

Obtaining a Credit Report During Litigation

See also the doc attached FCRA FATAL FLAW

Keeping in mind that the FCRA cites very LIMITED parameters for the acquisition of a credit report and among the possible “permissible purposes” listed there is an obvious absence of any language allowing the credit report to be obtained for the purpose of LITIGATION (or preparation for..), attorneys ALWAYS use the defense of claiming the permissible purpose of “legitimate business need”. (Section 1681b(3)(E) of the FCRA allows a credit reporting agency to furnish a consumer report to persons having a "legitimate business need for the information in connection with a business transaction involving the consumer." 15 U.S.C. § 1681b(3)(E).) However the following case contains a whole lot of language to firmly establish that “legitimate business need” applies only if an existing business relationship exists between the consumer and the entity requesting the report. In your case it would be impossible to establish any existing business relationship because;

1. Litigation between two parties is not a “business transaction”
2. Your wife is not a “client” of the law firm or an employee which would establish a business relationship
3. The law firm, (just like the association in the case cited below) had someone else obtain the report under false pretenses by failing to disclose their true identity to the CRA or the real purpose of obtaining the report.
4. The report was not obtained in connection with a proven contractual existence of an account or business transaction between her and any “client” represented by the law firm. That MUST be established first.

EXCERPTS FROM:

943 F.Supp. 464

United States District Court,

D. New Jersey.

Joseph DALEY, Plaintiff,

v.

HADDONFIELD LUMBER INC., Bay Club Condominium Association, Thomas Baird, and Robert Zegley, Defendants.

Civil Docket No. 96-cv-1200.

Nov. 7, 1996.

GLEANED FROM OPINION POSTED ON:

<http://myfaircredit.com/forum/viewtopic.php?f=3&t=1721&sid=54aad1c06962266c686b54573039f242>

Congress enacted the FCRA 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)(4). For example, the FCRA permits consumer reporting agencies to provide subscribers with consumer credit reports only for particular purposes, including credit, licensing, employment, or insurance purposes. § 1681b(3)(A-D). **Additionally, a credit reporting agency may issue a report to a person the agency believes "has a legitimate business need for the information in connection with a business transaction involving the consumer."** § 1681b(3)(E). Thus, an agency's reasonable belief as to the report's purpose determines whether the agency may lawfully issue the report to the requesting party. See *Popik v. American Int'l Mortgage Co.*, 936 F.Supp. 173, 176 (S.D.N.Y.1996) (agency provides report based on expectation that requesting party will use report for purpose permitted by FCRA). In addition to regulating the conduct of credit reporting agencies, the FCRA provides a mechanism to monitor and limit the actions of parties who request credit information from credit reporting agencies. To that end, the statute imposes **criminal and civil penalties** on persons who violate specific provisions of the Act. See §§ 1681n-q. In particular, sections 1681n and 1681o establish civil liability for willful and negligent noncompliance with any requirement of section 1681. §§ 1681n-o. Section 1681q, in turn, provides for criminal penalties for obtaining consumer information under false pretenses. § 1681q.

[3] Section 1681b, which lists the permissible purposes for which an agency may release *467 a credit report, expressly circumscribes the actions of consumer reporting agencies. However, this section has been applied also to users of consumer reports in the context of false pretenses allegations pursuant to section 1681q. [FN6] See *Korotki v. Attorney Servs. Corp.*, 931 F.Supp. 1269, 1276 (D.Md.1996) (citing *Yohay v. City of Alexandria Employees Credit Union*, 827 F.2d 967, 972 (4th Cir.1987) (quoting *Hansen v. Morgan*, 582 F.2d 1214, 1216 (9th Cir.1978))). As a result, section 1681q provides the basis for imputing to users of consumer reports civil liability for willful violations of section 1681. [FN7] *Kennedy v. Border City Sav. & Loan Ass'n*, 747 F.2d 367, 367-68 (6th Cir.1984). With this backdrop, this court will address plaintiff's allegation that defendants lacked a permissible purpose in obtaining the credit report in light of the related claim that defendants requested the report under false pretenses.

