability to appeal on the basis of the incorrect report.

- Incorrect dates

Three reports contained incorrect date information. One report stated a background investigation was requested by Human Resources in January 2007 and completed in July 2007. However, the investigation was actually requested and completed in the same month, July 2007. In another report, a date was incorrectly stated as August 2004, instead of August 2003. Another report incorrectly listed the date an applicant could be eligible to be placed on the registry for bingo workers in multiple locations in the report. The erroneous date was listed as July 15, 1998 instead of the correct date of July 15, 2008. This error could have caused confusion and resulted in possible placement of the applicant on the registry.

**Enforcement's Review Process to
Ensure Accuracy of Investigative
Reports.**

- Initial review by the team leader of work completed by the investigator.
- An electronic review of the report by the team leader and division director.
- A hard copy review of the report and supporting documentation by the division director.

- Incorrect supporting documentation

Errors were also noted in documentation used to support statements within an investigative report. For example, an investigator supported the dismissal of a 2004 conviction with court documents from the applicant's October 1996 case dismissal. In another case, an applicant had convictions in 1990, 1992, 1993, and 1994. All arrests were for theft of \$20-\$200. The investigator requested and received court documentation to ensure 10 years had elapsed for the 1993 conviction. However, the investigator did not request or receive court documents for the more current conviction.

- Self review

Review processes work best if reports and documentation are reviewed by more than one individual to ensure errors are properly detected. Our testing of a random sample of files revealed one case where the investigative report was researched, written, reviewed, and approved by the same investigator, who also happens to be a team leader.

Six percent (8 of 131 sampled) of bingo workers, manufacturers, and distributor reports were noted to contain errors in the reports or supporting documentation. A twenty percent error rate (7 of 34 sampled) was noted in reports for prospective TLC employees. Numerous reports contained misspellings; however, these errors were not documented in the error rates stated above.

b) Applicants without criminal history

In the case of prospective sales agents, the Enforcement Division does not prepare a report nor do they make a record if the CCH review does not return any convictions. These CCH reports are destroyed in accordance with records retention guidelines. The Enforcement Division does not maintain any record that the criminal history check was performed, nor is there a secondary review to confirm the CCH did not return a conviction.

This practice places the division at risk. While the CCH reports must be destroyed, the division has limited means to ensure the criminal history check was performed as appropriate. Further, the opportunity exists to falsify or avoid investigations on applicants with criminal history without detection.

Recommendation

To strengthen the background investigation report review process, Internal Audit recommends the Enforcement Division:

- Provide a thorough management review of critical elements contained in the report.
- Review documentation to ensure statements made and conclusions reached are adequately supported.
- Ensure team leaders do not review their own work.

To ensure an accurate accounting of all investigations completed, the Enforcement Division should:

- Keep a monthly log of criminal history record checks requested from DPS.

- Record DPS results into the monthly log when the reports are returned from DPS.
- Ensure confirmation by a second individual when the criminal history check does not reveal convictions. Secondary confirmation should occur prior to reporting to the requesting division and ultimate disposal of the CCH report.
- Perform a monthly reconciliation of the log to ensure an investigation has been completed on all individuals with criminal history activity.
- Require review of the logs and reconciliations by the Division Director.

Management's Response

Management agrees with these recommendations. Team Coordinator case loads have been reduced to allow them to focus more on their administrative responsibilities, including the review and approval of investigative reports.

A report review system has been initiated as an added quality control measure. Each month, the Enforcement Intake Specialist and the Enforcement Director's Administrative Assistant are randomly selecting a total of fourteen (14) background investigative reports written during the prior month for review. The number fourteen (14) is slightly more than the ten percent average of investigative cases generated each month. A procedure is currently being written to address the monthly review process.

Procedure EN-027 (Enforcement Investigations Intake and Referral Process) will be revised to require that team coordinators may not review or approve their own investigative case reports.

Enforcement is developing a log template to document criminal history checks conducted in connection with background investigations. The log will document the date the criminal history was conducted, the name of the subject, the last four digits of the subject's social security number, whether a criminal history existed, the initials of the submitting investigator, and the initials of the employee confirming no criminal history. A monthly reconciliation of the log will be performed by a team coordinator and the log and the reconciliations will be reviewed by the Enforcement Director. A procedure governing the log template and the monthly reconciliation is currently being written. Procedure EN-023 (TCIC and NCIC) will be revised to reflect these changes.

