

# Developing Your Information Security Program: WISPs, Policies, and More

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# Agenda

## Introduction

### **Presentation: *Developing Your Information Security Program: WISPs, Policies, and More***

- Key Issues in Developing Your Organization's Information Security Program
- Written Information Security Programs (WISPs)
  - Legal obligations and issues
  - Key WISP elements and best practices
- Information Security Policies
  - Legal obligations and issues
  - Key policy elements and best practices
- Risk Assessment and Preventing Cyber Incidents

### **Quick Review of Practical Law Related Resources**

### **Q&A Session**

### **Conclusion**

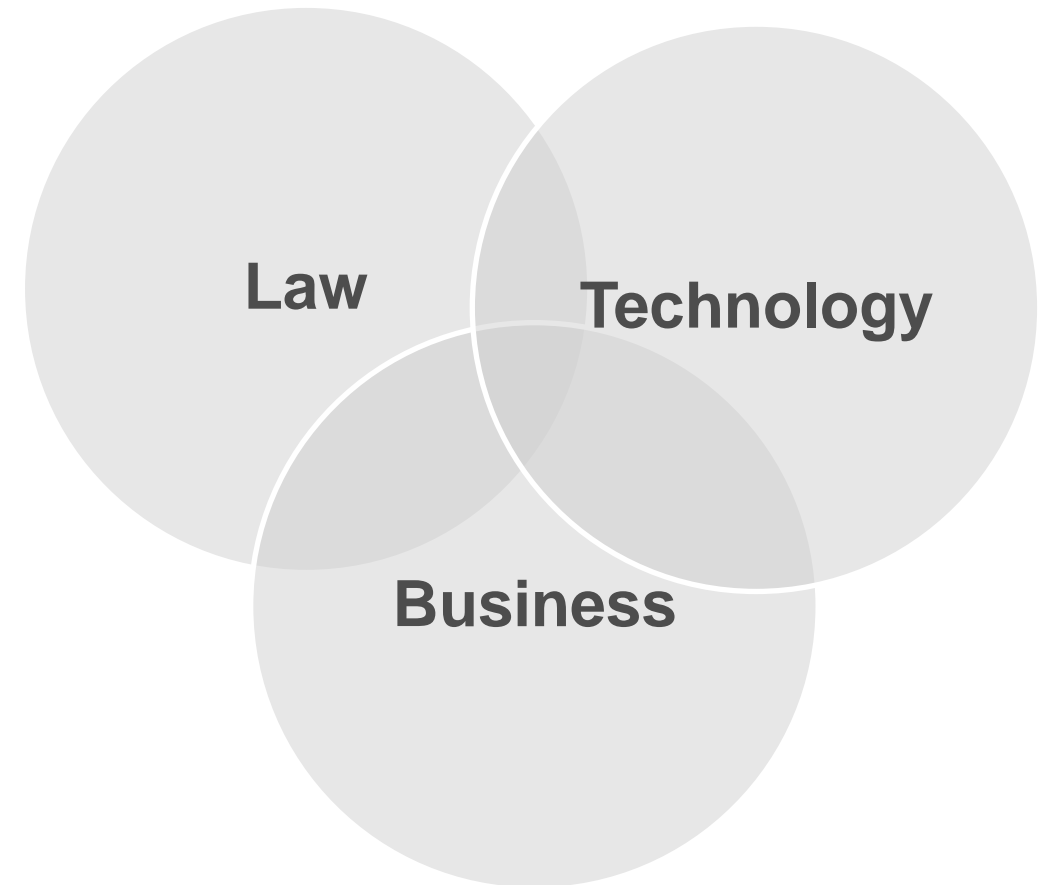
# Key Issues in Developing Your Organization's Information Security Program



# Why Information Security?

Privacy and information security operate at the intersection of law, technology, and business.

