



# Criminal Background Check Process:

*Refinements needed to further reduce risks*

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February 2020

A Report by the Office of the Auditor

**Brian Evans**

*Metro Auditor*

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**Brian Evans**  
**Metro Auditor**

600 NE Grand Ave  
Portland, OR 97232-2736  
TEL 503 797 1892, FAX 503 797 1831

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## MEMORANDUM

February 26, 2020

To: Lynn Peterson, Council President  
Shirley Craddick, Councilor, District 1  
Christine Lewis, Councilor, District 2  
Craig Dirksen, Councilor, District 3  
Juan Carlos Gonzalez, Councilor, District 4  
Sam Chase, Councilor, District 5  
Bob Stacey, Councilor, District 6

From: Brian Evans, Metro Auditor

**Re: Audit of Criminal Background Check Process**

This report covers the audit of Metro's criminal background check process. The objective was to determine if the process provided sufficient and appropriate information to ensure consistent hiring decisions.

The audit found Metro's criminal background check process was more consistent than several other local governments in the region because it covered all employees. Consistency made it more likely that appropriate criminal background information was considered when making hiring decisions. However, there were some weaknesses that made it less likely that sufficient criminal background information would be available.

The audit also found there was no single source of information about what type of criminal records check was required for each position. Without a comprehensive list of criminal background requirements for each position or job classification, there was an increased risk that the information used in the hiring process was not aligned with the position's duties. If the background check was too broad or too narrow compared to the position's duties it could increase the risk of inconsistent hiring decisions.

We have discussed our findings and recommendations with Andrew Scott, Interim COO; Carrie MacLaren, Metro Attorney; Heidi Rahn, Interim DCOO, and Julio Garcia, Human Resources Director. A formal follow-up to this audit will be scheduled within five years. We would like to acknowledge and thank all of the employees who assisted us in completing this audit.

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## Summary

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Background checks are used by employers to get information about candidates for job openings. This audit focused on Metro's criminal background check process. The objective was to determine if the process provided sufficient and appropriate information to ensure consistent hiring decisions.

We found Metro's criminal background check process was more consistent than several other local governments in the region because it covered all employees. Consistency made it more likely that appropriate criminal background information was considered when making hiring decisions.

While Metro's process was more consistent than the other jurisdictions we reviewed, its criminal background searches did not include some information that could be used to inform hiring decisions. The largest gap was related to federal criminal records. Until March 2019, criminal records from federal courts were not included in most background searches.

In addition, implementation of some parts of Metro's background check policy was underdeveloped. This increased the chance that some senior-level positions and some volunteers were not checked as thoroughly as allowed by policy.

We found there was no single source of information about what type of criminal records check was required for each position. Without a comprehensive list of criminal background requirements for each position or job classification, there was an increased risk that the information used in the hiring process was not aligned with the position's duties. If the background check was too broad or too narrow compared to the position's duties it could increase the risk of inconsistent hiring decisions.

We also identified two additional risk areas related to managing criminal background information. Shared responsibility for keeping track of some employees' status increased the risk that a person may be allowed to work when they should not. Unclear and flexible roles in Human Resources (HR) also increased the risk that background and other personal information could be accessed inappropriately.

The audit included six recommendations to reduce risks and ensure consistent reviews of criminal background information.

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# Background

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Background checks are used by employers to get information about candidates for job openings. The scope of what is searched can vary, but generally background checks include information about a candidate's education and work history, at a minimum. References from previous colleagues and criminal records searches are other common types of background information employers may use to inform their hiring decisions.

The timing for background checks can also vary. For example, some employers wait until one or more finalists for the position have been selected before requesting certain background information. This is done to focus attention on the skills and experience of the individual in relation to the job requirements. The goal is to reduce the chances biases get introduced into hiring decisions that are not related to the candidate's ability to do the job.

This audit focused on Metro's criminal background check process. The objective was to determine if the process provided sufficient and appropriate information to ensure consistent hiring decisions. Metro is one of several government jurisdictions in Oregon that have established processes to "ban the box." These processes prevent criminal background information from being requested or searched before the interview stage of hiring.

All candidates that have been given a conditional offer of employment by Metro are required to complete a criminal background check. The purpose of the check is to protect the wellbeing of its employees and the public, and safeguard agency assets. The source of the criminal information and thoroughness of the searches depends on the position and its responsibilities. For example, positions that work with children are required to have a more comprehensive criminal background search compared to positions that do not work with children.

