

Client Bulletin

June 2005

FTC Information Disposal Rule

Almost every business collects and stores information on customers or prospective customers. This information is often one of the most valued assets a company has. Information is stored in a variety of methods. Today this information is most often stored electronically on hard drives and backup tapes.

What happens to that information when you upgrade your computers? Often hardware is donated to charity, recycled, or discarded typically with little or no thought to what is on the hard drive.

The Federal Trade Commission (FTC) recently issued a regulation regarding proper disposal of sensitive types of data. The "Disposal Rule" was imposed in order to comply with the Fair and Accurate Credit Transaction act (FACT) of 2003.

Effective June 1, 2005 the disposal rule is aimed at reducing identity theft and related types of fraud. It requires that companies properly dispose of and protect consumer information. The disposal rule applies to every business where the FTC has jurisdiction regardless of size, industry or number of employees.

The FACT act does not re-

quire any new reporting or records keeping obligation. It applies to covered information when the decision is made to dispose of it.

The disposal rule requires businesses to take "reasonable measures" to prevent unauthorized access to discarded customer information. The measures utilized will vary depending on how data is retained. Traditional methods for paper disposal include shredding, pulverizing or burning. Often overlooked, but covered under the FACT act is electronic disposal. Computer hard drives and backup tapes must be properly destroyed (e.g. wiped clean, drilled, or smashed). Additionally, you must have an established policy and set of procedures to properly deal with data destruction.

The cost of not conforming could become very high. There are a range of civil liabilities and penalties that include statutory damages up to \$1,000 per violation, punitive damages, and civil penalties up to \$2,500 per violation.

If customer information were improperly disposed of and fell into the wrong hands ignorance is not a valid excuse. Knowledge that you



Reasonable measures will protect your small business.

possess "consumer information" is not a prerequisite to the duty to comply with the disposal rule. The FTC believes that in most cases covered entities will know they possess consumer information and therefore are expected to properly dispose of it. In this case ignorance is not bliss.

We would be glad to sit down with you and review your current disposal policies and practices or help you implement a conforming policy. Feel free to contact Michele Franke at 615.300.7476

Special bulletin

The information contained in this bulletin is intended for general information purposes only and should not be considered legal advice. You should consult and attorney with any legal questions.

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