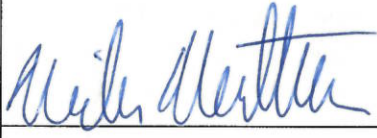


ITD

ITD Director's Rule 2017-01

Applicant: CITY OF SEATTLE Seattle Information Technology Department(ITD) Office of Cable Communications	Pages: 12	Supersedes: N/A
	Publication: May 3, 2017	Effective: May 24, 2017
Subject: Procedures for determining cable operator compliance with cable and internet privacy standards established in SMC 21.60.825 pursuant to 47 U.S.C. § 551.	Code and Section Reference: SMC 21.60.825	
	Type of Rule: Procedural	
	Ordinance Authority: SMC 21.60.825 (k)	
Index:	Approved	Date:
		5/3/17
Michael Mattmiller, Director Seattle Information Technology Department		

Introduction:

ITD Director's Rule 2017-01 ("Rule") provides procedures that Seattle Information Technology Department's Office of Cable Communications ("OCC") will implement to determine whether a franchised cable operator is in compliance with the requirements of SMC 21.60.825. SMC 21.60.825 (k) delegates to the OCC rulemaking authority to adopt such rules and regulations it deems necessary or advisable to implement the privacy requirements of SMC 21.60.825.

Background:

Seattle Municipal Code SMC 21.60 ("Cable Code") provides the regulatory framework under which companies that provide cable services over a cable system, or companies that control or manage and operate a cable system, ("Cable Operators") may operate in the City of Seattle. In 2002 the City enacted privacy protections codified at SMC 21.60.825 to address concerns that advances in technology would greatly increase the capabilities of Cable Operators to collect, use and disclose their customer's Personally Identifiable Information ("PII") without the customer's permission. In 2015, the City made relatively minor amendments to the privacy provisions allowing Cable Operators to submit semi-annual reports instead of quarterly reports and streamlined the reporting process. However, all substantive requirements remain intact. The City's privacy law is in all respects consistent with 47 U.S.C. § 551 and designed to ensure Cable Operator compliance with local and Federal law.

Specifically, SMC 21.60.825:

- Prohibits Cable Operators from collecting or disclosing any information regarding the extent of any individual customer's viewing habits, or other use by a customer of a cable service or other service provided such as web browsing activity, without the prior affirmative consent of the customer, unless such information is Necessary to render a service requested by the customer, or a legitimate business purpose related to the service.
- Requires Cable Operators to fully and completely disclose customer rights and the limitations imposed on a Cable Operator's collection, use, and disclosure of PII in clear language that a customer can readily understand.
- Requires Cable Operators to destroy within 90 days any PII if the PII is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such PII under this Section 21.60.825, pursuant to a court order, or pursuant to 47 U.S.C. § 551.
- Requires Cable Operators to provide stamped, self-addressed post cards that customers can mail in to have their names and addresses removed from any lists the Cable Operators might use for purposes other than the direct provision of service to those customers.
- Establishes without ambiguity that a customer, once "opting out" of the Cable Operator's mailing list, is permanently removed from that list unless that customer subsequently requests inclusion on such list.

SMC 21.60.825 requires all Cable Operators to provide semi-annual reports to verify their compliance with the City's privacy protections. To date Cable Operators have submitted the required reports. The reports themselves indicate that Cable Operators have also complied with the privacy requirements of SMC. 21.60.825. However, in light of recent Congressional action permanently barring the Federal Communications Commission (FCC) from applying its 2016 Broadband Privacy rules, the City believes it is prudent to develop and implement additional procedures to ensure continued compliance with SMC 21.60.825 by Cable Operators and to safeguard the privacy of Seattle internet consumers to the fullest

extent of the law. This action is taken pursuant to SMC. 21.60.825 (K) which delegates to OCC the rulemaking authority to adopt such rules and regulations as it deems necessary or advisable to implement the privacy requirements of Section 21.60.825.

Definitions:

"Annual Privacy Statement" means notice to the customer described in 47 U.S.C. § 551 (a) and SMC 21.60.825 (E).