Metro uses external service providers for its criminal background checks. The majority of finalists are checked through a private company that searches public records for criminal convictions based on the applicant's name, social security number and addresses where they have lived. Employees in positions that have unsupervised access to children were required to complete a criminal background check through the State of Oregon's Law Enforcement Data Systems (LEDS). That search requires fingerprints and may return a broader set of information beyond criminal convictions. A few executive level employees have been recruited through external firms. Those firms used their own processes and information providers for background checks.

Metro's criminal background check policy was created in 2011. Since that time at least 7,000 checks were completed by one of the providers listed in the previous paragraph. That works out to an average of about 780 per year, but the numbers can vary considerably between years depending on the

number of vacant positions and the number of new positions created. These searches cost an average of \$39,000 per year over that last five years, which was about \$44 per search. For comparison, LEDS searches were \$75 each.

If criminal records were discovered, that by itself was not sufficient to deny employment. Metro's guidance for reviewing criminal background check information is based on U.S. Equal Employment Opportunity Commission (EEOC) guidelines. Those guidelines, known as the *Green factors*, state that a "targeted screen" should be used for each candidate's criminal background information based on three factors:

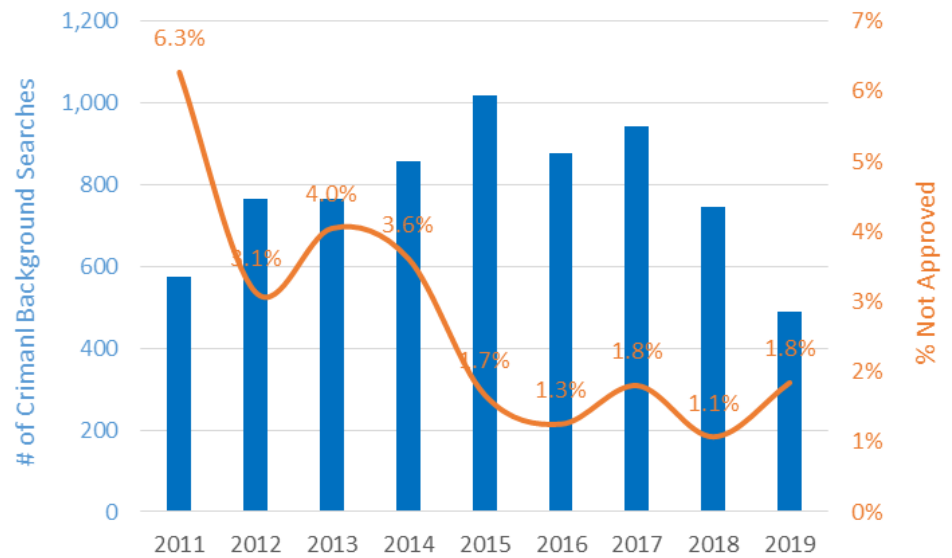
- The nature and gravity of the offense or conduct;
- The time that has passed since the offense, conduct, and/or completion of the sentence; and
- The nature of the job sought.

These factors are intended to balance the individual candidate's rights to be treated fairly during the hiring process, while also recognizing the responsibilities employers have to provide a safe work environment and protect their assets. The *Green factors* provide the criteria employers should use to evaluate criminal background information. Effective use of the criteria can reduce the likelihood that some employment related claims against Metro will be successful.

One of the major points of emphasis in Metro's policy and EEOC guidance was the difference between arrests and convictions. The policy stated that for most positions only convictions would be considered when reviewing criminal background information. According to the policy, arrest records could only be considered for positions that involved financial or fiduciary responsibilities, safety and security, or direct unsupervised access to children.

For the vast majority of Metro candidates, criminal background information appeared to have played a minor role in hiring decisions. For example, from 2011 to 2019 about 2.6% of the candidates who completed a criminal background check through Metro's primary vendor were not hired according to Metro's records. There was insufficient data to estimate the percentage of LEDS searches that resulted in a no hire decision.

