

Client Alert

A report
for clients
and friends
of the firm May 2005

New York City Enacts Laws Imposing New Burdens on Businesses Holding Personal Data

Notification Obligations Begin September 2005

Approximately 12,000 New Yorkers are victims of identity theft each year. That fact has prompted the New York City Council to pass a series of measures aimed at protecting New York City residents and placing new obligations on businesses.

Under the new legislation, which the Mayor signed on May 19th, the Department of Consumer Affairs has the power to shut down any business found to have been involved in cases of identity theft. More importantly for legitimate businesses, city agencies and businesses located in New York City that use personal data must now tell residents when information has been stolen.

The three laws will take effect in late September 2005, 120 days after the Mayor's approval.

The first bill (Intro. No. 139-A, 2004) increases the authority of the NYC Department of Consumer Affairs to revoke or deny city licenses for businesses that are convicted of identity theft. It also requires any business subject to Department of Consumer Affairs licensure to notify the Department immediately upon learning of a potential breach of personal identifying information. Such notification must occur in three instances.

First, businesses must give immediate notification to the Department upon a judgment against the business for identity theft. Second, notification must occur upon a criminal conviction of a business for identity theft or unlawful possession of personal identification

information. Finally, the Department must receive notification of criminal convictions rendered against any employee or associate of a business for identity theft or unlawful possession of personal identification information while using the business's resources. How the notice is to be made under the law is not clear, and will be subject to interpretation.

The second bill (Intro. No. 140-A, 2004) requires city agencies that own or lease data containing personal identifying information to notify the police immediately if any such information is believed to have been acquired by an unauthorized person or a breach of information security has occurred. The law does not provide a particularly specific definition for breach of security, defining it as "unauthorized disclosure or use by an employee or agent of an agency, or the unauthorized possession by someone other than an employee or agent of an agency, of personal identifying information that compromises the security, confidentiality or integrity of such information." After the police are notified, city agencies will be required to notify the persons whose information may have been stolen.

Disclosure must occur by at least one of three means: written notice to the individual at his or her last known address, verbal notification to the individual by telephone communication, or electronic notification to the individual at his or her last known e-mail address. The law also provides that if disclosure pursuant to the three prescribed means is impracticable or inappropriate, disclosure may be made by a method of the agency's choosing. The method must be in a manner that does not further compromise the integrity of the personal information.

The third bill (Intro. No. 141-A) requires businesses licensed or regulated by the Department of Consumer Affairs to inform consumers of any breach of their personal identifying information. Certain businesses that own or lease data containing personal information must notify any person whose personal identifying information may have been compromised.

Businesses that maintain data must inform the data's owner or licensee of any breach.

The law defines breach of security as the "unauthorized possession of personal identifying information that compromises the security, confidentiality or integrity of such information." Disclosure must occur by at least one of three means: written notice to the individual at his or her last known address, verbal notification to the individual by telephone communication, or electronic notification to the individual at his or her last known e-mail address. The law also provides that if disclosure pursuant to the three prescribed means is impracticable or inappropriate, disclosure may be made by a method of the business's choosing in a manner that does not further compromise the integrity of the personal information, or in an alternate method pursuant to rules promulgated by the Department Commissioner.

Businesses subject to DCA enforcement will be required to discard records of individual personal identifying information in a manner intended to prevent retrieval of that information. City agencies are under a similar obligation pursuant to Intro. No. 140-A.

Violations of the laws may result in fines or penalties.

The NYC laws are the latest in a series of laws and regulations enacted in response to news reports of data losses at ChoicePoint and other companies. Various states, led by California, have a variety of personal data laws designed to stem identity theft, and federal legislation is pending.

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