IMPORTANT TO TAKE NOTE OF:

This court rejects the proposition that one can **negligently violate section 1681q** and, instead, adopts the reasoning stated by the Sixth Circuit in *Kennedy v. Border City Sav. & Loan Ass'n*: "Since violation of section 1681q occurs only when an individual acts **knowingly and willfully**, section **1681n** rather than 1681o is the proper vehicle for **civil liability for violation of [section] 1681q.**"

In evaluating whether a person obtained a credit report under false pretenses, a court must examine the limited permissible purposes for which consumer reports may be released under

section 1681b of the FCRA. *Zamora v. Valley Fed. Sav. & Loan Ass'n of Grand Junction*, 811 F.2d 1368, 1370 (10th Cir.1987) (per curiam) (citations omitted). **Most courts agree that a person is liable for obtaining information under false pretenses when that person requests a report from an agency without disclosing the improper purpose for which the person in fact seeks the report.** See, e.g., *Hansen*, 582 F.2d at 1219-20; *Zamora*, 811 F.2d at 1370; *Zeller v. Samia*, 758 F.Supp. 775, 781 (D.Mass.1991). Cf. *Allen v. Calvo*, 832 F.Supp. 301, 303-04 (D.Or.1993) (citing *Houghton v. New Jersey Mfrs. Ins. Co.*, 795 F.2d 1144 (3d Cir.1986)) (user who discloses impermissible purpose not guilty of obtaining information under false pretenses).

THE FALLACY OF LEGITIMATE BUSINESS NEED:

Defendants argue, in error, that a consumer relationship existed between plaintiff and defendant *Bay Club*, which in turn created a legitimate business need for obtaining plaintiff's credit report pursuant to section 1681b(3)(E). This argument fails as a matter of law. As the Third Circuit stated in *Houghton*, a consumer relationship must exist between the person requesting the report and the subject of the report. *Houghton*, 795 F.2d at 1149. [FN9] See also *Greenway v. Info. Dynamics, Ltd.*, 399 F.Supp. 1092, 1096 (D.Ariz.1974) ("Information on a particular consumer may only be provided to a third party who requires it in connection with a specific transaction between that party and that particular consumer.") (emphasis added), aff'd, 524 F.2d 1145 (9th Cir.1975), cert. denied, 424 U.S. 936, 96 S.Ct. 1153, 47 L.Ed.2d 344 (1976). Because *Zegley* requested the report in the name of *Haddonfield Lumber*, the court considers *Haddonfield Lumber*--not *Zegley*--as the person requesting the report for purposes of section 1681b(3). [FN10] In light of *Houghton*, a consumer relationship must exist between *469 *Haddonfield Lumber* and *Joseph Daley*. However, such a relationship did not exist between *Haddonfield Lumber* and the plaintiff. Therefore, *Zegley* obtained the consumer report for an impermissible purpose.

The court notes that the Third Circuit admonished that section 1681b(3)(E) **should not be read broadly to include any report involving a business reaction.** Id. Rather, the business transaction "must relate to one of the other specifically enumerated transactions [listed] in §§ 1681a(d) and b(3) [of the FCRA], i.e., credit, insurance eligibility, employment or licensing." Id.

Under the law, when *Zegley* requested the plaintiff's credit report through *Haddonfield Lumber*, the credit reporting agency issued it to *Zegley* based on the representation that *Haddonfield Lumber* required the report for a permissible purpose. **It did not release the information generally to any potential user who may indeed maintain a permissible purpose for obtaining the report.**

See *Yohay*, 827 F.2d at 973 ("user" includes both ultimate destination of credit report and person who acquires report for another).

IV. CONCLUSION

For the reasons set forth above, the court finds that there are no genuine issues of material fact as to whether defendants *Zegley* and *Bay Club* obtained credit information about *Joseph Daley* under false pretenses. **The pleadings indicate that defendants violated section 1681n of the FCRA by willfully failing to comply with section 1681q, which proscribes accession of consumer information under false pretenses from a consumer reporting agency. Plaintiff's Motion For Judgment on the Pleadings as to Defendants *Zegley* and *Bay Club* is granted.** The court will enter an appropriate order.

http://classactiondefense.jmbm.com/2006/09/15_usc_1681q_and_1681r_obtaini.html

15 U.S.C. §§ 1681q and 1681r – Obtaining Information Under False Pretenses/ Unauthorized Disclosures by Officers or Employees: Statutory Provisions of the FCRA (Fair Credit Reporting Act) for the Class Action Defense Lawyer

