

PART 1 OF A 3 PART SERIES ON ACCURATELY GATHERING AND REPORTING CRIME STATISTICS

Gathering Crime Information from All Required Entities

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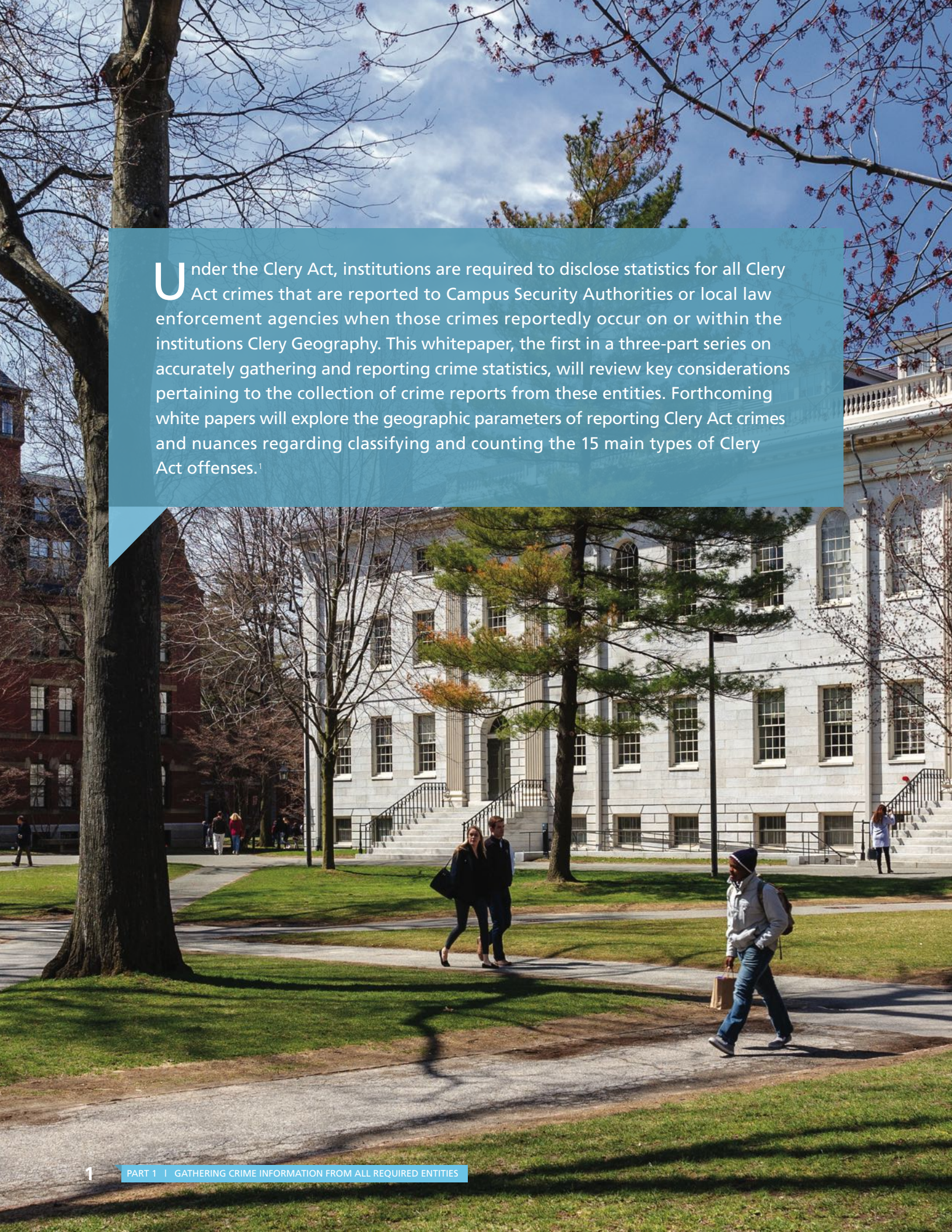
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Under the Clery Act, institutions are required to disclose statistics for all Clery Act crimes that are reported to Campus Security Authorities or local law enforcement agencies when those crimes reportedly occur on or within the institutions Clery Geography. This whitepaper, the first in a three-part series on accurately gathering and reporting crime statistics, will review key considerations pertaining to the collection of crime reports from these entities. Forthcoming white papers will explore the geographic parameters of reporting Clery Act crimes and nuances regarding classifying and counting the 15 main types of Clery Act offenses.¹

