A REVIEW OF THE FRESNO FIRE DEPARTMENT'S PRE-EMPLOYMENT
BACKGROUND INVESTIGATIONS PROCESS

EXECUTIVE ANALYSIS OF FIRE SERVICE OPERATIONS IN EMERGENCY
MANAGEMENT

BY: Kerri L. Donis
Deputy Chief
Fresno Fire Department
Fresno, California

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ABSTRACT

Although the Fresno Fire Department (FFD) has a pre-employment background investigation process in place, improvements are needed to keep the process current with best practices and to ensure the most accurate assessment of potential candidates are made.

The purpose of this applied research project is to determine the effectiveness of the pre-employment background investigation process and identify actions the Fresno Fire Department (FFD) could take to improve the process.

The procedure utilized for the research project was descriptive. The following research questions were asked:

1. Why are pre-employment background investigations necessary?
2. What laws apply to unlawful and unfair employment practices regarding pre-employment background investigations?
3. What information should be included in a pre-employment background investigation?
4. What is the effectiveness of pre-employment polygraph and psychological tests in qualifying perspective candidates?

The results of the research project found that although the FFD pre-employment background investigation process has many effective components, the FFD had a few improvement opportunities that needed to be addressed in order to implement a more professional process.

The recommendations of the research project are for the FFD to make improvements to its pre-employment background investigation process by first; scheduling all background investigators to attend the same training classes, creating a systematic and uniform set of procedures and line of questioning. Secondly, identify a specific “professional” polygraph
examiner to administer the test to perspective candidate, which will remove any subjective interview techniques. Finally, discontinue the practice of psychological testing by a professional psychologist, as this practice is extremely subjective and interpretation of the perspective candidates, comments and/or writings are made by the psychologist.
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INTRODUCTION

The FFD has always conducted pre-employment background investigations on all perspective candidates; however the depth and breadth of those pre-employment background investigations have been varied through the years. The purpose of a pre-employment background investigation is to allow an employer to determine if an individual candidate meets the minimum qualifications for the job requirements of the position in question. The pre-employment background investigation should also reveal the candidate’s moral character based on past acts, choices, and behaviors. Pre-employment background investigations add an additional layer of testing (or evaluation) which allows employers to select the best candidates, provided fair employment practices are not violated. The problem is that significant amounts (over 50 percent) of all potential firefighter recruits fail the pre-employment background process.

The purpose of this applied research project is to determine the effectiveness of pre-employment background investigations and to identify actions the Fresno Fire Department can implement to improve the current process.

Descriptive research was used to answer the following questions:

1. Why are pre-employment background investigations necessary?
2. What laws apply to unlawful and unfair employment practices regarding pre-employment background investigations?
3. What information should be included in a pre-employment background investigation?
4. What is the effectiveness of pre-employment polygraph and psychological tests in qualifying perspective candidates?
Research for this project began with information gathering at the FFD and continued at the Learning Resource Center of the National Fire Academy. A literature review was conducted from a variety of publications, and interviews were conducted with the Personnel Manager for the FFD and the Deputy Fire Marshal of Investigations for the FFD.

BACKGROUND AND SIGNIFICANCE

Over the last five years the FFD has hired over 164 new firefighters to fill new positions or to fill vacant positions due to retirements. Many fire departments across the country are in a similar hiring phase of which requires a pre-employment background investigation process to assist in determining qualified candidates. As the hiring momentum continues, it is critical that departments hire candidates with the proper work ethic, attitude, mental and physical abilities, and good moral character, as these young candidates will quickly become company officers in the fire service and serve as the first line supervisors for engine and truck companies.

The pre-employment background investigation for perspective Fresno firefighters is an essential phase in the hiring process. This phase includes: A polygraph test and/or psychological test as well as a background investigation. It is also essential that the pre-employment background investigation process be thorough, comprehensive, and conducted in a lawful manner.

The minimum qualifications for an entry-level Fresno firefighter recruit are very limited which allows for a significant percentage of the population to be eligible to apply. Because the minimum qualifications for the entry-level position are so limited, this further emphasizes the importance of screening perspective candidates to ensure qualified personnel are selected. The
minimum qualifications to apply for a Fresno Fire Department entry-level position are as follows:

- A United States citizenship or permanent resident alien.
- At least 21 years of age.
- High school diploma, or possess a G.E.D., or two-year or four-year degree.
- Valid Drivers License.

