

A Moment of Privacy

A newsletter brought to you by the Privacy and Data Security Practice Group at Proskauer Rose

APRIL 2009

Edited by

Kristen J. Mathews and

Tanya L. Forsheit

Welcome to “A Moment of Privacy,” a newsletter brought to you by the Privacy and Data Security Practice Group at Proskauer Rose LLP.

“A Moment of Privacy” addresses one legal development each month in the area of privacy and data security law. We answer the questions our clients are asking, in a way that we hope gives practical information to our readers. If you send us your question, you may find your answer in an upcoming newsletter.

And now for this month’s question:

Q: Last month’s *Moment of Privacy* addressed whether the Red Flag Rules apply to medical care providers. Now I am hearing that they may apply to retailers. Is that true?

A: As with respect to medical care providers, it depends on whom you ask. The Federal Trade Commission’s recently released [“how-to” guide](#) says that the Red Flag Rules apply to “retailers that offer financing or help consumers get financing from others, say, by processing credit applications.” However, most retailers have been caught off guard by this interpretation, since they are not accustomed to being considered “creditors.” Fortunately for them, in the nick of time for the May 1st compliance deadline, the FTC extended the deadline to August 1, 2009, giving retailers time to put their policies in place in a thoughtful and reasoned manner.

The Red Flag Rules require covered entities to implement a program to detect and respond appropriately to signs of identity theft. For a retailer that processes credit applications, this would mean, as an example, detecting situations in which a customer may be attempting to apply for credit using another person’s identity.

The FTC has reiterated that a covered entity’s Red Flag program should be “risk-based,” so if there is a relatively low risk of identity theft given the way the retailer processes credit applications, the Red Flag program can be simple. That said, there still needs to be a program in place.

As an example, where a retailer does nothing more than receive credit applications from customers and pass them on to a partner bank, the retailer could implement a program that includes, among other things:

- Checking customers' photo IDs when they apply for credit
- Requesting multiple forms of ID
- Training employees to know how to spot a fake ID
- Following the guidelines for authenticating applicants provided by its partner bank
- Documenting these procedures in writing, and training employees accordingly

The more involvement a retailer has in the processing of a credit application, the more robust its Red Flags program ought to be.

Have a question? E-mail Kristen J. Mathews at kmathews@proskauer.com.

Privacy and Data Security Practice

Our Privacy and Data Security Practice is an outgrowth of our Internet, intellectual property, technology media & communications, labor and employment, health law, First Amendment, international law and litigation practices. Indicative of our experience and reputation in this relatively new field of law is the fact that the venerable Practising Law Institute (PLI) asked our Firm to create its first-ever treatise on the subject of privacy and data security law, called "Proskauer on Privacy," which was published in late 2006.

Privacy and Data Security Practice Group Partners:

Tanya L. Forsheit
310.284.4508 – tforsheit@proskauer.com

Grégoire Goussu
33.1.53.05.60.11 – ggoussu@proskauer.com

Kristen J. Mathews
212.969.3265 – kmathews@proskauer.com

Jeffrey D. Neuburger
212.969.3075 – jneuburger@proskauer.com

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice, or render a legal opinion.

BOCA RATON | BOSTON | CHICAGO | HONG KONG | LONDON | LOS ANGELES | NEWARK | NEW ORLEANS | NEW YORK | PARIS | SÃO PAULO | WASHINGTON, D.C.

www.proskauer.com

© 2009 PROSKAUER ROSE LLP. All Rights Reserved. Attorney Advertising.