

# The Background Investigator

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Volume 20 Number 01  
January 2020

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examples of  
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Are Hiring Algorithms Fair?

Time is money and, unfortunately for companies, hiring new employees takes significant time -- more than a month on average, research shows.

Hiring decisions are also rife with human bias, leading some organizations to hand off at least part of their employee searches to outside tech companies who screen applicants with machine learning algorithms. If humans have such a hard time finding the best fit for their companies, the thinking goes, maybe a machine can do it better and more efficiently.

But new research from a team of Computing and Information Science scholars at Cornell University raises questions about those algorithms and the tech companies who develop and use them: How unbiased is the automated screening process? How are the algorithms built? And by whom, toward what end, and with what data?

They found companies tend to favor obscurity over transparency in this emerging field, where lack of consensus on fundamental points -- formal definitions of "bias" and "fairness," for starters -- have enabled tech companies to define and address algorithmic bias on their own terms.

"I think we're starting to see a growing recognition among creators of algorithmic decision-making tools that they need to be particularly cognizant of how their tools impact people," said Manish Raghavan, a doctoral student in computer science and first author of "Mitigating Bias in Algorithmic Employment Screening: Evaluating Claims and Practices," to be presented in January at the Association for Computing Machinery Conference on Fairness, Accountability and Transparency.

"Many of the vendors we encountered in our work

acknowledge this (impact) and they're taking steps to address bias and discrimination," Raghavan said. "However, there's a notable lack of consensus or direction on exactly how this should be done."

The researchers scoured available public information to begin to understand these tools and what measures, if any, companies have in place to evaluate and mitigate algorithmic bias. Shielded by intellectual property laws, tech companies don't have to disclose any information about their algorithmic models for pre-employment screenings -- though some companies did choose to offer insight.

The researchers honed in on 19 vendors who specialize in algorithmic pre-employment screenings, which, they found, include questions, video interview analysis and games. They combed company websites, webinars and any available documents for insights into vendor claims and practices.

Very few vendors offer concrete information about how they validate their assessments or disclose specifics on how they mitigate algorithmic bias, researchers found.

"Plenty of vendors make no mention of efforts to combat bias, which is particularly worrying since either they're not thinking about it at all, or they're not being transparent about their practices," Raghavan said.

Even if they use such terms as "bias" and "fairness," these can be vague. A vendor can claim its assessment algorithm is "fair" without revealing how the company defines fairness.

It's like "free-range" eggs, Raghavan said: There is a set of conditions under which eggs can be labeled free range, but our intuitive notion of free range may not line up with those conditions.

"In the same way, calling an algorithm 'fair' appeals

to our intuitive understanding of the term while only accomplishing a much narrower result than we might hope for," he said.

The team hopes the paper will encourage transparency and conversation around what it means to act ethically in this domain of pre-employment assessments through machine learning.

Given the challenges, could it be that algorithms are just not up to the job of screening applicants? Not so fast, Raghavan said.

"We know from years of empirical evidence that humans suffer from a variety of biases when it comes to evaluating employment candidates," he said. "The real question is not whether algorithms can be made perfect; instead, the relevant comparison is whether they can improve over alternative methods, or in this case, the human status quo.

"Despite their many flaws," he said, "algorithms do have the potential to contribute to a more equitable society, and further work is needed to ensure that we can understand and mitigate the biases they bring."

Credit: <https://www.sciencedaily.com/releases>

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es/2019/11/191120175616.htm

Virginia Courts Online

Virginia's court system made it a lot easier to find online court records, quietly rolling out a statewide search function on its website that allows users to search by a defendant's name to find docket information about criminal and traffic charges back to 1990 or earlier in most jurisdictions.

Previously, the records were available online, but searches were limited to specific courthouses, meaning a user had to either know where charges were filed to find them or conduct hundreds of individual searches.

The General Assembly required the Supreme Court's Office of the Executive Secretary to provide the new function as part of legislation passed in March 2018, which mandated the new system to go live by the beginning of this month.

There was little discussion at the time. Lawmakers rolled the bill, proposed by Sen. Monty Mason, D-Williamsburg, into a broader (and more widely reported) open records law championed by the Daily Press in Newport News that requires the court system to provide bulk data to those who request it.

The newspaper's advocacy was bolstered by open government advocates, who used time-consuming scraping techniques to provide both bulk data and a rudimentary statewide search function beginning in 2014.

Ben Schoeneld, who created VirginiaCourtData.org to provide the data free of charge, said he would cease operating the statewide search he created and cease scraping data now that both functions are available through official channels.

While the new system will make it easier for journalists to, say, vet a candidate for public office or cover breaking news, it remains unclear how it will be received by the wider public, particularly as momentum grows to limit the role of criminal record searches in employment screenings.

Website: <https://eapps.courts.state.va.us/ocis/landing/false>

When it comes to criminal records NO ONE does it better than Steven Brownstein

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Shape of Things To Come...

Did LexisNexis Sell Private Data Or Not?

Is Your Privacy Compromised?

LexisNexis states, “depending on how you interact with us and the service, we use your personal information to” and then gives a laundry list of uses.

These include custom content, targeted ads, promotional messages, even sweepstakes invitations.

It also says LexisNexis may study usage trends, develop data analysis and also may trade your data with parent company RELX, which as the New York Times reported in 2016, collects police information, sells it to insurance companies and kicks back a cut to cities.

LexisNexis has even been sued by states like Illinois and Massachusetts, for allegedly withholding portions of those fees from law enforcement agencies.

The company disputes those claims, but settled with the states for millions of dollars.

Confused About Canada Criminal Record Checks?

From Canadian HR Reporter > Canadian Employment Law Today

Outside of a few defined industries, most organizations are not obligated to obtain police record checks when screening employment candidates.

The court records are also available as an alternative.

Confused About Canada Criminal Record Checks (PartII)?

What comes back from a CPIC search?

CONFIRMATION OF A CRIMINAL RECORD - Standard Response

13.10 When the CNI/CRS query identifies a criminal record that matches to the criminal record information declared by the Applicant: "Based solely on the name (s) and date of birth provided and the criminal record information declared by the applicant, a search of the RCMP National Repository of Criminal Records has resulted in a possible match to a registered criminal record. Positive identification that a criminal record does or does not exist at the RCMP National Repository of Criminal Records can only be confirmed by fingerprint comparison. As such, the criminal record information declared by the applicant does not constitute a Certified Criminal Record by the RCMP. Delays do exist between a conviction being rendered in court, and the details being accessible on the RCMP National Repository of Criminal Records. Not all offences are reported to the RCMP National Repository of Criminal Records."

