Safeguarding Confidential Employee Records

By Seema Tendolkar and Samantha Ferris

Because information has become increasingly easy to obtain and transfer, employers must take precautionary measures to ensure that confidential data is adequately protected. This applies not just to proprietary business information, but also to confidential employee data.

This article provides an overview of statutory, constitutional and common law concerns with respect to obtaining and maintaining confidential employee information, and penalties that employers may face for failing to protect the security of confidential employee records.

STATE PRIVACY STATUTES

Many states have enacted laws requiring businesses that maintain computerized data including personal information to notify individuals of security breaches and unauthorized access to their personal information. (States with such security breach notification statutes include: Arkansas, California, Connecticut, Delaware, Florida, Illinois, Louisiana, Minnesota, Montana, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas and Washington.) The California Security Breach Notification Act of 2003 (the California Act), Cal. Civ. Code §1798.80 et seq., was

Insider Fraud: Biting the Hand That Feeds

By Howard Silverstone

[Editor's Note: I've for some time been imploring Howard Silverstone to share with our readers a few stories and insights from his forthcoming second edition of Forensic Accounting and Fraud Investigation for Non-Experts (Wiley, 2006). With the new edition now in press, Howard has kindly acceded to this adaptation.]

You've read about it, you've heard about it, but let's say it again: Your employees, on their own or in collusion with others, can make your firm a victim of fraud. Understanding how fraud takes place can help you and your clients minimize its possibility; yet statistics show that many businesses do not understand fraud and do not recognize its red flags.

For starters, it's important to realize that employees at any level (including owners) can commit fraud, and that fraud can be simple or complex — from bookkeepers writing themselves checks, to complex collusions accomplished by manipulating computer data and shipping stolen inventory to offsite locations.

Next, it's helpful to know that the prevalence of fraud varies greatly by type. As indicated in the 2004 report of the Association of Certified Fraud Examiners on Occupational Fraud and Abuse:

- **Asset misappropriation** figures in an overwhelming 92.7% of all occupational fraud.
- **Corruption schemes** are a distant second at 30.1%.
- **Fraudulent statements** come in third at 7.9%.

The rest of this article explores examples of inside fraud drawn from a variety of businesses. Law firms are far from immune to such problems.

CASH

Cash is the favorite target of fraudsters and accounts for 93% of all asset misappropriations, according to the 2004 ACFE study. Much is taken by outright cash larceny and skimming, but the majority is stolen through more elaborate disbursement schemes, including manipulation of the billing and payroll systems, falsification of expense reimbursements and check tampering.

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Measuring ROI for Marketing Efforts

By Larry Bodine and Suzanne Lowe

[Editor's Note: As in justifying many other law firm investments, ROI for marketing seems statistically elusive. Perhaps law firm financial strategists could be helpful to firm marketing specialists in quantifying metrics such as those advocated here.]

Management guru and author Peter Drucker said, "If you can't measure it, you can't manage it." So why is it that so few law firms measure their marketing efforts? Why is it that so many Chief Marketing Officers (CMOs) who are getting hammered by partners to demonstrate ROI on their efforts can't do it?

In our just-released 2006 study, "Increasing Marketing Effectiveness at Professional Firms," more than 377 senior marketing and management respondents gave us plenty of reasons:

• People aren't inclined to measure.
• It's hard to change their mindset.
• Measurement is not viewed as a worthy activity.
• People avoid accountability.
• Measurement is perceived as too hard, too costly and too time consuming.
• We're too small or new to have our act together.
• Our marketing leadership is new.
• We have no dedicated measurement resources.
• We have no measurement budget.

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• We are in too much turmoil to focus on measurement.
• We say, however, that measurement obstacles are largely self-caused, and are related to myopia, inertia, and avoidance of accountability. Here's how to start proving a return-on-investment on your marketing efforts.

MEASURING MARKETING EFFECTIVENESS

For starters, your firm needs to have a budget for measuring marketing. We were very surprised that only a fraction of our respondents' firms have a separate budget line for evaluating the effectiveness of their marketing programs (340 said "No" when asked if their firms have a separate line item for marketing measurement; only 37 said "Yes").

Your argument before senior management to get this line item is that your firm could bring in more revenue, if only it deliberately added structure to measuring marketing effectiveness.

Once you've got the funding, exactly what should you measure? According to our research, law service firms that want to excel at marketing should use these three Client Metrics:

1. Growing client revenue. "Did you grow revenues with your client or not?"
2. Moving the phases of a sale through a pipeline. "Did you close the sale or not?"
3. Listening to the client. "Did you listen to the client or not?"

Put another way, if you can't measure the results by one of these three metrics, you shouldn't pursue the marketing effort.

These three Client Metrics are unequivocally objective and obvious, clearly identified with clients, and feature very tangible outcomes. They are fact-based and "non-ignorable." And the more Client Metrics our respondents used, the more they said they were "extremely effective" in growing revenues against competitors.

