

ALBERTA

**OFFICE OF THE INFORMATION AND
PRIVACY COMMISSIONER**

P2012-ND-06

Empire Life Insurance Company of Canada

March 9, 2012

(Case File #P2064)

I. Introduction

[1] On February 16, 2012, I received a report from Empire Life Insurance Company of Canada (“Empire Life” or the “Organization”) of an incident involving the unauthorized disclosure of personal information. Based on the information reported to me, I have decided that there is a real risk of significant harm to individuals as a result of the incident, and therefore I require that Empire Life notify the individuals to whom there is a real risk of significant harm.

II. Jurisdiction

[2] Under s. 34.1 of the *Personal Information Protection Act* (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.

[3] 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 significant 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.

[4] PIPA applies to organizations, defined in section 1(1)(i) of PIPA as follows:

1(1) (i) "organization" includes

- (i) a corporation,
- (ii) an unincorporated association,
- (iii) a trade union as defined in the *Labour Relations Code*,
- (iv) a partnership as defined in the *Partnership Act*, and
- (v) an individual acting in a commercial capacity,

but does not include an individual acting in a personal or domestic capacity;

[5] I have jurisdiction in this matter because Empire Life is an “organization” as defined in section 1(1)(i) of PIPA, and the information at issue in this incident qualifies as “personal information” as defined in section 1(1)(k).

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

III. Background

[7] On February 16, 2012, I received a written report from Empire Life describing an incident involving the unauthorized disclosure of personal information.

[8] On February 22, 2012, my Office contacted Empire Life to request that it provide additional information concerning the incident, in order for me to determine whether to require Empire Life to notify individuals under subsection 37.1(1) of PIPA. The additional information was provided in a number of telephone calls and e-mail correspondence between February 22, 2012 and March 2, 2012.

[9] The circumstances of the incident as reported to me by the Organization are as follows:

- T4As¹ and Relevé 1s (tax reporting statements for Quebec residents) were mailed from Empire Life’s head office in Kingston, Ontario to 14,363 contracted advisors (“advisors”) of the Organization during the week of February 6 - 9, 2012.
- Empire Life advised that due to human error the Organization’s copies of T4As were printed two to a page and Relevé 1s were printed 3 to a page and mailed to the advisor whose name appeared on the top page. Accordingly, advisors received a copy of their T4A along with a copy another advisor’s T4A. Similarly, advisors

¹ The T4A is issued by a pension plan administrator, and is a statement of pension, retirement, annuity other income sources (self-employed commissions) of an individual received by the pension plan administrator

who received a copy of their Relevé 1 also received a copy of two other Individuals' Relevé 1s (approximately 3899) were issued.

- The T4As and Relevé 1s include the name of the advisor, mailing address, social insurance number or recipients' account number, income, and deductions.²
- The incident affected more than half of the 14,363 advisors to whom T4As and Relevé 1s were issued. Of the total affected, 1149 advisors are from Alberta.
- On February 13, 2012, Empire Life received telephone calls and emails from advisors informing the Organization that they had received someone else's tax statements.
- Subsequently, Empire Life notified all affected advisors that due to a recent mailing of 2011 T4As and Relevé 1s some advisors had received a copy of a tax statement that includes their tax information as well as other advisors' tax information. The notices asked advisors to immediately destroy the tax return that did not belong to them and confirm its destruction with the Chief Privacy Officer of Empire Life or return the information in a sealed envelope to the Organization. Empire Life notified the affected advisors and those that received the information in error about the incident. A summary of Empire Life's notifications to the affected advisors are outlined below:
 - February 13, 2012 by telephone;
 - February 14, 2012 by posting an e-bulletin on Empire Life's website for advisors which remains posted. The Organization also sent an "email blast" to advisors and included a notification of the incident in Empire Life's newsletter;
 - February 14-15, 2012, by mailing notification letters in English;
 - February 16-17, 2012, by mailing notification letters in French.
- Empire Life continues to track and monitor all e-mails and telephone calls from advisors confirming destruction and return of T4As and Relevé 1s. As of February 28, 2012, the Organization has received 475 (returned) T4As and 1600 (confirmed as destroyed) T4As. The Organization stated that it is aware of certain instances in which advisors have sent T4As to the advisor indicated on the T4A. In these cases, the Organization has yet to determine the number of occurrences.
- On March 1, 2012, Empire Life became aware that some Relevé 1s had been sent by their advisors to the Commission d'accès à l'information du Québec. The