Once a candidate has met all minimum qualifications listed above to test for an entry-level position, the following are additional steps that must be satisfied in order to continue and/or complete the entire testing process:

- Pass the written examination.
- Pass the physical agility test.
- Pass the Chief’s oral interview (panel of raters).
- Pass the polygraph test and/or psychological test.
- Pass a thorough background investigation.
- Pass the medical examination.

It is the researcher’s intent to use the information provided in the Executive Analysis of Fire Service Operations in Emergency Management course at the National Fire Academy to ensure that the FFD identifies improvement opportunities operationally in the area of pre-employment background investigation process, and ensure that any future changes in the process are successfully implemented.

The problem addressed in this paper relates to the National Fire Academy’s (NFA) Executive Analysis of Fire Service Operations in Emergency Management course as the intent of the course is to educate future leaders of the fire service to effectively manage emergency
incidents. Those future leaders are the entry level firefighters, including those who successfully complete a professional pre-employment background investigation process. The first step in this process was the collection and evaluation of informative data as it relates to pre-employment background investigation processes.

LITERATURE REVIEW

The literature review was carried out in accordance to the applied research guiding principles of the Executive Fire Officer Program at the National Fire Academy, and provided an abridgment of findings of others as it related to pre-employment background investigation processes. The purpose of the literature review was to facilitate the researcher’s ability to answer the following questions: **Question One:** Why are pre-employment background investigations necessary? **Question Two:** What laws apply to unlawful and unfair employment practices regarding pre-employment background investigations? **Question Three:** What information should be included in a pre-employment background investigation? **Question Four:** What is the effectiveness of pre-employment polygraph and psychological tests in qualifying perspective candidates?

**Question One: Why are pre-employment background investigations necessary?**

Pre-employment background investigations can give some prospective employers information regarding the character and previous work performance of a candidate. Checking with former employers to determine past performance can be very predictive of future job performance. Schuler (1990), “if a candidate has demonstrated traits such as inability to follow
instructions, assault behavior, or any other such undesirable behaviors, the prospective employer can use this information in deciding not to hire the candidate, thus limiting the resulting liability should the agency hire the individual and associated identified behaviors” (p.59).

“Pre-employment background investigations have evolved into a pivotal factor in hiring decisions as to whether your company (fire department) is large or small or any size in-between, it only takes one news making incident concerning an employee; or even ex-employee, to do significant damage to your reputation” Pendergast (2005).

Perspective firefighter candidates of the FFD are required to complete a pre-employment background investigation packet. The background investigation packet is very comprehensive and provides a foundation for further investigation into the candidates work history, financial solvency, former employers, neighbors, and friends. The value of properly conducted and completed pre-employment background investigation cannot be emphasized enough thus; the FFD investigators utilize this packet as the foundation for the background investigation.

Holden (1986) comments, “Background investigations should continue until the hiring agency and the background investigator are satisfied that they have determined the moral character and history of the candidate”

**Question Two: What laws apply to unlawful and unfair employment practices regarding pre-employment background investigations?**

In addition to the statutory requirements for a background investigation, concerns regarding civil liability also make pre-employment background investigations a must for any prudent public safety agency. Public employees, including firefighters, have always been liable for their own negligent or wrongful acts. In most cases, they are liable for both compensatory and punitive damages. Up until about ten years ago, public employers were considered immune
from civil liability resulting from the wrongful or negligent conduct of their employees. While individual employees are still civilly liable, the courts have held that the public agencies are also often civilly liable for the compensatory damages when the wrongful act occurs while the employee is acting in the course and scope of employment. Because the governments, including fire departments, are considered to have “deep pockets” and an inexhaustible supply of revenue, lawsuits for vicarious liability are now commonplace. Evans (2004) states, “many departments hire personnel whose experience may not have been appropriately screened, who may not be certified, or who is erroneously qualified. Inadequate screening can lead to embarrassing, expensive and often serious consequences.”

If a litigant can show that an employee acted in a negligent or tortuous manner while in the course and scope of his employment, the employer can be liable for the employees’ negligence. Also, if a litigant can show by a mere preponderance of the evidence that the fire department was negligent in either the hiring, training, supervision, or retention of an employee, the department may also be held liable. Monetary judgments can be enormous. Fire departments are exposed to tremendous liability for the acts of their employees. The nature of firefighting places the prospective employee in a position of great public trust, and there is a duty for the employer to ensure that those occupying those positions are fit to do so.

