Vendor Management Challenge
Doing More with Less

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Session Classification: Intermediate
Why You Should Care: From the Trenches

- Let’s talk “personal information”
- What are the real-world consequences of failure to address data privacy and security in the contracting process?
  - **Time** - Distractions for highly skilled human resources that could be spending time adding value to the business
  - **Money** - Overtime, consultants, counsel, breach notice costs; often unrecoverable
  - **Embarrassment, Reputation, Morale, Investigations** = **Money**!
- Real-world examples of failed process
  - No data protection due diligence at the outset
  - Agreement with vendor did not address data security terms beyond general obligation of confidentiality
  - Any guess what happened next?
Why You Should Care: Example A

- Vendor informs customer concurrently with sending notice of the breach to customer’s employees
- Employee information stolen from vendor’s unencrypted laptop

- Customer does not have time to:
  - Prepare internal call center FAQs
  - Draft employee communications
  - Ascertain responsibilities under the law
  - Ensure vendor communication to employees is compliant
Why You Should Care: Example B

- Upgrade results in exposure of SSNs
- Delay notifying customer for a month
- Short window between telling customer and providing notice to customer’s employees
- Customer placed under time crunch and has no leverage in the notification process
Learning Objectives

- Enhance awareness of legal and business requirements
- Identify business challenges for front line negotiation team
- Develop vendor management tools for front line personnel
- Implement effective compliance oversight
# Outsourcing Benefits & Challenges

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Challenges</th>
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<tbody>
<tr>
<td>Reduced cost</td>
<td>Privacy and data security</td>
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<tr>
<td>Better technology</td>
<td>Negotiation team knowledge</td>
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<tr>
<td>Competitive advantage</td>
<td>Delay</td>
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<tr>
<td></td>
<td>Increased costs</td>
</tr>
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<td></td>
<td>Costly surprises</td>
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Vendor Management Solution Roadmap

- Understand obligations and consequences of inaction
- Make privacy and security integral part of selection process
- Classify data based on risk
- Develop contracting tools and options for front-line personnel
- Provide training and awareness
- Share compliance burden
View From Space: What’s Our Goal?

- Select vendors that take privacy and security seriously
- Engage and empower company resources to make informed judgment calls
- Be flexible in privacy and security requirements
- Help vendors avoid and mitigate privacy and information security issues by providing guidance
## Legal Requirements

<table>
<thead>
<tr>
<th>Vendor Oversight</th>
<th>Derivative Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>State information security laws</td>
<td>Pending federal legislation</td>
</tr>
<tr>
<td>Federal (GLB, FCRA Red Flags, HIPAA)</td>
<td>State breach laws</td>
</tr>
<tr>
<td>Foreign (EU Directive and local laws)</td>
<td>HIPAA</td>
</tr>
<tr>
<td></td>
<td>Foreign (EU Directive and local laws)</td>
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Contracting Lifecycle

- Integrate privacy and security into the process
  - Documented in a single resource: “Playbook”
- Program must address all stages of the lifecycle
  - Data Classification
  - Project Initiation
  - RFP
  - Negotiation
  - Oversight
Vendor Management Tools - Data Classification

More Sensitive

• PHI
• NPI
• Payment card data

Less Sensitive

• Consumer report data
• Breach data
• EU sensitive data
• Other data business deems sensitive

• Everything else that identifies an individual or device
Vendor Management Tools - Project Initiation

- Project initiation survey answers threshold questions
- IT and Legal use judgment to evaluate responses and determine path forward
  - Is Personal Information involved?
  - Will vendors have access to the data? Is it an existing relationship?
  - Sensitivity of data, type of data subjects
  - Type of disclosure and its purpose
  - Volume of disclosure & associated risk
  - Initial assessment of risk – issue spotting
  - Cross-border data transfer issues
## Vendor Management Tools - Project Initiation

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
<th>Next Steps</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where are the individuals to whom the information pertains located?</td>
<td>Check all that apply:</td>
<td>▪ Determine whether Agent must establish a legal basis for cross-border</td>
</tr>
<tr>
<td></td>
<td>U.S.</td>
<td>transfer of Personal Information</td>
</tr>
<tr>
<td></td>
<td>EU/EEA/Switz</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Others (List):</td>
<td></td>
</tr>
<tr>
<td></td>
<td>[ ]</td>
<td></td>
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<td></td>
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</thead>
<tbody>
<tr>
<td>To how many individual records will service providers have access?</td>
<td>1-999</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>1,000-9,999</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>10,000-99,999</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>100,000-499,999</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>500,000 or more</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Determine whether to require Agent to obtain information security incident insurance coverage</td>
</tr>
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## Vendor Management Tools - Project Initiation

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<tr>
<td>Will third parties have access to Personal Information that has been anonymized or aggregated?</td>
<td>Yes</td>
<td>Because of re-identification concerns, access to anonymized or aggregated data still requires a Data Protection Assessment Questionnaire</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>TBD</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If Yes, describe data:</td>
<td></td>
</tr>
</tbody>
</table>

Because of re-identification concerns, access to anonymized or aggregated data still requires a Data Protection Assessment Questionnaire.
Vendor Management Tools - Vendor Assessment

- IT and Legal are key stakeholders in building an assessment tool
- Focus on processing information, not just on gathering it
- Include with RFP (existing vendors complete for new projects)
- Ability to safeguard data becomes evaluation criteria
- For single-source, assessment is the basis of due diligence and follow-up
- IT leads evaluation with help from Legal
  - Judgment, not scoring
## Vendor Management Tools - Vendor Assessment

