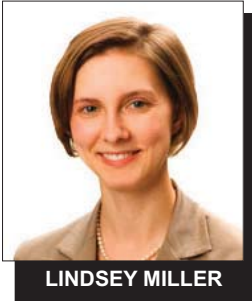


PRIVACY PRESS

A NEWSLETTER BY FIELD LAW'S PRIVACY GROUP

SPRING 2010

NEW - CHANGES TO PIPA



LINDSEY MILLER

Substantial amendments were recently made to the *Personal Information Protection Act* ("PIPA"), although the changes have not yet come into force. The changes will come into force upon proclamation of the *Personal Information Protection Act, 2009* (Bill 54).

The most notable changes include:

- A new duty to report security breaches involving personal information;
- New policy and notification rules regarding use of foreign data service providers;
- A new duty to destroy personal information after a certain time;
- Changes to the definition and scope of personal employee information and the collection, use and disclosure thereof without consent (mostly to facilitate the provision of employment references);
- New exceptions for handling personal information in the context of audits

Mandatory Security Breach Notification

The security breach notification requirement will require organizations to report themselves to the Commissioner if they have an incident involving the loss, unauthorized access, 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, access or disclosure. The Commissioner will investigate the report and may require the organization to notify the affected individuals about the breach. This new reporting provision does not restrict organizations from notifying individuals of the breach on their own initiative.

Foreign Data Service Provider Notification Requirement

If an organization uses a foreign (outside Canada) "service provider" to collect personal

information on the organization's behalf; or, transfers personal information to that service provider, then the organization must notify individuals at or before the time of collecting or transferring their personal information to the service provider of how the individual can access written information about the organization's policies and practices regarding foreign service providers and the name/title of the person who can answer questions on behalf of the organization about the collection, use, disclosure or storage of personal information by foreign service providers.

A "Service Provider" is broadly defined as "any organization, including without limitation, a parent corporation, subsidiary, affiliate, contractor, or subcontractor that, directly or indirectly, provides a service for or on behalf of another organization."

If an organization uses a service provider outside Canada to collect, use, disclose or store personal information for or on behalf of the organization, then the organization must include in its policies and practices the purposes for which the service provider has been authorized to collect, use, or disclose the information, and indicate in which countries the activity is occurring or may occur.

Duty to Destroy Information

Organizations can retain personal information, but only for as long as they reasonably require the personal information for legal or business purposes. Once that time has elapsed, organizations would now have a positive obligation to destroy the records or render the information non-identifiable.

Personal Employee Information

The definition of "personal employee information" will be expanded in its coverage and scope. It will now cover former employees

as well as potential and current employees, and deals with information for managing a post-employment work relationship. The definition will also be broadened to cover information “reasonably required” by the organization to establish, manage or terminate an employment relationship or managing the post-employment relationship, and will no longer be restricted to information collected , used or disclosed “solely” for those purposes.

The changes also expand the collection, use and disclosure of personal employee information without consent to the post-employment period, and will explicitly set out that the exception applies to hiring and managing employees. They will also allow organizations to disclose information about current or former employees to a potential or current employer, without consent, if the information is being collected by the new employer as personal employee information and it is reasonable for the purpose of “assisting that employer to determine the individual’s eligibility or suitability for a position with that employer”.

Audits

New provisions will allow for the collection, use and disclosure of personal information, without consent, for auditing purposes. It would be permitted if necessary to comply with an audit or inspection of or by the organization which is authorized or required by statute. Collection and use of information would also be permitted for “audits” of one organization by another that didn’t fall within the former category, but only if it was not practicable to collect or use non-identifying information for the purposes of the audit.

The PIPA Regulation currently includes audits in a similar provision, but these changes may bring more specificity to the framework. ▲



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