



Requesting Information On Fraudulent Accounts: A Guide for Identity Theft Victims *Tips for Consumers*

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Both California and federal law give an identity theft victim an important right. This is the right to get copies of documents relating to fraudulent transactions made or accounts opened using the victim's personal information. The information can help law enforcement investigate the crime and can prevent repeated violations.

You may use the form provided with this Information Sheet to ask creditors or other businesses to give you copies of applications and other business records relating to transactions or accounts that resulted from the theft of your identity.

Working with Law Enforcement

When you file your police report of identity theft, the officer may give you a form to use to request information from creditors or other businesses. If the officer does not do this, you may use the form provided here. After you receive the documents from the business, give copies to the officer investigating your case.

Contacting a Creditor or Other Business

When you call a creditor or other business to report the identity theft, explain that you will be sending a request for applications and other business records relating to the fraudulent transactions or account. Ask where you should

send your request and if any proof of your identity or affidavit of identity theft is also required.

Fraudulent Account Information Request Form

The form is provided to help you request the information from businesses. You are not required to use it. If you choose to use the form, make copies of it. Fill out one copy for each creditor or business. Send each creditor or business a completed and signed form. Enclose a copy of your police report of identity theft. If a business asked you to send proof of identity, send the proof or affidavit requested. Also enclose a copy of the federal and California laws provided with this Information Sheet.

This fact sheet is for informational purposes and should not be construed as legal advice or as policy of the State of California. If you want advice on a particular case, you should consult an attorney or other expert. The fact sheet may be copied, if (1) the meaning of the copied text is not changed or misrepresented, (2) credit is given to the California Department of Justice, and (3) all copies are distributed free of charge.

Identity Theft Victim's Request for Fraudulent Transaction/Account Information

Made pursuant to § 609(e) of the Fair Credit Reporting Act (15 U.S.C. § 1681g), California Financial Code §§ 4002 and 22470, Civil Code § 1748.95 and Penal Code § 530.8.

TO: _____ FAX: _____

ACCOUNT NO.: _____ REFERENCE NO.: _____

FROM: _____

I am a victim of identity theft. I am formally disputing a transaction or an account that I have learned has been made, opened or applied for with you. I did not make this transaction or open or apply for this account and have not authorized anyone else to do so for me. You may consider this transaction or account to be fraudulent. Below is my identifying information. I have filed a report of identity theft with my local police department and a copy is attached. Under federal and California laws, creditors and other business entities must provide a copy of application and business transaction records relating to fraudulent transactions or accounts opened or applied for using an identity theft victim's identity.

A copy of the relevant federal and California law is enclosed. The victim is generally permitted to authorize your release of the account information to a specified law enforcement officer. I am designating the investigator listed below as additional recipient of all account information and documents. I authorize the release of all account documents and information to the law enforcement officer designated. I am requesting that you provide copies of the following records related to the disputed transaction or account:

Application records or screen prints of Internet/phone applications

Statements

Payment/charge slips

Investigator's Summary

Delivery addresses

Continued

Identity Theft Victim's Request for Fraudulent Transaction/Account Information

Any other documents associated with the account

All records of phone numbers used to activate the account or used to access the account

