

**Brown & Hofmeister, L.L.P.**

Attorneys and Counselors



**Brown &  
Hofmeister, L.L.P.**

# **Data Privacy & Security Issues facing Cities**

Quality Representation ★ Unflinching Commitment ★ Results Driven

740 East Campbell Road ★ Richardson, Texas 75081

[www.bhlaw.net](http://www.bhlaw.net) ★ (214) 747-6100 ★ Fax: (214) 747-6111

# Data Privacy and Security Issues facing Cities

**Lisa D. Mares**

**Texas City Attorneys Association**

**Summer Conference**

June 16, 2016 ★ Bastrop, Texas ★ Hyatt Regency Lost Pines Resort

# Data Held by Cities

- Police records
- Municipal court records
- Municipal prison records
- Emergency response records
- Employee records
- Procurement documents
- Utility records



# Data Held by Cities

- Data disclosure required:
  - by law
  - to acquire a public benefit
  - for employment purposes.
- Data is created in connection with an activity for which there is no alternative.

# Definition of Data Breach

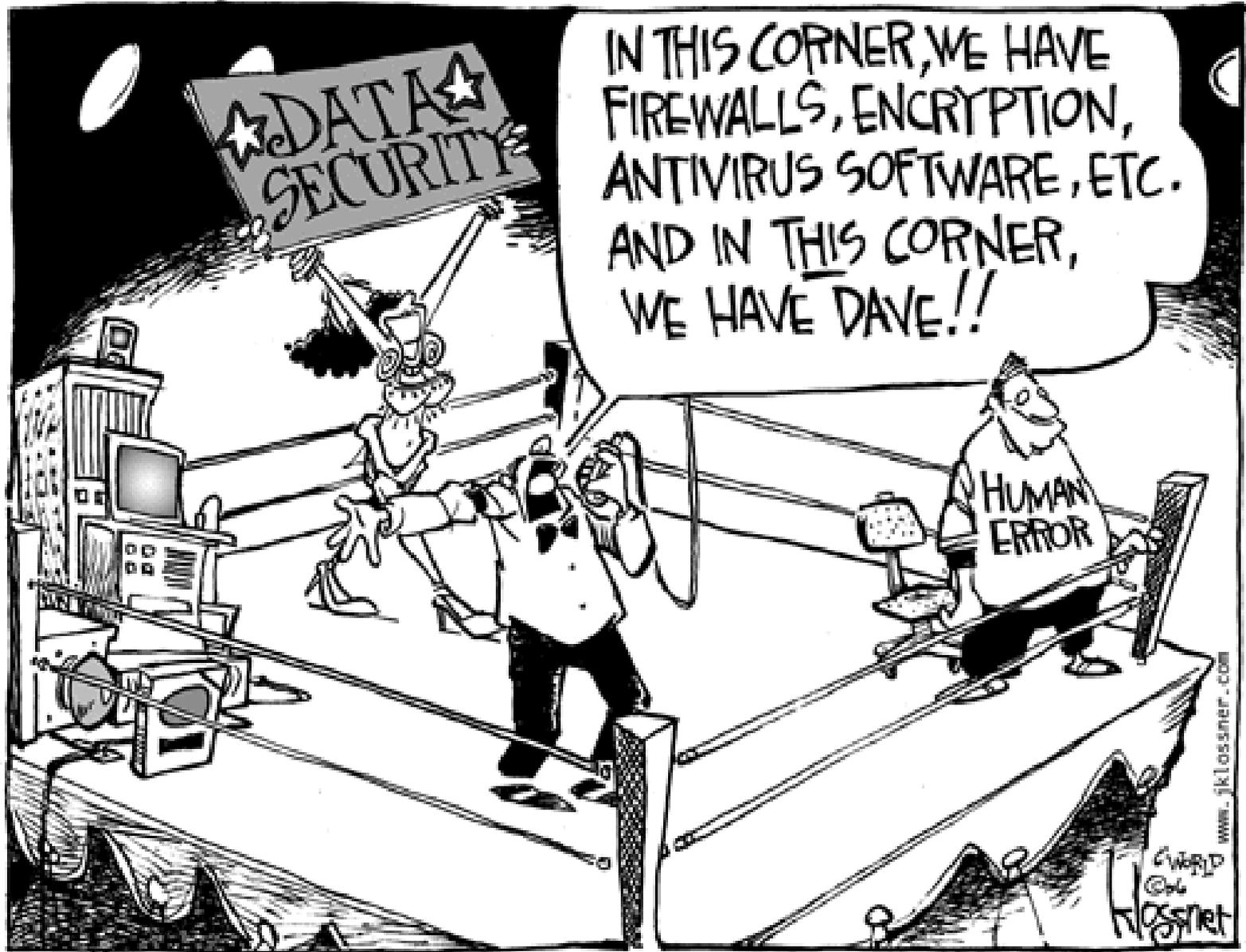
*A data breach occurs when there is a loss or theft of, or other unauthorized access to, data containing sensitive personal information that results in the potential compromise of the confidentiality or integrity of data.*

*~ 2012 CRS Report*

# Types or Causes of a Breach

- Malfunctioning or wrongly designed software
- Outside hackers, viruses, trojan horses
- Purportedly anonymized data releases that can be reverse engineered to create personally identifiable data.





