

FILED WITH LRC
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Donna Little
REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Commonwealth Office of Technology

3 (New Administrative Regulation)

4 200 KAR 1:015. Data Breach Notification Forms.

5 RELATES TO: KRS 61.932; KRS 61.933

6 STATUTORY AUTHORITY: KRS 42.726(2)(b); KRS 61.932; KRS 61.933.

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 42.726(2)(b) authorizes the
8 Finance and Administration Cabinet, Commonwealth Office of Technology ("COT") to
9 promulgate regulations relating to COT's duties. KRS 61.933 specifically authorizes COT to
10 prescribe forms necessary for notification by state agencies and nonaffiliated third parties when
11 they suspect or have determined that a breach of personal information that the state agency or
12 nonaffiliated third party maintains or otherwise possesses on behalf of another agency has
13 occurred. KRS 61.932 specifically authorizes COT to prescribe forms when law enforcement
14 agencies have requested a delay of notification to allow for investigation of the suspected or
15 determined breach. This regulation establishes the required forms for notification of a suspected
16 or determined breach of personal information or a request to delay notification by law
17 enforcement.

18 Section 1. Administrative - Required Forms. (1) Finance Form FAC-001, "Suspected and
19 Determined Breach Notification Form," shall be completed by a state agency or nonaffiliated
20 third party to notify the agency for whom it maintains or otherwise possesses personal
21 information regarding a suspected or determined breach in data.

1 (2) Finance Form FAC-002, "Delay Notification Record," shall be completed by state
2 agency or nonaffiliated third party when a law enforcement agency has requested a delay of
3 notification to allow for investigation of the suspected or determined breach.

4 Section 2. Incorporation by Reference. (1) The following material is incorporated by
5 reference:

6 (a) Finance Form FAC-001, "Suspected and Determined Breach Notification Form," August,
7 2014;

8 (b) Finance Form FAC-002, "Delay Notification Record," August, 2014.

9 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law,
10 at the Commonwealth Office of Technology, 101 Cold Harbor Drive, Frankfort, Kentucky 40601
11 Monday through Friday, 8 a.m. to 5 p.m. COT will also provide an electronic copy of the forms
12 on the Finance and Administration Cabinet website, <http://finance.ky.gov/Pages/default.aspx>.

APPROVED:

Steve Rucker

Steve Rucker, Deputy Secretary
Finance and Administration Cabinet

8-14-14

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 23, 2014 from 10:00a.m. to 12:00p.m., in Room 381, Capitol Annex Building, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until September 30, 2014. Send written notification of intent to be heard at the public hearing or written comments on the proposed amended administrative regulation to the contact person.

Contact Person: Doug Hendrix, Deputy General Counsel, Finance and Administration Cabinet, 702 Capitol Avenue, Frankfort, KY, 40601, (502) 564-6660 (telephone), (502) 564-9875 (fax).

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 200 KAR 1:015

Contact Person: Doug Hendrix
Phone Number: (502) 564-6660

(1) Provide a brief summary of:

(a) What this administrative regulation does: KRS 42.726(2)(b) authorizes the Finance and Administration Cabinet, Commonwealth Office of Technology ("COT"), to promulgate regulations relating to COT's duties. KRS 61.933 specifically authorizes COT to prescribe forms necessary for notification by state agencies and nonaffiliated third parties when they suspect or have determined that a breach of personal information that the state agency or nonaffiliated third party maintains or otherwise possesses on behalf of another agency has occurred. KRS 61.932 specifically authorizes COT to prescribe forms necessary and when law enforcement agencies have requested a delay on notification to allow for investigation of the suspected or determined breach. This regulation prescribes those forms.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order for COT to meet the requirements of KRS Chapter 13A.110 which requires that forms required to be submitted by a regulated entity shall be included in an administrative regulation, as well as the specific directives of KRS 61.932 and KRS 61.933.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.932 and KRS 61.933 specifically direct COT to prescribe these forms.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The forms prescribed herein will provide necessary notice to agencies, law enforcement, the Auditor of Public Accounts and the Attorney General as required by House Bill 5 of the 2014 Regular Session of the General Assembly.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state agencies or private entities (identified as nonaffiliated third parties) which maintain or otherwise possess personal information for state agencies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Affected entities must complete the necessary forms when they suspect or determine that a breach of personal information has occurred.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be a minimal cost to complete the forms.

(c) As a result of compliance, what benefits will accrue to the entities identified in

question (3): Affected entities will comply with the requirements of KRS 61.931-934.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: COT will not incur any initial costs as the result of this regulation.

