

**COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT**

SUFFOLK, SS.

**SUPERIOR COURT
CIVIL ACTION
NO. 04-**

**EDWARD BLAND, JENNIFER SZALL, and
JOHN CASEY, individually and on behalf of all
other similarly situated persons,**

Plaintiffs,

v.

**EDWARD A. FLYNN, Secretary of the Executive Office of
Public Safety, CRIMINAL HISTORY SYSTEMS BOARD,
and BARRY J. LACROIX, Executive Director/
General Counsel of the Criminal History Systems Board,**

Defendants.

COMPLAINT

I. INTRODUCTION

1. Plaintiffs are persons who are wrongfully associated with criminal records belonging to another individual. Plaintiffs have been denied employment or housing because the Massachusetts Criminal History Systems Board (CHSB) wrongfully disseminated as plaintiffs' records the criminal records of individuals who have unlawfully used plaintiffs' identities. The CHSB knew or should have known that disseminating those records as if they were plaintiffs' was inaccurate and misleading. Without this Court's intervention, the CHSB will continue to disseminate inaccurate and misleading information as plaintiffs' records.

2. Plaintiffs challenge this wrongful and misleading dissemination on the grounds that it violates the CHSB's statutory obligations to assure the accuracy of the criminal

records it disseminates in accordance with G.L. c. 6, §§ 171, 175; substantially interferes with the plaintiffs' rights of privacy in violation of G.L. c. 214, § 1B; and deprives them of their rights to due process of law in violation of the Massachusetts Declaration of Rights, Part 1, Articles 1, 10, and 12, and the Fourteenth Amendment to the U.S. Constitution.

II. JURISDICTION

3. This court has jurisdiction pursuant to G.L. c. 212, § 4; G.L. c. 214, § 1; G.L. c. 231A, § 1; and G.L. c. 6, §§ 176, 177. Plaintiffs' federal claims are brought pursuant to 42 U.S.C. § 1983.

III. PARTIES

A. NAMED PLAINTIFFS

4. Plaintiff Edward Bland resides at 73 Gold Street, Springfield, MA 01107. His identity was stolen by a Donald Fowler, who has 27 charges on his Criminal Offender Record Information (CORI).

5. Plaintiff Jennifer Szall resides at 20 Riverside Avenue 2nd Floor, Lowell, MA 01850. Her identity was misappropriated by a Sara L. Williams, who has 41 charges on her CORI report.

6. Plaintiff John P. Casey resides at 42 Upton Street, Boston, MA 02118. His identity was falsely assumed by his brother, David J. Casey, who has 74 charges on his CORI report.

B. DEFENDANTS

7. Defendant Edward A. Flynn is the Secretary of the Executive Office of Public Safety. The Executive Office of Public Safety is responsible for oversight of the

Criminal History Systems Board. Defendant Edward Flynn is sued in his official capacity. His office is located at One Ashburton Place, Boston, MA 02108.

8. Defendant Criminal History Systems Board is the state agency charged with the installation, operation and maintenance of data processing and data communication of the criminal offender record information system. The CHSB's offices are located at 200 Arlington Street, Suite 2200, Chelsea, MA 02150.

9. Defendant Barry J. LaCroix is the Executive Director/General Counsel of the CHSB, and has day-to-day responsibility for the operations of the CHSB, including the dissemination of CORI data to authorized employers and housing agencies. Defendant Barry J. LaCroix is sued in his official capacity. His office is located at 200 Arlington Street, Suite 2200, Chelsea, MA 02150.

IV. CLASS ACTION ALLEGATIONS

10. The named plaintiffs bring their claims for themselves and on behalf of all other persons who are wrongfully associated with the criminal records of another individual and for whom the CHSB has wrongfully disseminated and plans to continue to disseminate as plaintiffs' CORI the criminal records of those who have unlawfully used plaintiffs' identities.

11. This action satisfies all the conditions for a class action pursuant to Rule 23(a) and (b) of the Rules of Civil Procedure in that:

- a. The class is so numerous that joinder is impossible;
- b. There are questions of law and fact common to the class, including whether the CHSB's failure to both develop a system to ensure that the criminal records it disseminates as the plaintiffs' records are correctly identified with them and to cease

disseminating as plaintiffs' records inaccurate CORI data when that fact has been made known to it violates G.L. c. 6, §§ 171, 175; substantially interferes with plaintiffs' rights of privacy under G.L. c. 214, § 1B; and infringes upon the due process guarantees of the Massachusetts and United States Constitutions;

- c. The claims of the named plaintiffs are typical of the claims of the class;
- d. The named plaintiffs will fairly and adequately represent the interests of the class; and
- e. The class action is superior to other available methods for the fair and efficient adjudication of the controversy.

