Nonprofit Observer

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SPRING 2019

Take cybercrime seriously

Your donors' identities depend on it

Financial transactions increasingly are being conducted online — and that includes charitable donations. The Blackbaud Institute for Philanthropic Impact reports that online giving grew more than 17% between 2016 and 2018. For nonprofits without the appropriate IT infrastructure and security policies, such increased online donations can also mean greater cybercrime risk.

Many nonprofits blame budgetary constraints and insufficient in-house tech support, rather than negligence, for their systems' vulnerabilities. But such excuses won't fly if hackers break in and steal your donors' identities — particularly when you consider that many security tools are cheap and easy to use.

Don't stick your head in the sand

All organizations — all computers — are vulnerable to cyberattacks. But nonprofits and their networks may be more vulnerable than most. Hackers target charities because they're widely thought to have less-robust payment security and data storage protections in place. Also, nonprofits tend to collect extensive personal information on their donors, and these detailed files can fetch a high price on the Dark Web.

If your systems are weak, chances are that criminals will find a way to exploit those weaknesses. Phishing, spoofing and other email-based scams that trick users into revealing their passwords are perennially popular. Ransomware is also on the rise. There, hackers access stored data, encrypt it and then demand a ransom for its release. Even if the ransom demand is relatively low and you agree to pay it, there's no guarantee that additional demands won't follow. Nor can you be assured that the data returned to you won't be damaged or distributed to identity thieves.

Another scheme to look out for: Cybercriminals are increasingly taking advantage of nonprofits' reliance on automated clearing house (ACH) transactions. These transactions require donors to submit their bank routing numbers. Donors like ACH payments because they're useful for making automatic, recurring gifts — and hackers like them because they can provide unfettered access to individual bank accounts.

Build a fortress

Even if your nonprofit's tech budget is limited, you can slash the risk of cyberattack with almost no additional financial outlay. For example:

- Restrict network administration access to only those staff members who need it,
- Ensure that your payment processing system follows industry standards such as TLS (transport layer security) protocols that encrypt data and authenticate transaction parties,

- Update antivirus, antimalware and antispam software as soon as patches become available,
- Require all users to come up with complex passwords and change them frequently, and
- Educate staffers and volunteers about ways criminals might try to gain password access.

As an extra precaution, consider implementing two-factor authentication. This process shields networks with both a regular password and another challenge, such as a temporary password texted to a mobile phone.

Limit data collection

Lax cybersecurity isn't the only threat to your nonprofit's donors. The type and amount of data you collect and store could also put them at greater risk of identity theft. In general, collect only what you absolutely need and store what you're certain you can keep safe and confidential.

The European Union's recently implemented General Data Protection Regulation (GDPR) provides an excellent set of best practices. These rules are intended to protect the personal data of EU citizens and may not seem to affect your nonprofit directly. However, you could be subject to the GDPR if you receive online donations from Europeans or donations in foreign currencies. Proactively adopting the policies will help reassure donors that you take the security of their personal data seriously — and it could help head off legal trouble.

To make sure your constituents understand your policies, state on your website what data is collected, how it's processed and how it's stored. Provide a mechanism for donors to opt out of data collection.

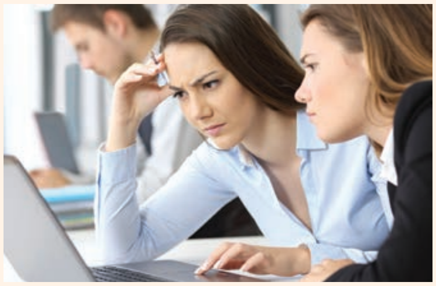
Also remind them that it's usually not safe to transmit sensitive information while using public Wi-Fi. Finally, provide a telephone number and mailing address should donors decide they'd prefer to give the old-fashioned way.

Conduct a risk assessment now

To gauge your organization's vulnerability to data loss, visit the Nonprofit Technology Network's site at nten.org. (Type "assessing risk" into the search box.) Also consider engaging an outside expert to review your nonprofit's security safeguards and recommend improvements.

WHEN WORSE COMES TO WORST

You may not want to think about it, but your nonprofit should be prepared in the event cybercriminals breach your network or payment processing system. A good disaster plan outlines procedures for limiting damage, fixing vulnerabilities and communicating with those who might be affected. Specifically name the individuals who will be responsible for carrying out each task.



