

----- Original Message -----

Subject: Re: [Politech] ChoicePoint, EPIC tiff continues with another letter-writing round [priv]

Date: Wed, 12 Jan 2005 14:46:08 -0600

From: Bill Fason <bfason@houston.rr.com>

To: Declan McCullagh <declan@well.com>

References: <41E4B735.6040006@well.com>

Declan,

As you know, over the years I have worked as a private investigator, process server, and debt collector, and have daily hands-on experience with credit reports, ChoicePoint, AutoTrack, information brokers, and the like. It appears to me that Chris Hoofnagle, Associate Director of the Electronic Privacy Information Center, may not have completely done his homework before sending his letter to the Federal Trade Commission (16 December 2004) as he makes inaccurate claims regarding the use of certain ChoicePoint products by investigators, law firms and law enforcement agencies. Based on my own use of products obtained from ChoicePoint as well as credit reports obtained from the 'Big Three' major credit reporting agencies (TransUnion, Experian, and Equifax), I can state that several of his claims are incorrect.

Hoofnagle incorrectly claims that ChoicePoint's AutoTrackXP reports contain 'the same information' that appears in a credit report. True credit reports obtained from the Big Three (even if resold by information brokers) include open trade lines, payment histories, balances, contact information for other creditors, recent inquiries, reported employment, often some kind of credit score and/or a ratio of debt to total available credit. None of this information is contained in an AutoTrackXP report, which pertains to the identity, location, address history, and public record filings of the data-subject. Don't take my word for it. Order copies of your credit report from the Big Three, and then compare it side-by-side with any non-Fair Credit Reporting Act (FCRA) report generated by ChoicePoint. It is a matter of public record that a mortgage company holds a deed of trust on one's home, and this fact can be reported outside the purview of the FCRA. However, the monthly obligation, payment history, and balance reported by a mortgage company to a credit reporting agency are not matters of public record, and can be divulged only in accordance with the FCRA.

Hoofnagle claims that "based on their status of being a private investigator, a paralegal, or a law enforcement agent, ChoicePoint's customers can pull information on almost anyone without having to declare their legal justification or entitlement to the data." Flat wrong. The contracts that ChoicePoint requires its subscribers to sign require that subscribers obtain information only in accordance with the Fair Credit Report Act, Driver Privacy Protection Act, and the Gramm-Leach-Bliley Act. Each time I wish to pull information from ChoicePoint, I am first routed to

a screen which requires that I certify the specific legal purpose for which I am obtaining the report. Each search I conduct leaves an electronic trail, and is subject to auditing. ChoicePoint can come back to me months or years later and demand that I prove exactly how a certain search complied with a specific privacy law.

While Hoofnagle claims that “ChoicePoint and other information brokers can create ties with marginal businesses or private investigators with dubious backgrounds,” the reality is that ChoicePoint carefully screens its customers. Notice how Hoofnagle uses a wiggly word (“can”) in the sentence? He’s not actually accusing ChoicePoint of having allowed “marginal businesses” (whatever that is) or investigators with “dubious backgrounds” to access ChoicePoint’s products, but he is smearing ChoicePoint by stating what he thinks “can” happen. The truth on the ground is that there is not a single documented case in which a private investigator obtained information from ChoicePoint which he then used to commit identity fraud.

Hoofnagle claims that ChoicePoint’s non-FCRA products, such as AutoTrackXP, “are sold outside the protections of the FCRA, yet are often used for related (and sometimes identical) purposes.” He provides no evidence for this assertion. Since the AutoTrackXP report does not contain trade lines, credit and debt, credit scores, payment history, or account balances, by itself it simply would not be useful to a loan officer, insurance company, or employer who needs to make an intelligent decision regarding the extension of credit, the underwriting of an insurance policy, or hiring and promoting. Creditors, landlords, insurance companies and employers want a true credit report, not the an incomplete substitute.

While an AutoTrackXP report does not contain credit and debt information, it is quite useful for investigators, law firms and police officers who need to identify and locate witnesses to take witness statements, or to locate defendants for service of legal process (subpoenas, summonses, warrants), or to find connections among people, corporations, and addresses. For this limited investigative purpose of generating leads, the AutoTrackXP report packs tremendous value for its \$20 price tag. However, locating witnesses to take witness statements and defendants for service of legal process falls outside the scope of the FCRA. If the FTC decided to extend by regulatory fiat the proscriptions of FCRA to AutoTrackXP and similar reports, the result would be that the current access enjoyed by law firms, investigators and police officers would be cut off. In fact, the FTC and other regulatory agencies would likewise have trouble locating defendants in their legal actions.

I present an example of a case I worked on several years ago where the question before the court was whether a certain affidavit had been forged. To prove that the affidavit was legitimate, we needed to locate the notary

public who notarized the affidavit and have her testify at trial. Unfortunately we could not locate her in time for trial, and consequently an innocent man spent five months behind bars until he was freed by writ of habeas corpus, and then eventually cleared completely of the charge. EPIC's policy recommendations would have deleterious consequences for those seeking justice through the courts.

