

Data Retention: How Long Should CRAs Keep Reports, and Other Information

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What Do Laws Say?

- **FCRA:** No specific data retention requirement.
- **Known State Laws:**
 - California: Keep reports for at least 2 years.
 - New York: Keep reports for at least 1 year.

How Have CRAs Handled In Past?

- **Conventional Wisdom:** Keep background screening reports and back-up information for at least five years.
- **Why? FCRA's Statute of Limitations**
 - FCRA: An individual can bring a claim for two years after discover basis for claim or a maximum of 5 years after claim arose.

Is Conventional Wisdom Wrong?

Maybe. Be strategic!

Goal: Strike the right balance between competing priorities.

Considerations?

- **Factors Favoring “Shorter” Retention Timeframe?**
 - **Class Actions**
 - For most CRAs, the most concerning possibility.
 - Class action settlements driven by size of class.
 - Scope of class often determined through CRAs records.
 - Shorter retention cycle for info = potentially fewer class members.
 - **Free File Requests**
 - Requests are significantly increasing.
 - Plaintiffs’ attorneys use as fishing expeditions.
 - Fewer files on hand means:
 - Less possible scrutiny from plaintiffs’ attorneys
 - Fewer requests to respond to in substantive way.
 - **Most Likely Lawsuit Timing:** Within first year after situation arises.
 - **Privacy Concerns:** Inherent risks associated with maintaining information containing SSNs and other private identifiers.

Considerations?

- **Factors Favoring “Longer” Retention Timeframe?**
 - Client contract says you will retain for specific period of time.
 - Client expects you to keep even without specific contractual promise.
 - Applicable state law says you must keep for X period of time.
 - If dispose of records and get sued, may lack desired proof.

What's The Right Balance?

- **Varies for every CRA.**
 - Is biggest concern class action risk or single plaintiff risk?
 - What types of lawsuits have you seen in past?
 - How many free file requests do you receive?
 - What does your client contract say?
 - Are you willing to roll out a contractual addendum if client contract says retain for lengthy period.
 - How many reports subject to Cal and NY law?
- **For many CRAs, retaining for two years may make sense.**
- **But CRAs could opt for less or more depending on circumstances.**

Psst...Is It Really Gone?

- “Deleted” does not always mean 100% gone.
 - Recoverable on back-up drives?
 - Recoverable in “deleted messages” storage.
- If still recoverable:
 - Can be found in litigation...
 - But at increased cost potentially to both sides.
- If going to delete, better to fully delete!
- Best to delete reports/back-up date in tandem.

QUESTIONS?

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