GATHERING CRIME INFORMATION FROM CAMPUS SECURITY AUTHORITIES

It is important to understand who you have to gather information from before we delve into how to set up a systematic approach to gathering the required information from each person or entity. The U.S. Department of Education (ED) identifies individuals who are mandatory crime reporters and mandates that the individual or organization managing Clery Act compliance actively request crime information from people who fall into this category. Under the Clery Act, these mandatory crime reporters are called “Campus Security Authorities” (CSAs) and they typically fit into one or more of the following four groups:

Group 1: All members of campus police/security department

(Note: A security department can be as small as one person).

Group 2: Individuals responsible for security—which includes student or professional employees

- Access monitor – anyone monitoring entrance into any institution owned or controlled facility (including parking facilities)
- Contract and event security, such as for sporting events or large, registered parties, or
- Individuals who provide safety escorts around campus (including other students)
- Officers from local law enforcement agencies who are contracted by the institution to provide campus safety-related services.

Group 3: Any individual or organization specified in an institution’s statement of campus security policy as an individual or organization to which students and employees should report criminal offenses

(If you identify a person, position, or organization as a person or organization to whom members of your campus community should report all or certain crimes to, then you must treat those individuals/organizations as CSAs. Keep in mind that if the institution provides information in the Annual Security Report that people can report or discuss incidents (and potential crimes) with groups like the behavioral threat assessment teams, bias response teams, and SARTS, the individuals on these teams may need to be considered CSAs.



Group 4: An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings.

- Most Student Affairs professionals
- Dean of Students and leaders in Student Affairs
- The Director of Housing and leaders in Residential Life
- Residence Hall Directors and Resident Assistants
- Student Conduct staff and others who are involved in adjudicating student disciplinary issues on campus (including members of student conduct hearing boards/appeal committees)
- Greek governing bodies with disciplinary enforcement authority
- Human Resources (staff who receive reports of employee misconduct or who have disciplinary enforcement authority within HR)
- Staff in the Student Activities Office (handling co-curricular activities)
- Coordinator of Greek Affairs/Fraternity and Sorority Life
- Directors of Student Health and Counseling Centers
- Ombudspersons
- Director of Athletics/All Athletic Coaches—this includes assistant/associate athletic directors, assistant coaches, and other coaches (including graduate assistants), whether part-time or full-time
- Administrators at separate campuses
- Study Abroad and Off-Campus Trip Coordinators (this includes individuals who are accompanying/supervising/coordinating student trips off campus on domestic or international short stay away trips of more than one night)
- Title IX Coordinator
- Faculty/Staff Advisors to recognized/registered student organizations

A Campus Security Authority's primary responsibility is to report allegations of Clery Act crimes of which they become aware to the reporting structure established by the institution. Typically, but not always, the reporting structure of the institution is the campus public safety or police department. The institution identifies the reporting structure of the institution in its Annual Security Report when it advises students and employees to whom they should report crimes for purposes of the annual statistical disclosure.

A CSA could receive information about a reported crime from a victim, witness, or the perpetrator. Alternately, the CSA might directly witness a crime, as occurred when a graduate assistant coach affiliated with the men's football team at Penn State witnessed an Assistant Coach sexually abusing a minor.²

All Clery Act crimes reported directly to a CSA must be included in the annual statistical disclosure, even if they are brought to the attention of a CSA by an uninvolved third party, such as a mother who calls the Dean of Students to report that her

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daughter was the victim of domestic violence while in her residence hall room. All third-party reports, including anonymous reports made directly to CSAs, are valid crime reports for Clery Act purposes and trigger a responsibility for the CSA to forward the information they receive to the reporting structure of the institution. Institutions cannot withhold crime reports from their statistics because they have not been substantiated, the offender has not been identified or held accountable, or because a reporting party has not followed a certain protocol when making a report. All reports of Clery Act crimes that are made to CSAs and reported to occur on or within the institution's Clery Geography must be included in the institution's crime statistics unless they have been fully investigated by sworn or commissioned law enforcement personnel and formally determined to be false or baseless (and even then, the offense must be reported as an "Unfounded" crime in the crime statistics).

