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A PRACTICAL GUIDE TO GDPR BREACH NOTIFICATION AND SECURITY REQUIREMENTS

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Overview

- Key definitions for breach notification requirements and GDPR
- 5 phases of an effective breach response lifecycle
- Questions

Key Definitions for GDPR Breach Notification

Personal data

GDPR regulates all forms of personal data which is defined as "*any information relating to an identified or identifiable natural person.*"

Personal data breach

"...a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed."
Art. 4. (12)

Key Definitions for GDPR Breach Notification

Types of data breach

- **Availability breach:** *Accidental or unlawful destruction or loss of personal data.*
- **Integrity breach:** *Alteration of personal data.*
- **Confidentiality breach:** *Unauthorized disclosure of, or access to, personal data.*

Key Definitions for GDPR Breach Notification

Having become aware

*"...a controller should be regarded as **having become "aware"** when that controller has a **reasonable degree of certainty** that a security incident has occurred that has led to personal data being compromised."*
- WP29 Guidance

- A short initial investigation period may be required to determine if personal data has been compromised.
- What constitutes a *reasonable degree of certainty?*
- Key difference to US regulations: assumption of breach

Key Definitions for GDPR Breach Notification

Having become aware – benchmarking data from US organizations show the average timeframe to be:

- Occurrence > Discovery – 13.21 days
- Discovery > Notify – 29.1 days

From RADAR metadata: https://www.radarfirst.com/blog/from-incident-to-discovery-to-breach-notification-average-time-frames

Key Definitions for GDPR Breach Notification

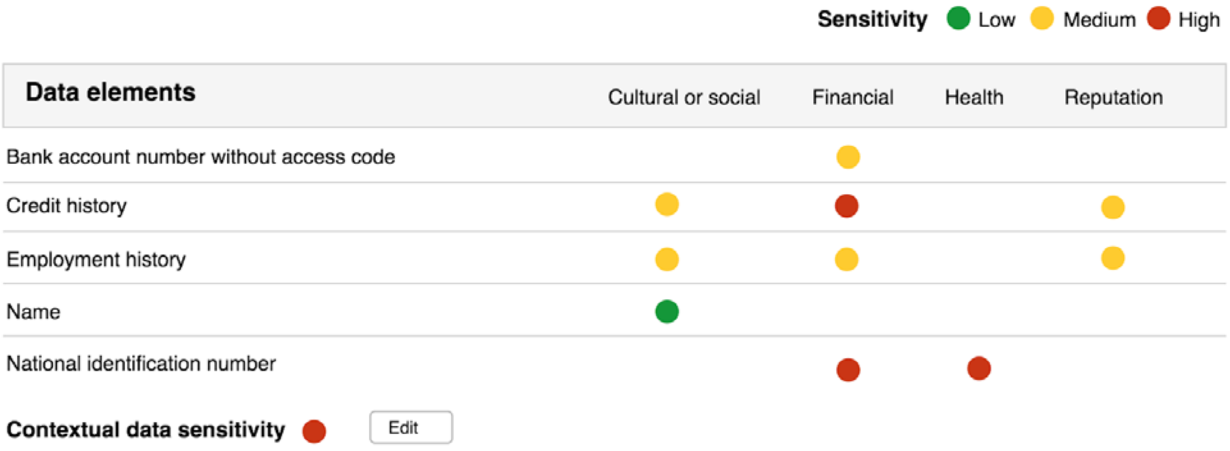
Risk vs High Risk

- The standard for notification to supervisory authorities is a breach that is likely “*to result in a **risk** to the **rights and freedoms** of natural persons.” Article 33 (1)*
- The standard for notification to data subjects is a breach that is likely to result in a “***high risk** to the **rights and freedoms** of natural persons.” Article 34 (1)*

Key Definitions for GDPR Breach Notification

Considerations when determining severity and likelihood of risk:

- Form of data
- Data protection measures such as pseudonymization
- Nature of the incident
- Recipient of the data
- Risk mitigation



Sensitivity 🟢 Low 🟡 Medium 🔴 High

Data elements	Cultural or social	Financial	Health	Reputation
Bank account number without access code		🟡		
Credit history	🟡	🔴		🟡
Employment history	🟡	🟡		🟡
Name	🟢			
National identification number		🔴	🔴	

Contextual data sensitivity 🔴 Edit

Important to note: This risk assessment is different from a DPIA, which is theoretical in nature.