As a resource for class action defense attorneys who must defend against actions brought under the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*, we provide the text of the FCRA. The statutory provisions concerning obtaining information under false pretenses and concerning unauthorized disclosure by officers or employees are set forth in Sections 1681q and 1681r, respectively, as follows:

§ 1681q. Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses **shall be fined** under Title 18, United States Code, **imprisoned for not more than 2 years, or both.**

§ 1681r. Unauthorized disclosures by officers or employees

Any **officer or employee of a consumer reporting agency** who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information **shall be fined** under title 18, United States Code, **imprisoned for not more than 2 years, or both.**

This report only scratches the surface, there is a great deal more in the way of case law and white papers on the topic.

[Court Finds That 1681q is Still Viable Despite 1681b\[f\]](#)

In the 1996 amendments, § 1681b[f] was enacted to provide a private right where courts previously filled a gap in the law by using the criminal statute § 1681q [false pretense access of "any information"] to make it actionable when someone accessed your report illegally. See, eg., *Yohay*. Many believed that § 1681q was no longer viable. Some courts hold that it is because § 1681q is broader than § 1681b[f].

Here, the USDC Ariz. found plaintiff "waived" her § 1681q claims by not pleading those in lieu of and exclusively favoring § 1681b[f].

Slip Copy, 2006 WL 173687 (D.Ariz.)

United States District Court,

D. Arizona.

Michelle P. TRAVELER, Plaintiff,

v.

GLENN Jones FORD [LINCOLN MERCURY](#) 1987, INC., an Arizona corporation,
Defendant.

No. CV-05-0817-PHX-SRB.

Jan. 24, 2006.

FN2. Although Plaintiff identified 15 U.S.C. § 1681q in her factual allegations, she failed to include a claim under § 1681q in her causes of action. Therefore, Plaintiff has waived any cause of action under § 1681q.

Scott v. Real Estate Finance Group, 1997 Westlaw 85973 [U.S.D.C. E.D. N.Y. 2/26/97]

Court granted summary judgment to plaintiffs against [TRW](#) subscriber that had obtained plaintiffs' [credit reports](#) under false pretenses. The court found that plaintiffs had no business or consumer relationship with the subscriber ["user"] and that "the absence of a consumer relationship between the requesting party and the subject of the [credit report](#) requires the court to find that the requesting party did not have a permissible purpose to obtain the report. [quoting *Daley v. Haddenfield Lumber, Inc.*, 943 F.Supp. 464, 468 [U.S.D.C. N.J. 1996].” *Ali v. Vikar Management, Ltd.*, 97-CIV-1501 [U.S.D.C.] c/w 97-CIV-7384 [U.S.D.C.] [U.S.D.C. S.D. N.Y. 2/18/98], at p.17.

“...[A] user who purports to seek a consumer report for a permissible purpose, while secretly seeking the report for an impermissible purpose, is subject to liability under the FCRA for obtaining information under false pretenses.” *Allen v. Calvo*, 832 F.Supp. 301, 303 [U.S.D.C.

Ore. 1993]; *Graziano v. TRW*, 877 F.Supp. 53, 57 [U.S.D.C. Mass. 1995]; *Ali v. Vikar Management, Ltd.*, 97-CIV-1501 [U.S.D.C.] c/w 97-CIV-7384 [U.S.D.C.] [U.S.D.C. S.D. N.Y. 2/18/98], at p.26.

Not Reported in F.Supp., 1983 WL 31496 (D.Mass.)

United States District Court, D. Massachusetts.

NEW PALM GARDENS, INC., Loris R. D'Amato and Lorenzo D'Amato, Plaintiffs,
v.

Thomas E. BENTLEY, Thomas Rice and Alfred E. Brooks, Sr., In Their Individual Capacities, Henry J. Lane, Individually and as he is Town Counsel, Thomas E. Bentley, Thomas Rice and Edmund J. Lizotte, as they constitute the Board of Selectmen of Uxbridge, the Town of Uxbridge, John Emerick, as he is Chief of Police, John P. Johnson, as he is Chairman of the Uxbridge Board of Health, Professional Investigative Consultants, Inc., Daniel J. Quigley, Robert B. Nadeau, R. Joseph L'Italien, Edward J. Doherty, and [Credit Bureau](#) of Greater Boston, Defendants.

