

Hamilton County LAW LIBRARY NEWS

Professional legal information, services, and education

March 2015

Electronic Data Breach Planning: 4 Tips For Reducing Liability Risk

By April A. Wimberg of Bingham Greenebaum Doll LLP. Reprinted with permission.

There is no doubt that electronic data breaches are a hot topic. The recent breach of Morgan Stanley's customer data is a prime example and chilling reminder that businesses, no matter the amount of security measures, are at risk of an electronic data breach. Indeed, as nearly every state has passed its own set of unique electronic data breach laws, electronic data breaches are becoming a much larger liability concern for companies, in terms of both financial and reputational harm.

In 2014, Kentucky passed KRS 365.732 and joined 46 other states in quantifying and qualifying what constitutes a data breach and the obligations that arise from a breach. Like most states, Kentucky's law does not include breaches of financial or health information which are covered under federal law in the Gramm-Leach-Bliley Act and the Health Insurance Portability and Accountability Act.

Because of this increased liability, businesses should be proactive in trying to manage risk in the event a data breach occurs.

IS MY COMPANY AT RISK FOR AN ELECTRONIC DATA BREACH?

While the news has focused on large electronic data breaches of major retailers, electronic data breaches of a smaller scale are much more common. Even more problematic may be the reputational loss of consumer trust and confidence resulting from an electronic data breach. Any business or organization that electronically collects and/or stores personal information is susceptible to a breach. Consider the following five questions:

1. Do you have customers' or potential customers' informa-

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Hamilton County Law Library

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Open Monday-Friday 8 - 4

<http://lawlibrary.hamilton-co.org>

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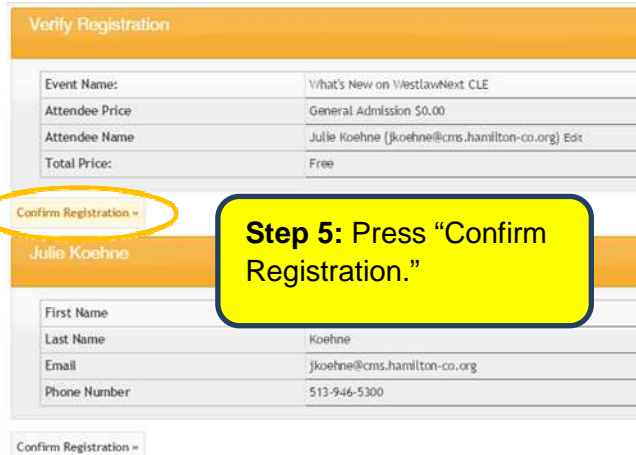
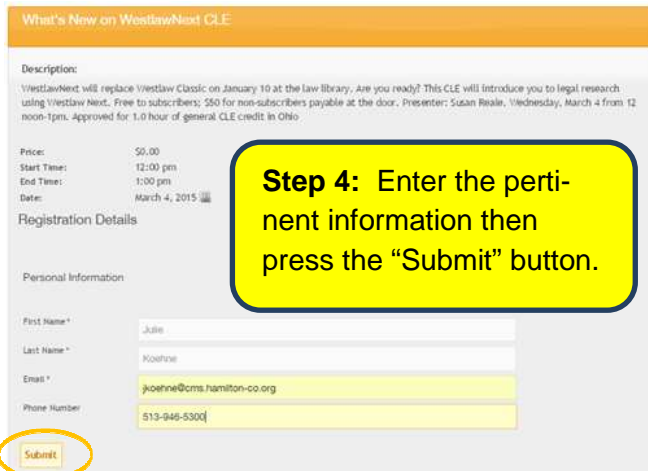
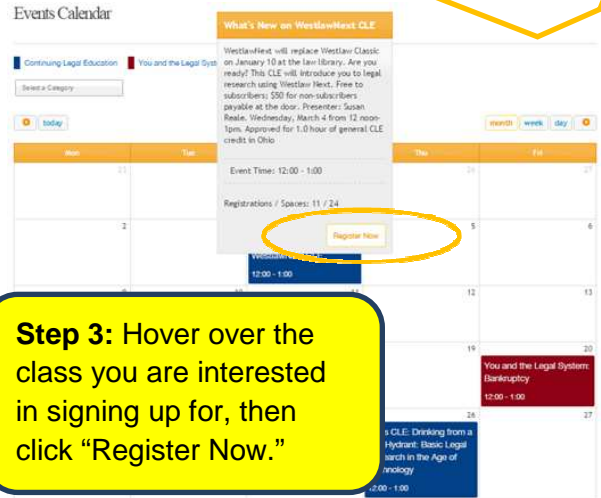
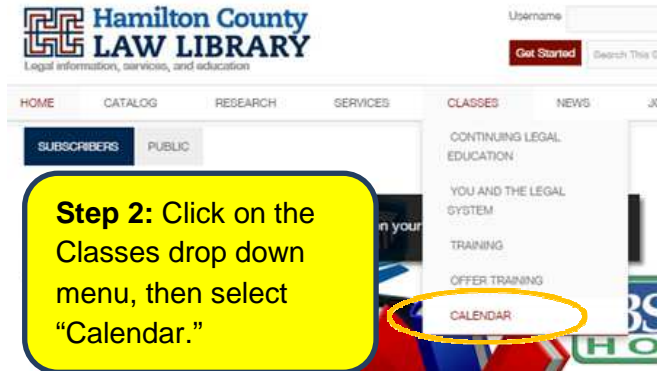
Tech Tip: DIY Sign Up for Hamilton County Law Library Classes!