Name: _____ Social Security Number: _____

Address: _____

Phone: _____ Fax: _____

Employer: _____ Phone: _____

Designated Police Department: _____ Report No.: _____

Designated Investigator: _____

Signed: _____ Date: _____

NOTES

Federal Law: Fair Credit Reporting Act, 15 U.S. Code § 609e

- (e) Information Available to Victims
- (1) *In general.* For the purpose of documenting fraudulent transactions resulting from identity theft, not later than 30 days after the date of receipt of a request from a victim in accordance with paragraph (3), and subject to verification of the identity of the victim and the claim of identity theft in accordance with paragraph (2), a business entity that has provided credit to, provided for consideration products, goods, or services to, accepted payment from, or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim, shall provide a copy of application and business transaction records in the control of the business entity, whether maintained by the business entity or by another person on behalf of the business entity, evidencing any transaction alleged to be a result of identity theft to –
- (A) the victim;
- (B) any Federal, State, or local government law enforcement agency or officer specified by the victim in such a request; or
- (C) any law enforcement agency investigating the identity theft and authorized by the victim to take receipt of records provided under this subsection.
- (2) *Verification of identity and claim.* Before a business entity provides any information under paragraph (1), unless the business entity, at its discretion, otherwise has a high degree of confidence that it knows the identity of the victim making a request under paragraph (1), the victim shall provide to the business entity –
- (A) as proof of positive identification of the victim, at the election of the business entity–
- (i) the presentation of a government-issued identification card;
- (ii) personally identifying information of the same type as was provided to the business entity by the unauthorized person; or
- (iii) personally identifying information that the business entity typically requests from new applicants or for new transactions, at the time of the victim's request for information, including any documentation described in clauses (i) and (ii); and
- (B) as proof of a claim of identity theft, at the election of the business entity--
- (i) a copy of a police report evidencing the claim of the victim of identity theft; and
- (ii) a properly completed--
- (I) copy of a standardized affidavit of identity theft developed and made available by the Commission; or
- (II) an affidavit of fact that is acceptable to the business entity for that purpose.
- (3) *Procedures.* The request of a victim under paragraph (1) shall –
- (A) be in writing;
- (B) be mailed to an address specified by the business entity, if any; and
- (C) if asked by the business entity, include relevant information about any transaction alleged to be a result of identity theft to facilitate compliance with this section including –
- (i) if known by the victim (or if readily obtainable by the victim), the date of the application or transaction; and
- (ii) if known by the victim (or if readily obtainable by the victim), any other identifying information such as an account or transaction number.
- (4) *No charge to victim.* Information required to be provided under paragraph (1) shall be so provided without charge.
- (5) *Authority to decline to provide information.* A business entity may decline to provide information under paragraph (1) if, in the exercise of good faith, the business entity determines that –
- (A) this subsection does not require disclosure of the information;
- (B) after reviewing the information provided pursuant to paragraph (2), the business entity does not have a high degree of confidence in knowing the true identity of the individual requesting the information;

- (C) the request for the information is based on a misrepresentation of fact by the individual requesting the information relevant to the request for information; or
- (D) the information requested is Internet navigational data or similar information about a person's visit to a website or online service.
- (6) *Limitation on liability.* Except as provided in section 621, sections 616 and 617 do not apply to any violation of this subsection.
- (7) *Limitation on civil liability.* No business entity may be held civilly liable under any provision of Federal, State, or other law for disclosure, made in good faith pursuant to this subsection.
- (8) *No new recordkeeping obligation.* Nothing in this subsection creates an obligation on the part of a business entity to obtain, retain, or maintain information or records that are not otherwise required to be obtained, retained, or maintained in the ordinary course of its business or under other applicable law.
- (9) Rule of Construction
- (A) *In general.* No provision of subtitle A of title V of Public Law 106-102, prohibiting the disclosure of financial information by a business entity to third parties shall be used to deny disclosure of information to the victim under this subsection.
- (B) *Limitation.* Except as provided in subparagraph (A), nothing in this subsection permits a business entity to disclose information, including information to law enforcement under subparagraphs (B) and (C) of paragraph (1), that the business entity is otherwise prohibited from disclosing under any other applicable provision of Federal or State law.
- (10) *Affirmative defense.* In any civil action brought to enforce this subsection, it is an affirmative defense (which the defendant must establish by a preponderance of the evidence) for a business entity to file an affidavit or answer stating that –
 - (A) the business entity has made a reasonably diligent search of its available business records; and
 - (B) the records requested under this subsection do not exist or are not reasonably available.
- (11) *Definition of victim.* For purposes of this subsection, the term “victim” means a consumer whose means of identification or financial information has been used or transferred (or has been alleged to have been used or transferred) without the authority of that consumer, with the intent to commit, or to aid or abet, an identity theft or a similar crime.
- (12) *Effective date.* This subsection shall become effective 180 days after the date of enactment of this subsection.
- (13) *Effectiveness study.* Not later than 18 months after the date of enactment of this subsection, the Comptroller General of the United States shall submit a report to Congress assessing the effectiveness of this provision.