WHAT OTHER LAW FIRMS MEASURE

So please forget about measuring marketing by counting the number of publicity hits, or number of attendees to your seminar, or number of magazine copies in which your advertisement appeared. These do not relate to points 1, 2, or 3 above. Push down the time you spend printing and rewriting brochures, writing ad copy, arranging menus for dinners, and developing branding campaigns. Delegate this work or send it to an outside agency.

Instead, be like survey respondent Patrick Lamb, a partner at Butler Rubin Saltarelli & Boyd in Chicago. "When I arrived, the first thing we did was analyze how much revenue we were getting from our clients. We found that our revenue was concentrated in a small number of key clients. If any left, it would be catastrophic, so I decided we needed to do client satisfaction studies.

"I was able to convince the two senior rainmakers to try it. The senior partners were skeptical at very beginning; they hadn't heard about the approach, but there is a fairly compelling intellectual case you can make. They got very positive feedback from their clients. They were pleased that anybody would take the time to find out what they think. By the time we got back from the first interview, the client had called the relationship partner and said it was great."

Lamb said his firm keeps track of three things:

1. The number of disputes that are brought to the firm;
2. The size of these disputes; and
3. The percentage of work the client is giving the firm.

Or follow the model of Lindsay Fikowski, Regional Marketing Manager for McCarthy Tétrault based in Calgary, Alberta, Canada. A key of marketing initiatives is increasing the firm's "share of wallet" — its share of the client's legal work. "We ask clients what their legal spend will be for the next year, and this can lead into very detailed discussions. Our next step is to develop a profitability measure for each client. We're working on that," she says.

The firm also pursues a targeting and segmenting program. McCarthy Tétrault measures results by comparing the level of work in these key sectors against prior results. "We try to estimate very roughly what our market share is based on our estimate of the

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client’s legal spend. We try to figure out where we stand, whether we are the #1, #2, #3 or #4 firm for the client.

“Lack of partner buy-in can be an obstacle,” she concedes. “Marketing is very hard for the lawyers to do; they don’t always know how to do it. They need to have a long-term plan in place — at least 5 years — because they may not see any work for 5 years. One year is too short-term for a plan,” she says. To overcome resistance to measurement-based self-evaluation, “We demonstrate the value of our approach to the partners and find ways to make it useful to the partners.”

ALIGNING METRICS WITH MARKETING STRATEGY
The perception that measurement is challenging however, is real, and must be overcome. Our study outlined a law firm marketing team’s main function — leading firms to succeed at five strategic marketing goals:
1. Define and identify the most strategically important prospects/clients.
2. Acquire the most strategically important prospects/clients.
3. Retain the most strategically important clients.
4. Increase the firm’s amount of revenues with its most strategically important current clients.
5. Increase the perceived value of the firm to all audiences, including non-targeted prospects and clients, influencers, suppliers, and current and potential employees.

Measure your marketing and measure it well. Your firm will be glad that you did.

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management of the main operation in the Midwest. The chief financial officer, based in the Midwest, had been with the company for many years and had worked his way up from bookkeeper to assistant controller, to controller, and ultimately to CFO.

What was most interesting about the CFO’s role was that with all the promotions leading finally to CFO, he retained custody over the bank reconciliations. Perhaps unwittingly, the company also allowed the CFO to authorize contracts with vendors, approve payments, actually print and sign checks, receive bank statements, and perform the bank reconciliation.

Over 7 years, the CFO embezzled over $600,000 through almost a dozen different schemes. One scheme was a falsified employee workers’ compensation claim, which the CFO used to pay for his children’s braces. Another was on his expense account and was there to sign checks, receive bank statements, and perform the bank reconciliation. An internal investigation ensued, and the schemes were discovered.

The company eventually recovered $500,000 of its losses under a fidelity bond. An agreement was reached between the company, the bonding company, and the U.S. attorney to keep the principal out of jail and working at another company in a nonfiduciary position, where he was able to start making restitution.

CONCLUSION
As recent corporate incidents have shown us, financial losses arising from fraudulent activity may lead to layoffs, closures or even business failures. Firms able to survive a fraudulent event may still miss key business opportunities. Fraud also extracts a huge personal cost — leading, in some cases, to marriage break-ups, nervous disorders or even suicide.

We have to accept that no business and no one is immune to fraud. A firm that thinks itself invulnerable to fraud is, in fact, the most inviting to fraudsters.

Through stronger controls and regular checks and balances, firms can reduce the opportunities for fraud and increase fraudsters’ expectation of getting caught. This benefits both your own organization and the clients you serve.

For all of the facts and war stories we tell as fraud investigators, however, we see that fraud cannot be eliminated entirely; for those in business, it is an occupational hazard. We therefore help ensure that a firm does not spend more money preventing and detecting fraud than it may possibly lose by it.

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