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## **Act on Background Checks**

(177/2002)

### Chapter 1 — **General provisions**

#### Section 1 — *Scope of application*

- (1) This Act applies to background checks, which may be carried out on persons seeking an office or position, persons to be admitted to a position or training, or persons who are performing an office or position.
- (2) A background check may be carried out as basic, extended or limited.

#### Section 2 — *Objective*

- (1) The objective of this Act is, by providing for a procedure on background checks, as referred to in section 1, and taking due account of the protection of the privacy of the subject of the check and of data protection, to improve the chances of preventing criminal offences that would seriously compromise:
  - (1) the internal or external security of Finland, national defence or preparedness for emergency conditions;
  - (2) the relations of Finland to other states or to international organisations;
  - (3) public finances;
  - (4) a considerably valuable business or professional secret of a private party, or another corresponding very significant private interest of a financial nature; or
  - (5) data security that is very significant in view of the protection of the interests listed above in subparagraphs (1)—(4).

### Section 3 — *Restrictive provision*

The powers under this Act may be used only if this is necessary for the attainment of the objective of the Act. When the powers are being used, the protection of anyone's privacy shall not be breached more than necessary.

## Chapter 2 — **Basic background check**

### Section 4 — *Applicant*

- (1) The following shall be legitimate applicants for a basic background check:
  - (1) a state agency and an independent state institution;
  - (2) the office commission of the Parliament, the Parliamentary Ombudsman, the state auditors and the State Audit Office;
  - (3) a state enterprise;
  - (4) a municipality and a federation of municipalities; and
  - (5) a private corporation and foundation, whose seat, central administration or main operative unit is located in Finland, and a foreign corporation or foundation that has a registered branch in Finland.
- (2) In addition, a background check may be carried out also upon the application of someone else than those referred to in paragraph (1), if a treaty binding on Finland or another international obligation so requires.

### Section 5 — *Competent agency*

The Security Police shall decide on a background check. However, the Defence Staff shall decide on a background check if the applicant belongs to the defence administration. or performs a task on commission by the defence administration.

### Section 6 — *Prerequisites for a background check*

- (1) It shall be a prerequisite for a background check that the subject has given a prior written consent to the same.
- (2) A background check may be carried out for an applicant referred to in section 4(1)(5) only if the applicant agrees to the conditions set by the competent agency, as are necessary for the protection of the personal data of the subject and the purpose of the check.

Section 7 — *Applying for a background check*

- (1) A background check shall be applied for in writing. The application shall state the name of the subject and the office or position to which the subject is to be appointed or taken, or which the subject performs, as well as the other information necessary for the background check.
- (2) The signed consent of the subject shall be appended to the application for a background check; likewise, an affirmation by the subject to the effect that he or she has been notified of the purpose and use of the background check and of his or her right to be informed of the results of the check shall also be appended to the application.

Section 8 — *Carrying out a background check*

- (1) A background check may only be based on registered data that is contained in:
  - (1) the police matters data system, the police administration data system, or the Security Police operative data system, as referred to in the Police Data Files Act (509/1995);
  - (2) the criminal records, or the register of prohibitions to pursue a business;
  - (3) the data systems of the judicial administration on pending or closed prosecutions, or the criminal justice decisions register;
  - (4) the criminal offences register or the security data register of the Defence Staff;
  - (5) the border control register of the Frontier Guard Staff;
  - (6) the investigation and executive assistance register of the Customs Service;
  - (7) the population register; and
  - (8) the Foreign Ministry's visa sub-register and immigration control sub-register that form a part of the general immigration register.
- (2) Data on reported crimes contained in the police matters data system may only be used if there is no reason to believe that the report is without a basis. In the use of such data, a verification of the current status of the matter shall be made. Data in the criminal justice decisions register shall not be used, if the same data has been deleted from another register referred to in paragraph (1) by virtue of the material legislation pertaining to that register.

- (3) The access of the competent agency to information in the files and registers referred to in paragraph (1) shall be governed by the specific provisions in other legislation.
- (4) When carrying out a background check, the competent agency may for the purpose of verifying register data referred to in paragraph (1), also use other information in the possession of the authorities, if the use of the information is necessary, in a given case, for the achievement of the purpose of the check, and if there is no doubt as to the correctness of the information. When carrying out a background check, no use shall be made of insinuations or allegations of crime, nor of suspicions that the subject may commit criminal offences in the future.
- (5) When carrying out a background check, information dating back to ten years or more shall not be used, unless the use of the information is necessary for the achievement of the purpose of the check; likewise, information on acts committed while younger than fifteen years of age shall not be used.

