



MAHANYLAW

A year ago, the legal profession was abuzz about the Ashley Madison hack. For those that don't recall, Ashley Madison was a website that caters to people looking to have an affair. When the site's promoters wouldn't succumb to the hacker's demands, its client database was published. Family lawyers were bracing for a wave of new divorce filings. In the end, however, not much happened.

Fast forward to April 2016 and the so-called Panama Papers. An international law firm reputed to help Americans and others hide money and evade taxes was hacked. The haul was tremendous. The International Consortium of Investigative Journalists claims it has 11.5 million documents; some 2.6 terabytes of data. And this past weekend that data was published.

Obviously there are completely legitimate reasons to have an offshore account. For example, we have represented expats who retired overseas, dual nationals, businesses with offshore locations and Americans with relatives or property in another country.

The Panamanian law firm Mossack Fonseca has a different reputation. With offices around the world (mostly notorious tax havens), the firm is known to help foreigners form Panamanian shell companies. These companies are also known as nominee entities. Often they are used to hide assets from creditors or tax authorities.

The documents were posted to the Internet on Sunday April 3rd. Mossack Fonseca evidently knew it had been hacked, however. We obtained a letter sent to its clients on Friday April 1st. That letter began, "This letter is to inform that we are in the process of an in-depth investigation with experts who have now confirmed that unfortunately we have been the subject of an unauthorized breach of our email server."

The dust hasn't settled yet but we expect the fallout to be significant. One expert (who has already reviewed data released earlier today) says in some case it provides a road map of assets hidden for divorce purposes.

We suspect that much of the data relates to accounts hidden from the IRS, a felony.

Other files suggest money laundering.

The press has seized on the ties to Vladimir Putin, FIFA and other public figures. Edward Snowden tweeted from Russia, "Biggest leak in the history of data journalism just went live, and its about corruption."

Not even 12 hours old and some European news outlets are saying it will bring down Iceland's government.

What does all this mean for U.S. lawyers and their clients? Can this data be used in court proceedings? Is it privileged? Does it matter if it fits within the crime fraud exception? How far must lawyers go to protect data from hackers?

The hack of Mossack Fonseca isn't the first breach of a law firm. Just days ago the Wall Street Journal reported that hackers apparently accessed data of two different U.S. law firms, Cravath, Swaine & Moore and Weil Gotshal. Early speculation is that hackers were looking for data about upcoming deals. The government believes the hackers hoped to engage in insider trading.

Already we have seen law firms filing class actions against other law firms whose systems were breached. On the flip side, many law firms are now specializing in cyber security defense.

As a whistleblower law firm, we are interested in finding folks willing to come forward with inside information about corruption, bribery and tax evasion. Our job is to help these folks collect awards from the IRS and SEC whistleblower program.

Obviously, there is many ways that cyber security impacts law firms. Perhaps the most basic impact is the need to beef up security so that hackers can't access or harm the firm's data. (We mention "harm" because law firms have also been the victims of recent ransomware attacks.)

These hacking and cyber security issues have been in the news for many months. We suspect the sheer size and sensationalism involved in the Panama Papers will bring the topic to the forefront of lawyers in the near future.

Technology is changing the world. How does your firm fit into the cybersecurity discussion? It is a question you need to ask now.