

Association of Corporate Counsel, Denver, Colorado

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Crisis Management – The Right Way To Respond To Everything Going Wrong

PERKINS COIE

COUNSEL TO GREAT COMPANIES

The New York Times

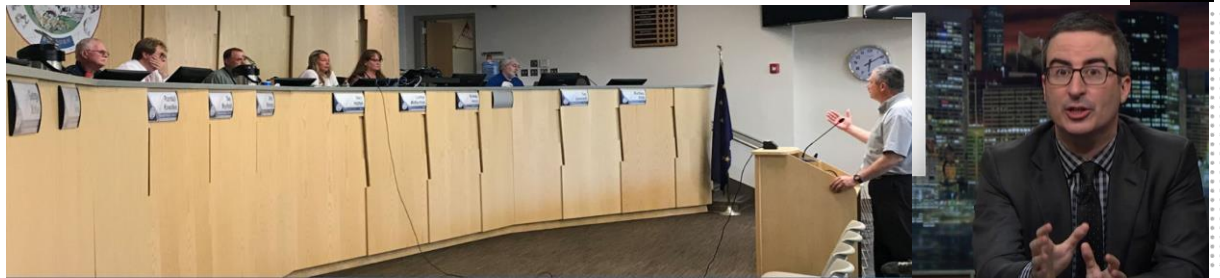


Federal agents raid office of lawyer



Three weeks after cyberattack, Mat-Su Borough computers still aren't back to normal

Chandra Westergaard
Rick Hosley



Panelists

- Graig Bears – General Counsel, Comfort Dental
- Bill Myers – Managing Director of Communications at Liberty Global
- Greg Trulove – Vice President and Associate General Counsel for DaVita Inc.
- Rick Hosley – Partner, Perkins Coie
- Chandra Westergaard – Senior Counsel, Perkins Coie

Don't Wait Until It Is Too Late



Incidents May Include:

- Government Investigation/Search Warrants
- Bet-the-Company Litigation
- Significant Environmental Release/Spill
- Data Breach or Cybersecurity Event
- Significant Employee Misconduct
- Weather Event Impacting Operations
- Serious Injury on the Job
- **Might Include:** Range of Smaller Issues & Sleepers

Rapid Reaction Matters

- Be First to Investigate Facts
 - Manage the Scene
 - Preserve Evidence/Information
- Protect Attorney-Client Privilege
- Pro-Active Notification of Authorities
- Respond Before Investigators/Law Enforcement
- Control Messaging/Information Flow
 - Avoid Misstatements
 - Protect Brand
- Protect Employees

Prepare and Anticipate

- Do you have an Incident Response Plan?
 - Does it follow best practices?
 - Does it include all types of hazards?
 - Have you practiced the plan?
 - Has the plan been audited?
- Have you anticipated legal action?
 - Regulatory enforcement
 - Criminal Investigation
 - Private litigation

Choose Your Team Strategically

- Multiple teams depending on issue
- Combination of in-house and outside professionals (legal, forensic, PR)
- Who is likely to know and understand regulators and investigators, and the playbooks that they follow
- Need objectivity, good judgment, broad knowledge base

Take Remedial Actions

- Take Accountability
- Root Cause Analysis
- Show Investment in Improvement
 - Make appropriate structural changes
 - Enhance compliance programs
 - Rebuild trust
- Report Results of Investigation (where appropriate)
- Hold Responsible Parties Accountable and Take Appropriate Personnel Actions

Incident Response Lifecycle

- Demonstrate accountability
- Repair damage
- Enhance compliance
- Analyze Root Cause
- Build trust

Remediate

- Update Incident Response Plan
- Include full range of incidents
- Practice the plan
- Retain outside advisors in advance
- Invest in compliance now
- Anticipate enforcement actions and litigation

Prepare

- Investigate
- Restore operations
- Self-disclose & cooperate
- Manage litigation, media and continued messaging

Mitigate

- Identify the incident quickly
- Protect health, safety & environment
- Assemble the team
- Control scene and information flow
- Make required notifications
- Protect privileges
- Gather initial facts
- Avoid misstatements/ admissions

Respond

Looks Like Smooth Sailing

