Program Overview

1. Cyber Risk Landscape
2. Incident Response
3. Notification
4. Messaging
5. Legal Landscape
6. Risk Management Strategies
7. Q&A
Incident Causes

Source: BakerHostetler 2018 Data Security Incident Response Report

Some combination of this data in conjunction with a first name (or initial) and last name is generally the personally identifiable information (PII) by most state data breach statutes.

What Data is at Risk?

Ransomware

WannaCry Attack — Threat or Fake News?
- A ransomware attack that impacted more than 300,000 people across 150 countries in less than two days.

How it Happens:
- Hackers gain access to your computer’s file system by installing a program via phishing link/attachment or by poorly configured Remote Desktop Protocol service.
- The ransomware prevents a user from accessing the operating system, or encrypts all the data stored on the computer.
- The user asks the ransom to pay a fixed amount of money, as opposed to decrypting files or allowing access again to the operating system.

Best Practices:
- Maintain a robust, off-site backup of data.
- Properly configure Remote Desktop Protocol services.

$5B

The estimated global cost for organizations of ransomware attacks in 2017 – up 400% from 2016.

- Stroz Friedberg (AON), 2018 Cybersecurity Predictions, at p. 19 (2018)
Hackers use emails from a target organization's CEO, asking human resources and accounting departments for employee W-2 information.

New Area Prone to Attack:

In 2017, hackers phished online payroll management account credentials used by corporate HR professionals.

Forensic Investigations

<table>
<thead>
<tr>
<th>Type of Investigation</th>
<th>Forensic Investigation Costs</th>
</tr>
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<tbody>
<tr>
<td>Investigation</td>
<td>$84,417</td>
</tr>
<tr>
<td>Imaging</td>
<td>$86,751</td>
</tr>
<tr>
<td>Malware Removal</td>
<td>$436,938</td>
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</tbody>
</table>

- 87% Investigation
- 55% Imaging
- 30% Malware Removal
- 13% Endpoint Scanning

- 65% of Network Intrusion Incidents
- 41.5% of Data Breach Incidents

- 36 Days Average Completion Time for Forensic Investigation
- 24% Accuracy of Data Estimation in Network Intrusion Incidents

Incident Response and Notification Process
**Notification Statistics**

<table>
<thead>
<tr>
<th>Number of Individuals Notified</th>
<th>Notifications by Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hospitality (Food/Beverage, Retail) 637,720</td>
</tr>
<tr>
<td></td>
<td>Education 69,763</td>
</tr>
<tr>
<td></td>
<td>Business &amp; Professional Services 9,281</td>
</tr>
<tr>
<td></td>
<td>Healthcare 6,435</td>
</tr>
<tr>
<td></td>
<td>Finance &amp; Insurance 3,572</td>
</tr>
<tr>
<td></td>
<td>Other 2,720</td>
</tr>
<tr>
<td></td>
<td>Nonprofit 957</td>
</tr>
<tr>
<td></td>
<td>Government 927</td>
</tr>
<tr>
<td></td>
<td>Aerospace &amp; Defense 275</td>
</tr>
</tbody>
</table>

Take Action:

- Keys to Shortening the Timeline
  - Increase EDN key storage to lock back at incidents.
  - Identify a liaison firm to advance and conduct interviewing to speed the process later.
  - Use endpoint security tools to get visibility faster.

- Be careful that the pressure to move quickly must be balanced with the need for a complete, thorough investigation and effective containment.

**Incident Response Plan**

1. **Preparation**

2. **Identification**
   - Initial incident detection, triage, and escalation to appropriate incident response team members. Formation of appropriate response team. Determine need to notify external parties.

3. **Assessment**
   - Conduct analysis necessary to properly prioritize response activities, including resource needs. Begin to form communication and containment action plans. Assess preservation and mitigation needs.

4. **Communication**
   - Finalize and execute any initial notification plans to internal and external parties.

5. **Containment**
   - Take incident specific actions to stop the incident from continuing.

6. **Eradication**
   - Determine and eliminate the cause of the incident. Repair any unauthorized changes. There is often a cycle back to identification, analysis, and containment in this phase.

7. **Recovery**
   - Finalize mitigation of incident and restore system to normal operational state and implement measures to prevent incident reoccurrence.

8. **Follow-Up**
   - Analyze plan effectiveness and areas for improving response and security measures to prevent future incidents and be better prepared to respond to future incidents (a return to the preparation phase).

**Incident Response Timeline**

- Detection: The time from initial occurrence to detection continues to be where entities have the most room to improve.
- Containment: Ending the attack is critical to reducing losses and incident response teams continue to find faster containment strategies.
- Analysis: Forensic analysis is getting faster and more sophisticated, with new tools and increased personnel.
- Notification: With local, national, and international media continuing to make data breaches headline news, entities are increased pressure to make notifications quickly.

Source: 2018 BakerHostetler Data Security Incident Response Report
Let Forensics Drive the Decision Making

- Know where your “crown jewels” are, have accurate network diagrams, log access, and internal imaging/collection capabilities.
- Vet several vendors and negotiate the MSA before an event happens.
- Do on-boarding with primary forensic firm before an incident.
- Have a backup – one firm may not be available or appropriate for all events.
- Retain counsel for incident response that understands technology and cyber issues to reduce response time.
- Establish protocols to maintain privilege.
- Perform tabletop exercises with your vendors.

