Data Protection Best Practices

Community-based organizations and nonprofits receive sensitive client information during the provision of services, and therefore ensuring such data is safeguarded is essential for client safety, trust, and to satisfy such organizations' own legal and ethical obligations. Development of good data governance to protect sensitive client data is especially important, particularly in anticipation of enhanced oversight and investigation by the new administration with respect to immigration-related service organizations. Below we outline key data protection best practices to assist community-based organizations in developing good data governance to protect client information[1]:

Action Item		Implementation Considerations	Importance
1	**Develop data maps/inventories**	Organizations should create an **inventory of all data** collected and processed in connection with the provision of its services, particularly with respect to client personally identifiable information. A data map/inventory should: 1. Identify the categories of data collected (e.g., names, addresses, contact information, immigration status, case history); 2. Classify data based on sensitivity and criticality, and identify any relevant regulatory or contractual requirements; 3. Map the sources from which such data is collected and for what purpose it is being used; 4. Track where the data is stored, who has access to such data (e.g., internal staff, volunteers, vendors) and for how long the data is being retained; and 5. List the third parties to whom such data is disclosed or otherwise accessed by, and what agreements govern such disclosure or access. Data maps should be **reviewed and updated regularly** for completeness and accuracy.	It is important to understand what data your organization is collecting, how it is being used and shared, and how long it is intended to be stored in order to identify what data it has access to and to develop data governance policies and procedures tailored to the nature and sensitivity of such data.
2	**Employ data minimization,**	Organizations should minimize the amount of data collected to only what is **necessary and proportionate** to perform a particular	The best way to ensure client confidentiality and privacy and to limit

[1] This information is current as of January 2025, and should not be considered comprehensive, particularly given that legislative and administrative policies and priorities are evolving, and will continue to evolve, in real time. This is not a substitute for, and should not be relied upon as, legal or professional advice; we recommend that you consult professional advisors for guidance on your individual circumstances. Nothing contained herein creates an attorney-client relationship with Cleary Gottlieb.

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	including by deleting data when it is no longer needed to achieve the purpose for which it was originally collected	function, and should **consider deleting** or, if no longer needed in an identifiable form, **anonymizing, aggregating or de-identifying, data** once the purpose for which such data was originally collected has been fulfilled. With respect to data deletion, nonprofit organizations should pay close attention to any legal or contractual requirements to retain specific types of data, even if no longer needed for the originally collected purpose. For example, nonprofit organizations should closely review any record-keeping obligations under their grant agreements to ensure compliance and avoid liability for breach of contractual obligations.	third party access (whether authorized or otherwise) to such information is by minimizing the information collected and stored. Deleting or anonymizing client information as soon as it is no longer needed will protect access to sensitive client data and minimize the risk of data breaches.
3	**Implement data protection policies and procedures**	Drafting and implementing data protection policies and procedures (e.g., **data classification and handling policies, data usage policies, data sharing standards, incident response plans, data retention/deletion schedules**) are paramount to ensuring enterprise-wide compliance with data protection best practices. Such policies and procedures should be **tailored based on an organization's data map/inventory, and take into account the organization's specific data protection compliance obligations** (e.g., legal and contractual obligations and restrictions on data collection and use) and the risks specific to the types of data collected (e.g., heightened protections may be required with respect to highly sensitive data). Organizations should closely monitor staff compliance with data protection policies and procedures, and regularly audit, review and refine such policies and procedures in light of changing legal requirements and an organization's specific risk assessments.	Not only will implementing such policies and procedures assist an organization with its legal and contractual compliance obligations, but documentation of such policies serve to provide a framework to enable an organization to maintain data confidentiality, integrity and availability, and prevent unauthorized data access, use or disclosure.
4	**Develop a plan to respond to government subpoenas, and**	Upon receipt of a government subpoena or investigatory demand for access to confidential client data, a nonprofit organization should first **notify necessary parties** (i.e., any general counsel, president, leadership, etc.) **of such receipt and issue a "hold"** over any relevant documents or other information that may be responsive to the request	A subpoena cannot command an organization to produce documents that are not in its "possession, custody or control." Therefore, following the data protection tips listed herein can help ensure that your organization does not