On the other hand, a CSA is not required to report what they overhear during a classroom discussion or other campus event in which a person discloses prior victimization, such as during a take back the night rally. When CSAs learn about Clery Act crimes in an indirect manner, the Handbook for Campus Safety and Security Reporting states they are not required to report the offense to the reporting structure of the institution. However, we would caution campuses against assuming this guidance is universally applicable. An institution may adopt certain policies or practices applicable to CSAs or other officials of the institution who are also CSAs. For example, if the institution has adopted a policy or practice that Resident Assistants must report all crimes about which they become aware while employed as a Resident Assistant (not just Clery Act crimes reported directly to them in their capacity as CSAs), institutions should ensure their CSAs are adhering to any such policies or expectations, even if the Clery Act would not otherwise have mandated such disclosure if the institution had not adopted that policy or practice.





Each institution of higher education has at least two major obligations with respect to individuals or organizations identified as CSAs. These obligations include:

- Training CSAs³ to understand their responsibilities, including what to report, when to report it, and how to report it to the reporting structure of the institution; and
- Making a direct request for information about crimes reported to each CSA at least once each calendar year (to request information about any Clery Act crimes reported to CSAs during the previous calendar year, in the event CSAs have not already reported the information to the reporting structure of the institution). The request should be sent directly to each CSA, not to the Directors of each department for subsequent distribution to CSAs in their area. Institutions should be able to prove that the request was sent to all CSAs and that all CSAs responded to the request.⁴ If an institution wants to establish a gold standard process, we recommend that a request be sent twice a year: in May to request information for the Spring (before students graduate, faculty CSAs end their contracts, and other employees separate from the institution in advance of the next academic year) and in January to request information for the Summer and Fall sessions.

In 2017, the U.S. Department of Education published several Final Program Review Determination letters in which it found institutions out of compliance for their “failure to establish a process for collecting Clery crime data from all of its CSAs.”⁵ Two institutions, Felician College and Occidental College, were each fined \$27,500 on September 27, 2017 for noncompliance with this requirement.

HOW SHOULD THE INSTITUTION GATHER CRIME INFORMATION FROM EACH CAMPUS SECURITY AUTHORITY?

First and foremost, the official responsible for compiling crime statistics for the campus/institution should request information about any Clery crimes⁶ that were reported to or witnessed by a CSA. This request should be made in writing, and a best practice⁷ would be to develop a form that includes:

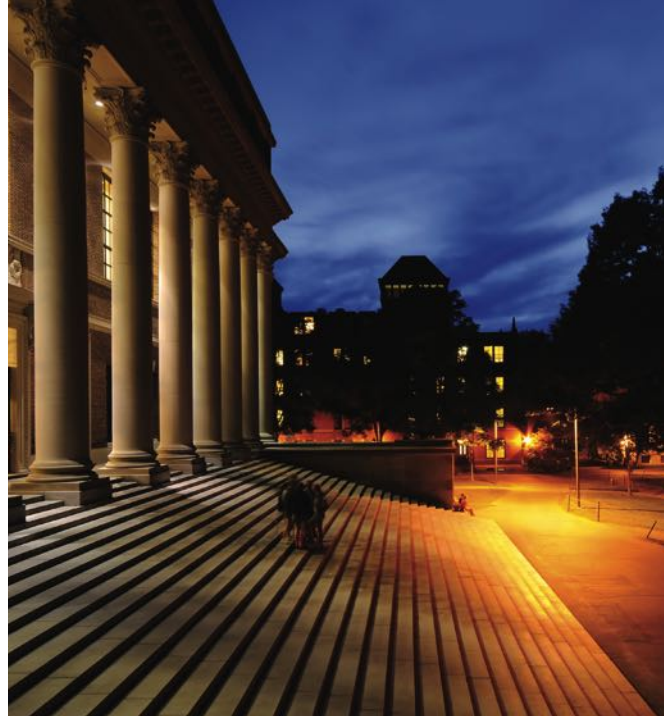
- The date the incident was reported to the CSA (since crimes are recorded in the year in which they were reported to a CSA or local law enforcement agency, regardless of when the crime occurred);
- The date the incident occurred (general information will suffice if the CSA does not know the exact date, for example, the victim reported that they were sexually assaulted “last week” so if that is all the CSA knows, then the CSA should be trained to provide that information. The importance of that information can’t be overstated, as it will allow the CSA report to be compared to the campus public safety records and to other CSA reports, to try to ensure that incidents are not double-counted in the statistics and to assess for Timely Warning purposes).
- The location of the incident. In a perfect world, knowing the name of the buildings or specifics about an outdoor area where the crime was reported to have occurred is incredibly helpful for purposes of comparing reports and avoiding double-counting. The CSA does not need to report the specific room number, as that may inadvertently identify the involved parties, and that is not the purpose of gathering this information. At a minimum, the CSA should provide enough information about the location of the reported crime to allow the institution to determine whether the offense occurred on or within its campus, on reportable Public Property, in or on Noncampus buildings or property, or in a location that is not within the institution’s Clery Geography and therefore not reportable.