(b) On a continuing basis: COT will not incur any additional costs as the result of this regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: COT agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation does not require an increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not applied.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 200 KAR 1:015

Contact Person: Doug Hendrix
Phone Number: (502) 564-6660

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? No local government entities will be affected but COT and any state agency which suspects or experiences a breach of personal information.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 42.726; KRS 61.932; KRS 61.933.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional cost.

(d) How much will it cost to administer this program for subsequent years? No additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

2014
200 KAR 1:015
SUMMARY OF FORMS
INCORPORATED BY REFERENCE

1) Finance Form FAC-001, "Suspected and Determined Breach Notification Form", effective August, 2014 is a form to be used by state agencies and nonaffiliated third parties who maintain or otherwise possess personal information on behalf of another agency to notify that agency of a suspected or determined breach of data within 72 hours.

2) Finance Form FAC-002, "Delay Notification Record", effective August, 2014 is a form to be used by state agencies or nonaffiliated third parties when law enforcement has requested a delay in the notice of a suspected or determined breach of personal information.

Suspected and Determined Breach Notification Form

Agency notify in writing if suspected or determined breach within 72 hours to agencies below:

Suspected Determined

- Finance Cabinet Secretary
- Auditor of Public Accounts (APA)
- Kentucky State Police (KSP)
- Attorney General (AG)
- Commissioner of Department of Library and Archives, if breach determined
- Chief Information Officer of Commonwealth Office of Technology
- If Department of Local Government under KRS 61.931(1)(b) or (c) also contact:
 Commissioner of Department of Local Government
- If Public School District listed in KRS 61.931(1)(d) also contact:
 Commissioner of Kentucky Department of Education
- If Educational entity listed under KRS 61.931(1)(e) also contact:
 President of Council on Postsecondary Education

Agency Name: _____

Date of Notification to Agencies Above on Suspected Breach: _____ Time of Notification: _____

Date of Suspected Breach: _____

Has Breached Occurred: Yes No Date Breach Determined: _____

Personal Information Breached: Yes No

If Yes, Explain: _____

Total Number of Individuals Impacted: _____ Date Individuals Notified: _____

Type of Notices Sent Out (select all that apply and provide explanations):

- | | |
|---------------------------------------------------|-------------------------------------|
| <input type="checkbox"/> Web Posting: | <input type="checkbox"/> Email: |
| <input type="checkbox"/> Local or Regional Media: | <input type="checkbox"/> Telephone: |
| <input type="checkbox"/> Letter: | <input type="checkbox"/> Other: |

Did You Notify Consumer Credit Reporting Agencies? Yes No If Yes, Date: _____

Any Other Breach Compliance Requirements Apply such as Federal? Yes No
If Yes, Explain: _____

Third Party Breach: Yes No

If Yes, Third Party Name: _____

If Third Party Involved, When Did They Notify the Agency: _____

If a delay then please attach the delay notification record along with supporting documentation. Was there a delay due to:

Law enforcement investigation. Reference to KRS 61.933 (3)(a)

An agency determines that measures necessary to restore the reasonable integrity of the data system cannot be implemented within the timeframe established and will delay the suspected or breach determination. Delay will need to be approved in writing from the Office of the Attorney General.

Reference to KRS 61.933 (3)(b)

Actions Taken to Resolve Breach:

Actions Taken to Prevent Additional Security Breaches in Future?

A General Description of what Actions are Taken as a Matter of Course to Protect Personal Data from Security Breaches:

Any Quantifiable Financial Impact to the Agency Reporting the Security Breach:

Reference:

KRS 61.931 to 61.934 - <http://www.lrc.ky.gov/Statutes/statute.aspx?id=43575>

KRS 42.726 - <http://www.lrc.ky.gov/Statutes/statute.aspx?id=43580>

Delay Notification Record

All documentation in reference to the delay should be attached to the notification record.

Agency Name: _____

3rd Party Name, if applicable: _____

Agencies are to use this form to record information:

If a law enforcement investigation has delayed the notification process for a suspected or breach determination. Reference to KRS 61.933 (3)(a)

Date Law Enforcement Notified Agency: _____

Law Enforcement Agency: _____

If an agency determines that measures necessary to restore the reasonable integrity of the data system cannot be implemented within the timeframe established and will delay the suspected or breach determination. Delay will need to be approved in writing from the Office of the Attorney General. Reference to KRS 61.933 (3)(b)

Date Submitted to Office of Attorney General: _____

Date Approved by the Office of Attorney General: _____

The agency will submit form FAC-001 as required by KRS 61.933 if law enforcement has not contacted it within seventy-two (72) hours of a suspected or determined breach.