**Exhibit 1 Criminal background checks appeared to have played a role in the hiring decisions of a small number of candidates**



*Source: Auditor's Office analysis of criminal background data from Metro's primary vendor.*

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## Results

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We found Metro's criminal background check process was more consistent than several other local governments in the region because it covered all employees. Consistency made it more likely that appropriate criminal background information was considered when making hiring decisions. However, there were some weaknesses that made it less likely that sufficient criminal background information would be available.

Until March 2019, criminal records from federal courts were not included in most background searches. Metro believed those records were part of its contract with one of the external providers, but they were not. In addition, implementation of some parts of Metro's background check policy were underdeveloped. This increased the chance that some senior-level positions and some volunteers were not checked as thoroughly as allowed by policy.

Formally designating the type of criminal background check required for each position would reduce the risk of insufficient or inappropriate checks. We also found clearer roles and responsibilities were needed to control who has access to criminal background information and ensure it was kept up-to-date.

**Despite covering all employees, the criminal background check process may not have been sufficient in some cases**

Metro was the only jurisdiction of the five reviewed in this audit whose policy required criminal background checks on all internal and external applicants selected as finalists. The policy stated that this requirement includes internships and volunteer positions. None of the other four jurisdictions reviewed required criminal background checks for all positions.

Requiring background checks for all positions increased the chances that hiring decisions were based on consistent information and procedures. Metro's policy and use of external service providers reduced variation in what was searched and what information could be used as part of the hiring process. These safeguards made it less likely that biases would be introduced into hiring decisions.

While Metro's processes were more consistent than the other jurisdictions we reviewed, its criminal background searches did not include some information that could be used to inform hiring decisions. The largest gap was related to federal criminal records. In addition, management stated that arrest records were not considered during the hiring process for positions with financial or safety and security responsibilities as allowed by policy. There were also indications that some applicants for volunteer positions may not have gone through criminal background checks as allowed by policy.



## Federal criminal records

Metro learned in late 2018 and early 2019 that some criminal records may not have been included in its background searches. After researching the issue, employees determined that it was related to federal court records.

Employees in Human Resources and Office of Metro Attorney (OMA) stated that they met with the external service provider to discuss the issue. They discovered that the contract did not include federal records in Metro's default criminal records searches. The contract was amended in March 2019 to include federal records.

As a result, Metro's costs for background checks were higher after March 2019. Federal records searches were \$7.13 per court district. In 2018, about 750 background searches were done by Metro's primary external service provider according to Human Resources data. If each of those people only lived in one federal court district, Metro would have paid an extra \$5,300 to search for federal criminal records for each of them.

The omission of federal court records created challenges for Metro to determine how to respond. Searching for those records retroactively could increase the chances an employee could claim they were being treated unfairly. Conversely, Metro could be liable for retaining an employee with a criminal record who was later responsible for a work-related incident.

Metro's policy provided some clarity for how to address these challenges. Employees were required to disclose criminal convictions that were drug-related or related to the qualifications or duties of their position. The policy also required employees to disclose arrests if their responsibilities included driving, safety and security, financial and fiduciary responsibility, or direct unsupervised access to children that related to these functions. In addition, the policy stated a criminal background check could also be conducted if there was reason to believe that an arrest or undisclosed conviction had occurred that may be relevant to the safety of employees and customers or to the integrity of the organization.

As a result, Metro would likely be in a stronger position to claim that an employee with a criminal record was liable for not disclosing it rather than the organization for not seeking those records out at the time of hire. Similarly, EEOC guidance made it clear that criminal background information could only be considered if it was related to the nature of the job. As such, even if Metro had known about federal criminal records, it may not have changed the decision about whether the person was hired.

## Arrest records and other background information

Another potential gap in Metro's criminal background check process was related to positions with financial or fiduciary responsibilities, and safety and security. Metro's policy allowed arrest records to be considered when making hiring decisions for these positions. Management stated that they do not consider arrest records during the hiring process for any positions.

Metro used a more comprehensive criminal background search, the State of

Oregon's Law Enforcement Data Systems (LEDS), for employees who had direct unsupervised access to children as part of their job. However, the process to conduct additional checks or consider arrest records appeared to be underdeveloped for positions with financial or fiduciary responsibilities, and safety and security.

For example, there were notes in the background check documentation indicating credit checks were completed for some lower level positions with fiduciary responsibilities, but those appeared to be outliers. Employees with similar titles or positions did not have notes in the spreadsheet that documented credit checks were done.