Due Date: February 1, 2009.

4

Use of Investigative Tools – Investigative tools should be limited to approved use.

The Enforcement Division utilizes various subscription tools for which the agency maintains contracts to perform background investigations and other investigative work.

**Subscription Tools Utilized by the
Enforcement Division**

- Accurant
- Texas Workforce Commission's Unemployment Insurance Benefit Information
- Texas Department of Public Safety (name check, fingerprints, and criminal history requests)
- FBI fingerprint processing

Accurant, an online research tool which uses public and non-public information, is one of the tools used by investigators to obtain information on prospective employees or licensees. Internal Audit determined use of the Accurant database search provided the highest potential for abuse of approved access by investigators. This was due to the extensive amount of sensitive and detailed information about individuals, coupled with limited oversight of investigator searches. Current background investigation procedures in the Enforcement Division allow investigators to use Accurant to verify social security numbers for prospective

employees. However, our testing revealed some investigators routinely requested comprehensive reports which contain extensive amounts of information such as criminal history, bankruptcies, tax liens and judgments, active and previous addresses, properties owned by the subject, licenses held by the subject, as well as other information. Accurant reports contain a disclaimer that states, *"Public records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly, and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified."* Some investigators place Accurant information directly into investigative reports without supplying any disclaimer and without independently verifying the information. This is especially problematic since decisions about the eligibility of applicants are based on information contained in the investigator's report.

All investigators have access to request reports directly from Accurant without prior supervisory approval or review. In addition, while Accurant provides a place for investigators to enter a case number or other identifying information, this feature had not been previously required to be used and was inconsistently applied. Furthermore, while Accurant billings were verified to ensure accurate payments are made, the Enforcement Division did not use these billings to review investigator usage.

During our review of Accurant billing information, Internal Audit noted one instance in which an investigator used authorized access inappropriately. This issue was brought to the attention of the Director of Enforcement, who took immediate corrective actions. As part of these corrective actions, the director now requires identifying information for Accurant report requests to be included in the Accurant database and provides a more thorough review of investigator usage when the Accurant billing is received.

Recommendation

Access to Accurant and all other tools should be limited to approved individuals and should only be used for defined purposes. If the intent of the use of Accurant is to verify social security numbers, the Enforcement Division should consider whether Accurant is the most reliable, effective, and efficient tool. Given the limitations of Accurant, the Enforcement Division should evaluate using another more reliable source such as the Social Security Administration database. Case information should continue to be recorded in the Accurant billing system to facilitate review of the invoices. Further, a secondary review of the billing detail by investigator should be performed periodically.

Management's Response

Management agrees with these recommendations.

The use of Accurant and other databases containing confidential information is to be used only for defined purposes. To ensure that Accurant is used only for defined purposes, beginning in July 2008, investigators were required to enter an identifying number for each search conducted, such as a case number. The Enforcement Director reviews the Accurant billing statements on a monthly basis and randomly selects ten (10) percent of the entries to be researched by the assigned team coordinator. In addition to the ten (10) percent randomly selected for research, any entry without an identifying number is also researched. The team coordinators document their research findings in a monthly report, which is submitted to the Enforcement Director for review. Enforcement is currently developing a procedure to address the use of Accurant.

The Enforcement Division is currently working on a monthly review process of the searches conducted in the D.P.S. Driver License Image Retrieval (DLIR) and Texas Data Exchange (TDEX) systems. Procedure EN-034, (DLIR Guidelines), was approved and became effective on November 13, 2008. A procedure addressing the use of the TDEX system is being developed.

Due Date: February 1, 2009.

5

Security of Information – Sensitive information should be safeguarded against inappropriate disclosure and unauthorized access.

While the Texas Lottery Commission is entitled to obtain criminal history information from DPS and the FBI, the agency has a responsibility to ensure the information is protected from unauthorized disclosure. Specific confidentiality restrictions have been included in the State Lottery Act. Our review revealed improvements are needed to adequately protect and secure criminal history and other sensitive information collected.

