



Federal Privacy Law Reform

Bill C-29, a bill to reform Canada's private sector privacy law (Personal Information Protection and Electronic Documents Act, or "PIPEDA") was tabled in Parliament in May, 2010. Bill C-29 makes a number of substantive and housekeeping changes, as recommended by review processes which have taken place over the last few years.

Breach Notification

Currently, the notification of affected individuals that an organization has suffered a data loss or security breach is at the discretion of the organization. Bill C-29 adds a new division to PIPEDA, requiring organizations to perform mandatory breach notifications in certain circumstances. If the organization experiences a material breach of security safeguards, it must provide a report, in a form to be prescribed, to the Federal Privacy Commissioner. In addition, if it is reasonable in the circumstances to believe that the breach creates a real risk of significant harm to an individual, there is a further duty to notify that individual in a prescribed manner.

Bill C-29 does not define, but provides some general guidance on the concept of, the terms "material" and "significant harm".

This provision maintains a subjective approach to breach notification, following on Alberta's recent reform of its provincial personal information protection law, PIPA. By contrast, in the U.S.A. a more objective approach is taken, with some state laws utilizing arbitrarily-set monetary or scope thresholds triggering a duty for notification.

Business Transactions

Bill C-29 codifies a statutory exemption permitting organizations to exchange information during the due diligence process of business transactions, without notice to or consent of the individuals the information is about, provided certain conditions are met. Bill C-29 substantially adopts the form and content of the existing business transaction exemption contained in Alberta's PIPA and BC's PIPA. During the due diligence process, and upon closing, certain formalities, safeguards and notices are required, as specified in proposed s. 7.1 of PIPEDA.

Statutory Exemptions

Bill C-29 introduces or amends several statutory exemptions to PIPEDA's general requirement that individual consent be obtained for collection, use or disclosure of personal information. The proposed amendments again closely track existing provisions in Alberta's PIPA and BC's PIPA. The exemptions include:

- (a) a work product exemption;
- (b) an employment relationship exemption;
- (c) a witness statement exemption; and
- (d) expansion of the existing "breach of agreement" investigation exemptions to permit disclosure to any other organization in connection with investigating a possible breach of agreement (previously, the permitted

disclosure was limited to selected “investigative bodies” prescribed by regulation”).

Lawful Access

Section 7(3) of PIPEDA contains a number of statutory exemptions permitting (and sometimes requiring) organizations to disclose information to a variety of public bodies, in connection with law enforcement, anti-terrorism, and similar matters. Bill C-29 substantially adds to and amends these provisions. The Bill also attempts to add clarification around the scope of “lawful authority”, which is a pre-requisite for many of these data exchanges.

Business Contact Information

Bill C-29 will clarify that PIPEDA is not intended to regulate use of standard “business card” information when contacting an individual for purposes related to their business.

About PIPEDA

PIPEDA regulates the personal information handling practices of private sector organizations which are:

- (a) federal works, undertakings or businesses; or
- (b) other organizations conducting commercial activity in a province which does not have its own accredited private sector privacy legislation.

Currently, Alberta, B.C. and Quebec have accredited provincial private sector privacy legislation in place. Ontario also has legislation covering health information.

End Notes

Bill C-29 also makes a number of other minor and housekeeping amendments to PIPEDA. It is not known how quickly Bill C-29 might move through the legislation process.

A full copy of Bill C-29 can be found online at:

<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4547739&Language=e&Mode=1>

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