



# The Power of Collaboration – Part 2

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CONSULTING

# Agenda for Part Two

- Land Use Liability
- Liability for Child Abuse and Domestic Violence
- Environmental Risk Management
- Cyber Risk Management
- Emergency Management and Crisis Communication
- NJ Gov't Employees Ethics Act
- Open Public Meetings Act
- Open Public Records Act
- First Amendment Audits



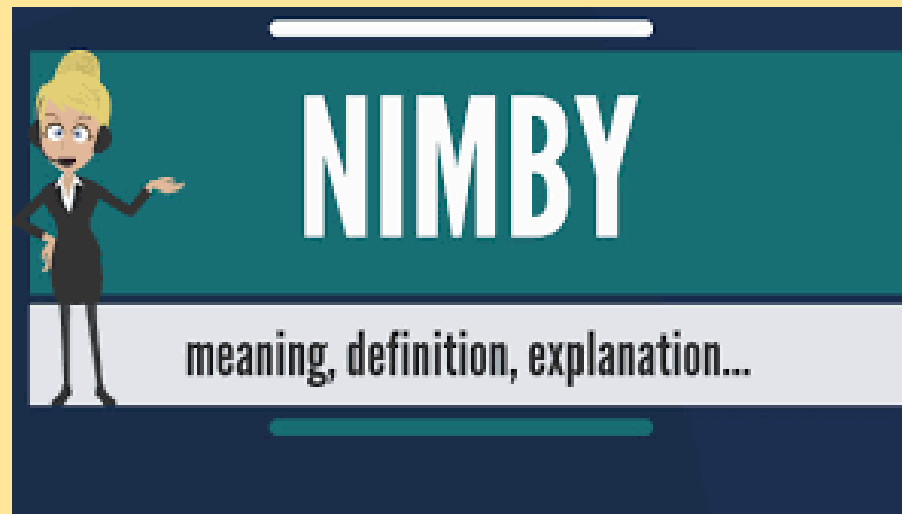
# Land Use Liability

- Cases usually involve request for injunctive relief, not monetary damages. However, there is one large exception we will discuss.
- Land Use boards enjoy broad immunities. However, the immunities do not apply when boards violate an applicant's civil rights.
- Based on 5<sup>th</sup> Amendment protections, which provides that private property shall not be taken without "just compensation."
- Inverse Condemnation (1922 US Sup Ct decision), where zoning laws significantly diminish the value of a private property. (Ruled a "taking" without compensation.)
- Cell towers, group homes, adult books stores



# Land Use Liability

***What does NIMBY stand for, and how does that relate to Land Use liability cases?***



# What is the definition of “Fee Shifting?”



# Land Use Liability - RLUIPA

## *Religious Land Use and Institutionalized Persons Act*



# Land Use Liability - RLUIPA



- Passed unanimously in both houses of Congress and signed into law in 2000.
- Addresses religious discrimination and government infringement of religious liberty in two areas: **local land use laws such as zoning** and the **religious exercise of persons confined to institutions.**
- Needed because faith groups whose members constitute only 9% of the population made up 50% of the reported cases involving zoning disputes.
- “Zoning codes frequently exclude churches in places where they permit theaters, meetings halls, and other places where large groups of people assemble for secular purposes. . . . Churches have been denied the right to meet in rented storefronts, in abandoned schools, in converted funeral homes, theaters and skating rinks—in all sorts of buildings that were permitted when they generated traffic for secular purposes.”

# Land Use Liability - RLUIPA

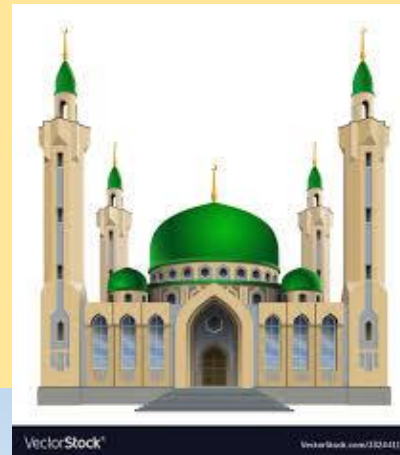
- RLUIPA codified the constitutional protections for religious freedom and against religious discrimination provided under the Free Exercise Clause, the Free Speech Clause, and the Equal Protection Clause, and provide mechanisms for enforcement of these rights.
- Fee shifting applies to these cases.
- The land use section contains five separate provisions, which together provide comprehensive protection for individuals and religious institutions from zoning and landmarking laws that discriminate based on religion or unjustifiably infringe on religious freedom.





# RLUIPA Cases – Al Falah Center v. Bridgewater (2013)

- A Muslim congregation proposed to build a conforming mosque and educational center on the site of a former hotel. Within two months, the town changed the Zoning Ordinance to require a church to seek a conditional use variance if located in a residential zone. The town argued that traffic would be an issue, but the expert for the Muslim congregation disagreed and provided documentation.
- Federal Court ruled against the town and was swayed by how quickly the town had acted to change the ordinance. The town paid \$2.5 million to purchase another property for the mosque, and the Town's insurer paid the mosque's \$5 million in legal fees.



# RLUIPA Cases – Tenafly Eruv Assoc. v. Tenafly (2002)

- A group of Orthodox Jewish residents attempted to create an enclosed “Eruv” zone that would allow them to push or carry objects outside their home on the Sabbath. The utility company agreed to allow the Eruv’s (running plastic string high and out of site on utility poles.) However, the town pushed back by enforcing a 1954 Town ordinance that prohibited placing signs on utility poles.
- Court ruled against the town due to “selective enforcement” of the ordinance, and cited numerous examples of similar sign violations in the past that were overlooked.



## RLUIPA Cases – Albanian Assoc. Fund v. Township of Wayne, New Jersey (2007)

- For years, the Township of Wayne, New Jersey blocked the Albanian Associated Fund (AAF), a Muslim congregation, from building a mosque. The congregation's efforts were opposed by a so-called "Property Protection Group" in the community, who labeled the mosque a "public nuisance." Instead of protecting the First Amendment rights of the congregation, Wayne Township suddenly decided that it needed to seize the future home of the mosque for "open space."
- Federal Court ruled that the use of eminent domain power to bypass zoning regulations could violate RLUIPA. The parties ultimately agreed to settle the case.



# Land Use Case – Schad v. Mt. Ephraim (1981)

- Town adopted a zoning ordinance that prohibited adult bookstores and theaters in its commercial zone.
- Plaintiff challenged the ordinance, and the U.S. Supreme Court overturned the zoning ordinance because it allowed a broad range of other uses in its commercial zone, including bookstores and theaters. Therefore, the town was singling out a particular type of speech for regulation which is not lawful.
- Note: In 1986 the same court upheld a zoning ordinance in Renton v. Playtime Theaters that prohibited adult theaters within 1,000 feet of a residential zone. The court ruled that establishing a “buffer” zone is acceptable in this case.



# Inherently Beneficial Uses

- 40:55D-4 a definition of *“inherently beneficial use”* as follows: *“a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare (2000).”*
- Some Examples:
  - Hospitals
  - Schools
  - Child Care Centers
  - **Group Home**
  - Wind Energy Facility
  - Solar Energy Facility

# Group Homes in New Jersey

- **What laws apply to the siting of a community residence?**
- **The Federal Fair Housing Act (42 U.S.C. 3601 et seq.):**
  - Prohibits local zoning rules to discriminate in housing opportunities for the disabled;
  - Makes it unlawful to deny a dwelling to any buyer or renter because of a handicap.
  - **The Municipal Land Use Law (N.J.S.A. 40:55 D-66.1 and 66.2):**
    - Requires all residential districts in the State to permit new community residences.
    - Specifically protects community residences that are licensed by the State
    - Prohibits municipal authorities from excluding group homes from their communities (S.210); and requires handicapped individuals to be placed in community residences whenever possible (N.J.S.A.30:6-D-13 and N.J.S.A. 30:11B-1)
    - In addition, State Statute (N.J.S.A. 30:11-B-5) ensures that homes for the handicapped are geographically “available throughout the State without unnecessary concentration.” These living arrangements are established in N.J. S. A. 30:11B-1 et. seq.
    - Stringent standards for opening, licensing and operating a community residence are delineated in N.J.A.C. 10:44A.

# Liability for Child Abuse



# Liability for Child Abuse





# Statistics on Child Abuse

- Reports involving 80,000 NJ children are filed annually
- 50,000 of these children receive prevention and post-response services
- 37% of all children are reported to child protective services by their 18<sup>th</sup> birthday
- 20% in claims during COVID



# Liability for Child Abuse

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Under recent legislation, you can be held personally responsible if you fail to act. How?



# Exposure To Personal Liability

- Possible Issues:
  - ▣ Failure to carry out a full and complete background check
  - ▣ Failure to train your employees properly
  - ▣ Failure to properly supervise your employees
  - ▣ Failure to document hiring practices, training, and education
  - ▣ Failure to take appropriate action on possible abuse claims



# Liability for Child Abuse

- The new NJ statute allows childhood victims of sexual molestation to file suit until they turn 55, or until seven years from the time that they became aware of their injury, whichever comes later. Further, for those previously barred from seeking recovery, the law establishes a two-year window to file suit.
- Previously, the time limit was two years past your 18<sup>th</sup> birthday to file.
- There is a “retroactive” provision in the new law as well, allowing refiling of old claims that were barred by the old statute of limitations.



# Extended Statute of Limitations for Victims to File

- **Previously:**
  - Victims of child sexual abuse and molestation had until two years past their 18<sup>th</sup> birthday to file a notice of claim or lawsuit.
- **Under the new law passed in 2019:**
  - Victims now have until they turn 55 years of age, or seven (7) years from the time the victim became aware of the abuse, whichever is LATER, and;
  - Victims previously barred by the SOL, have a 2-year window to file or re-file claims
  - So:
    - 18 YOA plus 2 years = 20 YOA versus:
    - 55 YOA OR 7 years from the time the victim is aware of the abuse
      - **SOL is Extended by at least 35 Years!!!**

# Protection and Safe Treatment of Minors

- Separate required course for the Leadership Academy
- **Covers the following areas in detail:**
  - Definition of an Abused Child under NJ law
  - Role of Government
  - Indicators of Abuse
  - Long Terms Impacts
  - Peer to Peer and Adult to Child abuse
  - “Grooming” victims
  - How to Report Suspected Abuse in NJ
  - In Loco Parentis doctrine
  - Best Practices including training for all employees

# Domestic Violence Impacting Public Employees in NJ

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# Domestic Violence Statistics

- There are over 70,000 reported cases of domestic violence annually in New Jersey
- 26% of females and 29% of males in New Jersey will be the victims of domestic violence in their lifetimes.
- In the US, an average of 20 people experience intimate partner physical violence every minute. This equates to more than 10 million abuse victims annually.
- **HOWEVER, most cases of domestic violence are never reported to the police**
- ***Children are either directly hurt or are “collateral” damage in about 1/3 of all domestic violence cases.***





# NJ Domestic Violence Policy Act for Public Employers

- Passed in January 2018
- Law directed the NJCSC to develop a uniform domestic violence policy and requires all public employers to adopt a written policy concerning reporting and handling of domestic violence
- On October 15, 2019, NJCSC issued its uniform domestic violence policy
- Posted on MEL Website with “fill in the blanks”
- Employers may modify the uniform policy; however, they must provide the same or higher level of protection and service to their employees. NJSCS must approve any policies that are not the same as their policy.



