

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Credit Practices
Bureau of Consumer Protection

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Attorney
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Re: Public records searches - FCRA §§603(d)(1), 603(f), 604(b)(2), 613

Dear Mr. Slyter:

This responds to your letter asking for clarification of the application of the Fair Credit Reporting Act (FCRA) to the background checks the Cargill Security Department obtains on both applicants for employment, and on current employees suspected of wrongdoing in the workplace. These checks consist primarily of a criminal background check provided by a private investigator or a company that searches court records on Cargill's behalf. You pose four questions that we repeat verbatim, followed by our answers.

1. Does Section 613 stand alone as the requirements for public records (i.e. criminal or civil court records), or are the requirements under Section 604(b)(2) required, (i.e. disclosure form signed prior to the search)?

Both provisions apply. Section 613 imposes obligations on *consumer reporting agencies* (CRAs, such as the records search companies you hire) that include public record information in the consumer reports they make to clients for employment purposes. Specifically, CRAs must either (1) notify the consumer when they provide reports containing public record information to the employer, or (2) "maintain strict procedures designed to insure that (adverse) public record information is complete and up to date" in such reports. Section 604(b)(2) imposes duties on *employers that use consumer reports* (such as Cargill) provided by CRAs. Employers must, before obtaining any consumer report, (A) disclose to the consumer "in a document that consists solely of the disclosure" that the report may be obtained, and (B) procure the consumer's written authorization to do so.

2. Are private investigators and court researchers considered a consumer reporting agency if they are obtaining information directly from the courts and reporting back to Cargill with the results.

Private investigators and records search firms that Cargill hires to report on court records are CRAs under the definition set forth in Section 603(f); individual researchers hired by such firms are not. See the enclosed staff opinion letter (*LeBlanc*, 6/9/98), where we discuss the status of such parties in detail.

3. When using a private investigator or court researcher to conduct a search of criminal or civil court records on an individual as part of a company internal investigation (i.e. fraud, theft etc.) is it necessary to obtain authorization and a signed disclosure from the individual prior to the search?

Yes. If an employer obtains such information from any CRA (including private investigators or record search firms, as discussed in item #2 above) as part of an internal investigation, it is "using consumer reports for employment purposes" and thus must comply with Section 604(b) that requires the employer to make a disclosure and obtain a written consent before obtaining any consumer report. See the enclosed staff opinion letter (*Brisch*, 6/11/98), where we respond to similar questions.

4. If a company hires a private investigator or court researcher to perform a criminal or civil records search and obtains copies of actual court documents, without generating their own report, is this considered a consumer report and do the same requirements apply?

Yes. The term "consumer report" is defined by Section 603(d)(1) of the FCRA to mean any communication "bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living" by a CRA. (As discussed in item #2 above, a records search firm or private investigator hired by Cargill is a CRA.) In forwarding court documents to a client in response to a request for a criminal or civil records search on a named individual, the investigator is a CRA communicating information about some or all of those factors as they relate to that person. At a minimum, these records bear on an individual's character and general reputation, and may bear on credit factors as well.

The opinions set forth in this informal staff letter are not binding on the Commission.

Sincerely yours,

Clarke W. Brinckerhoff