

The Facts about FACTA

Companies are bound by law to guard sensitive consumer information

The past several years have seen many high-profile thefts of consumer data, affecting retailers, credit card companies, video game systems, and even companies that collect and sell consumer data for business and government use. Consumers whose data is stolen risk identity theft, spam and phishing attacks, and loss of privacy for sensitive financial, medical, and other personal information.

FACTA (the Fair and Accurate Credit Transactions Act of 2003) regulates the proper disposal of sensitive consumer information and protect against careless disposal. It is intended to prevent identify theft or fraudulent acts, and any organization that creates or possesses consumer information must dispose of it in a way that it can no longer be accessed.

Underground Archives destroys more than 600,000 pounds of paper documents for our clients each year.

According to the Federal Trade Commission, which enforces FACTA, the Act's Disposal Rule (enacted June 1, 2005) applies to people and organizations that use consumer reports, including: consumer reporting

companies; lenders; insurers; employers; landlords; government agencies; mortgage brokers, car dealers; attorneys; private investigators; debt collectors; individuals who pull consumer reports on prospective home employees, such as nannies or contractors; and entities that maintain information in consumer reports as part of their role as a service provider to other organizations covered by the Rule.

"Under FACTA, we at Underground Archives are also legally bound to protect the consumer information we store for our clients," explains President/CEO Daniel Bruce "Even if a client abandons the information, we are still responsible for properly destroying it."

According to FACTA, "Consumer information' means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data." 16 CFR § 682.1(b)

The law goes on to define proper disposal as "taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal." 16 CFR § 682.3(a)

Employers, take note: The FTC encourages anyone who disposes of any records containing a consumer's personal or financial information to take similar protective

measures. So, employee or applicant data, such as W-4 forms or other records containing Social Security numbers or other identifying data (even names, addresses, and phone numbers) should be properly disposed of to guard against identity theft.

“One of our roles as storage experts is to help our customers figure out the best way to dispose of information to meet their legal obligations,” says Daniel Bruce. “Sometimes, clients aren’t even sure their records hold this type of information, so we can help with inventorying, as well as setting up a compliant disposition strategy.”

What is “proper disposal”?

The Disposal Rule requires disposal practices that are reasonable and appropriate to prevent the unauthorized access to – or use of – information in a consumer report. For example, reasonable measures for disposing of consumer report information could include establishing and complying with policies to:

- Burn, pulverize, or shred papers containing consumer report information so that the information cannot be read or reconstructed.
- Destroy or erase electronic files or media containing consumer report information so that the information cannot be read or reconstructed.
- Conduct due diligence and hire a document destruction contractor to dispose of material specifically identified as consumer report information consistent with the Rule.

One of the easiest—and most protective—solutions is for companies to implement a “Shred All” policy. This takes decision making out of employees’ hands and simply treats all documents as containing potential protected or confidential information.

Penalties for violation of FACTA include civil liability (actual damages or statutory damages of up to \$1,000 per person), class action lawsuits, federal fines (up to \$2,500 for each violation) and state fines (up to \$1,000 for each violation).

With so much at stake, not only in potential legal fines and penalties but also in reputational damage, negative publicity, and loss of consumer confidence should a privacy breach occur, organizations are advised to establish and follow a clear disposal policy to protect themselves as well as consumers.

References:

FTC Business Alert, *Disposing of Consumer Report Information? New Rule Tells How*, June 2005.