Bruegman (2005), “The department’s reputation and its overall success are tightly linked. To succeed in its mission, a department/organization must have the confidence of the people” (p.206).

In the California Supreme Court case of Mary M. v. City of Los Angeles, we find an excellent example of civil liability assumed by the employer for the acts of an employee who was deemed to be acting in the course and scope of duty even when he committed a rape.
“In October 1981, Mary M. was driving home alone when Sergeant Schroyer of the Los Angeles Police Department for erratic driving stopped her. Sergeant Schroyer, who was in uniform and driving a marked patrol vehicle, had the plaintiff exit her vehicle and perform a roadside sobriety test. She had been drinking and did not perform the test well. She began to cry and pleaded with Schroyer not to take her to jail. Schroyer ordered her to get into the front passenger seat of his patrol vehicle and drove her home. After arriving at the plaintiff’s home, Schroyer demanded “payment” for taking her home. She tried to runaway, but Schroyer grabbed her, threw her down on a couch and threatened to take her to jail. She stopped struggling and Schroyer raped her.”

In this case, the court wrote in part that police officers hold a unique position of public trust and are responsible for enforcing the law and protecting the community. They are given authority to arrest, detain and even use deadly force. Those who challenge an officer’s authority do so under threat of arrest and criminal prosecution. When law enforcement officers abuse their authority they violate the public trust and thus erode the community’s confidence in the integrity of the police force.

The court found that, “the employer could be held liable under the doctrine of respondent superior. Under the doctrine, an employer can be held vicariously liable for acts committed by an employee within the scope of employment” (I.A.C.P.). The plaintiff presented evidence that
the rape resulted from a misuse of official authority. Sergeant Schroyer was on-duty, in uniform, and armed. He detained the plaintiff using the red-lights on his patrol vehicle. He took advantage of his authority by ordering the plaintiff into his patrol vehicle and driving her home. He again asserted his authority as a police officer when he threatened to take her to jail. Based on these facts, it is reasonable to conclude that Sergeant Schroyer was acting in the course and scope of his employment when he sexually assaulted the plaintiff even though his conduct was unlawful and in violation of Department policy.

Although this example is of a police officer, the principal applies to firefighters, as they are public safety employees, which hold many of the same public trusts of protecting and serving the local communities.

Any selection process is discriminatory in nature. However, this discrimination must be proper, lawful, and based on job valid criteria to be legal. Employers are allowed to discriminate or chose between candidates because no group of candidates is likely to be equally and completely qualified in every respect. Employers are allowed to select employees who are identified as the best as long as they do not violate other established fair employment practices.

A background investigation is based on the premise that certain job relevant behaviors and qualities are needed for a candidate to successfully perform the duties of the position. Therefore, a proper pre-employment background investigation only makes inquiries into areas, which can legitimately demonstrate the candidates’ qualifications for the position. The investigation should at no time touch or focus on areas that are afforded legal protection, such as ethnic origin, religious practices, sexual orientation, race, or sex. The only exception would be if there were a direct, specific and a lawful nexus between the legally protected area and the bona fide occupational qualifications of the position.
The Civil Rights Act of 1964 is the cornerstone of federal mandates with regard to fair employment. Very simply, this legislation provides that no employer, either private or public, may discriminate against anyone on the basis of race, religious creed, color, national origin or ancestry, or sex.

Conducting pre-employment background investigations is a highly fluid and very specialized assignment. Persons conducting pre-employment background investigations must be vigilant to ensure that they are conducting an investigation that is lawful and does not unknowingly violate the rights of the candidate. If they are not careful and mindful of the laws as they change, they may find themselves trampling the rights of the candidate. Also, an inadequate or incomplete investigation can result in the hiring of a candidate that could potentially have harmful and long lasting damaging effects on the department and the community.

**Question Three: What information should be included in a pre-employment background investigation?**

In many states, including California, public policy and regulations have identified the areas of inquiry relative to a pre-employment background investigation. In California those areas of inquiry include, personal identifying information, relatives, friends and acquaintances, education, residences, employment, military duty, financial status, legal history, motor vehicle operation, and general topics. Although the areas of inquiry have been identified, the depth and method of inquiry are left to the investigator and the department to determine.