What comes back from a court search?

Case number, Name found on index, Identifiers on record, Date files, charges, date of disposition, disposition, sentence.

Is Renting A Virtual Office Duping The Customer?

Recently it was found that a Canadian based company advertised a new business in the USA, but it turned out to be a virtual office.



office. The new business’ advertised phone number was for their Canadian physical location.

Is this fraud or duping an unsuspecting public? Read on about these Virtual Office Companies and make up your own mind up.

Time to shut these dodgy offices for the dodgy dealers by Patrick Collinson

It’s the prestigious address that gives an air of authenticity...

It only costs a few hundred pounds to rent a “virtual office” that redirects mail and phone calls. What could be more respectable than, say, an office in Tower 42, still better known as the former Nat-West Tower and an icon of the London skyline?

One (person), though, had her suspicions. She decided to do a bit of her own investigating, and rang the number in Tower 42.

The office was managed by Regus, the self-styled “world’s largest provider of flexible workspace”. By doing her research, she found they had a mail forwarding facility and not a physical presence in the skyscraper. But the Regus person answering the phone gave her the impression that the company had a team of people occupying level seven of the tower.

(But she) persisted. Had there been other calls? Had there been complaints? She was again assured by Regus that there had not been “any sort of complaints”.

But our caller was cruelly deceived. However, and rather brilliantly, she had the sense to tape the conversation – and it has provided vital evidence for prosecution.

(Recently), Regus was found guilty at the City of London magistrates court and fined £11,000 plus £16,600 costs.

But Regus – which made an operating profit of

£104.3m in 2014 – was lucky to get off so lightly.

It turns out that four months earlier, Regus had been contacted by the City of London Corporation’s trading standards team, worried that their temporary tenant in Tower 42 had the hallmarks of a typical “boiler room” investment scam, involving the sale of worthless or nonexistent commodities like diamonds and wine, or “carbon credits”.

There are rules about mail forwarding services (yes, I’m surprised they exist) and for once they are being enforced. Office providers are required by the London Local Authorities Act 2007 to hold detailed records on their client firms. Regus did not – and was found guilty of four breaches of the act.

Servcorp, another multinational provider of temporary offices, has been little better. In December last year the City of London police and trading standards offices called in at its “stunning skyscraper” Dashwood House, just minutes from Liverpool Street station in the heart of the City. They asked to inspect the records Servcorp held on clients, a significant number of whom were suspected of fraudulent activity.

The act required Servcorp to keep records open for inspection at all reasonable times. But it couldn’t comply with the request for another two months – and, when it did, its records were inadequate. A fortnight ago it was ordered to pay £21,000 in fines and £11,500 in costs after pleading guilty to seven

offences under the act. Of course, not every occupant of Servcorp’s space in Dashwood House or Regus’s offices in Tower 42 are crooks. But in both instances Servcorp and Regus were the enablers to fraudsters hoping to dupe the public with prestige office addresses. A quick search of the Financial Conduct Authority’s database unearths seven official warnings about dodgy firms in Dashwood House, and 14 in Tower 42. We can’t say if every one of them were Regus or Servcorp clients, but it’s not a happy record.

The City of London trading standards has said it will “not tolerate office providers which allow suspected boiler room operations to develop in their sites”. In a statement, Regus said these were “isolated incidents” and “enhanced safeguards have been put in place to prevent any future repetition”.

So, why would a foreign background check company put a new company in a virtual office?

CANADA DAILY

Criminal Requests

PROVINCIAL COURT SEARCHES

Straightline International

PUBLISHER  
Steven Brownstein

CONTRIBUTORS:  
Les Rosen, Dennis Brownstein, Phyllis Nadel

COVER PHOTOGRAPH: Baltimore, Maryland Courthouse

COVER PHOTOGRAPHER:  
Steven Brownstein

PURPOSE: “Dedicated to pre-employment screenings everywhere”

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77 More Courts In England And Wales To Close

Nearly 80 more courts in England and Wales are due to close under a justice transformation scheme that is falling behind schedule, a watchdog’s report has revealed.

HM Courts and Tribunal Service (HMCTS) is three years into a £1bn programme of changes but is facing significant delays and failing to take into account the experiences of court users, the National Audit Office (NAO) has warned.

“HMCTS has made good progress in reforming some services but it is behind where it expected to be and has had to scale back its ambitions,” said Gareth Davies, the head of the NAO. “The timescale and scope remain ambitious and [it] must maintain a strong grip if it is to deliver a system that works better for everyone and delivers savings for the taxpayer.”

The modernisation programme will include an increase in the use of “virtual hearings” in criminal cases, with judges and magistrates dealing with defendants from a police station or prison using a video link.

The report reveals a surprisingly high number of courts are being considered for closure by HMCTS, which reports to the Ministry of Justice. A total of 77 courts are currently scheduled to be shut down; until recently as many as 96 had been earmarked for closure.

Since 2010 more than half of all magistrates courts in England and Wales have stopped hearing cases, forcing defendants, witnesses, police, lawyers and justices of the peace to travel more than 50 miles in some cases to access local justice. A further 133 tribunal, crown, county and family courts have also closed over the same period.

Many courts sit idle because of cost-saving measures which have reduced the number of recorders, or part-time judges. Last week, Lady Justice Macur, the senior presiding judge, said maintaining the backlog of cases by not employing more recorders to hear waiting cases “was a political decision”. Eleven out of 18 courts at the Old Bailey, for example, were empty on Thursday.

The NAO’s report says savings to date of £133m might not all be attributable to the changes. The courts service can only track certain savings, such as those

related to property costs, the report adds.

The report says HMCTS has not given sufficient consideration to concerns about access to justice.

The Labour MP Meg Hillier, the chair of the public accounts committee, said: “A government transformation plan off-track and scaled back is a broken record. HMCTS has not bucked this trend. It must ensure that further reforms, particularly those that include closing more courts do not mean citizens lose access to justice.”

Penelope Gibbs, the director of the campaign group Transform Justice, said: “Is our court closure programme just an exercise in selling off the family silver? More than half our magistrates courts have been closed since 2010 but this NAO report reveals for the first time that the government plans to close around 80 more courts. The funds generated will be used to take justice out of the courtroom and on to Skype and mobile phones. But, as the NAO points out, we don’t actually know whether these changes will help or hinder access to justice.”

