



# PRIVACY & SECURITY LAW



## REPORT

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### *Data Breaches*

#### **ChoicePoint Official: Experienced Counsel Key for Multi-State AG Probes**

**S**T. LOUIS—Dealing with a multi-state investigation by attorneys general is very much different from facing an investigation from a single office, according to Chris Cwalina, assistant general counsel for ChoicePoint Inc.

ChoicePoint agreed May 31 to a settlement agreement with attorneys general from 43 states and the District of Columbia over an incident in which ChoicePoint sold sensitive personal information on some 150,000 consumers to a ring of identity thieves who posed as legitimate businesses (6 PVL R 863, 6/4/07). The company also faced an investigation from the Federal Trade Commission, which led to a separate settlement in January 2006 (5 PVL R 110, 1/30/06).

According to Cwalina, ChoicePoint announced the breach in February 2005 and quickly began receiving queries about the incident from state attorneys general, even before the company was contacted by the FTC. But the state investigations quickly evolved into a single multi-state investigation, he said.

**Need to Be Responsive.** The fact that the company eventually found itself facing nearly the entire nationwide lineup of attorneys general drove home the importance “of being responsive and of doing it right,” Cwalina said. The first thing to do was to “engage outside counsel who had experience in this area,” he said.

“This is a real specialty, dealing with a multi-state investigation,” he said. “We needed lawyers who had insight into how the offices of attorneys general work, and what they really care about. We needed help navigating the process.”

After a search, the company found an Atlanta-based firm, Troutman Sanders, which had a practice group of former assistant attorneys general who were “exactly what we were looking for,” Cwalina said.

“Being a former assistant attorney general brings invaluable experience to the table,” he said. “They know how things work, and that is crucial when you’re working with so many of them.”

Within the company, ChoicePoint officials formed an ad hoc committee composed of the company president, the general counsel, and members of the IT department, the marketing department, the credentialing group, the company’s four business units, the compliance office, and the government-affairs office.

Contacts between the company and the investigating group began in earnest with an initial face-to-face meeting bringing together a large group of assistant attorneys general and company representatives, Cwalina said. This was around the same time as the beginning of the FTC investigation. After that, most communications took place via conference calls between company officials and the investigation’s executive committee, which included assistant attorneys general from eight states. Face-to-face meetings resumed in January 2007, when settlement negotiations began in earnest, he said.

Cwalina noted that the FTC investigation focused on different issues from the investigation by the states. “The FTC had clear jurisdiction over consumer reports, which are a kind of financial report that has a clear statutory definition,” he said. “But we also have products that are not consumer reports in that narrow sense, and which involve information on individual consumers. And the percentage of the information that the bad guys got in this case that came from our other products was much greater than what came from consumer reports. That’s where the states focused their attention.”

The basis for the state investigation was the “unfair and deceptive practices” acts of the individual states, Cwalina said. This meant that the company had to “do research on every single one of those laws, and to learn all of the distinctions and variations that showed up in them.”

**One Investigation Better.** Given that diversity of state law, Cwalina said he came quickly to the realization that dealing with a single large investigation had its ad-

vantages over facing 44 individual investigations. “Based on our experience and the facts of this case, I’d say that we much preferred facing a coalition,” he said. “The alternative would have been dealing with all of the variety in state laws. That would have been very difficult.”

The most important lesson he drew from the experience was the “importance of communication,” he said. “The signal we tried to send early and often was that we were taking the matter seriously, we were willing to cooperate, and that we wanted to resolve it.”

That is not to say that the company was prepared to roll over, Cwalina said. “When you’re right based on the law and the facts, you’ve got to be willing to say that. You let them know where you stand. But you also

acknowledge that there will be disagreements and differences, and remind them that you have the same goal: of resolving the matter in a way that makes sense.”

Cwalina said the company “hopes that the announcement of the multi-state settlement, coming after the FTC settlement, will really put a period at the end of the sentence, and drive home that this is over and we are moving on,” he said.

Cwalina added that the company would have preferred resolving the two investigations at the same time, to avoid any confusion about the relationship between them. But the investigations “moved according to such difference timetables, that resolving them together proved to be impossible,” he said.

BY CHRISTOPHER BROWN