Civ. A. No. 82-1361-MA.

Aug. 11, 1983.

FROM MEMORANDUM ORDER.....

B. Use of False Pretenses.

The plaintiffs have alleged that defendants Bentley, Rice, Brooks, Lane, the Board of Selectmen, the Town of Uxbridge, PIC, Quigley, Nadeau, L'Italien, and Doherty violated their rights as established under 15 U.S.C. §§ 1681q and 1681n by obtaining information from a consumer reporting agency under false pretenses.

*5 Section 1681q states:

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

Though section 1681q on its face establishes a basis for criminal liability, courts have consistently held that civil liability may be imposed as well. See *Hansen v. Morgan*, 582 F.2d 1214 (9th Cir.1978); *Rice v. Montgomery Ward & Co., Inc.*, 450 F.Supp. 668 (D.N.C.1978). Further, civil liability may attach without regard to whether a statutory "consumer report" has been prepared. As one court has stated:

In this case where liability is premised on a violation of § 1681q, it is immaterial whether the

information that passed ... was a 'consumer report,' since § 1681q pertains to all information which is obtained from a consumer reporting agency and not just to consumer reports.

Rice v. Montgomery Ward & Co., Inc., supra, 450 F.Supp. at 671.

On the basis of the record to date, I find that the plaintiffs have alleged sufficient facts to demonstrate, if proven at trial, that defendants did knowingly and willfully obtain information about them from a consumer reporting agency under false pretenses. It is immaterial to this allegation that the information provided was not a consumer report. Therefore, the defendants' motion to dismiss or for judgment on this portion of the plaintiffs' complaint must be denied.

<http://myfaircredit.com/forum/viewtopic.php?f=3&t=2132&sid=3a351a1be7b22edd71628bd274f40386>

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Consumer Protection
Division of Financial Practices

October 27, 1998

Dear Mr. Greenblatt:

This is in response to your letter requesting the staff's opinion concerning the application of certain provisions of the Fair Credit Reporting Act ("FCRA") to the following scenario:

Brokerage clients suffer substantial losses on a financial product sold to them by their brokerage firm. A large number of investors obtain legal counsel and notify their brokerage firm of their losses. An early dispute resolution conference is scheduled with each brokerage client. **Prior to the meetings, and with civil litigation seeming imminent, the legal department at the brokerage firm obtains the consumer credit report of every complainant. Some complainants do not have any debt, negative balance or outstanding margin balance in their accounts. The primary purpose for obtaining the credit report is to identify the financial status of each complainant prior to settlement negotiations. Settlement offers are prepared, at least to some extent, based upon the content of the consumer credit reports.**

Specifically, you have asked three questions that we will address here. Those questions are quoted verbatim in italics below, followed by the staff's analysis.

1. Whether the requests for the consumer credit reports comply with the requirements of the Fair Credit Reporting Act, §604, 15 U.S.C. §1681b?

No. Neither the dispute resolution conference, the imminent threat of civil litigation, nor the desire to craft a settlement offer provide the brokerage firm with a permissible purpose to obtain a brokerage client's consumer report under Section 604.

In the 1990 Commentary on the FCRA, the Federal Trade Commission ("Commission") stated that "[t]he possibility that a party may be involved in litigation involving a consumer does not provide a permissible purpose for that party to receive a consumer report on such consumer . . . because litigation is not a 'business transaction' involving the consumer." 16 C.F.R. § 600 App., 55 Fed. Reg. 18804, 18816 (May 4, 1990). This statement extends to all aspects of litigation, including the pre-litigation discussions and settlement preparations that you describe, and was not altered by the recent amendments to the statute.

While the brokerage firm does not have a permissible purpose to obtain consumer credit reports in the

scenario you describe, the brokerage firm is permitted to obtain such reports for the purposes enumerated in Section 604(a)(3)(F) of the statute. Section 604(a)(3)(F) allows a consumer reporting agency to provide a consumer report to anyone who "has a legitimate business need for the information -- (i) in connection with a business transaction that is initiated by the consumer; or (ii) to review an account to determine whether the consumer continues to meet the terms of the account." Therefore, the brokerage firm may request a [consumer credit report](#) prior to establishing a relationship with an individual who applies to open an account, or thereafter to determine whether to discontinue doing business with an established client.

