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## **Department of Financial Regulation**

### **Bulletin # 5**

# Application of the Security Breach Notice Act to Breaches Involving Data Owners and Third-Party Vendors

**November 07, 2023**

The purpose of this bulletin is to provide guidance on the Vermont Department of Financial Regulation's (the "Department") interpretations of the consumer notification requirements included in the Security Breach Notice Act, 9 V.S.A. § 2435, (the "Notice Act") as they relate to breaches involving multiple parties. This guidance relates to persons or entities licensed or registered with the Department under Title 8 or Title 9 ("Regulated Entity" or "Regulated Entities").<sup>1</sup>

The Department has observed an increase in the total number of data security breaches and the complexity of those breaches. Recent breaches have involved multiple parties including: (1) data collectors that own or license computerized personally identifiable information or login credentials ("Data Owners"); and (2) third-party vendors that contract with a Regulated Entity to maintain, process, or store nonpublic information or is otherwise permitted access to nonpublic information through its provision of services to the Regulated Entity (collectively "Third Parties"). Third Parties may include a Regulated Entity that retains a consulting group, an insurance company that retains a population management company, a Regulated Entity that retains a law firm, or any instance in which Third Parties maintain, access, or possess data owned or licensed by a Data Owner.

In the event of a security breach as defined in 9 V.S.A. § 2430(13), the Data Owner "shall notify the consumer that there has been a security breach." 9 V.S.A. § 2435(b)(1). In contrast, Third Parties that maintain or possess data owned by a Data Owner "shall notify the owner or licensee of the information of any security breach immediately following discovery of the

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<sup>1</sup> This bulletin is not directed towards persons or entities not licensed or registered with the Department. See 9 V.S.A. § 2435(h). All entities not licensed or registered with the Department should direct their notices to the Vermont Office of the Attorney General.



breach.” 9 V.S.A. § 2435(b)(2). Notice to consumers disclosing the security breach must be “clear and conspicuous.” 9 V.S.A. § 2435(b)(5).

To meet the requirement that a notice be “clear and conspicuous,” consumer notices sent directly from a Data Owner must include the following:

1. The name and/or logo of the Data Owner, which must be visible:
  - a. on the face of the envelope in which the notice is mailed (by printing it on the envelope or making such information visible through the envelope’s window); and
  - b. in the first sentence of the consumer notice.

The Department is aware that there are instances in which Third Parties will assume the responsibility of notifying consumers on behalf of the Data Owner. Such an arrangement is permissible when the following requirements are met:

1. A description of the relationship between the Data Owner and the Third Parties that experienced the Security Breach is included in the consumer notice.
2. The name and/or logo of the Data Owner (or the name and/or logo of a Third Party that has previously, directly communicated with the impacted Vermont consumer regarding services from, or data related to, the Data Owner) must be visible:
  - a. on the face of the envelope in which the notice is mailed (by printing it on the envelope or making such information visible through the envelope’s window); and
  - b. in the first sentence of the consumer notice.

If the above requirements are not met, the Department may find that the Regulated Entity is not in compliance with the Notice Act. If the Regulated Entity is not in compliance with the Notice Act, the Department reserves the right to require a supplemental consumer notice and/or take all appropriate enforcement actions.

The Department encourages all Regulated Entities to provide the Department with a draft consumer notice prior to mailing. The Department will review draft notices and provide guidance on any required changes prior to mailing. Such notices can be sent to [dfr.securitybreach@vermont.gov](mailto:dfr.securitybreach@vermont.gov).

  
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Kevin Gaffney, Commissioner

11-7-2023  
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Date