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IN THE STATE OF WASHINGTON  
KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES

IN RE: THE INQUEST INTO THE  
DEATH OF ISAIAH OBET

No. 417IQ7199

CITY'S RESPONSE TO FAMILY'S  
MOTION FOR SUBPOENA

**I. INTRODUCTION**

The Family asks the Administrator to “compel/subpoena” a variety of records regarding Officer Nelson’s psychological examinations. However, their briefing (1) fails to provide any authority by which the Administrator may compel or subpoena such discovery, (2) fails to explain how the psychological records are relevant here, and (3) fails to understand the clear privileges and confidentialities applicable to the documents.

**II. ARGUMENT**

**A. The Family Provides No Basis to Assert the Administrator’s Subpoena Authority for “Discovery”**

The Family begins its brief by stating “The family asserts that the administrator has the ability to compel” Officer Nelson’s psychological records. *Family’s Brief, 1:21-22.* However, after making that assertion, the Family never again addresses the issue. Their briefing outlines the alleged nature and relevance of these documents, but fails to offer any explanation of the Administrator’s legal authority to subpoena or otherwise compel production of any documentary evidence in an inquest to begin with. Without explanation

1 of the authority the Family assumes exist, the City should not be required to prove the  
2 negative, and is unwilling to do so in this briefing. In short, it is the City's position that  
3 nothing in the Coroner's Act, the County Code, the applicable Executive Order, the relevant  
4 home charter rules, or the case law addressing the issue, authorizes the Inquest  
5 Administrator (or the prosecutor) to issue subpoenas for the production of pre-hearing  
6 "discovery" in an inquest. With no briefing from the Family on this threshold issue, their  
7 demand fails *ab initio*.<sup>1</sup>

8 **B. The Records In General Are Not Relevant to This Inquest**

9 Even if the Administrator (or the prosecutor) has the authority to order "discovery"  
10 in an inquest, the Family simply asserts Officer Nelson's prior psychological records are  
11 relevant here, then proceeds to explain why they must be produced. The Family fails to  
12 offer any legitimate reason these documents could possibly be relevant here, or in any way  
13 within the factual scope of the inquest.

14 1. The Family Cites the "Civil Rules" Without Explaining How/Why They  
15 Apply to Inquest

16 The Family begins by discussing the scope of discovery under Civil Rule 26, and  
17 why Officer Nelson's psychological records qualify under the Rule. *Family's Briefing, 3:1*  
18 *et seq.* But there is nothing in the Executive Order on inquests, or anywhere else, that states  
19 the Civil Rules are applicable to inquests, and the Family provides no briefing whatsoever  
20 on the issue. In fact, the applicable Executive Order explicitly lists the documents that  
21 qualify as "discovery materials" for an inquest:

22 Such materials include the police and/or agency investigative file of the  
23 incident that resulted in the death. They also include the report of the  
24 medical examiner, crime laboratory reports, and the names, addresses, and  
25 summaries and/or copies of statements of any witnesses obtained by any

26 <sup>1</sup> The City reserves the right to fully brief this issue if the Administrator finds that (1) the documents are  
27 relevant, (2) the documents are discoverable, and (3) the Administrator has the power to compel production at  
this stage of the investigation.

1 *PHL-7-1-3-EO, App. 2 §4.2.* Neither the Executive Order, the Coroner’s Act, nor the King  
2 County Code provide any support for the Family’s conclusory assertion that Civil Rules of  
3 discovery apply to this inquest.

4 2. The Public Records Act is a Better Judge Of Relevance

5 The King County Executive has found that “the public has a strong interest in a full  
6 and transparent” inquest process, and “the purpose of the inquest is to provide a public  
7 inquiry...” *Id. at App. 1 §5.2 & App. 2 §11.1.* Similarly, the Public Records Act was  
8 expressly created because “the people insist on remaining informed,” and “to assure that the  
9 public interest will be fully protected.” *RCW 42.56.030.* Given the parallel purposes of the  
10 inquest process and the Public Records Act, it is helpful to look to the Act for guidance on  
11 what the public is entitled to know. For example, despite the strong presumption of  
12 disclosure, the Legislature has specifically determined that the public does not have a right  
13 to a record the disclosure of which “(1) would be highly offensive to a reasonable person,  
14 and (2) is not of legitimate concern to the public.” *RCW 42.56.050.* Applying those  
15 standards here, the public does not have the right to review Officer Nelson’s psychological  
16 records via the public inquest process.