Key Definitions for GDPR Breach Notification

Phased notifications

After making an initial notification, a controller could update the supervisory authority if a follow-up investigation uncovers evidence that the security incident was contained and the breach did not pose a high risk.

Delayed notifications

If notice is not provided to supervisory authority within 72 hours, you must provide a reason for the delay

Key Definitions for Breach Notification under GDPR

Roles in US vs GDPR

US	GDPR
Covered Entity: Responsible for notice to affected individuals & regulatory agencies	**Controller:** Responsible for notice to data subjects & supervisory authorities
Business Associates: Responsible for notice to CE / Data Owner (timeline for notice specified in the agreement)	**Processor:** Responsible for notice to controller.

Key Definitions for GDPR Breach Notification

Entities with EU establishments

- Single member state vs. cross-border breaches
  - Notice to lead supervisory authority
  - Notice to individuals in applicable member states
  - Voluntary report to applicable member state DPAs

Entities without EU establishments

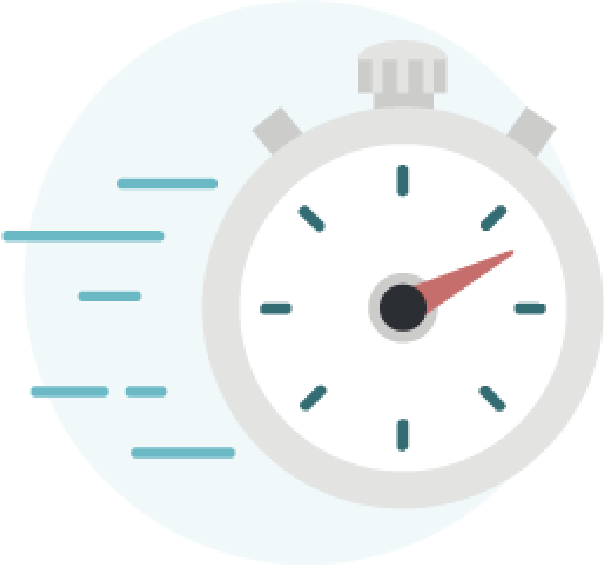
- Single member state vs. cross-border breaches
  - Notice to lead supervisory authority of the entity representative
  - Notice to member state of affected individual (?)

Providing notification in 72 hours

Racing the clock to determine…

- Who must be notified? How?
- Can you ensure consistency and manage risk?
- Can you demonstrate compliance?

…do you even need to notify?



Before a Breach Takes Place….

Operational:

- Data mapping and inventory, data workflows
- Identify core and extended teams
- Establish organizational controls & breach response plan
- Have cyber insurance & know what it covers/what the process is to report
- Practice, practice, practice – hold regular tabletop exercises

Data Security:

- Data Storage
- Disaster Recovery, Business Continuity
- Integrated systems passing information from a GRC, SIEM, ticketing system, or privacy monitoring software

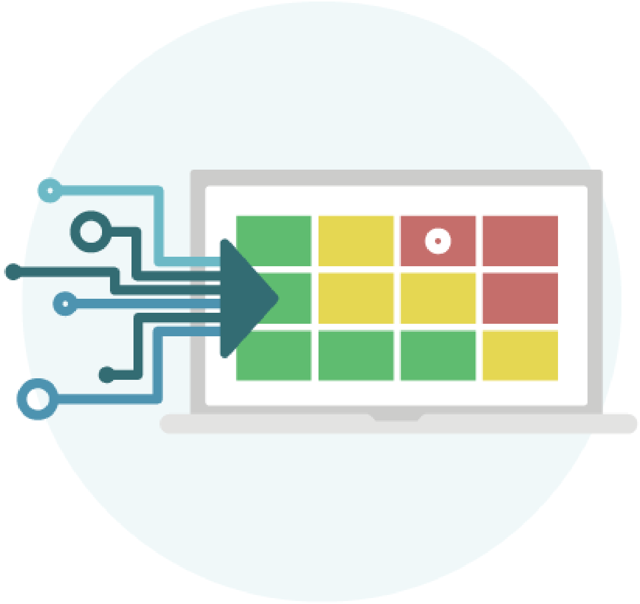
5 phases of an effective breach response lifecycle

