
Privacy in the Technology Age...

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Learning Objectives

- Privacy Awareness
 - Electronic Discovery
 - High Risk Behavior
 - Risks of Outsourcing
 - Privacy Rights and Remedies for Texas Consumers
 - Appropriate Controls to Ensure Privacy
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Privacy Awareness: Government

■ Fourth Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

- Drafted in response to the British magistrates issuing “general warrants” without probable cause or reasonable specificity.

■ Fifth Amendment

“No person...shall be compelled in any criminal case to be a witness against himself...”

- Applies only to spoken statements, generally will not apply to writings, physical evidence, contents of hard drives, etc. (very few exceptions: diaries, etc.)
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Privacy Awareness: Private Entities

- Codified/Statutory Privacy Law
 - Duty to Destroy
 - Duty to Report
 - Duty to Protect/Secure/Encrypt
 - Prosser's Four Torts – Civil Right to Privacy
 - Identity Theft
 - False Light
 - Public Disclosure of Private Facts
 - Unreasonable Intrusion Upon Seclusion or Solitude
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High Risk Behavior by Employers

- Any Type of Aural Communication Monitoring
 - Assumptions of Device Ownership
 - Failure to Research Applicable Laws
 - HIPAA
 - Privacy Laws by Jurisdiction
 - Privacy Case Law
 - Failure to Adhere to Industry Best Practices
 - Failure to Secure Archived Data
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High Risk Behavior by Employers

- Employee Owned Devices
 - Allowing Connectivity to Networks
 - Outsourcing
 - Cloud Computing
 - Excessive Social Network Activity
 - Facebook
 - Yammer
 - Excessive Comingling of Time
 - Failure to Train Employees
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High Risk Behavior

- Attitude of “If its legal, I can do it.”
 - Failure to adhere to good ethical standards
 - Lack of respect for the fundamental privacy rights of your fellow employees or family.
 - Excessive reliance on “what is legal” as opposed to “what is right”
 - Results in the creation of more laws
 - Results in greater government involvement in day to day business or household activities.
 - Results in lower employee or household morale
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Privacy Risks of Outsourcing

- Adding a third party to the data flow
 - Additional parties for adverse parties to subpoena
 - Loss of control over the data
 - Loss of control=inability to secure/protect
 - Relative immaturity of services being offered
 - Excessive reliance on third parties for critical communications infrastructure.
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Privacy Rights and Remedies: Damages

- Now for the wake up call...
 - The fundamental element of almost every legal cause of action is: Damages.
 - How does one prove actual damages for an invasion of privacy?
 - Conclusion: Actual damages are nearly impossible to prove without involvement of third parties and supposition.
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Privacy Rights and Remedies: Damages

- Solution to “Damages Problem”: Statutory Relief and Punitive/Exemplary Damages
 - Damages are calculated by way of statute, typically on a “per violation” scale
 - Punitive damages are allowed by way of statute
 - Purpose is to punish violators and discourage others from engaging in similar activities.
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Privacy Rights and Remedies: Some Texas Causes of Action

- Invasion of Privacy: Intrusion on Seclusion and Solitude
 - Invasion of Privacy: Public Disclosure of Private Facts
 - Defamation: Slander
 - Defamation: Libel
 - Interception of Wire, Aural, and Electronic Communications
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Privacy Rights and Remedies: Some Texas Crimes

- Unlawful Use of a Criminal Instrument
 - Unlawful Use of a Trap and Trace Device
 - Unlawful Access to Stored Communications
 - Stalking
 - Assisting or Encouraging
 - Risk if employer resources are used
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Interception of Wire, Aural, and Electronic Communications

- TEX. CIV. PRAC. & REM. CODE § 123
 - Allows for damages of \$10,000 per occurrence
 - Occurrence: each act of interception, attempted interception, use, or divulgence.
 - Texas Criminal Wiretap Act, TEX. PEN. CODE, § 16.02
 - TEX. CODE OF CRIM. PROC. § 18.20
 - FEDERAL WIRETAP ACT 18 U.S.C. § 2510-2520 for wire, aural, and electronic interceptions.
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Appropriate Controls to Help Protect Privacy

