

BUSINESSES MUST PROVIDE VICTIMS AND LAW ENFORCEMENT WITH TRANSACTION RECORDS RELATING TO IDENTITY THEFT

The Fair Credit Reporting Act (FCRA) spells out rights for victims of identity theft, as well as responsibilities for businesses. Identity theft victims are entitled to ask businesses for a copy of transaction records — such as applications for credit — relating to the theft of their identity.

Victims also can authorize law enforcement officers to get copies of the records. Businesses covered by the law must provide copies of these records, free of charge, within 30 days of receiving the request for them in writing. This means that law enforcement officials who ask for these records in writing may get them from your business without a subpoena, as long as they have the victim's authorization.

Federal regulators — the Federal Trade Commission, the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration — enforce the federal law that creates this right (FCRA, Section 609(e)). Here is some additional information to help your business comply with this provision of the law:

Q. Who must comply with Section 609(e) of the FCRA?

A. The law applies to a business (including banks and federal credit unions) that has provided credit, goods, or services to, accepted payment from, or otherwise entered into a transaction with someone who is believed to have fraudulently used another person's identification. For example, if your business made an unauthorized change of address on the victim's account, or opened a cell phone or credit account in the victim's name, you may be required to provide the records relating to the transaction to the identity theft victim or the law enforcement officer acting on that victim's behalf.

Q. What documents must my business provide?

A. Your business must provide applications and business transactions records, maintained either by your business or by another entity on your behalf, that support any transaction alleged to be a result of identity theft. These may include invoices, credit applications, or account statements. These documents may help victims clear their accounts and credit reports and provide useful evidence about the identity thief.

Q. To whom must I provide section 609(e) materials?

A. This information should be provided to:

1. The victim;
2. Any federal, state, or local government law enforcement agency or officer specified by the victim; or
3. Any law enforcement agency investigating the identity theft that was authorized by the victim to take receipt of these records.

Q. What are the procedures for requesting these materials?

A. Requests must be submitted in writing. Your business may specify an address to receive these requests. If you do so, the address should be prominently disclosed and easy for the victim to find. You may ask the victim to provide relevant information, like the transaction date or account number, if they know it. You also can require that victims provide:

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1. proof of identity, like a government-issued ID card, the same type of information the identity thief used to open the account, or the type of information you are currently requesting from applicants; and
2. a police report and completed affidavit. Victims can use the FTC's ID Theft Affidavit, available at ftc.gov/idtheft, or another affidavit that you accept.

Q. Is it ever appropriate not to provide documents?

A. You can refuse to provide the records if you determine in good faith that:

- you cannot verify the true identity of the person asking for the information;
- the request for the information is based on a misrepresentation;
- the information requested is Internet navigational data or similar information about a person's visit to a website or online service; or
- the law does not require the disclosure of the information.

Your business may not deny disclosure of these records based on the financial privacy provisions of the Gramm-Leach-Bliley Act (see Subtitle A of Title V of Public Law 106-102). Nevertheless, you may refuse to disclose them if state or another federal law prohibits you from doing so.

Q. Are there recordkeeping requirements of Section 609(e)?

A. Section 609(e) does not require any new recordkeeping procedures for your business.