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	educate and train staff accordingly	(i.e., by directing staff not to destroy potentially responsive material in their possession). **Based on a factual assessment of the request** in consultation with legal counsel, organizations can consider responding to the request by: 1. Contacting the party who issued the subpoena in an attempt to informally resolve the issue and determine what information the party is seeking; 2. Serving written objections to a document subpoena; 3. Moving to quash (or modify) the subpoena or moving for a protective order; 4. Contacting an adverse party (that is, a party to the litigation whose interests are adverse to those of the party that issued the subpoena) in an attempt to have the adverse party exercise its rights against the party who issued the subpoena; or 5. Complying with the subpoena and providing the requested testimony or documents. Determining how to respond to (and thus whether to comply with) the subpoena is a strategic step, and may require weighing multiple considerations, each of which should be **carefully considered with legal counsel on a case-by-case basis.**	retain excess, sensitive information, which in turn helps protect your clients and organization from having to produce such data in response to a subpoena.
5	**Review data sharing arrangements to understand obligations / impose appropriate restrictions on data access and use**	Organizations frequently share confidential data with, or receive confidential data from, third party organizations, lessening the organization's ability to maintain control over data hygiene and use. When entering into contracts with third-parties to whom you provide confidential client data, an organization should consider: 1. **Conducting due diligence** into third-party vendors to understand their data privacy and security posture and the measures utilized to protect confidential data; 2. Ensuring all vendor contracts **impose proper protections for cybersecurity and confidentiality**, including by entering into	Client data is often stored, accessed, or processed by, and is even often collected or received from, third-party vendors, which can include sensitive client information. Conducting due diligence and imposing confidentiality obligations on third-party vendors protects client data and prevents government agencies from trying to access sensitive client information through such vendors.

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		NDAs with all third-parties to whom confidential client data is provided or who otherwise access confidential client data; and 3. Imposing obligations on third-party vendors to **notify you in the event of a data breach** as well as to coordinate with you, where legally allowed, when client data is subpoenaed or otherwise subject to a governmental order or other request. Typical provisions in data related contracts may include: 1. **Allocation of data ownership** between the parties (both for existing and newly created or derived data); 2. **Standard confidentiality provisions** imposing restrictions on the data recipient's use, disclsoure and retention of data; 3. **Where personally identifiable information is implicated**: a. Customary representations and warranties, including compliance with applicable data privacy laws, the terms of applicable privacy policies or notices and/or the relevant terms of any applicable contracts related to data processing; b. Allocation of responsibility for responding to and honoring consumer privacy rights requests; c. Data breach, data misuse or other security incident notification obligations and allocation of responsibility to inform regulators and affected persons of such incident; and d. Audit rights permitting the data provider to ensure compliance by the data recipient with the foregoing obligations 4. **Guardrails around responding to government subpoenas or other governmental orders or demands for data access**, including sole discretion of the data provider to contest such requests or demands, and limitations regarding the data to be provided by the data recipient in response to such requests; 5. **Obligations that the data recipient implement technical and organizational measures** (e.g., access controls, encryption requirements, deidentification/anonymization standards) to protect and safeguard data;	

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		6. **Indemnification provisions** in the event of gross negligence or other breach of data use restrictions by the data recipient; and 7. **Requirements that the data recipient delete all data** upon termination of the relevant services or the agreement unless retention is required by law (in which case any applicable confidentiality requirements should survive such termination with respect to any data retained by the data recipient).	
6	**Implement technical and organizational measures to protect data**	Organizations must **assess and ensure implementation of reasonable security procedures and practices** appropriate to the nature of the data collected in order to protect such data from unauthorized access or disclosure. Such controls may include: 1. **Physical access controls** (e.g., requiring badges to access computers where sensitive data is stored); 2. **Technical access controls** (e.g., complex passwords, multi-factor authentication firewalls, encryption); 3. **Contractual controls** (e.g., execution of NDAs or other data sharing agreements); or 4. **Organizational measures** (e.g., employee security and privacy awareness training to educate staff on how to identify and report data breaches or other security incidents). Organizations should also consider enhancing security by **embracing the principle of least privilege** – meaning access to data, particularly sensitive client data, should be limited to only what is necessary for a particular staff member to perform their job functions. Staff data access should be regularly audited and reviewed for compliance.	Implementing robust data security and access controls protects sensitive client data, and reduces the likelihood of unauthorized access. Such safeguards can help ensure nonprofits are complying with any applicable regulations and obligations imposed under grant agreements to protect confidential information. In addition, with recent technological advancements, particularly the advancement of artificial intelligence, threat actors are developing sophisticated tools to target nonprofit organizations to obtain sensitive client data such as social security numbers, birth dates, and other financial information. For example, threat actors have used phishing emails and AI-generated deepfakes to pose as the IRS or other government agencies, or to claim to be representatives of legitimate organizations, to gain access to sensitive client data. Employing appropriate data security measures and safeguards can help keep client data

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			secure as well as protect your organization's reputation.

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If you have any questions about this guide, please contact NYLPI via https://**bit.ly/ClearinghouseIntake** or the Lawyers Alliance Legal Resource Call Hotline at (212) 219-1800 x224 or **ResourceCall@lawyersalliance.org**. For information about our organizations, visit www.nylpi.org and www.lawyersalliance.org.

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