- Policies, Habit, Good Business Practice
 - Data Segregation
 - Security by Obscurity
 - Removing Cruft
 - Data Encryption
 - Data Destruction
 - Slack Space and Free Space Wiping
 - Online Anonymity
 - Training
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Policies, Habit, and Good Business Practice

- Create business policies that allow for ongoing destruction and removal of unused data.
 - Comply with all relevant laws, regulations, and accepted practice within industry.
 - Distribute throughout company.
 - Training.
 - Goal of ensuring that non-relevant, discoverable data is destroyed as a matter of “...regularly conducted business...” or “...habit or ritual...”.
 - **NEVER DESTROY IN ANTICIPATION OF LITIGATION!!!**
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Data Segregation

- Explained
 - Methodology
 - Create separate drives, folders, or similar logically separated areas for each client, business area, subject, department.
 - Avoid lumping all client data in one place.
 - Habit and Best Practices
 - This must become standard practice.
 - Avoids perception of impropriety or bad faith.
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Logs

- Explained
 - Clearing them
 - Cost-Free Tools
 - Log files are *very* vendor specific, therefore, the list of tools is as long as the list of all software applications.
 - CCCleaner - <http://www.ccleaner.com/>
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Cruft

- Explained
 - Getting rid of it
 - Some Cost-Free Tools
 - CCCleaner - <http://www.ccleaner.com/>
 - My approach:
 - Run CCCleaner
 - Follow up with a full free space wipe using Eraser - <http://sourceforge.net/projects/eraser/>
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Data Encryption

- Explained
 - “Encryption at Rest”
 - “Encryption in Transit”
 - Cost-Free Tools
 - PGP - <http://www.pgp.com/>
 - Not free, but very intuitive and reasonably priced.
 - GnuPG - <http://www.gnupg.org/>
 - Requires experience working with PGP or similar public/private key encryption.
 - TrueCrypt - <http://www.truecrypt.org/>
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Data Destruction

- Explained
 - Cost-Free Tools
 - DBAN (Darik's Boot and Nuke) - <http://www.dban.org/>
 - Eraser - <http://sourceforge.net/projects/eraser/>
 - Device Wiping
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Metadata Removal

- Explained
 - Some Cost-Free Tools
 - Office 2003/XP Add-In: Remove Hidden Data
 - <http://www.microsoft.com/downloads/>
 - MS Office: Document Inspector
 - DocScrubber -
<http://www.javacoolsoftware.com/docscrubber.html>
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Slack Space and Free Space Wiping

- Explained
- Some Cost-Free Tools
 - Eraser - <http://sourceforge.net/projects/eraser/>



Online Anonymity

- Explained
 - Ethical Considerations
 - Some Cost-Free Tools
 - Anonymous Emailers – *Won't go here...go google.*
 - TOR - <http://www.torproject.org/>
 - Privoxy - <http://www.privoxy.org/>
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Android Apps for Protecting Privacy

- Vault

- <http://vault.en.softonic.com/android>

- Video Locker

- <https://play.google.com/store/apps>

- Hide It Pro

- <http://hideitpro.com/>

- Vaulty

- <http://vaultyapp.com/>

- AppLock

- <https://play.google.com/store/apps>

IOS Apps for Protecting Privacy

- Wickr
 - <https://www.wickr.com/>
 - Clueful Privacy Advisor
 - <http://www.cluefulapp.com/>
 - SurfEasy VPN
 - <https://www.surfeasy.com/>
 - MyPermissions - Online Privacy Shield
 - <http://mypermissions.com/>
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What Lies Ahead?

- Continued erosion of the U.S. Citizen's privacy.
 - Culture of "No Privacy" in the household.
 - Culture of information ownership in the business.
 - U.S. Citizens increasingly place less and less value on privacy.
 - Private contractors will, and arguably already are, being used by government agencies to circumvent constitutional protections.
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Conclusion

- Current trends paint a rather bleak picture.
- Hard cases make bad law.
- The importance of knowing how to protect yourself cannot be emphasized enough.

“In skating over thin ice, our safety is our speed.” --Ralph Waldo Emerson

Questions
