

June 28, 2005

Dear Criminal Records Identity Theft Victim:

We are writing to update you on the status of our negotiations with the Michigan State Police (MSP) regarding "mistaken identity convictions" that appear on criminal records like yours. In the course of working on this issue, we have spoken to many individuals who, like you, appear to have a criminal record, when in fact they do not have such a record. For the past year we have been meeting and corresponding with the MSP in an effort to resolve this situation. We are pleased to report that, while it will take some time, the MSP is willing to make major changes to its computer system that will eventually result in the removal of "mistaken identity convictions" from the MSP's criminal record database.

### **Name-Based Errors**

In order to explain what the MSP is proposing to do, let us first set out how the MSP's database works. When a person is arrested and fingerprinted for the first time, the name given by the person is attached to that person's fingerprints. For example, if Mary Smith gets arrested, and gives the name Mary Smith, then that name is attached to Ms. Smith's fingerprints. If Ms. Smith later gets married and changes her name to Mary Jones, then Mary Jones will be added as an additional name. If Mary Smith goes out and uses the alias Sarah Turner, then the name Sarah Turner will be added as an additional name. All three of these names are linked to Ms. Smith's record. Therefore, a search on Mary Smith, Mary Jones, or Sarah Turner will all produce Ms. Smith's record.

The problem comes when Ms. Smith uses a name that belongs to someone else. This may happen as a result of identity theft, or it may simply be a coincidence. If there is a real Sarah Turner, a search of her name will produce Ms. Smith's record, so long as there is also a match on the sex and year of birth. Thus if Ms. Smith stole Ms. Turner's identity and gave both her name and her birthdate as an alias, Ms. Turner's record will contain Ms. Smith's convictions. Similarly, if Ms. Smith simply used the name "Sarah Turner" as an alias, and happened to have been born the same year as the real Ms.

## Disclaimers

The MSP is willing to significantly change the language on the disclaimer which appears on the criminal records it releases. The disclaimer will, among other things, say something like:

**THE RECORD RESULTS PROVIDED HERE MAY OR MAY NOT BE THOSE FOR THE INDIVIDUAL REQUESTED. BECAUSE OF IDENTITY THEFT, THE USE OF ALIASES BY THOSE IN THE CRIMINAL JUSTICE SYSTEM, AND THE POSSIBILITY THAT MULTIPLE INDIVIDUALS WILL HAVE THE SAME NAME, SOME INDIVIDUALS WILL APPEAR TO HAVE A CRIMINAL RECORD WHEN THEY DO NOT. OTHER INDIVIDUALS WILL APPEAR NOT TO HAVE A RECORD WHEN THEY DO.**

**TAKING ADVERSE ACTION WITHOUT PROVIDING A COPY OF THIS RECORD TO THE INDIVIDUAL WHOSE NAME WAS SEARCHED MAY SUBJECT YOU TO LIABILITY. PROVIDE A COPY OF THIS RECORD TO THE INDIVIDUAL WHOSE NAME YOU SEARCHED *BEFORE* YOU TAKE ANY ADVERSE ACTION BASED ON THIS RECORD.**

We hope that when someone conducts a criminal background search, the new disclaimer will cause them to give a copy of the record to the affected individual. This will make it more likely that people learn about mistakes in their records, including mistakes based on identity theft.

## Free Records

It costs \$10 to obtain a copy of one's own criminal record. It is very important for people to check their criminal records, just like they check their credit reports, to make sure that they have not been victims of identity theft. Since some people cannot afford the \$10, the MSP will be offering free credit reports to individuals who provide an "affidavit of indigence," as well as a special request letter, called a FOIA request. The forms needed to request a free copy of one's criminal record will be made available on the MSP website.

## Timeline

As you can imagine, making all of these changes to the MSP's computer system will be time-consuming and expensive. We are fortunate in that the MSP is already in the process of upgrading its computer system anyway. Because the MSP will be getting a new computer system, no programming changes are being made to the old system at this time. The only changes that can be made now are those that involve changing text, not changing programming. Thus, the MSP plans to change the language on the disclaimer very soon. However, it cannot create the new identity theft field until it has the new computer system. Once the new system is installed, the computer programmers will work on making the changes described above. The MSP's budget for the next fiscal year, which starts in October, will include the money to make these changes. The MSP has said that these changes will be

completed by the fall of 2006 at the latest. It hopes to have the changes completed by March of 2006. These changes are among the top programming priorities once the new computer system is installed.

We are, of course, not happy about how long it will take to make these changes. We recognize that you have been waiting a long time to get your record cleaned up, and that you may have continuing problems as a result of the convictions that appear under your name. We pressed the MSP very hard on this issue, but the MSP believes it simply is not feasible to move faster. We should note that if we decided to sue, it might well take until the fall of 2006 before we would be able to get even an initial order from the court. We also cannot be certain whether the court would agree with us that the MSP's current system is illegal.

### **What To Do Until the New System is in Place**

As you know, the MSP will provide a clearance letter if you demonstrate through a fingerprint check that the convictions under your name do not belong to you. If you have not already done so, you should get your fingerprints taken and submit them, along with a copy of "your" criminal record, to the Michigan State Police, Criminal Justice Information Center, 7150 Harris Drive, Lansing, MI 48913. You should include a cover letter stating that you would like to do a record challenge. If you have any questions about how to do this, please call Miriam Aukerman. Assuming that your fingerprints do not match those associated with the conviction, the MSP will send you a clearance letter. If you now obtain, or have already obtained a clearance letter, the MSP will automatically correct your record when the new computer system is up and running. (It would, however, be a good idea to check your record in the fall of 2006 to make sure it has been corrected.) If you do not submit a record challenge in order to get a clearance letter, your record will not be changed. ***You must have submitted a record challenge to get the "mistaken identity convictions" removed from your record when the new computer system comes on line.***

The MSP has agreed that until the new system is operational, it will provide letters directly to employers, landlords, etc. if any of our clients need such letters to deal with specific employment applications, housing problems, or other similar situations. For example, if you are looking for work and an employer won't accept your clearance letter, you will be able to get a letter directed to that employer from the MSP. The person to contact at the MSP is Tim Bolles, Manager, 517-322-5529, [bollestd@michigan.gov](mailto:bollestd@michigan.gov).

Finally, it is important to understand that the changes to the criminal history system will not change the warrant system. Even after the new criminal history system is in place, if a person is using your identity to commit crimes, you could end up with a warrant in your name. There is a federal program that would allow victims of identity theft to get a password they could give to an arresting officer if they were being picked up on a warrant that did not belong to them. Unfortunately, Michigan's computer system is too old to allow that system to work here. The computer system used for warrants is different from that used for criminal history. Therefore, there is a whole second computer system that needs to be replaced in order to fix the warrant problem. We have been told that it will

likely take at least two years before that is fixed. In the mean time, if you think there is a warrant out for your arrest and that warrant does not belong to you, you should contact Tom Evans at the Michigan State Police, 517-336-6493, [evanst@michigan.gov](mailto:evanst@michigan.gov). Mr. Evans has told me that he will investigate such cases and try to get the warrant removed. He will not, however, tell you whether or not there is a warrant out in your name.

If you have any questions about the agreement, please contact Miriam Aukerman at 616-774-0672 ext. 114. If we do not hear from you in the next two weeks, we will assume that you are satisfied with the agreement, and will close your file.

Sincerely,

Miriam Aukerman  
Soros Justice Fellow  
Western Michigan Legal Services

Michael Steinberg  
Legal Director  
American Civil Liberties Union