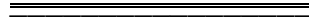
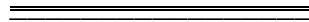


**The Bill Blackwood
Law Enforcement Management Institute of Texas**



Identifying Ethical Guardians for a Community



**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**



**By
Marc Schroeder**

**Red Oak Police Department
Red Oak, Texas
September 2018**

ABSTRACT

One of the reoccurring issues within law enforcement has been that of toxic officers gaining employment repeatedly after a history of documented misconduct at previous law enforcement agencies. This issue not only affects transparency and legitimacy with the citizens that law enforcement serves but impacts the morale of the applicable law enforcement agency which hinders the delivery of quality service. Background investigators are tasked with finding ideal applicants that meet or exceed the standards set forth by the employing law enforcement agency through a litany of examinations and assessments. These background investigators must research every aspect of an applicant's personal history and identify whether the applicant could perform as an ethical guardian of the community. Thorough background investigations are crucial and are the gateway to providing quality service. The lack of a thorough background investigation may lead to additional legal ramifications in the form of lawsuits and Brady violations. Thorough background investigations should supersede any suggested shortcuts to fill vacancies with a previously experience officer due to cost savings or an employee's personal relationship with an applicant. The well being of the community and the law enforcement agency must be a priority during the background investigation. Law enforcement agencies should conduct thorough background investigations on all applicants regardless of prior law enforcement service.

TABLE OF CONTENTS

	Page
Abstract	
Introduction	1
Position	4
Counter Position	7
Recommendation	11
References	13

INTRODUCTION

Turn on any news channel, open any newspaper and an individual is proliferated with news stories about corrupt officers with alleged histories of misconduct and complaints that span several previous law enforcement agencies. It has become commonplace for these articles to detail how officers had a history of disciplinary actions, terminations or resignations because of alleged misconduct. We have become a digital nation with instantaneous information at our fingertips. Anyone with a smart phone and open records request can obtain and upload information forever to the internet. Law enforcement officers of today must be cognizant of every career high and low will be readily accessible and documented through a variety of digital media on the internet. These previous career highs and lows require thorough investigation and documentation during background investigations to determine the applicant's suitability for employment. According to the Police Executive Research Forum (PERF), any perception that a law enforcement agency was not thorough or transparent could undermine the communities trust and confidence and potentially lead to the community doubting law enforcement agencies legitimacy (Fischer, 2014).

Each community has empowered police with being guardians of the people during times of crisis. These communities not only deserve quality service but also demand it from their representatives within the law enforcement agencies. Quality service from a law enforcement agency must be responsive to the needs of the community and based on individual rights guaranteed in the United States Constitution. The deliverance of quality service must be affirmed again within the mission statement or creed of each respective agency. Law enforcement departments maintain legitimacy

with the public they serve by the application of fair and consistent actions pursuant to the Constitution, state laws, mission statement and society norms coupled with compassion for the needs of the community. Wallace (2007) stated, "When citizens view the actions of their police agencies as being fair and ethical, their trust and respect for the organization in individual members of that organization will increase" (p. 3).

Law enforcement agencies utilize several screening mechanisms during hiring to detect and deter toxic applicants from continuing through the process. Sanders stated, "police agencies are expected to have hiring procedures in place that protect the community from unstable or incompetent police recruits" (2008, p. 129). There are some law enforcement professionals who recommend that a qualified applicant is comprised of good character and displays compassion and empathy with people.

These traits coupled with honesty are excellent starting points for a quality applicant (Means, Lowry & Conroy, 2011). Many people subscribe to the theory that law enforcement agencies would benefit from applicants being tested for emotional intelligence, which is comprised of self-awareness, self-regulation, internal motivation, empathy as well as social skills. Nunez stated, "The police profession, and their communities, expect officers to possess these strengths. They do not, however, test for them" (2015, p. 6). Regardless of the various screening processes used by law enforcement agencies, the thorough background investigation is a key tool to every process.

Professional standard units are tasked with the selection of potential guardians of a community and are dedicated to the role of gatekeepers into a law enforcement agency. These personnel have the ability to grant an individual the opportunity to serve

the community or deny them the opportunity. Through innovative investigative techniques, professional standard units can identify applicants that have the skill sets to provide such quality service. At the same time, these professional standard units are an agencies front line of defense at preventing a toxic applicant from possibly infecting the community or the law enforcement agency.