Much of this information would be difficult, if not impossible, to obtain if it were not for both case law decisions and some statutory provisions. The legislature and the courts have
recognized the importance of conducting complete and thorough investigations on police officer candidates. As a result, employers have been relieved from much of the worry about being civilly liable for releasing information, and individuals have also received some assurances that the information they provide is privileged and they cannot be sued for slander. Without the honest and forthright receipt of information the accuracy and quality of a background investigation would be without value.

California Government Code Section 1031.1 states that, “employer shall, upon request of an investigating agency that is conducting a background investigation disclose employment information relating to current or former employee.” This law exempts employers from civil liability who, in the absence of fraud or malice, disclose information in accordance with this law. For purposes of this section ‘employment information’ includes written information in connection with job applications, performance evaluations, attendance records, disciplinary actions, eligibility for rehire, and other information relevant to performance. An employer’s refusal to disclose information requested by an investigating agency shall constitute grounds for injunctive relief requiring disclosure on the part of the employer. Employment information disclosed by an employer to requesting agency shall be deemed confidential.

Currently, the FFD has two (2) waiver/authorization release forms that perspective candidates must sign to allow for background investigators to review personnel files of previous employers and to access State and local law enforcement agencies as and Department of Motor Vehicles.

Very few people will furnish background information to an investigator without a valid, signed authorization form. In California, Government Code Section 1031.1 requires that the
authorization form be signed by the candidate and notarized to invoke the mandatory disclosure provisions of this section.

One of the primary goals of the background investigation is to clearly establish the identity of the applicant. The examination of birth certificates with accompanying photo identification such as a driver’s license is generally available. Birth certificates are available at two locations, the local registrar of vital statistics in the county or city where the candidate was born, or with the state department of vital records. Birth date, birthplace and citizenship also are determined. Many documents can be used to establish citizenship, such as a U.S. passport, birth certificate or Certificate of Naturalization. Imposing citizenship requirements that are not required by law can limit the candidate pool and exclude some ethnic communities.

Those people who are familiar with the candidate, relatives, references and acquaintances often have valuable information into the candidate’s qualifications for the position. However, much of the information from these sources should be carefully considered, as it may not be truly accurate. Family members and friends will most likely not reveal information that would be damaging to a candidate’s selection. As well, ex-spouses may provide negative information that, because of an acrimonious situation, should be viewed with a degree of skepticism. Enough information from these sources should be obtained generally until a consistent picture of the candidate is developed.

Residence and neighborhood checks can reveal much information regarding a candidate. Primarily, a residence check establishes that the candidate actually lives at the address given. Interviews with the neighbors can determine how the candidate behaves, driving habits, coming and going from the residence, alcohol and drug use, if the candidate gets along with the neighbors and whether the candidate is friendly and helpful. A visual inspection of the
candidate’s residence establishes whether or not the candidate cares for the property. Landlords are also able to indicate whether the candidate pays the rent on time and is properly caring for the property, and they are most likely the one to receive complaints from the neighbors regarding a candidate’s behavior. Records and lease agreements kept by landlords also contain information regarding other persons living with the candidate, previous addresses, and employment information. If the property is owned, the County Assessor’s Office will have records of who actually owns the property and records of any tax liens or mortgages.

One of the best indicators of how a candidate will perform as an employee is how effective he/she performs at their present and previous employers. The more recent the information, the more reliable it really is. Care should be taken to remember that this information could only be utilized as an investigative lead. Some employers purge personnel records after an employee leaves employment, however, California Government Code Section 12946 declares it to be unfair employment practice to destroy any personnel record for a period of two years after they were created.

Employers must be honest in the statements and information they provide to background investigators. The California Labor Code Section 1050 provides that, “any employer who, after discharging a person from service or after an employee has voluntarily resigned such service, by any misrepresentation prevents or attempts to prevent the former employee from obtaining employment is guilty of a misdemeanor.” Some employers may openly misstate facts or lie about employees. Sometimes this is done out of spite or ignorance. This law is to dissuade mean spirited former employers from attempting to ‘get even’ with a former employee.
Prendergast (2005) states, “Many employers refuse to provide sensitive or derogatory information, fearing a defamation suit from the former employee. They offer only what is called a standard reference to confirm job titles and dates. They refuse to give qualitative information – such as drug abuse histories – to prospective employers who would gain valuable insight from this data. But this will no longer be possible because more and more employers are being sued under the negligent referral doctrine, which holds an employer accountable for not revealing critical information.” Additionally, a review of military service or registration for selective service should be completed. Recently, many localities, including the State of California, prohibit employment of an individual if they have not registered for Selective Service.