Time is of the essence if your system is hacked. Most states require you to immediately inform anyone whose personally identifiable information is disclosed in a security breach. Even if you aren't subject to a mandate, don't wait. The resulting bad publicity could do more damage to your organization than the original cyberattack. That's why it's important to include PR and communications specialists when responding to any incident of this kind.

IRS offers nonprofits new transportation benefits guidance

The Tax Cuts and Jobs Act (TCJA) dealt several blows to the nonprofit sector. One of them is that, effective January 1, 2018, nonprofit employers are subject to tax on transportation fringe benefits provided to employees. The IRS recently released Notices 2018-99 and 2018-100 to provide guidance on this issue.

This guidance may clarify matters for entities that aren't subject to the tax, but it will likely leave other organizations to make required calculations using methodologies that aren't fully defined. For example, although the tax on transit benefits and third-party paid parking is straightforward, the steps the IRS provides to compute liability related to these benefits aren't.

New tax = smaller budget

Since the early 1990s, the Internal Revenue Code has encouraged both nonprofit and for-profit employers to offer employees qualified transportation benefits — including workplace parking (whether in a paid facility or free lot), vanpools and transit passes. These benefits used to be excluded from taxable salaries up to a stated monthly amount ($260 in 2018), and for-profit organizations could deduct the benefits they provided to employees.

After the TCJA, transportation benefits remain tax-free to employees. However, tax-exempt employers now must treat transportation benefit expenses as unrelated business income (UBI), which is taxed at the 21% corporate tax rate. State income tax may also be assessed.

Because the law became effective for 2018, organizations with noncalendar year-ends should take note: Tax could accrue for the portion of 2018 included in your nonprofit's fiscal year.

There's an exception if the transportation is necessary to ensure a worker's safety — for example, if a staffer is working late and needs to take a taxi home. Another provision allows that parking other than that reserved for your employees is exempt from tax if over 50% of it is made available to the general public.

Some state and local laws require employers to provide transportation benefits to employees.

Consequences and alternatives

A January 2019 survey conducted by Independent Sector, the Urban Institute and George Washington University found that the new tax will deprive nonprofit budgets of an average of $12,000 a year. Not surprisingly, some organizations are considering discontinuing offering transportation benefits to employees.

Before your nonprofit takes that step, make sure you review all potential consequences. Changing your benefits package may not make sense if fringe benefits provide a competitive advantage in attracting and retaining skilled staffers. And some state and local laws — such as Washington D.C.'s Sustainable DC Omnibus Amendment Act — *require* employers to provide transportation benefits to employees. Also, some states (including Maryland and Washington) help defray costs with tax credits for qualified employers.

Unexpected offer

If you intend to keep offering transportation benefits, review IRS Notice 2018-99 (or talk to your tax advisor). It explains how to determine taxable parking expenses. It also makes an unexpected offer: If your nonprofit currently provides parking and is willing to reduce the number of spots reserved for employees by March 31, 2019, you can retroactively lower (to January 1, 2018) the amount of unrelated business income tax (UBIT) you owe. ●

Should your nonprofit join the shared space revolution?

If your nonprofit is still in its early stages and you can't imagine renting — let alone buying — an office facility, consider space sharing. Also referred to as "co-working," sharing space with other organizations is a major trend in the nonprofit sector. Even established charities can enjoy benefits such as lower costs, flexibility and opportunities to collaborate.

Justified popularity

What kinds of organizations share space? All kinds, but they're particularly popular with small nonprofit and for-profit businesses, as well as freelancers, contractors and sole practitioners. The primary advantage of sharing space is cost savings. Splitting the rent is only part of the equation. Think about how much your group could save by also sharing supplies, equipment, utilities and maintenance expenses.

Flexibility is another perk, especially if your organization is just getting off the ground and doesn't want to commit to a multiyear lease. Even if it's free to work out of your home and hold meetings in coffee shops, such arrangements can seem unprofessional and even hold a fledgling nonprofit back. But in a survey conducted by The Nonprofit Centers Network, an overwhelming majority of organizations reported increased "credibility" when working in a shared workspace.

Another survey, conducted by Deskmag (a publication covering shared workspace issues), reports that, in the prior 12 months, 70% of shared space participants collaborated with fellow tenants. Daily exposure to other organizations can facilitate new ideas, challenge old ones and possibly open avenues for joint projects.

