

III.E. Obtaining Business Records Relating to Identity Theft

Identity theft victims are entitled to copies of transaction records relating to the theft of their identity, such as applications for credit, under section 609(e) of the Fair Credit Reporting Act (FCRA). 15 U.S.C. § 1681g(e). These documents can be essential in establishing the underlying fraud. Victims also can authorize law enforcement officers to receive the records directly from businesses without the need to obtain a subpoena. The 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. For an explanation of the business's responsibility to provide transaction records, see [Appendix D.8](#).

Businesses that have 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 are obligated to provide such documents under section 609(e). Depending on the company involved, this provision is enforced by the Federal Trade Commission, Office of Thrift Supervision, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Reserve, or National Credit Union Administration.

The types of documents the business must provide include "applications and transaction records" that were maintained by the business, or by another entity acting on its behalf, that relate to any transaction alleged to be a result of identity theft. The records could include invoices, credit applications, or account statements, and may include electronic records. There are no recordkeeping procedures provided in the statute, so if the business disposes of certain records regularly, they may not be available to the victim or law enforcement.

All requests under the provision by the victim or an authorized law enforcement officer on behalf of the victim must be in writing. The business may specify an address to receive these requests. Before submitting such a request, the victim should contact the business to verify the address to which she should send the request.

[Appendix C.8](#) provides three sample letters – [C.8.a](#) is a victim's letter requesting documents under section 609(e), [C.8.b](#) is a cover letter for law enforcement requesting documents on behalf of a victim and enclosing the victim's written request, and [C.8.c](#) is an attorney's letter following up on the victim's request.

The business may ask the victim to provide information like the transaction date or account number if she knows it. They also may require:

- Proof of the victim's identity, like a copy of a government-issued ID card, and
- Proof of the identity theft, like a police report and completed Identity Theft Affidavit. In most cases, the victim can use her Identity Theft Report, given that it contains both a police report and an Identity Theft Affidavit, to satisfy the proof of identity theft requirement. (For more information on an Identity

Theft Report, see [Section II.B.](#)). In some cases, the business may specify that the victim use the company's own affidavit for this purpose.

Businesses are protected from civil liability under any Federal, State, or other laws for providing the records as long as the disclosure was made in good faith under section 609(e). FCRA § 609(e)(7), 15 U.S.C. § 1681g(e)(7).

Businesses may refuse to provide records if they have determined that:

- They cannot verify the true identity of the person making the request,
- The request for information is based on a misrepresentation, or
- The information requested is “Internet navigational data” or similar information about an identity thief’s visit to a website or online service. FCRA § 609(e)(5), 15 U.S.C. § 1681g(e)(5).

The business also may refuse to provide records if state or other federal laws prohibit them from doing so. FCRA § 609(e)(9), 15 U.S.C. § 1681g(e)(9). However, a business may not deny the records based on the financial privacy provisions of the Gramm-Leach-Bliley Act. 15 U.S.C. § 6803.

In the event that the business refuses to provide the records, it is recommended that the business communicate the reasons for the refusal to the victim or law enforcement officer or agency that made the request.

If your client has satisfied all of the section 609(e) requirements, and having received your follow-up letter, the business continues to refuse, the FTC would appreciate being notified of this fact. We ask that you, the attorney, please notify the FTC by email at “609eRecords@ftc.gov.”

Note on Private Rights of Action: The FCRA does not provide a federal private right of action for violations of section 609(e). Your client may have civil remedies under state law.