EPIC calls for tighter regulation of commercial data brokers "in light of the Amy Boyer case, where a Florida information broker sold data to the man who stalked and killed Amy Boyer." Boyer was murdered at her place of employment by Liam Youens, who on 8 September 1999 obtained her place of employment from Docusearch, a Florida private investigative firm. Docusearch acquired this address through a subcontractor in New York named Michele Gambino, who had obtained the information by placing a "pretext" telephone call to Boyer in New Hampshire. Gambino lied about who she was and the purpose of her call in order to convince Boyer to reveal her employment information. It should be noted that ChoicePoint did not provide Amy Boyer's place of employment or any other information about her, and that ChoicePoint does not engage in pretext calls. Changing the FCRA would not address pretext callers one iota. In fact, shutting off legitimate access to information might actually have the unintended consequence of increasing reliance on pretext calls, good old boy connections, and other gray area techniques.

Regards,

Bill Fason

Politech mailing list

Archived at <http://www.politechbot.com/>

Moderated by Declan McCullagh (<http://www.mccullagh.org/>)

----- Original Message -----

Subject: Re: [Politech] An insider says EPIC hasn't done homework on credit agencies [priv]

Date: Thu, 13 Jan 2005 23:01:46 -0500

From: Joel Reidenberg <reidenberg@sprynet.com>

Reply-To: reidenberg@sprynet.com

Organization: Fordham Law School

To: Declan McCullagh <declan@well.com>

CC: politech@politechbot.com

References: <41E60142.7030902@well.com>

Declan,

I have followed the various exchanges about the EPIC/Choice Point letters on your list. As you may know, I was one of the FCRA experts who testified in the FTC v. Trans Union proceeding that resulted in the landmark ruling holding that Trans Union's use of consumer reporting information for marketing purposes was illegal. *FTC v. Trans Union*, 245 F.3d 809 (D.C. Cir., 2001) cert. denied 536 U.S. 915 (2002). I am concerned that your readers will be misinformed about the FCRA because of significant errors that were stated in a recent post by Bill Fason.

Mr. Fason's assertion that the FCRA does not apply to public record information is simply wrong. The FCRA applies to any information that is collected for a consumer reporting purpose. The statute and the courts have been quite clear: "Under the FCRA whether a credit report is a consumer report does not depend solely upon the ultimate use to which the information contained therein is put, but instead, it is governed by the purpose for which the information was originally collected in whole or in part by the consumer reporting agency." *Bakker v. McKinnon*, 52 F.3d 1007 (8th Cir., 1998). Whether the data comes from a public record or a private record is legally irrelevant to the applicability of the FCRA. Once any data is collected for a consumer reporting purpose as defined by the statute, then uses of that data, in whole or in part, that are not expressly authorized by the FCRA are illegal. *FTC v. Trans Union*, 245 F.3d 809 (D.C. Cir., 2001) cert. denied 536 U.S. 915 (2002).

Mr. Fason suggests that the distinctions in the data reported in a traditional credit report as compared to an AutoTrackXP report are legally significant. This too is completely wrong. Under the FCRA and the Trans Union decision, the distinctions he describes do not matter. The relevant legal issue is whether the data used to generate an AutoTrackXP report was originally collected for consumer reporting purposes. If so, his description of an AutoTrackXP report would still be subject to the FCRA. Ironically, Mr. Fason's post raises important questions about the legality of AutoTrackXP that can only be answered through an FTC investigation or private law suit. Mr. Fason acknowledges that he has hands-on experience with AutoTrackXP reports along with credit reports as a private investigator and debt collector. While he does not specifically say that he used AutoTrackXP to find witnesses, defendants or assets in connection with debt collection, any of these practices would unarguably be subject to the FCRA under Section 604. If this is how he and others use AutoTrackXP,

then they and ChoicePoint have a substantial liability issue under the FCRA. If the the AutoTrack reports are not used in connection with debt collection, the issue of co-mingled data between permissible and non-permissible uses still remains. Mr. Fason does not, and most likely cannot, say anything about ChoicePoint's data collection and storage practices, and specifically whether ChoicePoint processes data collected for consumer reporting purposes in its AutoTrackXP algorithms. As the Trans Union case clearly demonstrated, the only way to actually find out how these products are really used, why a company collected particular information in the first place and how a company's systems process that data is through a legal investigation of the company's information practices.

Regards,

Joel

Of possible interest:

/Privacy Wrongs in Search of Remedies

<<http://reidenberg.home.sprynet.com/PrivacyWrongs.pdf>> ,/ 54 HASTINGS L. J. 877 (2003)

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----- Original Message -----

Subject: EPIC ChoicePoint Letter

Date: Thu, 13 Jan 2005 17:03:08 +0000

From: djsolove@comcast.net
To: declan@well.com

Dear Declan,

A lot has been written on your list about the letter Chris Hoofnagle (EPIC) and I wrote to the FTC regarding the activities of database companies such as ChoicePoint. I think that your readers might be interested in reading the original letter, so they have a more complete picture of the claims Hoofnagle and I made. I attach the text below.

I also take issue with the claim in the letter from the "insider" that EPIC hasn't done its "homework." Check out EPIC's ChoicePoint page, which has over a thousand pages of FOIA material: <http://www.epic.org/privacy/choicepoint> as well as Hoofnagle's article, "Big Brother's Little Helpers: How ChoicePoint and Other Commercial Data Brokers Collect and Package Your Data for Law Enforcement," 29 N.C. J. Int'l L. & Com. Reg. 595 (2004).

Regards,

Daniel J. Solove
Associate Professor of Law
George Washington University Law School

December 16, 2004

Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: Request for investigation into data broker products for compliance with the Fair Credit Reporting Act

Dear Commissioners,

In recent years, there has been an explosion in the creation and use of dossiers of personal information to evaluate individuals. Some of these dossiers, known as "data products," in the information brokerage industry, are designed to be sold so that they avoid triggering the provisions of Fair Credit Reporting Act of 1970 (FCRA), a landmark law that ensures that compilations of personal information used for many

different purposes are accurate, correctable, fairly collected. Additionally, the FCRA mandates that information collectors be accountable for their practices.

