RECORD SEALED, BUT STILL SHOWING UP?

How to Fix Your Background Check

After years of having a criminal case appear on background checks for employment, housing, or other opportunities, many people feel relief once the case is no longer visible to the public through sealing or expungement — but what happens if that old record still shows up on a background check?

A sealed record can have serious consequences, including the loss of a job offer or denial of housing. But there's good news: **Federal law provides protections when background check companies make these mistakes, and there is a clear process for getting the report corrected through the Fair Credit Reporting Act (FCRA).**

There are different terms for records that are removed from public view, including "*sealed*", "*expunged*" and more.

For the purposes of this explainer, we're referring to these records as "sealed."

The FRCA covers private companies that sell background checks to employers, landlords and others — but it does not cover background checks done directly by government agencies or courts. There are usually other processes to correct errors in government-produced records.

Individuals have the right to challenge (or dispute) the reporting of criminal cases after they are sealed. Once a dispute is submitted, the background check company must investigate it — at no cost — and provide the results within 30-45 days. **If the dispute is valid, the background check company must also quickly notify whoever bought the report** (like a potential employer or landlord) to correct the error.

The following 4 steps outline how to clear a sealed case from a background check.

STEP 1:

Determine which company provided the background check.

If an applicant is rejected for a job, housing, or other opportunity because of a background check, **the FCRA requires the rejector to tell the individual that the background check was the reason for the denial.** This rejection notice must include the name of the background check company and how to contact them — that's where the applicant can submit a dispute.

> *Special Rule*: An employer must give the applicant a copy of the background check report before taking adverse action, but landlords and other businesses are not required to do so. If a copy of the report is provided before a decision is final, the applicant should act immediately to try to avoid rejection.

If the documents are not provided, the applicant should call the employer or landlord and request them. If the applicant does not receive a copy of the report after requesting it, the individual should seek legal help. (See Step 4.)

STEP 2:

Find the contact information for submitting the dispute to the background check company.

The background check company's contact information should be listed in the rejection notice or the copy of the background check, as required by law. If it is not, check the *List of Consumer Reporting Companies* prepared by the Consumer Financial Protection Bureau (the CFPB), for that company's contact information.

STEP 3:

Prepare and submit the dispute.

Many companies allow disputes to be started by phone, but **the safest approach is to submit the dispute in writing, ideally by certified mail.** Although online submission may also be an option, **certified mail is the safest and most recommended way to submit a dispute.** However, if an individual submits a dispute, **a copy of the submission should always be retained** for their personal records.

📎**Here's a sample letter that can be modified for individual use.**

Your letter must include:

- Contact information.
- A statement explaining that the company's background check is inaccurate because it included a case that has been expunged or sealed. The more information that can be included, the better. If the company has made any other mistakes, such as stating that a misdemeanor was a felony, that should be listed as well.
- Request that the company investigate the sealed or expunged case and remove it from the background check (and from all of the data on the individual maintained by the company).

A dispute can often be filed online on the company's website.

Be aware that agreement to certain terms and conditions may be required in order to file a dispute online, including giving up the right to resolve further disputes in court.

Supporting documentation strengthens a dispute. Helpful documents include:

- A copy of the inaccurate background check, circling the case that was sealed.
- A court order of the sealing or expungement.
- Any other government notices that the case has been sealed or expunged.
- If the individual does not have an order or official notice, they may include an updated background check from the courts or the government that no longer shows the case after it was cleared.

If documentation is not available, the individual should still request that the company investigate with the court or state repository.

While the dispute is under review, it is important to notify the employer or landlord that the background check was inaccurate and that an investigation has been requested to fix it.

STEP 4:

Seek legal help if the dispute does not fix the problem.

If the dispute is denied, local legal aid organizations or a private lawyer who specializes in cases against background screening companies under the FCRA may be able to help. The National Association of Consumer Advocates has a searchable directory under "background history checks."

If the error caused damages — for example, losing a job offer — an individual may be able to sue the background check company for compensation. Employers or landlords may also be liable if they failed to provide required notices or acted improperly based on an expunged or sealed record.