Credit Monitoring

Why Offer?
- It mitigates harm, positively changes affected individuals’ perceptions, and regulators’ expectations.

Why Not Offer?
- It does not prevent fraudulent charges on payment cards.
- It may impact litigation position.
- Low redemption rate.

The Importance of Messaging

Goals
- Comply with all applicable laws and regulations
- Build thorough and deliberate without causing unnecessary concern
- Provide reassurance
- Drive for openness and transparency without creating unnecessary risk

Risks
- Complaints
- Negligence, Invasion of Privacy
- Lawsuits
- Class Action Lawsuits
- Regulatory Action
- Damage to Brand and Trust

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Credit Monitoring When Notification Occurred</th>
</tr>
</thead>
<tbody>
<tr>
<td>60%</td>
<td>Offered Credit Monitoring When Notification Occurred</td>
</tr>
<tr>
<td>35%</td>
<td>Average Redemption</td>
</tr>
</tbody>
</table>
The Importance of Messaging

Communication Don'ts:
- Don't speak too early and/or “on the fly.”
- Don't use a misleading initial holding statement.
- Don't fall victim to saying too much, or being too reassuring.
- Don't make logistical mistakes (e.g., call center).
- Don't assume you have to answer all media inquiries.
- Don't over-apologize.
- Don't leave out helpful evidence.
- Don't call yourself a victim.
- Don't overstate the security measures you had in place.
- Don't overstate new security measures.
- Don’t ignore regulators.

After You’ve Mailed Notice…
- Business may suffer reputational harm.
- Business may receive AG or OCR inquiries, investigations, or a lawsuit.
- Business operations and a disruption in productivity may result.

Rise of the Regulators
- State Attorney Generals (AGs)
- Office for Civil Rights (OCR)
- Other Regulators

Agencies issue Civil Investigative Demands (CIDs) that request:
- Information Security Plan
- Remediation Steps
- Digital Environment Details and its Physical, Technical, and Administrative Controls.
The Privacy “Patchwork”

- Federal & state laws govern the handling of PII/PHI
- Laws covering SSNs / disposal of PII
- Employment-related laws (e.g. FMLA, ADA, GINA)
- Other federal and state regulations (e.g. FTC Act, Mass. Regs)
- HIPAA
  - Applies to Covered Entities and Business Associates
  - Preempted except where state law is “more stringent”
- State breach notification laws
- State medical information breach reporting laws
- International data protection regulations

HIPAA

Breach by a Covered Entity

- **Applies To:** A health plan, health care clearinghouse and health care provider who transmits any health information in electronic form in connection with a covered transaction.
- **Information Covered:** Unsecured PHI—individually identifiable health information that is transmitted or maintained in electronic media or any other form or media (encryption=safe harbor).
- **Definition of Breach:** The acquisition, access, use, or disclosure of PHI in a manner not permitted by the HIPAA Privacy Rule, which compromises the security or privacy of the PHI.
- **Who Must Be Notified:** The patient or their personal representative, HHS, and if the number of more than 500 residents of a state or jurisdiction are affected.
- **Notification Timeframe:** Without unreasonable delay and in no case later than sixty (60) calendar days after the breach is discovered.
- **Preemption:** HIPAA preempts state law unless state law is more restrictive.

Definition of “Breach” in Final Rule

- **Acquisition, access, use, or disclosure** of unsecured protected health information in a manner not permitted under the HIPAA Privacy Rule is **presumed** to be a breach...
- **Unless** the Covered Entity or Business Associate can demonstrate that there is a **low probability that the PHI has been compromised** based on a risk assessment.
- **Compromise** is not defined...
HIPAA Breach Risk Assessment

- Must be documented
- Must evaluate at least the following factors:
  1. The nature and extent of the PHI.
  2. The unauthorized person involved.
  3. Whether the PHI was actually acquired or viewed.
  4. Extent to which any risk has been mitigated.

OCR Hot Buttons

- Recent Focus on Hacking Risk
  - Intrusion Detection Software
  - Anti-Virus Software
  - Logging
  - Updating
  - Access Controls
  - Training
- Mobile Device and Transmission
  - Encryption
  - Device Inventory, Tracking, and Facility Security and Theft Prevention
- Risk Assessments and Risk Management
  - Third Party Access to PHI / Business Associates
  - Staff Education and Sanctions