Commercial data broker ChoicePoint, for instance, is selling data products that are used by law enforcement, government, and the private sector to make important decisions about people. ChoicePoint,[1] one of the largest data aggregation companies, became independent from Equifax, a leading U.S. credit rating agency, in 1997.[2] ChoicePoint has bought more than 40 companies and competitors, and obtains 40,000 new public records daily for its database of more than 19 billion records.[3] Choicepoint contracts with about 35 federal agencies to supply data.[4]The company's slogan is "Smarter Decisions. Safer World." However, decisions cannot be smarter, and we cannot be safer, if these new data products are not subject to the basic fairness requirements incorporated in the FCRA.

In 1970, Congress passed the FCRA in response to a litany of problems and complaints about credit reporting agencies.[5] The opening of the FCRA states:

The Congress makes the following findings:

- (1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.
- (2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.
- (3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.
- (4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

15 U.S.C. § 1681(a) (1970).

Americans face a return to the pre-FCRA era if companies like ChoicePoint can amass dossiers on Americans without compliance with any regime of Fair Information Practices. That era was marked by unaccountable data companies that reported inaccurate, falsified, and

irrelevant information on Americans, sometimes deliberately to drive up the prices of insurance or credit.[6] To some extent, this pre-FCRA area has returned. For instance, erroneous ChoicePoint data sold without the FCRA's protections were relied upon in Florida to cleanse voting registration rolls of felons prior to the 2000 election, resulting in the disenfranchisement of thousands of eligible voters.[7]

In an

<http://www.epic.org/privacy/choicepoint/fcraltr12.16.04.html#appendix_
<<http://www.epic.org/privacy/choicepoint/fcraltr12.16.04.html>>>appendix to this letter, we explain ChoicePoint's business activities.[8]

ChoicePoint sells a number of FCRA products in the employment screening, tenant screening, and criminal background check fields. But the company also sells two products, "AutoTrackXP" and "Customer Identification Programs" outside of the FCRA's protections. AutoTrackXP is a database of 17 billion records that includes Social Security Number, addresses, property and vehicle information, and other information.[9] The company's anti-fraud "Customer Identification Programs" are a suite of data products that have been created in order to verify the identity and perform background checks on individuals who open new financial services accounts. [10] From its description, Customer Identificat! ion Programs appears to be an AutoTrackXP report with additional identity verification services.

These two products are sold to financial institutions, members of the public (private investigators, law firms, etc.) and to law enforcement agencies. These are the same institutions which rely on credit reports and investigative consumer reports, but these new products are sold outside the protections of the FCRA, yet are often used for related (and sometimes identical) purposes.

It is difficult to determine what sources ChoicePoint used to create AutoTrackXP and Customer Identification Programs. However, both of these non-FCRA products have similar data elements and descriptions as ChoicePoint's FCRA products. The similarities between the information in an AutoTrackXP report and the company's FCRA products is striking; it suggests that AutoTrackXP was generated from FCRA sources.[11]

Under a well-developed line of cases, courts interpreting the FCRA have held that if a data product originates from a consumer report database, the product remains protected by the FCRA. For instance, the D.C. Circuit held in *Trans Union v. FTC* that marketing lists drawn from a credit reporting agency's master databases were "credit reports" for purposes of the FCRA.[12]

If ChoicePoint had created AutoTrackXP or its Customer Identification

Programs from FCRA sources, the products should be considered "consumer reports" for purposes of the FCRA. Consumers could exercise a series of important rights with respect to their ChoicePoint reports that are not currently available. Only the FTC can determine the "information flows" or sources of data used by ChoicePoint, and whether the company has leaked data from the FCRA products to AutoTrackXP and Customer Identification Programs. We urge the Commission to engage in this inquiry.

Even if these products are not consumer reports for purposes of the FCRA, it is incumbent on the FTC to analyze them and make recommendations to Congress concerning possible expansion of the FCRA. If these products are found not to be within the FCRA, the FTC should recommend to Congress to expand the scope of the Act.

Many of the public policy purposes underlying the FCRA are being circumvented by data brokers who have artfully constructed databases to avoid the Act's provisions. For instance, the use of data products for voter registration list cleansing implicates the most important right in a democracy: access to the polls. If such a use is not covered by the FCRA, this creates an absurd consequence. Someone denied access to a credit card would enjoy access, correction, and other FCRA rights, while another person denied access to the voting polls would have no federal information privacy rights.

Other absurd consequences emerge from this end-run around the protections of the FCRA. Although the FCRA regulates law enforcement access to consumer report information,^[13] the FBI has concluded that information it buys from ChoicePoint is not subject to the FCRA.^[14] In effect, the FBI has circumvented the FCRA by purchasing data from AutoTrackXP -- data that is often identical to what appears in a credit report from one of the "big three" agencies. Why would law enforcement agencies continue to comply with fair procedures in the FCRA for access to consumer data when they can get unaccountable, open-door access to the same information at ChoicePoint?