By Julie Koehne, Assistant Law Librarian, Systems

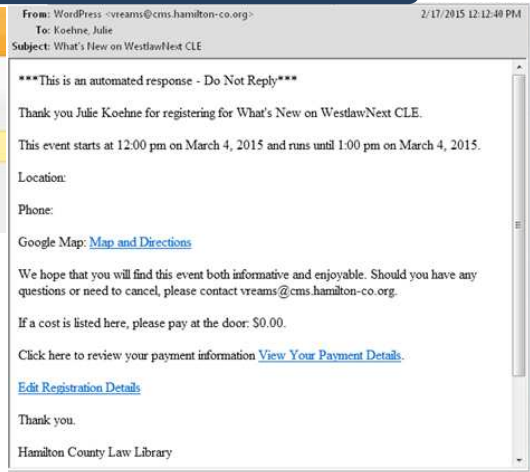
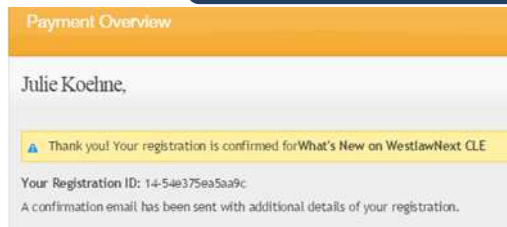
Follow these quick steps:

Step 1: Go to our website <http://lawlibrary.hamilton-co.org>

You DO NOT need to be logged into the website to sign up!



Step 6: You will get a confirmation page and email.



You will also get a courteous reminder the day before the class.

Upcoming CLEs

Free to subscribers; \$50 for non-subscribers

To register, call 513.946.5300, email reference@cms.hamilton-co.org, or register via the website

<http://lawlibrary.hamiltoncountyohio.gov/classes/cle/>

For more info on how to register online, see the Tech Tip on page 2.

What's New with WestlawNext? CLE

Presenter: Susan Reale

Wednesday, March 4

Noon-1pm

Approved for 1.0 hour of general CLE credit in Ohio

***Note: this class was rescheduled from 2/18/15**

Lexis CLE: Drinking from a Fire Hydrant: Basic Legal Research in the Age of

Technology (Lexis Advance)

Thursday, March 26

Noon-1pm

This CLE will cover basic legal research tips and techniques using the new Lexis interface, Lexis Advance.

Approved for 1.0 hour of general credit in Ohio.

***Note: This is the same course that was offered at the Law Library on 4/9/14. If you attended the 4/19/14 CLE, you cannot get CLE credit for this course.**

Unpaid Subscriptions: Revocation of Privileges

We have some subscribers whose library privileges will be revoked March 1 for non-payment of 2015 subscriber invoices. We have to take that step but we will happily reinstate privileges upon payment. We hope we haven't disappointed those subscribers in any way. Call Vanessa at 513.946.5300 if you need more information or a replacement invoice.