Operationalize breach notification

1. Timely incident intake and escalation
2. Consistent risk assessment
3. Providing notification
4. Reporting and trend analysis
5. Staying current with changing regulations

Timely incident intake and escalation

- Single channel of escalation
- Integrations and APIs with detection systems
- Avoid duplicate data entry
- Complete documentation of required incident details
- Automated alerts to privacy & security teams



Consistent assessment

- Defensible, compliant multi-factor risk assessment
- Enables cross-functional collaboration
- Legal oversight
- Documentation & audit trail

Scenario: Confidentiality Breach

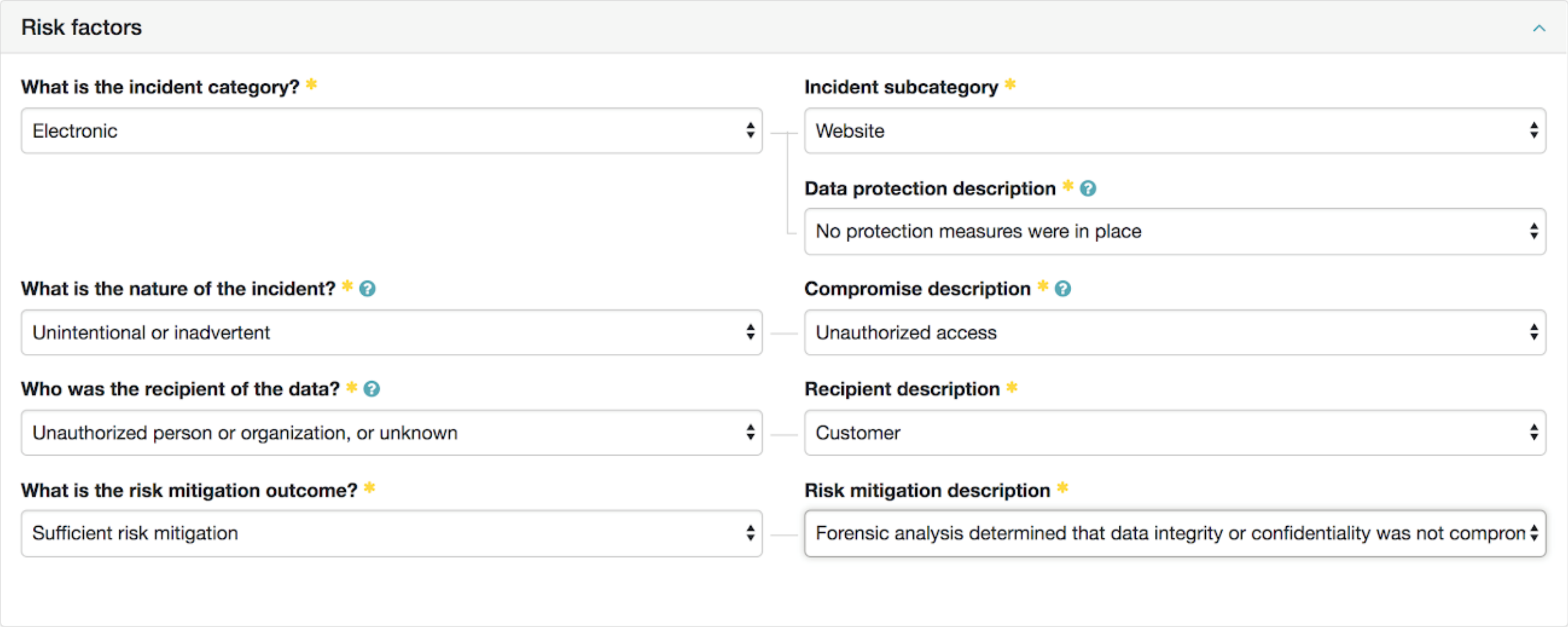
A website hosting company acting as a data processor identifies an error in the code which controls user authorization. The effect of the flaw means that any user can access the account details of any other user.