The use of these data products by law enforcement officials, government agencies, private investigators, and others raise the same concerns that prompted Congress to pass the FCRA. Errors in reports provided by ChoicePoint and similar companies can find their way into other databases, resulting in the potential for improper arrest and even imprisonment. People have been wrongly arrested and jailed due to errors in law enforcement databases.^[15] Since information often circulates between law enforcement records and commercial databases, erroneous information in a database such as AutoTrackXP can make its way into a series of other databases, with profoundly harmful effects on people's lives. For example, consider the following incident:

[A] Maryland woman wrongly arrested for a burglary was not cleared from the state's criminal databases. Her name and SSN also migrated to a Baltimore County database relating to child protective services cases. She was fired from her job as a substitute teacher, and only after she could establish that the information was in error was she rehired. When she later left that job to run a day care center for the U.S. military, she was subject to questioning about the erroneous arrest. Later on, when employed at as a child care director at a YMCA, she was terminated when her arrest record surfaced in a background clearance check. Since she could not have the error expunged in sufficient time, the job was given to another person. Only after several years was the error finally cleared from the public records.[16]

Finally, we note that under the self-regulatory scheme erected by the now defunct Individual Reference Services Group, commercial data brokers choose who is eligible to buy personal information. This is a subtle but important deviation from the Fair Credit Reporting Act's approach, which tends to approve record disclosure based on the use of the information, rather than the identity of the purchaser. The importance of this difference becomes clear when it is understood that private investigators, major buyers of personal information, are not licensed in all fifty states, and in some states that require licensure, it is a pro forma process.[17] As a result, ChoicePoint and other information brokers can create ties with marginal businesses or private investigators with dubious backgrounds. Based on their status of being a private investigator, a paralegal, or a law enforcement agent, ChoicePoint's customers can pull information on almost anyone without having to declare their legal justification or entitlement to the data.

We encourage the Commission to examine access to commercial data broker information in light of the Amy Boyer case, where a Florida information broker sold data to the man who stalked and killed Amy Boyer.[18] If the sale of Ms. Boyer's Social Security Number and other information to a complete stranger were conditioned upon one of the FCRA's permissible uses of data, perhaps she would be alive today. The FCRA's reasonable limitations on the use of data, if applied to this sector of data brokers, could protect individuals from unwarranted access to and sale of personal information.

Again, we urge the Commission to engage in a serious inquiry on the status of data brokers' products. We believe that some of these products may be "consumer reports" for purposes of the FCRA, thus subjecting both the seller and the buyer to regulation under the Act. We also think it incumbent upon the Commission to analyze whether the sale of these new data products circumvents the FCRA, giving businesses, private

investigators, and law enforcement access to data that previously had been subjected to Fair Information Practices.

We look forward to hearing from you on this matter, and please contact us if we can provide more information.

Sincerely,

Chris Jay Hoofnagle, Associate Director, Electronic Privacy Information Center

Daniel J. Solove* Associate Professor, George Washington University Law School

*Title and affiliation listed for identification purposes only.

[1] See EPIC ChoicePoint Page, available at [_http://www.epic.org/privacy/choicepoint/_](http://www.epic.org/privacy/choicepoint/). For more information about ChoicePoint, see Robert O'Harrow, No Place to Hide: Behind the Scenes of Our Emerging Surveillance Society (Free Press Jan. 2005).

[2] Duane D. Stanford, All our lives are on file for sale, Atlanta J. Const., Mar. 21, 2004 at 1A.

[3] Id.

[4] Daniel J. Solove, The Digital Person, Technology and Privacy in the Information Age 169 (NYU 2004).

[5] Robert Ellis Smith, Ben Franklin's Web Site, Privacy and Security from Plymouth Rock to the Internet 316-318 (Privacy Journal 2000).

[6] Id.

[7]Solove, Digital Person, 170.

[8] See also, Chris Jay Hoofnagle, Big Brother's Little Helpers: How ChoicePoint and Other Commercial Data Brokers Collect and Package Your Data for Law Enforcement, 29 N.C.J. Int'l L. & Com. Reg. 595 (Summer 2004).

[9] ChoicePoint, AutoTrackXP and ChoicePoint Online, [_http://www.choicepoint.com/industry/retail/public_cbi_1.html_](http://www.choicepoint.com/industry/retail/public_cbi_1.html).

[10] ChoicePoint, Customer Identification Programs,

[_http://www.choicepoint.com/business/financial/patriotact.html_](http://www.choicepoint.com/business/financial/patriotact.html).

[11] See Appendix.

[12] 245 F.3d 809 (D.C. Cir. 2001), cert. denied, 536 U.S. 915 (2002); *Bakker v. McKinnon*, 152 F.3d 1007, 1012 (8th Cir. 1998) ("even if report is used or expected to be used for non-consumer purpose, it may still fall within definition of consumer report if it contains information that was originally collected by consumer reporting agency with expectation that it would be used for consumer purpose"); *Ippolito v. WNS, Inc.*, 864 F.2d 440, 453 (7th Cir. 1988) ("even if a report is used or expected to be used for a non-consumer purpose, it may still fall within the definition of a consumer report if it contains information that was originally collected by a consumer reporting agency with the expectation that it would be used for a consumer purpose"); *Rice v Montgomery Ward & Co.*, 450 F. Supp. 668 (M.D.N.C. 1978).

[13] Law enforcement access to "credit headers" or information from a full report is subject to substantive and procedural protections. See, e.g., 15 U.S.C. § 1681b(a)(1).