Digital Books

The Law Library has selected a collection of e-books from LexisNexis for our subscribers' use, focusing on books that are popular with our users. You may be familiar with an e-book system called Overdrive, used by many public libraries. This library will use that same interface. Readers will be able to borrow e-books, make notes, highlight, and more. We will share more information about the collection when we roll it out in March.

County Auction

Just a brief reminder: The Law Library sells its withdrawn books via the Hamilton County auction site. We do put some low value materials on the free books shelf in the elevator foyer, but most of the books are bundled by state or topic and sold via auction. For more details about creating an account and to see what we're selling this month, click on the Surplus tab at <http://www.hamiltoncountyohioauction.com/app/>.

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tion stored electronically?

2. Do you store or transmit electronic files with customers' information?
3. Do you have client information stored on a cloud or with a third party vendor?
4. Do you process credit card transactions?
5. Do you have wireless networks in your office?
6. If you answered yes to the first question, you are at risk of an electronic data breach. Answering yes to any of the questions that follow greatly increase your risk for a data breach.

What is a Data Breach?

In general, a data breach occurs when there is an unauthorized disclosure of personal information. There is no model rule for what constitutes a breach of someone's personal information and each state can define what constitutes personal information.

In Kentucky, personal information is defined as a person's name coupled with a social security number, driver's license number, or credit/debit card or account number and passcode. However, some states define personal information much more broadly.

For example, Texas defines personal information as any "sensitive" information.

A data breach is commonly thought of in context of computer hacking, however, data breaches can occur in a number of more innocuous ways. In fact, most statutes are defined so broadly that a data breach occurs if an employee loses his/her cellphone containing personal information of a customer. As such, most companies today, no matter size, are at risk.

DECREASING YOUR COMPANY'S ELEC-

TRONIC DATA BREACH LIABILITY

Planning for and proactively adopting preventative measures in the event of an electronic data breach is the most important thing you can do to protect against potential liability. Being prepared can save you time, likely a significant amount of money, and any reputational harm associated with the data breach.

Most state laws require actual damages to bring a claim for a breach of data. Not surprisingly, in reviewing cases in which customers brought a claim for a breach of data, damages were less or non-existent when companies reacted and notified their customers quickly of the breach. (See generally *Giordano v. Wachovia Sec.*, 2006 U.S. Dist. LEXIS 52266, Civ. No. 06-476JBS, 2006 WL 2177036 (D.N.J. July 31, 2006); *Key v. DSW, Inc.*, 454 F. Supp. 2d 684 (S.D. Ohio 2006).

4 Tips for Reducing Liability Risk

While the type and amount of data a company collects or has access to will lead to varying plans, the following are some general tips that all businesses should know:

#1: Know what type of information is electronically stored. If a breach occurs, the information compromised may not be considered "personal information" under certain state laws. In addition, many state laws do not require action or impose liability if data is compromised that is encrypted. Further, take a hard look at the personal information you are collecting and determine whether such information is necessary to serve and know your customer. If the answer is no, not collecting that data would reduce your liability, as well as save valuable server or cloud space.

#2: Know where that information is stored. Most businesses use “clouds” to store their data on a remote server. Clouds offer different types of data storage, services and security levels. Many cloud vendors actually rely on subcontractors to hold their customers’ information. In many cases, these subcontractors are located overseas making any attempt to seek indemnification for a breach very difficult and expensive.

#3: Be ready to react. Have your notification template in place to communicate and know who is making that communication if a data breach occurs. Figuring out what should be done and communicated and who should lead this charge should occur before a breach occurs. Not having a plan of action will delay a reaction and likely lead to increased liability and reputational harm.

#4: Test your systems and your plan. A data breach does not have to mean that you breached the duty of care to your customers. Showing that you are using the best in class systems to prevent a breach and that you test your systems for a breach in a consistent manner, will assist in showing that you are meeting your duty of care owed to your customers.

Not only will the steps above help in limiting any liability your company may face if a data breach occurs, but it will also likely allow you to identify potential gaps in your data security, therefore, preventing a breach from occurring. Data breaches are inevitable these days, which is why having a well-defined incident response plan and team in place is important.