As previously noted, investigators request and obtain extensive amounts of information when conducting background investigations. While Internal Audit's review focused on investigations initiated and conducted in 2007, we noted information requested in previous investigations was even more expansive. For example, previous prospective employees were required to submit financial information such as bank account numbers and further proof of marital status such as marriage certificates. Credit history scores were also investigated. This information is still contained in current employee files. While information collected in the future should be limited to only that which is supported statutorily or through approved policy, as previously recommended, past and current information contained within the investigative file and report is considered sensitive and confidential. Therefore, appropriate steps must be taken to ensure the information is protected from disclosure.

a) Security of Records

Background investigation files contain the investigative report, as well as supporting documentation. This information is both sensitive and confidential.

- Physical Security

During the course of this audit, Internal Audit discovered the Enforcement Division's active file room was accessible to all investigators. A request was made to the Facilities Section in March 2007 to replace the lock cylinders within the Enforcement Division; however, this had not been completed at the time of our review. Management requested an update of the status of the request. The Facilities Section completed the re-key in May 2008. Currently, two employees of the Enforcement Division have access to the file room. Another key is available to be signed out for unforeseen circumstances.

In addition, Internal Audit noted archived files kept at the warehouse are not located in a secured storage area. The files are kept openly on a low-level shelf and maintained on the same aisle as agency promotional materials which are commonly accessed by non-Enforcement employees.

- Electronic Security

Although active files in the file room are now more physically secure, each investigator has access to the electronic case files located within the CAMP system, thereby negating some of the measures to secure the confidential information. In corrective action, management has limited CAMP access during the course of an investigation to only the investigator assigned, the intake specialist, and the Enforcement Director. However, once a case is closed, all investigators have access to the electronic case files in CAMP.

In addition, certain employees in the agency outside of the Enforcement Division also have access to the electronic files located in CAMP and can read the electronic investigation reports.

b) Records Retention and Destruction

An important component of the security of background investigation information is the retention of records for the mandated timeframe and the subsequent destruction according to the Records Retention Schedule. The schedule requires most background investigation files be retained for one year on-site. The files are then sent to the TLC warehouse for storage for four years prior to destruction. One notable exception requires CCH information to be destroyed after "the immediate purpose for which it was obtained."⁵

Enforcement Division stores reports and case files in both paper format and electronically on CAMP. Per the Records Retention Schedule, both versions must be destroyed when retention requirements have been met. Internal Audit found the Enforcement Division is making efforts to timely destroy records that are due for destruction; however, the division is not completely current in this effort. In addition, while the Enforcement Division has witnessed the destruction of paper records, the associated electronic CAMP files have not been destroyed accordingly. Enforcement Division has submitted an ISR requesting the deletion of these records and is currently awaiting action on this request.

c) Information from CCH in Report

Background investigators include information from the CCH in investigative reports, sometimes verbatim. Further, some investigators detail police reports and court documents in

⁵ Texas Lottery Commission 2007 Records Retention Schedule, Agency Item No. ENF.113

their reports. Including criminal history information in investigative reports may negatively affect the agency's ability to ensure CCH information is secured and protected from public disclosure. Discussions with DPS officials and our review of agreement documents revealed sanctions may be applied for inappropriate access and use of the criminal records.

d) Custody and Use

The State Lottery Act⁶ states, "*The commission shall adopt rules governing the custody and use of criminal history record information obtained under this subchapter.*" To date, the agency has not adopted rules in accordance with the statutory requirement. Adopting rules and ensuring adherence to those rules helps the agency provide for the consistency of use, due diligence, and protection of sensitive and confidential data. Further, rulemaking provides an opportunity for stakeholders to comment on the agency's proposed custody and use of criminal history record information obtained and allows commissioners to provide direction and policy for agency.

Recommendation

It is important to define the purpose for which the information will be collected; how it will be used; how the security of the information will be managed; and finally, how the agency will ensure proper disposition and destruction of those records. To accomplish this, Internal Audit recommends the Enforcement Division:

- Limit approved access to the electronic background investigation files in CAMP.
- Follow the records retention schedule and timely destroy files, including electronic files, according to the schedule, including ensuring CCH reports and information is destroyed immediately after the purpose for which it was obtained.
- Continue to limit access to the Enforcement active file room.
- Ensure limited access to the files stored at the TLC warehouse by placing files in one of the existing locked storage areas.
- Develop rules governing the custody and use of criminal history information in accordance with the State Lottery Act.
- Review the records retention schedule for appropriateness.
- Redact banking information and other personal identifying information from current investigative files in both paper and electronic formats.
- Agency management should review current statutes to ensure all required rules have been adopted as required.