# NJ Domestic Violence Policy Act for Public Employers

- All employees must be covered under the policy (full time, part time, seasonal, interns, volunteer, and temporary employees.)
- Employer must designate a Human Resource Officer (HRO), and a backup
- Employees must be made aware of the Policy, and how to report an incident



# NJ Domestic Violence Policy Act for Public Employers

- **HRO**

- Designed to assist employees or members of their family who have been victims of domestic violence.
- HRO also helps employees work through the NJ Security & Financial Empowerment Act (NJ SAFE)
- Training is mandatory and available on the NJ Civil Service Commission Website for the HRO.



# HRO Training

The screenshot shows the State of New Jersey Civil Service Commission website. At the top left is the logo and name of the commission. At the top right, it lists Governor Phil Murphy and Lt. Governor Sheila Oliver, along with navigation links for Home, Services A to Z, Departments/Agencies, and FAQs. A search bar is also present. The main content area is titled 'New Jersey Domestic Violence Policy' and includes a breadcrumb trail: Home > Accounting Authorities and Employees > New Jersey Domestic Violence Policy. The text explains the purpose of the policy, which is to set a uniform domestic violence policy for public employees. A 'Resource Documents' box lists 'NJ SAFE ACT', 'NJ Coalition Services', and 'Appendix - Domestic Violence Training Resources'. Below this, there are links to download the policy and a press release. The section 'Domestic Violence Policy Training' states that all HROs in public service are required to take this training, which is available through the LMS eLearning platform. Instructions are provided for users with and without LMS access, and for those without myNewJersey portal access. A footer note directs all questions to [DVP@csc.nj.gov](mailto:DVP@csc.nj.gov).

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION

Governor Phil Murphy • Lt. Governor Sheila Oliver  
NJ Home | Services A to Z | Departments/Agencies | FAQs  
Search

HOME  
JOB SEEKERS  
CURRENT EMPLOYEES  
APPOINTING AUTHORITIES AND EMPLOYERS  
• Agency Services  
• CSC Consultant Team Map  
• CAMPS  
• Classification and Compensation  
• Appeals  
• Job Announcements  
• Intergovernmental Services and Forms  
• Frequently Asked Questions  
• 2011 Police Sergeant Consent Decree Information  
ABOUT US

Home > Accounting Authorities and Employees > New Jersey Domestic Violence Policy  
New Jersey Domestic Violence Policy

The purpose of the State of New Jersey Domestic Violence Policy for Public Employees is to set forth a uniform domestic violence policy for all public employees to adopt in accordance with [N.J.S.A. 11A:2-6a](#). This policy is designed to encourage employees who are victims of domestic violence, as well as those impacted by domestic violence, to seek assistance from Human Resources Officers (HRO) within both state and local government.

Resource Documents

- NJ SAFE ACT
- NJ Coalition Services
- Appendix - Domestic Violence Training Resources

Download the policy here: [State of New Jersey Domestic Violence Policy for Public Employees](#)

See Press Release: [Civil Service Unveils Domestic Violence Policy for Public Employees](#)

**Domestic Violence Policy Training**

All New Jersey Human Resources Officers (HRO) in public service who are designated to assist employees of domestic violence are required to take Domestic Violence Policy Training.

This training is available through the Civil Service Commission's Learning Management System (LMS) platform. The LMS eLearning platform is a web-based software system that you will have temporary access for the completion of the online training.

Please follow the instructions below to access the training.

If you currently have access to the LMS eLearning platform via your myNewJersey portal; for instructions [click here](#)

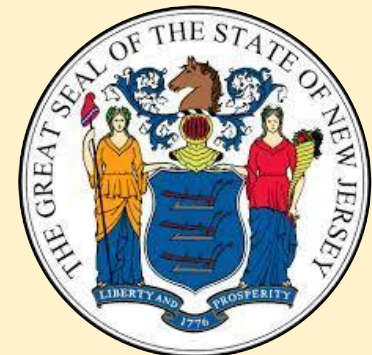
If you currently have a myNewJersey portal account, but do not have LMS eLearning access; for instructions [click here](#)

If you currently do not have access to the myNewJersey portal; for instructions [click here](#)

All questions can be directed to [DVP@csc.nj.gov](mailto:DVP@csc.nj.gov)

# NJ SAFE Act

- The New Jersey Security and Financial Empowerment Act (NJ SAFE Act)
- applies to employers with 25 or more employees and grants an employee 20 days of leave in a 12-month period if the employee, or the employee's family member, including a child (under 19 or of any age incapable of self-care), parent, spouse, domestic partner, or civil union partner, has been the victim of domestic violence or a sexually violent offense.
- employers may no longer require employees to use accrued paid leave; and
- employees are now eligible for Family Leave Insurance benefits.



# Prevention of Domestic Violence Act for Law Enforcement officers



- A law enforcement officer must make an arrest when the officer finds “probable cause” that domestic violence has occurred. This holds even if the victim refuses to make a complaint.
- The Act is invoked in situations where the victim exhibits signs of injury caused by domestic violence, when a warrant is in effect, or when there is probable cause to believe that a weapon has been involved in an act of domestic violence.
- If a child is present, the officer must report the situation to the Department of Children and Families for further investigation.
- Domestic violence is not just about physical assault. Abusers often use psychological tactics to gain control over their partners, such as making threats to prevent a victim from leaving, or contacting friends or the police.

# Protecting Children – Cases - J.H. v. Mercer County (2007)

- A 24-year-old female detention center employee started a sexual relationship with a 17-year-old inmate at a county detention center. He was a very troubled young man who entered treatment with another Agency after he turned 18 and was released from the county facility. A lawsuit was filed to recover medical bills. The county argued that while the molester can be held liable, the county itself has immunity from vicarious liability under Title 59.
- Court ruled that both the county and the employee can be held liable. Under the current law, the County Board of Commissioners could also be held to be personally liable for failure to implement appropriate safeguards.



# Protecting Children – Cases – L.E. v. Plainfield Bd. of Ed. (2018)

- A girl was pushed into the boy's bathroom in a high school, where she was sexually assaulted. The lawyers for the Board of Education argued that while, under Title 59, the perpetrator of the crime can be sued, the public entity itself has an immunity for failure to provide adequate police protection.
- The Court ruled in favor of the plaintiff, stating that the Board of Education has a duty to implement reasonable measures to prevent student-on-student assault, including enforcement of a system of hall passes, maintaining supervision of students in class and preventing free entry into school buildings.





# Environmental Risk Management



# Environmental Risk Management

- Environmental Liability was not a large concern to local governments in NJ until 1983, when Ayers v. Jackson Township was decided.
  - Involved contamination of well-water by toxic pollutants leaching into the Cohansey Aquifer from the Jackson Township landfill. Jury found that the township had created a “nuisance” and a “dangerous condition,” by virtue of the operation of the landfill. The jury also found the township’s conduct to be “palpably unreasonable.”
  - Jury awarded \$2 million for emotional distress and \$5.4 million for deterioration of the residents’ quality of life. Also, \$8.2 million was placed in a fund to cover the future cost of annual medical monitoring.



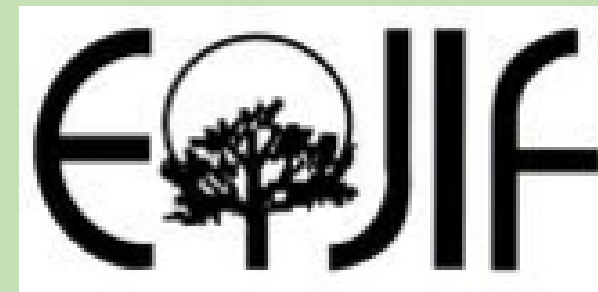
# Environmental Risk Management

- This case established the principle that the cost of pollution claims must be shared by all of the General Liability insurers that covered Jackson Township during the many years that toxic waste was deposited in the landfill.
- Resulted in the private insurance market discontinuing coverage to municipal entities.
- State of NJ created the NJ Spill Compensation Claims Program in 1987
  - Funded by a tax on the petroleum and chemical industries
  - Double-edged for NJ local governments
- NJ MEL decided to create a “specialized” pool of environmental claims
- E-JIF formed in 1993



# Environmental Joint Insurance Fund (E-JIF)

- Current membership includes 13 Joint Insurance Funds, encompassing 313 municipalities, 72 authorities and seven other entities.
- Unmatched success
- Most extensive coverage available to local governments in the US, including five coverage areas:
  - Third Party Liability
  - On-Site Clean Up Costs
  - Public Officials Pollution Liability
  - De Minimis Abandoned Waste Sites
  - Storage Tank Systems



# Environmental Liability Cases- RE: Combe Fill South Landfill (1998)

- Combe Fill South Landfill was in operation from the 1940's until it was closed via EPA Order in 1981. Accepted municipal waste and sewage sludge, septic tank waste, chemicals and waste oil. EPA sued approximately 250 parties to recover clean-up costs estimated to be more than \$150 million in 1998. The suit included 21 municipalities insured by the E-JIF.
- Lawsuit was settled against the 21 E-JIF members for \$3.8 million. Much of the money came from prior insurers. E-JIF used "archiving" to identify and document the insurers that previously insured the 21 members. Large savings in legal costs by the E-JIF managing this case.



# Environmental Liability Cases- RE: NJDEP v. Occidental Chemical e. al. (2005)

- Chemical plants along the Passaic River discharged toxic materials that poisoned the six-mile stretch in Newark, Harrison, East Newark, and Kearny. Of special concern was dioxin, used to manufacture Agent Orange during the Vietnam War. Because of tidal movement, the high concentrations of dioxin also contaminated other areas of the river and the NJ/NY Harbor. The direct defendants counter-sued numerous municipalities, 32 of which were E-JIF members, alleging municipal storm water runoff and discharge from sanitary processing plants contributed to the contamination.
- E-JIF was able to settle the case for just over \$2 million. E-JIF paid \$50K for each town per the policy and the defense costs. Each town paid \$45K; however, the local JIFs picked up those costs so no member had any out-of-pocket costs for the suit.



