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Office of General Counsel

2022 Data Practices Update

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Presentation Content

- Part One: International and Out of State Regulation Update
- Part Two: Recent Data Request Issues
- Part Three: Recent Legal Developments

Part One: International Data Protection Statutes

Europe: General Data Protection Regulation

- It has been almost four (4) years since the GDPR went into effect.
- Regulators have not targeted US institutions of higher education
- However, there have been some cases of students and employees invoking GDPR rights

GDPR: Examples of Student Issues

- Students or employees asking to delete records
- Students invoking GDPR rights to avoid investigations

GDPR: Online Education

- If we don’t advertise, we don’t trigger compliance obligations.
- However, keep in mind that this isn’t the only issue with offering online classes directly to international students outside the United States.

GDPR: Standard Contractual Clauses

- Increasingly common in software contracts
- Require legal review, even though they are clauses of adhesion set by statute
- Not necessarily problematic, but sometimes can be paired with other clauses that are, e.g. indemnification, choice of law.

China – Personal Information Protection Law (PIPL)

- New regulation went into effect in November 2021.
- China's answer to the GDPR, containing similar language about consent.
- Gives the Chinese government extraordinary powers over personal data.
- Some American tech companies have left China due to this law.

Other Statutes

- Non-EU countries such as the UK, Switzerland, and Turkey have versions of the GDPR.
- Various other countries have national data privacy legislation (Israel, Japan, Canada, Bahrain, Qatar, Brazil, etc.).
- California law (not international, but important to note) – does NOT apply to public entities.

Part Two: Recent Data Practices Issues

Requests from Generic Email Addresses

- If you are concerned about phishing, report to IT Security. They will examine the email and determine if it is a phishing threat.
- If the email is not a phishing attempt, you have to respond to the data request.
- If the email is a phishing attempt, you do not have to respond.

Request Timing Reminder

- We have ten (10) business days to respond to requests from data requestors for data on themselves. This includes students and persons with the consent of the data subject.
- We have a “reasonable time” to respond to other requests.
- However, keep in mind that “reasonable” does not mean we have an indefinite amount of time to respond.

Size and Scope of Requests

- We've recently gotten several large data requests.
- We still need to respond to these in a reasonable amount of time.
- However, keep in mind that you can charge data requestors for copies.

Charging Data Requestors

- Hard files – 25 cents per page, actual costs if over 100 pages.
- Actual costs include search and retrieval (salary plus fringe of lowest paid employee who can conduct the search).
- Electronic files – actual costs except for:
  - Redaction time
  - Search and retrieval costs for data subjects

Copyrighted Works

- Minnesota State does not own the copyright to faculty or student works.
- If we receive a request for these works, we ask data requestors to agree to use the works in accordance with the “fair use”

Part Three: Recent Legal Developments

Halva Case

- Plaintiff wanted procurement data from the Minnesota State System Office.
- MN Supreme Court held that the Official Records Act does not contain a private right of action.
- However, the court was unclear about whether the MGDPA can be used to compel us to keep certain records.
- Follow your record retention schedules.

Audio and Video Records

- If these are public data, they need to be provided to data requestors.
- Redacting an audio or video record can be problematic to say the least.
- Describing the content of the recording, and omitting private data, is one manner of complying.
- Security cam footage is public data according to MN Supreme Court.

Recent Advisory Opinions

- Professional development classes taken by faculty are public data.
- Security data exception requires a short description of the need for this classification.
- Recordings on personal devices can be public data.
- Campuses must have data access policies.

Reminder: Campus Presentations

- Overview of MGDPA and FERPA
- Scheduling Zoom meetings
- Email me directly if you'd like to set one up for your campus

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Questions and Answers

- Please chat in your questions.

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