Susan Acland-Hood, the chief executive of the HMCTS, highlighted the positive elements of the NAO report. “We are pleased the NAO has recognised the progress we have made towards a more accessible and efficient justice system,” she said. “More than 300,000 people have now used our online services, and two new service

centres are making it easier and quicker for all to access help.

“This is an ambitious and challenging programme but is already making a significant difference. We will continue to listen and learn, working closely with our stakeholders to improve and ensure reform delivers the full benefits to all those who use our justice system.”

John Bache, the national chair of the Magistrates Association, said: “We strongly support the recommendation of this report that HM Courts and Tribunals Service should better demonstrate how it is monitoring the impact of its reforms on users of the justice system. We recognise the need to deliver savings as part of the reform programme, but it is essential that in doing so the experience of those who use the courts does not deteriorate.

“We are also concerned that a further 77 courts are due to be closed. Justice should, wherever possible, be administered locally and many courts are already worryingly remote from the communities that they serve.”

London Courts/Cities Pricing by Straightline International

Greater London Magistrates Courts

City of London	19.99
Camberwell Green	19.99
Westminster	19.99
Thames	19.99
Stratford	19.99
Wimbledon	19.99
Highbury Corner	19.99
Lavender Hill	19.99
Willesden	19.99
Others	32

Courts Served\*

Magistrates Courts - The courts of first instance. Most cases begin here. Mainly misdemeanor (Summary) cases are adjudicated here.

\* The Magistrates Court is the standard search.

For a Crown Court search added to a Magistrates Court search add \$14

For accuracy a Postal Code is suggested.

TAT is 1-3 days for major metropolitan areas and their surrounding vicinity.

Other England costs

Civil from 48

"We take criminal records seriously"

England Prices by Straightline International

England

London**	19.99
Manchester	21.99
Birmingham	21.99
Liverpool	29.99
Leeds	29.99
Sheffield	21.99
Bristol	29.99
Leicester	29.99
Oxford	19.99
Dover	29.99
Portsmouth	29.99
Hull	24.99
Others	32

Courts Served\*

Magistrates Courts - The courts of first instance. Most cases begin here. Mainly misdemeanor (Summary) cases are adjudicated here.

Crown Courts - The court of jurisdiction for felonies (Indictables) are heard at this level.

\* The Magistrates Court is the standard search.

For England searches a Postal Code is suggested.

If an address without the postal code is submitted only the Crown Court will be searched when there is more than one Magistrates Court in that city.

For the Crown Court search added to the Magistrates Court search add \$14

\*\*For London searches see separate sheet to see if your address is included.

TAT is 1-3 days for major metropolitan areas and their surrounding vicinity.

Other England costs

Civil from 48

"We take criminal records seriously"

Editor's Note: These closures will not affect the search results that a court record researcher would get. Files and case information will still be available at Local Justice Areas

Straightline International Criminal Record Services

Whether it's Magistrates or Crown England Courts Straightline's got you covered.

For Background Screeners - no need for expensive, long waits, hard to get police clearances.

They are not required for most employment purposes in England and absolutely not needed for employment purposes outside of Australia.

Court records are public, easy to get, some are even online!





Public Access In Bermuda

Are court hearings held in public? Are court documents available to the public?

The Bermuda Constitution generally provides that all proceedings instituted in any court shall be held in public, save that the court may exclude persons other than the parties and their legal representatives to such extent: (i) as the court may be empowered or required by law so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings or in the interest of public morality, the welfare of persons under the age of 18 years or the protection of the private lives of persons concerned in the proceedings; or (ii) in the interests of defence, public safety or public order.

The legal principles governing private chamber hearings were considered in Bermuda Casino Gaming Commission v Richard Schuetz [2018] SC (Bda) 24 Civ.

The Bermuda courts have recognised that the granting of confidentiality orders (ie, the anonymising of proceedings and dealing with them as private) may be appropriate where there is no obvious public interest in knowing about the matter in dispute (Re BCD Trust (Confidentiality Orders) [2015] Bda LR 108). The legal principles governing confidentiality orders were recently considered In The Matter [of] The E Trust [2018] SC (Bda) 38 Civ.

The public may apply for copies of originating process, judgments and orders in civil and commercial matters save for any case whereby order of the court public access to such documents has been restricted, divorce proceedings and any other proceedings related to children, applications in relation to arbitration

proceedings, applications for directions in relation to trusts, cases relating to the administration of deceased estates, winding-up proceedings and any other category of case that may be identified, from time to time, by way of circular by the Registrar of the Supreme Court (the Registrar).

The legal basis for members of the public to gain automatic access to court records where the member of the public is not a party to the proceedings is as follows:

- where a case is no longer pending or active because it is finally concluded, a member of the public can apply to the Registry for copies of documents under the Supreme Court (Records) Act 1955;
- where a case is pending, a member of the public can apply to the Registry for copies of any originating process or orders made in the case under Order 63, rule 4 of the Rules; and
- where reference is made in the course of a public hearing or in a public judgment to any documents on the court file, a member of the public has a common-law right to apply for copies of the relevant document or documents (Bermuda Press (Holdings) Ltd v Registrar of Supreme Court [2015] SC (Bda) 49 Civ).

Rwanda Going Online

Members of the public will effective from next week access criminal record certificates through an online platform, the Prosecutor General has confirmed, in a response to public concerns that the current process is complex.

The criminal record certificate is an official document issued to an individual to state their criminal record. Whether the individual holds a criminal record or not, the status is documented on the certificate.

The document, valid for six months from the issuance date, is a requirement

for securing official services such as visas, passports and public sector jobs among others.

Background Check Information (That Shouldn't Be Available) Can Cost You Plenty of \$\$\$

A federal jury ruled that Bucks County willfully disseminated criminal record information through an online search tool on the county's website, violating a federal privacy law.

As a result of the class-action lawsuit verdict, Bucks County could be required to pay up to \$67 million to the 67,000 people booked in county jail from 1938 to 2013.

Personal information, photos, and charges had been made public through the Buck County website's inmate lookup tool for anyone booked during those 75 years, the courts found.

The eight-person jury in the U.S. District Court for the Eastern District of Pennsylvania in Philadelphia determined the county had "willfully," or with a reckless disregard, shared that inmate information.

A U.S. district judge ruled in 2016 that the Bucks County had violated the Criminal History Record Information Act, however Tuesday's proceedings found officials hadn't prevented the information from being shared.

In the class-action lawsuit — brought forth by Daryoush Taha, who discovered in 2013 his 1998 arrest details were available on the county website — each of the 67,000 people booked could be eligible for \$1,000 in punitive damages.



