


## Doing Business in Oregon Under the Oregon Consumer Identity Theft Protection Act and Related Privacy Risks

Presented by:  
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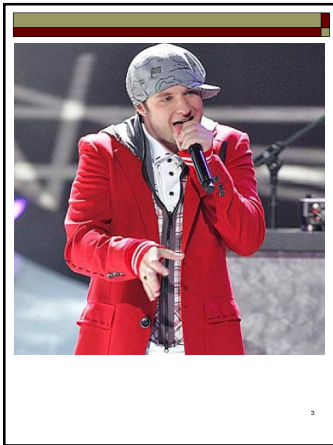
**MILLER NASH**  
ATTORNEYS AT LAW

## Privacy | Data Loss

[www.breachblog.com](http://www.breachblog.com)



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## Privacy | Data Loss

- June 23, 2008, EZ Corp. Loan Services, \$600,000 settlement for security breach
- January 27, 2009, NY Times, Veterans Affairs Department, \$20 million settlement
- September 28, 2007, TJ Maxx, \$25 million in vouchers after compromise of 11 million pieces of financial information

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## Identity Theft

- An individual typically spends 125 hours repairing the damage ([www.creditreportrepair.com](http://www.creditreportrepair.com))
- U.S. businesses spend about \$48 billion a year on identity theft issues
- Oregon is ranked 20<sup>th</sup> worst in the nation in identity theft
- Will the economic climate increase identity theft? Suits over identity theft?

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## The Legal Issues

- Oregon Consumer Identity Theft Protection Act
- Tort law
  - Negligence
  - Other theories?

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Oregon Consumer Identity Theft Protection Act

### Goals of the Act

- Protect Oregon residents against identity theft
- Ensure safety of personal identifying information
- Even if Act does not apply, indication of standard of care (e.g., negligence claim)

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Oregon Consumer Identity Theft Protection Act

### Key Provisions

- Protecting social security numbers (SSNs)
- Security breach notification
- Safeguarding personal information
  - Name (first or first initial and last) with:
    - SSN
    - ODL or Oregon ID card
    - Financial, credit, or debit card number with security or access code or password

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### Protecting Social Security Numbers

- Act prohibits:
  - Printing SSN on mailed materials not requested by individual;
  - Printing SSN on card required to access products or services;
  - Publicly posting or displaying SSN (e.g., web site)
- Exceptions:
  - Records required by law to be made available to public
  - Records used for internal verification or administrative purposes

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### Notification of Security Breach

- If computer files containing personal information have been subject to a security breach, business must notify affected individuals
  - Security breach = unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained in computer files
    - Lost or stolen laptop, hacker
  - Notify affected individuals as soon as possible, consistent with needs of law enforcement
  - If breach result of criminal activity, call law enforcement
  - Although applies to computer files, best practice is to apply to hard copies also
  - Establish written procedure for all employees for identifying, reporting, and responding to security breaches

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## Notification of Security Breach

**□ Manner of notice:**

- Written
- Electronic (if customary means of communication with individual)
- Telephone (if individual contacted directly)
- Substitute notice
  - Cost of notifying individuals would exceed \$250,000 or
  - Number of affected individuals exceeds 350,000 or
  - Insufficient contact information for affected individuals
  - Conspicuous notice or link to notice on Web site and
  - Notify major Oregon TV and newspaper media

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## Notification of Security Breach

**□ Content of notice**

- General description of incident
- Approximate date of security breach
- Type of personal information at issue
- Contact information of entity
- Contact information for national consumer reporting agencies and
- Advice to individual on how to report suspected identity theft to law enforcement
- Oregon Department of Consumer and Business Services has a sample notification letter—or create notification customized to circumstances of breach

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## Sample Breach Notice

**SAMPLE LETTER SECURITY BREACH**

Dear \_\_\_\_\_,

We are contacting you because we have learned of a serious data security incident that involved some of your personal information.

*[Describe what happened and what types of information was breached]*

We have notified law enforcement and have advised the three major U.S. credit bureaus about this incident. We also have given them a general report, clicking them to the fact that the incident occurred. However, we have not notified them about the presence of your specific information in the data breach. Because this is a serious incident, we strongly encourage you to take preventative measures now to help prevent and detect any misuse of your information.