- Just a few of the challenges include:
  - increasing threats;
  - heightened expectations from:
    - customers,
    - shareholders,
    - employees,
    - business partners, and
    - regulators;
  - lack of communication among legal, IT, and business leadership; and
  - the demands of changing technology and ongoing risk management.



# A Growing Body of Law Demands Counsel's Attention

Common business scenarios create legal obligations to develop, implement, and maintain a reasonable information security program.

- Some examples include:
  - collecting and using personal information of customers, employees, or others;
  - participating in an industry sector that is considered high risk or critical infrastructure;
  - offering securities as a public company;
  - protecting trade secrets and other internal or proprietary information;
  - handling other organizations' information, subject to contract terms and conditions;
  - accepting certain forms of payment, such as credit cards, other payment cards, or direct payments from bank accounts; and
  - aiming to demonstrate compliance with generally-accepted industry standards for various legal and business purposes.

# Building an Information Security Program

Information security programs combine multiple elements to protect the confidentiality, integrity, and availability of systems and data.

- Effective programs rely on:
  - policies;
  - processes;
  - people; and
  - tools.

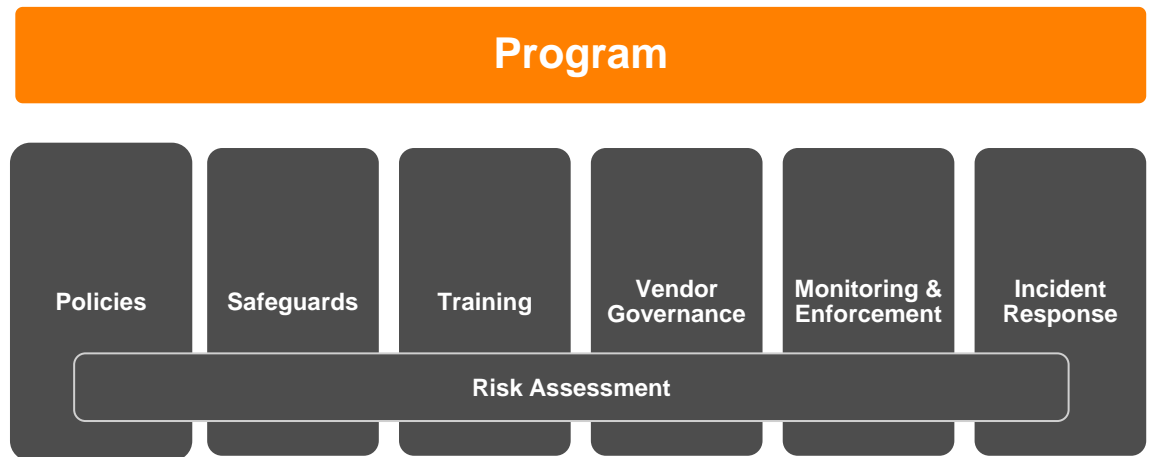


# Written Information Security Programs (WISPs)

# A Written Information Security Program (WISP) Documents the Measures an Organization Takes to Protect its Systems and Data

A WISP consists of high-level program descriptions and makes organizational commitments.

- WISPS are:
  - targeted to organizational leadership and stakeholders;
  - concise since policy and implementation details reside in related documents; and
  - required by some federal and state laws.





# State Data Security Laws Protect Personal Information

State data security laws focus on those who handle personal information, including customer and employee data.

- Data security laws vary by state, but where enacted, may require businesses to:
  - maintain appropriate security policies, procedures, and safeguards;
  - train employees;
  - oversee service providers;
  - periodically assess risks; and
  - monitor their programs.



