



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

Division of Privacy and Identity Protection

**VIA FEDERAL EXPRESS  
SIGNATURE REQUESTED**

May 2, 2013

Case Breakers  
David Scott  
1440 Coral Ridge Drive  
Coral Springs, FL 33071

Dear Mr. Scott:

This letter concerns recent test-shopping contacts with your company by non-attorney staff of the Federal Trade Commission (“FTC”), a federal agency that enforces consumer privacy laws, including the Fair Credit Reporting Act (“FCRA”).<sup>1</sup> These test-shopping contacts indicated that your company may be selling consumer information for employment purposes, which may violate the FCRA. We want to make you aware of the requirements of this law so that you can ensure that your practices comply with it.

If you assemble or evaluate information on consumers and provide it to employers so that they can screen or evaluate employees, then you are a consumer reporting agency (“CRA”) that is required to comply with the FCRA.<sup>2</sup> This is true even if you obtain this information from criminal background checks or other public records.<sup>3</sup> Further, even if you place a disclaimer on your website indicating that your data must not be used for employment or other FCRA-covered purposes, you may still be a CRA. Regardless of any disclaimers, if you do not intend to be a CRA, you should have clear policies in place explaining the purposes for which you will and will not sell information, you should educate your employees and customer service representatives about the importance of not selling consumer information for FCRA purposes, and you should review all marketing materials to ensure that you are not marketing your products to HR professionals or employers. If you are a CRA, the reports that you provide for these purposes are known as “consumer reports.”<sup>4</sup>

In the event that you are a CRA, the FCRA requires you to take several steps to ensure the fairness, accuracy, and confidentiality of the consumer reports that you provide. For

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<sup>1</sup> 15 U.S.C. § 1681 *et seq.*

<sup>2</sup> *See* 15 U.S.C. § 1681a(f).

<sup>3</sup> *See* Sum, Informal Staff Opinion Letter, Sept. 15, 1999 (“The ‘public record’ status of . . . information is irrelevant . . . . The FCRA is concerned with . . . the accuracy of information being reported by consumer reporting agencies. Public-record source information may be inaccurate, or errors may occur in the transcription of the information by a CRA. In either case, it is important for the consumer to know that inaccurate information is being disseminating by a CRA so that he or she may take steps to correct the information.”).

<sup>4</sup> *See* 15 U.S.C. § 1681a(d).

example, you must take reasonable steps to ensure the maximum possible accuracy of the information in your consumer reports, and to ensure that each employer you provide with a consumer report is in fact using the report to screen employees.<sup>5</sup> You also must obtain certification from employers that they provided clear written notice to the person whose report they are requesting and obtained that person's written consent to procure the report.<sup>6</sup> Further, you must inform employers who obtain consumer reports from you about employer obligations under the FCRA.<sup>7</sup> For example, you must tell employers that if they deny employment on the basis of the consumer reports you provide, they must provide the applicant with notice of that fact, along with information about the applicant's right to receive a free copy of his or her report from you, and to dispute information that the applicant believes is inaccurate. A model notice is available in 12 Code of Federal Regulations § 1022, Appendix N.

We also note that you have additional duties under the FCRA if you provide employers with public-record information that is likely to affect negatively a consumer's ability to obtain employment (e.g., arrests, indictments, criminal convictions, tax liens, or outstanding judgments). In these circumstances, you must directly notify the consumer that you are reporting the information to the employer and provide the consumer with the employer's contact information or you must maintain strict procedures designed to insure that the public-record information you provide is complete and up to date.<sup>8</sup>

At this time, we have not evaluated your company's practices to determine whether they comply with the FCRA. However, we encourage you to review your products and services, as well as your policies, employee-training, and other procedures for compliance. You may find the full text of the FCRA and more information about it on the FTC website at <http://business.ftc.gov/privacy-and-security/credit-reporting>.

The Commission reserves the right to take action against you based on past or future law violations; your practices also may be subject to laws enforced by other federal, state, or local law enforcement agencies. A violation of the FCRA may result in legal action by the FTC, in which it is entitled to seek injunctive relief and/or monetary penalties of up to \$3,500 per violation.<sup>9</sup>

If you have any questions, please call Laura Berger at (202) 326-2471 or Kristen Anderson at (202) 326-3209.

Sincerely,

Maneesha Mithal  
Associate Director

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<sup>5</sup> See 15 U.S.C. § 1681e(a), (b).

<sup>6</sup> See 15 U.S.C. § 1681b(b)(1)(A)(i), (b)(2)(A)(i)-(ii).

<sup>7</sup> 15 U.S.C. § 1681e(d).

<sup>8</sup> 15 U.S.C. § 1681k(a)(1)-(2). See also *In the Matter of Filiquarian Publishing, LLC.*, FTC File No. 112 3195 (May 1, 2013) (consent agreement for violations of the FCRA).

<sup>9</sup> See, e.g., *U.S. v. Teletrack, Inc.*, Case No. 1:11-CV-2060 (N.D. Ga. June 27, 2011) (consent agreement for civil penalties of \$1.8 million for violations of the FCRA).