Many Canadian And Ontario Criminal Record Providers Are Basically Couriers

Whenever I've tried to use a provider there to get me record information or copies or civil lawsuits, judgments, or lien records it's near impossible no matter what I've been told about their getting them.

Are Canadian criminal background screeners really screeners or just a delivery service for RCMP records?

I would consider a training course for Canadian based record providers.

Now that they are members of PBSA maybe they can undergo training.

Meanwhile, I find that doing them myself has always been much better.

Maybe because I am 20 more years experienced than them in obtaining records.

But it is never too late for them to begin learning!

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# Senator Says Checkr Background Checks Not Good Enough

Sen. Richard Blumenthal (D-Conn.) said that Uber and Lyft provided “ambiguous” answers to his recent inquiries about safety measures in the ride-hailing industry and called on both companies to institute fingerprint background checks for drivers.

Blumenthal said the two companies should also exchange data about driver dismissals with each other, which would help keep the entire system more safe.

“The responses to us certainly are lacking in any sense of priority,” he said, referring to responses to his request for background checks or fingerprinting. “They have a real responsibility for taking every possible step to do background checks that are reliable and comprehensive.”

The senator in September asked for more information from Uber and Lyft following a Washington Post article about Uber’s Special Investigations Unit. The Post investigation found that safety investigators are instructed to keep the company’s interests foremost, including through restrictions on their ability to report apparent felonies to police and a ban on sharing information with competitor Lyft about possibly dangerous drivers. That means that drivers who are restricted from Uber or Lyft for violations like poor driving or even assaults on passengers can, with impunity, simply register as a driver for the other company.

“If they ban a driver right now, they have no protocol or procedure for sharing that information with each other,” he said. “I think that’s just central to safety, and yet they have no protocol.”

When rides go wrong: How Uber’s investigations

unit works to limit the company’s liability

Blumenthal said he plans to arrange to meet with representatives of the two companies privately and that he believed Congress should hold hearings on ride-hailing safety. Representatives from neither Uber nor Lyft appeared at a recent House Transportation subcommittee hearing aimed at examining safety and labor practices.

Uber and Lyft have both faced multiple lawsuits over their background checking policy and responses to assaults and sexual misconduct during rides. Earlier this year, 14 women sued Lyft alleging it didn’t adequately respond to their allegations of sexual assaults during rides.

The companies have added new features like panic buttons in the app and additional background checks for existing drivers. Lyft recently updated its protocols for driver bans, The Post reported, issuing new guidelines that could result in bringing some previously banned drivers back onto the platform.

“Uber is deeply committed to the safety of riders and drivers, and our actions show it,” Uber spokeswoman Susan Hendrick said in a statement. “We look forward to meeting with the Senator soon.” Lyft spokesman Adrian Durbin said Lyft “has worked hard to design innovative policies and features focused on the safety of both passengers and drivers” and that the company has hundreds of staff working on safety initiatives.

In their responses to Blumenthal, both Uber and Lyft said fingerprinting may bias against minorities who are more likely to be arrested but not necessarily convicted. That is why, they said, they rely on their own background check systems and those provided by a tech company called Checkr.

“That’s the reason for belt and suspenders — for using both Checkr and finger-

print,” said Blumenthal. “The only reason they can possibly give [for not using fingerprinting] is additional cost — it should be the cost of engaging in their business.”

Uber and Lyft are required to use fingerprint background checks in New York City and previously were required to in Houston. Rather than face voter-approved fingerprint background checks, the companies in 2016 suspended operations in Austin for more than a year before the governor overturned the rules statewide.

“While no background check is perfect, our process is thorough, fair and relevant to the work in question,” Justin Kintz, Uber vice president of global public policy, wrote in his letter to Blumenthal.

Lyft’s director of federal public policy, Lauren Belive, said in her letter to Blumenthal that the company is “constantly developing new ways to enhance ride safety.”

Blumenthal said he supports Uber’s policy that survivors of sexual assault should be allowed to decide if they want to go public with their stories, but he noted that law enforcement can keep victims anonymous. Uber and Lyft “have an independent responsibility to at least alert law enforcement even if the wish of the survivor is respected — and it should be — that they want to avoid being part of some public proceeding,” he said. “Lyft or Uber drivers are in positions of trust. Once somebody gets into their car, the rider is vulnerable.”

Uber and Lyft both said they have 24-hour support for riders and suspend or ban drivers when their investigations warrant.



# CA DMV Makes \$50M Selling Personal Data, Report Says

The California Department of Motor Vehicles is selling customers’ personal information for millions of dollars, according to a report from VICE released this week.

The report cites a CA DMV document that shows the “total annual revenue” from commercial requesters of data.

The state has collected about \$50 million a year since 2015 providing registration and license data to various businesses, according to that document.

“[I’m] really irritated that they make that much money selling our personal information,” said Julian resident Dale Watterson while in line at the Hillcrest DMV Tuesday. “In this day of protecting your information, that’s just inexcusable.”

But the DMV is pushing back.

“The VICE headline is inaccurate,” said DMV Public Affairs Deputy Director Anita Gore.

Gore explained only certain groups, like insurance companies, background check businesses or car manufacturers, can seek the data.

The spokesperson said the \$50 million a year is not profit, but rather just the cost of processing the requests for data.

“We do not put information up for sale,” Gore continued in a phone call with NBC 7.

However, the DMV did not provide a specific list of those businesses or companies who have paid for data.

And when asked if DMV customers are made aware their data may be sold, Gore asked, wouldn’t [NBC 7] want to know if a

car manufacturer had a recall, and used the information to get in touch?

“We don’t want it to be just open sourced, where anybody who wants it can obtain our data for a fee,” said Identity Theft Resource Center CEO Eva Velasquez.

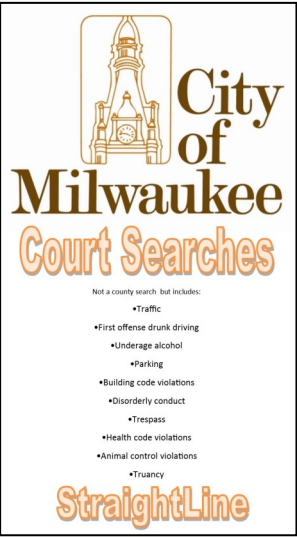
The data and privacy expert said companies buying data is not necessarily a bad thing, emphasizing this issue is nuanced.

