

# My Background Check Report mistakenly reported that I have a Criminal Record. What can I do?



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According to the Professional Background Screening Association, 94% of all organizations conduct some form of background check before hiring new employees. In addition, 69% of these organizations conduct criminal record checks, according to the Society of Human Resource Management. Suffice it to say; that there is nothing to be concerned about if you are put through a background check – it is a considerable concern, however, when the check shows a false criminal record in your past.

Although it can be extremely worrying when a background check shows you have a false criminal report, you have the right to file a dispute with the background screening provider and employer to get the reports correct. The company you interview with is required by law to give you a reasonable amount of time to dispute the report, identify inaccurate information, and provide evidence to support your claim. This article has been written to provide you with guidance on how to deal with this type of situation.

To formulate your plan of action, you must first understand the laws that apply to your situation and your rights.

First, it is important to understand the Fair Credit Reporting Act (FCRA) that provides you with the right to dispute inaccurate information provided in a background check report.

The government fully recognizes the possibility of false positives on name-based criminal background checks. When someone's background check shows a criminal record despite the person actually not having a criminal story is called a 'false positive.'

The FCRA applies to reports produced by consumer reporting agencies, including credit reports, criminal background reports, and other kinds of background checks. The act was drafted in 1970 to ensure that all consumer reports are fair and accurate.

## **Your Rights According to the FCRA**

The Consumer Financial Protection Bureau which enforces the FCRA has created a convenient document- A Summarized of Your Rights Under the Fair Credit Reporting Act:

Employers are required to do the following:

- Inform you if any information from your background report is used to reach a decision not to hire you.

- They must also give you complete contact information for the consumer reporting agency that produces the report.
- Provide you with a free copy of the report.
- Provide you with a summary of your rights as specified in the FCRA.

You have the right to provide evidence supporting your claim that the background check report contains inaccurate information and to request that the background screening agency re-investigate your allegation of incorrect information. If you believe that the background checking agency and/or employer have not followed the law, you have the right to pursue legal action for damage that you suffered from a false report.

The Federal Trade Commission (FTC) is the government agency that enforces the FCRA. The FTC has the authority to act against background check agencies and/or employers who violate the FCRA. So, if either the employer or a consumer report agency does not abide by the FCRA, you should report them to the FTC.

### **Steps To Take When You Get a False Positive Background Check**

The Federal Trade Commission also has a comprehensive set of rules that employers must follow to ensure compliance with the FCRA. You should know these rules to see if an employer or a consumer reporting agency is violating federal laws.

### **Employers are expected to comply with the following process:**

If your background check shows a criminal record, the employer must send you a pre-Adverse action notice. A pre-adverse action notice is sent as a warning that the information in your report will be used against you. This means that if the employer doesn't offer you the job based on information reported in your background check, they must send you what is known as an upper action notice.

Additionally, you should be aware that the employer must give you a reasonable amount of time, generally, employers provide 5-7 days for you to respond prior to sending a final Adverse action notice- which is the final decision to deny employment. During this waiting period, you must provide evidence supporting your claim disputing the criminal record reported on the background check report.

If the employer chooses to move forward with the decision not to hire you, they must let you know and provide the following information:

- The name, address, and phone number of the consumer reporting agency responsible for producing the report.
- A statement saying that the consumer reporting agency that produced the report did not make the decision not to hire you.

- A notice telling you that you have the right to get a copy of the report for free and to get the report changed if there are any mistakes.

Once you have been notified, you should take the following steps:

### **Step 1: Get in Touch with the Consumer Reporting Agency that created your report.**

Get in touch with the consumer reporting agency, identify the inaccurate/errors in the report, and request that the company correct the report based on evidence you provide. You should be specific and clear in identifying the inaccurate information.

It's likely that the reporting agency took information that was already part of public records. For example, if you have a criminal record that was expunged you should check with the police department, the local courts, and other similar sources where the error in public record was made. Get these records removed from the public registry.

Make sure that all your conversations with the agency are documented and send your letter using the certified mail service of the United States Post Office. Don't forget to get a certified receipt and keep it in a file so you have proof of having sent the information.

### **Step 2: Closely Read the Report, Identify the Mistakes, and Understand Why They Were Made**

Take a close look at the report and make a note of all the mistakes that you find there.

Once you have found the mistake, do your best to understand the reason why the mistake was made.

Common reasons for mistaken criminal records include:

- Sharing similar names with offenders. For example, your name is John P. Smith and the criminal record reported belongs to John T. Smith.
- Expunged criminal charges were recorded. Include copies of your expungement approval by the court and all related documents. Do not send your original information. Make copies.
- Criminal records beyond seven years were included in the report if you are in a state that prohibits this. In your response refer to the applicable state law that limits reporting to seven years and provide copies of court records indicating when the charges were filed, dates of your trial, etc.

Please note that there can be many reasons for a mistake. It will help your situation if you are able to recognize the reason for the mistakes. However, if you are not able to identify the cause, still submit all the other documentation you have that supports your claim.

Remember to document all your conversations and to keep copies of all documents obtained in speaking with the police department and local courts.

Keep in mind that the more specific the information you provide along with the connection with the error, the easier and quicker it will be for the agency to correct the information. Do not make the mistake of assuming that it is obvious that the information you provide connects with the inaccurate information you are claiming. You must point it out and make the connection obvious.

#### **Step 4: After You Send Your Letter**

Once the agency has received the dispute, they must correct the records within 30 days and have an additional 5 days to inform you of the changes.

Right now, you may be thinking that if the reporting agency has 30-35 days to re-investigate, correct, and communicate the issue to me, what about the job I applied for? Is the employer going to keep the job open once I have disputed the information in their Adverse action letter? Unfortunately, the FCRA does not require employers to hold the position open that you applied for until the dispute is resolved.

This is where you need a lucky charm and hope that the position is still available once the dispute has been resolved. However, if the position has been filled remember that you have cleared up inaccurate information in your background screening report and hopefully, this will clear the way for the same errors not to be made in the future.

If you follow all these steps and still cannot get the information corrected, you have the option of taking legal action.

#### **Conclusion**

A false criminal record can be a significant problem because it can become a barrier to getting a job. However, the law is on your side so do not need to worry. The FCRA protects you from the mistakes made during background checks, and it is completely possible to get your records fixed to avoid possible adverse effects from those mistakes in the future.

If you need more information on employee screening, your rights, and advice on how you can manage issues related to 10, visit the Employee Screening Advice Center blog.

#### **Disclaimer**

The information provided in this article is strictly for professional purposes and is not intended to provide legal advice. We accept no responsibility for any actions you take based on the information provided in this article. Before taking any action, you should consult a competent attorney with specialized knowledge of background screening.

#### **Published by**

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