"Personally identifiable information" means specific information about a customer, including, but not limited to, a customer's (a) login information, (b) extent of viewing of video programming or other services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, (h) web browsing activities, or (i) any other personal or private information. "Personally identifiable information" does not mean aggregate information about customers that does not identify particular persons.

"Necessary" means required or indispensable.

Additional Procedures:

1. Affirmation of compliance with SMC 21.60.825 as it relates to web browsing activity or other internet usage

SMC 21.60.825 requires Cable Operators to obtain opt-in consent before sharing or otherwise using a customer's web browsing activity or other internet usage history unless it is Necessary to render a service ordered by the customer or pursuant to a subpoena or valid court order authorizing disclosure. Cable Operators shall submit a letter to the Director of the Office of Cable Communications self-reporting their compliance with Section 21.60.825 of the Cable Code by September 30, 2017 and annually thereafter. At a minimum, this letter shall contain the following:

- The process by which customers may opt-in to sharing or other use of web browsing activity, other internet usage history, and use of their personally identifiable information.
- Whether customer web browsing activity or other internet usage history is shared in a detailed or an aggregated manner
- Deidentification techniques used to protect individual customer privacy before web browsing activity or other internet usage history is shared
- Process by which customers may appeal perceived privacy harms from this data sharing process

2. Office of Cable Communications Approval of Annual Privacy Notices

As of the effective date of this Rule, all Cable Operators will submit their respective Annual Privacy Statements to the Office of Cable Communications for approval a minimum of 30 days before mailing to customers. If the OCC determines that a Cable Operator's privacy statement

does not comply with SMC 21.60.825, it will promptly issue a notice to the Cable Operator identifying the reasons why the notice does not meet the requirements of SMC 21.60.825 and requiring the Cable Operator make the necessary modifications to ensure compliance. If an Cable Operator sends to customers privacy notices that do not comply with SMC 21.60.825 (E) as determined by OCC, it will be subject to all enforcement action available to the City.

OCC may also require the Cable Operator to provide an insert to accompany the Cable Operator's privacy notice. Such an insert will carry the official City seal and succinctly inform the customers of their privacy protections under City law and how to seek redress if necessary. Additionally, the Cable Operator must ensure that the privacy notices are in a separate mailing and not bundled with other information unrelated to customer privacy.

3. Uniform Semi-Annual Reporting

As of the effective date of this Rule all Cable Operators will submit the standard semiannual privacy reporting form established by the OCC. The form may be obtained from the OCC.

Attachment A: Seattle Municipal Code Section 21.60.825

Attachment A

21.60.825 Cable customer privacy

In addition to complying with the requirements in this Section 21.60.825, a grantee shall fully comply with all obligations under 47 U.S.C. § 551.

A. Definitions.

For purposes of this Section 21.60.825:

"Affiliate" means any person or entity that is owned or controlled by, or under common ownership or control with, a grantee, and provides any cable service or other service.

"Necessary" means required or indispensable.

"Non-cable-related purpose" means any purpose that is not necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the grantee to a customer. Market research, telemarketing, and other marketing of services or products are considered non-cable-related purposes.

"Personally identifiable information" means specific information about a customer, including, but not limited to, a customer's (a) login information, (b) extent of viewing of video programming or other services, (c) shopping choices, (d) interests and opinions, (e) energy uses, (f) medical information, (g) banking data or information, (h) web browsing activities, or (i) any other personal or private information. "Personally identifiable information" does not mean aggregate information about customers that does not identify particular persons.

B. Collection and use of personally identifiable information.

1. A grantee shall not use the cable system to collect, record, monitor, or observe

personally identifiable information without the prior affirmative written or electronic consent of the customer unless, and only to the extent that, such information is: (a) used to detect unauthorized reception of cable communications, or (b) necessary to render a cable service or other service provided by the grantee to the customer.

2. A grantee shall take such actions as are necessary to prevent any affiliate from using the facilities of the grantee in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit an affiliate unauthorized access to personally identifiable information on the computer or other equipment of a customer (regardless of whether such equipment is owned or leased by the customer or provided by a grantee) or on any of the facilities of the grantee that are used in the provision of cable service. This subsection 21.60.825.B.2 does not prohibit an affiliate from obtaining access to personally identifiable information to the extent otherwise permitted by this Section 21.60.825.