#### Section 9 — *Background check based on an international obligation*

If the background check is carried out on the basis of a treaty binding on Finland or another international obligation, information other than that referred to in section 8 may be used in so far as a specific duty to do so has been laid down in the treaty or other international obligation.

#### Section 10 — *Notification of the results of a background check*

- (1) The results of a background check shall be delivered to the applicant in writing. Only the information that is necessary, in a given case, for the achievement of the purpose of the check shall be included in the results. When information on a pending criminal matter is included in the results of a background check, a note of the current status of the matter shall likewise be included therein.
- (2) The competent agency shall not include in the results of the background check any assessment as to the reliability of the subject or his or her appropriateness for an office or task, unless otherwise required by the treaty or other international obligation referred to in section 9.
- (2) If, during the course of the background check, no information arises that would be relevant for its purpose, the authority may notify the applicant of the same also orally.

### Section 11 — *Use of the results of a background check*

The results of a background check shall not be binding on the applicant. The information contained in the results shall not be used for purposes other than that stated in the application.

### Section 12 — *Safekeeping and confidentiality*

- (1) The applicant shall keep the results of the background check safe, so that the information therein is accessible only to those persons for whom it is necessary in order to perform their tasks. The applicant shall destroy the results as soon as they no longer are necessary for the stated purpose of the background check, and in any event no later than two years after the background check.
- (2) The provisions in sections 22—24 of the Act on the Openness of Government Activities (621/1999) apply to the secrecy of the results of a background check, the documents pertaining to the same and the data contained therein, as well as to the duty of confidentiality and the duty of non-use, also in the event that the documents and data have been delivered to some other applicant than an authority referred to in section 4 of the said Act.

### Section 13 — *Access to information*

- (1) Any person has the right to be informed by the competent agency as to whether he or she has been subject to a background check for any given task. A subject shall have access, upon request to the competent agency, to the information contained in the results. However, the subject shall not have access to information taken from a register which the subject is not entitled to inspect.
- (2) If, in cases referred to in section 10(3), the notification has been given orally, also the applicant for the background check may provide the subject with information on the notification.
- (3) Separate provisions apply to the right of a person to inspect personal data contained in various registers.

## Chapter 3 — **Clearance classification and extended background check**

### Section 14 — *Clearance classification*

- (1) It may be decided by the Government that clearance classification be implemented in a given state agency or a defined part thereof, if absolutely necessary for the achievement of the objective of this Act.

- (2) The first clearance class shall cover tasks where the person has constant access to more than an insignificant amount of confidential information, the disclosure of which would seriously compromise the interests referred to in section 2(1)—
- (3). The second clearance class shall cover all other tasks relevant to the objective of this Act.
- (3) Tasks covered by the first and second clearance class shall be defined by a decision of that Ministry to whose administrative sector the agency referred to in paragraph (1) belongs.

#### Section 15 — *Carrying out an extended background check*

- (1) An extended background check may be carried out on a person seeking a task covered by the first clearance class, a person to be appointed to such a task or a person performing such a task. An extended background check may be carried out also when so required by a treaty or other international obligation binding on Finland.
- (2) In addition to what has been provided on a basic background check, an extended background check may cover the business activities of the subject, his or her assets and liabilities, as well as the other financial interests of the subject. For the clarification of the financial status of the subject, information in the possession of the enforcement authorities may be used in addition to what has been provided in section 8.
- (3) An extended background check shall include a personal data declaration, by which the subject shall himself or herself supply basic information on himself or herself, on his or her family and relations, training and education, places of residence and office or employment history, for the ten preceding years at most. Where necessary, the personal data declaration may contain also information on the financial interests of the subject, as referred to in paragraph (2).

#### Section 16 — *Right to make remarks*

- (1) The subject has the right to inspect the information contained in an extended background check, and to make his or her remarks on the same before the results are delivered to the applicant. This right does not apply, however, to information taken from a register which the subject is not entitled to inspect.
- (2) The competent agency shall enter the remarks of the subject into the extended background check, unless they result in the immediate rectification of the information or unless the remark is to be deemed manifestly without a basis. If the competent agency refuses to enter a remark of the subject into the extended

background check, it shall issue a reasoned written decision on the same to the subject.

- (3) Separate provisions apply to the rectification of data in a register.

#### Section 17 — *Extended background check and persons close to the subject*

- (1) If necessary for the achievement of the purpose of an extended background check, the check referred to in section 8 may in a given case be carried out also on the parents, children, spouse or live-in partner of the subject (*person close to the subject*). It shall be a prerequisite for the check that the person close to the subject gives his or her prior written consent to the same.
- (2) If the applicant deems it necessary that the extended background check be carried out also on a person close to the subject, it shall supply a reason for the same in the application.
- (3) The provisions on the access of the subject to information apply also to a person close to the subject, once a check referred to in paragraph (1) has been carried out on him or her. The right of the person close to the subject to make remarks on the information pertaining to him or her shall be governed by section 16.