Data compromised: Name and Financial Account Number

…do you have to notify?

Scenario vii from *Working Party 29 Guidelines on Personal data breach notification under Regulation 2016/679*, page 32.

Sufficient Risk Mitigation



Risk factors

What is the incident category? *
Electronic

Incident subcategory *
Website

Data protection description * ?
No protection measures were in place

What is the nature of the incident? * ?
Unintentional or inadvertent

Compromise description * ?
Unauthorized access

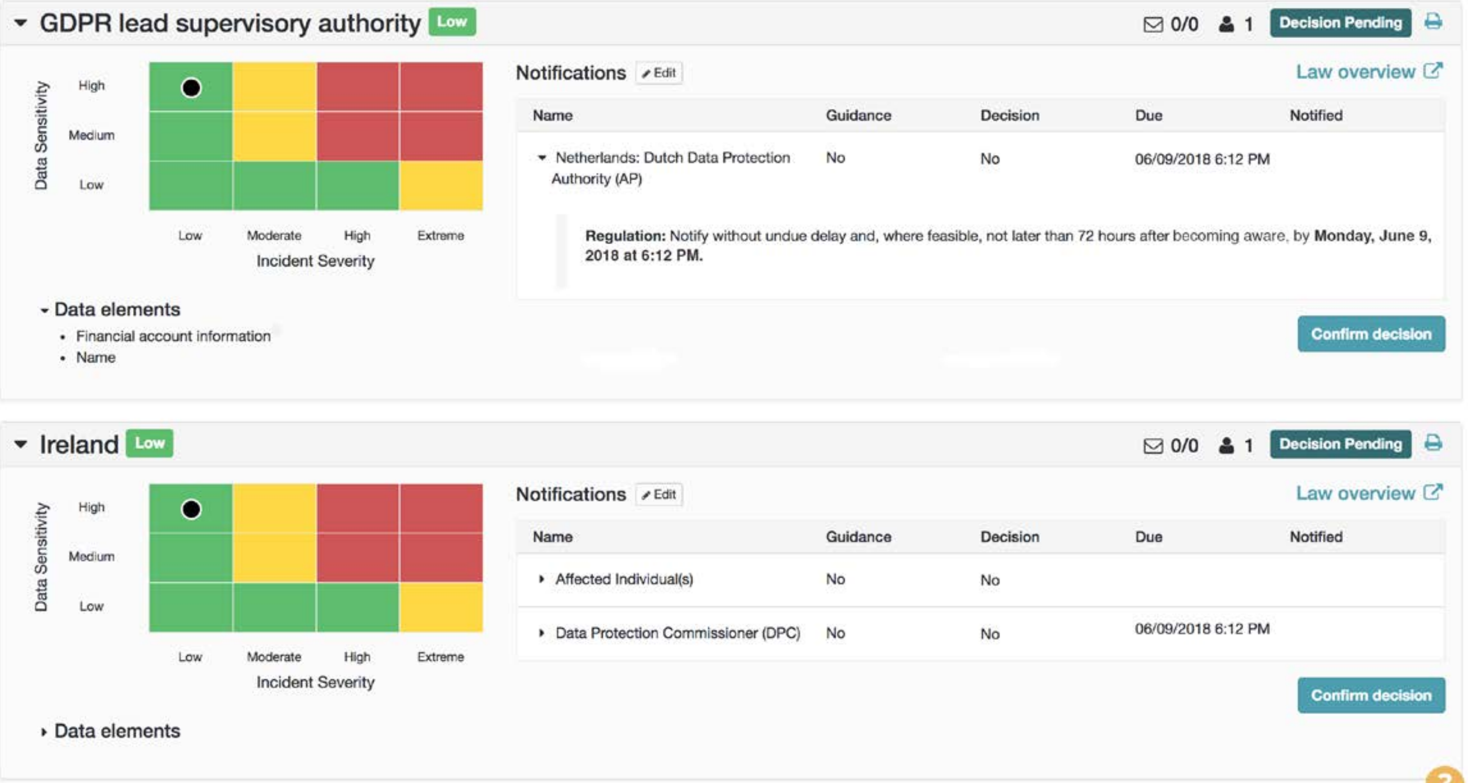
Who was the recipient of the data? * ?
Unauthorized person or organization, or unknown

