

Proposed Local Law \_\_\_\_\_ 2006

A local law establishing the Town of Dryden policy on notification upon the unauthorized release of private information.

PREFACE: This local law is adopted to comply with the requirements of State Technology Law Section 208 which became effective December, 7, 2005.

1. As used in this local law, the following terms shall have the following meanings:

(a) "Private information" shall mean personal information in combination with any one or more of the following data elements, when either the personal information or the data element is not encrypted or encrypted with an encryption key that has also been acquired;

(1) social security number;

(2) driver's license number or non-driver identification card number;  
or

(3) account number, credit or debit card number, in combination with any required security code, access code, or password which would permit access to an individual's financial account

"Private information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(b) "Breach of security of the system" shall mean unauthorized acquisition or acquisition without valid authorization of computerized data which compromises the security, confidentiality, or integrity or personal information maintained by the town. Good faith acquisition of personal information by an employee or agent of town for the purposes of the town is not a breach of the security of the system, provided that the private information is not used or subject to unauthorized disclosure.

In determining whether information has been acquired, or is reasonably believed to have been acquired, by an unauthorized person or a person without valid authorization, the town may consider the following factors, among others:

(1) indications that the information is in the physical possession and control of an unauthorized person, such as a lost or stolen computer or other device containing information; or

- (2) indications that the information has been downloaded or copied;  
or
  - (3) indications that the information was used by an unauthorized person, such as fraudulent accounts opened or instances of identity theft reported.
- (c) “Town” shall mean the Town of Dryden, Tompkins County, New York, and any board, bureau, division, committee, commission, council, department, office or other entity performing a governmental or proprietary function of the town, except judiciary of the town.
- (d) “Consumer reporting agency” shall mean any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. A list of such consumer reporting agencies is compiled by the state attorney general.
2. When the town owns or licenses computerized data that includes private information, it shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the system to any resident of New York State whose private information was, or is reasonably believed to have been, acquired by a person without valid authorization. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision four of this local law, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.
  3. When the town maintains computerized data that includes private information which the town does not own, the town shall notify the owner or licensee of the information of any breach of the security of the system immediately following discovery, if the private information was, or is reasonably believed to have been, acquired by a person without valid authorization.
  4. The notification required by this section may be delayed if a law enforcement agency determines that such notification impedes a criminal investigation. The notification required by this section shall be made after such law enforcement agency determines that such notification does not compromise such investigation.
  5. The notice required by this section shall be directly provided to the affected persons by one of the following methods:

- (a) written notice;
  - (b) electronic notice, provided that the person to whom notice is required expressly consented to receiving said notice in electronic form and a log of each such notification is kept by the town when it notifies affected persons in such form; provided further, however, that in no case shall any person or business require a person to consent to accepting said notice in said form as a condition of establishing any business relationship or engaging in any transaction;
  - (c) telephone notification, provided that a log of each such notification is kept by the town when it notifies affected persons; or
  - (d) substitute notice, which notice shall consist of all of the following:
    - (1) e-mail notice when the town has an e-mail address for the subject persons;
    - (2) conspicuous posting of the notice on such town's web site page, if the town maintains one; and
    - (3) notification to major statewide media.
6. Regardless of the method by which notice is provided, such notice shall include contact information for the town and the name of the person making the notification and a description of the categories of information that were, or are reasonably believed to have been, acquired by a person without valid authorization, including specification of which of the elements of personal information and private information were, or are reasonably believed to have been, so acquired.
7. (a) In the event that any New York residents are to be notified, the town shall notify the state attorney general, the consumer protection board, and the state officer of cyber security and critical infrastructure coordination as to the timing, content and distribution of the notices and approximate number of affected persons. Such notices shall be made without delaying notice to affected New York residents.
- (b) In the event that more than five thousand New York residents are to be notified at one time, the town shall also notify consumer reporting agencies as to the timing, content and distribution of the notices and approximate number of affected persons. Such notice shall be made without delaying notice to affected New York residents.
8. This local law shall take effect upon filing with the Secretary of State.