If the brokerage firm misrepresents to a consumer reporting agency that it is requesting consumer reports pursuant to Section 604(a)(3)(F), however, and instead uses the reports in connection with the settlement discussions you describe, the firm is in violation of the FCRA.

2. Whether the brokerage firm is required to inform any of the brokerage clients of the use of the credit reports or that any settlement offers may have been based upon information in the reports, as in §615, 15 U.S.C. §1681m?

Because we have opined that the brokerage firm is not permitted to obtain consumer credit reports in the scenario you describe, we do not reach this question.

3. If the consumer credit report requests fail to comply with §604 of the Act, what are the penalties for violation?

The penalties for violating the FCRA are governed by several different sections of the statute, and the applicability of a particular section depends on such factors as who brings the action and the degree of the violator's noncompliance. For example, Sections 616 and 617 impose liability for willful noncompliance and negligent noncompliance, respectively. The monetary penalties mandated by these two sections include actual damages proven by a consumer, plus costs and attorneys fees in each such case. In the case of willful violations, the court may also award punitive damages to a consumer. **Any person who procures a consumer report under false pretenses, or knowingly without a permissible purpose, is liable for \$1000 or actual damages (whichever is greater) to both the consumer and to the consumer reporting agency from which the report is procured. Also, Section 621 governs enforcement actions brought by the Commission, other agencies, and the states, and provides for various monetary and injunctive penalties. The potential monetary penalties include, for those who knowingly violate the FCRA, up to \$2500 per violation in a civil action brought by the Commission in district court.**

I hope this information is helpful to you. The views expressed herein are those of the staff and do not necessarily reflect the views of the Commission or of any individual Commissioner.

Sincerely,

Kellie A. Cosgrove
Attorney

ABRIDGED

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Financial Practices

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Clarke W. Brinckerhoff
Attorney

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202-326-3224

April 30, 1999

Mr. Kenneth J. Benner
American Council on Consumer Awareness
Post Office Box 17291
St. Paul, Minnesota 55117

Re: Sections 604(a)(3), 607(e), and 609(a)(3) of the Fair Credit Reporting Act

Dear Mr. Benner:

This responds to your letters concerning whether the Fair Credit Reporting Act ("FCRA") permits a party to obtain a [credit report](#) on a consumer under certain circumstances. We list the three questions you posed verbatim, with our opinion following each.

2. Is a permissible purpose for obtaining consumer [credit reports](#) for the sole purpose of determining possible debt by a collection agency for the purpose of soliciting collection business from creditors?

No. You report that a debt collector and a major credit bureau assert that the collector has a "legitimate business need" to obtain a random selection of credit histories for the purpose of determining overdue accounts and then contacting the creditors on the account to solicit collection business. Section 604(a)(3)(F)(ii) does provide a permissible purpose to a party that "has a legitimate business need for the information to review an account to determine whether the consumer continues to meet the terms of the account." In our view, this section authorizes a provider of an existing account (e.g., a bank that has established a checking account with the consumer) to obtain a report on the individual. In the scenario you described, the debt collector has no "account" to "review" when it orders a credit report (in fact, no "account" may exist for some consumers), but instead seeks to randomly examine credit files in order to solicit collection business from creditors. The collector is not authorized to obtain (nor a CRA to furnish) a consumer report for that purpose. The entire focus of Section 604 is to protect the confidentiality

of consumers' personal data in the files of CRAs, by restricting access to parties who have a specific need for it.(2) If a third party such as a debt collector can review the consumer's file to see if there exists any account that the creditor has reported as delinquent, the section has totally failed its goal.

3. Is it permissible for a business doing credit with a consumer to obtain credit information under false pretenses, i.e. hiring another firm to solicit credit file information without disclosing the name of the party actually seeking the credit file information? In these cases the consumer attempting to determine who has accessed his credit file, as required, is provided with names of parties unknown to him.

No. Section 607(e)(1)(A) provides that the second firm may "procure a consumer report for purposes of reselling the report (or any information in the report)" only if it discloses "the identity of the end-user of the report (or information)" to the credit bureau. In our view, the firm hired to procure credit file information would be required to comply with this provision. Section 609(a)(3) requires the credit bureau, when responding to a consumer attempting to determine who has accessed his file, to identify the end-user -- not the intermediary -- as the recipient of the report. Thus, the amended FCRA results in the consumer being provided with the parties who actually used his or her credit file information.

