

Redline Comparison of October 30, 2009 Final Rulemaking Massachusetts Information Security Regulations, 201 CMR 17.00 et seq.

On October 30, 2009, the Massachusetts Office of Consumer Affairs and Business Regulation (OCABR) stated that it has filed its final set of information security regulations to supersede the existing text of 201 CMR 17.00 et seq., proposed on August 17, 2009. The following is a redline comparison between the text of the final rulemaking and the prior version. For more information, contact [Gabriel M. Helmer](#) of Foley Hoag's [Security & Privacy practice](#).

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201 CMR 17.00: STANDARDS FOR THE PROTECTION OF PERSONAL INFORMATION OF RESIDENTS OF THE COMMONWEALTH

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17.01 Purpose and Scope

(1) Purpose

This regulation implements the provisions of M.G.L. c. 93H relative to the standards to be met by persons who own or license personal information about a resident of the Commonwealth of Massachusetts. This regulation establishes minimum standards to be met in connection with the safeguarding of personal information contained in both paper and electronic records. The objectives of this regulation are to insure the security and confidentiality of customer information in a manner fully consistent with industry standards; protect against anticipated threats or hazards to the security or integrity of such information; and protect against unauthorized access to or use of such information that may result in substantial harm or inconvenience to any consumer.

(2) Scope

The provisions of this regulation apply to all persons that own or license personal information about a resident of the Commonwealth.

17.02: Definitions

The following words as used herein shall, unless the context requires otherwise, have the following meanings:

Breach of security, the unauthorized acquisition or unauthorized use of unencrypted data or, encrypted electronic data and the confidential process or key that is capable of compromising the security, confidentiality, or integrity of personal information, maintained by a person or agency that creates a substantial risk of identity theft or fraud against a resident of the commonwealth. A good faith but unauthorized acquisition of personal information by a person or agency, or employee or agent thereof, for the lawful purposes of such person or agency, is not a breach of security unless the personal information is used in an unauthorized manner or subject to further unauthorized disclosure.

Electronic, relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

Encrypted, the transformation of data into a form in which meaning cannot be assigned without the use of a confidential process or key.

Owns or licenses, receives, [stores](#), maintains, processes, or otherwise has access to personal information in connection with the provision of goods or services or in connection with employment.

Person, a natural person, corporation, association, partnership or other legal entity, other than an agency, executive office, department, board, commission, bureau, division or authority of the Commonwealth, or any of its branches, or any political subdivision thereof.

Personal information, a Massachusetts resident's first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such resident: (a) Social Security number; (b) driver's license number or state-issued identification card number; or (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "Personal information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

Record or Records, any material upon which written, drawn, spoken, visual, or electromagnetic information or images are recorded or preserved, regardless of physical form or characteristics.

Service provider, any person that receives, [stores](#), maintains, processes, or otherwise is permitted access to personal information through its provision of services directly to a person that is subject to this regulation; ~~provided, however, that "Service provider" shall not include the U.S. Postal Service.~~

17.03: Duty to Protect and Standards for Protecting Personal Information

(1) Every person that owns or licenses personal information about a resident of the Commonwealth shall develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to (a) the size, scope and type of business of the person obligated to safeguard the personal information under such comprehensive information security program; (b) the amount of resources available to such person; (c) the amount of stored data; and (d) the need for security and confidentiality of both consumer and employee information. The safeguards contained in such program must be consistent with the safeguards for protection of personal information and information of a similar character set forth in any state or federal regulations by which the person who owns or licenses such information may be regulated.

(2) Without limiting the generality of the foregoing, every comprehensive information security program shall include, but shall not be limited to:

- (a) Designating one or more employees to maintain the comprehensive information security program;
- (b) Identifying and assessing reasonably foreseeable internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper or other records containing personal information, and evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such risks, including but not limited to:
 - 1. ongoing employee (including temporary and contract employee) training;
 - 2. employee compliance with policies and procedures; and
 - 3. means for detecting and preventing security system failures.
- (c) Developing security policies for employees relating to the storage, access and transportation of records containing personal information outside of business premises.
- (d) Imposing disciplinary measures for violations of the comprehensive information security program rules.
- (e) Preventing terminated employees from accessing records containing personal information.
- (f) Oversee service providers, by:

1. Taking reasonable steps to select and retain third-party service providers that are capable of maintaining appropriate security measures to protect such personal information consistent with these regulations and any applicable federal regulations; and
 2. Requiring such third-party service providers by contract to implement and maintain such appropriate security measures for personal information; provided, however, that ~~any~~until March 1, 2012, a contract a person has entered into with a third party service provider ~~prior to March 1, 2012, shall be deemed to be in compliance herewith, notwithstanding the absence in any such contract of~~to perform services for said person or functions on said person's behalf satisfies the provisions of 17.03(2)(f)(2) even if the contract does not include a requirement that the third party service provider maintain such ~~protective security measures, so~~appropriate safeguards, as long as ~~the contract was~~said person entered into ~~before~~the contract no later than March 1, 2010.
- (g) Reasonable restrictions upon physical access to records containing personal information,, and storage of such records and data in locked facilities, storage areas or containers.
- (h) Regular monitoring to ensure that the comprehensive information security program is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of personal information; and upgrading information safeguards as necessary to limit risks.
- (i) Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing personal information.
- (j) Documenting responsive actions taken in connection with any incident involving a breach of security, and mandatory post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of personal information.

17.04: Computer System Security Requirements

Every person that owns or licenses personal information about a resident of the Commonwealth and electronically stores or transmits such information shall include in its written, comprehensive information security program the establishment and maintenance of a security system covering its computers, including any wireless system, that, at a minimum, and to the extent technically feasible, shall have the following elements:

- (1) Secure user authentication protocols including:

- (a) control of user IDs and other identifiers;
 - (b) a reasonably secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices;
 - (c) control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect;
 - (d) restricting access to active users and active user accounts only; and
 - (e) blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system;
- (2) Secure access control measures that:
- (a) restrict access to records and files containing personal information to those who need such information to perform their job duties; and
 - (b) assign unique identifications plus passwords, which are not vendor supplied default passwords, to each person with computer access, that are reasonably designed to maintain the integrity of the security of the access controls;
- (3) Encryption of all transmitted records and files containing personal information that will travel across public networks, and encryption of all data containing personal information to be transmitted wirelessly.
- (4) Reasonable monitoring of systems, for unauthorized use of or access to personal information;
- (5) Encryption of all personal information stored on laptops or other portable devices;
- (6) For files containing personal information on a system that is connected to the Internet, there must be reasonably up-to-date firewall protection and operating system security patches, reasonably designed to maintain the integrity of the personal information.
- (7) Reasonably up-to-date versions of system security agent software which must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis.

(8) Education and training of employees on the proper use of the computer security system and the importance of personal information security.

17.05: Compliance Deadline

(1) Every person who owns or licenses personal information about a resident of the Commonwealth shall be in full compliance with 201 CMR 17.00 on or before March 1, 2010.

REGULATORY AUTHORITY

201 CMR 17.00: M.G.L. c. 93H