3. A grantee shall take such actions as are reasonably necessary to prevent a person or entity (other than affiliates) from using the facilities of the grantee in any manner, including, but not limited to, sending data or other signals through such facilities, to the extent such use will permit such person or entity unauthorized access to personally identifiable information on the computer or other equipment of a customer (regardless of whether such equipment is owned or leased by the customer or provided by a grantee) or on any of the facilities of the grantee that are used in the provision of cable service.

C. Disclosure of personally identifiable information. A grantee shall not disclose personally identifiable information without the prior affirmative written or electronic consent of the

customer, except as follows:

1. A grantee may disclose for a non-cable-related purpose the name and address of a customer to any general programming tiers of service and other categories of cable and other service provided by the grantee if the grantee has provided the customer the opportunity to prohibit or limit such disclosure in accordance with this Section 21.60.825 and 47 U.S.C. § 551, and such disclosure does not directly or indirectly disclose:
 - a. A customer's extent of viewing of a cable service or other service provided by the grantee;
 - b. The extent of any other use by a customer of a cable service or other service provided by the grantee, including, but not limited to, a disclosure of the particular viewing selections by a person subscribing to a cable service or other service, or the particular web sites visited by a customer to non-cable service (i.e., a grantee may only disclose the fact that a person subscribes to non-cable service);
 - c. The nature of any transactions made by a customer over the cable system of the grantee; or
 - d. The nature of programming or sites that a customer subscribes to or views (i.e., a grantee may only disclose the fact that a person subscribes to a general tier of service or a package of channels with the same type of programming).
2. A minimum of 30 days before making any disclosure of personally identifiable information of any customer as provided in this subsection 21.60.825.C, the grantee shall notify in writing the Office of Cable Communications and each customer about which the grantee intends to disclose information of the specific information that will be disclosed, to whom it will

be disclosed, and notice of the customer's right to prohibit the disclosure of such information for non-cable-related purposes. The notice to customers may be included with or made a part of the customer's monthly bill for cable service or other service or may be made by separate mailed notice. Each time that this notice is given to a customer, the grantee also shall provide the customer with an opportunity to prohibit the disclosure of information in the future. Such opportunity shall be given in one of the following forms: a toll-free number that the customer may call, a website option, or such other equivalent methods as may be approved by the Office of Cable Communications.

3. Additionally, within 45 days after each disclosure of personally identifiable information of any customer as provided in this subsection 21.60.825.C, the grantee shall notify in writing the Office of Cable Communications and each customer about which the grantee has disclosed information of the specific information that has been disclosed, to whom it has been disclosed, and notice of the customer's right to prohibit the disclosure of such information for non-cable-related purposes. The notice to customers may be included with or made a part of the customer's monthly bill for cable service or other service or may be made by separate mailed notice. Each time that this notice is given to a customer, the grantee also shall provide the customer with an opportunity to prohibit the disclosure of information in the future. Such opportunity shall be given in one of the following forms: a toll-free telephone number that the customer may call; a website option; or such other equivalent methods as may be approved by the Office of Cable Communications.

4. A grantee may disclose personally identifiable information only to the extent that it is necessary to render, or conduct a legitimate business activity related to, a cable service

or other service provided by the grantee to the customer.

5. To the extent required by federal law, a grantee may disclose personally identifiable information pursuant to a subpoena or valid court order authorizing such disclosure, or to a governmental entity.

D. Access to information. Any personally identifiable information gathered and maintained by a grantee shall be made available for customer examination within 30 days of receiving a request by a customer to examine such information at the local offices of the grantee or other convenient place within the City designated by the grantee. Upon a reasonable showing by the customer that the information is inaccurate, a grantee shall correct such information.

E. Privacy notice to customers.

1. A grantee shall annually mail a separate, written privacy statement to customers consistent with 47 U.S.C. § 551(a)(1) and shall provide a customer a copy of such statement at the time the grantee enters into an agreement with the customer to provide cable service or other service. The written notice shall be in a clear and conspicuous format and be printed in ten-point type or larger.

