ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

P2010-ND-006

ALBERTA TREASURY BRANCHES, carrying on business as ATB FINANCIAL

November 4, 2010

(Case File #P1680)

I. Introduction

[1] On September 30, 2010, I received a report from ATB Financial (ATB) of an incident involving the loss of personal information. Based on the information reported to me, I have decided that there is a real risk of significant harm to the customers affected by the incident and therefore I require ATB to notify those customers.

II. Jurisdiction

[2] The *Personal Information Protection Act* (PIPA) applies to provincially-regulated private sector organizations in Alberta. I have jurisdiction in this case because ATB is an "organization", as defined in section 1(1)(i) of PIPA, operating in the Province of Alberta.

[3] Under s. 34.1 of PIPA, an organization having personal information under its control must, without unreasonable delay, notify me of any incident involving the loss of or unauthorized access to or disclosure of the 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.

[4] Section 37.1 of PIPA authorizes me to require an organization to notify individuals to whom there is a real risk of significant harm as a result of an incident. It states:

> 37.1(1) Where an organization suffers a loss of or unauthorized access to or disclosure of personal information that the organization is required to provide notice of under section 34.1, the Commissioner may require the organization to

notify individuals to whom there is a real risk of significant harm as a result of the loss or unauthorized access or disclosure

(a) in a form and manner prescribed by the regulations, and

(b) within a time period determined by the Commissioner.

(2) If the Commissioner requires an organization to notify individuals under subsection (1), the Commissioner may require the organization to satisfy any terms or conditions that the Commissioner considers appropriate in addition to the requirements under subsection (1).

(3) The Commissioner must establish an expedited process for determining whether to require an organization to notify individuals under subsection (1) in circumstances where the real risk of signification harm to an individual as a result of the loss or unauthorized access or disclosure is obvious and immediate.

(4) The Commissioner may require an organization to provide any additional information that the Commissioner considers necessary to determine whether to require the organization

(a) to notify individuals under subsection (1), or

(b) to satisfy terms and conditions under subsection (2).

(5) An organization must comply with a requirement

(a) to provide additional information under subsection (4),

(b) to notify individuals under subsection (1), or

(c) to satisfy terms and conditions under subsection (2).

(6) The Commissioner has exclusive jurisdiction to require an organization

(a) to provide additional information under subsection (4),

(b) to notify individuals under subsection (1), and

(c) to satisfy terms and conditions under subsection (2).

(7) Nothing in this section is to be construed so as to restrict an organization's ability to notify individuals on its own initiative of the loss of or unauthorized access to or disclosure of personal information.

[5] ATB reported that the information at issue in this incident consisted of nine customers' names, addresses, phone numbers and bank account numbers. The information also consisted of personal bank statements of an agent of ATB and tax information of the agent and the agent's son.

[6] This is information about identifiable individuals and so qualifies as "personal information" as defined in section 1(1)(k) of PIPA.

[7] In considering whether to require ATB to notify the affected individuals, I am mindful of PIPA's purpose and legislative principles and the relevant circumstances surrounding the reported incident.

III. Background

[8] On September 30, 2010, I received a written report from ATB describing an incident involving the loss of personal information.

[9] On October 5, 7 and 12, 2010, my Office contacted ATB to request additional information regarding this incident. Additional information was provided in telephone calls and through email correspondence between October 5 - 12, 2010.

[10] In summary, the circumstances of the incident reported to me are as follows:

- ATB contracted with an individual located in Minburn, Alberta as an agent (the "Agent") to perform certain services on behalf of ATB.
- Upon arriving at the Minburn, Alberta office the morning of September 16, 2010, the Agent, who was the only person working at this location, discovered the office had been broken into.
- The break-in occurred sometime in the evening of September 15, 2010 or early morning of September 16, 2010.
- The Agent had been keeping some of her personal bank records and tax information as well as her son's tax information in her office. These records were missing and presumed to have been stolen.
- In addition, a file containing the names, addresses, phone numbers and bank account numbers of nine ATB customers was missing. The Agent could not recall if she had previously destroyed the file or if it had been stolen.
- The Agent reported the incident to the RCMP in Vermillion on September 16, 2010 and to ATB.
- The Agent telephoned each of the nine customers to inform them of the incident. ATB also subsequently contacted each of the nine customers to inform them of the incident and offered to change their bank account numbers, replace their cheques and monitor their accounts. Locks on the building were also changed.