■ Brief description of what was reported. It is important to understand what is being reported so the incident can be properly classified and counted for Clery Act purposes. For example, a victim might say that they were “sexually assaulted” but the CSA understands at the end of the conversation that the victim was raped, or that the victim was fondled (which would be reported differently than a Rape for Clery purposes), but there was no penetration. It is important for the CSA to explain what the victim reported and their understanding of what occurred, not just the victim’s characterization of the offense, to allow the incident to be accurately classified and assessed for potential Timely Warning purposes. Again, the Penn State case is instructive, as the Department noted there “It is not the responsibility of a crime victim or witness to use any particular words or phrases to describe an incident. Instead, it is the province of law enforcement or other trained security professionals or CSAs to assist the victim or witness in making an accurate and complete report.”⁸

■ The form could include a prompt for the CSA to provide the name of the victim or the accused, but the CSAs should be trained to understand that this information is optional and not required (unless the institution has established a requirement or expectation that CSA crime reports include personally identifiable information, including if the victim requests confidentiality, the CSA can honor that request).

The form can be a hard copy form that is distributed with a written request for information or institutions can use a simple and free online survey system or form generator to develop a quick and easy CSA report form to gather this information from each CSA.⁹ While making this form readily available to your CSAs throughout the year will help to facilitate timely reporting, the form should also be distributed to CSAs each time the institution makes a request for crime information from all CSAs. It is imperative that a letter or email with an explanation of what



is being requested and why accompany the request for crime information, to remind the CSA of their obligations and why the information is being requested by the reporting structure of the institution.

Finally, create a form that requires all CSAs to respond to you, with a confirmation that no crimes were reported (if applicable) or with details about each reported incident. This will enable the institution to use the form for CSA reporting throughout the year as well as to document CSA responses to the request for crime information.

GATHERING CRIME STATISTICS FROM LOCAL LAW ENFORCEMENT AGENCIES¹⁰

In addition to requesting crime information/reports from their CSAs, institutions must also make a good-faith effort to gather crime statistics from local law enforcement agencies that have jurisdiction in and around their campus(es).¹¹

Institutions are required to report crime statistics for the institution’s Clery Geography, which often includes public streets and sidewalks running through or immediately adjacent to and accessible from campus property. This is noteworthy because campus police officials often believe that their agency has “primary jurisdiction” on their campus and/or that the local police don’t “come on campus” unless they notify the campus police/public safety agency. Even if this is true, a local police officer who has jurisdiction may conduct a traffic stop on a public or a campus¹² street and the officer could make an arrest, for example, for possession of an illegal weapon in the institution’s Clery Geography. Therefore, it is incumbent upon all institutions to assess which local law enforcement agencies have jurisdiction on or within their Clery Geography and to request crime statistics from each of those agencies on an annual basis.





