



Municipal Technical Advisory Service  
INSTITUTE *for* PUBLIC SERVICE

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## Consumer Reports

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## Consumer Reports

**Reference Number:** MTAS-1916

According to the act (15 U.S.C. § 1681(a), the definition of a consumer report includes:

“any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for credit or insurance to be used primarily for personal, family, or household purposes, employment purposes, or any other purpose authorized under section 604 [§ 1681b].”

Consumer information is defined as any record about an individual that is a consumer report or is derived from a consumer report. However, according to the FACTA amendment, “a consumer report does not include communications made to an employer while investigating suspected employee misconduct relating to employment or employee compliance with applicable laws or with pre-existing written policies of the employer”. 15 U.S.C. § 603(y)(1)(B)(i) and 15 U.S.C. § 603(y)(1)(B)(ii).

Generally, a city that accesses a consumer report while conducting a background check on an applicant has eight (8) main obligations: (1) show a permissible purpose. (15 U.S.C. 604(a)(3)(B) and 604(b)), (2) provide certification of compliance (15 U.S.C. 604(f)), (3) notify consumers when adverse actions are taken (15 U.S.C. 603(k)), (4) Limit on use of information when a fraud or active duty alerts are on file (15 U.S.C. §605A), (5) comply with regulations when notified of an address discrepancy (15 U.S.C. 605(h)(1)(A)) , (6) establish procedures to dispose of records (15 U.S.C. §628); (7) make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained (15 U.S.C. 604(b)(2)(A)(i)), and (8) obtain from the consumer prior written authorization to access reports (U.S.C. 604(b)(2)(A)(ii)),

Before a consumer reporting agency may provide or prepare a consumer report for an applicant, the employer must certify to the agency that: (1) it has provided the required “clear and conspicuous disclosure” to the individual who is the subject of the report; (2) it has received written authorization to obtain the report. 15 U.S.C. § 604(b)(2)(A).

If an applicant applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application: (1) the person who procures the consumer report on the applicant for employment purposes shall provide to the applicant, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer’s rights under section 615(a)(3); and (2) the applicant shall have consented, orally, in writing, or electronically to the procurement of the report by that person. 15 U.S.C. § 604(b)(2)(B).

Once the employer has the consumer report, it may decide to take an action based on the consumer report (or based in part on the consumer report). An adverse action includes a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee. 15 U.S.C. § 603(k)(B). Before taking any adverse employment action against someone based in whole or in part on the consumer report, the employer must provide the affected individual with an adverse action disclosure that includes a copy of the consumer report as well as a summary of that individual’s rights under the FCRA. 15 U.S.C. § 604(b)(3)(A). In other words, when the employer receives the consumer report, he/she must immediately send a copy of the report and the individual’s rights statement to the applicant.

Then, if the employer takes adverse action based upon the subject of the report, the employer must by oral, written or electronic means: (1) provide oral, written or electronic notice of the adverse action to the affected individual; (2) written or electronic disclosure of a numeric credit score used in taking any adverse action, the range of possible credit scores, all the key factors that adversely affected the credit score, the date on which the credit score was created and the name of the person or entity that provided the credit score or credit file; (3) provide orally, written or electronically the name, address, and telephone number of the consumer reporting agency that provided the report to the employer (the telephone number provided must be the toll-free number where the individual can reach the agency, if the agency maintains files on consumers on a nationwide basis) and a statement that the agency did not make the decision to take adverse action and thus cannot tell the applicant or employee the specific

reason for the actions; (4) provide notice of the individual's right to obtain a free copy of the report on which the adverse action was based within 60 days of notice of the action; and (5) provide notice of the individual's right to dispute the accuracy or completeness of any information in the report with the consumer reporting agency. 15 U.S.C. § 615(a).

Similarly, an employer must provide an adverse action notice to an existing employee who is subject to an employment decision that adversely affects his or her employment, such as termination or discipline, based in whole or in part on a consumer report. U.S.C. § 603(k)(1)(B)(ii). An adverse action notice also is required in employment situations if credit information is used to deny employment. 15 U.S.C. 615(b)(2).

If an applicant applies for employment by mail, telephone, computer, or other similar means, and if a person who procured a consumer report on the consumer for employment purposes takes an adverse action on the employment application based in whole or in part on the report, then the person must provide the consumer within 3 business days of taking such action, an oral, written or electronic notification: (1) that adverse action has been taken based on a consumer report received from a consumer reporting agency; (2) the name, address and telephone number of the consumer reporting agency that furnished the report (including a toll free telephone number if the agency compiles and maintains files on consumers on a nationwide basis); (3) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and (4) that the applicant may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report. 15 U.S.C. § 604(b)(3)(B).

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