17 The Legislature has expressly determined that the public does not have the right to  
18 review “applications for public employment... and other materials submitted with respect to  
19 an applicant.” *RCW 42.56.250(2);* In *Sheats v. City of E. Wenatchee*, 6 Wn.App 2d 523, 540  
20 (Div. III 2018), *rvw dnd*, 193 Wash. 2d 1004 (2019), the court specifically applied this  
21 exception to records of pre-employment psychological examinations. The Act also exempts  
22 all records “compiled, obtained, or maintained in the course of providing mental health  
23 services to either voluntary or involuntary recipients of services...” *RCW 70.02.030*  
24 *(incorporated into Act via RCW 42.56.360(2)).*

25 The same Legislature that established the public inquest process has clearly  
26 established that mental health records, and records related to applications for public  
27

1 employment (specifically including pre-employment psychological evaluations), are not  
2 matters of legitimate public concern, and not subject to public release. Consequently,  
3 Officer Nelson's psychological records here are private information, not of legitimate public  
4 concern in this inquest process, and should remain confidential.<sup>2</sup>

5 **C. The Specific Records At Issue Are Neither Relevant Nor Admissible Here**

6 The psychological records that do exist are (1) a 2-page evaluation summary from  
7 2008, prepared during Officer Nelson's application to the Auburn Police Department, (2) a  
8 3-line memo from a clinical psychologist dated May 16, 2011, solely assessing whether  
9 Officer Nelson himself was experiencing any signs or symptoms of trauma from the 2011  
10 shooting, and (3) a 1½-page "Return to Duty Evaluation" completed on June 20, 2017, 10  
11 days after the Obet shooting. Each of these records were created by a licensed, professional  
12 psychologist, each are highly confidential and privileged, and none are relevant to the "facts  
13 and circumstances" of Mr. Obet's death.

14 1. 2008 Pre-Employment Psychological Evaluation

15 It strains credibility to argue that a 2-page psychological summary from more than  
16 11 years ago, required as a matter of course prior to employment as a police officer in  
17 Washington, is somehow relevant to assessing the "facts and circumstances" surrounding  
18 the death of Mr. Obet in 2017. In fact, the document itself contains an express disclaimer  
19 that "conclusions reached should be considered valid for one year, beyond which time no  
20 claim to validity can properly be maintained." *Id. at Exh. 2, p. 3*. By its own admission, the  
21 document has no bearing on the incident at issue here.

22 The document is also highly personal and confidential. These records are exempt  
23 from public disclosure based on their confidential nature (see above), are retained in the  
24 employee's "medical file" by the human resources department, and are not even available to  
25

26 <sup>2</sup> When the Family's attorney attempted an end-run around the inquest process, and submitted a Public Records  
27 Request for "any and all psychological records of Officer Nelson..." the City responded that such records were  
exempt from disclosure "per RCW 42.56.360(2); 70.02.230." *See Exh. 1*.

1 the applicants themselves.<sup>3</sup> Moreover, these evaluations are only “accurate to the extent that  
2 information provided by the applicant during the evaluation was complete and that the  
3 applicant did not withhold, falsify, or conceal information...” *Id.* Simply put, the entire  
4 purpose of these examinations would be destroyed if applicants knew the records would  
5 become public anytime they were involved in any shooting during the course of their entire  
6 career. The chilling effect would be immediate and disastrous.