Management's Response

Management agrees with this recommendation. Enforcement is currently researching available options to further restrict access to the electronic background investigation files in CAMP, while minimizing the disruption to investigative work. The option being pursued at this time would require the Intake Specialist to activate the "private" feature on the electronic CAMP file. Once

⁶ Texas Government Code §466.205(b)

activated, the “private” feature will restrict access to the electronic report to the assigned investigator and those “super business users” assigned to Enforcement and the client division but still allow the existence of the case to appear in a CAMP search. Procedure EN-027 (Enforcement Investigations Intake and Referral Process) is being revised to address these changes.

With the exception of nineteen (19) boxes of case files that originated prior to 2000, the Enforcement Division is now current with its records retention schedule. The nineteen (19) boxes of case files are currently under review. As an inventory sheet is completed for each box, the case files will be scheduled for destruction. Electronic files will also be reviewed and scrutinized for compliance with the appropriate records retention schedule.

The Enforcement Division will continue to restrict access to its file room. Currently, the only Enforcement personnel with access to the file room are the Investigative Administrative Assistant and the Intake Specialist.

The Enforcement files stored at the TLC warehouse have been placed in a storage area secured by a lock and seal.

On November 6, 2008, the Enforcement Director met with Legal Services personnel to discuss Enforcement’s current practice of custody and use of criminal histories. The Legal Services Division will use the information discussed at the meeting to develop a rule, in accordance with the State Lottery Act, that will govern the TLC’s custody and use of criminal history records.

The review of the division records retention schedule has already begun.

Currently TLC employee background investigative files are required under the records retention schedule to be retained until five (5) years after the individual leaves agency employment. Per Section 441.1852 of the Texas Government Code, it is not permissible to redact information from current investigative files. Case files and all their contents may only be redacted/destroyed when they have reached the end of the retention period. However, the Enforcement Division has conducted additional research and, in discussions with the agency records management officer, has determined that applicant background investigative reports can be reclassified and, once their purpose has been served, can be destroyed.

Agency management is working with the Legal Services Division on a comprehensive review of current statutes to ensure all required rules are developed and provided to the Commission for consideration.

Due Date: February 1, 2009, with the exception of required rule development which will be completed by June 1, 2009.

ADDITIONAL ITEMS

In conducting our review, additional items came to our attention that we believe require management's attention. We present these items for management's consideration.

1. All Texas Lottery Commission employees are not "flagged" in the DPS system.

At the time of the criminal history check, agencies may request DPS set an automatic notification flag on the individual. Setting a "flag" allows for automatic notification in the event a "flagged" individual is arrested in the future. DPS provides notification to the agency in this event.

As of March 2008, there were approximately 82 current Texas Lottery Commission employees that were not "flagged" in the DPS system. To ensure equitable treatment of employees, all employees should either be flagged or not flagged. Adding a flag to the 82 individuals would require the individuals to submit new fingerprint cards.

Agency management should determine whether automatic notifications will be required of all employees. If required, the Enforcement Division should develop procedures to regularly reconcile and update automatic notifications from DPS. The procedures should include periodic review of the list of employees with automatic notifications set by DPS to ensure all current employees are treated equitably and that separated employees are removed from automatic notification.

2. Internal procedures should be enhanced to incorporate state-recommended basic and best practice elements.

The State Auditor's Office Report No. 08-024, *An Audit Report on Agencies' and Higher Education Institutions' Background Check Procedures*, included a chapter entitled Model for Background Check Policies and Procedures. The report was issued March 2008. While we did not audit agency processes and procedures against the recommendations contained in the report, we note current procedures lack basic and best practice elements recommended by the SAO. Enforcement Division procedures could be enhanced or clarified by these elements and the process streamlined. Further, some of the elements noted may improve licensee or prospective employee understanding of the background investigation process.

While our audit identified improvements needed that also appear among the SAO-recommended basic and best practice elements, we noted the SAO identified additional elements that were outside the scope of our audit. We encourage the Enforcement Division to review the SAO report to consider ways to further strengthen current practices and procedures. Internal Audit recommends the following SAO elements as those the Enforcement Division should consider addressing:

- Purpose of conducting criminal history checks.
- Notification to the individual regarding the agency's criminal background checks policies.
- Individual's written consent to have criminal background check conducted and notification of consequences for not giving consent.
- Consequences of falsifying or omitting information regarding criminal history.