2. In the statement required by subsection 21.60.825.E.1, the grantee shall state substantially the following regarding the disclosure of customer information: "Unless a customer affirmatively consents electronically or in writing to the disclosure of personally identifiable information, any disclosure of personally identifiable information for purposes other than to the extent necessary to render, or conduct a legitimate business activity related to, a cable service or other service, is limited to:

a. Disclosure pursuant to a subpoena or valid court order authorizing such

disclosure; or to a governmental entity, but only to the extent required by applicable federal law; or

b. Disclosure of the name and address of a customer to any general programming tiers of service and other categories of cable and other services provided by the grantee that does not directly or indirectly disclose:

1) A customer's extent of viewing of a cable service or other service provided by the grantee,

2) The extent of any other use by a customer of a cable service or other service provided by the grantee, including, but not limited to, a disclosure of the particular viewing selections by a person subscribing to a cable service or other service, or the particular web sites visited by a customer of non-cable service (i.e., a grantee may only disclose the fact that a person subscribes to non-cable service),

3) The nature of any transactions made by a customer over the cable system, or

4) The nature of programming or sites that a customer subscribes to or views (i.e., a grantee may only disclose the fact that a person subscribes to a general tier of service, or a package of channels with the same type of programming).

3. The statement shall also inform the customers of their right to prohibit the disclosure of their names and addresses in accordance with subsection 21.60.825.C for non-cable-related purposes. This opportunity will be presented in the form of a toll-free telephone number or website, provided by the grantee with the privacy notice or other manner acceptable to the Office of Cable Communications. If a customer exercises the customer's right

to prohibit the disclosure of name and address as provided in subsection 21.60.825.C or this subsection 21.60.825.E, such prohibition against disclosure shall remain in effect permanently, unless the customer subsequently notifies the grantee in writing that the customer wishes to permit the grantee to disclose the customer's name and address.

F. Privacy reporting requirements. The grantee shall provide a semi-annual report to the City summarizing:

1. The type of personally identifiable information that was actually collected or disclosed during the reporting period, including:

a. For each type of personally identifiable information collected or disclosed, a statement sufficient to demonstrate that the personally identifiable information collected or disclosed was: 1) collected or disclosed only to the extent necessary to render, or conduct a legitimate business activity related to, a cable service or other service provided by the grantee; 2) used only to the extent necessary to detect unauthorized reception of cable service; 3) disclosed pursuant to a subpoena or valid court order or to a governmental entity to the extent required by federal law; 4) names and addresses disclosed in compliance with subsection 21.60.825.C.1; or 5) a disclosure of personally identifiable information of particular subscribers, but only to the extent affirmatively consented to by such subscribers in writing or electronically; and

b. The categories of all entities to whom such personally identifiable information was disclosed, including, but not limited to, cable installation and maintenance contractors, direct mail vendors, telemarketing companies, print/mail houses, promotional service companies, billing vendors, and account collection companies; and

2. Measures that have been taken, or could be taken, to prevent the unauthorized access to personally identifiable information by a person other than the customer or the grantee, including, among other things, a description of the technology that is or could be applied by the grantee to prohibit unauthorized access to personally identifiable information by any means.

G. Nothing in this Section 21.60.825 shall prevent the City from obtaining personally identifiable information to the extent not prohibited by 47 U.S.C. § 551.

H. The grantee shall provide the names of the entities described in subsection 21.60.825.F.1.b to whom personally identifiable information was disclosed, within 30 days of receiving a request for such names from the City. However, the grantee need not provide the name of any court or governmental entity to which such disclosure was made if such disclosure would be inconsistent with applicable federal law.

I. Any aggrieved person may begin a civil action for damages for invasion of privacy against any grantee.

J. Destruction of personally identifiable information. A grantee shall destroy, within 90 days, any personally identifiable information if the personally identifiable information is no longer necessary for the purpose for which it was collected and there are no pending requests or orders for access to such personally identifiable information under this Section 21.60.825, pursuant to a court order, or pursuant to 47 U.S.C. § 551.

K. Rulemaking. The Office of Cable Communications shall adopt such rules and regulations as it deems necessary or advisable to implement this Section 21.60.825.