7 2. 2011 and 2017 Post-Incident Psychological Sessions

8 As indicated in the Family’s own briefing, any officer involved in a traumatic event  
9 while on-duty is provided “critical incident debriefing” services with a department-approved  
10 psychologist. The purpose of these sessions is not to assess why the officer used force, what  
11 was going on at the time, what he was thinking, or whether he complied with training and  
12 policy. Rather, the express purpose of these sessions is to assess and treat any effects the  
13 officer may be suffering as a result of the incident. And so, contrary to the Family’s  
14 argument, such records are clearly protected from disclosure by both black letter law and  
15 express judicial pronouncements. *RCW 18.130.010; Jaffee v. Redmond, 518 U.S. 1, 116*  
16 *S.Ct 1923, 135 L.Ed.2d 337 (1996).*

17 Moreover, as discussed above, the statutory language exempting such records from  
18 disclosure applies to anything involving “mental health services,” and is not merely limited  
19 specific sorts of treatment or examination. *RCW 70.02.230(1)*. It even applies to  
20 “involuntary recipients” of such services, vitiating the Family’s argument that making such  
21 an exam a requirement of employment somehow destroys confidentiality.

22 Next, the release language in these records, signed by the officer, expressly states  
23 that (1) a doctor-patient privilege exists, (2) the doctor is acting as a “treating doctor,” and  
24 (3) the records are protected by “the Americans with Disabilities Act” and “the Health  
25

26  
27 <sup>3</sup> The document expressly states it “should not be shown to unauthorized person, including the applicant.”

1 Insurance Portability and Accountability Act.”<sup>4</sup> Contrary to the Family’ argument, the fact  
2 that such summaries are reviewed by the Chief of Police does not magically destroy all  
3 confidentiality. In other words, there is no support for the claim that an officer’s voluntary  
4 consent to have a summary reviewed by his superior – or anyone else of his choosing – has  
5 thereby forfeit his right to prevent the records from being made public anytime he is  
6 required to use deadly force in the course of his duties.

7 Making these records public now would not only vitiate the clear expectation of the  
8 officers who have already undergone these important examinations – since the waivers they  
9 signed specifically state they are confidential – but will also ensure that officers in the future  
10 will be unlikely to participate in such sessions, knowing those sessions will become public  
11 record in an inquest.<sup>5</sup>

### 12 III. CONCLUSION

13 The Family has provided no basis on which to conclude the Administrator has the  
14 legal authority to issue subpoenas for, or otherwise “compel,” documentary discovery prior  
15 to an inquest hearing. However, even if such authority exists, the Family has provided no  
16 basis on which to conclude Officer Nelson’s psychological records are relevant to this  
17 inquest in any way, or that the statutory confidentiality of these records should be destroyed.  
18 Disclosure of these records would violate statutory confidentiality as well as public policy,  
19 and the City of Auburn respectfully requests the Family’s motion be denied.

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<sup>4</sup> Because of their confidentiality, these records are not provided here, even in redacted form. If the  
25 Administrator determines *in camera* review is required to confirm the quoted language, redacted copies can be  
provided.

26 <sup>5</sup> Critical incident debriefs are generally only used following application of deadly force, which are the same  
27 circumstances that require an inquest. In other words, making these records public in an inquest will, by  
definition, ensure psychological treatment is unavailable to officers at the time they are most likely to need it  
(following use of deadly force).

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DATED this 3rd day of January, 2020.

KEATING, BUCKLIN & McCORMACK, INC., P.S.

By: /s/ Jeremy Culumber

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Jeremy W. Culumber, WSBA #35423  
Attorneys for City of Auburn

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**DECLARATION OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington that on the below date, a true and correct copy of the foregoing document was served upon the parties listed below via E-mail only, per agreement:

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[kcomeau@auburnwa.gov](mailto:kcomeau@auburnwa.gov)

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**Attorneys for Officer Jeff Nelson**  
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DATED this 3rd day of January 2020, at Seattle, Washington.

