

FTC, CFPB, and DOJ File Brief Supporting Fair Credit Reporting Act

[Christie Grymes Thompson](#)

May 8, 2012

Today the Federal Trade Commission ("FTC"), Consumer Financial Protection Bureau ("CFPB"), and Department of Justice ("DOJ") filed a [brief](#) supporting the constitutionality of the [Fair Credit Reporting Act](#) ("FCRA"). FCRA limits the use of credit report information, protecting the privacy of the information, and establishes procedures for correcting mistakes in credit reports. The brief addresses a provision of FCRA (§ 1681c) that bars a credit reporting agency ("CRA") from disclosing individuals' arrest records or other adverse information that is more than seven years old.

The government filed the brief in *King v. General Information Services, Inc.*, which is pending in the Eastern District of Pennsylvania District Court. The defendant argues that the FCRA provision is an unconstitutional restriction of free speech. Contrary to that position, the government argues that the provision satisfies the applicable *Central Hudson* test for restrictions on commercial speech and should not be invalidated, despite the U.S. Supreme Court's recent ruling in *Sorrell v. IMS Health Inc.* The brief concludes, "The law directly advances the government's substantial interest in protecting individuals' privacy and is no more extensive than necessary to protect that interest while also accommodating businesses' competing interest in obtaining complete information about people to whom they are considering offering a loan, an insurance policy, or a job."

The brief demonstrates the cooperation expected between the FTC and CFPB as they jointly enforce FCRA. In July 2011, the FTC issued "[40 Years of Experience with the Fair Credit Reporting Act](#)," a staff report "to share [the FTC's] extensive experience with the CFPB and the public through a summary of its key interpretations and guidance" developed through its 40 years of enforcing FCRA. Companies subject to FCRA should continue to watch for coordination between the agencies as the enforcement roles evolve.