- As a first step, we recommend you closely monitor your financial accounts and, if you see any unauthorized activity, promptly contact your financial institution.
- You also may want to consider requesting a free credit report from each of the three companies. To order your free credit report, visit [www.annualcreditreport.com](http://www.annualcreditreport.com) or call toll-free 1-877-322-8228.

Even if you do not find any suspicious activity on your initial credit reports, the Federal Trade Commission (FTC) recommends that you check your credit reports periodically. A victim's personal information is sometimes held for use or shared among a group of thieves at different times. Checking your credit reports periodically can help you spot problems and address them quickly.

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## Sample Breach Notice

- To protect yourself from the possibility of identity theft, Oregon law allows you to place a security freeze on your credit files. By placing a freeze, someone who fraudulently acquires your personal identifying information will not be able to use that information to open new accounts or borrow money in your name.

You will need to contact the three national credit reporting agencies (TransUnion, Equifax and Experian) to place the freeze. Keep in mind that when you place the freeze, you will not be able to borrow money, obtain loans, credit, or get a new credit card until you temporarily lift or permanently remove the freeze. The cost of placing the freeze is no more than \$10 for each credit reporting agency for a total of \$30. However, if you are a victim of identity theft and have filed a report with your local law enforcement agency or submitted an ID Complaint Form with the Federal Trade Commission, there is no charge to place the freeze. For detailed procedures, go to the Oregon Department of Consumer and Business Services at [www.dcs.oregon.gov/id\\_theft.html](http://www.dcs.oregon.gov/id_theft.html) and click on Security Freeze.

If you have further questions or concerns, contact us at this special telephone number: 000-000-0000. You can also check our Web site at [www.dcs.oregon.gov](http://www.dcs.oregon.gov) for updated information.

We apologize for any distress this situation has caused you. We are ready to assist you in any way.

(Insert closing)  
Your Name

*[Optional paragraph if offering credit protection services]*

To protect you we have retained [name of identity theft company], a specialist in identity theft prevention. To provide you with [name] of protection and prevention services, free of charge, you can enroll in the program by following the directions below.

Please keep this letter; you will need the personal account info & sensitive info to register for services.

*[List specific services customer will receive]*

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## Alternative Notice

[Date]

Dear \_\_\_\_\_,

The safety and security of our staff and their families is a priority for [entity], as I am alerting you to a situation that arose last week.

On [date], [entity] was broken into and three computers were stolen. Following an investigation, we have learned that one of those computers contained information about staff. This information included names, addresses, and, in some cases, Social Security numbers.

Portland Police and [entity] staff continue to investigate this matter and hope to resolve it soon. In the meantime, we encourage you to take preventative measures to help prevent and detect any misuse of your child's information.

- As a first step, we recommend you closely monitor your financial accounts and, if you see any unauthorized activity, promptly contact your financial institution. While we believe and hope this is an unlikely outcome, if you notice anything out of the ordinary, please immediately contact Portland Police at xxx-xxx.
- You also may want to consider requesting a free credit report from each of the three companies. To order a free credit report, visit [www.annualcreditreport.com](http://www.annualcreditreport.com) or call toll-free 1-877-322-8228.

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**Oregon Consumer Identity Theft Protection Act**

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If you have further questions or concerns, contact me at [insert info].

We apologize for any inconvenience this situation has caused you and we desire to assist you as appropriate.

Sincerely,

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### Notification of Security Breach

- Notify all consumer reporting agencies
  - If breach affects more than 1,000 individuals
  - Notify regarding timing, distribution, and content of notification given by entity to individuals
  - Include police report number if available
  - Need not provide names of affected individuals

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### Notification of Security Breach

- No notice to individuals required
  - If entity determines, after appropriate investigation or consultation with law enforcement
    - That affected individuals are not likely to be harmed by security breach
  - Determination must be documented in writing
    - Documentation must be maintained for five years

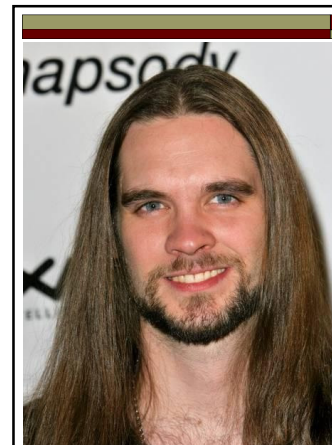
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### Notification of Security Breach