Information regarding a candidate’s financial history is simple to obtain and can yield much useful information. The Fair Credit Reform Act of 1996 requires, “A separate consent to receive credit information and any adverse hiring decision based on the credit report requires the candidate be fully informed of their rights under the Act.”

**Question Four: What is the effectiveness of pre-employment polygraph and psychological tests in qualifying perspective candidates?**

Polygraph and psychological testing is a fairly common tool in the pre-employment background investigation process. Although the polygraph test (or lie detector) has been utilized for many years by other agencies (Federal, law enforcement) as a required or standard practice, only recently has fire departments started using this tool.

A polygraph test is much more sophisticated and structured than most people would suspect. There are specific pretest interviews that includes explanation of test questions, how the
“instrument” works, and “stimulation tests,” which are demonstrations of the instrument’s accuracy in detecting deception.

Psychology Matters (2005) states, “the instrument typically used to conduct polygraph tests consists of a physiological recorder that assesses three indicators of autonomic arousal: Heart rate/blood pressure, respiration, and skin conductivity. Most examiners today use computerized recording systems. The accuracy of polygraph testing has long been controversial. An underlying problem is theoretical: There is no evidence that any pattern of physiological reactions is unique to deception. An honest person may be nervous when answering truthfully and a dishonest person may be non-anxious.”

California Labor Code Section 432.2 expressly prohibits, “An employer from requiring that an applicant submit to a polygraph test as a condition of employment, however, public employees are exempt from this prohibition.” A recent court case, Long Beach City Employee Association v. City of Long Beach, banned mandatory polygraph examinations on public employees already employed, but did not address pre-employment polygraphs. So far the only successful challenges to pre-employment polygraphs have been those made on the grounds that the questions asked in the polygraph examination were unreasonably intrusive or not job-relevant.

When an organization chooses to utilize a polygraph test in its pre-employment background investigation process, it is critical to identify professional polygraph examiners and to “stick with one (maybe two) you respect for the entire testing process. Some of the basic qualifications for professional polygraph examiners are:

- Member of a professional association, i.e., American Polygraph Association or National Polygraph Association
Pre-Employment Backgrounds

- Member of a State professional association for the state who is requesting the test, i.e., California, American Polygraph Association

Psychological assessments are another tool utilized in the pre-employment background investigation process. Psychological reports are part of an applicant’s confidential medical file under the Americans with Disabilities Act and must, at a minimum, be maintained in a confidential medical file, separate from a background file or a personnel file. It may provide the most security to return these reports to the professionals who completed them.

Psychological tests assess and evaluate information that the candidate gives to the examiner. This information is either in the form of answers to interview questions and/or written answers to prepared assessment tests. Richmond (1997) states, “A classic problem with validity arises when someone uses a test for a purpose for which it was not designed. The Minnesota Multiphasic Personality Inventory (MMPI), for example, was designed to measure pathological personality traits, yet it is often used as a screening tool for law enforcement, seminary students, firefighters/paramedics, airline pilots, medical/psychology students, and nuclear power facility workers” (p.7).

In addition to some of the current psychological assessments that are used in the pre-employment assessment, the subjectivity that surrounds these tests is also of question. “Test administrators have to make a subjective judgment based partly on science and partly on experience. Furthermore, if a candidate selection is based only on the use of a MMPI, its validity is stretched way beyond reason, and some serious mistakes would be made” Richmond (1997).
PROCEDURES

A three-step process was conducted to complete this applied research project and apply its findings to recommendations.

The first step was to conduct literature review of relevant information from professional journals, magazines, Federal and State publications, and FFD data as it relates to pre-employment background investigation processes. Literature review began with the FFD’s current background investigation process, continued at the Learning Resource Center at the National Fire Academy utilizing the following:

- California Government Code (Section 1029-1031.1)
- California Government Code (Section 12940)
- Executive Analysis of Fire Service Operations in Emergency Management
- Professional Magazines/Articles
- The Fair Credit Reform Act of 1964
- Interviews with Fresno Fire Department personnel

The second step was to identify what were key components of an effective background investigation process utilizing best practices. These findings were then evaluated as to how they could best be applied to Fresno. Consideration was given to the following factors:

- The budget and personnel available to conduct pre-employment background investigations.
- The number of changes that needed to be implemented into the Department’s current pre-employment background investigation process.
- Applicable state and federal laws regarding pre-employment background investigations.
The third step was to conduct two interviews with FFD personnel who have participated in the pre-employment background investigation process for the past 15 years. The first interview was with Carla Lombari, the Personnel Manager for the FFD. Carla has held this position for over 20 years. The information gathered through the interview would establish a history of where the pre-employment background investigation process started and where it is today. The second interview was with Don MacAlpine, the Deputy Fire Marshal of Investigation for the FFD. Don MacAlpine is the supervisor for all investigators and has been the lead background investigator for over 10 years.