California Law: Penal Code § 530.8

- 530.8. (a) If a person discovers that an application in his or her name for a loan, credit line or account, credit card, charge card, public utility service, mail receiving or forwarding service, office or desk space rental service, or commercial mobile radio service has been filed with any person or entity by an unauthorized person, or that an account in his or her name has been opened with a bank, trust company, savings association, credit union, public utility, mail receiving or forwarding service, office or desk space rental service, or commercial mobile radio service provider by an unauthorized person, then, upon presenting to the person or entity with which the application was filed or the account was opened a copy of a police report prepared pursuant to Section 530.6 and identifying information in the categories of information that the unauthorized person used to complete the application or to open the account, the person, or a law enforcement officer specified by the person, shall be entitled to receive information related to the application or account, including a copy of the unauthorized person's application or application information and a record of transactions or charges associated with the application or account. Upon request by the person in whose name the application was filed or in whose name the account was opened, the person or entity with which the application was filed shall inform him or her of the categories of identifying information that the unauthorized person used to complete the application or to open the account. The person or entity with which the application was filed or the account was opened shall provide copies of all paper records, records of telephone applications or authorizations, or records of electronic applications or authorizations required by this section, without charge, within 10 business days of receipt of the person's request and submission of the required copy of the police report and identifying information.

- (b) Any request made pursuant to subdivision (a) to a person or entity subject to the provisions of Section 2891 of the Public Utilities Code shall be in writing and the requesting person shall be deemed to be the subscriber for purposes of that section.
- (c) (1) Before a person or entity provides copies to a law enforcement officer pursuant to subdivision (a), the person or entity may require the requesting person to submit a signed and dated statement by which the requesting person does all of the following:
 - (A) Authorizes disclosure for a stated period.
 - (B) Specifies the name of the agency or department to which the disclosure is authorized.
 - (C) Identifies the types of records that the requesting person authorizes to be disclosed.
- (2) The person or entity shall include in the statement to be signed by the requesting person a notice that the requesting person has the right at any time to revoke the authorization.
- (d) (1) A failure to produce records pursuant to subdivision (a) shall be addressed by the court in the jurisdiction in which the victim resides or in which the request for information was issued. At the victim's request, the Attorney General, the district attorney, or the prosecuting city attorney may file a petition to compel the attendance of the person or entity in possession of the records, as described in subdivision (a), and order the production of the requested records to the court. The petition shall contain a declaration from the victim stating when the request for information was made, that the information requested was not provided, and what response, if any, was made by the person or entity. The petition shall also contain copies of the police report prepared pursuant to Section 530.6 and the request for information made pursuant to this section upon the person or entity in possession of the records, as described in subdivision (a), and these two documents shall be kept confidential by the court. The petition and copies of the police report and the application shall be served upon the person or entity in possession of the records, as described in subdivision (a). The court shall hold a hearing on the petition no later than 10 court days after the petition is served and filed. The court shall order the release of records to the victim as required pursuant to this section.
- (2) In addition to any other civil remedy available, the victim may bring a civil action against the entity for damages, injunctive relief or other equitable relief, and a penalty of one hundred dollars (\$100) per day of noncompliance, plus reasonable attorneys' fees.
- (e) For the purposes of this section, the following terms have the following meanings:
 - (1) "Application" means a new application for credit or service, the addition of authorized users to an existing account, the renewal of an existing account, or any other changes made to an existing account.
 - (2) "Commercial mobile radio service" means "commercial mobile radio service" as defined in section 20.3 of Title 47 of the Code of Federal Regulations.
 - (3) "Law enforcement officer" means a peace officer as defined by Section 830.1.

See also California Financial Code §§ 4002 and 22470, and California Civil Code § 1748.95.