

# Fair Credit Reporting Act 101: What Every Legal Aid Lawyer Needs To Know

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# What is the Fair Credit Reporting Act?

Federal law enacted to promote the accuracy, fairness, and privacy of consumer information contained in the files of consumer reporting agencies (“CRAs”).

15 U.S.C. § 1681.

Not just about credit!



# What is a “Consumer Report”?

“[A]ny... communication . . . 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** . . . used or expected to be used. . . for . . . establishing . . . eligibility for **credit** . . . insurance . . . [or] **employment.**”

15 U.S.C. § 1681a(d).



# What is a “Consumer File”?

- “[A]ll of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

15 U.S.C. § 1681a(g).

A consumer “disclosure” is only a small part of this.



# Major Players:

- **Credit:** “Big 3” Experian, TransUnion, Equifax
- **Tenant Screening:** RentGrow, RealPage (On-Site and LeasingDesk), First Advantage, AppFolio, TransUnion Rental Screening Solutions
- **Employment Screening:** Checkr, First Advantage
- **Check Services:** ChexSystems, TeleCheck, Certegy
- **Banking:** Early Warning System
  - And more!



# Data Sources on Criminal Background Checks

- Credit data from the Big 3
- Data scrapers
- “Public records vendors”
- Gathered by central repository (LexisNexis)



# FCRA Protections – Tenant Screening

- Reasonable procedures to assure maximum possible accuracy 15 U.S.C. § 1681e(b)
- Disclosure (including data sources) upon request 15 U.S.C. § 1681g(a)
- Reasonable reinvestigation after a dispute, deletion of unverifiable information 15 U.S.C. § 1681i



# FCRA Protections - Employment Screening

- Reasonable procedures to assure maximum possible accuracy 15 U.S.C. § 1681e(b)
- Disclosure (including data sources) upon request 15 U.S.C. § 1681g(a)
- Reasonable reinvestigation after a dispute, deletion of unverifiable information 15 U.S.C. § 1681i

**PLUS**

- Notice and a copy of the report before adverse action is taken 15 U.S.C. § 1681b(b)(3)





# Identifying FCRA Violations

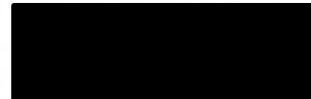
- Make sure you have a copy of the report
  - Request from user or CRA? Depends what you want.
  - File vs. report

September 17, 2021

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Verisk Analytics, Inc.  
545 Washington Blvd  
Jersey City, NJ 07310

**Re:   Name:**  
      **SSN:**  
      **DOB:**



Dear Sir or Madam:

Please provide me with a full copy of everything you have in your file about me.

Very truly yours,



# Identifying FCRA Violations

- Common problems

- Mixed file – wrong person's record
- Duplication – same record appears multiple times
- Expunged records
- Inadequate context
- Erroneous description/case level (e.g., misdemeanor instead of summary offense)
- Failure to update (e.g. shows charges but not dispositions)
- Too old
  - 15 U.S.C. § 1681c prohibits reporting of **non-conviction** records older than 7 years.



# Example – Mixed file

First Advantage National Criminal File BRISTOL, HARTFORD, CT

Status: Complete

Score: Decisional

Date Completed: 10/Nov/2017

Record Source	DATABASE SEARCH (XDB) - NJ AOC - OCN - OCEAN COUNTY, NEW JERSEY
Search Results	Record Found
Search Type	First Advantage National Criminal File Search
Date of Search	08/Nov/2017
Address Covered	73 WOODARD DRIVE
Address City Covered	BRISTOL
Address County Covered	HARTFORD
Address State Covered	CT
Address Zip	06010
Location	OCEAN COUNTY, NJ OCEAN COUNTY COUNTY
Given Name Searched	RASHAUNA LYNN WILSON
<p>Full matched by the following identifiers: Last Name, DOB</p> <p>Partial matched by the following identifiers: First Name, Middle Name</p>	
Case Reference #	09020520
Case Date	28/Jan/2009
Name on File	RASHAUN L WILSON
Address on File	135 GRANT AVE, SEASIDE HEIGHTS, NJ
DoB on File	REDACTED
Charge	FORGERY - ALTER/CHANGE WRITING WITHOUT AUTHORIZATION - OTHER FORGED DOCUMENT
Major/Minor Category	THEFT/FRAUD/BURGLARY / FORGERY
Charge Type	INDICTMENT
Disposition	GUILTY
Disposition Date	04/Oct/2010
Sentence	JAIL CREDIT TIME 5 DAY; PROBATION 18 MONTHS; RE SENTENCED 03/18/2011; JAIL 9 DAYS TIME SERVED; RE SENTENCED 04/26/2013; JAIL 25 DAYS; CREDIT TIME SERVED 16 DAYS; FINE AND COSTS
Current as of Date	10/Nov/2017