# Break Time

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- We will now take a **10-minute break.** Please be back in ten minutes. Thank you!

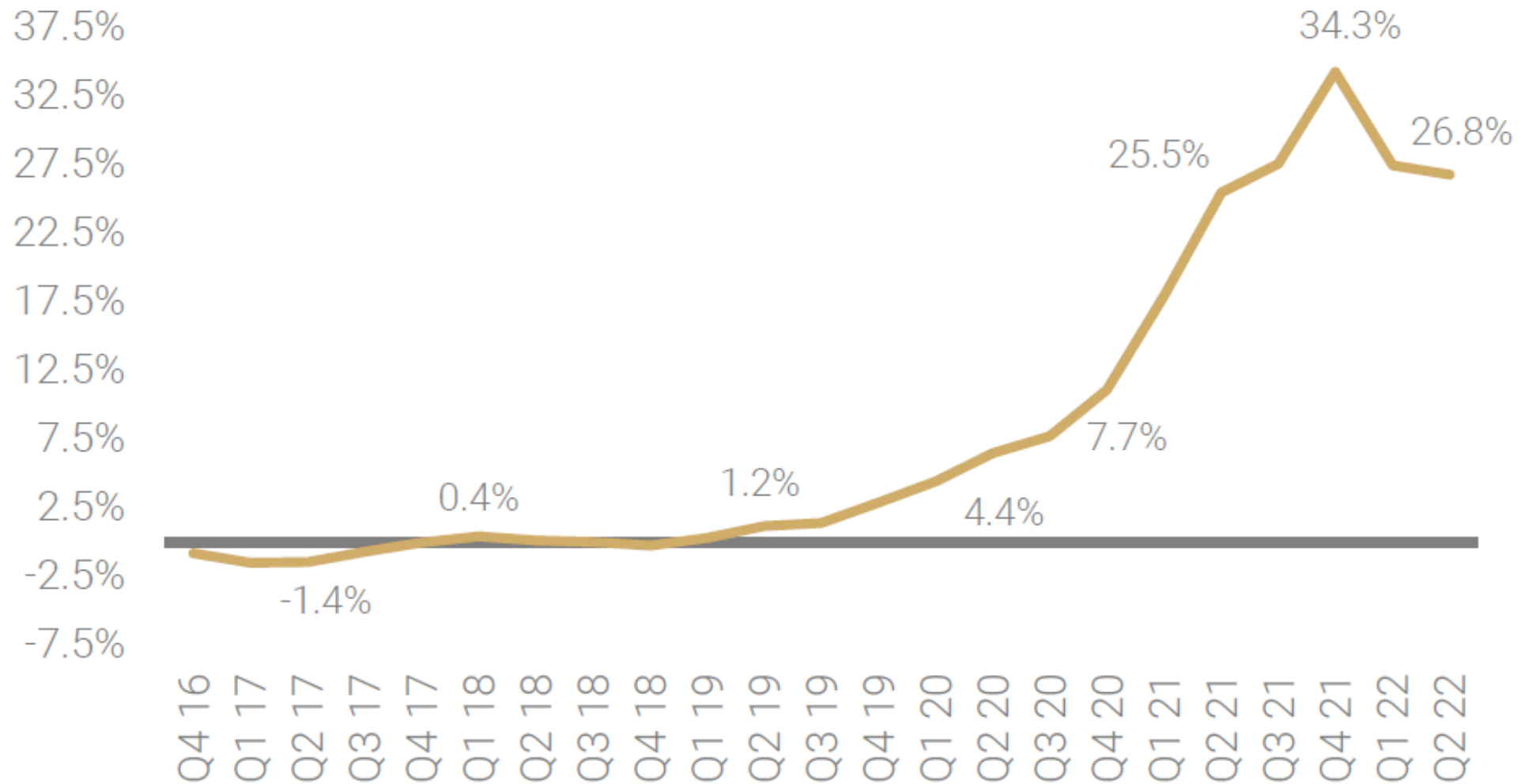
# Cyber Liability and Risk Control





# Marketplace Overview

Premium Change for Cyber, Q4 2016 - Q2 2022



# IBM Security

287

Average number of days to identify and contain a data breach

**The longer it took to identify and contain, the more costly the breach.**

Data breaches that took longer than 200 days to identify and contain cost on average \$4.87 million, compared to \$3.61 million for breaches that took less than 200 days. Overall, it took an average of 287 days to identify and contain a data breach, seven days longer than in the previous report. To put this in perspective, if a breach occurring on January 1 took 287 days to identify and contain, the breach wouldn't be contained until October 14th. The average time to identify and contain varied widely depending on the type of data breach, attack vector, factors such as the use of security AI and automation, and cloud modernization stage.

\$4.62m

Average total cost of a ransomware breach

**Ransomware and destructive attacks were costlier than other types of breaches.**

Ransomware attacks cost an average of \$4.62 million, more expensive than the average data breach (\$4.24 million). These costs included escalation, notification, lost business and response costs, but did not include the cost of the ransom. Malicious attacks that destroyed data in destructive wiper-style attacks cost an average of \$4.69 million. The percentage of companies where ransomware was a factor in the breach was 7.8%.

20%

Share of breaches initially caused by compromised credentials

**Compromised credentials was the most common initial attack vector, responsible for 20% of breaches.**

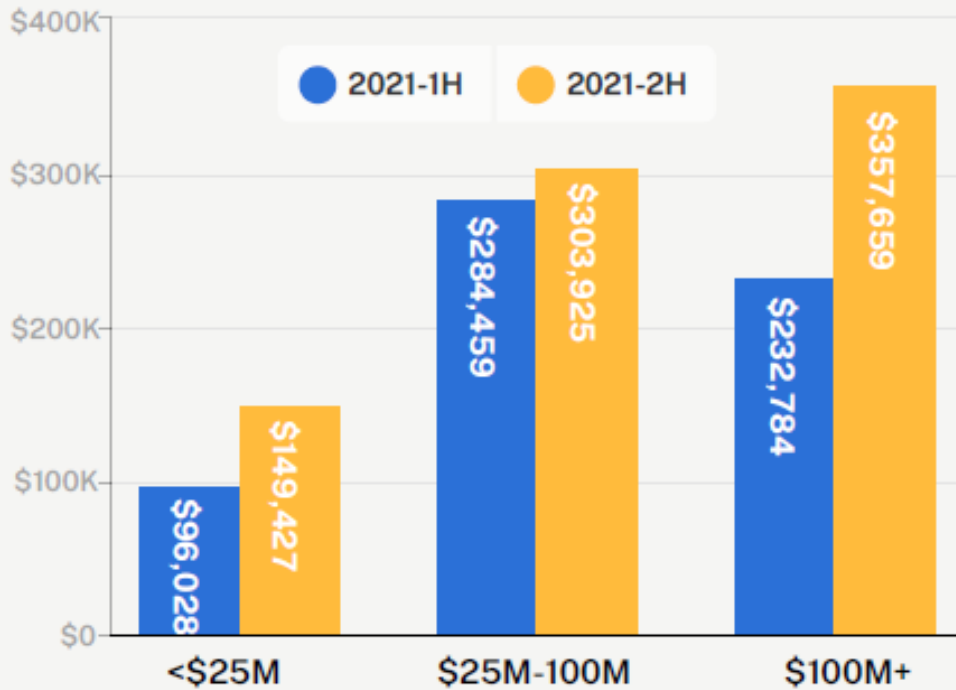
Business email compromise (BEC) was responsible for only 4% of breaches, but had the highest average total cost of the 10 initial attack vectors in the study, at \$5.01 million. The second costliest was phishing (\$4.65 million), followed by malicious insiders (\$4.61 million), social engineering (\$4.47 million), and compromised credentials (\$4.37 million).

USD 9.44 million

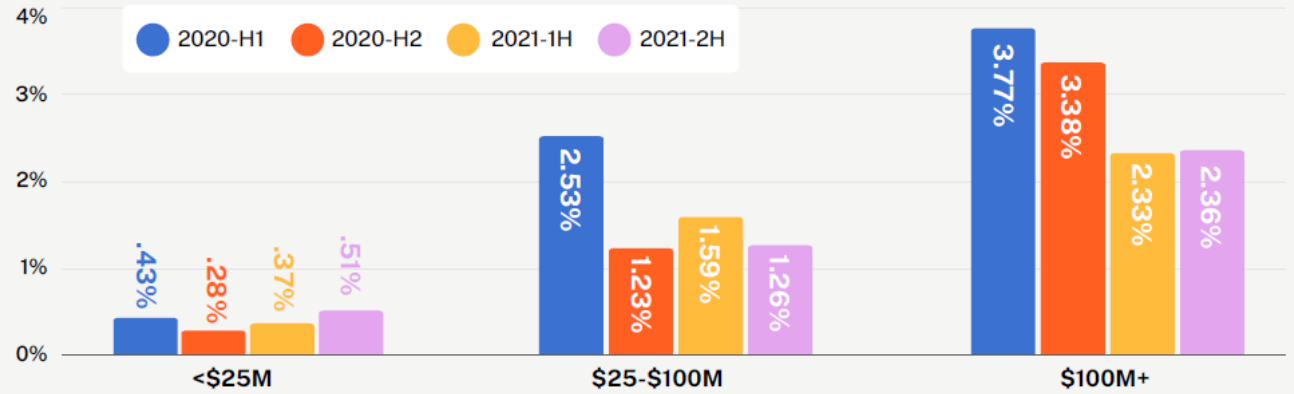
Average cost of a breach in the United States, the highest of any country