Recipient description *
Customer

What is the risk mitigation outcome? *
Sufficient risk mitigation

Risk mitigation description *
Forensic analysis determined that data integrity or confidentiality was not compron

Sufficient Risk Mitigation



GDPR lead supervisory authority Low

✉ 0/0 1 Decision Pending

Data Sensitivity / Incident Severity

Data Sensitivity	Low	Moderate	High	Extreme
High	🟩 ●	🟨	🟥	🟥
Medium	🟩	🟨	🟥	🟥
Low	🟩	🟩	🟩	🟨

Incident Severity

Notifications Edit — Law overview

Name	Guidance	Decision	Due	Notified
Netherlands: Dutch Data Protection Authority (AP)	No	No	06/09/2018 6:12 PM	

Regulation: Notify without undue delay and, where feasible, not later than 72 hours after becoming aware, by **Monday, June 9, 2018 at 6:12 PM.**

Confirm decision

Data elements

- Financial account information
- Name

Ireland Low

✉ 0/0 1 Decision Pending

Data Sensitivity	Low	Moderate	High	Extreme
High	🟩 ●	🟨	🟥	🟥
Medium	🟩	🟨	🟥	🟥
Low	🟩	🟩	🟩	🟨

Incident Severity

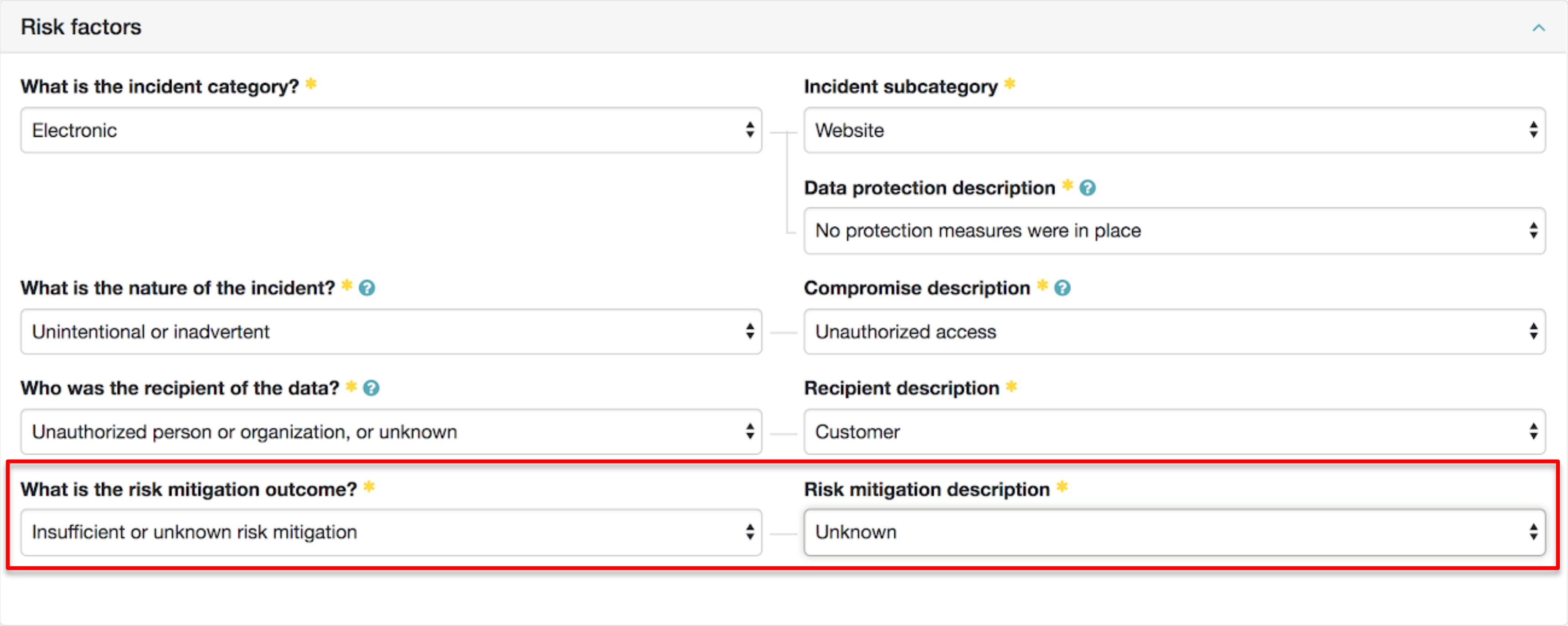
Notifications Edit — Law overview

Name	Guidance	Decision	Due	Notified
Affected Individual(s)	No	No		
Data Protection Commissioner (DPC)	No	No	06/09/2018 6:12 PM	

Confirm decision

Data elements

Insufficient Risk Mitigation



Risk factors

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Website

Data protection description *
No protection measures were in place

What is the nature of the incident? *
Unintentional or inadvertent

Compromise description *
Unauthorized access

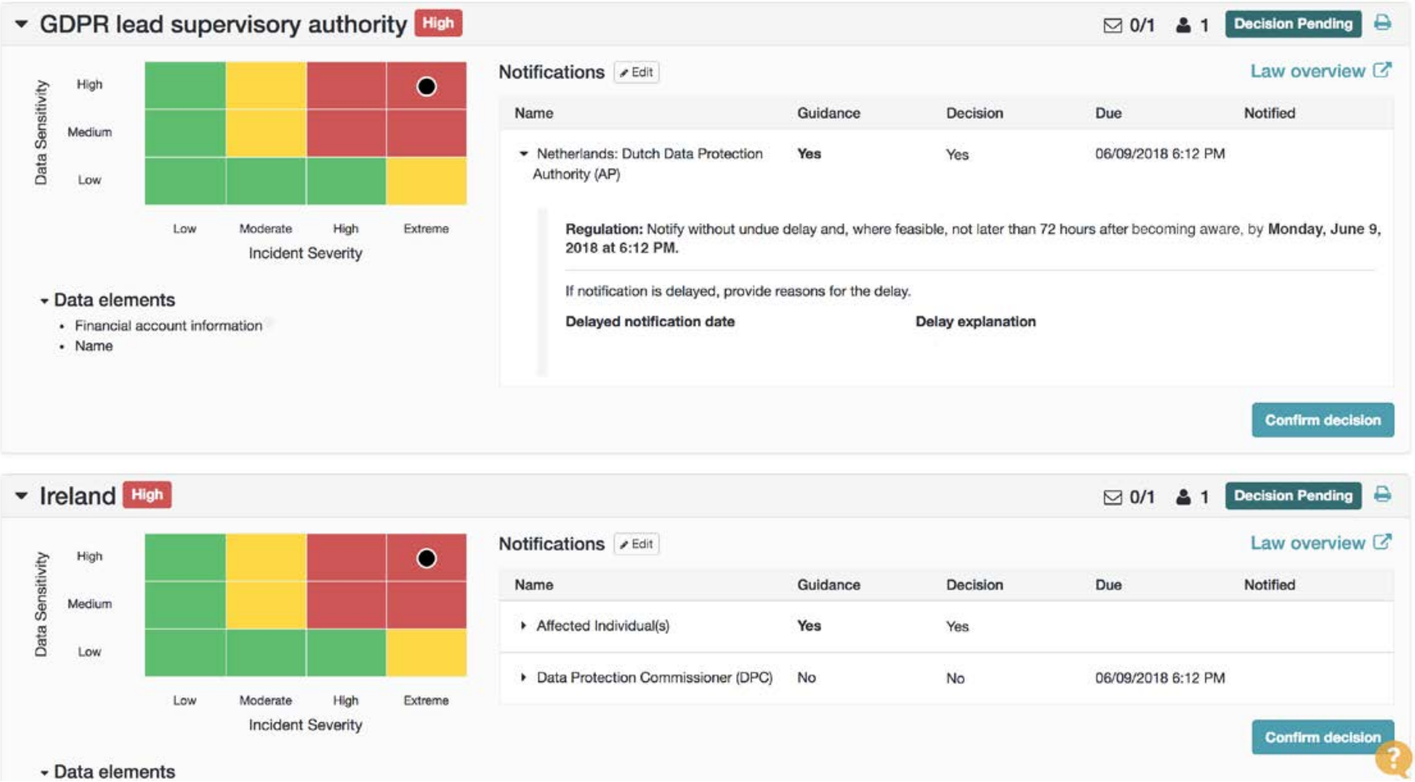
Who was the recipient of the data? *
Unauthorized person or organization, or unknown

