

## Canada's Entry Into Breach Notification Requirements

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1. June 2010 By Marcus Jones

The Canadian province of Alberta passed the Personal Information Protection Amendment Act of 2009 (PIPAA), which received Royal assent late last year. This Act amends Alberta's Personal Information Protection Amendment Act of 2004 (PIPA). PIPA covers a wide range of issues dealing with the collection, protection and use of personal information. However, PIPA did not cover notification of the individual in the event someone gained unauthorized access to the individuals' information. PIPAA filled in that gap with its breach notification requirements, the first of its kind in Canada.

PIPAA went into effect on May 1, 2010. The breach notification requirements contained in PIPAA mirror, to a large degree, notification requirements found in states across the U.S. In summary, PIPAA requires notification of the Information and Privacy Commissioner (Commissioner) if a breach occurs and the breach poses a "real" risk of significant harm to individuals. A "real" risk of significant harm means more than a risk that is merely theoretical. PIPAA specifies the information required to be included in a notice to the Commissioner.

After reporting an incident to the Commissioner, the Commissioner has the ability to require an organization to report the breach to individuals affected by the breach. A notice to individuals, if required by the Commissioner, will contain a description of the incident that led to the breach, the time when the incident occurred, a description of the personal information involved, information about any steps taken to reduce the risk of harm, and contact information for a person who can answer the individual's questions. The Commissioner may require the disclosure additional information to individuals as it determines is necessary. PIPAA nor PIPA restrict a company from notifying individuals on their own accord. However, if there is a "real" risk of significant harm to individuals, notification of the Commissioner is required.

PIPAA is not the final word in Canadian breach notification requirements. On May, 25, 2010, amendments to the Personal Information Protection and Electronic Documents Act were introduced into the Canadian House of Commons. The amendments include breach notification requirements that parallel the PIPAA requirements. The new law will be addressed in my next post.