

**ALBERTA  
OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER**

**Report of an Investigation into the  
Use of and Access to Personal Information**

**August 19, 2008**

**Canada Life Assurance Company**

**Investigation Report P2008-IR-004**

**I. INTRODUCTION**

[1] An individual (“the Complainant”) applied for a life insurance policy offered by Canada Life Assurance Company (“Canada Life” or “the Organization”) through Investors Group. The Complainant was approved for insurance by the Organization and became concerned when the Investors Group Financial Advisor delivered the insurance documents to her. The documents presented to her by the Financial Advisor not only included her insurance contract, policy and application, but also the paramedical examination results completed by a health practitioner for the purposes of the application. In addition, a health questionnaire that the Complainant completed was amongst the documents. The Complainant asserted that Canada Life’s inclusion of this sensitive personal information in the contract documents presented to her by Investors Group was not reasonable. She maintained that the Financial Advisor had no reason to access the information.

[2] In response to this complaint, the Information and Privacy Commissioner (“the Commissioner”) elected to conduct an investigation to determine whether the Organization’s activities represented a contravention of Alberta’s *Personal Information Protection Act* (“PIPA” or “the Act”).

**II. JURISDICTION**

[3] PIPA applies to provincially-regulated private sector organizations operating in Alberta, including Canada Life. PIPA sets out the provisions under which organizations may *collect, use, or disclose* personal information.

[4] Section 36 of the Act empowers the Commissioner to conduct investigations to ensure compliance with any provision of PIPA and make recommendations to organizations regarding their obligations.

[5] The Commissioner has jurisdiction in this case because Canada Life Assurance Company is an “organization”, as defined in section 1(i) of the Act, and operates in Alberta. The information at issue, the Complainant’s medical and health information, qualifies as personal information, as defined in section 1(k) of PIPA.

[6] Pursuant to section 49 of PIPA, the Commissioner authorized me to investigate this matter. This report outlines my findings and recommendations, which may be made public according to section 38(6) of the Act.

### **III. BACKGROUND**

#### Complaint

[7] The Complainant in this matter reported that she purchased a Canada Life policy through Investors Group. When applying, the Financial Advisor asked the Complainant risk-related lifestyle questions about alcohol, tobacco and drug use. In addition, shortly after she underwent a paramedical examination, the Complainant was also asked by the Financial Advisor to complete a health questionnaire. Although the Financial Advisor requested that the completed questionnaire be returned to him, the Complainant stated that she asked if she could submit it directly to Canada Life due to the sensitive information involved. While the Complainant was able to do so, when the Financial Advisor delivered her final insurance documents to her, she noticed that the results of her paramedical examination and her completed health questionnaire were attached to the package, to which the Financial Advisor had access.

[8] The Complainant alleged that this practice is contrary to PIPA. Although she does not dispute Canada Life’s authority to collect this information, the Complainant maintains that it is not reasonable for Canada Life to have included her health questionnaire and medical examination in contract documents that were delivered to her by the Financial Advisor, who is not entitled to access this kind of medical information.

#### Canada Life

[9] In response to this complaint, the Organization reported that in order to sell life insurance products, a person must be licensed as an agent by the relevant provincial insurance regulator; the Alberta Insurance Council in this case. This includes Financial Advisors selling life insurance. To obtain a license, individuals must complete and pass the Life License Qualification Program (LLQP) training and examination. Two volumes of training material outline the role of the insurance agent in the underwriting process: meeting the client, obtaining relevant

personal information to complete the application, delivering the contract, and confirming the owner's state of health.

[10] Financial Advisors licensed as insurance agents are not employees of Canada Life. Rather, they or their firms, are contracted by Canada Life to sell the Organization's products. The insurance agent, or Financial Advisor in this case, represents the insurance company to which the individual is applying for insurance and must completely and accurately record personal information necessary to underwrite the life (risk) to be insured. The insurance agent must also act in the individual's best interests, ensure the right product has been selected, and that all material information has been presented to the parties to prevent a claim from being denied in the future because of inaccurate information.

[11] Insurance agents who sell for Canada Life are expected to deliver policies to clients in person, if possible, and review the contract (including application material) with the client to confirm that insurability has not changed since the time the application was completed. This practice is outlined in the Organization's "Code of Business Conduct and Ethics".