“Often other organizations use that data in their fraud analytics, in their authentication process... however we need to be more transparent about it,” said Velasquez.

“People need to know if their data is being sold and to whom it is being sold and for what purpose,” she said.

“It is important to note DMV does not sell driver information for marketing purposes, or to generate revenue outside of the administrative cost of the program,” read a statement from the DMV.

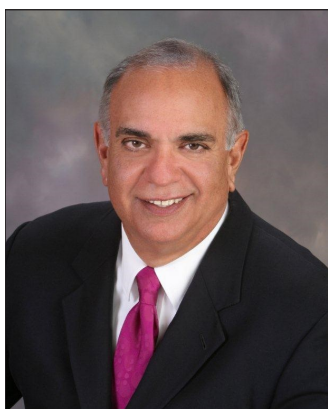
“The DMV takes its obligation to protect personal information very seriously. Information is only released according to California law, and the DMV continues to review its release practices to ensure information is only released to authorized persons/entities and only for authorized purposes,” the statement continued.





## Les Rosen's Corner A monthly column

By Lester Rosen,  
Attorney at Law



Written By ESR News Blog Editor  
Thomas Ahern

On November 18, 2019, the U.S. Equal Employment Opportunity Commission (EEOC) – which advances opportunity in the workplace by enforcing the federal laws prohibiting employment discrimination – announced that a major retail chain has agreed to pay \$6 million to settle a discrimination lawsuit filed by the EEOC that claimed the retailer's criminal background check process discriminated on the basis of race.

According to the lawsuit filed by the EEOC in U.S. District Court for the Northern District of Illinois in Chicago, Dollar General – the largest small-box discount retailer in the United States – violated Title VII of the Civil Rights Act of 1964 by denying employment to African American applicants at a significantly higher rate than white applicants for failing the company's broad criminal background check.

The three-year consent decree settling the lawsuit requires Dollar General to pay \$6 million into a settlement fund which will be distributed to African Americans who lost their chance at employment at the company between 2004 and 2019. Employment screens that have a disparate impact on the basis of race violate Title VII unless an employer can show the screen is job-related and is

a business necessity.

"Because of the racial disparities in the American criminal justice system, use of criminal background checks often has a disparate impact on African Americans. This consent decree reminds employers that criminal background checks must have some demonstrable business necessity and connection to the job at issue," EEOC Chicago District Director Julianne Bowman stated in a press release about the settlement.

If Dollar General uses a criminal background check during the three year consent decree, they must hire a criminology consultant to develop a new criminal background check based on time since conviction, number of offenses, nature and gravity of the offense, and risk of recidivism. Once a recommendation is given, the decree enjoins Dollar General from using any other criminal background check when hiring.

"This case is important because Dollar General is not just providing relief for a past practice but for the future as well. Unlike other background checks based on unproven myths and biases about people with criminal backgrounds, Dollar General's new approach will be informed by experts with knowledge of actual risk," Gregory Gochanour, regional attorney for EEOC's Chicago District, stated in the press release.

In April of 2012, the EEOC issued "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964" that recommended if employers ask about criminal convictions that the "inquiries be limited to convictions for which exclusion would be job-related for the position in question and consistent with business necessity."

The EEOC enforces Title VII, which makes it illegal to discriminate against a person on the basis of race, color, religion, sex, or na-

tional origin. An employer may violate Title VII if its policy has a "disparate impact" of disproportionately screening out a Title VII-protected group without demonstrating the policy is job related for the position in question and consistent with "business necessity."

In cases involving a criminal history exclusion, the ruling in *Green v. Missouri Pacific Railroad* held that the three "Green factors" relevant to assessing whether an exclusion was job related for the position in question and consistent with business necessity were the nature and gravity of the offense, the time passed since the offense or completion of the sentence, and the nature of the job held or sought.

In 2013, a group of national civil and workers' rights organizations released a report entitled "Best Practice Standards: The Proper Use of Criminal Records in Hiring" that addressed the use of criminal records by employers during background checks. At-

torney Lester Rosen, founder and chief executive officer (CEO) of Employment Screening Resources® (ESR), helped develop these best practice standards.

Rosen also wrote a complimentary white paper entitled "Practical Steps Employers Can Take to Comply with the EEOC Criminal Record Guidance" that gives examples on what employers should do to remain in compliance with

EEOC Guidance when performing criminal background checks. ESR also offers a proprietary EEOC Compliance Toolkit that provides a set of software tools available only to ESR clients.




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**New San Luis Obispo Crime Reporting Tool Owned By Data Broker**

The reporting of some crimes in San Luis Obispo has moved online. This week the city’s police department launched a new web tool for filing a police report for certain non-violent crimes. But the online system may not be the only entity holding victims' personal data.

Say you leave your car door unlocked and someone breaks in, rifles through the interior and steals your favorite pair of sunglasses and iPad. The new Citizen’s Online Reporting System is where you will go to report the theft in San Luis Obispo. Even if you call non-emergency dispatch, the police department says it may still refer those with internet access to the online system if the crime warrants it.

The web tool allows the community to file reports and photos for thefts under \$950 dollars, vandalism and graffiti, abandoned vehicles, and a hit and run if the car is parked and there are no witnesses. Also, it’s where you would file a report if you lose your phone.

What the online system won’t file are reports for hate crime or gang-related vandalism, firearm theft, emergencies, bodily harm or any serious crime.

The San Luis Obispo Police Department says the tool will make reporting some crimes easier for the public

and easier on them, too. According to a November 12 press release, the department has seen a spike in calls for service over the past few years—800 to 1,000 additional calls for service per year—and the online system will free up time for more street patrolling.

The software is named Coplogic and is owned by LexisNexis, the company that pioneered putting research documents online in the 1970s. Specifically, Coplogic is a product of LexisNexis Risk Solutions, an international data and analytics company that compiles and sells consumer data. The San Luis Obispo Police Department says hundreds of U.S. law enforcement agencies use Coplogic, close to half in California alone. LexisNexis Risk Solutions offers several other law enforcement and public safety products that are used by more than 5,000 agencies, according to the company.

Law enforcement agencies have different options for using that data. For Coplogic’s automobile crash reporting tool, cities can track where the worst traffic intersections are for collisions.

When you launch San Luis Obispo’s Citizen’s Online Reporting System, the site states, “all personal information shared is secured and encrypted for your protection and will be used for criminal justice purposes only.” But LexisNexis will also have a copy of that data.