IV. Is there a real risk of significant harm to individuals as a result of the incident?

[11] Pursuant to section 5(2) of PIPA, ATB is responsible for the Agent's compliance with PIPA. Section 5(2) provides:

> 5(2) For the purposes of this Act, where an organization engages the service of a person, whether as an agent, by contract or otherwise, the organization is, with respect to those services, responsible for that person's compliance with this Act.

[12] The file containing the personal information of the nine ATB customers was missing and the Agent could not recall whether she had destroyed the file or whether it was in the office and had been stolen. In my view, this constitutes a loss of personal information under PIPA.

[13] Pursuant to section 37.1 of PIPA, I have the power to require ATB to "notify individuals to whom there is a real risk of significant harm as a result of the loss or unauthorized access or disclosure." In determining whether or not to require ATB to notify the individuals in this case, I must consider whether there exists a "real risk of significant harm" to those individuals as a result of the incident.

[14] In order for me to require that ATB notify the customers, there must be some harm – some damage or detriment or injury – that could be caused as a result of the incident; moreover, that harm must be "significant" – it must be important, meaningful, and with non-trivial consequences or effects.

[14] In this case, the personal information at issue consists of the customers' names, addresses, phone numbers and bank account numbers. While an individual's name, address and phone number is not particularly sensitive information, the inclusion of the bank account number in connection with this information raises the sensitivity of the information to moderate to high sensitivity.

[15] This is information that could be used to cause significant harm to individuals as it could be used for identity theft and/or fraud.

[16] In order for me to require ATB to notify the customers, however, there must also be a "real risk" of harm to the customer as a result of this incident. This standard does not require that harm will certainly result from the incident, but the likelihood that it will result must be more than mere speculation or conjecture. Further, there must be a cause and effect relationship between the incident and the possible harm.

[17] I note that the Agent acted quickly to inform the RCMP of this incident. However, as the customer personal information is missing, and the Agent is unable to confirm that it was securely destroyed, I believe there is a real risk that the information was stolen, and very possibly with an intent to cause harm. As a result, I believe there is a real risk of significant harm to the nine customers in this case.

[18] With regard to the personal information of the Agent and her son, the Agent reported that this information was stolen during the break-in. In my view, bank statements and tax information are highly sensitive and there is a real risk of significant harm to both the Agent and her son in the form of identity theft and fraud as a result of the loss of and unauthorized access to this information. However, as the information is that of the Agent and her son, and not ATB customers, and was brought by the Agent to

her place of work in a personal or domestic capacity for storage purposes, I find that it was not in the custody or under the control of ATB.

[19] As already noted above, PIPA applies to "organizations", which term is defined in section 1(1)(i) of PIPA. The definition of "organization" specifically excludes an individual acting in a personal or domestic capacity. Therefore, the Agent, acting in a personal or domestic capacity, is not an organization for purposes of PIPA, and PIPA does not apply in respect of the Agent's own personal information and that of her son which was stolen during the break-in.

V. Decision

[19] Based on the information reported to me by ATB, I have concluded there is a real risk of significant harm to the nine customers as a result of this incident. Therefore, I require ATB to notify the nine customers of this incident in accordance with section 19.1 of the *Personal Information Protection Act Regulation* if it has not already done so.

[20] I understand ATB has already notified the nine customers.

Frank Work, Q.C.
Information and Privacy Commissioner