Limitations of the research project are as follows:

- All involved parties answered honestly.
- Personal biases of those interviewed may be present.
- Literature reviewed by other authors was accurate.

**RESULTS**

**Question One: Why are pre-employment background investigations necessary?**

The results of the research gathered indicated several reasons why pre-employment background investigations are necessary. Although each department/organization will have their own unique needs for pre-employment background investigations, the core concepts were similar in all literature reviewed.

**Question Two: What laws apply to unlawful and unfair employment practices regarding pre-employment background investigations?**
Several State and Federal laws apply to unfair and unlawful employment practices, which affect the pre-employment background investigation process. Some of those codes include the California Government Code, California Labor Code, Federal American with Disabilities Act and Federal Civil Rights Act. Additionally, the City of Fresno’s Municipal Code Section 2-1621 has written local ordinances that apply to perspective candidates who apply for City of Fresno employment. The following disqualifies a person from holding a position in the City of Fresno:

- Lacks any minimum qualifications;
- Is addicted to drugs or alcohol;
- Has been dismissed for good cause;
- Has used or attempted to use political pressure or bribery to secure advantage;
- Has made false statements in the application or examination process;
- Conviction of a felony or any misdemeanor in which the judgment of the Director evidences moral turpitude.

“The actions of others are critical to the reputation of an individual or public agency. There is nothing more important to public administrators than the public’s opinion about their honesty, truthfulness, and personal integrity. Individuals who compromise these values can damage the ability of an agency to perform its tasks and ultimately to accomplish its mission. Those of us who serve in the law enforcement, fire, and emergency medical services often face situations in people’s homes and are privy to intimate details about the customers we serve. With that reality comes a great deal of responsibility. Therefore, the public has higher expectations of those of us who wear a uniform – and rightly so” Bruegman (p. 199).

In addition, the California Government Code Section 12940 specifically bans, “Employment discrimination based on marital status, pregnancy or physical disability and further
prohibits discrimination in employment on the basis of physical impairment, where such impairment cannot be shown to keep that person from performing the job tasks required of the position.”

The Age Discrimination in Employment Act of 1976 prohibits discrimination based on age. However, certain public safety agencies were exempted by amendment to allow for the imposition of mandatory retirement ages and maximum entry ages.

The Americans with Disabilities Act has broadened protections for the disabled. Discrimination against anyone with a disability who is otherwise qualified for the position is prohibited.

California state law and the federal law both restrict the use of credit information for use in employment decisions. When negative credit information results in an adverse employment decision, the affected candidate must be advised of their appeal rights. In California, the candidate must be provided with a free copy of the credit report and have an opportunity to refute the report. Care must be taken to ensure that persons in protected classes, who may be susceptible to poor credit ratings, are not subjects of disparate impact.

California Labor Code Section 1102.1 prohibits “Employment decisions based on sexual orientation by any employer of more than five persons.”

**Question Three: What information should be included in a pre-employment background investigation?**

The analysis and interpretation of the literature indicates that specific criteria that need to be included in a comprehensive pre-employment background investigation process. When conducting inquiries in the pre-employment background investigation, it is important to focus on
those topics and areas that have been validated as job-relevant. When considering anti-discrimination laws, it is easily noted that they have a common sense framework. Simply stated; if the requirement of the position has nothing to do with an individual’s ability to successfully perform the job then the requirement should not exist. All qualifications for a position must be job-relevant.

In the 1971, the Supreme Court case Griggs v. Duke Power, 401 U.S. 224, the Court stated that, “the employer has the burden of showing that any given requirement must have a manifest relationship to the employment in question” Arvey (1988).

MacAlpine (2005) stated, “FFD 40-hour investigators typically conduct all pre-employment background investigations. Their charge is to determine if the candidate “meets the minimum qualifications for the position of firefighter” who includes legal, ethical, and moral character issues that would be problematic as a professional firefighter.”