We also learned that executive level positions recruited through external firms had their criminal records checked through different providers than Metro's normal background check process. These positions have the highest levels of authority to approve payments and take actions on behalf of the agency.

In the last two years, Metro used two firms to recruit for five positions. The contracts for these services included provisions for conducting background and reference checks. One of the firms appeared to have a more comprehensive process for searching background information than the other. They said they searched driving records, credit histories and civil court cases (i.e. lawsuits). The other firm told us they do not look at civil court case information or credit histories.

## Volunteer positions

During the audit, a concern was raised about the process to appointment volunteers on one of Metro's advisory committees. Metro Code lists 16 advisory committees responsible for giving input on specific issues like transportation policy, land use policy, solid waste and recycling policy, and bond oversight. Most of these positions were appointed by the Council President. However, membership on at least two committees was based on a list of elected officials from specific jurisdictions in the region.

The breadth of responsibilities among these volunteers may make it more difficult to assess the appropriateness of background checks for advisory committee members. None appear to have unsupervised access to youth so a LEDS check does not appear to be appropriate. Similarly, these positions did not appear to have special access to Metro property or equipment, so they did not meet the current requirements for a basic search by Metro's primary vendor.

However, some of the committees advised on financial matters or may have access to sensitive information that could make additional background check requirement appropriate for some committees. If Metro decides to reevaluate its volunteer background check requirements, it will be important to consider how background information would be assessed. Under Metro's current policy it appears the EEOC guidance would need to be applied. This

## Documenting the type of background check required would improve the process

would limit consideration of background information to only what was related to the volunteer position's responsibilities.

We found there was no single source of information about what type of criminal records check was required for each position. Metro's policy did not specify the scope (e.g. local, state, or federal court; look back period) or type (e.g. convictions; arrests; driving; credit) of criminal checks. Documenting the type of criminal background check required for each position would reduce the risk of insufficient or inappropriate information being used in the hiring process.

Without a comprehensive list of criminal background requirements for each position or job classification, there was an increased risk that the information used in the hiring process was not aligned with the position's duties. If the background check was too broad or too narrow compared to the position's duties it could increase the risk of inconsistent hiring decisions. For example, narrow or limited criminal checks may omit information that could be considered when making hiring decisions. Overly broad criminal checks may include information that should not be considered when making hiring decisions.

Employees involved in the process relied mostly on their interpretation of job-related information and conversations with hiring managers to determine which type of check was needed. Informal practices to determine the scope of the criminal background search may not:

- Capture changes in position responsibilities or program changes over time.
- Take into consideration the policy for additional scrutiny for positions with financial or fiduciary, and safety and security responsibilities.

We also found responsibility to determine what type of criminal check was required was undefined. Hiring managers have the most knowledge about the specific roles and responsibilities of the position, but they may not be aware that they can give input. HR employees assumed hiring managers would tell them what type of check was needed, but the process to solicit that information was informal.

While it is possible to overcome these challenges with good communication between HR and hiring managers during each recruitment, a more effective way would be to create an approved list that everyone could reference. One of the jurisdictions we reviewed in this audit formally approved a list of positions, classifications, and departments that are required to have each type of criminal background check.

## Exhibit 2 Example of one jurisdiction's alignment between departments and criminal background check requirements

Department	Type of Check (A-D)
Sheriff's Office*; Community Corrections*; District Attorney*; Central Communications*; Juvenile Department*; Emergency Management*	A
Finance^; Technology Services^	B & D
Business and Community Services^; Department of Employee Services^; County Clerk^	D
Department of Human Services^	C & D
Department of Transportation and Development; Water Environment Services; County Assessor; County Admin/ BDD/County Counsel/Community & Legislative Affairs; Public and Government Relations; Family Court Services, Law Library, Tourism	None

*Source: Auditor's Office analysis of Clackamas County's Employment Policy and Practice (EEP #58) for Criminal History Checks, June 22, 2009.*

*\*All positions*

*^Some positions*

If Metro took that approach, it could provide a more well-rounded assessment of the risks associated with each position. It could also decrease the ability of individual employees to influence what criminal information was searched for each recruitment. This is because the criteria for those decisions would be used to create the list, rather than having to be recreated for each recruitment.

