

Presenter Bios

Billee Elliott McAuliffe

Member
Lewis Rice LLC



- Billee Elliott McAuliffe is the practice group leader of the Information Technology and Data Privacy practice groups in the Corporate Department of Lewis Rice. In over twenty years of practicing law, Billee has gained extensive experience in all areas of corporate law, including technology licensing, cybersecurity and data privacy, mergers and acquisitions, and general business and corporate law. With this background and perspective, she understands the operations and needs of all types of businesses and provides well-rounded, practical, client-centered guidance and advice.

Melissa G. Powers

Associate
Lewis Rice LLC



- Melissa G. Powers is an associate practicing general business and transactional law in the Corporate Department of Lewis Rice. Her areas of particular experience include cybersecurity and data privacy, as well as information technology and cyber liability insurance. She regularly advises on compliance and best practices for data management and incident preparedness. Melissa also designs and implements privacy and security programs including audit and risk assessments, global policies, national and international data transfer agreements, and innovative structures, processes, and arguments to enable organizations to comply with an increasingly complex global regulatory environment.



Privacy Compliance: *Why Are We Talking About This?*

“When rating a list of items in terms of their importance to the business using a 1-to-10 scale, from very low importance (1) to very high importance (10), **CLOs continue to place cybersecurity, regulation and compliance issues, and data privacy as the top three issues for the business.** This aligns with the survey’s other findings that CLOs expect industry-specific regulations and data protection privacy rules to pose the biggest legal challenges to the business this year.”

- 2023 ACC Chief Legal Officers Survey



Privacy Compliance: *Why Are We Talking About This?*

- Two Waves of Fundamental Changes
- Entire Enterprise Engagement
- Takes Everyone to Make It Work
- Continuing Compliance Efforts



Key Steps for Ongoing Compliance

- Ongoing Data Mapping
- Consistent Application of Data Minimization/Retention Policies
- Robust Processing Contracts
- Informal and Formal Data Protection Assessments
- Annual and Event-Based Reviews

Ongoing Data Mapping



















Toddler Questions:

- What?
- How?
- Where?
- Why?
- How long?
- Who?



Data Inventory Essentials

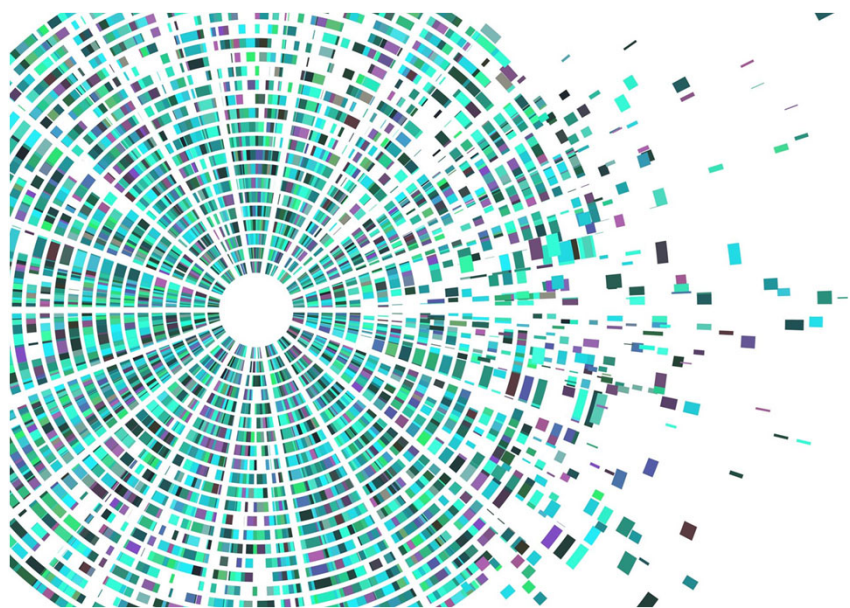
PROCESSING ACTIVITY:
HR - ONBOARDING

DATA SUBJECTS	 Dependents/Beneficiaries Employees – Current Employees – Former Prospects
APPLICABILITY	
PERSONAL DATA	Social Security # Drivers' License # Biometric Identifier Aptitudes Bank Routing # Military Status Certifications
COLLECTION	 Scan  Email  Web Application  Paper
APPLICATIONS	  
DEPARTMENTS	 Employee Benefits Employee Training Facilities & Distribution Plant Operations Marketing Payroll
LOCATIONS	 Office 365  box  SharePoint  Laptops  File Cabinets
THIRD PARTIES	 Cigna  KPA  LS SCREENING  MetLife
RETENTION	Drug Screening Records Employee Document Submissions Payroll Records Background Checks
PURPOSE	Provide Employee Benefits & Process Payroll

				
AUT 7 Years	BEL 5 Years	NLD 5 Years	ITA 5 Years	USA 7 Years



Consistent Application of Data Minimization and Retention Policies



Data Minimization

Collect or process only the personal information which is adequate, relevant, and necessary for the purpose of collection or processing.

