



COMMISSION MEMORANDUM

REPORT TO: Honorable Mayor and Commission Members

FROM: Chris Kukulski, City Manager

SUBJECT: Background Checks and City Review of Password Protected Internet Information

MEETING DATE: June 22, 2009

RECOMMENDATION: Listen to staff presentation on: (i) historic use of usernames and passwords for access to a candidate's password protected internet site; (ii) City Manager's decision to stop this practice for all positions; and (iii) the City Manager's decision to evaluate with the cooperation of the City Commission the possible use of password protected internet sites for law enforcement.

This item has been noticed as a discussion on the use of the internet for City background checks. The City Manager's presentation includes a request that the Commission participate in future discussions regarding these issues where definitive action by the Commission can be taken.

BACKGROUND: The practice of the City of Bozeman requesting the usernames and passwords for password protected internet sites from applicants receiving conditional offers of employment has been brought to the attention of the City Commission. Individual Commissioners have requested I provide an explanation of the City's practices as well as provide an overall description of the City's recruitment and selection processes for Commission review. Attached is an overview of the City's background investigation elements and facts related to the collection of usernames and passwords for City job candidates.

Below are the facts related to the City's request for usernames and passwords for protected internet sites:

- As of Friday June 19, 2009, the City suspended asking for any usernames and passwords for password protected internet sites. This included discontinuing the use of usernames and passwords to access password protected internet sites of potential employees for whom we already have obtained the information.
- The standard practice was that username and passwords were to be used to access personal sites only after a conditional job offer was made.

- No candidate was ever disqualified or penalized for not disclosing usernames and passwords to these password protected sites.
- The only staff to review any password protected information was the Human Resources Department for employees other than police and fire, Detective's Division of the Police Department for police and fire candidates, and the Fire Chief and Deputy Fire Chiefs for fire candidates.
- Hiring committees do not participate in background investigations. The background investigations are conducted by the Human Resource, Police and Fire Departments.
- Protected class information was never used in consideration of candidates.

Public Safety: For police officers, the City is required by law to conduct a thorough background investigation (MCA 7-32-303). The process of requesting access to police and fire candidate's social networking sites was established because their duties and responsibilities, (powers of arrest, unsupervised entry into dwellings and business, providing medical care) required a more thorough background screening to be performed before conditional job offers became final. At that time, candidates considered for public safety, after receiving a conditional offer of employment, were required to undergo numerous evaluations including psychological, medical, hearing and vision evaluations, objective pre-employment interviews and more rigorous background investigations than applicants outside of police and fire positions typically would have been subject to. Investigations that can rule out personal associations with known criminals or can detect other criminal activity that is not reported in national criminal record databases are a critical element to our determination of suitability for law enforcement positions.

Extent of Background Checks for Various Personnel: As a condition of employment, the City of Bozeman conducts comprehensive background checks on all candidates with conditional job offers. Prior to Friday's decision by the City Manager, the City evaluated a candidate's password protected internet sites. This practice is no longer being employed. Thus, as of today, the following identifies the City's current practice of conducting background checks:

City Administration (CM, ACM and Department Directors) :

- Screen Now criminal background and financial credit checks. (Subject to federal Fair Credit Reporting Act -- *see below.*)
- Driving record check (Montana database or use Screen Now for out of state drivers licenses.)
- Review of publicly accessible internet information.
- Extensive reference checks.

Public Safety (Police officers, Firefighters)

- Firefighters - Screen Now criminal background check (checks for convictions)
- Police Officer - NCIC criminal history and local records check.
- Credit check/financial investigation.

- Driving record (Montana database or use Screen Now for out of state drivers licenses).
- Review of publicly accessible internet information.
- Extensive reference checks.
- Objective pre-employment interview.
- Psychological, medical, hearing and vision evaluations as appropriate to the position.
- Personal history questionnaire.

Other positions with law enforcement-related responsibilities (City Attorney, Information Technology)

- NCIC criminal history check for those positions with NCIC access; or
- Screen Now criminal background and credit checks.
- Drivers license checks, if required for the position.
- Review of publicly accessible internet information.
- Extensive reference checks.

Positions dealing with confidential information and those having access to public funds (HR, finance, etc.)

- Screen Now criminal background check.
- Credit check.
- Drivers license checks, if required for the position.
- Review of publicly accessible internet information.
- Extensive reference checks.

Employees who are required to have a commercial drivers license:

- Screen Now criminal background check.
- Driving record.
- Pre-employment drug test, prior DOT drug testing results.
- Review of publicly accessible internet information.
- Pre-employment medical exam (as appropriate to position).
- Extensive reference background.

All other hires not specifically listed above:

- Screen Now criminal background check.
- Driving records check if applicable to the position.
- Pre-employment medical exam (as appropriate to position).
- Extensive reference background.
- Review of publicly accessible internet information.

All positions: We have been checking sexual and violent offender registries and probation/parole sites of locations where the applicant has resided.

Fair Credit Reporting Act. The federal Fair Credit Reporting Act (FCRA) applies whenever an employer uses the services of a consumer reporting agency (Screen Now is a CRA). The FCRA requires that, before any adverse impact is taken as a result of information received through a CRA, the applicant must be informed of the information, and given time to correct any erroneous records. Even though the City's use of the State's information (violent offender registry, drivers' license database) is not through a CRA, it is HR's policy to follow the adverse impact review procedure whenever information surfaces which may result in an adverse impact on the applicant.

GOING FORWARD: We will no longer be looking at password-protected internet information for job candidates. With the assistance of our recently hired City Attorney, we recommend scheduling a Policy Meeting (within 30 days) for an update on city hiring procedures. This will include a discussion regarding the appropriate level of screening for public safety pre-employment background checks.

This was an honest mistake. Human Resources, our Police and Fire Departments were doing something they believed was consistent with our core values. I take full responsibility for this decision and we will work hard to regain the trust and confidence of the City Commission and our community.

ALTERNATIVES: As suggested by the City Commission.

ENCLOSURES:

- Recruitment and Selection Procedures
- Position Vacancy Checklist
- Employment Process Policy
- Consent and Release to Conduct Criminal Background and Reference Checks form