IN THIS CORNER, WE HAVE  
FIREWALLS, ENCRYPTION,  
ANTIVIRUS SOFTWARE, ETC.  
AND IN THIS CORNER,  
WE HAVE DAVE!!

www.jklossner.com  
copyright 2006 John Klossner, www.jklossner.com

# Breach Incidents

## Sample Breaches Involving Cities

	Date Reported	Type of Breach	Number of Records
Charlotte, NC	5/26/10	Lost storage device	5,220
Seattle Municipal Court, WA	1/22/10	Bribed employee disclosed credit card information	Unknown
Burlington, VT	1/15/14	Employee released tax records containing SSNs, which was posted as part of an agenda item	Unknown
Philadelphia, PA (Fire/EMS Unit)	2/3/15	Employee of third party payment processor illegally accessed data	81,463

# Types or Causes of a Breach Unique to Public Sector

- Data released intentionally, but in violation of law or regulations
- Data released accidentally due to human error or misconfigured software
- Data on physical media that is lost or stolen or otherwise not secured
- Insider access in excess of defined permissions or for private purposes, or both.

# Potential Harm due to Data Breach

- Damage to reputation
- Disruption of operations
- Legal liability under new and amended laws, regulations, and guidelines, as well as under contracts
- Financial costs
- Identity Theft/Financial Crime.

# Cost of Data Breach

- \$6.5 million is the average total cost of a single data breach
- \$217 average cost per lost or stolen record for a private entity
- \$73 average cost per lost or stolen record for a public entity

## ATTACKS/BREACHES

4/14/2015  
03:10 PM



Sara Peters  
News

Connect Directly



1

COMMENT

[COMMENT NOW](#)

Login



100% 0%

Like 102

## Police Pay Off Ransomware Operators, Again

**Law enforcement agencies are proving to be easy marks -- but are they any worse than the rest of us?**

Police departments are proving to be easy marks for ransomware operators -- but perhaps no more so than anyone else. Recently, reports are stacking up of police departments paying attackers ransoms -- payments in the \$300 to \$500, made in Bitcoins -- for the recovery of encrypted files and equipment.

Despite having certain resources readily available -- like assistance from FBI investigators, for example -- police aren't faring any better than the private sector against ransomware.

But are they faring any worse? Are police departments more likely to be infected, less likely to have good backups and restores, or generally more willing to pay criminals? Or are we just more likely to hear about these incidents because they are public entities, while such events go unreported when they occur in the private sector?

Like 105

100% 0%



when they occur in the private sector? incidents because they are public entities' while such events go unreported willing to pay criminals? Or are we just more likely to hear about these infected, less likely to have good backups and restores, or generally more

## ATTACKS/BREACHES

6/10/2016  
04:00 PM

# Ransomware Now Comes With Live Chat Support



Jai Vijayan  
News

Connect Directly



2 COMMENTS  
[COMMENT NOW](#)

**Victims of a new version of Jigsaw now have access to live chat operators to help them through the ransom payment process, Trend Micro says.**

Getting hit by ransomware is nasty business at any time. But victims of some new variants of a ransomware sample called Jigsaw should count themselves a tad luckier than others.

The purveyors of the malware have considerably introduced a new live chat feature that gives victims a way to directly contact their extortionists and negotiate a ransom payment. Instead of requiring customers to go to dark web sites, the operators have made people available to answer questions and provide direction to victims on how to pay the ransom.

Security vendor Trend Micro, which reported on the chat feature this week

COMMENT NOW  
2 COMMENTS

provide direction to victims on how to pay the ransom. The operators have made people available to answer questions and negotiate a ransom payment instead of requiring customers to go to dark web

# Legal Landscape



# Laws Regulating Data Privacy

- Data protection is regulated primarily by industry on a sector-by-sector basis.
- Legislative framework resembles a patchwork quilt.



# Laws Regulating Data Privacy

- Designed to protect personally identifiable or sensitive personal information.
- No uniform federal law that protects personally identifiable information.
- Challenge to determine:
  - Which laws apply to which activities,
  - How to comply with multiple, sometimes inconsistent, laws.

# A City must Safeguard these Types of Information

- Protected health information
- Sensitive personal information
- Personal information in connection with motor vehicle records
- Identifying financial information
- Biometric Identifiers
- Crime victim information
- Social Security numbers
- Federal tax information

# Motor Vehicle Records

- The disclosure of personal information contained in motor vehicle records is regulated,
  - Required or Required with Written Consent
  - Permissible
- The resale or further disclosure is also regulated.
- Record of permitted disclosure must be created and maintained for 5 years.

