



Data Security Incident Response and Attorney Obligations

Caroline B. Brackeen, Baker Hostetler
Andy Sawyer, Locke Lord

BakerHostetler

LockeLord

1

Summary of the Topics to Discuss

- Incident Response
- Attorneys' Ethical and Legal Obligations to Protect Client Data
- Recommendations on How to Protect Client Data

BakerHostetler

LockeLord

2

Where are the threats?

External Threats

- State-Sponsored
- Cyber-Espionage
- “Hacktivists”
- Vendors



Internal Threats

- Employee Negligence
- Employee Ignorance
- Malicious Employees



BakerHostetler

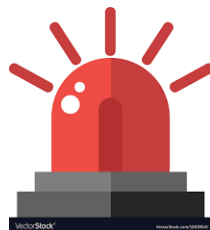
LockeLord

3

Incident Response for Lawyers

Attack on your own systems:

- Who do you call first?
 - Internal or External IT?
- Share exact details of what happened
- Develop containment plan
 - Is a vendor needed?
- Legal analysis if notification is required
 - State & Federal laws? Model rules?
- Complete notifications



Attack on your client's systems:

- You may be their first call!
- Get a full explanation of what happened
- Who needs to be involved?
 - Insurance? Vendors? Cybersecurity counsel?
- What value are you adding?
 - Contracting with vendors
 - Attorney-Client privilege
- Develop containment plan
 - Is a vendor needed?
- Legal analysis if notification is required
 - Applicable state, federal or international laws?
- Assist with completing notifications
- Regulatory investigations
- Litigation

BakerHostetler

LockeLord

4

Lawyers/Law Firms Are Tempting Targets

Why law firms?

- “Attractive Targets”
 - Large amount of stored information
 - Highly sensitive nature of that information
 - More efficient for hackers, whether to steal confidential data for its own sake or to use in hitting another target, such as a client
- “Soft Targets”
 - “The soft underbelly of corporate cybersecurity”
 - Law firms have many things to be concerned about, including malware, hackers and unpatched software and devices . . .

BakerHostetler

LockeLord

5

5

What types of information are at risk?

- “Confidential Information” in Attorney Files
- Trade Secrets
- Strategic Data
 - M&A targets and due diligence
 - Supply contracts, Pricing
 - Development Data/Reserve Estimates
- Personally identifiable Information of all kinds for employees, clients and third parties
- Payment Card / Bank Account Information



BakerHostetler

LockeLord

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Data Security Incident Response and Attorney Obligations

Also available as part of the eCourse

[2020 Ernest E. Smith Oil, Gas, and Mineral Law eConference](#)

First appeared as part of the conference materials for the
46th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"Data Security Incident Response and Attorneys' Obligations"