Meeting a variety of needs

An explosion of interest in shared space has given rise to workspaces that provide tenants with back office administrative, HR, IT and other support. Examples include the 24,000-square-foot

Community Partners Center for Health and Human Services in Colmar, Pennsylvania, and the Posner Center for International Development in Denver. The Inc. in Seattle even combines shared workspace with a child care center.

There are other shared space options. Some private foundations have more room than they need and lease the remainder to nonprofits. Because foundations are tax-exempt, they're able to pass savings along to their tenants in the form of reduced rent. And don't overlook the possibility that one of your corporate supporters would be willing to donate workspace. You won't know unless you ask.

Move cautiously

Not all nonprofits can successfully share space. Consider how your nonprofit's unique culture will hold up in a shared arrangement and whether it might clash with that of another non- or for-profit tenant. In general, organizations with similar values and complementary missions make better partners.

Also watch out for legal issues — including lease obligations, liabilities, compliance requirements and confidentiality. To help head off future conflicts, consult an attorney before signing a shared space arrangement.

Finding the right space

Finding a shared space may be easier than you think. Such arrangements have grown exponentially in the past couple of years and simple online searches can point you in the right direction. Try nonprofitcenters.org, your state's nonprofit agency or regional sites such as the San Francisco Bay–area Spaces for Good (spacesforgood.org). Or ask other nonprofit leaders and your professional advisors for recommendations.

Best practices for effective board meeting minutes

Meeting minutes may seem like the least important aspect of your nonprofit's board meetings. But these records of attendance, discussions and votes are critical to protecting your organization and demonstrating your directors' proper execution of fiduciary duty. Minutes also lend structure to meetings and motivate members to act on board decisions. So it's important to take these records seriously.

Focus on fundamentals

It may sound like a contradiction, but board meeting minutes should be clear and focused, yet also detailed. Certain information is fundamental: the meeting's date and time, whether it was a special or regular meeting, and the names of directors attending, as well as those who didn't. Your minutes should also:

- Record all board actions — such as motions, votes for and against, and resolutions — and note whether a quorum was reached,
- Indicate whether any board members left and re-entered the meeting (for example, in the case of a possible conflict of interest) and whether anyone abstained from voting or discussions,
- Record action items and who will be responsible for carrying them out, and
- Summarize key points from reports to the board and alternatives considered for important decisions.

Attorneys often advise their clients to include enough information in meeting minutes so that they can be offered as evidence that an action was properly taken and that directors fulfilled their fiduciary duties. When in doubt about the depth of detail to include, consult legal counsel.

Generally, your minutes should be ready for inspection by the next board meeting *or* within 60 days of the date of the original meeting, whichever comes first. IRS Form 990 asks whether there is "contemporaneous," or timely, documentation of the board and board committee meetings in minutes or written actions.

Transparency first

The person assigned to take minutes at your organization's board meetings should produce a straightforward report that summarizes actions taken and describes the basis for any decisions. Simple and unambiguous wording is best. Indeed, if meeting minutes are so abbreviated that only the keenest insider can understand them, your leaders aren't meeting their obligation to be open and transparent.

To that end, have a second person review your meeting minutes. That person (as well as the original writer) should ask, "Would this report make sense if I hadn't been at the meeting, and had been unfamiliar with the issues addressed? Would I be able to see at a glance the information provided and decisions made?"

DOCUMENTING EXECUTIVE SESSIONS

At times, your nonprofit's board may need to meet behind closed doors to discuss sensitive or confidential issues, such as key person salaries, a staff dismissal or a lawsuit. Details of these sessions should *not* be included in regular meeting minutes.

However, regular minutes should include a notation that the board moved to an executive session and indicate the general topic of the conversation, without violating confidentiality. Also make sure you know your state's sunshine laws. They may mandate that certain meetings be open and specify what you must document.

If your organization is ever audited by the IRS, your meeting minutes likely are among the first documents the agency will request. And any attachments, exhibits and reports generally are considered part of the minutes. Meeting minutes also can serve as evidence in court. For example, if someone alleges that your board made a hasty decision in cutting a program, meeting minutes can be used to present the data board members relied on when making that decision.

Remember your public

It's easy to forget that board meeting minutes are public documents and that many people will review them for many different reasons. To ensure that decisions made by members are easy to understand — and justifiable — strive to produce clear, comprehensive meeting minutes.