

MSD Kiosk debacle - learnings

The MSD problem shows how legal and reputational risk management overlap.

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The Privacy Act requires organisations to protect information with such security safeguards as are reasonable in the circumstances. So, 100% security is not required, but best industry practice is a good benchmark. The degree of required protection in each case will reflect the sensitivity of the information. MSD has highly sensitive information so its security must be high. Protecting the fact that I ordered a Pepperoni Pizza from Hell's Pizza requires low security.

There are also obligations under other laws such as the laws of negligence and of confidentiality. The required standards under those laws are similar. Breach of these laws including the Privacy Act can lead to the organisation being liable for damage caused to affected people and firms.

The Privacy Act also says that, if it is necessary to give information to a third party (for example a hosting service), that person must do everything reasonable in its power is done to prevent unauthorised use or disclosure. In other words the organisation cannot do a Pontius Pilate simply by outsourcing.

Probably no-one affected by the MSD security breach will sue. The \$ impacts are not likely to be high enough. While litigation will sometimes happen where there's a security breach (eg if a large company's secrets are let out of the bag or a leak causes reputational damage to an individual) often the real issue, as with MSD, is reputational.

Managing the legal and reputational risks closely

overlap. If the following NBR story is correct, MSD has breached a cardinal rule, as GE's Jack Welsh notes: take it on the chin, do it quickly, and don't state facts when the answer is not clear. The NBR report – 3 days after the story broke - says:

“Yesterday - after initially blaming IT contractor Dimension Data - the MSD's Mr Boyle admitted Dimension had warned about issues with the kiosks in April last year, but that its recommendations “might” have been ignored.”

Of course MSD had to scurry to sort out how to deal with the kiosk problem and they did take it on the chin. But the organisation should unequivocally take responsibility. In pointing the finger early on at Dimension Data, that story gets diluted. Yes, they didn't directly blame Dimension. They just said that Dimension's role would be reviewed. Well, that's close to blaming them. But worse, MSD have to backtrack to say Dimension Data warnings might have been ignored. Bad enough for MSD, as its attempt to point fingers bounced back on it, but what about fairness in dealing with suppliers? Dimension won't be a happy camper. We doubt they'd look to legal rights, but this is treading in defamation territory (we're not saying it's defamatory as we don't know enough about the facts: we're only saying this could be an issue to consider).

Remember when the NZ Olympic team head-honcho dobbed in an official for the Valerie Adams screw-up? A lot of people didn't like that even if they thought the official caused the problem.

We welcome your feedback on this article and any enquiries in relation to its contents. This article is intended to provide a summary of the material covered and does not constitute legal advice. We can provide specialist legal advice on the full range of matters contained in this article.

Wigley+Company

PO Box 10842
Level 7/107 Customhouse Quay, Wellington
T +64(4) 472 3023 E info@wigleylaw.com

and in Auckland
T +64(9) 307 5957

www.wigleylaw.com

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