Although the FFD investigators have not all attended the same training (nor was it mandatory training) most of them do follow a similar line of questioning during the employment process. “Questioning often times is free flowing and may vary depending on the answers of the perspective candidate, however at no time may a line of questioning be related to medical, psychological, or illegal drug rehabilitation” MacAlpine (2005). Background investigation packets should include information about the perspective candidate that will establish a clear picture about their moral character, organizational skills, and work ethic.

Police Officers Standardize Testing (POST) is an established standard for employment as a police officer. Additionally, POST has a commissioned procedure for conducting background investigations, which has been a best practice model. MacAlpine (2005) again, “The two-tier reporting system is the model for all pre-employment background investigations are utilized by
the POST, and utilized by the FFD. This format has both the background investigation questionnaire and a separate document of the investigators work” (in the event of a subpoena by attorneys). This model includes the following sections, which should be verified by a background investigator:

- Background Investigation
- Completion of Personal History Statement
- Personal Identifying Information
- Relatives and Other References
- Educational History
- Residential History
- Employment History
- Military History
- Financial History
- Legal History
- Driving Record
- Other Topics

**Question Four: What is the effectiveness of pre-employment polygraph and psychological tests in qualifying perspective candidates?**

Interpretation of the literature indicates that, although psychological testing has been utilized for many years as part of the pre-employment background investigation process, polygraph testing may have more validity.
“While polygraph technique is not infallible, research clearly indicates that when administered by a competent examiner, the polygraph test is one of the most accurate means available to determine truth and deception” American Polygraph Association (2005).

Lombari (2005) comments, “Approximately 35-50 percent of all perspective candidates do not move beyond the polygraph and/or psychological exam process. Of those who continue in the pre-employment background investigation process, about 1-5 percent is not successful in meeting the minimum qualifications.”

MacAlpine (2005) adds, “Candidates don’t “fail” a polygraph test, rather, they admit to something (behavior, actions, choices, etc.) that are not inline with the qualities or character of a Fresno City firefighter, and thus the candidate does not continue on in the background investigation.”

DISCUSSION

The study results and findings in the literature review concluded several common themes. Firefighters are role models for our community and provide a critical service of public safety. Therefore it is critical to hire candidates that will represent the fire department in the most professional manner.

Pre-employment background investigations are an important and necessary part of the hiring process. Firefighters maintain a special place of authority in our communities. This authority results in high expectations of public trust. Unethical, illegal behavior or improper performance of firefighters undermines public confidence in the fire department. It can also result in costly lawsuits robbing valuable resources from city reserves. Background investigations are designed to weed out those who are unfit or unqualified to be firefighters so
that there is some assurance that those hired are qualified to do the job and are of good moral character.

There are many legal considerations that must be taken when conducting a background investigation. There is a federal, state and local guideline to take into consideration as well as precedent setting case law that must be adhered to. The background investigator walks a fine line between violating a candidate’s rights and the need to complete a thorough investigation.

As with any public (or private) agency, people are the most valuable and important resource. The quality of the Fresno Fire Department is a direct result of the people working in the organization. The success of the FFD (or any organization) depends on how well people are selected. It is incumbent on the agency to hire the best people to do the job. The pre-employment background investigation is a valuable process when attempting to select the best candidates to do a very difficult job.

Over the last three years the FFD has started to utilize polygraph testing in addition to psychological testing to screen perspective candidates. Psychological testing has been in place for many departments/organizations for many years as a standard practice for screening perspective candidates, thus it merits consideration. However, using psychological testing for assessing perspective candidates has validity issues for two reasons; first, the testing process is completely subjective both from the written assessment and the oral interview assessment. Secondly, if the Fire Chief chooses to “override” the recommendation of the professional psychologist, he/she is leaving himself/herself exposed to potential lawsuits in the future, as the Fire Chief is not an “expert” in interpreting psychological testing results.

There is a financial impact that must be considered when proposing improvements to the pre-employment background investigation process. Although the FFD has a background
investigation process in place, the evidence from this research indicates there are several improvement opportunities.

**RECOMMENDATIONS**

FFD has always maintained a pre-employment background investigation process. However, developing a process based on best practices will require several recommendations to be implemented.