There is no 'opt out' button or data waiver to sign when you launch the San Luis

Obispo Police Department’s web reporting system. When you click the 'Privacy Policy' link at the bottom of the page, LexisNexis states, “depending on how you interact with us and the service, we use your personal information to” and then gives a laundry list of uses. These include custom content, targeted ads, promotional messages, even sweepstakes invitations. It also says LexisNexis may study usage trends, develop data analysis and also may trade your data with parent company RELX, which as the New York Times reported in 2016, collects police information, sells it to insurance companies and kicks back a cut to cities. LexisNexis has even been sued by states like Illinois and Massachusetts, for allegedly withholding portions of those fees from law enforcement agencies. The company disputes those claims, but settled with the states for millions of dollars.

“I spoke with the head of security at LexisNexis this morning and confirmed that when a report is submitted online the data stays on the LexisNexis server for only 60 days after [being] imported into the police department's Records Management System,” Cantrell said in a Nov. 14 email to KCBX News. “All data is then completely deleted from their system and no information is shared with

outside entities for the purpose of marketing, etc.”

KCBX News made multiple requests for documentation of Coplogic privacy protocols from both the city and Cantrell and none were returned in time for publication. But under the 'Terms & Conditions' and 'Retention/Distribution' sections of San Luis Obispo's web tool, Coplogic states, "for all services provided hereunder that involve Reports provided to LN (LexisNexis) by agency, LN will maintain a copy of such Report for a period of no less than seven years from the date of the Report."

The American Civil Liberties Union has raised concerns about what Coplogic stores and for how long. The ACLU of Washington state issued a surveillance impact report about Seattle's use of Coplogic. The report states, “this technology gives rise to potential civil liberties concerns because it allows for the collection of information about community members, unrelated to a specific incident, and without any systematic method to verify accuracy or correct inaccurate information.” In addition, the report found a lack of clarity surrounding how data was retained and shared by LexisNexis and integrated into the Seattle Police Departments' records management system.

KCBX News reached out to LexisNexis for comment about Coplogic’s data sharing, as well as clarification of its data security policy, which is, “we implement technical and organisational measures to seek to ensure a level of security appropriate to the risk to the personal information we process. These measures are aimed at ensuring the integrity, confidentiality, and availability of personal information.” The company did not respond.

As a side note, the data company the San Luis Obispo Police Department is working with may have personal information on you already. If you're curious about what data LexisNexis does have and disseminates, you can ask for it via an online form.

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# Kern County, CA Struggles With Online Access

It frustrates Bakersfield, Calif., attorney Jeff Wise that he can't simply download local court records any time of day in exchange for a modest fee.

Federal courts allow it. So does Los Angeles County's court system. But if Wise wants immediate access to Kern County Superior Court's full library of digital records, he has to stand at one of three computerized public terminals in the lobby of the courthouse on Truxtun Avenue in downtown Bakersfield.

Even then, if he needs a printed copy of a record, he pays 50 cents per page.

"That bothers me, too, that you have to pay to get a public record ... that's available digitally," said Wise, who practices civil, family and some criminal defense law.

Have patience, local officials say: A day is coming when the public will have unfettered access to most county court records over the internet.

But how soon that access might be granted, and how much it will cost, they declined to say. In the meantime, Kern County Superior Court recently began charging some parties new fees for retrieving and making copies of records that now must be filed digitally.

The situation highlights inconsistencies in the state's superior court system. Although California's courts system has a policy of encouraging remote access to superior court records, and it has set uniform fees for record retrieval and copies, the state Judicial Council leaves it up to local courts to decide how and when they make internet access available.

In Kern, the bigger priority now is moving criminal records over to a new system for managing digital

court documents.

"After that project is complete, we can focus on allowing the public direct remote access to both criminal and civil case records," Kristin Davis, public affairs officer for Kern County Superior Court, said by email. "The court is dedicated to improving efficiency and access for everyone."

She and a senior Superior Court official declined to estimate when the court will make more records available online and what, if anything, the service will cost members of the public.

There remains some question as to how close the court has already come to being able to offer remote access to its records.

While older records may never be fully digitized, officials say, all documents filed with the court since Oct. 1, 2018, have had to be submitted digitally.

Anyone hoping to receive digital copies by email is invited to make such requests through the court's website. Otherwise, members of the public must go to the courthouse to use a free public kiosk or pay to receive a printed copy.

A court employee recently offered to provide The Californian with a password she said would give the newspaper free remote access to all the county's civil records. (The newspaper declined in order to avoid the appearance of favoritism.)

Many local court records are available online free of charge at the Kern County Superior Court's website, <https://www.kern.courts.ca.gov>. Minute orders, judges' rulings and other important documents are generally posted and easily accessible there.

But certain key records — civil complaints, for example, the documents at the center of most lawsuits — are not available remotely without a password.

Terry McNally, who retired in 2018 as executive officer of Kern County Superior Court, told The Californian last year that costs associated with digitizing court records are the primary impediment to widening access to digital court records.

Not only does it take time and money to scan in older court documents, he said, but the computer infrastructure required to manage them costs money to build, operate and maintain.

McNally said the court saves money by offering access to its records over the internet. For one thing, it lowers the court's staffing costs, he said.

However, he asserted that it would be up to the state Judicial Council, based in San Francisco, to decide how courts like Kern Superior will recover their digitization costs.

But that kind of guidance probably isn't coming, said the Judicial Council's chief operating officer, Robert Oyung.

The council promotes maximum remote access to public records, he said, but it also recognizes that each local court system faces its own technological challenges.

"It's just a matter of having the courts implement (remote access) when they can," Oyung said. He added that Kern may have some ability to make more records available online, "but there may be some limitations in terms of making it available more broadly."

He said the council has no plans to tell courts how or when to make fuller access available online.

"Everybody is moving in that direction, but they will be moving at the pace that they can afford to move," he said.

The way members of the public have traditionally been allowed to view court records such as civil case complaints has been to go to the Truxtun Avenue

courthouse and request them from a clerk. That person was usually able to retrieve them quickly and make them available for inspection on site at no charge.

That practice has been curtailed in recent years, and on Aug. 14, Kern Superior announced it would begin charging fees outlined in a California statute instituted in 2006. As part of changes that took effect locally on Sept. 1, the court ended its practice of producing physical court records free of charge for government agencies and news media.

Anyone wishing to look at a record that was not posted online would have to either ask for a password to read it on a kiosk, or pay 50 cents per page for a copy — plus, pay a \$15 file retrieval fee for records that take more than 10 minutes to find, or \$20 if the retrieval requires going to an off-site location.