/s/ Teresa A. Caceres  
Teresa A. Caceres, Legal Assistant



# **EXHIBIT 1**

**Subject:** Public Records Request :: P014960-083019

**Body:**

RE: PUBLIC RECORDS REQUEST of August 30, 2019, Reference # P014960-083019

Dear Bryan,

The City of Auburn received a public records request from you on August 30, 2019. You requested the following:

**"I am requesting the following records related to the officer involved shooting death of Isaiah Obet (Auburn PD Case # 17-7199) by Auburn Police Officer Jeff Nelson on 6/10/17.**

- 1. All police reports and narratives related to the above named incident.**
- 2. In-car video, written/typed reports, and statements from all officers who responded to the scene in the above case.**
- 3. All recordings from dispatch from involving the above case, date 6/10/17.**
- 4. Any and all video surveillance discovered during the course of the investigation, including but not limited to private surveillance or cell phone video discovered during the course of the investigation.**
- 5. Reports from responding AMR, fire, or other medical personnel on scene involving this incident.**
- 6. All statements made by Auburn Police Officer Jeff Nelson in connection with the killing of Isaiah Obet, including emails, summary of statements made to others, statements made in the course of any psychological treatment, and any other statements at all.**
- 7. Current use of force policy Auburn Police and Use of Force Policy at the time of the death of Isaiah Obet on 6/10/17.**
- 8. Records of Officer Nelson: all employment records, disciplinary records, names and cause numbers of lawsuits involving officer Nelson, use of force reports, complaints, inquiries.**
- 9. All training manuals received and used by Officer Nelson, records of Officer Nelson's training, list of all trainings he has participated in during the course of his career including while he was a cadet in training.**
- 10. Any and all psychological records of Officer Nelson surrounding this incident.**
- 11. All statements made by Officer Nelson in connection with the killing of Isaiah Obet, including emails, summary of statements made to others, statements made in the course of any psychological treatment, and any other statements at all.**
- 12. All statements recorded, written or otherwise by all witnesses involved in the investigation of the death of Isaiah Obet, including officer witnesses and lay witnesses.**
- 13. All forensic reports and notes made in the course of this case.**
- 14. Officer Nelson's in-car video with sound (interior and exterior ICV).**
- 15. Records of Officer Nelson's firearm certification**
- 16. Records regarding Officer Nelson's firearm and Taser throughout his career**
- 17. Records regarding Auburn Police Policy training requirements in order to be compliant with training requirements.**
- 18. DNA results associated with case, if any.**
- 19. Fingerprint results associated with this case, if any.**
- 20. All information regarding the K-9 in this case, commission date, training materials and records, policy manual, employment records, use of force statements and documents, and training records for handler.**

**21. Any discovery, videos, documentation, transcripts or other information that could potentially lead to relevant information regarding the death of Isaiah Obet."**

The next installment of records responsive to your request is available to you now in the City of Auburn Public Records Center. I will put a CD in the mail from the VIT investigation that is to large to load into this program.

Please note regarding item No. 10 - **Any and all psychological records of Officer Nelson surrounding this incident.** - The City can neither **confirm** no deny **existence** of the requested records per RCW 42.56.360(2); 70.02.230.

I anticipate there being one more installment of emails. the search terms I used for item No 11 is any email to or from Jeff Nelson with the word "Obet" if there are any additional terms or you would like to change the scope of this item please let me know.

You have 15 calendar days to review this installment. If the installment isn't reviewed by 11/21/2019, we will consider your request abandoned and closed. We will release the next installment 15-20 business days from when you review this installment.

Please click the link below to view your responsive records.

[Link](#)

Sincerely,

Shawn Campbell  
City Clerk  
City Clerk's Office  
253-931-3055

# **EXHIBIT 2**

# Auburn Police Department

EXAMINER: BILL R. EKEMO, PH.D.  
2300 130<sup>TH</sup> AVE. NE., SUITE 211, BELLEVUE, WA 98005  
CLINICAL AND CONSULTING PSYCHOLOGIST

LAW ENFORCEMENT & PUBLIC SAFETY ASSESSMENTS  
TELEPHONE: (425) 869-2100 X (425) 869-9578

[REDACTED]