- Right of individual to obtain copy of his/her criminal history report directly from DPS, not the agency.
- Notification of an applicant's rights to review his or her criminal history information, challenge the accuracy and completeness, and request corrections.
- Opportunity given to appeal decision based on background check.
- Provision that all similar situations are treated in the same manner.
- Guideline for proper use of criminal history information obtained.
- Guideline for disclosure of criminal history information.
- Proper storage of criminal histories.
- Security of history information.
- Disposal of CCH after completion of the purpose for which the CCH was obtained.
- Automatic notification regarding subsequent criminal information about an individual (notifying applicant, licensee, employee) and action taken when we receive a notification.
- Timeliness of conducting criminal background investigations.
- Staff qualifications and training requirements for conducting criminal background checks.

BACKGROUND

The Texas Lottery Commission's Enforcement Division is responsible for conducting background investigations of Texas Lottery sales agents; bingo workers; bingo licensees (conductors, commercial lessors, manufacturers, distributors; and system service providers); current and prospective Texas Lottery Commission employees; and vendors and vendor employees. Authority to conduct these investigations is granted under both the State Lottery Act, §466.201, and the Bingo Enabling Act, §2001.⁷

The Enforcement Division is responsible for performing background investigations at the request of several divisions within the agency, including Lottery Operations Division – Retailer Services, the Charitable Bingo Operations Division (CBOD), and the Human Resources Division. Each type of background investigation involves a different level of work.

Lottery Operations Division

The Retailer Services section of the Lottery Operations Division requests the Enforcement Division conduct criminal history checks on all individuals listed on new sales agent applications and any new individual listed on renewal applications. The Retailer Services section collects the fingerprint cards and sends them to Enforcement for processing through the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigations Identification Division (FBI). DPS returns computerized criminal history (CCH) reports to the Enforcement Division for all individuals with arrests or convictions. Enforcement Division determines the correct disposition of the convictions by obtaining court documents. An investigative report is then prepared on any individual with a criminal history "hit" and determines whether the individual is potentially disqualified. *Texas Government Code §466.155* states the agency may deny an application for an individual who "has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served of the offense". All individuals are marked for automatic notification from DPS so that any subsequent arrests or convictions are reported to the Enforcement Division and can be monitored for disqualifying convictions. All other eligibility requirements are determined by the Retailer Services Section.

Charitable Bingo Division

The Enforcement Division conducts background investigations for Bingo manufacturers, distributors and system service providers, as well as Bingo conductors, workers, unit managers and lessors.

In-state conductors, workers, unit managers, lessors

CBOD inputs applicant data into the ACBS system where it is extracted by the Enforcement Division. Due to the large number of applicants, the Enforcement Division conducts criminal history records checks through the use of "name checks" only. Name checks are conducted through the Department of Public Safety database and do not require

⁷ See Appendix A

fingerprints. Name checks are also less costly to process than fingerprint checks. An investigative file and report is prepared for any individual with a criminal history “hit” and the investigator determines whether the individual is potentially disqualified. *Texas Government Code §2001.102, §2001.154, and §2001.437* provide statutory authority to deny licensing to individuals with specific criminal histories. Individuals are not marked for automatic notification from DPS; therefore, renewal investigations are conducted every three years. Fingerprints would be required to be submitted in order to have these individuals marked for automatic notification with DPS. Although name checks may be less accurate than fingerprints, the bingo worker registry contains approximately 30,000 workers. Additionally, regular reconciliations of those workers who no longer wish to be listed on the registry would be necessary to reduce the work conducted by DPS. Fingerprinting bingo workers would significantly increase all cost associated with performing these checks for both the agency and DPS. CBOD is notified when an investigation has been completed and is able to review the report through the CAMP system.

Out-of-state workers

All out-of-state bingo worker applicants are required to submit fingerprints, which are submitted for DPS and FBI criminal history records checks. Since DPS name check reviews only reveal Texas convictions, the use of FBI criminal history records are important. FBI checks require fingerprints. An investigative file and report is prepared for any potentially disqualified applicant. CBOD is notified when an investigation has been completed and is able to review the report through the CAMP system.