[14] Memorandum from Office of the General Counsel, National Security Law Unit, FBI, to National Security, FBI (Sept. 17, 2001) (document obtained from the FBI), available at [_http://epic.org/privacy/choicepoint/cpfbia.pdf_](http://epic.org/privacy/choicepoint/cpfbia.pdf).

[15] Solove, *Digital Person*, 109-110.

[16] Solove, *Digital Person*, *supra*, at 46-47 (citing Eugene L. Meyer, "Md. Woman Caught in Wrong Net; Data Errors Link Her to Probes, Cost 3 Jobs," *Wash. Post*, Dec. 15, 1997, at C1). Another example includes the case of Scott Lewis, an innocent person who was labeled a criminal because of an administrative error. After he was able to fix the error, information brokers continued to circulate erroneous conviction information. Beth Givens, *Identity Theft: The Growing Problem of Wrongful Criminal Records*, Jun. 1, 2000, [_http://www.privacyrights.org/ar/wcr.htm_](http://www.privacyrights.org/ar/wcr.htm).

[17] "Some States have few requirements [for private investigator licensure], and 6 States—Alabama, Alaska, Colorado, Idaho, Mississippi, and South Dakota—have no statewide licensing requirements while others have stringent regulations." U.S. Department of Labor, Bureau of Justice Statistics, *Private Detectives and Investigators*, Mar. 21, 2004, available at [_http://www.bls.gov/oco/ocos157.htm_](http://www.bls.gov/oco/ocos157.htm).

[18] *Remsburg v. Docusearch, Inc.* 149 N.H. 148 (N.H. 2003). More

information about the Amy Boyer case is online at
[_http://epic.org/privacy/boyer/_.](http://epic.org/privacy/boyer/)

Appendix

I. ChoicePoint

ChoicePoint,[1] one of the largest data aggregation companies, became independent from Equifax, a leading U.S. credit rating agency, in 1997.[2] ChoicePoint has bought more than 40 companies and competitors, and obtains 40,000 new public records daily to insert into its database of more than 19 billion records.[3] Its business and government services division offers through its [_http://www.epic.org/privacy/choicepoint/fcraltr/AutoTrackXP.pdf_](http://www.epic.org/privacy/choicepoint/fcraltr/AutoTrackXP.pdf)AutoTrackXP product identity verification, property records, bankruptcy records, licenses, liens, judgments, and other records to local, state and federal law enforcement,[4] including the Drug Enforcement Administration and the Federal Bureau of Investigation.[5] It also advertises the AutoTrackXP product as a solution for financial services anti-fraud and anti-money laundering compliance.[6!]

ChoicePoint's roots are in information services to the insurance sector. The company stated in its initial Securities and Exchange Commission filing that: ChoicePoint's operations have historically consisted of database information and inspection and investigative services supplied primarily to the insurance industry. ChoicePoint believes it can enhance future growth and profitability by offering a broader range of risk assessment services, fraud management information and technology solutions to clients outside of the insurance industry. Although Equifax believes that significant growth opportunities exist for ChoicePoint's products and services, it anticipates that marketing and promotion of these services will be necessary. The public perceives, however, that credit reporting services and the more privacy sensitive services offered by ChoicePoint should not be available from a single provider.[7]

Since its spinoff from Equifax, ChoicePoint has acquired a number of information collection and processing companies.[8] As a provider of personal information to the insurance sector, from its inception, ChoicePoint's activities have been subject to the FCRA.[9]

II. ChoicePoint's FCRA Business Activities

ChoicePoint sells a number of information products in the employment screening, tenant screening, and personal insurance areas. Many of these

information products are FCRA databases and require both ChoicePoint and the company's clients to comply with the Act. This section summarizes ChoicePoint's FCRA employment screening, tenant screening, and personal insurance products. The next section turns to AutoTrackXP and "Customer Identification Programs," ChoicePoint's non-FCRA data products that are similar to the company's FCRA employment, tenant, and insurance screening products.

A. ChoicePoint's "CP Online" Product

On its website, ChoicePoint markets a pre-employment screening service named "CP Online." The company claims that that product is FCRA-compliant:

ChoicePoint Online is a comprehensive Web-based screening interface designed to help employers meet their pre-employment screening needs regarding background verification and drug testing administration. ChoicePoint Online is FCRA-compliant and offers easy-to-use data entry screens, duplicate request notification and alerts for possible criminal records. Using ChoicePoint Online's interactive ordering system, flexible reporting options, process monitoring and online billing, users can gain valuable information to help make better decisions and employ more efficient hiring practices.[10]

..*FCRA Summary of Consumer Rights attached to all decisional reports

ChoicePoint lists the following databases as being available for pre-employment search through the CPOnline product:

Stanton® Assessments

State Law Reference Library

National Criminal File

Driver Qualification File

Criminal Background Checks

Identity Verification

MVRs

Credit History

Employment Verification

Education Verification

Military History

Worker's Compensation

License, Credentials and Certification Verification

Business or Personal Reference Verification[11]

B. ChoicePoint's "National Criminal File" Product

On its website, ChoicePoint markets a pre-employment screening service named

"<<http://www.epic.org/privacy/choicepoint/fcraltr/NCrF.pdf>>National Criminal File." The company claims that that product is FCRA-compliant:

ChoicePoint National Criminal File is a comprehensive search of multiple criminal record sources, including fugitive file, state and county criminal record repositories, ChoicePoint proprietary criminal record information, prison, parole and release files from state Department of Corrections, Administrative Office of Courts and other state agencies.