# State Data Security Laws Protect Personal Information

- Massachusetts, Oregon, and Rhode Island require an **information security program**.
- Massachusetts requires a **written information security program**.
  - M.G.L. c. 93H; Mass. Regs. Code tit. 201 § 17.01-17.05
  - Or. Rev. Stat. § 646A.622
  - R.I. Gen. Laws §§ 11-49.3-1 through 11-49.3-6

# State Data Security Laws Protect Personal Information

- Others states require **reasonable security measures** to protect personal information. Some examples include:
  - Ark Code Ann. § 4-110-104(b).
  - Cal. Civ. Code § 1798.81.5.
  - Fla. Stat. § 501.171(2).
  - 815 Ill. Comp. Stat. § 530/45 (as amended by H.B. 1260, effective Jan. 1, 2017).
  - Ind. Code Ann. § 24-4.9-3-3.5.
  - Md. Code Ann., Com. Law § 14-3503.
  - Nev. Rev. Stat. §§ 603A.210, 215 (including payment cards data standards).
  - Tex. Bus. & Com. Code Ann. § 521.052(a).
  - Ut. Stat. § 13-44-201(1)(a).

# State Data Security Laws Protect Personal Information

- California AG guidance sets a **baseline** for reasonable security practices:
  - details appear in her Data Breach Report 2012-2015;
  - published in Feb. 2016, see <https://oag.ca.gov/breachreport2016>; and
  - leverages the Center for Internet Security's 20 Critical Security Controls.



# Federal Law Focuses on FTC Enforcement and Sector-Specific Requirements

The Federal Trade Commission (FTC) takes data security enforcement actions under its authority to address unfair or deceptive trade practices.

- Actions focus on businesses that fail to:
  - keep their data security commitments, including promises to follow industry standards; or
  - implement reasonable safeguards to protect personal information.
- FTC follows a **reasonableness standard**.
- Federal sector-specific data security laws include:
  - HIPAA/HITECH (healthcare);
  - GLBA (financial services);
  - COPPA (children's online privacy);
  - FERPA (student information); and
  - those applicable to telecommunications and other sectors.

# WISP Benefits

Even when not explicitly required by law, WISPs may provide risk management benefits to organizations.

- Some **potential benefits** include:
  - prompting the organization to proactively assess risk and implement safeguards;
  - educating employees and other stakeholders;
  - communicating information security expectations and practices to leadership, customers, and other interested parties, including regulators; and
  - establishing that the organization takes **reasonable steps**, especially in the event of a data breach or other security incident where litigation or enforcement action could occur.





# Issues to Consider Before Developing a WISP

Counsel should consider key issues regarding applicable laws, data collected, and the organization's culture before creating a WISP.

- How is personal information defined?
- What types of personal information does the organization collect, use, store, or share?
- Where do affected individuals reside?
- What laws and regulations apply?
- Does the organization have other information security obligations, such as any imposed by contracts?
- For what purposes does the organization collect, use, store, or share personal information?
- What other sensitive or confidential information (if any) should the WISP address?
- How is information collected, stored, and managed (including any safeguards)?

# Issues to Consider Before Developing a WISP

- Who are the organization's third-party service providers and other business partners?
- What is the WISP's relationship to the organization's other policies and obligations?
- What resources are available to develop, implement, and maintain the WISP and any supporting policies, procedures, or other program elements?
- Who will own the WISP and be accountable for information security matters?
- Should the WISP:
  - be state-specific or nationwide (or global) in scope?
  - apply to part or all of the organization?
  - address a specific law (separate) or different laws (combined)?

# Common WISP Elements

Common WISP elements demonstrate accountability.

- WISPs typically include:
  - Purpose.
  - Scope.
  - Information security coordinator designation and responsibilities.
  - Training.
  - Commitments to:
    - conduct periodic risk assessments and address identified issues;
    - develop, maintain, and distribute appropriate information security policies and procedures;
    - develop, implement, and maintain reasonable administrative, physical, and technical safeguards;
    - oversee service providers;
    - regularly test, monitor, and update the program; and
    - establish and maintain incident response policies and procedures.
  - Enforcement and sanctions for violations.
  - Periodic (annual) program review and documentation.

# State-Specific Requirements

Some state laws and regulations dictate detailed program elements and safeguards.