[12] In the case of the Complainant, Canada Life stated that her Financial Advisor is a contracted Consultant with Investors Group Financial Services Inc. ("Investors Group"). Investors Group has its own separate contract with Canada Life whereby Canada Life authorizes Investors Group's Consultants to sell and distribute the Organization's products. The contract between Canada Life and Investors Group includes provisions requiring Investors Group to comply with Canada Life's underwriting and policy delivery procedures, as well as to maintain client confidentiality. The Financial Advisor acts on behalf of Canada Life in first collecting the information for underwriting, and then delivering the contract. The Financial Advisor then reviews the information and explains the full terms of the insurance contract.

[13] According to the Organization, the contract for insurance includes the application form. The application form includes the questionnaires completed by the Complainant. This is made clear on several portions of the form signed by the Complainant. Providing the Financial Advisor with temporary access to the application (which includes health related information) for delivery to the client is reasonable given that by law, the application forms part of the contract of insurance.

[14] Canada Life asserted that the practice of providing life insurance products to customers through Financial Advisors who have face to face and personal relationships with their clients is common across the insurance industry, with the exception of "guaranteed coverage" plans offered on television. While Financial Advisors deliver insurance contracts (including the applications containing medical information), they are not permitted to retain copies.

[15] The Organization recognized that there may be circumstances in which an individual does not wish for the Financial Advisor (who may be a personal friend or

family member, for example) to have access to sensitive personal information. In such cases, Canada Life makes reasonable efforts to accommodate such individuals. In the present case, the Organization was not advised that the Complainant had any particular concerns with her personal information.

#### **IV. ISSUES**

[16] The issues to be examined in this report are as follows:

- a) What is the relationship between Canada Life, Investors Group, and the Financial Advisor?
- b) Did the Organization use the Complainant's personal information for purposes that are reasonable and to the extent reasonable, in accordance with section 16 of PIPA?
- c) Did the Organization make reasonable security arrangements to protect the Complainant's personal information, in compliance with section 34 of PIPA?

#### **V. ANALYSIS**

##### **a) What is the relationship between the Organization, Investors Group, and the Financial Advisor?**

[17] In the present case the Financial Advisor works solely for Investors Group and only sells insurance products of those affiliated companies with which Investors Group has an agreement. The Financial Advisor is not an employee of Canada Life. Rather, the Financial Advisor is a Consultant contracted by Investors Group, as evidenced by the contract between the two, which states:

*IGFS hereby engages the Consultant as its agent to arrange for the distribution of the financial products and services offered or sponsored by IGFS and/or its affiliated corporations... For greater certainty, the Consultant and IGFS agree that the Consultant is not an employee of IGFS and the relationship is one of principal and agent.*

[18] I note that despite the contractor relationship outlined in the agreement, for the purposes of PIPA, the Financial Advisor is considered an employee of Investors Group since the definition of "employee" in section 1(e) of PIPA includes an "individual employed by an organization who performs a service" for an organization "under contract".

[19] Much like an employer, Investors Group sets down workplace policies, provides a work space, evaluates performance, and offers personal group insurance plans and income tax withholdings for its Financial Advisors. Thus, for the purposes of PIPA, the relationship between the Financial Advisor and Investors Group is one of employer-employee, despite the wording of the contract between the two. PIPA's definition of "employee" includes contract workers, and the Act

holds Investors Group responsible for the Financial Advisor's conduct under PIPA, as it would any other employee.

[20] The Financial Advisor's relationship with the Organization stems from and flows through an agreement between Canada Life and Investors Group. Having entered into a service agreement, the relationship between Canada Life and Investors Group is contractual, wherein Canada Life authorizes Investors Group representatives to sell and distribute its insurance products or policies to consumers. To that end, in the agreement, Investors Group agrees to:

*...authorize and appoint duly qualified representatives of [Investors Group] to sell and distribute Canada Life policies.*

...

*All [Investors Group] representatives who are authorized and appointed to sell and distribute Canada Life policies are not employees of Canada Life.*

[21] Given all of the above, I find that the Financial Advisor is an employee of Investors Group (for the purposes of PIPA), who is Canada Life's contracted service provider. Under section 5(2) of PIPA, an organization is accountable for the compliance of service providers carrying out work on its behalf, as follows:

*(2) For the purposes of this Act, where an organization engages the services 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.*

[22] PIPA therefore holds Canada Life responsible for Investors Group's compliance with PIPA, and Investors Group is responsible for its Financial Advisor's compliance with the Act. Section 5 of the Act continues by stating:

*(6) Nothing in subsection (2) is to be construed so as to relieve any person from that person's responsibilities or obligations under this Act.*

Thus, both organizations involved – Canada Life and Investors Group - share accountability for their compliance with PIPA. While Canada Life has delegated to Investors Group the responsibility of finding and appointing qualified workers to conduct Canada Life product sales, the Organization is still jointly accountable under PIPA for any of Investors Group's (and its employees) actions in carrying out this function.

