

**Testimony of Commissioner Julie Menin
New York City Department of Consumer Affairs**

**Before the
New York State Assembly's
Standing Committee on Consumer Affairs and Protection**

**Public Hearing on
Data Breaches' Impact on Consumers and the
Availability and Sufficiency of State Resources Available to Consumers**

November 14, 2014

The New York City Department of Consumer Affairs (“DCA”) thanks Chairman Dinowitz and the members of the State Assembly’s Consumer Affairs and Protection Committee for the opportunity to submit testimony about the important issue of data breaches and their harmful impact on consumers.

DCA’s mission is to empower consumer and businesses alike to ensure a fair and vibrant marketplace. In addition to licensing approximately 80,000 businesses across 55 different industries, DCA mediates complaints between consumers and businesses, conducts patrol inspections and legal investigations, and engages in significant efforts to educate businesses about laws, rules, and new policies.

Through its broad jurisdiction to enforce both State and City consumer protection laws, DCA is currently involved in a number of aggressive initiatives to crack down on scams, fraud, and other predatory business practices. Just this year, DCA has issued subpoenas to more than 100 employment agencies and approximately 200 secondhand auto dealers to investigate predatory or fraudulent practices we believe are present in both industries.

In addition to such initiatives, we are committed to preemptively educating businesses about laws and regulations so that they have the opportunity to come into compliance quickly and easily. This year’s efforts are most clearly evidenced by our outreach efforts to businesses regarding New York City’s new paid sick leave law, which have included the translation of key documents into 26 languages, direct contact with thousands of employers in all five boroughs, and presentations at hundreds of events and trainings.

Because protecting consumers and educating businesses are central to our mission, we believe ensuring businesses are appropriately safeguarding consumers’ personal information is an important element of our work. Ensuring data is properly protected from those who seek to use it for predatory purposes is vital to maintaining a well-functioning marketplace. As you are aware, data breaches have become all too common in recent years. According to the Privacy Rights Clearinghouse, more than 900 million records have been breached as part of the nearly 4,500 data breaches made public since 2005.¹ When data breaches occur, affected consumers are

¹ Privacy Rights Clearinghouse, “Chronology of Data Breaches,” <https://www.privacyrights.org/data-breach>.

more likely to face identity theft and unauthorized charges or changes to their existing credit and debit card accounts.

Incidents of identity theft are disturbingly prevalent. The Bureau of Justice Statistics estimates that an estimated 16.6 million people experienced identity theft in 2012 alone.² In the same year, financial losses due to personal identity theft totaled \$24.7 billion, \$10 billion more than the losses attributed to all other property crimes measured in the National Crime Victimization Survey.³

DCA has local jurisdiction to ensure data breaches and identity theft are appropriately disclosed by licensees. Under the New York City Administrative Code, DCA licensees are required to immediately disclose to DCA, the New York City Police Department, and any person whose data was unlawfully acquired, any breach of data where personally identifying information is believed to have been compromised.⁴ Licensees are also required to notify DCA of judgments or convictions against them for acts of identity theft or unlawful possession of personal identification information.⁵

In addition to potentially jeopardizing our licensees, data breaches can have a particularly harmful impact on those New Yorkers with lower incomes, a population that DCA directly serves through its Office of Financial Empowerment (“OFE”). For low income families, who do not have the resources to correct errors in the credit reports, one incident of identity theft can mean irreparable damage to their credit, harassment by debt collectors, loss of income and access to mainstream banking services and years of financial instability. Such challenges can exacerbate other hurdles, such as accessing needs-based support and housing. Barriers such as limited English proficiency among immigrant communities only compound these hardships.⁶

OFE operates 30 Financial Empowerment Centers throughout New York City, where we provide free, one-on-one, professional financial counseling, serving a primarily low-income client base. In 2013, approximately 70% of OFE’s clients had annual incomes of less than \$20,000. Since 2009, OFE has conducted over 50,000 sessions of financial counseling. OFE’s counselors work with clients to review their credit reports, help clients communicate with credit bureaus and financial institutions, close accounts or update pins, passwords, and account numbers, file police reports, and help clients write an identity theft statement to place on their credit file.

We commend you, Assembly Members Dinowitz and co-sponsors of A.10190, for your commitment to addressing this issue. DCA is supportive of the legislation’s intent to ensure businesses appropriately safeguard sensitive personal information. We believe, however, that

² Bureau of Justice Statistics, “16.6 Million People Experienced Identity Theft in 2012,” December 12, 2013, <http://www.bjs.gov/content/pub/press/vit12pr.cfm>.

³ Bureau of Justice Statistics, “16.6 Million People Experienced Identity Theft in 2012,” December 12, 2013, <http://www.bjs.gov/content/pub/press/vit12pr.cfm>.

⁴ N.Y. City Admin. Code § 20-117

⁵ N.Y. City Admin. Code § 20-118

⁶ See, e.g., American Bar Association, “Identify Theft: A Low-Income Issue,” 2014, http://www.americanbar.org/content/newsletter/publications/dialogue_home/dialogue_archive/ls_dial_wil4_probono1.html

certain changes to the bill could be made to better protect consumers and ensure that requirements placed on small businesses are not unduly burdensome.

As currently drafted, this legislation does not provide for local enforcement authority. We would welcome the opportunity to engage members of the Committee in a discussion regarding DCA's jurisdiction and ability to potentially assist in the enforcement of this considered legislation.

We also suggest that the bill be amended so that it does not preempt the City's ability to enact local laws or rules that provide greater safeguards for particular industries under DCA's purview. Ensuring the City has the ability to swiftly and appropriately implement additional safeguards if the agency becomes aware of emerging issues of concern related to specific industries is important to ensuring businesses stay ahead of the curve to protect consumers' information.

As the City looks to simplify rules and compliance processes for small businesses, we also urge the State Assembly's Consumer Affairs and Protection Committee to carefully consider the perspective of small businesses and to ensure requirements regarding data security are not unduly burdensome.

The de Blasio administration is committed to helping New York City's small business community thrive. In July, DCA announced a sweeping small business relief package to streamline onerous burdens, significantly reduce fines, and expand our business outreach and education efforts. DCA is also working with the Mayor's Office of Operations, the Department of Small Business Services, as well as multiple other City agencies, to improve the overall regulatory climate in New York City and help businesses avoid penalties and fines. DCA is dedicated to working with you on any new regulation to manage its impact and measure its effectiveness.

Thank you for the opportunity to submit testimony on this timely and vital topic. I look forward to working together on this and other important issues to protect New York City's consumers.