



WHITE PAPER

PII REDACTION & BACKGROUND CHECKS: NAVIGATING A CHANGING LANDSCAPE



In background screening for employment, the ability to positively identify your candidate when running a background check is paramount to ensuring you are making the right hiring decision, as well as keeping your workplace and clients safe. Consumer Reporting Agencies (CRAs) typically use a number of markers, or identifiers, to ensure the candidate you have submitted for a background check is a positive match to any records returned on that individual. The use of key identifiers enables you to trust that you have accurate and actionable information about your candidates, allowing you to make the best hiring decisions for your organization.

However, there are some states, primarily California and Michigan, that have begun redacting some of these identifiers from public records, making it more difficult for background screeners to quickly identify your correct candidate.

In this white paper, we will explore the concerns surrounding this issue for private citizens, employers, and background screeners, where policies in California and Michigan currently stand, and potential action steps you can take to fight for your organization's right to keep your workplace safe.

WHAT IS PII?

PII stands for Personally Identifiable Information. According to the Department of Homeland Security, PII is "any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual."¹

PII includes a person's Social Security Number (SSN), Driver's License Number (DLN), date of birth (DOB), financial or medical records, biometrics, and even criminal history. Without access to these identifiers, CRAs would be unable to meet its obligation of achieving "maximum possible accuracy" requirements as outlined in the Fair Credit Reporting Act (FCRA). Removal of PII from public records often only leaves a name match available, which is insufficient in background screening (e.g., John Smith).

CONCERNS FOR PRIVATE CITIZENS

So, why have California and Michigan decided to redact PII from many public records?

As a result of court rulings in both states, PII has been redacted from court documents in an effort to protect private citizens from identity theft, or any other improper use of a citizen's PII.

In California, the decision in the *All of Us or None – Riverside Chapter vs. W. Samuel Hamrick*² case led to the redaction of citizens' DOBs.

In Michigan, the decision was made by the Michigan Supreme Court in a May 2019 ruling³ to prohibit courts from including PII of private citizens, including DOB, SSN, DLN, and more.



CONCERNS FOR EMPLOYERS

Employers operating in the states of California and Michigan may face much longer wait times for background checks to be returned, as well as increased costs due to the now much more manual process required to obtain and verify records. Increased turnaround times or costs may be extremely burdensome or even prohibitive for some employers and tenant screeners who need to make decisions on candidates. Some candidates may be impossible to positively identify, especially in cases with common names.

As a result, some employers and tenant screeners may make decisions based on incomplete information on their candidates, or may be forced to make adjustments to their background screening protocols they wouldn't have otherwise made. On top of the headache, this has the potential to lead to unsafe work environments and living situations in California and Michigan.

CONCERNS FOR CONSUMER REPORTING AGENCIES

The largest concern for CRAs is maintaining the ability to positively verify records of candidates that are searched by employers and tenant screeners.

In California, for example, the decision to redact PII led to the removal of the DOB field from online portals and other public-access terminals in courts throughout the state. In some counties, courts are refusing to respond to requests, limiting the number of requests that can be made in person, or not providing sufficient PII to verify a potential record when one is found.

WHAT IS THE CURRENT STATUS OF PII REDACTION IN CALIFORNIA AND MICHIGAN?

In California, there is a continued effort to reverse the redaction of PII in courts across the state, led by organizations such as the Professional Background Screening Association (PBSA) and the Consumer Data Industry Association (CDIA).⁴ California Senate Bill 1262,⁵ a result of joint efforts by PBSA and CDIA as well as member companies, was introduced on February 17, 2022 and is awaiting committee referencing in the Senate. This bill would permit indexing and searches of criminal cases based on a defendant's DLN, DOB, or both.

In Michigan, efforts by PBSA and CDIA have been successful in creating avenues for CRAs to access previously redacted information. As of April 1, 2022, the Michigan State Court

Administrative Office (SCAO) now allows for authorized individuals and entities to register in order to obtain access to identifiers in Michigan courts.⁶

Some local courts in Michigan have implemented policies that slow down the identifier verification process, such as requiring authorized individuals to appear in person to receive records, or charging for record checks. However, the SCAO has released an FAQ to address these issues.⁷ Employers who continue to face these hurdles should voice their concerns to the respective court, and if the issue persists, may contact PBSA for assistance. PBSA and CDIA continue to work to overturn Michigan's PII redaction rule.

YOUR VOICE AS AN EMPLOYER MAKES A DIFFERENCE

Employers and tenant screeners operating in, or with candidates living in, California and Michigan may choose to contact their legislators in these states to voice concerns over these PII redaction policies.

You may also choose to support PBSA and CDIA's efforts by contributing financially. PBSA and CDIA are working on behalf of CRAs who, in turn, can provide better service to employers with improved turnaround times, reduced pass-through costs, and higher accuracy.

You can learn more about action steps at www.thepbsa.org.

CITATIONS

1. U.S. Department of Homeland Security "What is Personally Identifiable Information?" December 8, 2021.
2. Justia, "All of Us or None etc. v. Hamrick," 2021.
3. Michigan Courts, "Protecting personal Identifying Information," May 12, 2022.
4. PBSA, "California DOB Redaction Information," retrieved July 14, 2022.
5. California Legislative Information, SB 1262, February 17, 2022.
6. PBSA, "State of Michigan," retrieved July 14, 2022
7. Michigan Courts, "FAQ: Personal Identifying Information in Court Filings," April 19, 2022.



ABOUT CISIVE

Cisive, headquartered in Holtsville, New York, is a leading background screening provider focused on providing high-value employment background checks and industry-specific compliance services to highly regulated, risk-sensitive industries. Cisive has long-term relationships with a diverse base of clients across healthcare, financial services, transportation and other regulated industries.

Founded in 1977, Cisive has developed a broad range of differentiated vertical business lines and risk mitigation offerings including the core Cisive brand (global and enterprise), PreCheck (healthcare), Driver iQ (trucking and transportation), eVerifile (rail and contractor), Inquiries Screening (government), IntelliCorp (small and mid-market) and CARCO (insurance risk mitigation). Cisive's solutions deliver compliant employment intelligence to employers who are highly averse to employee-related risks and operate in highly regulated industries.

With Cisive, your business will not only gain a background screening provider, but a true partnership: a company that stands by our work, protects our clients, and provides the consultation and guidance world-class organizations seek.

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