The opinions set forth in this informal staff letter are not binding on the Commission.

Sincerely yours,

Clarke W. Brinckerhoff

1. Section 604(a)(3)(F)(ii) provides a similar "review" purpose in connection with accounts (such as checking accounts) that do not involve credit.

2. "The bill also seeks to prevent an undue invasion of the individual's right of privacy in the collection and dissemination of credit information. ... (Section 604) requires that the information in a person's file be kept confidential and used only for legitimate business transactions." S. Rept. 91-517, 91st Cong., 1st Sess. 1 (1969).[u]

Tsai v. Franceschi

Not Reported in Cal.Rptr.3d, 2005 WL 1580409

Cal.App. 2 Dist.,2005.

After Global lost its state court case, Tsai brought the present case against Franceschi, and the Blums for violation of the Fair Credit Reporting Act (FCRA, 15 U.S.C. § 1681 et seq.), violation of the California Consumer Credit Reporting Agencies Act (CCRA, Civ.Code § 1785.1 et seq.), and invasion of privacy. Tsai alleged that defendants conspired to violate both the federal and state statutes by willfully obtaining consumer [credit reports](#) containing information related to Tsai for purposes other than those permitted by law, such as in Tsai's deposition in the federal litigation. Tsai alleged this conduct also constituted an actionable invasion of her privacy.

Appellants responded with a special motion to strike the complaint under the anti-SLAPP law, section 425.16. They contended that the use of credit information in the deposition was a valid exercise of their constitutional right to petition for redress of grievances, and that Tsai could not meet her burden in opposition to the motion of showing a probability of prevailing on her claims because their conduct is absolutely privileged under Civil Code section 47, subdivision (b) (section 47 litigation privilege).

Appellants sought an award of attorney fees pursuant to section 425 .16, subdivision (c).

Simultaneously, appellants demurred to the Tsai complaint on the grounds that she failed to comply with the pre-filing procedures required by Civil Code section 1714.10 (applicable where an attorney is alleged to have conspired with a client), and that the action is barred by the section 47 litigation privilege.

Tsai opposed the motion to strike on the ground that the action does not arise from appellants' exercise of the right to petition because it is based on the act of obtaining the [credit report](#) rather than its use in the deposition. She also argued she has a reasonable probability of prevailing in the action because the section 47 litigation privilege does not apply to conduct as opposed to communication. Tsai also sought an award of fees. She opposed the demurrer on the ground that the appellants' conduct is not privileged, and that she was not required to comply with Civil Code section 1741.10.

The trial court denied the motion to strike, finding that appellants had failed to make a prima facie showing that Tsai's claims fall within the ambit of the anti-SLAPP law. It rejected the argument that obtaining the credit report for use in discovery brought appellants' conduct within the ambit of the right to petition. The court also reached the second step of the analysis and concluded that Tsai had met her burden of offering sufficient evidence to establish a probability of prevailing on her claim. Appellants were ordered to pay Tsai \$2,000 in fees pursuant to section 425.16, subdivision (c). The trial court overruled appellants' demurrer on the ground that Civil Code section 1741.10 does not apply because the alleged conspiracy involves a violation of an independent legal duty to Tsai. Appellants filed a timely

appeal from the order denying the motion to strike and purport to appeal from the order overruling their demurrer.

Paragraph 12 of the complaint alleges damages as a result of this conduct: "The defendants' acts of obtaining Tina Tsai' [consumer credit report](#) and then interrogating Tina Tsai on the contents of her consumer credit report was intended to, and did, cause emotional distress."

The gravamen of the complaint is that appellants unlawfully obtained Tsai's consumer credit report. The first three categories of protected activities under section 425.16, subdivision (e) involve writings or statements, and thus are inapplicable to the act of obtaining the report. The only applicable category is 425.16, subdivision (e)(4) which applies to conduct: "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (Italics supplied.) Appellants make no showing that their conduct with respect to the credit report fell within that category.

*5 Nor does it appear, from the record presented to us, that a tenable argument could be made that this category applies.