# Insurer Reports

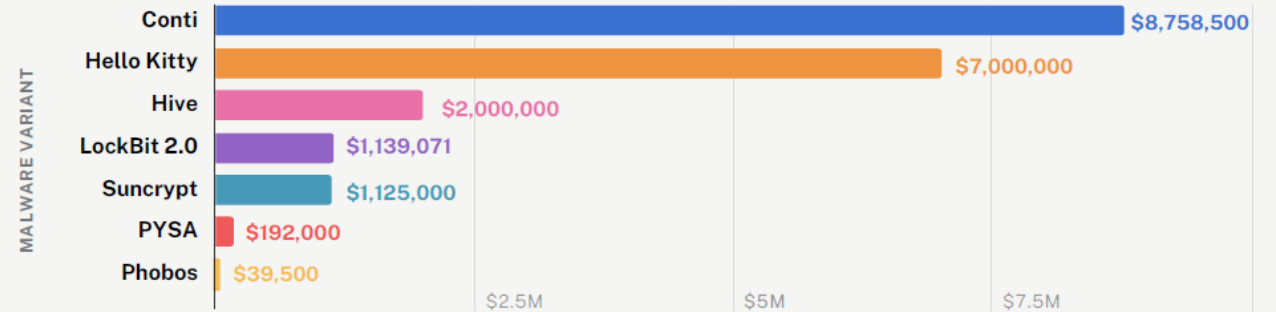
## Claims severity by revenue band - US



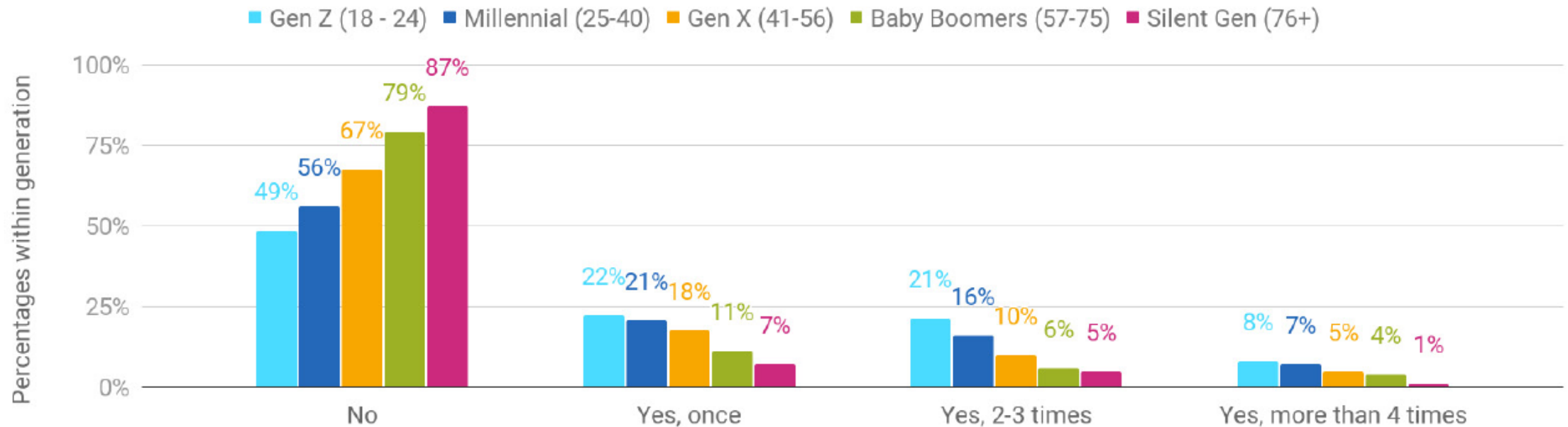
## Ransomware frequency by revenue band



## Average ransom demand in H2 2021



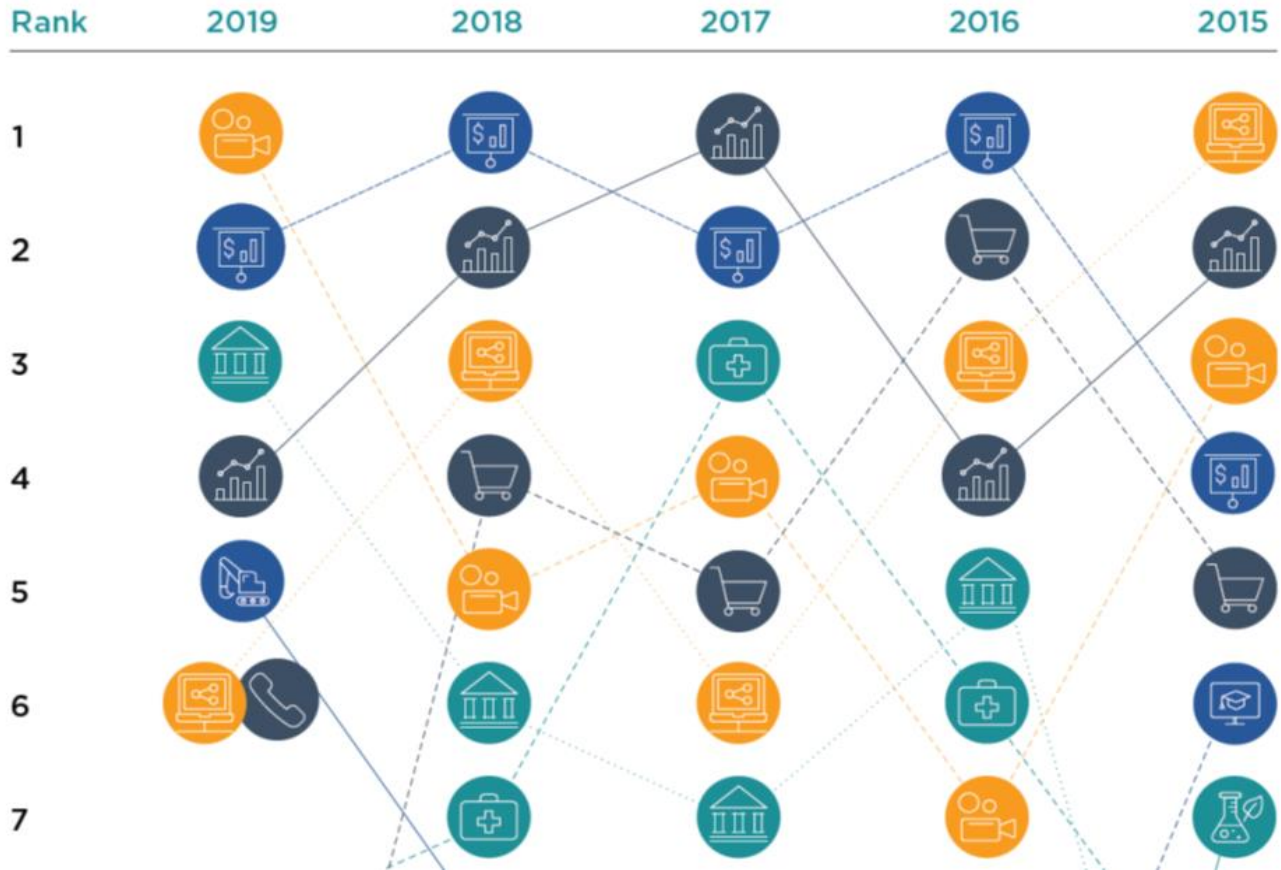
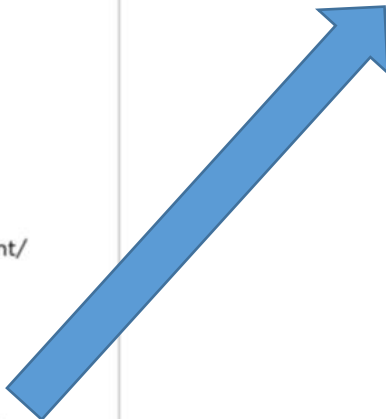
# Victims of Cybercrime by Age Group



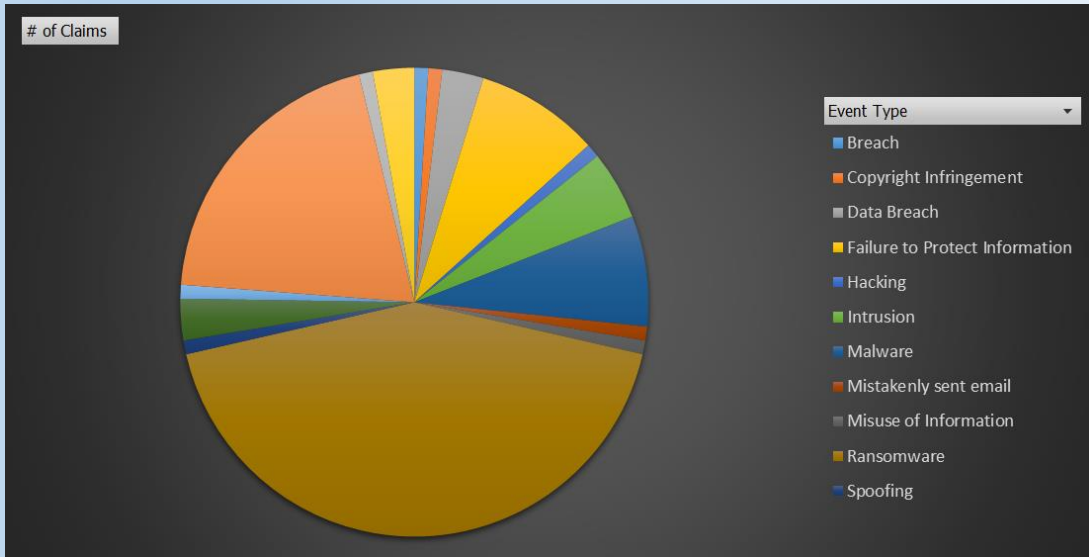
# Targeted Industries

## TARGETED INDUSTRIES

-  Aerospace/Defense
-  Biotechnology
-  Business/Professional Services
-  Construction/Engineering
-  Education
-  Energy
-  Entertainment/Media
-  Financial
-  Government



# Overview of MEL Events



## By Event Type

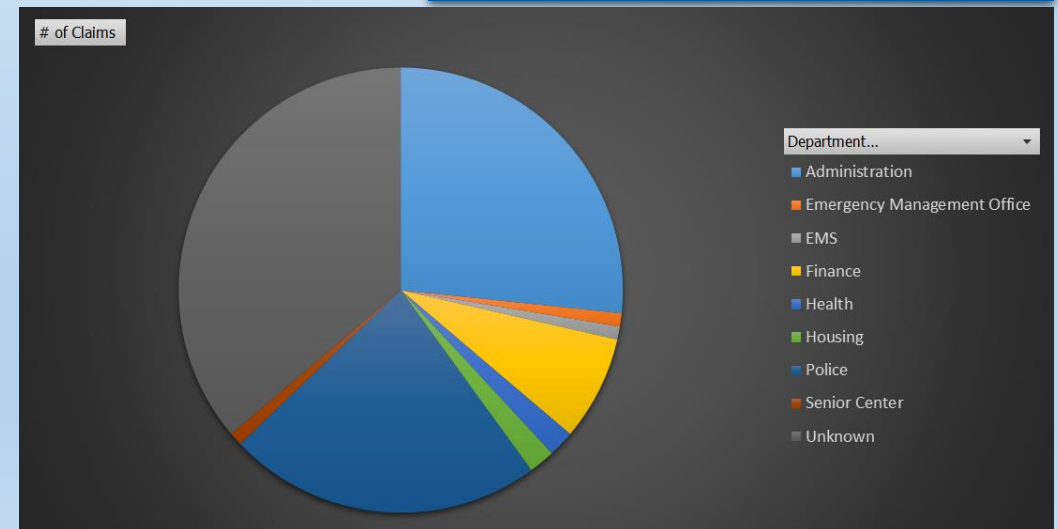
**48%** of data breaches were caused by human error or system glitch (**57% for Public Sector**)