<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
<th>CRI</th>
<th>CI</th>
<th>Evaluation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Will service provider access, collect, store, use, disclose or otherwise process Personal Data in aggregated or de-identified format?</td>
<td>Yes</td>
<td>□ Verify information will not be used other than for the benefit of customer and that information cannot be re-identified.</td>
<td>□ Same as CRI</td>
<td>Acceptable □</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>□</td>
<td>□</td>
<td>Not Acceptable □</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If yes, describe aggregation method</td>
<td>□</td>
<td>□</td>
<td>Additional Due Diligence Required □</td>
<td></td>
</tr>
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## Vendor Management Tools - Vendor Assessment

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<th>CI</th>
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<tr>
<td>Does service provider regularly test and monitor key administrative,</td>
<td>Yes</td>
<td>Required; evaluate the response in light</td>
<td>Required; evaluate the response in light</td>
<td>Acceptable</td>
</tr>
<tr>
<td>technical and physical controls, systems and procedures that safeguard</td>
<td>No</td>
<td>of heightened risks associated with</td>
<td>of heightened risks associated with</td>
<td>Not</td>
</tr>
<tr>
<td>Personal Data?</td>
<td>If yes,</td>
<td>processing CRI</td>
<td>processing CI</td>
<td>Acceptable</td>
</tr>
<tr>
<td>how often is testing performed?</td>
<td></td>
<td></td>
<td></td>
<td>Additional</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Due Diligence Required</td>
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Vendor Management Tools - Vendor Assessment

- Assessment based on information gathered and business judgment
  - Security / privacy must be balanced against business interests
  - Zero-tolerance approach is insufficient and implacable
- After assessing, engagement is key
  - Work with vendors to meet requirements
  - Automate evaluation mechanics, not the thought process
Vendor Management Tools - Negotiation

- Key negotiation points
  - Sensitive data vs. less sensitive data
  - Information security incident definition
  - Scope of legal privacy/data security obligations
  - Sub-contractor oversight requirements
  - Information security incident reporting requirements
  - Record-keeping requirements
Vendor Management Tools - Negotiation

- FAQs empower front-line personnel respond to questions

Q: Are privacy and security concerns implicated when Service Provider has the ability to access or actually accesses Personal Data, but does not store it?

A: Yes. The privacy and security provisions of the Service Provider Personal Data Privacy, Confidentiality and Security Schedule apply to the Processing of Personal Data. Processing encompasses any operation or set of operations performed upon Personal Data, such as accessing, obtaining, storing, transmitting, using, maintaining, disclosing or disposing of the information. Once Service Provider has the ability to access Personal Data, there is a possibility that the information may be lost, stolen or otherwise mishandled, which in turn raises significant privacy and security concerns for Xcel Energy.
Vendor Management Tools - Negotiation

- Pre-determined negotiating positions provide negotiating flexibility

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<th>Objections</th>
<th>Response</th>
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<tr>
<td>1.4 Industry Standards means industry standards and best practices relating to the privacy, confidentiality or security of Personal Data…</td>
<td>• Definition is too broad and does not provide sufficient specific guidance</td>
<td>• Compliance with industry standards often is a potential minimum benchmark (regulatory compliance, common law negligence, reasonable)</td>
<td>1.4 Industry Standards means [the ISO 27001/27002]</td>
</tr>
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## Vendor Management Tools - Negotiation (con’t)

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<tr>
<td>2.6.1 Notify Company within 48 hours of any reasonably suspected Information Security Incident…</td>
<td>- We need more time to confirm whether an Incident actually occurred</td>
<td>- Must inform ASAP as soon as vendor reasonably suspects an incident has occurred</td>
<td>No fallback</td>
</tr>
</tbody>
</table>
Vendor Management Tools - Oversight

- Oversight is an integral part of a vendor management program
- Should be a collaborative process, designed to help vendors meet your requirements
  - Recommended privacy/security controls
- Focus on prevention
  - Risk assessment process
- Cooperate if something goes wrong
  - Incident investigation process
  - Breach notification process
From the Trenches: A Brighter Future

- Goal: data protection concerns are raised early in the contracting process

- Benefits of early action:
  - Vendor refuses contractual protections for SSNs; determined that vendor did not need access to SSNs and worked on replacing vendor for future projects
  - Customer avoids engaging vendor that was unable to identify/commit to countries where data would be processed, contrary to customer’s data protection requirements
From the Trenches: What if?

- Different vendors
- Early notice for impacted individuals
- Customer would have been the decision maker
  - Response strategy
  - Notice
  - Legal obligations
  - Indemnification for legal cost

**Why You Should Care: Example A**
- Customer does not have time to:
  - Prepare internal call center FAQs
  - Draft employee communications
  - Ascertain responsibilities under the law
  - Ensure vendor communication to employees is compliant

**Why You Should Care: Example B**
- Upgrade results in exposure of SSNs
- Delay notifying customer for a month
- Short window between telling customer and providing notice to customer’s employees
- Customer placed under time crunch and has no leverage in the notification process
Apply Program

- Within 3 months evaluate existing vendor management program
  - Identify vendors that have access to PI
  - Review contracts
  - Engage senior management
  - Follow up with vendors
- Within 6 months prepare key vendor management tools
  - Project assessment questionnaire
  - Vendor assessment/annual reporting questionnaire
  - Get assistance with contractual terms
Questions?

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