<b>Motor Vehicle Records</b>	<b>Personal Information</b>
Motor vehicle operator's license or permit	An individual's photograph or computerized image
driver's license or permit,	Social Security number
Motor vehicle registration	Driver identification number
Motor vehicle title	Name
Identification document	Address, but not zip code
	Telephone number
	Medical or disability information

# Permitted Disclosure

- Use by a government agency, court or law enforcement agency, in carrying out its official functions.
- For motor vehicle safety, theft, emissions, or product recalls.
- Use in connection with a civil, criminal, administrative or arbitral proceeding.
- To notify the owner of a towed or impounded vehicle.

# Permitted Disclosure

- For any other legitimate State use if it relates to motor vehicle or public safety.
- In response to request for individual records if the express consent from the individual is obtained.
- Use by any requestor where the requestor can show written consent of the individual.

# Permitted Disclosure

- The only personal information a political subdivision may release for a permitted disclosure is:
  - The individual's name and address;
  - The individual's date of birth; and
  - The individual's driver's license number.

# Remedies

- Falsifying statements or knowingly, obtaining, disclosing, or using information in violation of state or federal law.
- Civil and criminal penalties may be imposed.
- Federal law creates a private cause of action.

# Scenarios



# Scenario No. 1

Luann obtains a restraining order against Kirk Milhouse and moves from Springfield to Evansville, Texas to escape his harassment. Milhouse contacts the Evansville police and asks for help to locate Luann by claiming that he needs to serve her with court papers.

# Scenario No. 1 (con't)

Unaware of the restraining order, Officer Biggum happily assists Milhouse by looking up Luann's new address on the Driver's License Database of TLETS, which is maintained by the Department of Public Safety. Milhouse sends threatening letters to Luann at her new address. Is the City liable in a civil suit?

# Result?

- TLETS motor vehicle records fall under the MVRDA and the DPPA.
- Personal information can only be released if required or permitted under the MVRDA or if the requestor provides written consent from the individual.
- Personal information was not disclosed in connection with a required or permissible use and the City did not verify consent.
- Violation of MVRDA and DPPA.

# Potential Defenses

- The City can claim sovereign immunity.
- The City can assert that the records were created separate and apart from those accessed on TLETS.
- The City can assert that there is no concrete and particularized injury.

# DPPA Cases

- Facts are similar to the scenario we just reviewed.
- Jury ruled in favor of the Plaintiffs that the City violated the DPPA.
- Damages of \$25,000 initially awarded.
- City eventually settled lawsuit for \$337,500.

# DPPA Cases

- Florida Dep't of Highway Safety and Motor Vehicles sold personal information to mass marketers without written consent.
- Plaintiff's claims were based on violations of constitutional privacy, DPPA statutory privacy and Section 1983.
- Court held that the agency was not entitled to qualified immunity on all counts.
- The agency entered into a settlement agreement.

# *Spokeo vs. Robins*

- Alleged violations of the Fair Credit Reporting Act due to publishing inaccurate personal data on website.
- Ninth Circuit concluded that Robins could base Article III standing on a statutory violation alone.
- It is necessary to determine whether the sale of inaccurate personal data caused sufficiently "concrete" injuries.

# Resources



# Resources

- **State Laws:**
  - Identity Theft Enforcement and Protection Act
  - Medical Records Privacy Act
  - Motor Vehicle Records Disclosure Act

# Resources

- **Federal Laws:**
  - Health Insurance Portability and Accountability Act
  - Privacy Act of 1974
  - Driver's Privacy Protection Act
  - Fair Credit Reporting Act
  - Fair and Accurate Credit Transactions Act of 2003

# Resources

- **Industry Standards:**
  - Payment Card Industry Data Security Standards

# Resources

- **U.S. Department of Justice:**

[www.justice.gov](http://www.justice.gov)

- **Office of the Attorney General:**

[www.texasattorneygeneral.gov/cpd/state-and-federal-health-privacy-laws](http://www.texasattorneygeneral.gov/cpd/state-and-federal-health-privacy-laws)

[www.texasattorneygeneral.gov/cpd/list-of-regulatory-agencies](http://www.texasattorneygeneral.gov/cpd/list-of-regulatory-agencies)

- **Electronic Privacy Information Center:**

[www.epic.org](http://www.epic.org)

# Questions, Comments, etc.

---

**Lisa D. Mares**

**Brown & Hofmeister, L.L.P.**

**lmares@bhlaw.net ★ Phone: (214) 747-6100 ★ Fax: (214) 747-6111**

**Brown & Hofmeister, L.L.P.**

Attorneys and Counselors



**Brown &  
Hofmeister, L.L.P.**

# **Privacy & Data Security Issues facing Cities**

**Quality Representation ★ Unflinching Commitment ★ Results Driven**

**740 East Campbell Road ★ Richardson, Texas 75081**

**www.bhlaw.net ★ (214) 747-6100 ★ Fax: (214) 747-6111**