**Clear roles and responsibilities needed to reduce risks**

We also identified two additional risk areas related to managing criminal background information. Shared responsibility for keeping track of LEDS statuses increased the risk that a person may be allowed to work when they should not. Unclear and flexible roles in HR also increased the risk that background and other personal information could be accessed inappropriately. Clear roles and responsibilities were needed to reduce these risks.

**Tracking the status of positions that have direct unsupervised access to children**





Staff and volunteer positions that may require unsupervised access to children were required to complete a LEDS check. Responsibility for tracking the LEDS status to determine the person's ability to work was shared between the position's supervisor or manager, and HR.

HR was the primary contact with the state employees who administered LEDS to determine the status of new hires before they started work. HR also received official LEDS notifications by mail. We were told managers and supervisors were supposed to track the status of employees and volunteers to make sure they did not work without LEDS approval. In practice, HR appeared to keep track and send reminders to managers about the status of their employees.

These processes appeared to be working reasonably well, although employees involved in the process stated that the information was not updated as frequently as they would like. In addition, none of the volunteers in the tracking spreadsheet had a manager or supervisor listed for them. Without that information, it would be more difficult for HR employees to know who to contact about the volunteer's responsibilities and their LEDS status.

LEDS statuses were more difficult to check than other criminal background checks for several reasons. They were paper-based, so the only way to confirm a person's status was to get a letter in the mail or talk to a LEDS representative on the phone. In addition, there were four possible LEDS statuses for each person and each had a different effect on the person's ability to work with children.

**Exhibit 3    There were four possible LEDS statuses, each had a different effect on the person's ability to work with children**

Status	Meaning	Duration
Approved 	No restrictions on having direct unsupervised access to children	Five years
Conditionally Approved 	Restricted from having direct unsupervised access to children until the results of FBI fingerprint search was complete	Up to one year
Not approved 	Not allowed to have direct unsupervised access to children	Undefined
Not required 	No restrictions on having direct unsupervised access to children	Until 18 <sup>th</sup> birthday

*Source: Auditor's Office analysis of the State of Oregon's Law Enforcement Data Systems (LEDS) requirements and statuses.*

Some employees and volunteers had expired, conditionally approved, or unknown LEDS statuses listed in Metro's tracking spreadsheet. We were able to determine most of these employees and volunteers were not active or had not worked after the date of their expiration. However, five active employees and one active volunteer were required to register when they turned 18 but had not completed it as of October 16, 2019. We did not assess the reliability of the data, so it's possible that there were other employees or volunteers, but we did not see evidence of that during the audit.

Employees or volunteers under the age of 18 were not required to complete a LEDS search. An employee's or volunteer's birthday would need to be known to effectively track when they were required to register. That information may not be available to managers and supervisors, so HR was the only source of that information.

We also learned some employees who were waiting for the results of the LEDS check were allowed to start working after completing a criminal records check by Metro's other provider of criminal background information. This appeared to be a relatively limited practice that HR approved in some cases. Managers stated that they mostly used it to allow a conditionally approved employee to complete training before they start working directly with children. This alternative process increased costs for each criminal check, but also reduced some risk.

Managers and supervisors stated that the LEDS process drove their hiring timelines for many of the positions that required direct unsupervised access to children. They said it was not uncommon for a candidate's LEDS status to still be pending the first day they were supposed to work. We were told some events had to be canceled in the past because there were not enough LEDS approved employees available.

## Access to confidential information should be limited

Some HR employees have access to all background check information from Metro's primary criminal information provider. Background check information contained sensitive and confidential information about an employee or applicant's social security number, addresses, arrests, and criminal convictions. For some employees, it may have included driving records and credit histories.

HR employees shared roles in some situations. During those times, and potentially afterward, those employees may have been given access to information that was not needed for their normal role. Access to sensitive and confidential information should be limited to only those who need it for their jobs. Safeguards should be in place to protect the data from unauthorized use.

There has been turnover within HR in recent years that required employees to fill in for other roles. During that time, the review of criminal information varied between several employees who may not have had experience reviewing criminal information.

Metro's policy stated that the Office of Metro Attorney (OMA) was responsible for determining applicants' suitability for employment based on the information obtained through the recruitment process. However, we were told it was uncommon to involve OMA and that OMA was only consulted in the most challenging situations. Additional criteria to help determine when OMA should be consulted would help ensure Metro's policy and guidance was implemented as intended.