2021 Ponemon Institute

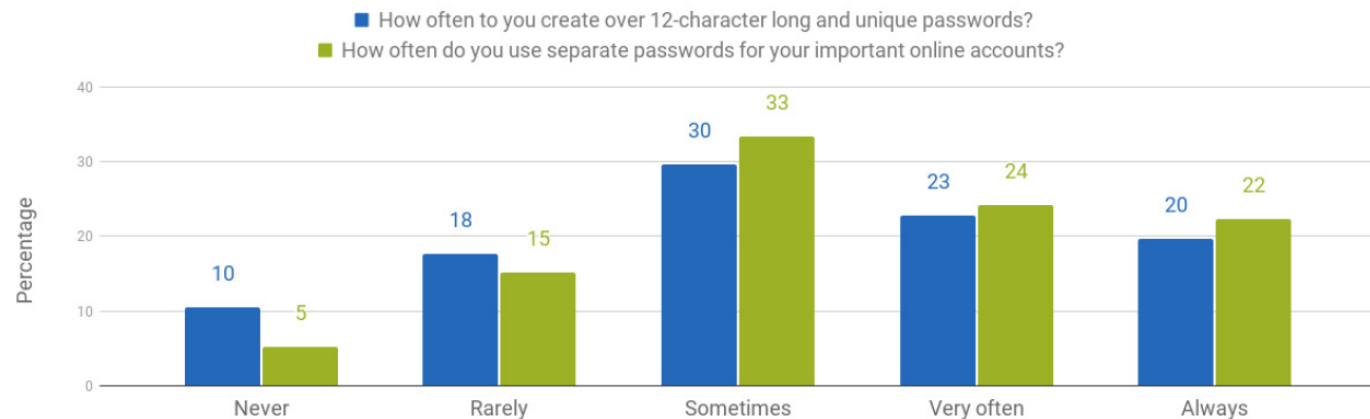
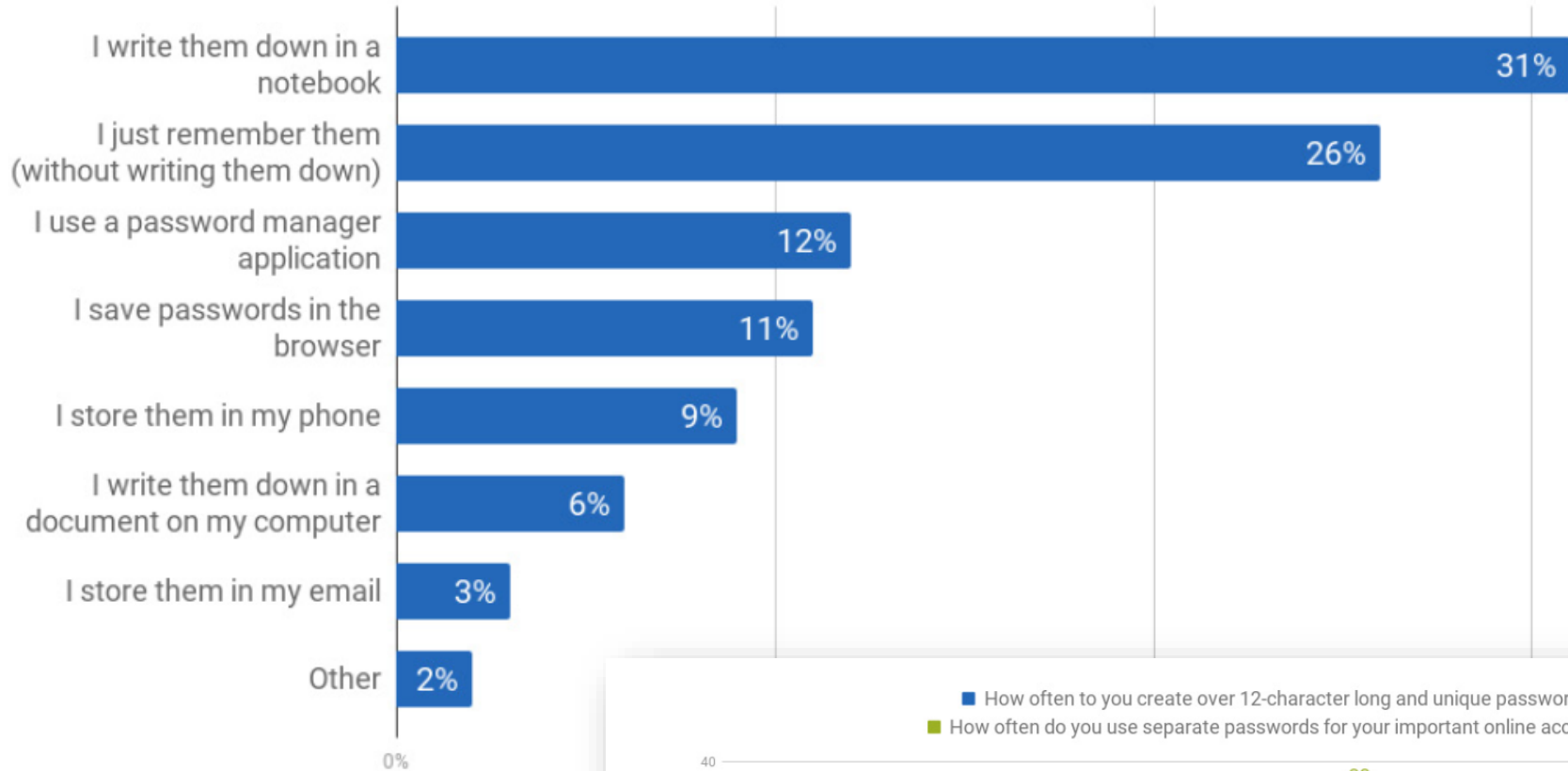
**20%** of breaches due to compromised credentials and **16%** due to third-party vulnerabilities

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## By Department



# Passwords





# EMAIL DOs & DON'Ts



## EMAIL ADDRESSES

- Do you recognize the sender and the CCs?
- Is the sender's email spelled correctly? (i.e. "YourMayor" vs. "YourMay0r")

## DATE & TIME

- Was the email sent on a typical day and at a typical time?

## EMAIL CONTENT

- Are the format and grammar in the email typical for the sender?
- Does the content seem atypical?
- Did the sender seem overly urgent?
- Does the email ask for person info/login info?

From: YourMayor@yourtown.com  
To: You@yourtown.com  
Cc: Who@where.com, Who2@Site.com, Who3@Web.com  
Date: Sunday, October 3, 2105 at 3:20 a.m.  
Subject: Wire for Project

Message | Instructions.docx (4 KB)

Hi,  
Im traveling and lost my phone. We need to wire money for a large project to the below link ASAP so the project isnt delayed.  
Could you wire \$15,000 today?

<http://www.chase.com>

Thanks so much.  
Mayor

## SUBJECT

- Is the subject a typical style for the sender?
- Does the subject match the email content?

## ATTACHMENT

- Is an attachment needed for the email content?
- Were you expecting the attachment?
- Is it a ".txt" file?

## LINKS

- Does the link look appropriate?
- Does the web address match the hyperlink shown (scroll over the hyperlink)?

## DON'T GET PHISHED!

... but if you do, remember to

Contact Your Conner Strong & Buckelew Claims Representative for reporting the claim and engaging breach counsel and forensics firms as necessary.

CONNER  
STRONG &  
BUCKELEW



# Technology Management

- If feasible, a Full-Time, In-House Information Technologies (IT) Director
  - Prepare an annual IT Plan that includes a cyber risk assessment analysis for the top administration and governing body to review
  - Establish and periodically test a Cyber Security Incident Response Plan
- Strongly consider retaining a Cyber Auditor for an annual independent review of your system, policies and practices
- Join the NJ Chapter of Government Management Information Sciences (GMIS)
- Also enroll in:
  - NJ Cyber Communications and Information Cell (NJCCIC)
  - Multi-State Information and Analysis Center (MS-ISAC) funded by Dept. of Homeland Security



# Technical Competency - Basics

- Back-Up Plan - “Reasonable Recovery”
- Security - No unauthorized access
- Software - Defensive Software, Anti-malware, virus, spam and firewalls

## Cyber Hygiene:

- Training
- Password Policy
- Internet and Email Use Policies
- Personal Information Security
- Testing



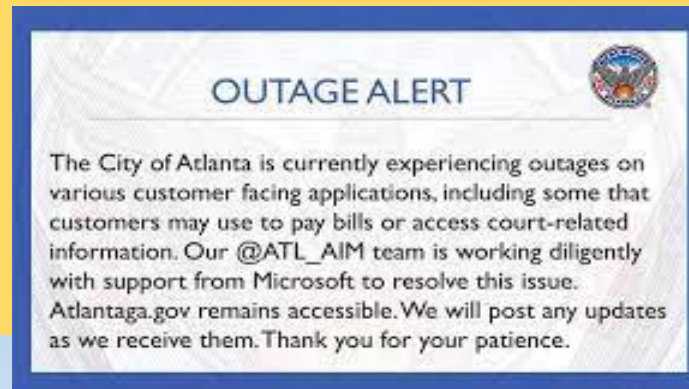
# Cyber Security and Claims

- Based on the large number of claims, and the average size of the claims incurred by the Joint Insurance Funds that are members of the NJ Municipal Excess Liability Fund (NJ MEL), the MEL Fund Commissioners have formed a separate joint insurance fund – the “Cyber JIF” to handle the purchase of Cyber Insurance and process and pay Cyber claims.
- Effective 1/1/2023
- If your municipal entity is not a member, what cyber insurance do you have?.



# Case Studies – Cyber – City of Atlanta, GA

- In March 2018, hackers targeted Atlanta’s computer networks. Demanding \$51,000 in bitcoins, the cyberattack held the city hostage for nearly a week. Some city services reverted to pen and paper to continue operations.
- The city refused to pay: It didn’t want to reward and encourage more ransomware attacks, and there was no guarantee that systems would be restored even if paid. Ultimately, the financial hit to the city was far higher than the ransom. One city report [uncovered by the Atlanta Journal-Constitution](#) estimated that the costs associated with the attack could reach as high as \$17 million.
- “We’re not here to necessarily stop the attacks,” Atlanta Chief Information Officer Gary Brantley said on a panel Monday at [CityLab D.C.](#) “We’re here to prepare for the inevitable.”



