# Establishing and maintaining privilege during data security incidents

OSLER

When your organization is confronted with a data security incident, it is crucial to establish and maintain privilege during the breach and the subsequent investigation in order to minimize the potential risk of future litigation. Below are some practical steps and best practices that you can implement to ensure that privilege is protected.

Top 10 best practices for maintaining privilege
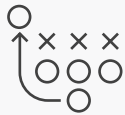
1 **Engage counsel** (internal/external) **to quarterback the investigation.** Counsel should be involved in all fact gathering, strategic discussions, and responsive action

2 Implement a **document freeze**

3 Copy counsel on **internal and third-party** communications

4 Mark documents **"privileged and confidential"**

5 **Forward requests from third parties** to counsel where appropriate

6 Establish **segregated confidential files** over which privilege is to be maintained

7 **Limit circulation of legal advice and privileged reports,** and ensure recipients understand the importance of keeping advice confidential

8 Retain and manage expert witnesses **through counsel**

9 **Advise team members** involved in investigation that **purpose of investigation is to obtain legal advice;** avoid drawing conclusions or offering opinions; and limit distribution of emails to members of the team (copying counsel)

10 **Final report** from team leader to counsel