² Canada Revenue Agency's T4A form includes Box 13 – Recipient's account number (15 characters). If the recipient of the reported amount is a business (sole proprietor, partnership, or corporation), the employer would enter the recipient's account number. In this case, the recipient's account number does not qualify as "personal information" as defined under PIPA (s.1(1)k). That is, it is not "information about an identifiable individual".

Organization is expecting the return of these Relevé 1s from the Quebec Privacy Commissioner's office.

- The Organization reported that it will conduct follow-up calls to advisors who have not confirmed destruction or return of the tax statements by March 2, 2012.
- Empire Life has offered to reimburse all costs associated with credit monitoring to the affected advisors.
- The Organization will no longer print file copies of the T4As and Relevé 1s and instead maintain copies electronically on its internal network folder. Empire Life also advised that the Chief Privacy Officer is working with the Organization's IT Department to implement the distribution of next year's T4As and Relevé 1s in a secure manner and will conduct a threat risk assessment of its proposed procedures in regard to this matter.

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

[10] Pursuant to section 37.1 of PIPA, I have the power to require Empire Life 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 Empire Life to notify individuals, I must consider whether there exists a “real risk of significant harm” to individuals as a result of the incident.

[11] In interpreting the above referenced phrase, it is clear that in order for me to require that Empire Life notify individuals, there must be some harm – some damage or detriment or injury – that could be caused to that employee as a result of the incident; moreover, that harm must be “significant” – it must be important, meaningful, and with non-trivial consequences or effects.

[12] In this case, the personal information at issue is of high sensitivity as it includes name of the individual, mailing address, social insurance number, and income.

[13] Empire Life also noted that the type of harm that could result from the unauthorized disclosure of this information is identity theft as well as damage to reputation and humiliation, which, in my view are significant harms. Empire Life noted that there is a medium risk of identity theft and a high risk of damage to reputation and humiliation potentially occurring as a result of the breach. The Organization further explained that based on the fact that these advisors are each other's competitor within the industry, the earnings of an advisor is usually a “tightly guarded secret”.

[14] In order for me to require Empire Life to notify individuals, however, there must also be a “real risk” of significant harm to the individual as a result of the incident. This standard does not require that significant 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.

[15] In deciding whether there exists a “real risk” of harm in this case, I considered that Empire Life notified the affected individuals soon after the incident was discovered; the information that was reported to this Office; and the type of information involved. I also considered that a major portion of T4As and Relevé 1s have not been returned or destroyed. I further note that more than half of 14,363 individuals were affected by the incident, nationwide, depending on whether one (in the case of the T4A) or two (in the case of Relevé 1) extraneous individuals were affected by each mailout.

[16] I also carefully considered Empire Life’s assessment that there is a “high risk” of humiliation and damage to reputation given that the advisors operate in a competitive environment and therefore, to know another advisor’s income may cause humiliation and damage to reputation of the affected advisors.

[17] Given the information reported by Empire Life, I have decided that there is a real risk of significant harm to individuals as a result of this incident. I have based my decision on the following factors: the type of information involved could be used to commit identity theft as well as damage to reputation and humiliation, the significant number of affected individuals located across the country and the fact that a substantial number of T4As and Relevé 1s have not been returned or destroyed.

V. Decision

[18] Based on the information reported to me by Empire Life I have concluded there is a real risk of significant harm to individuals as a result of this incident and I require Empire Life to notify affected individuals. I understand Empire Life has already notified the individuals in accordance with section 19.1 of the *Personal Information Protection Act Regulation* by way of letter, email and telephone from February 13 - 17, 2012; therefore I will not require Empire Life to notify again.

Jill Clayton
Information and Privacy Commissioner