The Texas Commission on Law Enforcement (TCOLE) assists these professional standards units by mandating that a background investigation be conducted into the applicant's personal history by utilizing a personal history statement that meets or exceeds the commission-developed questionnaire or personal history statement pursuant to Texas Administrative Code 211.1 (2016). In addition, agencies that are accredited or recognized as professional law enforcement agencies maintain policies that mandate thorough background investigations that either meet or exceed the standards set forth by the TCOLE. However, the toxic law enforcement applicant or gypsy cop often moves from one law enforcement agency to another during their career. These applicants prey on communities with limited resources or abilities to conduct thorough background investigations, which would reveal their previous misconduct. In larger agencies, these applicants may develop relationships with team members within the investigating agency who will vouch for their performance and attempt to utilize them as references during the background investigation. These toxic applicants may have also recruited team members at former agencies to provide positive performance reviews and attempt to discourage the background investigator from traveling to the agency to review the applicant's personnel file.

The community is entitled to personnel who are focused on improving the quality of life in the community that they serve. Professional standard units are dedicated to their community and colleagues by providing a recruit who is capable of such service. Professional standard units can promote legitimacy and transparency within the community by vigorously investigating all law enforcement applicants regardless of the applicant's history or other recommendations. Law enforcement agencies can achieve quality service to the public and minimize potential future financial expenditures by the recruitment and hiring of quality personnel. This transparency builds trust within the community and colleagues within the law enforcement agency. Law enforcement agencies should conduct thorough background investigations on all applicants regardless of prior law enforcement service.

POSITION

Law enforcement agencies that conduct thorough background investigations of applicants clearly have the best interest of their community, agency and team members at heart. The agencies that make quality service a priority benefit by maintaining trust and legitimacy of the community, furthering the professional image of the law enforcement agency and instilling a sense of organizational pride in the team members. The aforementioned three subsections can be generated by providing quality service is one of the best recruiting tools an agency can use and that money cannot buy.

Quality service starts by valuing the community and the citizens each law enforcement agency serves and humanizing the badge with every contact. The Police Executive Research Forum stated, "People react favorably when they believe that the authorities with whom they are interacting are benevolent and caring, and are sincerely

trying to do what is best for the people with whom they are dealing” (Fischer, 2014, p. 10). Law enforcement personnel must be able to compassionately communicate with their community and be cognizant the citizens may not understand the procedural aspects of the job.

The recruitment of applicants that are open to explaining procedural processes to citizens often develop a rapport with the community, which leads to trust and legitimacy in their perception. Transparency starts with a thorough and complete background investigation to identify whether the applicant is a quality or toxic applicant. These thorough background investigations can often identify whether the applicant is a quality or toxic applicant based on the presence of factual records of misconduct maintained within a previous law enforcement agencies personnel records which would allow the investigating agency to make a predetermination prior to an offer of employment. The agencies focus must be on transparency and maintaining the communities trust. A thorough background investigation of all law enforcement applicants promotes this transparency and creates the benefit of trust and legitimacy of the law enforcement department within the community.

Law enforcement agencies can obtain the moniker of being a quality service department when the mission statement of the agency parallels the expectations of the community and are constantly reinforced throughout the ranks and executed. Law enforcement can produce policies, mission statements or obtain accreditation through a variety of state or national organizations to promote professionalism and service. However, if the team members do not buy into the vision, the agency will not obtain the needed organizational commitment to provide such quality service.

Law enforcement agencies can achieve organizational commitment by taking an active role in providing the tools needed in moving a team member towards their career goals. Law enforcement agencies that have resources such as career path development programs and provide coaching and feedback to their team members are usually indicative of agencies with organizational commitment (van Gelderen & Bik, 2016). Professional police agencies cannot tolerate the possibility of infection from a toxic applicant that could infect the agency or the team members they have worked so hard to cultivate. A thorough background investigation of all law enforcement applicants promotes quality service and creates organizational commitment from within the agency.

Police departments expend large amounts of financial resources before applicants will ever patrol the streets of a community on their own. These expenditures consist of weeks to months of work force hours and travel expenses to review records and interview subjects who are affiliated with the applicant in a professional or personal capacity. Some of these record checks can be handled with phone calls while others require a thorough records review of a former law enforcement agency. The additional expense of manpower hours for review boards, psychological examination fees, polygraph examination fees and medical examination fees also contribute to the financial expenditures of an agency to hire an applicant. The remaining expenses come in the form of training and equipment, which can put the agency investment at three to five thousand dollars before the applicant, has provided any service to the community.

Several law enforcement agencies are not financially capable of making the needed investment to ascertain whether an applicant is a viable candidate. These law

enforcement agencies focus their recruiting of applicants with prior police experience to minimize their financial expenditures. Middleton-Pope stated, "Analysis of data from a management system designed to monitor police officer conduct determined that previously experienced officers (PEO) who underwent accelerated training were involved in a disproportionate number of public complaints" (2003, p. 173). Based on this information, the community has to question on what the benefit would be in hiring any officer with previous experience.