So, who are local law enforcement agencies? The Department of Education Handbook says: “Local law enforcement refers to outside law enforcement agencies or departments with jurisdiction over some or all of your Clery geography.”¹³ In essence, any law enforcement agency outside of your campus police or public safety agency is considered “local” for purposes of the Clery Act. This would include, but may not be limited to, the municipal, county, and state police agencies. This could also include agencies like tribal police, sheriff’s office, park police, or metro police agencies, to name a few. If an agency exercises law enforcement authority anywhere in your Clery Geography,¹⁴ you should request crime statistics from the agency.

Each institution of higher education has several major obligations with regard to managing the process for gathering crime statistics from local law enforcement agencies. These obligations include:

- Identify all local law enforcement agencies that need to be contacted to request crime statistics.
- Make a good-faith effort to request crime statistics for all Clery crimes that occurred in the institution’s Clery Geography.
 - This means the request needs to include all Clery Act crimes and the UCR/Clery definitions of each of those crimes.
 - The institution is also obligated to request information about all Clery crimes that were reported, and subsequently unfounded (we recommend that you include the definition of unfounded as defined in the ED Handbook).
 - The request needs to include a clear description of the campus, including what constitutes On Campus, Noncampus, and Public Property. Institutions should ensure that the request includes pertinent addresses associated with campus and Noncampus locations and clearly identifies the specific Public Property for which the institution is requesting crime statistics (e.g., provide block numbers or cross-streets of public streets and thoroughfares, and request that the

local agency limit their responses to the locations provided). We strongly recommend that you include a detailed Clery Map as an attachment or enclosure to the request, to avoid confusion about what is and isn’t part of your Clery Geography with respect to the campus or campuses within the agency’s jurisdiction.

- Send the request to local law enforcement in January or February for the crime statistics for the previous calendar year, as this leaves ample time for the agency to respond to the request and for the institution to reconcile any responses with crime reports already known to the institution. Sending a request in July or August is not optimal and would likely not be viewed favorably by the Department of Education. The Handbook makes strong recommendations to “contact agencies early in the calendar year”¹⁵ to provide ample time for agencies to respond.





The Handbook describes in detail what an institution should do if there are “red flags that alert you to the possibility that the agency misunderstood your request.”

An important part of making these requests is to document them in writing. If the request is accurate and you have included required information, the institution will be deemed to be in compliance, even if the agency doesn’t respond to the request. If the agency does respond, the institution “may rely on the information supplied”¹⁶ which means that the institution “is not required to verify the accuracy of the statistics that are provided.”¹⁷ The Handbook does indicate that the institutions are “required to ensure that the statistics you receive cover the Clery Act geography and not other areas”¹⁸ thus, the institution should attempt to verify that the crime occurred in a Clery-reportable geographic area.

In order to be above reproach, institutions should send at least one follow-up (in writing via letter or email) to any local law enforcement agency that does not respond to the initial request for crime statistics within 6-8 weeks. That action should put the institution on solid ground in the event of an audit.

The Handbook describes in detail what an institution should do if there are “red flags that alert you to the possibility that the agency misunderstood your request.”¹⁹ It also provides specific guidelines for responses from local law enforcement that include directing the institution to a website to obtain the statistics; requests for the institution to pay for the statistics; receiving statistics based on state crimes code versus the UCR/Clery definitions; if institutions can’t identify the geography for the statistics provided; and if the request for crime statistics is denied. Follow the guidelines in the Handbook if you encounter any of these issues.

The ultimate goal is for your agency to make a good faith effort to gather the crime statistics from all agencies with jurisdiction in the location of the Clery geography you are requesting. Make the effort to ensure that your written requests are detailed and include all requirements to ensure that the agency understands what you are requesting and how/where to respond to your request.

CONCLUSION

Institutions have various requirements pertaining to the collection of Clery Act crimes from CSAs and local law enforcement agencies. Institutions should consider developing a policy or standard operating procedure to explain each of these functions and the responsibilities of all involved parties, including CSAs, persons requesting and receiving CSA crime reports, and individuals responsible for requesting crime statistics from local law enforcement agencies.