Manufacturers and Distributors

CBOD requests an in-depth review of bingo manufacturers and distributors. Investigators perform not only criminal history records checks, but also determine if all eligibility requirements are met for licensing. Investigative reports are prepared annually for each manufacturer and distributor. *Texas Occupations Code §2001.202 and §2001.207* detail the eligibility requirements for manufacturers and distributors, respectively⁸. Officers and directors are marked for automatic notification through DPS so that any subsequent arrests or convictions are reported to the Enforcement Division. This enables the agency to monitor for any possible disqualifying convictions. CBOD is notified when an investigation has been completed and is able to review the report through the CAMP system.

Human Resources Division

Prospective Employees

Background investigations are performed on prospective employees for the Texas Lottery Commission. Hiring supervisors request background investigations on primary (and sometimes secondary) candidates through the Human Resources Division to the Enforcement Division. Background specialists perform in-depth reviews by requesting and verifying extensive information from the applicants, including the submission of fingerprint cards. Eligibility requirements are examined and criminal history records

⁸ See Appendix A

checks are performed through DPS and FBI. An investigative report is prepared for each requested applicant. Successful applicants are flagged with DPS so that any subsequent arrests or convictions are reported to the Enforcement Division and can be monitored for disqualifying convictions. *Texas Government Code §466.201* states, “*The commission shall conduct an investigation of and obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to assist in the investigation of: (1) the executive director or prospective executive director; or (2) an employee or prospective employee of the commission.*” However, the statute does not specifically state the type of convictions that would disqualify an applicant from employment.

Current Employees

Background investigations are conducted on current employees when the employee has applied for a new position within the agency and has been identified as a primary or secondary applicant for the job posting.

Human Resources Division is notified when an investigation is completed. The hiring supervisor may make arrangements to review the report in the Human Resources section, but is not allowed to keep a copy of the report.

AUDIT PURPOSE, SCOPE AND METHODOLOGY

Purpose: The purpose of the audit was to evaluate the effectiveness of controls in place for ensuring:

- Policies, procedures and practices are in compliance with statutory requirements,
- Background investigations are conducted in a consistent, efficient, effective, and fair manner, and
- Records are adequately protected from inappropriate disclosure and unauthorized access.

Scope: The scope of this audit covered background investigations of Charitable Bingo licensees and workers, lottery sales agents, and prospective and current employees. Internal Audit did not include a review of the background investigation process of vendors and vendor employees. During the past year, Internal Audit participated as a consultative member on an agency workgroup which reviewed and drafted procedures regarding vendor and vendor employee background investigations. In addition, this audit did not address background investigations conducted during the course of an investigation addressing a possible violation of the State Lottery Act or Bingo Enabling Act.

Methodology: To accomplish our objective, we reviewed current procedures, interviewed responsible management and staff, and assessed management controls. Internal Audit examined and reviewed supporting documentation and electronic files, as well as performed selected test work as deemed necessary. Source documentation was examined to the extent available. Internal Audit also reviewed relevant audit work performed by the State Auditor's Office: An Audit Report on State Agencies' Use of Criminal History Records, SAO Report No. 06-049; A Report on The Use of Criminal History Information by Texas State Agencies and Institutions of Higher Education, SAO Report No. 07-009; and An Audit Report on Agencies' and Higher Education Institutions' Background Check Procedures, SAO Report No. 08-024. Internal Audit's review did not include verifying the reliability and integrity of financial and other automated systems.

Auditor's Consideration of Fraud: In accordance with our professional standards, Internal Audit considered risks due to fraud that could significantly affect our audit objectives and the results of our audit. Accordingly, we designed our procedures to provide reasonable assurance of detecting fraud significant to the audit objectives. During the course of the audit, we were also alert to situations or transactions that could be indicative of fraud. We conducted our audit to provide reasonable assurance of detecting illegal acts or fraud that could significantly affect the audit results; however, it does not guarantee the discovery of illegal acts or fraud.

Professional Standards: Internal Audit conducted its review in accordance with the *International Standards for the Professional Practice of Internal Auditing* as promulgated by the Institute of Internal Auditors (IIA), and the generally accepted government auditing standards (GAGAS) as promulgated by the U.S. Government Accountability Office (GAO).