OCR Resolution Agreements

- Providence Health & Services ($1.3M)
- UHC Paramus ($1.2M)
- NV Hospital ($1.2M)
- Management Services Organization of Washington ($1.2M)
- Ogden ($1.2M)
- Massachusetts General Hospital ($1.2M)
- UCLA Health Services ($1.2M)
- Heart of the Valley Health System ($1.2M)
- Alaska Medicaid ($1.2M)
- Massachusetts Eye and Ear Infirmary ($1.1M)
- Hospital of North Texas ($1.1M)
- Idaho State University ($1.1M)
- Baptist Regional Medical Center ($1.1M)
- WestPark ($1.1M)
- Affinity Health Plan ($1.1M)
- Zachary Medical Associates, P.C. of Massachusetts ($1.1M)
- Rapid City, Washington ($1.1M)
- OCR Health Plan, Inc. ($1.1M)
- Caremark Health Services ($1.043M)
- New York Presbyterian Hospital ($1.0M)
- Calvary University ($1.0M)
- Palomar Health System ($1.0M)
- Anchorage Community Mental Health Services ($1.0M)
OCR Resolution Agreements

- Cornell Prescription Pharmacy ($125K)
- St. Elizabeth’s Medical Center ($216.4K)
- Cancer Care Center ($750K)
- Lahey Hospital and Medical Center ($850K)
- Triple-S Management Corporation ($3.5M)
- University of Washington Medicine ($750K)
- Lincare ($239.8K)
- Complete P.T. Pool & Land Physical Therapy ($25K)
- North Memorial Healthcare ($1.55M)
- Feinstein Institute for Medical Research ($3.9M)
- Raleigh Orthopaedic Clinic, PA of N. Carolina ($750K)
- New York Presbyterian Hospital ($2.2M)
- Catholic Health Care Services of the Archdiocese of Philadelphia ($650K)
- Oregon Health & Science University ($2.7M)
- University of Mississippi Medical Center ($2.75M)
- Advocate Health Care Network ($5.55M)
- Care New England Health System ($400K)
- St. Joseph Health ($2.14M)
- University of Massachusetts Memorial ($3.6M)
- University of Minnesota Medical Center ($3.7M)
- Children's Medical Center of Dallas ($3.2M)
- Memorial Healthcare System ($5.5M)
- The Center for Children's Digestive Health ($31K)
- CardioNet ($2.5M)
- 21st Century Oncology ($2.3M)
- Saint Luke’s – Roosevelt Hospital Center, Inc. ($378K)
- Filefax ($100K)
- Fresenius Medical Care North America ($3.5M)

State Laws

- 50 States, D.C., & U.S. territories
- Laws vary between jurisdictions
- Varying levels of enforcement by state attorneys general
- Limited precedent

International Breach Notification

- Several Non-U.S. jurisdictions have security breach notification requirements
  - Some are specific to certain industries
  - Some only require notification to a regulator
  - In certain countries, authorities have issued guidance for providing breach notifications
  - GDPR imposes a 72-hour notification requirement
**GDPR Breach Notification**

“Personal data breach”: incident in security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored, or otherwise processed.

Data controller must notify the competent Supervising Authority without undue delay and, where feasible, not later than 72 hours after discovery.

- If more than 72 hours later, must give reason for delay.

- Content: (1) Description of incident (number affected, categories of data subjects and data records); (2) DPO contact information; (3) Likely consequences of incident, including mitigation efforts.

Individual notification required if there’s a high risk (with exceptions).

Data processor must notify data controller “without undue delay” but no strict deadline.

Entities operating in the EU should prepare a GDPR-compliant data security incident response plan.

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**GDPR Applicability**

GDPR only applies to organizations outside of the EU to the extent that they offer goods and services to or monitor the behavior of EU data subjects.

- **Key Questions**
  - 1. Offering goods in services: Do you have any representatives or offices in the EU? Does your website have a domain with an EU extension (e.g., .fr, .es, .de)?
  - 2. Monitoring the behavior of EU data subjects: Do you track subjects on the internet (e.g., cookies)? Do you use data processing techniques to profile data subjects, their behaviors or attitudes?

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**Is California the Next GDPR?**

California Consumer Privacy Act of June 28, 2018

- Stated Purpose:
  - To give consumers more control and transparency regarding use of private information.
  - Recent amendments would prohibit application of act to PHI collected by HIPAA-covered entities; however, may still apply to other types of personal information.
RISK MANAGEMENT STRATEGIES

PREVENTION = PROTECTION
- Vendor Management
- Security Awareness/Education
- Basic Data Security Good Practices
- Risk Assessment, Risk Management Plan
- Policies and Procedures
- Consistent Enforcement of Policies and Procedures
- Practice breach response initiative
- Delete data when it is no longer needed

BASIC DATA SECURITY BEST PRACTICES
- Data Identification & Classification
- Data hygiene don’t collect what you don’t need
- Access restrictions
- Education
- Document retention/destruction

Policy & Procedures
- Security Incident Response Plan
- BYOD Policy and Social Media Policy
- Information Security and User Policies
  - What users can and must do to use network and organization’s computer equipment
  - Define limitations on users to keep the network secure (password policies, use of proprietary information, internet usage, system use, remote access)
- IT Policies
  - Virus incident and security incident
  - Log
  - Backup policies
  - Server configuration, patch update, modification policies
  - Firewall policies
  - Wireless, VPN, router, and switch security
  - Email retention
- General Policies
  - Program Policy
  - Crisis Management Plan
  - Disaster Recovery
    - Server Recovery
    - Data Recovery
    - End-user Recovery
    - Emergency Response Plan
    - Business Recovery

Questions

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