



FTC Office of the Secretary  
600 Pennsylvania Ave. N.W.  
Washington, DC 20580

August 27, 2010

**Re: Comments of the World Privacy Forum in the Matter of Rite Aid Corporation,  
FTC File No. 072 3121**

The World Privacy Forum offers comments on the proposed consent order in FTC File No. 072 3121, In the Matter of Rite Aid Corporation. The notice about this result was published on July 27, 2010 at <http://ftc.gov/opa/2010/07/riteaid.shtm>.

The World Privacy Forum is a non-partisan, non-profit public interest research and consumer education organization. Our focus is on conducting in-depth research and analysis of privacy issues, including issues related to health care. See <<http://www.worldprivacyforum.org>>.

We begin by referring to comments we previously filed on a similar case, FTC File No. 072 3119, In the Matter of CVS Caremark Corporation. Our comments in the CVS case can be found at <http://www.ftc.gov/os/comments/cvscaremark/index.shtm> and at [http://www.worldprivacyforum.org/pdf/WPF\\_CVS\\_comments03272009fs.pdf](http://www.worldprivacyforum.org/pdf/WPF_CVS_comments03272009fs.pdf).

In commenting on the CVS case, we objected to a similar consent decree on these grounds:

The lack of facts is problematic. Did CVS's conduct result in the disclosure of records about one million patients? We do not know from the Commission's disclosures in this case. Did CVS's conduct result in the disclosure of records about one hundred patients? We would like to think that there might be a greater consequence for a violation that affected a large number of patients, but we have no way of being able to make a judgment here due to the lack of facts.

How many different CVS locations were guilty of the breach of security? How many different locations were accused of a breach of security? The public does not know according to these documents, and we do not know.

How long did CVS dispose of patient records using methods that violate the HIPAA privacy and security rules and the FTC Act? Did the conduct last for a week? A month? Four years? Where was this specifically happening? We do not know, and we do not know what the Commission found out beyond the media reporting. The only facts are a few sentences summarizing what unnamed

television stations and other media outlets found. The Commission did not provide a link to any of the reporting.

Did CVS' breach of security result in any cases of medical identity theft or financial identity theft? There is no information in the consent order or in other Commission documents.

We have the same concerns about the Rite Aid consent decree. What are the facts? The only facts that inform the public about the specific conduct that Rite Aid engaged in come from a single paragraph of the complaint:

The complaint alleges that as a result of these failures, Rite Aid pharmacies discarded materials containing sensitive information in clear readable text (such as pharmacy labels and job applications) in unsecured, publicly-accessible trash dumpsters on numerous occasions. For example, in July 2006 and continuing into 2007 and 2008, television stations and other media outlets reported finding such information in unsecured dumpsters used by Rite Aid pharmacies in at least 7 cities throughout the United States. When discarded in publicly-accessible dumpsters, such information can be obtained by individuals for purposes of identity theft or the theft of prescription medicines.

The public has no way to assess the scope of Rite Aid's conduct. Did the Commission find any facts? Did it conduct an investigation? What were the results?

The Commission did not impose a penalty in either case, but we note that the Department of Health and Human Services imposed a fine of \$2.5 million on CVS and \$1 million on Rite Aid. There is nothing on the public record to indicate why Rite Aid's fine was only 40% of the fine imposed on CVS. Were fewer patients affected by Rite Aid's conduct? Were fewer locations affected? Was less information disclosed? What facts justified a smaller fine?

Unless the public record includes sufficient facts and explains why a particular fine was imposed, the actions taken by the Commission and the Department are not understandable to the public. Essentially, we are commenting here without any substantive facts.

We also repeat an objection that we made in the earlier case. That is, nothing in the consent order offers any remedy, relief, assistance, or support to a patient who may have been injured because of Rite Aid's security breach. We have no explanation from Commission documents why the settlement in this case does not impose upon Rite Aid an obligation to notify patients, provide assistance to those who may have been injured, or to compensate those who were injured.

We urge the Commission to take another look at this consent order and to publish the facts and documents that support the decision of the Commission. We now have two similar cases, both of which have results that lack facts and documentation for the Commission's action. Federal agencies must explain what they are doing and why. We are concerned that the decisions in both of these cases may become problematic at some point to both agencies, particularly if similar

breaches at other companies occur in the future. We would like to see robust facts that support the decision, and remedies for patients.

Respectfully submitted,

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World Privacy Forum