

9 GCA CRIMES AND CORRECTIONS
CH. 48 NOTIFICATION OF BREACHES OF PERSONAL INFORMATION

CHAPTER 48
NOTIFICATION OF BREACHES OF PERSONAL INFORMATION

SOURCE: This entire chapter added by P.L. 30-004:1 (Mar. 13, 2009).

2009 COMMENT: See § 48.70 for the effective date of this Chapter.

- § 48.10. Legislative Findings and Intent.
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§ 48.10. Legislative Findings and Intent.

I Liheslaturan Guåhan finds that both public and private entities on Guam have a duty to safeguard personal information that, *if* stolen *or* publicized, may result in crimes such as fraud and identity theft. The anonymity of the global internet, that transcends the borders of sovereign nations, makes it possible for unscrupulous individuals to profit from the theft of personal information and never be brought to justice for their crimes *or* made to pay restitution. Therefore, it is incumbent upon all entities that are entrusted with such data to maintain strong security systems to ensure that the personal information will always be protected.

It is the intent of *I Liheslatura* to ensure that the personal information of the residents of Guam is protected, by providing procedures for notification of security breaches related to personal information and thereby encouraging individuals and commercial entities, as defined by public law, to provide reasonable security for unencrypted personal information.

§ 48.20. Definitions.

As used in this Chapter:

(a) *Breach of the security of a system* means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security *or* confidentiality of personal information maintained by an individual *or* entity as part of a database of personal

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information regarding multiple individuals and that causes, *or* the individual *or* entity reasonably believes has caused *or* will cause, identity theft *or* other fraud to any resident of Guam.

Good faith acquisition of personal information by an employee *or* agent of an individual *or* entity for the purposes of the individual *or* the entity is *not* a breach of the security of the system, provided, that the personal information is *not* used for a purpose other than a lawful purpose of the individual *or* entity *or* subject to further unauthorized disclosure.

(b) *Entity* includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies, *or* instrumentalities, *or* any other legal entity, whether for profit *or* not-for-profit.

(c) *Encrypted* means transformation of data through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without the use of a confidential process *or* key, *or* securing the information by another method that renders the data elements unreadable *or* unusable.

(d) *Financial institution* has the meaning given that term in Section 6809(3) of Title 15, United States Code.

(e) *Individual* means a natural person.

(f) *Personal information* means the first name, *or* first initial, and last name in combination with and linked to any one *or* more of the following data elements that relate to a resident of Guam, when the data elements are *neither* encrypted *nor* redacted:

(1) Social Security number;

(2) Driver's license number *or* Guam identification card number issued in lieu of a driver's license; *or*

(3) Financial account number, *or* credit card *or* debit card number, in combination with any required security code, access code, *or* password that would permit access to a resident's financial accounts.

(4) The term *does not* include information that is lawfully obtained from publicly available information, *or* from Federal, State,

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or local government records lawfully made available to the general public.

(g) *Notice* means:

(1) Written notice to the postal address in the records of the individual *or* entity;

(2) Telephone notice;

(3) Electronic notice; *or*

(4) Substitute notice, *if* the individual *or* the entity required to provide notice demonstrates that the cost of providing notice will *exceed* Ten Thousand Dollars (\$10,000), *or* that the affected class of residents to be notified *exceeds* five thousand (5,000) persons, *or* that the individual *or* the entity does *not* have sufficient contact information *or* consent to provide notice as described in paragraphs 1, 2, *or* 3. Substitute notice consists of any two (2) of the following:

(A) E-mail notice *if* the individual *or* the entity has e-mail addresses for the members of the affected class of residents;

(B) Conspicuous posting of the notice on the Website of the individual *or* the entity, *if* the individual *or* the commercial entity maintains a Website; and

(C) Notice to major Guam media.

(h) *Redact* means alteration *or* truncation of data such that *no more than* the following are accessible as part of the personal information:

(1) five (5) digits of a Social Security Number, *or*

(2) The last four (4) digits of a driver's license number, Guam identification card number *or* financial account number.

§ 48.30. Disclosure of Breach of Security of Computerized Personal Information by an Individual *or* Entity.

(a) **General Rule.** An individual *or* entity that owns *or* licenses computerized data that includes personal information *shall* disclose any breach of the security of the system following discovery *or* notification of the breach of the security of the system to any resident of Guam whose unencrypted and unredacted personal information was *or* is reasonably believed to have been accessed and acquired by an unauthorized person and

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that causes, *or* the individual *or* entity reasonably believes has caused *or* will cause, identity theft *or* other fraud to any resident of Guam. *Except* as provided in subsection (d) of this Section, *or* in order to take any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the system, the disclosure *shall* be made without unreasonable delay.

(b) **Encrypted Information.** An individual *or* entity must disclose the breach of the security of the system *if* encrypted information is accessed and acquired in an unencrypted form, *or if* the security breach involves a person with access to the encryption key and the individual *or* entity reasonably believes that such breach has caused *or* will cause identity theft *or* other fraud to any resident of Guam.

(c) An individual *or* entity that maintains computerized data that includes personal information that the individual *or* entity *does not* own or license *shall* notify the owner *or* licensee of the information of any breach of the security of the system as soon as practicable following discovery, *if* the personal information was, *or* if the entity reasonably believes was, accessed and acquired by an unauthorized person.

(d) Notice required by this Section may be delayed *if* a law enforcement agency determines and advises the individual *or* entity that the notice will impede a criminal *or* civil investigation, *or* homeland *or* national security. Notice required by this Section must be made without unreasonable delay after the law enforcement agency determines that notification will no longer impede the investigation *or* jeopardize national *or* homeland security.

§ 48.40. Procedures Deemed in Compliance with Security Breach Requirements.

(a) **Information Privacy *or* Security Policy.** An entity that maintains its own notification procedures as part of an information privacy *or* security policy for the treatment of personal information and that are consistent with the timing requirements of this Chapter *shall* be deemed to be in compliance with the notification requirements of this Chapter *if* it notifies residents of Guam in accordance with its procedures in the event of a breach of security of the system.

(b) **Compliance with Federal requirements.**

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(1) A financial institution that complies with the notification requirements prescribed by the Federal Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice is deemed to be in compliance with this Chapter.

(2) An entity that complies with the notification requirements *or* procedures pursuant to the rules, regulations, procedures, *or* guidelines established by the entity's primary *or* functional Federal regulator *shall* be in compliance with this Chapter.

§ 48.50. Violations.

(a) A violation of this Chapter that results in injury *or* loss to residents of Guam may be enforced by the Office of the Attorney General.

(b) *Except* as provided by § 48.40 of this Chapter, the Office of the Attorney General *shall* have exclusive authority to bring action and may obtain either actual damages for a violation of this Chapter *or* a civil penalty *not to exceed* One Hundred Fifty Thousand Dollars (\$150,000) per breach of the security of the system *or* series of breaches of a similar nature that are discovered in a single investigation.

§ 48.60. Applicability.

This Chapter *shall* apply to the discovery *or* notification of a breach of the security of the system that occurs on *or* after the effective date of this Chapter.

§ 48.70. Effective Date.

This Chapter *shall* take effect one hundred twenty (120) days after the date of enactment.

§ 48.80. Preemption.

This Chapter deals with subject matter that is of island-wide concern, and it is the intent of *I Liheslatura* that this Chapter *shall* supersede and preempt all rules and regulations regarding the matters expressly set forth in this Chapter.