CITY OF AUBURN  
HUMAN RESOURCES DEPARTMENT  
**CONFIDENTIAL**

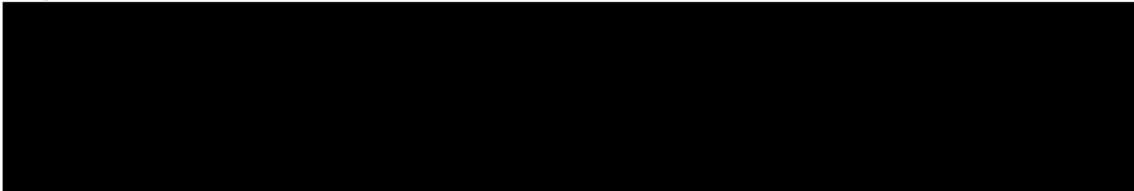
[REDACTED]

TO: Auburn Police Department  
ATTN: Cheryl Abner  
FROM: Bill R. Ekemo, Ph.D.  
EVALUATION DATE: 10/21/08  
REPORT DATE: 10/23/08  
RE: Applicant—Jeffrey Nelson

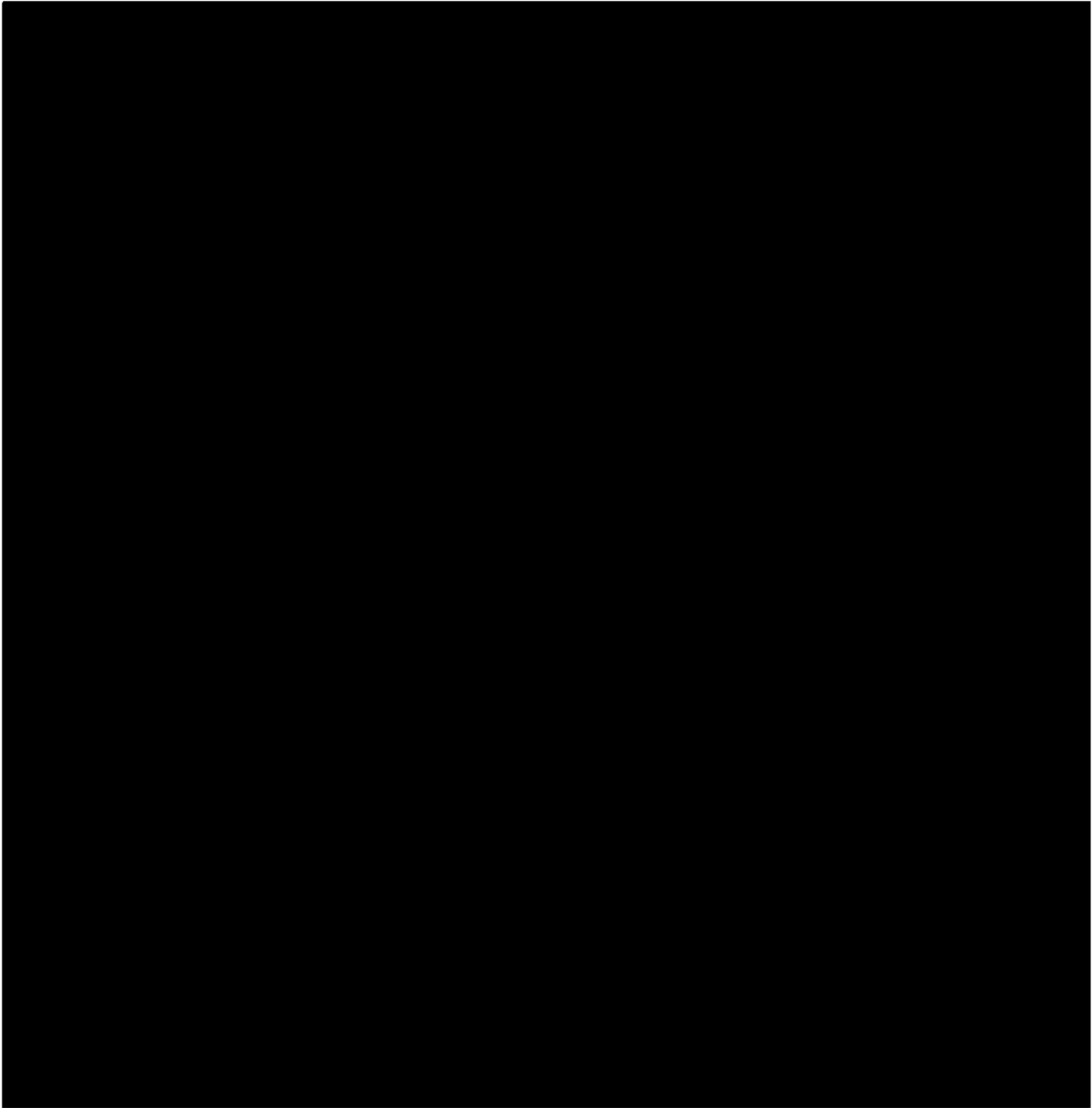
Age: 30                      DOB: [REDACTED]

