



City of Chicago



Or2017-502

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	10/11/2017
Sponsor(s):	Burke (14) Solis (25)
Type:	Order
Title:	Call for Corporation Counsel to file cause of action to hold Equifax Board of Directors liable for acts or omissions contributing to 2017 Equifax data breach
Committee(s) Assignment:	Committee on Finance

ORDER

WHEREAS, the City of Chicago is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6(a); and

WHEREAS, pursuant to its home rule power, the City of Chicago may exercise any power and perform any function relating to its government and affairs including the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, a board of directors has an ordinary duty to take care not to injure third parties and has a duty of loyalty to the corporation to act in a reasonable manner to oversee policy and management of executives; and

WHEREAS, as practically every aspect of private and public business is conducted and stored on virtual networks and warehouses, data breaches are occurring more frequently and with more potentially disastrous repercussions; and

WHEREAS, “hacks” and data breaches have a near constant strong hold on news headlines as cybercrime afflicts nations and industries throughout the globe; and

WHEREAS, for example, in 2013, the retail giant Target had its systems breached by a cyber-attack that affected more than 41 million customer payment card accounts, causing Target to pay out \$18.5 million in settlement fees; and

WHEREAS, in 2014, Home Depot’s systems were breached and 50 million cardholders were affected, resulting in Home Depot agreeing to pay at least \$19.5 million to compensate those individuals; and

WHEREAS, Equifax is a consumer credit reporting agency that collects and aggregates information on over 800 million individual consumers and more than 88 million businesses worldwide; and

WHEREAS, Equifax then sells this information to third parties in the form of consumer credit reports, insurance reports, and other consumer demographic and analytics information; and

WHEREAS, Equifax also markets and sells its credit protection and identity theft monitoring services to the consumers whose personal information Equifax collects; and

WHEREAS, Congress enacted the Fair Credit Reporting Act (FRCA) to ensure fair and accurate credit reporting, to promote efficiency in the banking system, and to protect consumer privacy; and

WHEREAS, Equifax as a credit reporting agency must abide by FRCA consumers privacy protection requirements of preventing inappropriate disclosure of private information by

maintaining reasonable procedures to ensure third-party disclosures are made exclusively for permissible purposes; and

WHEREAS, on July 29, 2017 Equifax discovered evidence of a cyber security breach in their databases that stored confidential and private consumer information of approximately 143 million U.S. consumers; and

WHEREAS, on September 7, 2017, 40 days after the breach was allegedly discovered, Equifax finally announced to the public that, due to a vulnerability in its systems, its files had been accessed by criminals for a period of time lasting at least from mid-May through July 2017; and

WHEREAS, August 2017 regulatory filings show that three Equifax executives completed stock sales totaling nearly \$2 million worth of company stock during the period in which breach information was withheld from the public; and

WHEREAS, consumer information compromised in the Equifax breach includes names, social security numbers, birth dates, addresses, driver's license numbers, credit card numbers, and documents containing personal identity information; and

WHEREAS, it appears that Equifax willfully ignored the clear and present risk of security breaches in its systems and failed to implement and maintain reasonable security measures to prevent, detect, and mitigate the breach; and

WHEREAS, Equifax waited 40 days to alert consumers of their private information being stolen, thereby depriving consumers of an opportunity to freeze and monitor their accounts in a timely manner and increasing the timeframe and risk of exposure; and

WHEREAS, to date, Equifax has not issued confirmation to any person that his or her information was compromised; and

WHEREAS, as a remedy, Equifax originally offered "complimentary identity theft protection and credit monitoring" through a website they created called equifaxsecurity2017.com, but the service required waiver of the right to a jury trial and purported to bind users to individual arbitration; and

WHEREAS, moreover, the credit protection assistance included an automatic renewal option on the paid service after the "free" year subscription expired; and

WHEREAS, Equifax's consumer relations were called into question even earlier when, in January 2017, the Consumer Financial Protection bureau ordered Equifax and TransUnion (another credit reporting agency), to pay \$23.1 million collectively in consumer restitution and fines for deception about the usefulness and true cost of credit sold to consumers; and

WHEREAS, according to Attorney General Lisa Madigan, 5.4 million consumers in Illinois were affected by the security breach at Equifax; and

WHEREAS, due Equifax's conduct, Chicago residents are at an increased risk of identity theft and fraud, improper disclosure of private information, and confront the need to spend added time and money to monitor their financial records; and

WHEREAS, according to the Chicago Sun Times, more than 70 class-action lawsuits have reportedly been filed against Equifax as a result of the breach; and

WHEREAS, the Massachusetts Attorney General filed suit against Equifax alleging the company knew about electronic vulnerabilities yet failed to protect consumer data; and

WHEREAS, additionally, the city of San Francisco has filed suit against Equifax claiming the company violated California state law by failing to provide timely notice of the data breach that affected Californians and failing to provide complete and clear information; and

WHEREAS, Equifax and this breach are now the subject of congressional hearings in Washington D.C.; and

WHEREAS, with what appears to be concealment of wrongdoing and effort to profiteer from it, evidence of Equifax's conduct to date offends longstanding notions of business ethics and morals; and

WHEREAS, as these legal actions and investigations begin, the Chairman and Chief Executive Officer during the activities in question, Richard Smith, is poised to retire from Equifax with a payout worth as much as \$90 million; and

WHEREAS, according to Equifax's mission statement, the Board of Directors has "a responsibility to Equifax's customers, employees, and suppliers and to the communities where it operates," and has the responsibility to "regularly monitor the effectiveness of management policies and decisions including the execution of its strategies;" and

WHEREAS, in *City of Chicago v. Equifax, Inc.*, the City has initiated a cause of action against Equifax in the Circuit Court of Cook County, claiming that the breach and the manner in which it was handled violated the Municipal Code of Chicago's provisions concerning consumer fraud and deceptive business practices; and

WHEREAS, the lawsuit naming the company is the start of a necessary and worthy effort to protect the interests of Chicagoans, but corporate entities and individuals cannot hide behind the corporate veil to evade responsibility; and

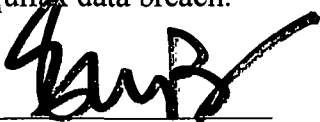
WHEREAS, the Chicago City Council finds that the Equifax Board of Directors shall be held responsible for the following: (i) failed oversight of business operations resulting in a system vulnerable to breaches in general, and the 2017 data breach in particular; (ii) failure to detect and investigate the breach in a timely manner; (iii) failure to disclose the breach to consumers in

a reasonable time; (iv) failure to provide adequate remedies to consumers; (v) failure to prevent inappropriate stock trading practices and business transactions in the aftermath of the breach; and

WHEREAS, the Equifax Board of Directors bears direct responsibility for the intrusion of consumer's privacy information among millions of Chicagoans; now, therefore,

BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

The Chicago City Council urges the Corporation Counsel to file a cause of action seeking to hold each Equifax Board of Director personally liable for acts or omissions contributing to the 2017 Equifax data breach.



Edward M. Burke
Alderman, 14th Ward



Daniel Solis
Alderman, 25th Ward

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