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## Recommendations

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To reduce the risk of insufficient or inappropriate criminal background searches, the Human Resources with input from Office of Metro Attorney and hiring managers, should:

1. Formally approve a list of positions, including volunteer positions, for each type of background check.
2. Periodically reassess and update the list.

To reduce the chances of misalignments between expected and actual criminal background searches, the Human Resources Recruiting Manager should:

3. Create a process to regularly verify the scope of the criminal searches ordered by Metro.

To ensure consistent reviews, and safeguard criminal background information, the Human Resources Director and Office of Metro Attorney should:

4. Document the process and personnel involved in reviewing criminal background information.
5. Establish a process to formally approve who has access to criminal background information, including the duration that access has been granted.

To reduce the chances an employee or volunteer will be allowed to work prior to being approved by LEDS, the Human Resources Recruiting Manager should:

6. Document the process and timelines for notifying managers and supervisors about the LEDS status of their employees and volunteers.

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## Scope and methodology

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The objective of this audit was to determine if Metro's criminal background check process provided sufficient and appropriate information to ensure consistent hiring decisions. The scope of the audit was 2011 through November 2019. Metro began requiring criminal background checks in 2011.

To meet our objective, we reviewed policy, guidance, and data related to Metro's criminal background check process. We also obtained and reviewed information about the criminal background check processes at Clackamas County, Multnomah County, Washington County, and the city of Portland. We reviewed previous audits related to this topic, professional literature about background checks, and data from Metro's human resources and financial accounting systems.

We also analyzed criminal background check records maintained by the Human Resources department. Since we used data and evidence from multiple sources and did not rely solely on Metro's data for our findings, we did not assess the data's reliability.

We interviewed Metro employees involved in the process, and some of the managers who hire the employees and volunteers who were required to complete a LEDS search. We interviewed representatives from two of the local jurisdictions that we used as comparisons. We also interviewed representatives from several of Metro's external service providers.

This audit was initiated, in part, based on a concern raised about safety and security of Metro employees after the gap in information about federal court records was discovered. While researching that issue, additional concerns were raised about privacy and the effectiveness of the background check process for some recruitments and volunteer appointments.

The audit was included in the FY 2019-20 audit schedule. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



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# Management response

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## Memo



Date: Friday, Feb. 21, 2020

To: Brian Evans, Metro Auditor

From: Andrew Scott, Interim Chief Operating Officer

Subject: Background Check Audit Response

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Thank you for your recent audit of Metro's background check practices during the hiring process. Below you will find a written response to each of the six recommendations including our proposed plans and implementation timelines. Management agrees with all of the recommendations.

Metro is in a solid position given our consistent approach to conducting criminal background checks prior to hiring for any position. This consistency will support successful implementation of the improvements outlined below. I appreciate the Auditor and his staff's work on this issue and look forward to moving forward on these recommendations.

**Recommendation 1:** Formally approve a list of positions, including volunteer positions, for each type of background check.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** HR will develop a list of classifications or positions and the type of check required for each.
- **Timeline:** December 31, 2020

**Recommendation 2:** Periodically reassess and update the list.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** HR will reassess this list on an annual basis to ensure that any new classifications or positions are added and that any necessary updates are captured.
- **Timeline:** December 31, 2020

**Recommendation 3:** Create a process to regularly verify the scope of the criminal searches ordered by Metro.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** Each year when HR reassesses this list of classifications or positions that require background checks, we will also review the scope of the criminal searches that are ordered.
- **Timeline:** December 31, 2020

**Recommendation 4:** Document the process and personnel involved in reviewing criminal background information.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** HR will provide a list of staff (by position title) of those involved in reviewing criminal background check information.
- **Timeline:** December 31, 2020

**Recommendation 5:** Establish a process to formally approve who has access to criminal background information, including the duration that access has been granted.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** HR will provide a list of staff (by position title) of those involved in reviewing criminal background check information. This list will also include the duration for which access to the criminal background information is granted.
- **Timeline:** December 31, 2020

**Recommendation 6:** Document the process and timelines for notifying managers and supervisors about the LEDS status of their employees and volunteers.

- **Response:** Management agrees with the recommendation.
- **Proposed plan:** HR will document a standard operating procedure (SOP) that outlines the process and timelines associated with background checks conducted through the State of Oregon's Law Enforcement Data Systems (LEDS).
- **Timeline:** December 31, 2020