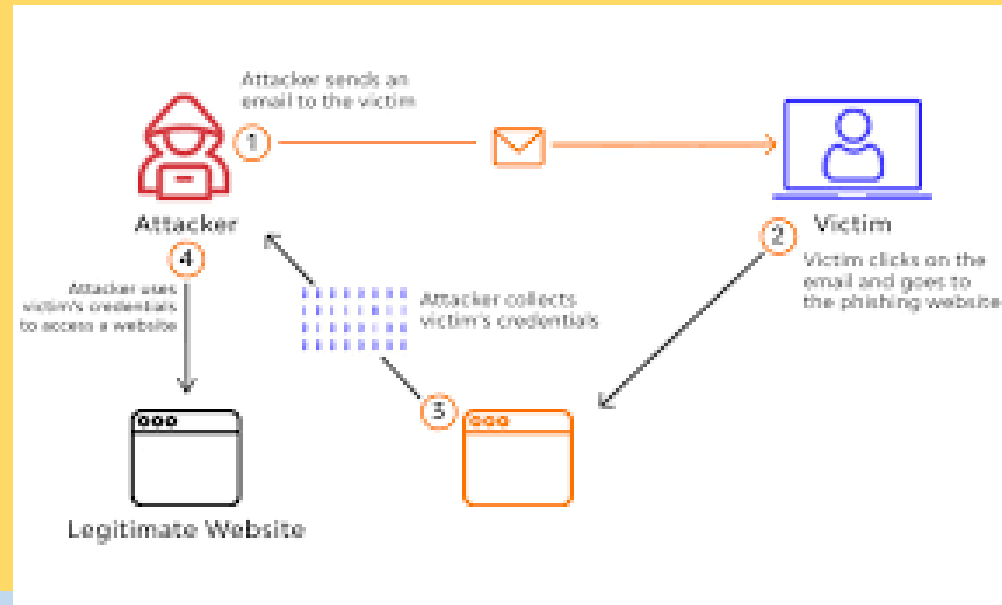
# Case Studies – Cyber

- An employee received an e-mail from a popular company during the December holiday season and clicked on the link to check package delivery status. The link downloaded malware to the network that encrypted the police system. The attacker demanded ransom while rummaging through the police network.
- All costs, subject to the deductible, were covered. A cyber and forensics expert were engaged to remediate the breach and replace the equipment.



# Case Studies - Cyber

- A cyber attacker was able to obtain a municipality's banking information from an unwitting employee.
- The attacker used this information to transfer \$500,000 to a fake account. Only a portion of the money was recovered. The insurance policy covered the remaining lost funds and other associated expenses.



# Local Emergency Preparedness and Response



# Emergency Preparedness

- FEMA was created in 1979 to coordinate the federal response to emergencies and disasters
- NJ Office of Emergency Management, under the NJ State Police, coordinates disasters in four major areas, including interaction with local governments
  - Severe Weather
  - Hazardous Materials Training and Response
  - Radiological Preparedness
  - Local Emergency Operation Plans Development Process



FEMA



# Emergency Preparedness – Emergency Management Coordinator



- State law requires appointment of a resident as the **Emergency Management Coordinator** (EMC) for a term of three (3) years
  - Depending on the size of the municipality, some EMCs are full-time while others are part-time
  - Appointment of an experienced person is a must
  - Cannot have any conflicting duties
  - Cannot be subordinate to other public safety professionals, should report directly to Mayor or his/her designee to be effective.
  - Must have the authority to declare a “State of Emergency” under the NJ Emergency Management Act, and codified in the local Emergency Operation Plan
  - Will be the person coordinating municipal resources during an emergency
  - Must, at least complete a home study course and workshop as training , plus annual NJ OEM requirement of 24 hours of training.

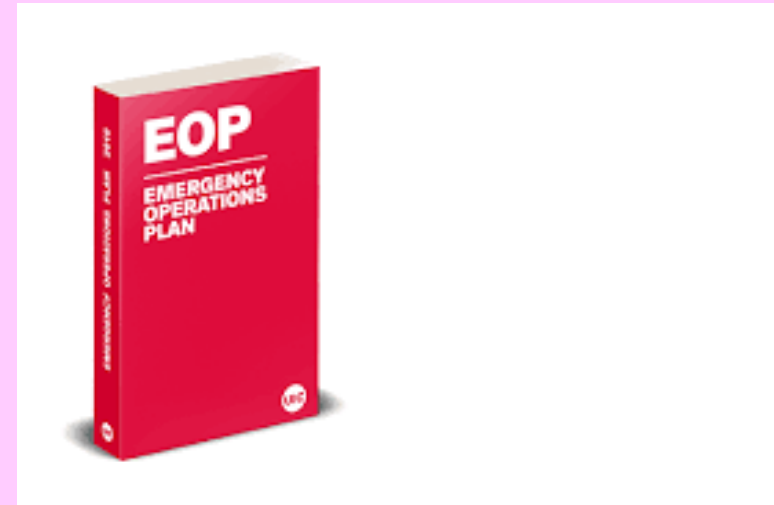
# Emergency Preparedness – Emergency Planning Committee (LEPC)

- Required under ***Federal and State Law***
- Should include representatives of all agencies involved in emergency response and recovery
- The group is chaired by the EMC. **Recommended representatives:**
  - Mayor and/or B.A.
  - At least one other elected official
  - Police Chief
  - Fire Chief
  - Health Officer
  - IT Professional
  - DPW Superintendent
  - Municipal Engineer
  - School Representative
  - Construction Official
  - CFO
  - Media Representative or PIO
  - Optional – Risk Manager, or local Safety Director



# Emergency Preparedness – Emergency Operations Plan (EOP)

- **EOP Must contain the following “Annexes:”**
  - Basic Plan – including an assessment of vulnerabilities
  - Alert, Warning and Communications
  - Damage Assessment
  - Emergency Medical Services
  - Emergency Operations Center (EOC)
  - Emergency Public Information
  - Evacuation Plans
  - Fire Services
  - Hazardous Materials
  - Public Health
  - Public Works
  - Radiological Protection
  - Resource Management
  - Shelter, Reception and Care
  - Social Services
  - Terrorism



# Emergency Preparedness – Emergency Operations Plan (EOP)

- Most EOPs now include an annex for high-risk facilities, cyber crime, and global pandemics
- Must be updated every two years, but an annual update is recommended
- Must be submitted for review and certification to the NJOEM every four years
- Assignments for each type of incident is critical
- Incident Management and how well you respond and coordinate is key
  - Incident Command System (ICS)
- EOC – where the key players gather to coordinate the response



# Emergency Preparedness

- Drills and Exercises – required by NJOEM
  - OEM recommends testing seven annexes each year
    - Individual organization Exercise
    - “Tabletop” Exercise
    - “Functional” Exercise
    - “Full-Scale” Exercise
- Town-Wide Alert System
  - Consider power outages
- Financial Planning



# Crisis Communications



# Crisis Communications

- Developing a **Crisis Communications Plan**
  - Must consider a wide range of possible events:
    - Natural – Hurricane, Blizzard, Tornado, Super Storm
    - Man-Made – Chemical Release, Infrastructure Failure
    - Facilities – Explosions, Structural Collapse
    - Criminal – Official Misconduct, Data Breach, Terrorism
    - Legal or Regulatory – Major Lawsuit
    - Human Resources – Labor Issues or Loss of Key Officials
    - Reputational – Social Media Crisis, Misconduct
    - Proximity Crisis – Not us, but close enough to make an impact



# Crisis Communications Plan

- ***CDC Planning for Crisis Communications:***
  - ***Be First*** – time sensitive
  - ***Be Right***- accuracy is important
  - ***Be Credible***- honesty
  - ***Express Empathy*** – address feelings
  - ***Promote Action***- restores order
  - ***Show Respect*** – promotes cooperation





# Crisis Communications Plan Checklist

- Who will be in overall command for each scenario?
- What is the potential impact on the public?
- Who will be affected and how?
- What emotions should we consider?
- What are we going to ask the public to do?
- What is the **BIA**, and if not available, when will it be available?
- What CAN'T be said?
- Is legal counsel needed?
- Who is the spokesperson?
- Who needs to be contacted in advance of any public announcements?
- Does the issue have traction?



# Crisis Communications Plan Checklist

- No release until fully authorized
- “No Comment” is never acceptable
- Personnel matters are to remain confidential
- May require constant and updated contact with stakeholders
- Do not guess or speculate. Give only the BIA
- Anticipate the needs of media representatives
- Designate a liaison to stay in touch with families
- The quality of the message should always be “high”
- When the crisis is over, conduct a post-mortem evaluation
- Keep good records



# Ethics for Public Officials and Employees



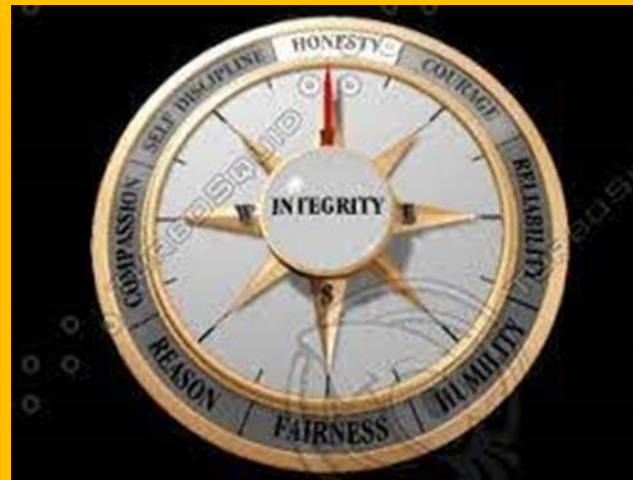
# Ethics for Public Officials and Employees

- Since those of you enrolled in the Leadership Academy are required to take our Ethics Course, this section will be a condensed summary.

