

INFORMATION SECURITY BREACH AND NOTIFICATION REGULATION

Definitions

“Private information” shall mean personal information (i.e., information such as name, number, symbol, mark or other identifier which can be used to identify a person) in combination with any one or more of the following data elements, when either the personal information or the data element is not encrypted or encrypted with an encryption key that has also been acquired:

- Social security number;
- Driver’s license number or non-driver identification card number or;
- Account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual’s financial account.

Note: “Private information” does not include publicly available information that is lawfully made available to the general public pursuant to state or federal law or regulation.

“Breach of the security of the system” shall mean unauthorized acquisition or acquisition without valid authorization of computerized data which compromises the security, confidentiality, or integrity of personal information maintained by the BOCES. Good faith acquisition of personal information by an officer or employee or agent of the BOCES for the purposes of the BOCES is not a breach of the security of the system, provided that the private information is not used or subject to unauthorized disclosure.

Procedure for Identifying Security Breaches

In determining whether information has been acquired, or is reasonably believed to have been acquired, by an unauthorized person or a person without valid authorization, the BOCES shall consider:

1. indications that the information is in the physical possession and control of an unauthorized person, such as a lost or stolen computer, or other device containing information;
2. indications that the information has been downloaded or copied;
3. indications that the information was used by an unauthorized person, such as fraudulent accounts, opened or instances of identity theft reported; and/or
4. any other factors which the BOCES shall deem appropriate and relevant to such determination.

Security Breaches – Procedures and Methods for Notification

Once it has been determined that a security breach has occurred, the following steps shall be taken:

1. If the breach involved computerized data *owned or licensed* by the BOCES, the BOCES shall notify those New York State residents whose private information was, or is reasonably believed to have been acquired by a person without valid authorization. The disclosure to affected individuals shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the system.

The BOCES shall consult with the New York State Office of Cyber Security and Critical Infrastructure Coordination (CSCIC) to determine the scope of the breach and restoration measures.

2. If the breach involved computer data *maintained* by the BOCES, the BOCES shall notify the owner or licensee of the information of the breach immediately following discovery, if the private information was or is reasonably believed to have been acquired by a person without valid authorization.

Note: The notification requirement may be delayed if a law enforcement agency determines that such notification impedes a criminal investigation. The required notification shall be made after the law enforcement agency determines that such notification does not compromise the investigation.

The required notice shall include (a) BOCES contact information, (b) a description of the categories of information that were or are reasonably believed to have been acquired without authorization and (c) which specific elements of personal or private information were or are reasonably believed to have been acquired. This notice shall be directly provided to the affected individuals by either:

1. Written notice
2. Electronic notice, provided that the person to whom notice is required has expressly consented to receiving the notice in electronic form; and that the BOCES keeps a log of each such electronic notification. In no case, however, shall the BOCES require a person to consent to accepting such notice in electronic form as a condition of establishing a business relationship or engaging in any transaction.
3. Telephone notification, provided that the BOCES keeps a log of each such telephone notification.

However, if the BOCES can demonstrate to the State Attorney General that (a) the cost of providing notice would exceed \$250,000; or (b) that the number of persons to be notified exceeds 500,000; or (c) that the BOCES does not have sufficient contact information, substitute notice may be provided. Substitute notice would consist of all of the following steps:

1. E-mail notice when the BOCES has such address for the affected individual;
2. Conspicuous posting on the BOCES' website, if they maintain one; and
3. Notification to major media

Notification of State and Other Agencies

Once notice has been made to affected New York State residents, the BOCES shall notify the State Attorney General, the Consumer Protection Board, and the State Office of Cyber Security and Critical Infrastructure Coordination as to the timing, content, and distribution of the notices and approximate number of affected persons.

If more than 5,000 New York State residents are to be notified at one time, the BOCES shall also notify consumer reporting agencies as to the timing, content and distribution of the notices and the approximate number of affected individuals. A list of consumer reporting agencies will be furnished, upon request, by the Office of the State Attorney General.

The agency reporting form, and instructions on how to report a security breach are available here:

<http://www.dhss.ny.gov/ocs/breach-notification/documents/nys-security-breach-reporting-form-4-15-11.pdf>