Recipient description *
Customer

What is the risk mitigation outcome? *
Insufficient or unknown risk mitigation

Risk mitigation description *
Unknown

Insufficient Risk Mitigation



GDPR lead supervisory authority High

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Incident Severity

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Regulation: Notify without undue delay and, where feasible, not later than 72 hours after becoming aware, by **Monday, June 9, 2018 at 6:12 PM.**

If notification is delayed, provide reasons for the delay.

Delayed notification date **Delay explanation**

Data elements

- Financial account information
- Name

Ireland High

Data Sensitivity	Low	Moderate	High	Extreme
High	🟩	🟨	🟥	🟥 ●
Medium	🟩	🟨	🟥	🟥
Low	🟩	🟩	🟩	🟨

Incident Severity

Notifications Edit — Law overview

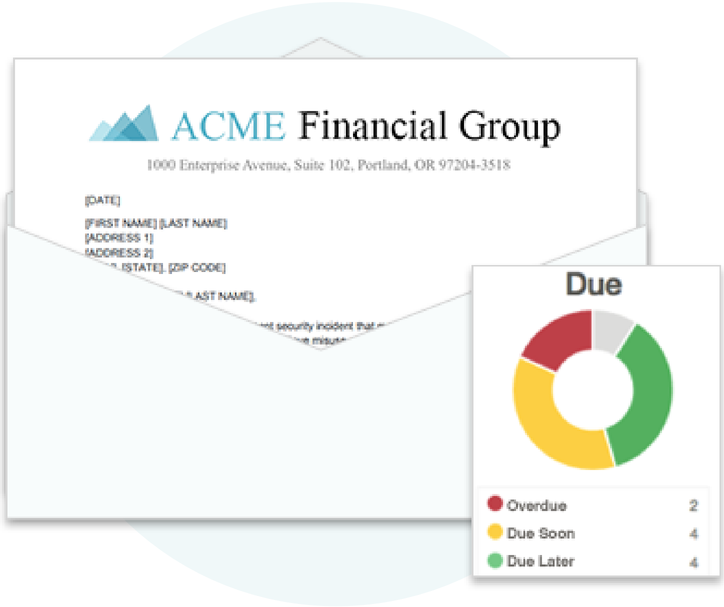
Name	Guidance	Decision	Due	Notified
Affected Individual(s)	Yes	Yes		
Data Protection Commissioner (DPC)	No	No	06/09/2018 6:12 PM	

Data elements

radar

Provide notification

- Counsel approved notification templates
- Content, format & contact requirements
- Generating notifications
- Central repository of all notifications



ACME Financial Group

1000 Enterprise Avenue, Suite 102, Portland, OR 97204-3518

[DATE]

[FIRST NAME] [LAST NAME]
[ADDRESS 1]
[ADDRESS 2]
[STATE], [ZIP CODE]

LAST NAME],

nt security incident that
misus

Real-time reporting, trend analysis

- Track program key performance indicators
- Establish benchmarking metrics:
  - Volume, source, type
  - Initial vs. Complete vs. amended notifications
  - Average time to provide notice
  - Frequency of missed deadlines or delays

Remain current with changing regulations

- Considerations:
  - Monitor pending regulations
  - Analysis of impact on existing workflow and decision making
  - Implementation of any resulting changes to workflow, who to notify, notice content, etc.

Apply what you have learned today:

- Establish benchmarking metrics and KPIs
- Identify areas of your privacy program that can be automated or streamlined
- Begin building a model to demonstrate ROI of investments in your program, assigning value of reducing **overall risk** and **operational costs.**

ANY QUESTIONS?

Thank you!