If you do believe customer data has been

compromised, you should contact an attorney immediately to help you understand what duties you may have to notify and further protect your customers’ information. As stated above, reacting quickly can help reduce any liability that may be caused by the breach.

For more information, contact [April Wimberg](#).

The Value of the Law Library

We appreciate all of the subscriber renewals we’ve received over the past couple of months. Each one of them feels like a thank you note to library staff. The Law Library offers exceptional value in the form of research guidance, online access to legal information, document delivery via email, CLEs, books, videoconferencing, and other resources. But we understand that you have many choices about how to spend your money for legal information, services, and education, and some of you are asked to justify the fee. When it comes time for subscriber renewals for next year, we will include a customized letter for your firm that describes the services that the Law Library offers and the number of times that your firm used the services. It won’t be a comprehensive look, and we assure you that we are not tracking the content of research questions, but we hope that this expression of value will help you justify the expense of a subscription next year. Oh, and we’re not counting the number of cups of coffee anyone drinks; you already know the value of that benefit!

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', Westlaw, IntelliConnect, Hein Online Law Journals and Federal Register, and over 70 Aspen /LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

Five meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

Bi-Weekly news updates in various practice areas

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises, HeinOnline and IntelliConnect.

You and the Legal System: Bankruptcy- Rescheduled for May 1

Attorneys Tammy Stickley and Nick Zingarelli will discuss Bankruptcy on Friday, May 1 at noon in the Law Library. This program was originally scheduled for March 20.

The program is free to the public. To register, call 513.946.5300 or register via our website at <http://lawlibrary.hamiltoncountyohio.gov/classes/you-and-the-legal-system/>

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5300.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service. Save the date for the next event in the *You and the Legal System* series. Attorneys Alison De Villiers and Kristen Myers will discuss Employment Law: Wage and Hour Issues on Friday, April 17 at noon in the Law Library.



Bankruptcy Resources

Law Library subscribers have access to a variety of resources on Bankruptcy. For more information about accessing these or any of the library's resources, contact the reference staff at

reference@cms.hamilton-co.org or
513.946.5300

Bankruptcy courts & procedures
KF1527. E9 200

Bankruptcy deskbook
KF1524. L435 2014

Bankruptcy fundamentals
KFO221 .B34 2013

Bankruptcy litigation
KF1527 .S6 2014

Collier bankruptcy manual
KF1524 .C59 4th ed. 2014

Consumer bankruptcy handbook, with forms
KF1040 .Z9 S65 2014

Consumer bankruptcy law and practice
KF1040.Z9 S65 2013

Creditors' rights in Chapter 11 cases: leading lawyers on representing and enforcing the rights of creditors in bankruptcy matters
KF1544 .C542 2014

LexisNexis Ohio annotated bankruptcy law handbook
KFO221.A29 A53 2015

Solve your money troubles: debt, credit and bankruptcy
KF1501 .L46 2013

Aspen/Loislaw Bankruptcy Treatise Library

Ginsberg & Martin on Bankruptcy
Bankruptcy Litigation and Practice: A Practitioner's Guide
Bankruptcy Litigation Manual
Automatic Stay Litigation in Bankruptcy
Advanced Chapter 11 Bankruptcy Practice
Tax Planning for Troubled Corporations
Bankruptcy Law Update
CCH Bankruptcy Case Reporter
Loislaw Bankruptcy Court Collection

CCH Bankruptcy Law Library

Bankruptcy Law Report Letters
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: Law & Explanation
Bankruptcy Law Reporter - Laws, explanations, rules of procedure, forms, state exemptions, court decisions, organized by Code section
Bankruptcy Law Reporter Court Decisions Archive
Indexes & Tables

EBSCO

Chapter 13 Bankruptcy: Keep Your Property & Repay Debts Over Time
How to File for Chapter 7 Bankruptcy
New Bankruptcy
When You Have to File for Bankruptcy

*Remote access is available to subscribers who are solos or firm attorneys whose entire firm has a subscription to the Law Library.

Upcoming Events:

March 4: What's New With WestlawNext? CLE

March 26: . Lexis CLE: Drinking from a Fire Hydrant: Basic Legal Research in the Age of Technology (Lexis Advance)

April 17: You and the Legal System: Employment Law-Wage and Hour Issues

May 1: You and the Legal System: Bankruptcy



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