

Class Action Case Shows Importance of Background Screening Firms Following Fair Credit Reporting Act when Reporting Sexual Offender Data

By Attorney Lester Rosen, Founder & CEO Employment Screening Resources® (ESR)

A new class action lawsuit filed in federal court on August 23, 2011 underscores once again the importance of background screening firms following the Fair Credit Reporting Act (FCRA).

According to the civil complaint for damages, a background screening firm allegedly reported sexual offender data on applicants based solely upon a name match only, without making any effort whatsoever to confirm if the data belonged to the applicant.

The suit alleges that such a practice violated the rule contained in FCRA section 607(b) that a screening firm must take reasonable procedure to assure maximum possible accuracy.

In addition, the class action suit contends the screening firm “also reported public record information to employers without informing consumers that such information was being reported and without maintaining strict procedures to assure that the public information that it reported was complete and up to date” as required by FCRA section 613.

In this case, the lead plaintiff had a common name, and the screening firm reported seven possible sexual offender matches relating to three individuals with the same name. The first possible match was convicted when the plaintiff was four years old, had a different date of birth, and was of a different race.

The second possible match belonged to a 66 year old person of a different race sentenced to life in prison also with a different date of birth. The third individual was also another race and had a different date of birth. The plaintiff contended he never lived in any of the states where the matches were reported and was not a sexual offender.

Based upon his allegations, it appears that matching the records to the plaintiff would have demonstrated the sexual offender record did not belong to the plaintiff.

According to the case filed in the U.S. District Court for the Northern District of Illinois, when contacted by the plaintiff, the background screening firm advised him that the screening firm had a practice of routinely reporting all sexual offender matches based upon first and last name while making no effort to determine if the matter was applicable to a candidate.

The suit contends that the background screening firm told the lead plaintiff that it often leads to problems. The suit alleged that a background screening firm can use other information to insure accuracy, such a date of birth.

As a result, the suit alleged that the background screening firm “creates and distributes grossly and obviously inaccurate consumer reports to employers by including sex offender information in its consumer reports without making sure that some aspect of the consumer’s unique personal identifying information – such as a date of birth, middle initial, social security number, or even race information – matches its reported sex offender information.”

The lawsuit alleges that the background screening firm acted in reckless disregard of its duties, and is seeking punitive on behalf of the class of individuals who have been wrongly identified as sex offenders by the screening firm as well as attorney’s fees. Class action cases can create substantial exposure for defendants.

At this point, only a complaint has been filed, which is merely an allegation, and no response has been filed and there have been no judicial determination made as to the accuracy of the allegations.

However, the seriousness of the allegations, if true, underscores the differences between professional background screening firms and mere data vendors. A professional background screening firm that provides real background checks would never report that a person was possibly a sexual offender without taking appropriate steps under the FCRA to evaluate the accuracy of the data.

In addition, providing information to employer as alleged was one of the issues brought up before the Equal Employment Opportunity Commission (EEOC) on their meeting of July 26, 2011, where some speakers complained about inaccurate data.

Since, at the time of my writing this article, the matter is only in the allegation stage, and there has been no judicial determination as of the truthfulness of the charge, my policy is to not identify any of the parties.