Kern Superior's revenue from charging members of the public file retrieval fees has risen sharply in recent years.

In fiscal 2018-19, the court's revenue from retrieval fees came to \$28,481.49. That's almost twice what the court took in from such fees two years earlier.

Online access to federal records is available through PACER, or Public Access to Court Electronic Records. It charges account holders 10 cents per page for digital documents.

Los Angeles County Superior Court also offers broad online access to court records. It charges \$1 per page for the first five pages, then 40 cents per page after that, up to a maximum of \$40 per document.

That court's public information officer, Mary Hearn, noted that no government money has been set aside to cover the cost of providing online access to court records. And similar to Kern Superior's system, she added that anyone may view or buy copies of case records at public terminals located in L.A. courthouses.

At the Bakersfield law firm of Chain Cohn Stiles, online access to court records is the same as it is for the general public, meaning it's free but limited, Marketing Director Jorge Barrientos said by email.

"We're fortunate to have this access in Kern County," he wrote. "Los Angeles (County) Superior Court, for example, provides the same services, but charges to access documents."

That said, broader access would definitely be preferable, Barrientos added.

"The few folks I talked to in our office would welcome with open arms having remote access at any time to all these types of documents," he stated.

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# California Police Access Background Check Database For Personal Use

On June 5, 2013, San Francisco police Sgt. John Haggett was working the 8 a.m. to 4 p.m. shift in a third-floor office at the city’s Hall of Justice.

At 11:48 that morning, someone logged into the department’s secure database inside that office and used Haggett’s sign-on and password to run a criminal background check on a San Francisco woman through the department’s local records.

Within minutes, Haggett’s account was used to run a Department of Motor Vehicles check on the same woman, as well as an FBI criminal records check and another background check run through the California Law Enforcement Telecommunications System, known as CLETS.

Eventually, investigators found Haggett’s sign-on had been used to run checks on two other city residents, and that all three of them had something in common: they were tenants renting apartments from Haggett’s girlfriend, according to San Francisco Superior Court records.

Haggett, who spent three decades on the police force, was charged with a single misdemeanor count of misusing DMV computer information and retired from the department while the case was pending. He later pleaded guilty and was ordered to pay \$150 in restitution.

Haggett, who did not respond to a request for comment, was allowed to keep his pension, which last year paid him \$75,613.26, according to the online database TransparentCalifornia.com.

“I felt so violated,” said one of the tenants whose name was run through law enforcement computers.

“Did he get away with it? Yes,” said the woman, who asked not to be named to preserve her privacy. “It’s such a clear-cut thing. You’re not allowed to do that.”

Haggett is one of more than 1,000 California law enforcement agency workers in the last decade who have been found to have misused the CLETS system or other sensitive databases that are supposed to be accessed only for legitimate investigative purposes.

The allegations against officers around the state run the gamut, according to an investigation from a coalition of news organizations, including McClatchy, and coordinated by the Investigative Reporting Program at UC Berkeley.

A California Highway Patrol officer was accused of accessing computer files to dig up information on a romantic rival, then allegedly driving out and keying her car.

A West Sacramento police officer pleaded no contest to a misdemeanor count of harassment after being charged with accessing department computers and making “repeated telephone calls” to harass someone at their home.

And a San Jose police officer was charged in a case where prosecutors said he accessed police computers and then wrote phony traffic and parking tickets against two people who had been involved in a lawsuit with him over a motorcycle accident five years earlier.

Law enforcement officials say there is little leeway for officers found to have misused computer systems for personal purposes, and that access is controlled using computer identities and passwords that are specific to each officer.

“It’s taken very seriously,” said former Sacramento Sheriff John McGinness, who fired one deputy for lying about a case where he asked another officer to help him find a friend while

on an out-of-town trip.

McGinness also investigated then-Capt. Scott Jones in 2004 over allegations that Jones was using his computer access to run criminal background checks for bail bondsmen in Sacramento.

Jones was cleared of any wrongdoing,

Since that time, hundreds of law enforcement officials have faced accusations of misusing computers in various departments, according to statistics compiled by the Electronic Frontier Foundation, a San Francisco-based non-profit that champions digital privacy rights.

The data is collected by Attorney General Xavier Becerra’s office, and figures provided to The Sacramento Bee show that over the last 10 years 1,002 cases of computer database misuse have been confirmed.

In that same time frame, 82 law enforcement agency employees have resigned as a result of such investigations, another 86 were fired and 125 were suspended.

But the filing of criminal charges in such cases is rare.

In the last 10 years, there have been only 40 misdemeanor and 14 felony cases filed, according to data from Becerra’s office.

Last year, when 149 cases of misuse were found, only 11 cases were prosecuted statewide, all but one of them misdemeanors, according to the data. In 2017, when 147 cases of misuse were confirmed, only three cases were filed, all misdemeanors.

Such disparity between the number of abuses and the number of prosecutions is not surprising, said Eli B. Silverman, a professor emeritus at John Jay College of Criminal Justice in New York and an expert in police reform and police leadership.

Police oversight is “what’s

demanding by the public or political leaders,” Silverman said.

But, he added, “Oversight is generally a stepchild in the tool kit of law enforcement.”

Silverman said most responses from law enforcement are that “the system can be improved” or “we’re working on it.”

“The response fits a pattern,” he said. “It’s not necessarily nefarious, but it is a defense mechanism.”

Agencies are required to make annual reports to the attorney general’s office outlining the number of investigations and the outcome.

Last year, the Chula Vista Police Department reported 38 violations stemming from one internal investigation, the highest number in the state.

Chula Vista police Lt. Dan Peak said the department had been using CLETS when it issued concealed weapons permits to officers who had retired from the department. The checks were being made to ensure the officers had no criminal convictions before the permits were issued, but the department learned that was not a proper use of the CLETS system and discontinued the practice, he said.

The second-highest number came in Glendale, which reported 25 violations.

Glendale police Sgt. Daniel Suttles said the violations stemmed from an investigation into an individual found to have made 15 to 25 inappropriate computer searches.

“The department took what we believe to be the appropriate action, in this matter, in the form of a suspension,” Suttles wrote in an email.

At the CHP, 11 investigations took place last year, including three where officers ran license plates through the CLETS system “without a need to know,” the agency said.

One officer was fired, and two were suspended.

None of them faced criminal filings.

CHP’s 11 investigations ranked only behind the San Diego County Sheriff’s Office, which reported 20 investigations, 17 of which were determined to not involve computer misuse, according to data provided by EFF.

