



Consumer Privacy: Not so private.

Current federal and state laws protect the rights of the consumer; however, these laws also allow for certain entities to have access and rights to individual consumer information. The Fair Credit Reporting Act (FCRA) outlines many of these rights and limitations. Consumer reporting agencies including credit bureaus, and specialty agencies such as entities that sell information about check writing histories, medical records, rental history records, etc. as well as background screening companies, are accountable to consumer privacy and protection laws.

A recent Harris Poll shows over 90% of Americans are concerned about threats to personal privacy. It was also revealed that four in five Americans believe consumers have lost control over how their personal information is used.

Specified below are the key rights and responsibilities defined by the FCRA to help ensure the personal information security of consumers.

Adverse Action Notifications. Privacy rights are secured through regulated limited access to a consumer file. Only persons or entities with a valid need can be provided with this information, including a creditor, insurer, employer, landlord and other business. An employer, for example only has access with the consumer's consent. Under the FCRA, before adverse action is taken, the candidate must receive an adverse action notification and a copy of the report. The candidate is then entitled to a period of time whereby he can dispute the findings of the report. If he does not dispute the content, he is then notified that he is being denied (a job for example) based on the information provided in the report. This applies to not only providers of credit reports, but also to users of specialty consumer reports.

Recent amendments to the FCRA were made in the name of the 'specialty' subcategory, outlined specifically by the Fair and Accurate Credit Transaction

Act (FACTA) of the FCRA. FACTA responds to the many new companies that have emerged to compile reports specifically targeted at employers, insurers, and landlords and include such reports as civil and public records, credit history, bankruptcy filings, companies with which the consumer has had a prior business relationship (ex. Insurance companies or banks), medical records and driving records.

These specialty consumer reporting agencies are equally bound under the FCRA and FACTA to furnish accurate information. Often however, the average consumer is not aware of the existence of specialty consumer reports, unless of course, they are denied a job, insurance or a rental agreement.

Consumers have the right to dispute inaccurate information in any consumer report prepared about them that results in an adverse action.

If any information on the reports is inaccurate, the consumer has the right to dispute incomplete or erroneous information. In turn, consumer reporting agencies are required to correct inaccurate or incomplete information, as well as delete any unverifiable information.

Despite that right, there are varying federal and state regulations. For example, under the FCRA, an employer does not need to reveal to the consumer the name of the company that conducts the screening. Under California law however, an employer is obligated to reveal this information through notice and permission documents signed by potential employees prior to any background screening (CA Civil Code §1786.12(2)(B)(iv)).

Consumer Right to Adverse Action Notice and Free Copy Request. Under the FCRA, a 'consumer report' presented to the requesting organization, is "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living" (FCRA §609(d)(1)). The consumer's file should include "all of the information on [the consumer] recorded and retained by a consumer reporting agency regardless of how the information is stored" (FCRA §609(g)). Essentially, the consumer receives the same report information as the requesting entity.

Under the right to know clause pertaining to consumer file, not only does the consumer have the right to access their file, providing proper identification is provided, but this disclosure from the consumer reporting agency must be free of charge if any of the following conditions are met:

- A person or entity has taken adverse action against the consumer because of information in their credit report
- The consumer is a victim of identity theft and a fraud alert is on file
- The consumer file contains inaccurate information due to fraud
- The consumer is on public assistance
- The consumer is unemployed but expects to apply for employment within 60 days

Other limitations, including time limitations are imposed on consumer information. For example, negative information more than seven years old and bankruptcies more than ten years old may not be reported by the consumer reporting agency.

All consumers have the federally mandated right to have one free disclosure annually from credit bureaus and specialty consumer reporting agencies. Free reports have been available nationwide since December 1, 2004. These reports must be requested through each reporting agency as there is no centralized source for obtaining reports.

The consumer has also been granted additional control over consumer information through ‘freezing’ their credit report in at least 16 states including California, so it can only be accessed in very limited situations. With some exceptions, this option is offered free to victims of identity theft who provide a police report to the credit bureaus. Those who are not victims of identity theft may have the option of freezing their credit reports for a fee in those states that offer report freezing.

Despite federally enforced, free benefits for consumers, consumers may incur expenses to acquire information in situations where no waiver conditions occur or when the free annual report has been utilized. Consumers have the right to ask for credit scores, yet costs must be absorbed by the consumer.

While there are general limitations on who can access consumer information, consumers should be aware that there are exceptions. For example, if an employer conducts an in-house check, these regulations do not apply in order to allow a misconduct investigation.

Conclusion

While consumers often focus on credit checks, background checks may include any of the following pieces of information: driving records, Social Security Number, bankruptcy, property ownership, past employers, vehicle registration, education records, character references, military records, personal references, credit records, court records, neighbor

interviews, state licensing records, incarceration records, criminal records, workers’ compensation, medical records, drug test records and sex offender list.

The FCRA covers reports about a consumer’s overall financial health. However, as illustrated above, it is clear that credit reports are just one of a broader category of consumer reports covered by the FCRA.

If in any case a consumer reporting agency or related furnishers of information violate any of these rights, the consumer may be able to seek restitution for damages through state or federal court. Visit www.ftc.gov for the details of the rights and responsibilities provided by the FCRA.