- Several states require organizations to impose **contractual obligations on service providers** to implement and maintain similar reasonable security measures.
- Massachusetts and Oregon call for **risk assessments** that pay particular attention to:
  - ongoing employee training, including training for temporary and contract employees;
  - employee compliance with policies and procedures; and
  - means for detecting and preventing security system failures.

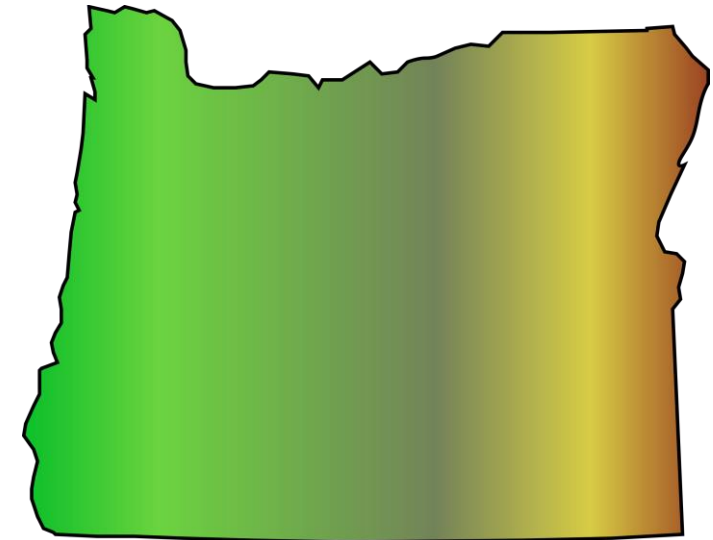
# State-Specific Requirements

- Massachusetts regulations also emphasize:
  - the need to prevent **terminated employees** from accessing personal information;
  - **incident response and post-incident analysis** and follow up documentation;
  - particular **safeguards** (security system elements), including:
    - secure user authentication protocols;
    - secure access control measures;
    - encryption; and
    - monitoring, network perimeter, and anti-malware controls.



# State-Specific Requirements

- Oregon calls for focusing on **risk assessment and management** by:
  - assessing risks in:
    - network and software design;
    - information processing, transmission, and storage; and
    - information storage and disposal.
  - detecting, preventing, and responding to attacks or system failures;
  - testing and monitoring the effectiveness of key controls, systems, and procedures;
  - detecting, preventing, and responding to intrusions;
  - protecting against unauthorized access to or use of personal information; and
  - securely disposing of personal information after it is no longer needed.





# State-Specific Requirements

- Rhode Island highlights **records management issues**, requiring that personal information:
  - Be retained no longer than is required:
    - to provide requested services;
    - to meet the purposes for which the personal information was collected;
    - in accordance with a written retention policy; or
    - by law.
  - Be securely disposed of after it is no longer needed.



## Practice Tips: Effective WISPs

Taking some simple steps can improve a WISP's effectiveness.

- Identify specific reasons for adopting a WISP.
- Define objectives.
- Establish a clear scope.
- Engage pertinent stakeholders.
- Assign accountability for developing, implementing, and maintaining information security program elements detailed in the WISP.
- Set reasonable expectations for related policies and other documents.
- Periodically review and seek feedback on the WISP, especially when business practices change.



# Information Security Policies

# Workforce-Facing Information Security Policies Establish Accountability and Standards of Behavior

Policies assign detailed program responsibilities but also address the weak link in information security: people.

- As one element of an organization's information security program, a robust policy helps minimize risks by:
  - establishing information security as a core value;
  - laying out clear rules for using and protecting information assets;
  - helping workforce members understand and manage information security risks;
  - providing a basis for training; and
  - fostering communication among workforce members and the information security team.



# Legal Requirements for Information Security Policies Address Personal Information and More

Federal and state laws and regulations, industry standards, and best practices require information security policies.

