

Professional Records & Information Services Management

June 14, 2004

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex H)
600 Pennsylvania Avenue NW
Washington, DC 20580

RE: The FACT Act Disposal Rule, R-411007

PRISM International (Professional Records & Information Services Management) offers these comments on the FACT Act Disposal Rule proposed by the Federal Trade Commission ("FTC"). 69 Fed. Reg. 21388 (April 20, 2004)(to be codified at 16 C.F.R. pt 682).

The information management industry, which includes an estimated 2,000 active records management companies in the United States, assists clients in the protection, access, retention, storage, and disposal of their important and confidential information. PRISM International is the not-for-profit trade association for companies in this industry. More than 95 percent of PRISM International members are small business owners and operators, defined as businesses whose gross sales are \$3 million or less per year. PRISM International provides quality services and education to its members. As businesses engaged in the day-to-day practice of disposing confidential records, we are fully committed to implementing proper methods of destruction in order to prevent identity theft.

Except as discussed below, PRISM International endorses the FTC's proposed rule. PRISM International, however, does believe that it is important to further clarify the manner in which the rule proposes to regulate record custodians. This clarification is important for our industry, particularly in light of the FTC's commentary that "[c]ompanies that possess consumer information in connection with the provision of services to another entity are also directly covered by the proposed Rule to the extent that they dispose of the consumer information." 69 Fed Reg. at 21389.

We are primarily concerned about an interpretation of the rule which would create legal obligations for record management companies when these companies have no reason to know whether the client records in their possession contain consumer information. Such a construction would impose enormous, and often times impossible, burdens to analyze the substance of the records in our custody. These burdens would be patently unreasonable for five important reasons:

First, our members simply lack the means to undertake a document review of the billions of client records that they possess.

Second, many of our members have entered contracts with their clients which prohibit them from reading the information in their possession.

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Third, in most cases, record custodians would have no way of knowing whether their clients' financial information was *derived from* credit reports.

Fourth, imposing a substantive review requirement on third parties would contradict the FACT Act's goal of preventing identity theft by narrowing third party access to confidential information.

Fifth, making records management and storage companies responsible for insuring proper disposal of consumer information, even when they have not contracted to do so, would unreasonably shift responsibility to these companies for records owned by their clients. Indeed, doing so could well work at cross-purposes with the goal of the rule, since the owners of the records might attempt to shift responsibility away from themselves and to those who have no knowledge of the content of the records or the source of the information contained in those records. At a minimum, the failure clearly to specify whether it is the owner of the documents or the custodian who bears responsibility for their disposal will surely invite unnecessary conflict and unfairness.

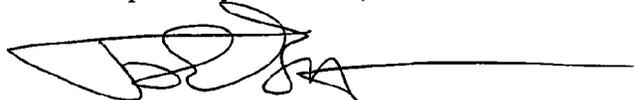
Based on these five concerns, PRISM International recommends a new provision in the rule, which states that third parties are not required to analyze the documents in their possession to determine whether these documents contain consumer information. Moreover, we recommend that third parties should be fully exempt from the rule unless they receive notice from the record owners that documents in their possession contain consumer information *and* they enter a written contract to destroy documents in accordance with the Disposal Rule. In this way, third parties will not be responsible for compliance when they simply do not know that records in their possession require special methods of destruction, such as shredding. However, they will assume legal responsibility when they receive this notice and affirmatively agree to perform additional services in accordance with the rule. This structure has the added advantage of ensuring that there is always one entity responsible for proper destruction at all times.

One way of modifying the rule to implement this suggestion is to restate the example set forth at proposed Section 682.3(b)(3) as a requirement that all record owners who outsource disposal shall, after due diligence, enter into and take reasonable steps to monitor compliance with a written contract with another party engaged in the business of record destruction to dispose of consumer information in a manner consistent with this rule. We also note that the proposed rule limits the liability of one group of third parties within the example stated at proposed Section 682.3(b)(4)(b). This example provides: "For traditional garbage collectors engaged in the normal course of business," reasonable disposal methods include, "disposing of garbage in accordance with standard procedures." Such an exemption should not be limited to traditional garbage collectors. As discussed above, records management companies are in a unique position because they have no way of knowing whether the records in their possession contain consumer information, and it would be inefficient, ineffective, and unfair to require them to independently analyze these records. Accordingly, the FTC should add an express provision—not just an example—that exempts records management companies from the Disposal Rule unless and until they (1) receive notice from the record owners that documents in their possession contain consumer information, *and* (2) enter a written contract to destroy documents in accordance with the Disposal Rule. We also suggest that recycling companies are a third group that should benefit from a similar exemption.

We believe that these modifications to the rule will accomplish several important goals. First, the rule will provide strong protections against identity theft by requiring PRISM International members and other third parties to destroy consumer information in accordance with the rule when the notice and contract prerequisites are met. Second, third parties will be afforded the clarity of knowing when their statutory obligations are imposed. Third, record owners will be prevented from circumventing the rule through inappropriate attempts to shift their obligations to third parties.

In closing, we commend the FTC for its proposed Rule. We ask you to consider modifying the structure of custodian liability in order to articulate clear and fair legal obligations, while advancing a strong rule that prevents the serious crime of identity theft.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'James E. Booth', is written over a horizontal line. The signature is stylized and cursive.

James E. Booth
Executive Director