The Sacramento County Sheriff’s Office reported one CLETS misuse investigation last year that resulted in a suspension, but the department refused a public records act request to release files on the incident.

Records the department agreed to release indicated that since 2014 it has confirmed 12 incidents of computer misuse that resulted in two suspensions and one firing.

The Sacramento Police Department reported two investigations last year, but determined there was no misuse of computers. Records provided by the attorney general’s office indicate that from 2014 through 2017 the department confirmed eight cases of computer misuse, which resulted in the resignation of two employees.

But the precise nature of computer misuse among law enforcement officers often remains shrouded in secrecy unless it is spelled out in court files.

The Sacramento County Sheriff’s Office and West Sacramento Police Department both declined public records requests for details of misuse cases involving specific employees who had been disciplined, including one who faced criminal charges.



Continues next page



# California Police Access Background Check Database For Personal Use

Cont.

Each agency cited privacy concerns for their officers, and contend that a new police transparency law, SB 1421, that took effect Jan. 1 does not cover such cases. Some law enforcement veterans argue there can be gray areas about when it is permissible to use agency computers without a rock-solid investigative purpose.

McGinness, the former Sacramento sheriff, says deputies can run license plate checks freely.

“Any plate you run on the street is fair game because it may be stolen,” he said. “A license plate is on a car specifically to deprive an operator on a public highway of anonymity.”

But the attorney general’s office has issued detailed instructions to all law enforcement agencies in the state outlining prohibitions on misuse of the CLETS system and saying computers must be used for official business, with employees required to establish both a “right to know” and a “need to know” the information being sought.

In a bulletin issued in April 2018, Becerra’s office

spelled out some prohibited computer searches, including accessing databases for information on family or friends, providing data to someone else for unauthorized use or looking for records on “high profile individuals in the media.”

Even when criminal charges are filed, the most serious punishment generally is a plea to a misdemeanor and a fine, court filings show, and the prosecutions do not always lead to an officer losing their job.

CHP Officer Joelle McChesney was charged in Yolo County in May 2008 with five counts of accessing computers without permission and pleaded no contest eight months later to three misdemeanor counts.

She also was charged in Placer County with identity theft and defacing a vehicle belonging to a woman she was accused of obtaining information about improperly.

McChesney did not respond to a request for comment, but a CHP spokeswoman confirmed

McChesney is still on the job serving in the Sonora area office.

The agency declined to discuss her case, citing confidentiality of personnel records.

But McChesney testified in a traffic case last year in Tuolumne County Superior Court that the incident stemmed from jealousy about a CHP officer she was dating who was seeing another woman, according to news accounts from the trial.

McChesney testified she ran computer checks twice, but denied that she had keyed the woman’s car, according to a July 2018 report in The Union Democrat.

“I made a mistake, and this is part of the consequences,” the newspaper quoted her as saying in explaining her no contest pleas. “I just wanted it done.

“It still haunts me, but it was what I thought was best.”

Other officers also have been able to remain in law enforcement despite such prosecutions.

San Francisco Police Officer Warrick Whitfield was charged with seven misdemeanors in 2014 accusing him of “misuse of confidential information.”

Court records say Whitfield was running computer searches as a favor to his girlfriend, whose daughter was involved in a custody dispute.

Whitfield, who could not be reached for comment, pleaded no contest to a misdemeanor count and was ordered to pay \$7,398.56 in restitution, court documents say.

Despite that, he remains on the force and was named the Richmond Station’s “officer of the week” in 2017.

Sgt. Michael Andraychak, a San Francisco police spokesman, said the department could not comment on the cases involving Haggett or Whitfield.

“We would not have access to specific officers’ files nor would we be able to comment on any investigations, their outcomes or, if a complaint was sustained,

what discipline was ordered,” he wrote in an email. “As such, we would not be in a position to compare or contrast any cases.”

But the system is not always as forgiving as it appeared to be for Whitfield, especially once the allegations spill out into public.

Former Alameda County Deputy Sheriff Ryan Silcocks has firsthand knowledge of how devastating a mistake misuse of computers can be.

Silcocks, now 47, spent five years with the sheriff’s office as a civilian and another 13 as a sworn officer working out of a family law courthouse until he was fired in August 2013.

Investigators accused Silcocks in court records of accessing law enforcement computers three times over a five-week period in 2012 to look for DMV and criminal background information and providing some of it to a family law attorney he knew.

At the time, Silcocks said in an interview, the family law attorney was seeking help for a client in an ugly child custody case and he believed the woman in the case might be the victim of a sexual assault going on in a Livermore home.

The attorney’s call for help came in at 10:30 p.m. on a Sunday night, and Silcocks acknowledges he drove to the Alameda County family law courthouse, used his keys to get inside and went to his office to access sheriff’s office computers.

“I was extremely concerned about the individual’s safety,” he said. “My mindset at the time was, I understand it’s 10:30 at night, I understand I’m off duty, but I’m still a deputy sheriff, I’m still a police officer and this person’s in danger.”

Silcocks says he was looking for an address to give to Livermore police so they could go to the home and halt the alleged assault.

“I really thought I was do-

ing the right thing, trying to get a bad guy off the streets,” Silcocks said. “I was doing what I thought a police officer should do.”

Internal affairs investigators had a different view of the situation, and Silcocks ended up pleading no contest to a single misdemeanor or count in exchange for time served of one day and a \$395 fine.

Silcocks also faced a \$3 million federal civil rights lawsuit filed by the man whose information he first looked up. He and the county prevailed in their fight against the suit, but the cost to Silcocks from accessing the computers has been incalculable.

He now works 80 hours a week in two different jobs to make ends meet, and says it took five years before he could allow his girlfriend to remove his sheriff’s uniforms from his closet and store them out of sight.

“The newspaper carried my case relentlessly,” he said, noting that he has never spoken publicly about the case until now. “It gave my agency a black eye.

“I was on administrative leave for 439 days. I counted every single one.”

Silcocks, who spoke while wearing a thin blue line T-shirt he bought after the June 19 slaying of Sacramento police Officer Tara O’Sullivan, said he loves law enforcement and that his father, a 24-year veteran of the Alameda sheriff’s office, stopped speaking to him after his case went public and he was fired.

“I spent two months unemployed and I remember trying to apply even as a clerk at a Chevron gas station,” he said. “I got turned down.

“I think being fired as a police officer is probably the biggest blemish that one can have on any kind of job application or resume. I think you can have a severe criminal history, but just don’t be fired as a cop.”

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