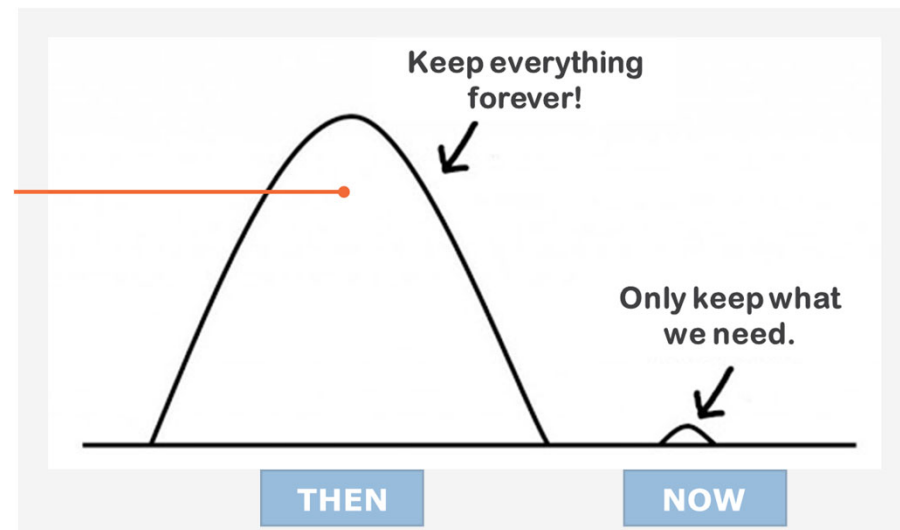
Retention Periods and Policies

May require public disclosure.

Consistent Application of Data Minimization and Retention Policies

Key Risks:

- ❖ Data Breach
- ❖ Ransomware Attack
- ❖ Enforcement Action
- ❖ Litigation
- ❖ Class Action
- ❖ Consumer Requests



Robust Processing Contracts

- Specific requirements for processing agreements in each law.
 - CPRA - Different Requirements for Different Types of Processor
 - Service Provider, Contractor or Third Party
- Examples of contractual requirements:
 - Processing instructions;
 - Details of processing;
 - Restrictions on processing;
 - Technical and organizational security measures;
 - Return or deletion of personal data;
 - Audits and other assistance; and
 - Sub-processor restrictions and pass-through obligations.
- Prepare a robust form that includes all of the required provisions.
- Try to account for changes and new laws through general application of the DPA and express procedural provisions.



Robust Processing Contracts

- Joint Controllers and Controller-to-Controller Transfers
 - GDPR concepts not addressed in US privacy laws, but practical realities in the US
- Recommended contractual minimums absent legally-required provisions
 - Role acknowledgment and designated responsibilities
 - Compliance with law, including requisite notice and consent
 - Security measures
 - Breach notification
 - Cooperation and assistance
 - Indemnification



Informal and Formal Data Protection Assessments

- Data protection assessments are risk assessments designed to help businesses identify, analyze, and limit the privacy risks associated with data processing.
- Many, but not all laws, require them for certain types of “high risk” processing.
 - Targeted Advertising
 - Sales of Personal Data
 - Profiling
 - Processing Sensitive Data
- Beyond the formal, legally-required assessments, informal assessments provide benefits, too.



Annual and Event-Based Reviews

- Annual regulatory reviews are required under California law and practical necessity where not legally-required.
- Events may also warrant reviews of your privacy program
 - New data collection.
 - Security incidents impacting existing data.
- Businesses have a duty to monitor and document their own and their processors' compliance.



QUESTIONS?

Thank You!

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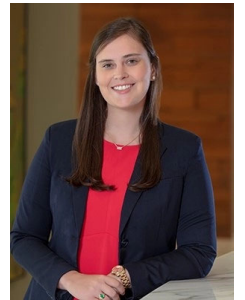
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