Key Features & Benefits

- * Access to more than 100 million criminal conviction records across all 50 states
- * National reach at an economically feasible price
- * FCRA Compliant.[12]

C. ChoicePoint's "Resident Data" Screening Product

On its website, ChoicePoint markets a tenant screening service named "Resident Data." The company claims that that product is FCRA-compliant:

Resident Data is an industry leader in apartment resident screening and debt collections. Our mission is to maximize customer profitability by managing resident profile risk, collecting maximum payments from residents who default, and creating an environment of resident accountability.

Our integrated screening, skip watch and collections solutions enable apartment owners and managers to better direct their properties by providing flexible solutions that adapt to the individual needs of the

community.

Resident Data helps reduce liability by improving compliance with FCRA and Fair Housing requirements.[13]

ChoicePoint lists the following data elements as being available for tenant screening through the "Resident Data" product:

Access to Criminal, Registered Sex Offender and Eviction Databases.

[.]

- * Online access to more than 77 million criminal records, State and county criminal record repositories.

- * 39 States of Registered Sex Offender Records.

- * FBI Terrorism Watch List - Including FBI Most Wanted list and FBI Terrorist database list.

- * Proprietary records from ChoicePoint's other screening business results.

- * Offender and offense descriptions.

[.]

National Eviction Search

ChoicePoint has more than 10 million current records from 45 states. The data includes initial filings, dispossessory warrants and property actions. Resident Data searches every state where the applicant has a prior address as part of its search, not just the state where the applicant is applying.

[.]

Unit Application Analysis

For roommates or multiple applicants, the Resident Data system evaluates all applicants on a per-unit basis and presents a recommendation for the group. Individual screening outcomes are also noted on the report.

[.]

Occupant Processing

Resident Data also offers occupant screening to protect your property from potential problem residents who are not financially responsible for a lease. We can provide legally compliant screening services on potential occupants without initiating a credit check.

[.]

Maximum Evaluation of the Credit Report

The Resident Data review of the credit report includes fraud alerts, SafeScan warnings for possible Social Security Number problems, landlord or utility debt, address matching and full review of payment performance.[14]

D. ChoicePoint's CLUE Personal Auto Product

On its website, ChoicePoint markets a personal insurance screening service named

"<<http://www.epic.org/privacy/choicepoint/fcraltr/CLUEAutoUnderwriter.pdf>>CLUE Personal Auto:"

C.L.U.E. (Comprehensive Loss Underwriting Exchange) is a claim history information exchange that enables insurance companies to access prior claim information in the underwriting and rating process. C.L.U.E. Personal Auto reports contain up to five years of personal automobile claims matching the search criteria submitted by the inquiring insurance company. Data provided in C.L.U.E. reports includes policy information such as name, date of birth and policy number; claim information such as date of loss, type of loss and amounts paid; and vehicle information.

More than 95 percent of insurers writing automobile coverage provide claims data to the C.L.U.E. Personal Auto database. By providing immediate interactive information, C.L.U.E. Personal Auto helps insurers and agents make immediate business decisions.[15]

The data elements in the CLUE Personal Auto report include: names of other drivers possible associated with the person applying for insurance, claims information, vehicle descriptions, and vehicle ownership.[16]

E. ChoicePoint's "Motor Vehicle Records" Product

On its website, ChoicePoint markets a personal insurance screening service named

"<<http://www.epic.org/privacy/choicepoint/fcraltr/mvrhowtoread.pdf>>Motor Vehicle Records:"

ChoicePoint provides driving records, including standard violation codes, from all 50 states and three Canadian provinces in an easy-to-read standardized format. Online access to driving records is available for 40 states and two provinces, and ChoicePoint continues to add to the list of states with online access.[17]

The data elements in the Motor Vehicle Records report include: contact information, driver license number, physical descriptions of drivers, and additional drivers that may be associated with the data subject.[18]

F. ChoicePoint's "National Credit File" Product

On its website, ChoicePoint markets a product named "<http://www.epic.org/privacy/choicepoint/fcraltr/NCF.pdf>>National Credit File:"

ChoicePoint's National Credit File provides insurance carriers with online consumer credit reports obtained from the three major credit bureaus. Carriers then consider the financial history of the applicant and assess the applicant's risk for quoting, underwriting and renewal purposes.[19]

The data elements in the National Credit File report include: contact information, bankruptcies, public records, liens, collection items, employment information, and tradelines.[20]

III. ChoicePoint's Apparent Non-FCRA Products

In addition to the FCRA products described above, ChoicePoint markets two additional, popular data products to law enforcement, financial services companies, private investigators, law firms, and other businesses. These products are known as "AutoTrackXP" and "Customer Identification Programs."

A. ChoicePoint's "AutoTrackXP" Product

On its website, ChoicePoint markets "AutoTrackXP", which is described as:

AutoTrackXP and ChoicePoint Online provide Internet access to more than 17 billion current and historical records on individuals and businesses, and allow users to browse through those records instantly. With as little information as a name or Social Security number, both products cross-reference public and proprietary records including identity verification information, relatives and associates, corporate information, real property records and deed transfers. In addition,

access is available to a staff of field researches who perform county, state and federal courthouse searches.[21]

The advertised data elements in AutoTrackXP include:

Discovery PLUS!TM - through ChoicePoint Online

- * Compiles a comprehensive report on an individual including current and previous addresses, relatives, assets, corporate involvement and derogatory information.

- * Returns list where no matches were found.

- * Also available Discovery PLUS! with Vehicle Identification Number.