**b) Did the Organization use the Complainant's personal information for purposes that are reasonable and to the extent reasonable, in accordance with section 16 of PIPA?**

[23] In this case, Canada Life's sharing of information with Investors Group is considered a 'use' rather than a 'disclosure' of personal information since Investors Group is a service provider contracted to carry out Canada Life's duties and fulfill

the Organization's purposes for collecting the information. In accordance with the agreement between the two, Canada Life continues to exert control over its customers' information and provides direction through contractual provisions as to how that information is to be managed by Investors Group. In this case, Canada Life's authority under PIPA to use the Complainant's personal information to provide life insurance has been conferred to Investors Group. In cases where an organization relinquishes its control of personal information to another organization, perhaps for a different purpose, that activity may be considered a disclosure. That was not the case here. This application of PIPA is consistent with Investigation Report P2008-IR-003 and P2007-IR-002 (see para. 40) issued by this Office.

[24] Section 16 of the Act requires the following:

**16(1)** *An organization may use personal information only for purposes that are reasonable.*

**(2)** *Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.*

This section ensures that where an organization uses personal information, it has a reasonable purpose for doing so and no more information than is reasonable to satisfy that purpose is used. In other words, the degree or amount of personal information used must be limited to what is reasonable to satisfy the identified purpose.

[25] The Complainant alleged that, contrary to PIPA, Canada Life included her sensitive medical information in the insurance documents which Investors Group's Financial Advisor presented to her. This entailed a lifestyle questionnaire about tobacco, alcohol and drug use, a paramedical questionnaire completed by a health care professional who examined the Complainant, and a health-related questionnaire. She was concerned that this was not a reasonable use of her information given that an Investors Group representative was presenting the documents to her.

[26] According to the Organization, the application for insurance is comprised of the above-noted questionnaires. Canada Life also maintained that the Complainant was made aware of the fact that her questionnaire responses formed part of the application for insurance on several portions of the forms she signed:

*...the application...includes this form, any written statements and answers you provide for this application, and all other information given by you...*

*The answers above are given by me... I hereby agree that they shall form part of the Application for insurance.*

*I understand that my answers to this questionnaire are material to my application for insurance... I declare that the above answers are complete and true, and shall form part of my application.*

[27] A contract for insurance includes the full insurance application and the insurance policy. The fact that an application forms part of the life insurance contract is established in section 558(2) of the Alberta *Insurance Act*, which states:

***Issuance of policy***

558(1) *An insurer entering into a contract must issue a policy.*

(2) *Subject to subsection (3), the provisions in*

*(a) the application,*

*(b) the policy,*

*(c) any document attached to the policy when issued, and*

*(d) any amendment to the contract agreed on in writing after the policy is issued, constitute the entire contract.*

[28] In my view, it is logical that medical or health questionnaire results would form part of the application for insurance given that in an application, an individual is presenting information which the Organization evaluates to determine eligibility to receive life insurance. Eligibility is based on risk which is assessed according to an individual's state of health and medical predispositions. Acceptance or denial of an application therefore centers largely on the health information provided. In my view, it is therefore reasonable that information central to acceptance or denial of the application would form part of the application.

[29] The *Insurance Act* dictates that the application then constitutes part of the insurance contract. While this is a matter of law, it is clear why this would also be reasonable. The terms of the contract are based on the information supplied by the applicant and the policy provisions, which together form the basis for the contract. Thus, the contract for insurance must include the basis for the agreement: the policy and the information supplied by the applicant. If the information supplied by the Complainant changed, or was proven to be inaccurate or incomplete, the contract could be invalidated. Therefore, all of these documents must form part of the insurance contract.

[30] The Organization also asserted that Investors Group was authorized to use the Complainant's application, policy and insurance contract since the Organization does not utilize its own employees in the field to meet with individuals and sell its products. As Canada's Life's authorized representative appointed by Investors Group, the Financial Advisor's specific duties include conducting "field underwriting", delivering the insurance documents, and reviewing the policy with the Complainant on the Organization's behalf. This is standard industry practice for insurance agents who are licensed, regulated, and must undergo specialized training and examination.