V. FACTS

Plaintiffs

Edward Bland

12. Plaintiff Edward Bland has, for the past five years, lost numerous employment opportunities because of the CHSB's wrongful dissemination of Don Fowler's CORI report as his record. In 1998, Mr. Bland was denied a job at Deluxe Check, a check printing company in Springfield, Massachusetts. The company informed Mr. Bland that it could not hire him because, in response to a CORI check on him, it had received a CORI report for Don Fowler with Mr. Bland's name listed as an alias. Although the company eventually relented and hired Mr. Bland, he spent significant time persuading the employer that Don Fowler had misappropriated his identity and that he should not be held responsible for crimes he had not committed.

13. In 2001, Mr. Bland applied for a license to provide daycare services from New England Farm Workers' Council, an organization that administers daycare licenses. His

application was rejected when the organization received Don Fowler's CORI as Mr. Bland's record. Mr. Bland attempted, to no avail, to convince the organization that he was not Don Fowler. Mr. Bland never received the daycare license.

14. In October 2002, Mr. Bland was suspended without pay from a position with the United States Postal Service after the employer received Don Fowler's CORI report as Mr. Bland's record. The employer told Mr. Bland that he could not return to his position until he had established that he was not Don Fowler.

15. Chief Probation Officer Michael S. Ghazil of the Hampden Superior Court, upon information and belief, brought a motion on behalf of Mr. Bland to have his birth date changed as it appears on Don Fowler's CORI. The purpose of the motion was to suppress Don Fowler's CORI from being disseminated in response to a CORI inquiry for Mr. Bland. The court denied the motion because it would have resulted in an alteration of Don Fowler's CORI.

16. Mr. Bland then enlisted the assistance of the Office of the District Attorney for Hampden County. After examining Mr. Bland's fingerprints, Assistant District Attorney (ADA) Patrick S. Sabbs wrote a letter dated November 18, 2002, in which he concluded that "the Commonwealth has determined through fingerprint examination that Edward Bland is not [Don Fowler] and that another individual [Don Fowler had] used Mr. Bland's name and date of birth when arrested." Mr. Bland presented ADA Sabbs's letter to the United States Postal Service and was permitted to resume his position. However, Mr. Bland was laid off shortly thereafter. Mr. Bland never received compensation for the wages he lost during the period he tried to prove that he was not Don Fowler.

17. In May 2003, Mr. Bland, his fiancée, and their minor children applied for a housing voucher at the Springfield Housing Authority. The Housing Authority required Mr. Bland to sign a document acknowledging that it would obtain his CORI report.

18. When the Housing Authority submitted a request for Mr. Bland's CORI report to the CHSB, it received Don Fowler's CORI report. The Housing Authority denied Mr. Bland's application for housing because of the CORI report. Mr. Bland filed a timely appeal. At his administrative hearing, Mr. Bland presented ADA Sabbs's letter to verify that Don Fowler had misappropriated his identity. The Housing Authority ultimately reversed its decision, but Mr. Bland and his family had been erroneously deprived of the benefits of the housing voucher for the period of time it took to appeal the denial and lost several opportunities to secure affordable housing.

19. Furthermore, Mr. Bland has been arrested, charged with, and jailed, for offenses committed by Don Fowler. In November 1999, Mr. Bland was arrested by the Springfield Police Department and held in a Hampden County jail for several days based on an outstanding warrant for Don Fowler. Mr. Bland was eventually released when the Hampden Superior Court determined that the wrong defendant had been taken into custody. In March 2000, Mr. Bland was charged with operating a motor vehicle after a suspended license, although his license had never been suspended. The charge was eventually *nolle prossed* due to misidentification. Notwithstanding the Commonwealth's determination that Mr. Bland was not responsible for this offense, it continues to be associated with him and still appears on his record.

20. On August 14, 2003, and January 5, 2004, Mr. Bland informed the CHSB that the Commonwealth had determined through fingerprint examination that he was not Don

Fowler. Mr. Bland therefore requested that the CHSB cease disseminating Don Fowler's CORI report as his own because the records are falsely associated with him, mislead employers and housing providers, and have caused him to lose employment and housing opportunities. The CHSB ignored his requests.