Officers with previous experience can bring years of training and knowledge to benefit the agency or a plethora of complaints and baggage that has been ingrained into them throughout their careers. For law enforcement agencies that do not have adequate financial resources, the belief is employing an officer with prior law enforcement experience regardless of their past performance is simply an appealing financial decision (Dolan, 2014). Unfortunately, for these communities, the potential for a toxic officer slipping through the hiring process is significantly increased. The initial investment in completing a thorough background investigation of all law enforcement applicants is likely to yield dividends in the form of quality service, organizational commitment and a reduction of potential costly financial expenditures that are associated with a toxic law enforcement officer.

COUNTER POSITION

Some opponents believe it is an unnecessary waste of agency resources to complete a thorough background investigation of officers who have been previously employed as a law enforcement officer. These opponents frequently state the Texas Commission on Law Enforcement (2016) rulebook does not mandate that a law

enforcement agency physically inspect every record within a law enforcement agency that has previously employed a law enforcement applicant. The opponents cite that under the TCOLE rulebook and the Texas Occupations Code 1701.451 (2016), a law enforcement agency is obligated to obtain a signed waiver from the applicant to view employment records, request the employment separation reports or F5-R from TCOLE and make contact with a representative of each prior law enforcement agency during the background investigation. These opponents also affirm that they are obligated to submit a report to TCOLE upon separation of any peace officer that has resigned, retired, terminated or separated by any other means from their agency pursuant to the Texas Occupations Code 1701.452 (2016).

While each of the previous affirmations is correct, agency administrators may attempt to conceal misconduct by abusing them. The TCOLE F5-R (2016) report provides general separation information to a background investigator with no real information on the performance of a peace officer while employed at a previous agency. The report provides the dates of employment for each previous agency along with the name and the type of separation for each. These separations are classified as honorably discharged, general discharge or dishonorably discharged. While this information is useful, it provides little insight into the applicant's performance or any disciplinary actions or misconduct while employed with the agency.

Some law enforcement agency administrators fail to correctly complete the F5 separation report and allow officers accused of misconduct to resign prior to the initiation of an investigation with an honorable or general discharge depending on the seriousness of the misconduct. While other law enforcement administrators may report

the separation correctly but fail to attend an administrative license hearing upon notification. This act occasionally leads to the administrative judge improving the separation classification on behalf of the former employee without opposing testimony. Law enforcement agencies should conduct thorough background investigations on all applicants and review all employment records from any previous law enforcement agency. Law enforcement agencies that complete thorough background investigations are able to make informed pre-employment decisions on the suitability of an applicant and be able to effectively defend their selection if required. Law enforcement agencies that fail to complete thorough background investigations could also lead to potential Brady law implications as well.

Pursuant to *Brady v. Maryland* (1963) and *Giglio v. United States* (1972), law enforcement agencies must be able to furnish a record of an officer's misconduct to the prosecutor if it has any possibility of impeaching the credibility of the officer as a witness (as cited in Means & McDonald, 2016). Law enforcement agency administrators that fail to authorize a thorough background investigation of an applicant, place the credibility of the agency and community in unnecessary jeopardy.

Some law enforcement agency administrators believe they are under no obligation to provide access to a former employee's personnel records and the information from the separation report is adequate. Some of these situations may occur under the advice of counsel because the employee separated under a mutual agreement or some type of non-disclosure agreement drafted by the human resources division or city attorney and the separating employee. These agency administrators and city attorneys express that the records are not subject to release and any release could

place the city in a position of liability. Some agencies have even failed to provide access to the records even with a signed waiver from the applicant presented and forwarded the documents to the Attorney General in an attempt to buy time or discourage the pursuit of the personnel records.

These perceptions by opponents are simply not true and can actually place the administrators TCOLE peace officer license in jeopardy if they fail to comply. The TCOLE Rulebook 1701.451 states, "A law enforcement agency that obtains a consent form described by Subsection (a) (2) (B) shall make the person's employment records available to a hiring law enforcement agency on request" (2016, p. 124). A law enforcement agency background investigator that serves a designee or administrator of the applicant's former law enforcement agency with a signed waiver shall provide access to these applicants' personnel records.

If the agency administrator fails to comply with the waiver, the background investigator has the option to file a complaint with the enforcement division of TCOLE for a violation of rule 1701.451. The TCOLE enforcement division will verify the information with the former agency and if necessary, cite the agency administrator for the violation, which could result in the suspension of the agency administrator's peace officer license. The TCOLE Rulebook 223.15 states, "Unless revocation is required, the commission may suspend a license or certificate for violating any provision of the Texas Occupations Code, Chapter 1701 or commission rule" (2016, p. 67).