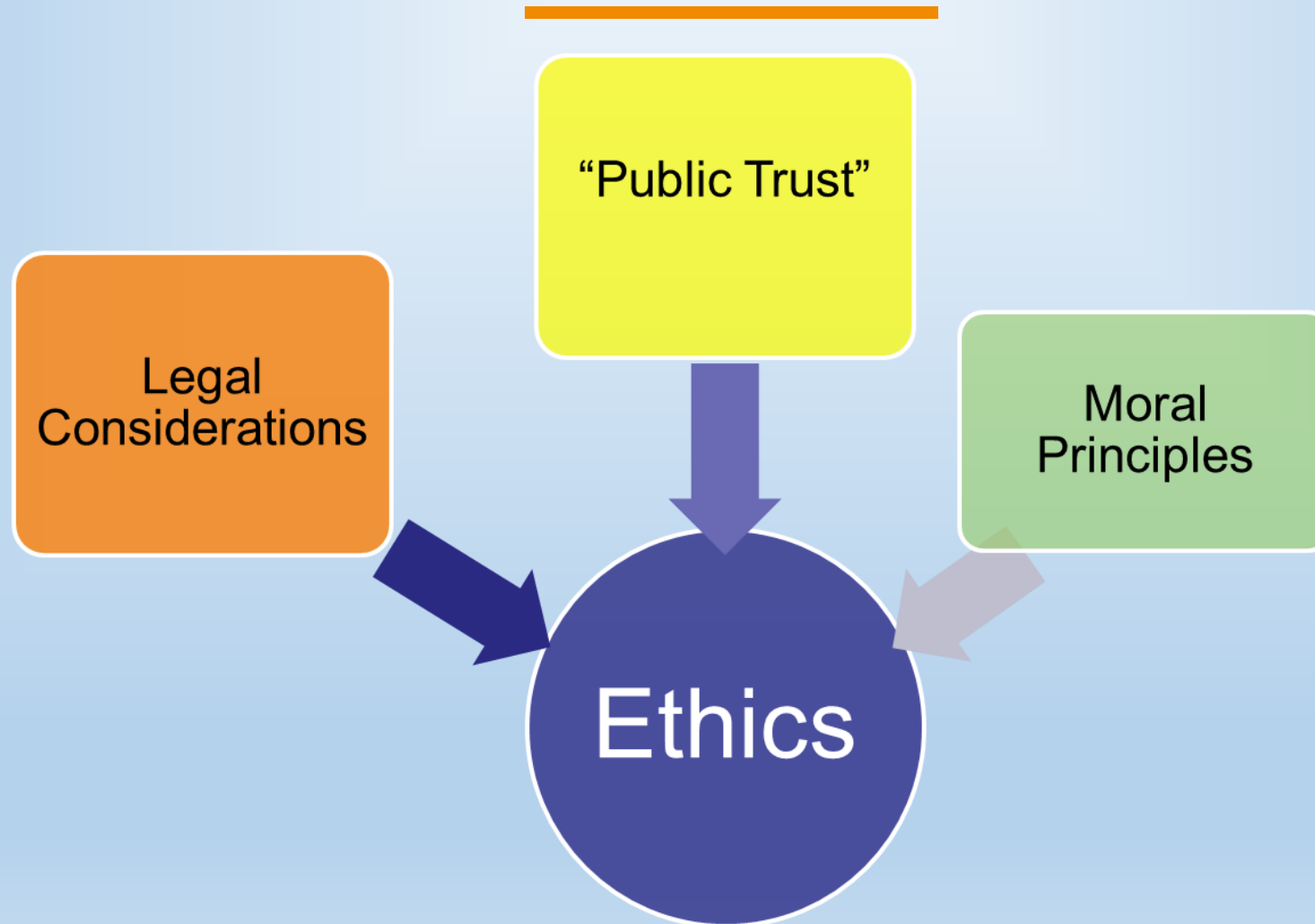
**WITHOUT A MORAL  
COMPASS THE  
HUMAN MIND WILL  
JUSTIFY ANYTHING.**

MEHRNAZ BASSIRI

Quoteish



# The Components of our Ethical Decision Making



# NJ Local Government Ethics Act N.J.S.A. 40A:9-22.1, et. Seq.

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# NJ Local Government Ethics Act

- Enacted in **1991** to ensure that local government officials and employees have ethical standards and financial disclosure requirements that are clear, consistent, uniformly applied and enforceable statewide.
- The Ethics Law established:
  - A structure for oversight and regulation of local government officials and employees, with options
  - A code of ethics
  - Financial disclosure requirements



# NJ Local Government Ethics Act

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- **The Recurring Themes in the NJLGE Act**
  - Public Trust
  - Integrity
  - Avoidance of Conflicts of Interest
  - Faithful Performance of Public Duties
  - **NOTE:** Monetary Penalties for violations are minimal. However, additional penalties may be imposed (i.e. suspension, revocation of licenses, referral to County Prosecutor)



# NJ Local Government Ethics Act



- Covers anyone who is elected, employed or appointed.
- The “Code of Ethics” is the cornerstone of the law, setting forth the actions that are prohibited:
  - Direct and Indirect conflicts of interest by either the employee, members of their immediate family or business organizations the employee or members of his immediate family have an interest in.
  - Government officers and employees are prohibited from other employment that may conflict with their official positions.
  - Cannot accept gifts , meals or other entertainment if there is any inference that someone is attempting to influence their decisions. (Does not apply to political contributions).
  - Cannot use information learned during official duties that is not generally available to the public at large
  - Cannot represent parties before boards or agencies in their town

# NJ Local Government Ethics Act

## *Cautionary Advice:*

### □ Do Not:

- Use governmental equipment or vehicles for personal business including volunteer activities or political campaigns
- Request that governmental employees work on your property, personal business or political campaigns.
- Use governmental information that is not commonly known for personal gain. A good test is to avoid using information that is not available through OPRA.
- Meet alone with developers or others seeking advantages from you. Keep a written record of all meetings including who attended and what was discussed.



# Enforcement of the NJ Local Government Ethics Act

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- Municipalities and Counties have a choice:
  - Creation of “local” Ethics Board; OR
  - Defer to the NJ Local Finance Board



# Penalties for Violations

- A local government officer or employee found guilty of violating the NJLG Ethics Law or any other code of ethics shall be fined not less than \$100 or more than \$500.
- However, the finding that a local government officer or employee is guilty of violating the law or any other code of ethics, **may be sufficient cause for removal, suspension, demotion, or other disciplinary action.**
- These penalties are IN ADDITION to any other civil or **criminal** penalties provide by law.
- **“A local government official in NJ must be aware that unethical conduct may result not only in removal from office, public embarrassment, fines, and abrogation of actions in the official participated, but depending on the type and severity of the conduct, may result in criminal penalties, including imprisonment.”**
  - Thomas P. Scrivo, **“NJ Local Government Deskbook,** 2019 edition.

# Financial Disclosure Statements (FDS)

- Requires **ANNUAL electronic** filing of Financial Disclosure Statement by “local government officers” before April 30<sup>th</sup> of each year.
  - **Local government officers** are defined in the law as:
    - Elected to any office or a local government agency; or
    - Serving on a local government agency, which has the authority to enact ordinances, approve development applications or grant zoning variances; or
    - Who is a member of an independent municipal, county, or regional authority; or
    - Who is a managerial executive employee of a local government agency.
- All sources of income exceeding \$2,000 received by the officer or member of his immediate family.
- Each source of fees or honoraria exceeding \$250 for any single personal appearance, speech, or writing received by the officer or member of his family.
- Each source of gifts, reimbursements or prepaid expenses exceeding \$400 from any single source (other than relatives) received by the officer or member of his immediate family.
- The name and address of all business organizations in which the officer or member of his immediate family had an interest during the preceding year.
- The address and brief description of all real property in the state in which the officer or member of his immediate family had an interest during the preceding year.

# Please Keep In Mind

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- Financial Disclosure Statements are considered “public records,” and are available to be viewed and copied by the public through an Open Public Records Act (OPRA) request.
- FDS forms are now routinely requested by political opponents, usually prior to or during a campaign.
- SO....
  - Make sure your information is factual, including any information required that pertains to your family.
  - Make sure you did not neglect to mention anything.

# NJ Open Public Meetings Act (OPMA)

- Passed in 1975, requires that the public and the press be given advance notice and an opportunity to attend meetings, including executive sessions of public bodies, except where the public interest or individual rights would be jeopardized.
- Transparency is the objective.
- Applies to all phases of the deliberation, policy formulation and decision making process.
- All meetings where a majority of the governing body is present. Also, official subcommittee meetings are included under OPRA.
- “Partisan Caucuses” are excluded. (Maybe)
- Electronic meetings require the same notice
- Emergency Meetings should only be held for compelling circumstances.



# NJ Open Public Meetings Act (OPMA)

- A “*meeting*” is defined as any gathering of the quorum of any “voting body” held with the intent to discuss or act upon the business of the public body.
  - Does not need to be “in-person” to qualify as a meeting
  - Notice must be given in advance; Annual notice for regularly scheduled meetings;
    - Emergency meetings still require notice as well.
  - During COVID-19 (i.e., during a “declared emergency), public bodies are permitted to meet “remotely,” however, notice requirements must still be met.
  - In NJ, time must be allotted for public comment
  - Public body may adjourn to executive (i.e., closed) session for....



# NJ Open Public Meetings Act (OPMA)



- Nine (9) Exceptions:
  - Any matter that federal law, state statute, or court rule expressly denotes as confidential.
  - Any matter in which the release of information would impair a right to receive funds from the US government.
  - Any material that constitutes an unwarranted invasion of privacy if disclosed, such as any records, data, reports, recommendations, or other personal material of educational training, social service, medical, health, custodial, welfare, housing, relocation, insurance, rehabilitation, legal defense, information related to an individual's personal family circumstances, information pertaining to the admission or treatment of any individual.
  - Collective bargaining agreements and negotiations of same.

# OPMA – Closed Session Exemptions (Cont.)

- Purchase, lease or acquisition of real property with public funds, setting of banking rates or investment of public funds.
- Any tactics or techniques used to protect the safety and property of the public, provided that their disclosure could impair such protection, including investigations of violations or possible violations of the law.
- Pending or anticipated litigation or contract negotiation.
- Employment, appointment, termination of employment, terms and conditions of employment, the evaluation, promotion or disciplining of any prospective or current public officer employed or appointed by the public body.
- Any deliberations of the public body occurring after a public hearing that may result in the imposition of a specific civil penalty or the suspension or loss of license or permit upon the responding party as a result of an act or omission for which the responding party bears responsibility.
  - Adoption of a Resolution by the governing body setting for the reason for the executive session is required.
  - Minutes of the closed session must be kept and made available once the matter(s) are no longer confidential.

