

# Privacy and Information Protection Bulletin

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## Important Amendments to Alberta Personal Information Protection Act

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The Alberta *Personal Information Protection Act* (the “Act”) came into force on January 1, 2004. As required by the Act, a Special Committee of the Legislative Assembly began a comprehensive review of the Act commencing on July 1, 2006. A Select Special Personal Information Protection Act Review Committee was convened in 2006 and provided its final report to the Alberta Legislature in November 2007. The report presented 39 recommendations, including:

- Requiring organizations to inform individuals of trans-border flows of their personal information;
- Creating a new duty for notification of privacy breaches; and
- Clarifying the rules governing personal employee information.

Bill 54: *Personal Information Protection Amendment Act*, 2009 received first reading in the Alberta legislature on October 27, 2009 and third reading on November 18, 2009. It will come into force upon proclamation.

One of the most important amendments to the legislation is the breach notification obligation. The federal legislation, the *Personal Information Protection and Electronic Documents Act*, and the B.C. *Personal Information Protection Act* have also gone through legislative committees with recommendations for breach notification. However, while amendments are expected to be in place across Canada shortly, Alberta is clearly first out of the gate.

The notification obligation in the amended Alberta *Personal Information Protection Act* requires an organization to provide notice to the Commissioner of any incident involving the loss of, or unauthorized access to, or disclosure of personal information where a reasonable person would consider that there exists a real risk of significant harm to an individual as a result of the loss or unauthorized access or disclosure.

The organization must send notification to the Commissioner without unreasonable delay. The organization will still have to undertake an analysis as to whether a real risk of significant harm exists.

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The Alberta Information and Privacy Commissioner has previously recommended that organizations consider whether the loss of information could lead to a number of types of risks. One risk is the risk of identity theft or other fraud, which would include considerations of whether the breach includes unencrypted information, and the type of information (e.g. social insurance numbers, credit card numbers, debit card numbers and/or personal health numbers). The organization should consider whether there is a risk of physical harm flowing from the loss of information, or a risk of damage to reputation or humiliation or whether there is a risk of loss of business or employment opportunities to the individual.

Bill 54 states that the notice to the Commissioner must be in a form prescribed by the regulations. It is presumed that the regulations will be promulgated once the Act comes into force.

The legislation includes an important amendment that requires notification of service providers outside of Canada. The amendment provides (subject to the regulations) that an organization that uses a service provider outside of Canada to collect personal information about an individual—or on behalf of the organization with the individual's consent—must notify the individual (either in writing or orally) about the ways in which the individual can obtain access to written information about the organization's policies and procedures with respect to service providers outside of Canada, as well as the name or position name or title of a person who can answer questions on behalf of the organization about the collection, use, disclosure or storage of personal information by service providers outside of Canada for, or on behalf of, the organization.

The regulations will provide an important guideline as to when this provision will apply.

The drafting of the legislation means that the organization is not required in a client notification to inform individuals of the names of the service providers or the locations or countries in which the service providers reside or do business. Rather, it requires the organization to notify individuals how they can contact the organization to obtain information from the organization about their of its service providers including those outside the country.

In the past, the Alberta Commissioner, along with the B.C. and federal Commissioners, have stated that the obligation to protect personal information by the organization includes an obligation to enter into privacy protection contracts with third-party service providers. It is recommended that the organization be in a position to respond to inquiries from individuals about the collection, use, disclosure or storage of personal information by the service providers outside of Canada with a response that the organization has privacy protection contracts in place with the service provider.

In terms of changes to employee personal information provisions, the disclosure of employee personal information section was amended to deal with "current or former employees" of the organization. Previously, the legislation did not specify that it applied to "former employees". This amendment corrects a gap in the legislation where the Alberta Commissioner, in an inquiry, had to "read into" the Act that the legislation must have meant that the organization had the right to disclose information about former employees. The Act also moves provisions from the regulations to the general collection, use and disclosure provisions to allow, without consent, collection, use and disclosure in certain circumstances such as where it is necessary to comply with an audit or inspection that is authorized or required by a statute of Alberta or Canada, or where the disclosure is necessary to comply with a

collective agreement that is binding on the organization.

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