- WISP laws call for policies.
- Reasonable security practices are generally understood to include policies and related training.
- The need to implement reasonable security practices, including policies, addresses protecting personal information and more, including:
  - sector-specific regulations;
  - critical infrastructure obligations;
  - public company risk disclosures;
  - trade secrets protection;
  - contract obligations, including payment processing; and
  - litigation and enforcement risk management, especially if a data breach or other security incident occurs.

# Issues to Consider Before Developing a Policy

As with WISPs, counsel should consider key issues regarding applicable laws, data collected, and the organization's culture before creating a policy.

- What laws and regulations apply?
- What industry standards and best practices has the organization adopted (or plans to adopt)?
  - for example,
    - generally applicable standards such as those collected in the NIST Cybersecurity Framework;
    - sector-specific standards and best practices; and
    - activity-related standards, such as the Payment Card Industry Data Security Standard (PCI DSS).
- Does the organization prefer a single workforce-facing policy or multiple policy documents, such as those that address:
  - acceptable use; and
  - bring your own device to work (BYOD)?



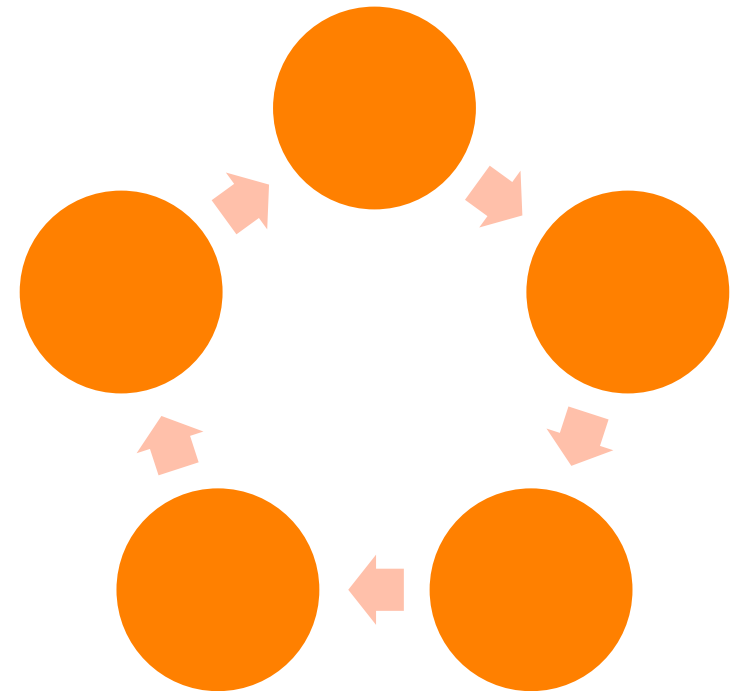
# Issues to Consider Before Developing a Policy

- Will the organization's culture and characteristics support the policy and specific policy decisions contained in it?
- Is the scope realistic?
- Does leadership value information security and will they support the policy by modeling good practices?
- Will the information security coordinator have real enforcement authority?
- Are sufficient resources available to implement and maintain the policy, including compliance monitoring?
- How technically savvy are most workforce members?
- How much (if any) control do users need over the desktops, laptops, and mobile devices they use?
- Does the organization support telecommuting and BYOD?

# Developing, Implementing, and Maintaining the Policy

Information security policy development is an iterative process, because risks and business needs change.

- Designating and empowering a **policy owner** promotes accountability.
  - The policy owner typically should be the same individual (role) identified as the information security coordinator in any WISP.
- Policy development follows a **five-step process** to:
  - identify stakeholders, build collaboration, and gather information;
  - identify legal obligations;
  - develop policy content;
  - implement the policy and supporting processes; and
  - periodically review and update the policy.



# Developing, Implementing, and Maintaining the Policy

Information security policies should be concise and change infrequently.