21. Mr. Bland, now 25 years old, currently works as an inspector/packer at a bottle manufacturing company. He plans to pursue paralegal training at Holyoke Community College. While, pursuant to 803 CMR § 7.02 (2)(e), Mr. Bland's own record cannot be disseminated to most prospective employers because it consists solely of dismissed charges, the CHSB's continued dissemination of Don Fowler's CORI report as his record will significantly impair Mr. Bland's ability to obtain gainful employment and other benefits to which he is entitled. The CHSB's actions also put Mr. Bland at the continuing risk of being stopped, arrested, detained and charged with crimes committed by Don Fowler.

Jennifer Szall

22. Plaintiff Jennifer Szall, a 25-year-old student at Middlesex Community College, is pursuing an Associate degree in medical radiology. In December 2003, she was terminated from her position as a medical technician after her employer received a CORI report belonging to Sara L. Williams. The CORI report listed Jennifer Szall's name as an alias.

23. The CHSB sent Sara L. Williams's CORI report to the Winchester General Hospital in response to the employer's request for the criminal record of Jennifer Szall. Although the employer also received a CORI report for Jennifer Szall, it told her that

drug-related convictions on Sara L. Williams's criminal records prohibited it from retaining her as an employee.

24. Ms. Szall filed a misidentification complaint with the Lowell Police Department. On an incident report dated December 22, 2003, the Lowell Police determined that Sara L. Williams had used Ms. Szall's identity when she was arrested for an offense in Worcester, Massachusetts. The Lowell Police asked Ms. Szall to have her fingerprints examined and "to take the fingerprints [images] to Worcester to rectify [the] misidentification." Ms. Szall promptly complied.

25. On a form dated February 2, 2004, the Probation Department of the Worcester District Court concluded that Jennifer Szall was "not the same person [as Sara L. Williams]." The Probation Department also directed that Ms. "Szall[']s name [be] deleted from [Sara L. Williams's CORI]."

26. On or about February 17, 2004, Ms. Szall was rejected for a job by the Lawrence General Hospital after the CHSB sent the employer Sara L. Williams's CORI report as Ms. Szall's record. Ms. Szall has also been denied other job opportunities because of the CHSB's actions.

27. On or about February 20, 2004, Ms. Szall notified the CHSB about its wrongful dissemination of Sara L. Williams's CORI report as her record. Ms. Szall made similar complaints in December 2003 and January 2004. The CHSB informed Ms. Szall that it could not assist her.

28. Ms. Szall is currently working as an overnight direct caregiver at Cab Health and Recovery Services, a holding facility for recently released offenders. Upon graduation

from college, Ms. Szall's chances of obtaining a job will be significantly undermined by the CHSB's continued dissemination of Sara L. Williams's CORI report as her record.

John Casey

29. In March 2003, Plaintiff John Casey was denied a driver's license by the state's Registry of Motor Vehicles. The Registry assumed that he was his brother, David J. Casey, for whom they had a record of outstanding motor vehicle offenses that occurred in the state of Arizona.

30. On or about April 6, 2004, John Casey had his fingerprints examined by the Boston Police Department. John Casey sent his fingerprint images to the Arizona Department of Public Safety (ADPS), and by a letter dated April 16, 2004, the ADPS determined that "a fingerprint comparison was made and the results indicate that [John Casey is] *not* the same person as [David J. Casey or] any other person who may be using [his] identifiers." (Emphasis in original.) The Arizona Department of Corrections also has on record that David J. Casey is presently serving time for motor vehicle offenses.

31. In January 2004, John Casey authorized Impact Employment Services (IES), a career counseling and job placement agency, to access his CORI report. When IES submitted John Casey's CORI request form to the CHSB, it received David J. Casey's CORI report with John Casey's name listed as an alias. A former student with a learning disability, John Casey wants to help children with special needs. IES has informed Mr. Casey that the CHSB's dissemination of his brother's CORI report as his record will significantly undermine his ability to obtain a job in his chosen field. In response to John Casey's complaints to the CHSB about its wrongful dissemination of David J. Casey's CORI report as his record, the CHSB informed him that it could not assist him.

VI. LEGAL BACKGROUND

32. Three million individual records are maintained in the CHSB's statewide criminal history data system. Of these individuals, many, according to the CHSB, have complained about their identities being misused.

33. Pursuant to G.L. c. 6, § 168, the CHSB is charged with regulating the "collection, storage, access, content, dissemination, and use of criminal offender record information." Over 9,000 entities, including employers and housing agencies, have been granted access to CORI data, and most use the information to screen applicants for employment and housing.

34. Under G.L. c. 6, § 172, the dissemination of CORI data is permissible "only if the inquiry is based upon name, fingerprints, or other personal identifying characteristics." The CHSB's dissemination of CORI data is based solely upon name and date of birth information.