1. Discontinue the use of psychological assessments in the pre-employment background investigation process.
2. Utilize only polygraph tests as part of the pre-employment background investigation process.
3. Identify one (or two) professional polygraph examiners that maintain both national and California certifications from the American Polygraph Association.
4. Update the background investigation packets to accurately capture relevant information from perspective firefighter candidates.
5. Require all background investigators to attend the “California Background Investigation Association class” in an effort to implement a more consistent background investigation to all perspective firefighter candidates.
6. Implement the California Background Investigation Association (Professional Standards Division) list of pre-designated background questions (Appendix A).
7. Implement the use of a separate (required) consent to receive credit information per The Fair Credit Reform Act of 1996.
REFERENCES


California Civil Code Section 47.

California Government Code Section 1029.

California Government Code Section 1031.

California Government Code Section 1031.1.

California Government Code Section 12940.

California Labor Code Section 432.7.

California Labor Code Section 1050.

California Penal Code Section 12021 (c)(1).


Fresno Municipal Code Section 2-1621, Fresno, California, 2005


Interview with Carla Lombari (Personnel Manager for the Fresno Fire Department) conducted on 12/28/05

Interview with Don MacAlpine (Deputy Fire Marshal of Investigations for the Fresno Fire Department) conducted on 12/28/05


**Court Cases Cited:**

Long Beach City Employee Association v. City of Long Beach, 41 Cal. 3d 937 (1986).


The Civil Rights Act of 1964.

The Fair Credit Reform Act of 1996.

White v. County of Orange, 166 Cal App. 3d 566 (1985)
APPENDIX A

California Background Investigations Association
(Professional Standards Division)

Symbol Legend
X : Applicant Name

Please answer these questions as completely as possible. Your comments are of utmost importance in selecting a well-qualified candidate.

1. What type of association have you had with X?
   - Relative
   - Neighbor
   - Classmate
   - Military
   - Ex-spouse
   - Family Friend
   - Co-worker
   - Personal Friend
   - Significant Other
   - Roommate
   - Acquaintance
   - Other
   - Supervisor. If so, where?: __________________________
   When?: __________________________

2. How long have you known X?
   __________________________________________

3. When was your last contact with X?
   __________________________________________

4. How often do you have contact with X?
   - Daily
   - Several times a week
   - Several times a month
   - Monthly

5. Do you believe X uses good judgment when making decisions?
   ______________________

6. How would you describe X’s friends and associates?
   - Law abiding
   - Questionable
   - Unknown
   __________________________________________
7. Are you convinced that X is honest?
   - Yes
   - No
   - Unable to form opinion. Why?:
     ________________________________
     ________________________________

8. Is X dependable: (i.e., punctual, follows through on promises, or projects)
   - Yes
   - No
   - Unknown

9. Would you trust X with confidential matters?
   - Yes
   - No
   - Unable to form opinion. Why?:
     ________________________________
     ________________________________

10. Does X interact well and have an interest in people?
    - Yes
    - No
    ________________________________

11. Would X treat all people fairly, regardless of their racial, ethnic, gender, religious, sexually oriented, or economic backgrounds?
    - Yes
    - No
    ________________________________

12. How does X confront personal and or professional problems?
    ________________________________
    ________________________________

13. To your knowledge, has X ever used or experimented with Marijuana, cocaine, or any other form of illegal or non-prescription drugs or narcotics?
    - Yes
    - No
    ________________________________
If Yes, explain.

________________________________________________________________

14. Do you know how X handles financial responsibilities?
   - Lives within means
   - Lives beyond means
   - Unknown
   - Bankruptcy
   - Repossessions

15. How would you describe X’s temperament?

________________________________________________________________

16. Is X able to make decisions under stress? (Able to make sound, logical decisions on the spot?)
   - Yes
   - No

17. Have you ever seen X lose control of his/her temper. If angered, how does X react?
   - Yes
   - No

18. Would you say X is observant in that he/she knows what is occurring around him/her? (i.e., senses when something is wrong, inquisitive, memory for detail)
   - Yes
   - No

19. Are you aware of any information or circumstances, not covered in the previous questions that you feel we should be made aware of when considering X for a position with the Office.
   - Yes
   - No
20. Would you want X to be an employee of the District Attorney and be involved in the process of the administration of justice?

☐ Yes  ☐ No  ☐ If No, why?:

__________________________________________

21. Do you have any other comments?

_____________________________________________

Your Signature: ___________________________   Date:  ___________________
Print Name: ________________________________
Daytime Phone: ____________________________

Please list a person(s) who may know or have knowledge about X.

Name: ________________________________
Address: ________________________________
Telephone: ______________________________

Name: ________________________________
Address: ________________________________
Telephone: ______________________________