- Exception
  - Compliance with Gramm-Leach-Bliley (GLB) Act meets Oregon's requirements
  - Even if GLB or Oregon Act does not apply, consider adopting Oregon's requirements as standard of care

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### Safeguarding Personal Information

- Must develop, implement, and maintain reasonable safeguards to ensure security and confidentiality of information
  - Includes proper disposal of information
  - Compliance with GLB Act and HIPAA is sufficient
    - Must follow Oregon's safeguard requirements to protect personal information of employees

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### Safeguarding Personal Information

- Assess personal information
  - Take inventory of all information in paper files and on computers, laptops, flash drives, disks, home computers, employee laptops, PDAs, etc.
    - By type and location
    - Information that creates a risk of identity theft = guide
    - Who has access to information
    - Who needs access to information
    - Business office

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## Safeguarding Personal Information

- Administrative safeguards
  - Designate employee(s) to coordinate security program
  - Identify reasonably foreseeable internal and external risks
  - Assess sufficiency of safeguards in place to control identified risks
  - Train and manage employees in security program practices and procedures
  - Select service providers capable of maintaining safeguards
    - Require and specify safeguards in written contract with service provider
  - Adjust security program in light of business changes or new circumstances

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## Safeguarding Personal Information

- Technical safeguards
  - Assess risks in network and software design
  - Assess risks in information processing, transmission, and storage
  - Detect, prevent, and respond to attacks or system failures
  - Regularly test and monitor effectiveness of key controls, systems, and procedures

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## Safeguarding Personal Information

- Physical Safeguards
  - Assess risks of information storage and disposal
  - Detect, prevent, and respond to intrusions
  - Protect against unauthorized access to or use of personal information during or after collection, transportation, and destruction or disposal of information
  - Dispose of personal information after it is no longer needed for business purposes by shredding, burning, pulverizing, or modifying a physical record and by destroying or erasing electronic media so that information cannot be read or reconstructed

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## Safeguarding Personal Information

- Examples
  - Store paper documents, CDs, floppy disks, zip drives, tapes, and backups in locked file cabinet or locked room with limited access
    - Any employee who leaves an employer should return keys/access cards
  - Reduce personal information collected and stored
    - Only information necessary for legitimate need
  - Restrict access to electronic personal information to small number of designated people
    - Information password-protected
      - "Strong" passwords—mix of letters, numbers, and characters
      - Terminate passwords of former employees

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## Safeguarding Personal Information

- Examples
  - Consider prohibiting employees from storing personal information on business laptops
    - Instead, allow access to personal information but require that such information be stored on server
    - Or encrypt sensitive information stored on laptops
  - Train employees
    - Recognize personal information
    - Entity's security program practices and procedures
    - Identify and respond to security breaches

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## Safeguarding Personal Information

- Examples
  - Destruction of records
    - Written document retention policy
      - What information to be kept, how long to keep it, and how to dispose of it securely when no longer needed
    - Locked box for disposal of paper documents containing personal information
    - Documents shredded on regular basis by designated employee(s) or shredding service
    - Delete electronic personal information with "wiping" program that overwrites data

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## Enforcement

- Oregon Department of Consumer and Business Services
  - Investigations to determine violations
  - If reason to believe violation, director may
    - Issue cease-and-desist order
    - Order compensation to individuals injured by violation
      - If finds that enforcement of rights of consumers by private civil action so burdensome or expensive as to be impractical
      - Easy standard--no right to recover attorney fees in private action
  - Civil penalties
    - \$1,000 per violation
    - Maximum \$500,000 per occurrence

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## Additional Resources

- Miller Nash
  - Mike Porter
    - [mike.porter@millernash.com](mailto:mike.porter@millernash.com)
    - (503) 224-5858
- Oregon Department of Consumer and Business Services
  - [www.cbs.state.or.us](http://www.cbs.state.or.us)
- Federal Trade Commission
  - [www.ftc.gov/infosecurity](http://www.ftc.gov/infosecurity)



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