APPENDIX A

Eligibility Requirements and Background Investigation Authority

General

Texas Government Code §466.201 Access to Criminal History Record Information: *“(a) The commission is entitled to conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to assist in the investigation of:*

- (1) a sales agent or an applicant for a sales agent license;*
- (2) a person required to be named in a license application;*
- (3) a lottery operator or prospective lottery operator;*
- (4) an employee of a lottery operator or prospective lottery operator, if the employee is or will be directly involved in lottery operations;*
- (5) a person who manufactures and distributes lottery equipment or supplies, or a representative of a person who manufactures or distributes lottery equipment or supplies offered to the lottery;*
- (6) a person who has submitted a written bid or proposal to the commission in connection with the procurement of goods or services by the commission, if the amount of the bid or proposal exceeds \$500;*
- (7) an employee or other person who works for or will work for a sales agent or an applicant for a sales agent license;*
- (8) a person who proposes to enter into or who has a contract with the commission to supply goods or services to the commission; or*
- (9) if a person described in Subdivision (1) through (8) is not an individual, an individual who:*
 - (A) is an officer or director of the person;*
 - (B) holds more than 10 percent of the stock in the person*
 - (C) holds an equitable interest greater than 10 percent in the person;*
 - (D) is a creditor of the person who holds more than 10 percent of the person’s outstanding debt;*
 - (E) is the owner or lessee of a business that the person conducts or through which the person will conduct lottery-related activities;*
 - (F) shares or will share in the profits, other than stock dividends, of the person;*
 - (G) participated in managing the affairs of the person; or*

(H) is an employee of the person who is or will be involved in;

(i) selling tickets; or

(ii) handling money for the sale of tickets.

(b) The commission shall conduct an investigation of and obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to assist in the investigation of:

(1) the executive director or a prospective executive director; or

(2) an employee or prospective employee of the commission.

(c) Not later than the first anniversary date of each renewal, the commission shall obtain criminal history record information maintained by the Department of Public Safety on a sales agent whose license is renewed under Section 466.158."

Texas Government Code §466.205(b) Confidential Information: *"The commission shall adopt rules governing the custody and use of criminal history record information obtained under this subchapter."*

Employees

Texas Government Code §467.035 Restrictions on Employment: *"The commission may not employ or continue to employ a person who owns a financial interest in: (1) a bingo commercial lessor, a bingo distributor, or bingo manufacturer; or (2) a lottery sales agency or a lottery operator."* Employees are further limited from having a "spouse, child, brother, sister, or parent residing as a member of the same household" who owns a financial interest in the business listed above.

Texas Government Code §467.036(b) Access to Criminal History Records: *"The commission shall conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency relating to an individual the agency intends to employ."*

Texas Lottery Commission Personnel Handbook: *"A current or prospective employee is disqualified from employment if he or she has been convicted of a felony or of a misdemeanor involving gambling, fraud or theft and less than 10 years has elapsed since termination of the sentence, parole, mandatory supervision, probation served for the offense. A conviction that does not automatically disqualify an individual from employment may be considered in an employment decision if the conviction is relevant to the job duties of the current or prospective employee."*

Lottery Sales Agents

Texas Government Code §466.155 Denial of Application or Suspension or Revocation of License: *"(a) After a hearing, the director shall deny an application for a license or the commission shall suspend or revoke a license if the director of commission, as applicable, finds that the applicant or sales agent:*

(1) is an individual who:

- a. has been convicted of a felony , criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less that 10 years has elapsed since the termination of the sentence, parole, mandatory supervisor, or probation served for the offense;*
- b. is or has been a professional gambler;*
- c. is married to an individual:*
 - i. described in Paragraph (A) or (B); or*
 - ii. who is currently delinquent in the payment of any state tax;*
- d. is an officer or employee of the commission or a lottery operator; or*
- e. is a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of a person (employee or lottery operator);*

(2) is not an individual, and a individual described in Subdivision (1);

- a. is an officer or director of the applicant or sales agent;*
- b. holds more than 10 % of the stock in the applicant or sales agent;*
- c. holds an equitable interest greater than 10 % in the applicant or sales agent;*
- d. is a creditor of the applicant or sales agent who holds more than 10 % of the applicant's or sales agent's outstanding debt;*
- e. is the owner or lessee of a business that the applicant or sales agent conducts; or through which the applicant will conduct a ticket sales agency;*
- f. shares or will share in the profits, other than stock dividends, of the applicant or sales agent, or*
- g. participates in managing the affairs of the applicant or sales agent;*