- A reasonable information security program requires more extensive **supporting documents** to ensure that the organization:
  - applies its policy consistently;
  - develops, implements, maintains, and improves individual program elements over time; and
  - can demonstrate the program's effectiveness in audits.
- Related documents provide technical details and may include:
  - supporting processes and procedures (organization-wide and local);
  - compliance programs;
  - technical security standards;
  - operations procedures;
  - best practices and guidelines; and
  - checklists.

# Key Policy Topics and Provisions

No single information security policy is right for all organizations, but reasonable practices and standards call for addressing core topics.

- **Introductory statements**, including:
  - basic compliance and confidentiality expectations;
  - any guiding principles;
  - scope;
  - resources for getting help;
  - privacy and monitoring expectations; and
  - regulatory compliance, including a brief review of applicable laws.
- **Responsibilities, authorities, and obligations**, including:
  - naming and designating authority to the policy owner (information security coordinator);
  - exceptions and making exception requests;
  - workforce acknowledgment and compliance obligations;
  - sanctions;
  - training; and
  - customer/client policies (if applicable).

# Key Policy Topics and Provisions

- **Data classification and risk-based safeguards and controls**, for example:
  - public information;
  - confidential information; and
  - sensitive (or highly) confidential information.
- **People-related policies**, such as:
  - roles for employees, contractors, and others;
  - identity and access management (access control); and
  - acceptable use.



# Key Policy Topics and Provisions

- **Protecting information assets**, including:
  - end-user computers and access;
  - passwords and user credentials;
  - perimeter controls;
  - data and network segmentation;
  - encryption;
  - data and media disposal;
  - log management and retention;
  - physical security; and
  - disaster preparedness.
- Managing **customer/client information** (if applicable).
- **Managing information assets**, including limits regarding:
  - procurement;
  - asset inventory and management;
  - authorized computing environments and network connections;
  - change management; and
  - application and software development (if applicable).
- **Incident** reporting and response.
- **Service provider** governance.
- Risk and compliance management.



# Communicating the Policy to the Workforce

Without clear communications and training, workforce members may be unaware of the organization's policy or confused about their personal obligations.

- The policy should make clear that:
  - in many cases, all workforce members are personally responsible for taking or avoiding specific actions as stated; but
  - in some situations, the information security team, IT, or another operational resource takes or avoids the stated actions.
- With counsel's support, organizations should:
  - select one or more appropriate policy delivery methods;
  - provide workforce training; and
  - offer workforce members expert help when needed.



# Practice Tips: Effective Policies

Effective policies share some common traits.

- Policies should:
  - have clear ownership coupled with collaborative development;
  - be based on detailed information gathering and informed decision making;
  - be written in plain language and made easily accessible;
  - apply to the current environment but evolve as the business changes;
  - set standards that are feasible to implement;
  - contemplate exceptions and their management;
  - be supported by responsive experts and processes;
  - be monitored for compliance and consistently enforced;
  - explain policy decisions where appropriate; and
  - help demonstrate information security's value to the organization.