As long as information in the personnel file is made available in good faith, the law enforcement agency administrator, city attorney or human resources division should not be concerned with liability. The TCOLE Rulebook 1701.456 states, "A law

enforcement agency, agency head, or other law enforcement official is not liable for civil damages for a report made by that agency or person if the report is made in good faith” (2016, p.128). Law enforcement agencies, which are passionate about identifying ethical guardians for their communities, will not be discouraged by such tactics and must utilize the law to complete a thorough background investigation.

RECOMMENDATION

Every law enforcement agency should mandate thorough background investigations of law enforcement applicants because they provide a multitude of benefits for the community, law enforcement agency and its team members. These benefits lead to a level of professional and ethical service delivered to the community. Law enforcement agencies can gain or improve trust and legitimacy with the community they serve and improve the professionalism and organizational commitment from their personnel by conducting thorough background investigations. The initial financial expenditure associated with a thorough background investigation generates a potential reduction in costly investigations or training expenses to correct a problem that could have been identified during the background investigation.

Some law enforcement agency opponents would like to forego a thorough background investigation because they state it is not required by TCOLE rules. These administrators cite the rules that mere contact with an agency will suffice and meets their obligations to TCOLE. The statements are correct but provide a disservice to the agency, community and colleagues, which negatively affects the professionalism of the department and the level of service they provide. This unethical practice opens the law enforcement agency and the administrator to potential civil recourse and is considered a

violation of the law enforcement code of ethics. Some opponents believe liability is incurred if they permit an outside agency access to personnel records of a former law enforcement employee. These administrators will provide basic information or refuse all access by outside agencies. However, TCOLE rules and regulations order these agencies to open their files and comply with the outside agency or face disciplinary action for their lack of cooperation.

Law enforcement agencies must remember, failure to complete a thorough background investigation of a police applicant can lead to ethical, professional and legal ramifications that could have lasting effects on the law enforcement agency and the community they serve. According to Dolan, law enforcement agency administrators must remember the oath they took and provide access to colleagues from other law enforcement agencies who are conducting a background investigation (2017). Law enforcement agencies that are not familiar with thorough background investigations should seek out guidance from outside agencies and adopt policies and procedures that provide such guidance. Although law enforcement agencies may experience the occasional challenge from opponents in completing a thorough background investigation, investigators must stay focused on the goal of identifying an ethical guardian of the community.

REFERENCES

- Dolan, M. (2014, February). *“Gypsy Cops” and agency liability*. Retrieved from http://www.llrmi.com/articles/legal_update/2014_dolan_gypsyncops.shtml
- Dolan, M. (2017, March). *Confronting the “Gypsy Cops” problem*. Retrieved from https://www.dolanconsultinggroup.com/wp-content/uploads/2017/03/Legal_Article_Gypsy_Cops_March2017.pdf
- Fischer, C. (Ed.). (2014, March). *Legitimacy and procedural justice*. Washington, DC: Bureau of Justice Assistance. Retrieved from http://www.policeforum.org/assets/docs/Free_Online_Documents/Leadership/legitimacy%20and%20procedural%20justice%20-%20a%20new%20element%20of%20police%20leadership.pdf
- Means, R., Lowry, K., & Conroy, D. (2011, March). Hiring: Background investigation, part 3. *Law & Order*, 59(3), 12-13.
- Means, R., & McDonald, P. (2016, March). Brady/Giglio disclosure requirements. *Law & Order*, 64(3), 10-11.
- Middleton-Hope, J. (2003). Misconduct among previously experienced officers. *Saint Louis University Public Law Review*, 22(1), 173-184.
- Nunez, E.R. (2015). Recruiting for emotional-social intelligence (ESI). *Journal of California Law Enforcement*, 49(3), 6-13.
- Sanders, B.A. (2008). Using personality traits to predict police officer performance. *Policing*, 31(1), 129-147.

Texas Commission on Law Enforcement. (2016, September 1). *Statute and rules handbook*. Retrieved from

http://tcole.texas.gov/sites/default/files/Rules%20Handbook%209_1_2016.pdf

van Gelderen, B. R., & Bik, L. W. (2016, January). Affective organizational commitment, work engagement and service performance among police officers. *Policing*, 39(1), 206-221.

Wallace, R. (2007). *Ethics policies for law enforcement agencies*. Huntsville, TX: The Bill Blackwood Law Enforcement Management Institute of Texas.