—PSYCHOLOGICAL EVALUATION SUMMARY—

[REDACTED]



This examination included a series of questions concerning acts that might be considered sexually deviant (i.e., use of the Internet to access pornography, including use of porn accounts, interests and acts related to child pornography, voyeurism and peeping tom behaviors, etc). Although these issues are examined as much as reasonably possible during inquiry, there are currently no known tests or inquiry methods that will reliably identify such deviant interests or behaviors. Good background investigations and polygraph or Voice Stress analysis testing are possibly the only current useful methods used to determine whether a candidate is involved in inappropriate activities of this nature. We encourage Departments to have these issues fully explored through available technologies and methods.



A handwritten signature in cursive script, appearing to read "Bill R. Ekemo".

**EVALUATION RATING FORM**

**NOTE:** The above report is a summary of my pre-employment psychological evaluation of the above-named applicant, the results from which should not be shown to unauthorized persons including the applicant. Conclusions reached should be considered valid for one year, beyond which time no claim to validity can properly be maintained. The evaluation follows the format approved March 1992 by the **Washington Association of Sheriffs and Police Chiefs**. A standard psychometric test battery was administered to this applicant, including the HILSON TEST BATTERY, the WONDERLIC PERSONNEL TEST (general intelligence) and CANDIDATE ESSAY adhering to standards adopted by the **American Psychological Association**. Background information provided by the applicant during the interview should be considered unverified and will not be repeated in detail. This evaluation is accurate to the extent that information provided by the applicant during this evaluation was complete and that the applicant did not withhold, falsify, or conceal information relative to questions asked. In addition to the psychological evaluation, a thorough background investigation and polygraph examination is strongly recommended. Any discrepancies between the psychological evaluation, background investigation, and polygraph results should be thoroughly investigated and brought to the attention of the examining psychologist prior to a final offer of employment. This report is subject to modification, including changes in overall rating, if background and/or polygraph information is unavailable prior to dictation transmittal.

**Explanation:** The following rating form has been used to categorize the applicant:

**RECOMMENDED FOR EMPLOYMENT**

CATEGORY A: OUTSTANDING APPLICANT

No personality deficits noted; outstanding personality profile;  
Special skills, training or education noted.

CATEGORY B: ABOVE AVERAGE APPLICANT

No personality deficits noted; above average in:  
a) Personality characteristics, as noted  
b) Special skills/training, or education

CATEGORY C+: HIGH AVERAGE APPLICANT

CATEGORY C: AVERAGE APPLICANT

All personality categories average; no significant performance problems  
Predicted; data suggests stylistic or attitude characteristics worthy of comment;  
Performance problems may be remediated in academy or field training.

**MANAGEMENT DISCRETION;  
ALTHOUGH CONSIDERED MARGINAL, CANDIDATE MAY BE CONSIDERED**

CATEGORY C-: LOW AVERAGE APPLICANT

The *potential* for the applicant to experience performance deficiencies may be somewhat higher than average. These are often project applicants, and in my experience, have about a 50% chance of failure.

CATEGORY D: BELOW AVERAGE APPLICANT

Personality deficits are noted; significant performance deficiencies are  
Predicted which are not likely to improve during training or probationary period.

CATEGORY E: HIGH RISK APPLICANT

Applicant's current psychological characteristics constitute a vicarious  
liability concern to the agency.