35. In accordance with G.L. c. 6, § 171, the CHSB is required to "creat[e] a continuing program of data auditing and verification to assure the accuracy of criminal offender record information." The CHSB is also required to "assur[e] the prompt and complete purging of criminal record information insofar as [it] is required by any statute or administrative regulation, by the order of any court of competent jurisdiction, or to correct any errors shown to exist in such information." Furthermore, the CHSB's regulation at 803 CMR § 7.01(2) also mandates that the Board "shall adopt procedures to ensure a high degree of certainty that [the] CORI [it] maintain[s] ... is correctly identified with the individual to whom it pertains." G.L. c. 6, § 175, and 803 CMR § 6.07 require

the CHSB to “purge[], modif[y] or supplement[] by explanatory notation” any record found to be inaccurate or misleading.

36. In spite of its legal obligations, the CHSB has repeatedly refused to cease disseminating as plaintiffs’ CORI the criminal records of individuals who have unlawfully used plaintiffs’ identities.

VII. CLAIMS

37. Count 1: By disseminating as plaintiffs’ CORI the criminal records of individuals who have misappropriated or unlawfully used the plaintiffs’ identities, the CHSB fails to assure the accuracy of the criminal records it disseminates, in violation of G.L. c. 6, §§ 171, 175, and 803 CMR § 6.07.

38. Count 2: By disseminating as plaintiffs’ CORI the criminal records of individuals who have unlawfully used plaintiffs’ identities, the CHSB fails to ensure a high degree of certainty that the CORI reports it maintains and disseminates are correctly identified with the individuals to whom they pertain, in violation of 803 CMR § 7.01(2).

39. Count 3: By associating the plaintiffs with and disseminating the criminal records of those who have misappropriated the plaintiffs’ identities, the CHSB unreasonably interferes with the plaintiffs’ rights of privacy without furthering any legitimate public interest, in violation of G.L. c. 214, § 1B.

40. Count 4: By disseminating as plaintiffs’ CORI the criminal records of individuals who have misused the plaintiffs’ identities without providing plaintiffs with notice and an opportunity to demonstrate that their identities have been misappropriated, the CHSB deprives the plaintiffs of their property and liberty interests without due

process of law, in derogation of the Massachusetts Declaration of Rights, Part 1, Articles 1, 10, and 12, and the Fourteenth Amendment to the United States Constitution.

VIII. REQUESTS FOR RELIEF

Wherefore, the plaintiffs respectfully request this Court to:

1. Determine pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure that this action be maintained as a class action;
2. On behalf of plaintiffs and the class they represent, issue a declaration that the CHSB, by disseminating as class members' CORI the criminal records of individuals who have unlawfully used or misappropriated the class members' identities, has violated its legal obligations and duties under G.L. c. 6, §§ 171, 175, and 803 CMR §§ 6.07, 7.01(2).
3. On behalf of plaintiffs and the class they represent, issue a declaration that the CHSB, by disseminating as class members' CORI the criminal records of individuals who have misappropriated the class members' identities, has unreasonably interfered with the class members' rights of privacy without furthering any legitimate public interest, in violation of G.L. c. 214, § 1B.
4. On behalf of plaintiffs and the class they represent, issue a declaration that the CHSB, by disseminating as class members' CORI the criminal records of individuals who have unlawfully used the class members' identities, has violated their rights to due process of the law in violation of the Massachusetts Declaration of Rights, Part 1, Articles 1, 10 and 12, and the Fourteenth Amendment of the United States Constitution.
5. On behalf of plaintiffs and the class they represent, permanently enjoin the defendants from continuing to disseminate as class members' CORI the criminal records

of those who have unlawfully used the class members' identities without affording them notice and an opportunity to demonstrate that their identities have been unlawfully used.

6. Order the defendants to promptly develop and implement a comprehensive and effective system to protect plaintiffs and the class they represent from having inaccurate or misleading CORI disseminated as part of their records.

7. With respect to Plaintiff Edward Bland, order the defendants to completely purge from Mr. Bland's records and the defendants' data files all criminal data relating to the charge of Operating After Suspended License for which Mr. Bland was wrongfully arrested and charged because he had been wrongfully assumed to be Don Fowler, the man who had unlawfully used his identity.

8. Award plaintiffs their reasonable attorneys' fees and costs pursuant to G.L. c. 6, § 177 and 42 U.S.C. § 1988.

9. Award plaintiffs such other and further relief as the Court determines is just and proper.

Respectfully submitted,

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