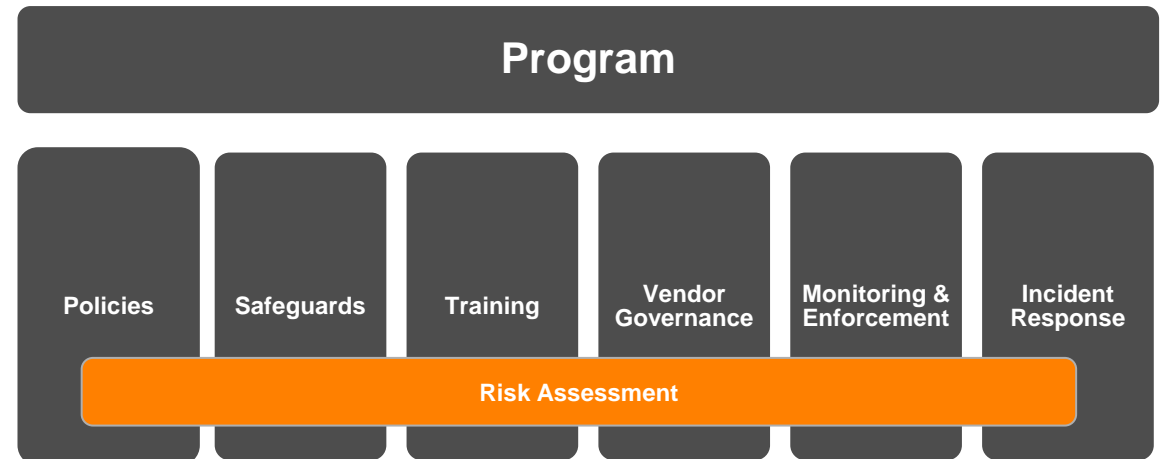


# Risk Assessment and Preventing Cyber Incidents

# Counsel's Role in Data Security Risk Assessments

Risk assessments are inherently operational, but counsel plays an important role in this crucial information security activity.

- Data security laws, regulations, and typical contract obligations often use a **reasonableness standard**.
- Organizations look to counsel for advice on what is reasonable.
- To provide effective advice, counsel must understand common data security risk assessment:
  - terminology;
  - processes; and
  - standards.



# Key Concepts for Defining Data Security Risks

Current laws and regulations that mandate risk assessments generally do not directly define risks or prescribe specific methods for identifying them.

- Data security risks are defined and prioritized by combining several elements, including:
  - **threats** to an organization's IT environment or data, whether internal or external, human or otherwise;
  - **vulnerabilities** or weaknesses that exist within the organization's environment;
  - the **likelihood** or probability that a particular threat or threat actor will exploit one or more vulnerabilities; and
  - the **impact** or harm likely to result from a particular event.



# Key Concepts for Defining Data Security Risks

- Risk assessments typically focus on:
  - identifying **reasonably foreseeable internal and external risks** to data security; and
  - reviewing an organization's **current information security program** for:
    - compliance against a specified set of standards;
    - general effectiveness; or
    - both.
- Common forms of risk assessments include:
  - audits and certifications;
  - assessments;
  - penetration tests;
  - vulnerability scans;
  - asset scans; and
  - continuous monitoring programs.



# Practice Tips: Protecting Risk Assessment Reports

Risk assessment reports and supporting documents typically contain highly confidential and sensitive information.

- Counsel should identify methods for protecting reports, such as:
  - applying attorney-client privilege, the work product doctrine, or both (where appropriate);
  - assigning the organization's most protective information classification level;
  - using extensive administrative, physical, and technical safeguards; and
  - educating risk assessment participants on the need to protect reports.



## Practice Tips: Preventing Data Breaches, What Counsel Can Do

Most data breaches and cyber incidents are preventable. Counsel can help organizations minimize their risks and the potential impact of these unfortunate events.

- Help the organization understand that information security and privacy are not just IT issues.
- Develop a WISP and appropriate policies.
- Encourage appropriate training.
- Create and maintain data and IT asset inventories, because you cannot protect something that you don't know is there.
- Support regular risk assessments.
- Maintain sound safeguards, including service provider oversight and governance.
- Stay vigilant because privacy and data security laws (and risks) are constantly evolving.
- Expect the best, but prepare for the worst with a solid (and tested!) incident response plan.

**PREVENTION  
WORKS!**



# Practical Law Related Resources

- Practice Notes
  - US Privacy and Data Security Law: Overview
  - Written Information Security Programs: Compliance with the Massachusetts Data Security Regulation
  - Developing Information Security Policies
  - Data Security Risk Assessments and Reporting
  - The NIST Cybersecurity Framework
- Standard Documents
  - Information Security Policy
  - Written Information Security Program (WISP)
- Common Gaps in Information Security Compliance Checklist

## Q&A Session



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