# OPMA



- **Public Participation**
  - Required, time limits may be set, and rules of “decorum” may be established
- **Decorum**
  - “No person is permitted to make personal, impertinent, slanderous or profane attacks.” Warnings need to be issued before public comment.
- **Right to Record and Film**
  - First amendment rights. Subject to reasonable time, place and manner limitations, should be established by ordinance.
- **First Amendment Audits**
  - Social movement, to test compliance with First Amendment rights.
- **“Rice” Notices** – From a case in 1977. Employees must receive advance notice whenever the governing body will discuss a matter negatively impacting the employee. Employee may elect for the discussion to be in public.

# Maintaining Decorum During Public Meetings

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- *Proper protocols need to be established annually at the Reorganization meeting*
- *Enforcement of the protocols must be consistent.*
- *Reasonable time limits may be set for citizen comment.*
- *Meeting curfews may be set.*
- *Avoid getting into a debate with citizens at a public meeting*
- *Be careful of your body language when you are presiding at a public meeting.*
- *If matters get out of hand, call for a short recess.*
- *Elected and appointed officials should not be “texting” or sending email to each other during a public meeting. Those messages will likely be considered a public record, and your phone/laptop can be confiscated through discovery in any legal proceeding.*

# Open Public Meetings Decorum

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- Federal law recognizes that public bodies must maintain reasonable decorum, and speakers can be cut-off if they stray from the issue, are redundant or disruptive.
- The municipal, county, or board attorney are your best assets. The role of the attorney at a public meeting is to help the Presiding Officer maintain decorum and not become a combatant.
- Under both Federal law and New Jersey law, private citizens have some First Amendment rights to record public officials and employees performing their duties, but that right is not absolute and is subject to reasonable time, place, and manner restrictions.
- Each local government needs a written procedure to address the right to record governmental facilities. Employees should be trained accordingly. There are model policies posted on the MEL Website.

# Court Cases – Open Public Meetings

- **Kindt v. Santa Monica (1995)**
  - An apartment owner was ejected from a Rent Control Board meeting on a number of occasions for trying to speak at various times throughout the meeting. He argued that limiting comment to the end of the meeting meant that he could not share his views when the resolutions were actually being decided. He often heckled the Board and other speakers.
  - The Court ruled that “The Board regulations restricting public comment to 3 minutes per item at the end of the meeting are the kind of reasonable time, place, and manner restrictions that preserve a board’s legitimate interest in conducting efficient and orderly meetings.”

# Court Cases – Open Public Meetings

- **Olasz v. Welsh (2008)**
  - After a Council Member was repeatedly ruled “out of order,” he was arrested and charged with a criminal disorderly person offense. The County Prosecutor threw out the complaint, and the Council Member sued the Council President for malicious prosecution. The Council Member admitted to disrupting the meeting but contended that his behavior was necessary to make his point.
  - The U.S. Court of Appeals ruled that “The Council President’s actions to constrain the council member’s badgering, constant interruptions, and disregard for the rules of decorum constitute appropriate time, place and manner regulation.”

# NJ Open Public Records Act (OPRA)





# Open Public Records Act (OPRA) N.J.S.A. 47:1A-1 et seq.

- Provides access to government records, specifically “public” records.
- To qualify as a public record, it must be shown that the document was “made, maintained, kept or received” by a public employee or public entity in the scope of official business.
- Definition of a “record” – any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof...”
- Once determined to be a public record, it must be “Readily Accessible”
- Request form supplied by municipality (usually on their website)

# Open Public Records Act (OPRA) N.J.S.A. 47:1A-1 et seq.

- OPRA requests that are “overly broad” may be rejected for that reason.
  - Example: “Any and all records related to the construction of the new high school.”
  - An appropriate OPRA request:
    - “Any and all e-mails between Jane Doe and John Smith regarding the construction of the new high school from 1/1/2009 to 2/28/2009.”
- OPRA provides that a Custodian of records must provide a copy of the record in the medium requested, if the public agency maintains the record in that medium.
- If the record contains some “non-disclosable” information, that information may be redacted but the Custodian must explain the legal basis for redaction.

# NJ Governments Records Council (GRC)

**GRC Contact Information**

New Jersey Government Records Council  
101 S. Broad Street  
P.O. Box 819  
Trenton, NJ 08625-0819

Office: (609) 292-6830  
Fax: (609) 633-6337  
Toll-free (866) 850-0511

E-Mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Website: [www.nj.gov/grc](http://www.nj.gov/grc)



- GRC vested with the legal authority to hear and decide disputes arising out of the NJ Open Public Records Act
- May include order for losing party to pay legal fees
- [www.nj.gov/grc](http://www.nj.gov/grc)

# Daniel's Law (2020)

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- In November of 2020, Governor Phil Murphy signed into effect Daniel's Law which amended P.L.1995, c.23, P.L.2001, c.404, P.L.2015, c.226, and supplemented Title 47 of the Revised Statutes. Daniel's Law prohibits disclosure of home addresses or unpublished telephone numbers of certain law enforcement officers, judicial officers, and prosecutors. Criminal and civil action for disclosing such information is included in the regulations.
- "The new law is named in honor of Daniel Anderl, the late son of U.S. District Court Judge Esther Salas. Daniel was killed in an act of senseless gun violence committed by an individual who had compiled a dossier of personal information about Judge Salas, including the judge's home address."
- Presents challenges for the custodian of records for municipalities and counties.

# Daniel's Law (2020)

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- An amendment to the statute was passed in 2022 to address those challenges, legislation ([A-6171/S-4219](#)), which created an Office of Information Privacy to streamline the process.
- The Office of Information Privacy opened an online “portal” for all authorized public officials and public agencies to apply to have specific personal information redacted from certain records and internet postings.
- The law applies to active and retired judicial officers, prosecutors and members of law enforcement and their immediate family members.
- Guidance is available on the NJDCA Website, “Daniel’s Law” Online Portal Open Now.

# Government Records Council Opinion 2005-127

- A citizen requested “All documents, in electronic format, sent from or received by the Mayor to or from his personal e-mail account that relate in any manner to his position as a Fair Lawn Borough public official and/or the conduct of government by or for the Borough of Fair Lawn, from 1/1/2004 to 5/31/2005
- ***The GRC ruled that the request was valid and ordered the Borough to comply. In a subsequent case, however, the GRC determined that OPRA requests for e-mail must contain: “the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) was transmitted, and (3) the identity of the sender or recipient.”***
- **NOTE: Officials who use their PERSONAL e-mail accounts on official business open themselves to numerous legal issues.**

# Court Cases – OPRA - Avid v. Oradell (2005)

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- The town rejected an OPRA request for the list of all homeowners who applied for a fire alarm or burglar permit in the last three years on the grounds that the documents fall under the emergency or security exemption.
- The GRC UPHELD the town's decision by applying the "balancing test." In a situation like this, the GRC weights the public's right for information against the potential severity of the security's exposure.
- In 2021 the GRC UPHELD the decision to deny release of dog and cat licenses. However, in another case the GRC UPHELD a decision to access the building plans for a home.

# Court Cases – OPRA –Matthews v. Atlantic City (2009)

- A frequent critic requested a “demotion list,” including base salaries before and after the demolition. He complained that the document that he ultimately received did not contain that information. The City argued that no document exactly complied with the request.
- The GRC Ruled that a Custodian “was under no obligation to create a list compatible to the Complainant’s OPRA request because OPRA does not require a Custodian to produce new documents.”
- Electronic records may be treated differently depending on the circumstances.
- John Paff – Transparency NJ, Chairman of the NJ Libertarian Party’s Open Government Advocacy Project.
  - <https://transparencynj.com/author/john-paff/>



# Court Cases – OPRA – Burnett v. Gloucester County (2010)

- Plaintiff requested documents related to “Any and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” The county responded that many of these documents were in the files of the county’s insurance broker.
- The Court ruled that agreements settling claims involving the county were government records and that the county had an obligation to secure the requested records from its insurance broker.
  - ***“Were we to conclude otherwise, a governmental Agency seeking to protect its records from scrutiny could simply delegate their creation to third parties or relinquish possession to such parties, thereby thwarting the policy of transparency that underlies OPRA.”***

# OPRA – “Words to Live By”



- Unless you are 100% comfortable with reading it on the front page of the Asbury Park Press, Star-Ledger, or on the internet, do not write it in an email to anyone or text it to anyone. There are no secrets in local government.
- If you use your personal phone, tablet or laptop at any time for work purposes, the information on those devices may be accessible under OPRA.
- Be very careful and seek advice from your attorney before you determine a document is not a “public record,” or before you start redacting a public record.
- There are deadlines that **MUST** be met unless the requesting party grants an extension. Some records must be immediately available. The usual time frame is 7 days.
- Fees may be charged at .05 cents per letter size paper and .07 cents for legal size. You can impose additional charges but only if you can prove the time spent.
- GRC hears appeals and attorney’s fees may be charged if you lose.

# First Amendment Auditors

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- Who are they?
  - Claim to be an American social movement that usually involves photographing or filming of public spaces
  - They are known as auditors, activists and citizen journalists that are determined to test our knowledge and exercise their constitutional rights
  - They believe that the movement promotes transparency and open government

# First Amendment Auditors

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- Current Trends:
  - Visit government facilities, record and livestream public employees performing their duties
  - Film or photograph buildings, equipment, access control points and sensitive areas
  - Communication
    - Test your knowledge of the law
    - May ask questions and demand answers
    - May not engage in any conversation

# First Amendment Auditors

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- Why do you think they want to record us?
  - Their motives are across the continuum
    - Financial
    - Personal grudge
    - Altruistic - selfless concern for the well-being of others
    - Transparency
    - Watching the watchman
    - Testing & baiting governmental employees

# First Amendment Auditors

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- Allegations made by First Amendment Auditors
  - False arrests and assaults
  - Incompetency
  - Cameras confiscated
  - Weapons aimed at them

# Sources of Liability

- First Amendment Audits
  - Allegations of Civil Rights Violations
  - Allegations of False Arrest
  - OPRA violations
  - Allegations of misconduct
  - Discipline
  - Reputation
  - Retaliation



# Resources – Page 177

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- Medical Exams for Crossing Guards
- Guidelines for Firefighters Physicals
- Model Title 59 Resolution Approving Plan Design
- Model Indemnity Ordinance
- Model Tort Claim Notice
- MEL Guidelines for Contracts and Use of Facilities
- Special Events Checklist
- Model Resolution or Ordinance Concerning Meeting Decorum
- Model Policy for First Amendment Right to Record Meetings
- Model JIF Documents



# Questions?

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- This concludes Part 2 of the *Power of Collaboration*.
- Thank you for your attention.
  - My Contact Information:
    - Paul J. Shives, Safety Director
    - [Pshives@jamontgomery.com](mailto:Pshives@jamontgomery.com)
    - 609-290-5686 (Cell Number)