Info:PROBETM - through ChoicePoint Online

- * Checks millions of records simultaneously and provides a "shopping list" of databases, which contains records that match the search criteria. A client can then choose which databases to view.

[.]

<<http://www.epic.org/privacy/choicepoint/fcraltr/nationalcomprehensive.pdf>>National Comprehensive Report - through AutoTrackXP

- * Searches national and state databases for a summary of assets, driver licenses, professional licenses, real property, vehicles, and more.

- * Each report offers the ability to add associates to the report, which include relatives, others linked to the same addresses as the subject and neighbors.[22]

A sample AutoTrackXP report on the ChoicePoint web site shows that it contains Social Security Numbers; driver license numbers; address history; phone numbers; property ownership and transfer records; vehicle, boat, and plane registrations; UCC filings; financial information such as bankruptcies, liens, and judgments; professional licenses; business affiliations; "other people who have used the same address of the subject," "possible licensed drivers at the subject's address," and information about the data subject's relatives and neighbors.[23] The AutoTrackXP report is very similar in content to a standard credit report issued by one of the "big three" credit reporting agencies.

However, there is no indication that AutoTrackXP is sold within the

FCRA's procedural and substantive safeguards. ChoicePoint seems to have treated the data product outside the FCRA and subject only to the now-defunct Individual Reference Service Group self-regulatory principles. This means that anyone with a ChoicePoint account can buy an AutoTrackXP account.

It appears that both ChoicePoint and federal law enforcement share the view that AutoTrackXP is outside the FCRA's protections. In a document obtained by EPIC under the Freedom of Information Act from the Federal Bureau of Investigation, the agency concluded that ChoicePoint's products are not covered by the FCRA: "In this instance, none of the information which the FBI would seek to review has been collected by ChoicePoint for any of the [FCRA] purposes." [24]

B. ChoicePoint's Customer Identification Programs

On its website, ChoicePoint offers "Customer Identification Programs," described as a PATRIOT Act compliance mechanism with many data elements similar to AutoTrackXP:

Identification Solutions

Basic identification solutions ensure that name, address, date of birth and Social Security numbers match. This includes a check against required government sanctions lists. Enhanced due diligence solutions include telephone numbers, historical information, criminal records, key relationships, international information and comprehensive individual and business reports.

[.]

You'll benefit from our unique offerings, including:

- * Access to more than 17 billion public records and three major credit bureaus.
- * An extensive proprietary identity database.
- * National real property information.
- * Nationwide corporate and business information.
- * A vast database of drivers' license data and motor vehicle records.
- * National criminal history database.

* Access to the Office of Foreign Asset Control and other government sanctions and enforcement actions, including international information.[25]

[1] See EPIC ChoicePoint Page, available at [_http://www.epic.org/privacy/choicepoint/_.](http://www.epic.org/privacy/choicepoint/) For more information about ChoicePoint, see Robert O'Harrow, No Place to Hide: Behind the Scenes of Our Emerging Surveillance Society (Free Press Jan. 2005).

[2] Duane D. Stanford, All our lives are on file for sale, Atlanta J. Const., Mar. 21, 2004 at 1A.

[3] Id.

[4]ChoicePoint, AutoTrackXP and ChoicePoint Online, [_http://www.choicepoint.com/industry/government/_public_le_1.html](http://www.choicepoint.com/industry/government/_public_le_1.html) (accessed Oct. 25, 2004).

[5] Chris Jay Hoofnagle, Big Brother's Little Helpers: How ChoicePoint and Other Commercial Data Brokers Collect and Package Your Data for Law Enforcement, 29 N.C.J. Int'l L. & Com. Reg. 595 (Summer 2004).

[6]ChoicePoint, All Financial Solutions, [_http://www.choicepoint.com/business/financial/allfinan.html_](http://www.choicepoint.com/business/financial/allfinan.html) (accessed Oct. 25, 2004).

[7] ChoicePoint Corporation, SEC Registration of securities [Section 12(b)], Jun. 9, 1997.

[8] These include: National Data Retrieval, Inc., a provider of public records information; List Source, Inc., d/b/a Kramer Lead Marketing Group, a marketing company in the life and health insurance and financial services markets; Mortgage Asset Research Institute, Inc., a mortgage fraud monitoring company; Identico Systems, LLC, a customer identity verification company; Templar Corporation; insuranceDecisions, Inc., an insurance industry claims administration company; Bridger Systems, Inc., a USA PATRIOT Act compliance company; CITI NETWORK, Inc. d/b/a Applicant Screening and Processing, a tenant screening company; TML Information Services, Inc., a provider of motor vehicle reports. ChoicePoint Corporation, SEC Form 10-K, Mar. 5, 2004. With respect to TML Information Service, ChoicePoint purchased "certain assets" of the company. Drug Free, Inc., a drug testing company; National Drug Testing, Inc., a drug testing company; Application Profiles, Inc., a background check company; Informus Corporation; a company enabling ChoicePoint to offer products online; Tyler-McLennon, Inc., a background screening

