

# DATA BREACH STRATEGIES



*Our Data Use, Privacy and Security team helps clients protect, manage, defend and leverage the digital technology assets that are core to their business. Our expertise merges regulatory compliance, technology law and licensing, commercial contracting and dispute management, yielding our unique ability to advise clients on all aspects of data. Several of our team members are former in-house counsel, which gives us first-hand experience of our clients' perspectives.*



## PRE-BREACH PLANNING

- ◆ Designate a privacy officer and a security officer
- ◆ Identify data sources, inventory sensitive data and map locations
- ◆ Evaluate technical, administrative and physical security safeguards
- ◆ Implement data privacy and security policies and procedures, including a data incident response policy
- ◆ Assemble a data incident response team and applicable roles
- ◆ Establish relationships with outside advisors who are knowledgeable about data breaches (e.g., IT, forensics and counsel)
- ◆ Outline critical steps to take within the first 24 hours of a suspected breach
- ◆ Train staff to identify and report suspected breaches
- ◆ Implement a self-audit plan, to include data security and compliance assessments
- ◆ Develop and maintain data privacy and security standards for third-party service providers
- ◆ Restrict access to information on a “need to know” and “minimum necessary” basis
- ◆ Track data breach laws, rules and notification mandates
- ◆ Consider adequacy of network security levels and encryption of sensitive data
- ◆ Follow a data retention policy with a plan to destroy or dispose of unneeded data

## YOUR DATA BREACH STAKEHOLDERS

- ◆ Forensics
- ◆ Legal
- ◆ Security Contacts – Infrastructure and Physical
- ◆ Information Technology
- ◆ Privacy Officer
- ◆ Security Officer
- ◆ Human Resources
- ◆ Internal Auditors
- ◆ Management
- ◆ Corporate Communications / Public Relations



# DATA BREACH STRATEGIES

## DATA BREACH RESPONSE

- ◆ Engage outside forensic and IT advisors immediately
- ◆ Confirm breach has ended and lock-down of systems (e.g., change passwords and encryption keys)
- ◆ Isolate and preserve compromised systems and data
- ◆ Investigate scope of breach to determine types of information compromised and number of affected individuals
- ◆ Determine whether access to networks or systems can be ruled out by IT and forensics
- ◆ Attempt to retrieve lost or otherwise compromised data
- ◆ Identify notification timeframes and requirements
- ◆ Document your work, but coordinate with counsel on preparation and treatment of written materials related to the breach
- ◆ Act swiftly, as regulatory timeframes begin upon discovery of the breach
- ◆ Consider notifying law enforcement
- ◆ Involve counsel to analyze legal obligations
- ◆ Develop and deliver notices to affected individuals and agencies in accordance with regulatory mandates and timeframes
- ◆ Evaluate the need for a toll-free number for affected individuals to receive specific information and assistance
- ◆ Consider offering credit monitoring, identity repair services, or identity theft insurance for affected individuals
- ◆ Cooperate with regulatory and governmental inquiries

## POST-BREACH EFFORTS

- ◆ Assess gaps and evaluate effectiveness of current policies and procedures
- ◆ Update technology controls and policies and procedures
- ◆ Revisit privacy, security and response plans and make appropriate changes
- ◆ Conduct retraining of appropriate personnel
- ◆ Maintain a breach report in accordance with regulatory requirements
- ◆ Focus on monitoring crisis communications and restoring customer relations

“Smith Anderson brings a real confidence and calmness to a transaction and are strategically excellent. They walked us through the process really well and the work they did was flawless.”

– Client quotation as published in *Chambers USA*

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