## Example – Failure to Update

Report date: May 14, 2018



### County Criminal Searches

Consider

McKean, PA

Consider

RAPE FORCIBLE COMPULSION (STATUTE: 18-3121-A1)

Apr 4, 2014

Case Number MJ-48303-CR-0000041-2014UNIV OF PITTSBURGH POLICE DEPT

File Date Apr 5, 2014

Court Jurisdiction AOC - PENNSYLVANIA - MCKEAN COUNTY

County MCKEAN

State PA

Full Name BRANDON SANDERS

DOB Apr 3, 1992

YOB 1992

Charge RAPE FORCIBLE COMPULSION (STATUTE: 18-3121-A1)

Charge Type felony

Offense Date Apr 4, 2014

Charge Date Apr 5, 2014

Disposition HELD FOR COURT

Disposition Date May 21, 2014

# Addressing FCRA Violations

## 1. Get the underlying record



### McKean County Court of Common Pleas Court Summary

Sanders, Brandon  
New York, NY 10029  
Aliases:  
Brandon Sanders

DOB: 04/03/1992

Sex: Male  
Eyes: Brown  
Hair: Black  
Race: Black

Closed

McKean  
CP-42-CR-0000376-2014

Proc Status: Completed

DC No:

OTN:T4508663

Arrest Dt: 04/04/2014

Disp Date: 08/30/2016

Disp Judge: Pavlock, John H.

<u>Seq No</u>	<u>Statute</u>	<u>Grade</u>	<u>Description</u>	<u>Disposition</u>
1	18 § 3121 §§ A1	F1	Rape Forcible Compulsion	Dismissed
2	18 § 3124.1	F2	Sexual Assault	Not Guilty
3	18 § 3125 §§ A1	F2	Agg. Ind. Assault W/O Consent	Not Guilty
4	18 § 3126 §§ A1	M2	Indec Asslt-W/O Cons Of Other	Not Guilty
5	18 § 3121 §§ A3	F1	Rape Unconscious Victim	Dismissed



# Addressing FCRA Violations

## 2. Make a detailed dispute



COMMUNITY LEGAL SERVICES  
OF PHILADELPHIA

January 23, 2012

To: Accurate Background  
from [REDACTED]

I am appealing This Background  
Check because it is incorrect I was  
Victim Of Identity Theft

Case: [REDACTED]  
Phone: [REDACTED]

LexisNexis Consumer Print Center  
P.O. Box 105179 Bldg 2  
Atlanta, GA 30348-5179

Re: Dispute of consumer report on John Giddiens

To Whom It May Concern:

I represent John Giddiens concerning a criminal record check issued by LexisNexis Screening Solutions, Inc., on December 12, 2011 (copy enclosed). This letter constitutes a dispute of that consumer report.

The report indicates that Mr. Giddiens' record contains two drug charges resolved as of February 20, 2009. In fact, those charges had been expunged by court order dated April 14, 2010 (copy enclosed). That order was implemented by the Pennsylvania State Police (PSP) on May 5, 2010 (certification enclosed). As a result of this expungement, Mr. Giddiens does not have a criminal record (PSP certification enclosed).

We insist that this inaccurate report, and your database, be corrected immediately to reflect the expungement, and that an accurate report be sent to your client.

Because of a lack of clarity as to what address this dispute should be submitted, it is also being submitted to Privacy Information Manager, c/o LexisNexis, P.O. Box 933, Dayton, OH 45401.

Should there be any questions, please contact me at 215-981-3719 or [sdietrich@clsphila.org](mailto:sdietrich@clsphila.org).

Very truly yours,

SHARON M. DIETRICH  
Managing Attorney

SMD

Enclosures

cc: John Giddiens



# Addressing FCRA Violations

## 3. Prevent recurrence

- Get disclosures from other big players and dispute as needed
- Dispute with any identified vendor sources, particularly LexisNexis



# Addressing FCRA Violations

## 4. Time to litigate?

- Inaccuracy not corrected after a dispute
- Cannot get a file/report copy after multiple requests
- Same fact pattern repeated with same CRA (e.g., ignoring date of birth, partial name matching, not picking up updates)





# Addressing FCRA Violations

**Call or email us!**

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