company; ChoicePoint Direct Inc., formerly known as Customer Development Corporation, a database marketing company; EquiSearch Services, Inc.; DATEQ Information Network, Inc., an insurance underwriting services company; Washington Document Service, Inc., a court record retrieval service; DataTracks Technology, Inc., a public record information company; DataMart, Inc., a database software company; Statewide Data Services, Inc; NSA Resources, Inc., a drug testing company; DBT Online, Inc., a public record services provider; RRS Police Records Management, Inc., a provider of police reports and related services; VISN Service Corporation; Cat Data Group, LLC; Drug Free Consortium, a drug testing company; BTi Employee Screening Services, Inc., an employee pre-screening services company; ABI Consulting Inc., a drug screening company; Insurity Solutions, Inc., an insurance rating company; National Medical Review Offices, Inc.; Bode Technology Group, Inc., a DNA identification company; Marketing Information & Technology, Inc., a direct marketing company; Pinkerton's, Inc., a preemployment screening company; Total eData Corporation, an e-mail database company; L&S Report Service, Inc., a provider of police records; Resident Data, Inc., a residential screening services provider; Vital Chek Network, Inc., a provider of vital records; Accident Report Services, Inc., a provider of police records. ChoicePoint Corporation, SEC Form 10-K, Mar. 26, 2003. Programming Resources Company, insurance software company; Professional Test Administrators, Inc., a drug testing company; CDB Infotek, a seller of public records; Medical Information Network, LLC, an online physician verification service. ChoicePoint Corporation, SEC Form 10-K, Feb. 16, 2001. Rapsheets.com, an online provider of criminal records data. ChoicePoint acquired Rapsheets, a provider of online criminal records data, Information Today, Inc., Sept. 1, 2004.

[9] "Certain data and services provided by ChoicePoint are subject to regulation by the Federal Trade Commission under the Federal Fair Credit Reporting Act, and to a lesser extent, by various other federal, state and local regulatory authorities. Compliance with existing federal, state and local laws and regulations has not had, and is not anticipated to have, a material adverse effect on the results of operations or financial condition of ChoicePoint. Nonetheless, federal, state and local regulations in the United States designed to protect the public from the misutilization of personal information in the marketplace may increasingly affect the operations of ChoicePoint, which could result in substantial regulatory compliance and litigation expense, adverse publicity and a loss of revenue. *Id.*

[10] ChoicePoint, CP Online, http://www.choicepoint.com/business/pre_employ/pre_employ_2.html.

[11] *Id.* ChoicePoint offers similar information for employment purposes

under the product names "ScreenNow," "Screening Network," and "Secure Point."

[12] ChoicePoint, National Criminal File, [_http://www.choicepoint.com/business/pre_employ/pre_employ_4_1.html](http://www.choicepoint.com/business/pre_employ/pre_employ_4_1.html). In November 2001, ChoicePoint introduced the National Criminal File database, one that then contained, "more than 20 million conviction records from jurisdictions around the country." David J. Cook, then ChoicePoint vice president, was quoted saying that the National Criminal File was created for employment screening purposes: "We have two large clients who want to run a large national criminal search on every one of their employees." Lisa Guernsey, What Did You DO Before the War?, New York Times, Nov. 22, 2001.

[13] ChoicePoint, Resident Data, [_http://www.choicepoint.com/business/public/cbi_5.html](http://www.choicepoint.com/business/public/cbi_5.html).

[14] ChoicePoint, Screening Unique Services and Features, [_http://www.residentdata.com/services/screening_features.asp](http://www.residentdata.com/services/screening_features.asp).

[15] ChoicePoint, CLUE Personal Auto, [_http://www.choicepoint.com/business/pc_ins/us_1.html](http://www.choicepoint.com/business/pc_ins/us_1.html). ChoicePoint markets a similar product for other property as "[_http://www.epic.org/privacy/choicepoint/fcraltr/CLUEPropertyUnderwriter.pdf](http://www.epic.org/privacy/choicepoint/fcraltr/CLUEPropertyUnderwriter.pdf)" >CLUE Personal Property."

[16] ChoicePoint, CLUE Personal Auto Report, [_http://www.choicepoint.com/sample_rpts/CLUEAutoUnderwriter.pdf](http://www.choicepoint.com/sample_rpts/CLUEAutoUnderwriter.pdf).

[17] ChoicePoint, Motor Vehicle Records, [_http://www.choicepoint.com/business/pc_ins/us_5.html](http://www.choicepoint.com/business/pc_ins/us_5.html).

[18] ChoicePoint, Motor Vehicle Records Report, [_http://www.choicepoint.com/sample_rpts/mvrhowtoread.pdf](http://www.choicepoint.com/sample_rpts/mvrhowtoread.pdf).

[19] ChoicePoint, National Credit File, [_http://www.choicepoint.com/business/pc_ins/us_9.html](http://www.choicepoint.com/business/pc_ins/us_9.html).

[20] ChoicePoint, National Credit File Report, [_http://www.choicepoint.com/sample_rpts/NCF.pdf](http://www.choicepoint.com/sample_rpts/NCF.pdf).

[21] ChoicePoint, AutoTrackXP and ChoicePoint Online, [_http://www.choicepoint.com/industry/retail/public_cbi_1.html](http://www.choicepoint.com/industry/retail/public_cbi_1.html).

[22] Id.

[23] ChoicePoint, AutoTrackXP Report,
_http://www.choicepoint.com/sample_rpts/AutoTrackXP.pdf_.

[24] Memorandum from Office of the General Counsel, National Security
Law Unit, FBI, to National Security, FBI (Sept. 17, 2001) (document
obtained from the FBI), available at
http://epic.org/privacy/choicepoint/cpfbia.pdf

[25] ChoicePoint, Customer Identification Programs,
http://www.choicepoint.com/business/financial/patriotact.html.

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<_http://www.epic.org/_>EPIC Home Page

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