Reporting crime statistics is a foundational requirement of the Clery Act. Institutions must ensure they have developed appropriate procedures for collecting crime information from all required sources to ensure the most accurate and complete statistical disclosures are presented to the campus community and to the U.S. Department of Education. Developing a sound system for gathering this information will not only help to keep the institution above reproach in a program review, but it will help to meet the espoused goal of the Clery Act to provide important information to both current and prospective students and employees about campus safety.

¹There are 22 different crime statistics (including Unfounded offenses) contained within the 15 main types of offenses.

²“Pennsylvania State University Campus Crime Final Program Review Determination [Penn State FPRD],” U.S. Department of Education, November 3, 2016, <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/cleryact/pennstate/PSCFPRD10327991.pdf>.

³The Department of Education focused on the importance of training CSAs in the Penn State case. Of note, the Penn State FPRD stated: “While the Clery Act does not specifically require institutions to provide CSA training, it is virtually impossible [emphasis added] to achieve compliance without it,” p. 116.

⁴The University of Maine was found to have a deficient system for collecting crime reports from all CSAs because when they queried CSAs via email, not all individuals or entities receiving the request responded to indicate if any crimes had been brought to their attention. In other words, the absence of a response from CSAs was viewed by ED as evidence that the institution did not adequately collect information from all identified CSAs. We strongly recommend that institutions strive for a 100% response rate from CSAs, as the absence of a response from all CSAs may call into question whether all crimes brought to the attention of CSAs have been included in the institution’s crime statistics. Such a practice can make an institution vulnerable to not including all Clery Act crimes reported to CSAs, in violation of the Clery Act. See University of Maine Campus Crime Final Program Review Determination, available at <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/cleryact/universityofmaine/UniofMaine.pdf>.

⁵See Occidental College Fine Notice, 2017, available at: https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/cleryact/Occidental_College_9_27_17_Fine_Action.pdf, p. 7.

⁶This presumes that the institution has properly trained the CSAs to ensure that they understand what the Clery crimes are and they have a sense of the definition of each, so they would be capable of recalling the information when they hear about or observe Clery crimes.

⁷Readers are cautioned that the 2016 Handbook recommends institutions should “Provide a simple mechanism for CSAs to report information to the person or office responsible for compiling the institution’s crime statistics.” See 2016 Handbook for Campus Safety and Security Reporting [2016 Handbook], available at: <https://www2.ed.gov/admins/lead/safety/handbook.pdf>, p. 4-10.

⁸Penn State FPRD, p. 22.

⁹Institutions should consider any applicable federal or state laws or industry standards pertaining to privacy/confidentiality/data security that may inform the format in which CSAs are encouraged to report crimes, especially if personally identifiable information is collected in these crime reports. Also of note, institutions are required to discuss in their Annual Security Reports how they protect (in cases of Dating Violence, Domestic Violence, Sexual Assault, and Stalking) the confidentiality of victims and other necessary parties, including how the institution will complete publicly available recordkeeping, including Clery Act reporting and disclosures, without inclusion of personally identifying information about the victim. Institutions may find it prudent to discuss in their ASR statements of policy how CSA reports are stored, who has access to these reports, and what type of data security practices are in place to protect confidentiality of victims (such as through the use of encryption software).

¹⁰NACCOP members can access a more detailed review of requesting crime statistics from local law enforcement agencies in the Journal of Clery Compliance Officers and Professionals, 2017 edition.

¹¹Institutions should ensure they are requesting crime statistics from local law enforcement agencies with jurisdiction at each of their Separate Campuses, not just the agencies with jurisdiction on the Main Campus.

¹²It is not difficult to imagine a municipal police officer initiating a traffic stop on a public street adjacent to campus, and the vehicle pulling into campus before coming to a complete stop.

¹³2016 Handbook, p. 4-12.

¹⁴In some States, a sheriff’s deputy has a role of providing security for the jail, and does not exercise law enforcement authority outside of the jail. Thus, they should not be included in the list of agencies from which crime statistics must be collected.

¹⁵2016 Handbook, p. 4-14.

¹⁶2016 Handbook, p. 4-12.

¹⁷2016 Handbook, p. 4-12.

¹⁸2016 Handbook, p. 4-12 through 4-13.

¹⁹2016 Handbook, p. 4-13.