#### Section 18 — *Provisions applicable to an extended background check*

In addition the provisions in this chapter, the provisions on a basic background check apply also to extended background checks, with the exception of section 4 and section 6(2).

### Chapter 4 — **Limited background check**

#### Section 19 — *Purpose of a limited background check*

- (1) The purpose of a limited background check is to determine whether a person can be granted access to a site or location for reasons of work.
- (2) The following are sites or locations as referred to in this chapter:
  - (1) a nuclear installation;
  - (2) an airport, port or other comparable transport facility important to the external or internal communications of the country;
  - (3) an important utility installation;
  - (4) a garrison, repository or other facility under the control of the armed forces which is of considerable significance to military national defence;

- (5) an operative installation of the armed forces, the frontier guards or the police;
- (6) an installation which is of significance to the use of the telecommunications network of the authorities; and
- (7) an installation of a state agency, a public or private research installation or a computer centre which is of considerable significance to the internal or external security of the state or the national defence, or of extremely considerable significance to public finances.

*Section 20 — Application for a limited background check*

When applying for a limited background check, the site or location referred to in section 19(2) shall be stated, as shall the work that the subject is to perform there.

*Section 21 — Competent agency for limited background checks*

- (1) The local police authority of the municipality where the site or location is shall decide on a limited background check, in so far as not otherwise provided in paragraph (2).
- (2) The Defence Staff shall decide on a limited background check, if the matter concerns access to an installation under the control of the armed forces.

*Section 22 — Carrying out a limited background check*

A limited background check may only be based on information contained in the police matters data system, the criminal records, the judicial administration registers on pending or closed prosecutions, the criminal justice decisions register or the criminal offences register or security data register of the Defence Staff.

*Section 23 — Provisions applicable to a limited background check*

In addition to the provisions in this chapter, the provisions on regular background checks apply also to limited background checks, with the exception of section 5 and section 8(1).

## Chapter 5 — **Miscellaneous provisions**

### Section 24 — *Legal safeguards*

- (1) A decision of the competent agency refusing an application for a background check shall not be open to appeal.
- (2) A decision of the competent agency refusing to provide the information referred to in section 13(1) or section 16(1), or to make an entry referred to in section 16(2), shall be open to appeal before an administrative court, as provided in the Act on Administrative Judicial Procedure (586/1996). An order by an administrative court overturning or amending a decision by a competent agency referred in section 5 shall be open to appeal also by the said authority.
- (3) The Data Protection Ombudsman is entitled to acquaint himself with a background check provided in this Act for the purpose of verifying its lawfulness.

### Section 25 — *Inter-authority transfers of information or by an educational institution*

Notwithstanding the confidentiality obligation provided in the Act on the Openness of Government Activities, the Security Police, the Defence Staff and the local police authorities may transfer among themselves information required for a given background check.

### Section 26 — *Personal data files on background checks*

Personal data files containing information on background checks shall be governed by the provisions of the Police Data Files Act and the Act on Police Operations within the Armed Forces (1251/1995).

### Section 27 — *Charges for background checks*

Background checks carried out by the competent agencies on the basis of this Act shall be subject to a charge, applying, in so far as appropriate, the provisions of the Act on the Charge Criteria of the State (150/1992). However, a background check carried out by a competent agency on application by an agency or by an educational institution within the same administrative sector, shall be free of charge.

### Section 28 — *Penal provisions*

- (1) A breach of the confidentiality obligation referred to in section 12(2) shall be subject to a penalty, as provided in chapter 38, section 1 or 2, of the Penal Code

(39/1889), unless the act is punishable under chapter 40, section 5, of the Penal Code, or more severely punishable under another provision in the law.

- (2) A personal data offence shall be subject to a penalty as provided in chapter 38, section 9, of the Penal Code; a personal data violation shall be subject to a penalty as provided in section 48(2) of the Personal Data Act (523/1999).

Section 29 — *Further provisions*

- (1) Further provisions may be issued by a Decree of the Ministry of the Interior on the information to be supplied with an application for a background check to be carried out by the Security Police or a local police authority, on the application procedure, and on the conditions referred to in section 6(2).
- (2) Further provisions may be issued by a Decree of the Ministry of Defence on the information to be supplied with an application for a background check to be carried out by the Defence Staff, on the application procedure, and on the conditions referred to in section 6(2).

Section 30 — *Entry into force*

- (1) This Act enters into force on 1 September 2002.
- (2) Measures necessary for the implementation of this Act may be undertaken before its entry into force.