(3) has been finally determined to be:

- a. delinquent in the payment of a tax or other money collected by the comptroller, Texas Workforce Commission or Texas Alcoholic Beverage Commission;*
- b. in default of a loan made under Chapter 52, Education code;*
- c. in default of a loan guaranteed under Chapter 57, Education Code;*

(4) is a person whose location for the sales agency is:

- a. a location licensed for games of bingo under Chapter 2001, Occupations Code;*
- b. on land that is owned by:*
 - i. this state; or*
 - ii. a political subdivision of this state and on which is located a public primary or secondary school, an institution of higher education, or an agency of the state;"*

Texas Administrative Code §401.152(e) Application for License: “All applications submitted under this subchapter shall be available for public inspection during business hours, provided that criminal history information and other information confidential by law shall not be available for inspection.”

Charitable Bingo Conductors, Workers, Unit Managers, and Lessors

Texas Occupations Code §2001.105(a)(6) Conductor and Bingo Workers: “The commission shall issue or renew a license to conduct bingo on payment of the license fee provided by Section 2001.104 if the commission determines that no person under whose name bingo will be conducted and no person working at the proposed bingo has been convicted of a felony, a gambling offense, criminal fraud, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense, (b) The commission may not issue a license to an authorized organization to conduct bingo if an officer of the organization has been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense.”

Texas Occupations Code §2001.154 (a)(1) Lessor: “The commission may not issue a commercial lessor license to or renew a commercial lessor license of a person convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense.”

Texas Occupations Code §2001.437 (g) Unit Manager: “A person is not eligible for a unit manager license under this subchapter if the person, or any officer, director, or employee of the person:

- (1) has been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or crime of moral turpitude, if less than 10 years has elapsed since the termination of a sentence, parole, or community supervision served for the offense;”

Charitable Bingo Manufacturers, Distributors, and System Service Providers

Texas Occupations Code §2001.202 Manufacturer: “The following persons are not eligible for a manufacturer's license:

- (1) a person convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, mandatory supervision, or community supervision served for the offense;
- (2) a person who is or has been a professional gambler or gambling promoter;
- (3) an elected or appointed public officer or a public employee;
- (4) an owner, officer, director, shareholder, agent, or employee of a licensed commercial lessor;

- (5) *a person who conducts, promotes, or administers, or assists in conducting, promoting, or administering, bingo for which a license is required by this chapter;*

Texas Occupations Code §2001.207 Distributor: *“The following persons are not eligible for a distributor's license:*

- (1) *a person convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, community supervision, or mandatory supervision served for the offense;*
- (2) *a person who is or has been a professional gambler or gambling promoter;*
- (3) *an elected or appointed public officer or a public employee;*
- (4) *an owner, officer, director, shareholder, agent, or employee of a licensed commercial lessor;*
- (5) *a person who conducts, promotes, or administers, or assists in conducting, promoting, or administering bingo for which a license is required by this chapter;*

Texas Occupations Code §2001.252 System Service Provider: *“A person is not eligible for a license under this subchapter if the person:*

- (1) *has been convicted of a felony, criminal fraud, a gambling or gambling-related offense, or a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, or community supervision served for the offense;*
- (2) *is an owner, officer, or director of a licensed commercial lessor; or*
- (3) *holds another license under this chapter.”*

Charitable Bingo Advisory Committee

Texas Administrative Code §402.102 (c)(4) Bingo Advisory Committee: *“A member must meet the criminal history standards in Bingo Enabling Act Sections 2001.105(b), 2001.154(a)(5), 2001.202(1), 2001.207(1), and 2001.252(1).”*

STATE OF TEXAS
TEXAS LOTTERY COMMISSION

INTERNAL AUDIT DIVISION

An Internal Audit of
BACKGROUND INVESTIGATIONS

IA #09-005

December 2008

This report has been provided to the following:

Mr. James A. Cox, Jr., Chairman
Mr. David J. Schenck, Commissioner
Ms. Mary Ann Williamson, Commissioner

Mr. Gary Grief, Deputy Executive Director
Mr. James Carney, Enforcement Division Director

This report is also provided to the following for appropriate distribution in accordance with
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Ms. Mary Katherine Stout, Director, Governor's Office of Budget, Planning and Policy
Mr. John O'Brien, Director, Legislative Budget Board
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