[31] In Canada, any person who sells life insurance products must be licensed as an agent by the relevant provincial insurance regulator. Licensees may be referred to as financial consultants, planners, brokers, or agents. The Alberta Insurance Council (AIC) is the regulatory body responsible for licensing and discipline of insurance agents, brokers and adjusters in the Province of Alberta. The AIC

derives its authority under a delegation from the Minister of Finance and Enterprise. To qualify for a license, the AIC requires that applicants complete the LLQP course of study and pass the related examination. Although the examination is administered and written by the AIC, the LLQP is not.

[32] I reviewed LLQP training material offered by one AIC approved LLQP provider. The program describes the underwriting process as being completed in two interdependent parts: first, in the field where the client completes the application and forms, and second, at the insurance company's head office where an underwriter reviews the information to assess the risk. The agent's described role is to "receive personal information about the applicant's income, habits and medical background." Whereas the insurance company's underwriter ultimately evaluates the risk, the agent "must ask the applicant all the questions on the application and related documents and record the customer's responses fully and accurately." The LLQP material maintains that it is "essential" that the agent:

*...review the information with the applicant to ensure that it is recorded accurately and with all the relevant details (in the case of medical information, this would include the ailment, the treatment and outcome and the date, along with the attending doctor's name and address).*

[33] As is described in the LLQP, the importance of the field underwriting process is to ensure that the proceeds from the policy contract will be paid to the beneficiaries at claim time. The risk accepted by the insurer and the terms of the contract are based on the information supplied by the applicant. False, misleading, incorrect, absent or inaccurate information can therefore invalidate the insurance contract. Significant attention is given in the LLQP to train agents to elicit accurate details from individuals and to explain the consequences associated with a failure to do so.

[34] In my view, since a claim may be denied and a policy voided if anything but accurate and complete information is supplied by the individual, in the absence of Canada Life's own field employees it is reasonable that an intermediary would be used to ensure the integrity of information supplied to the insurer. The intermediary in this case has been specifically contracted to provide this service on the organization's behalf. An individual may misunderstand or misinterpret a question, or fail to provide adequate detail, and an agent can assist by asking probing questions to offer more complete information to the insurer.

[35] In addition to gathering personal information from individuals on behalf of Canada Life, agents or in this case, Investors Group Financial Advisors, are expected to deliver policy documents to clients and review the contract with the client to ensure his or her health has not changed. Canada Life's contract with Investors Group requires the latter organization to take responsibility for delivering policies in accordance with Canada Life's procedures. The Organization's "Code of Business Conduct and Ethics" specifies that agents must deliver policies, which are sent to the agent and not the client, as soon as possible once they have been received, and to do so in person wherever possible. According to the "Code of



Business Conduct and Ethics”, in-person delivery ensures that agents review the policy contents with the clients and satisfy themselves that “insurability has not changed since the application was taken.”

[36] The LLQP trains agents to check the policy contract to ensure it has been issued as applied for and to verify that application information is accurate because “if there has been a change in the applicant’s health between the date of application and the date of delivery”, the policy cannot take effect. The agent is therefore responsible for ensuring no changes in health have occurred in the interim, since the interval can be several weeks or months.

[37] In summary, the information on which I base my findings is as follows:

- As stated on the application signed by the Complainant, medical and health information forms part of Canada Life’s application for insurance, and in accordance with the *Insurance Act*, the application forms part of the insurance contract.
- The Financial Advisor is an employee of Investors Group. Canada Life authorized Investors Group to appoint representatives to act on Canada Life’s behalf by selling insurance.
- The Financial Advisor in this case is an “appointed representative” of Investors Group authorized to act on Canada Life’s behalf in selling insurance products and is approved to perform certain functions. Canada Life does not utilize its own employees in the field and instead uses contracted insurance agents to carry out specific duties on the Organization’s behalf.
- Both Canada Life and regulator-approved training guidelines required for licensing expect that a Financial Advisor will gather medical information from the individual and later deliver the insurance contract (which includes further health details).
- Field underwriting, or collection of medical information by Investors Group, is necessary to ensure that information supplied by the individual is sufficiently detailed, accurate, and complete. A field representative can ask probing questions to elicit the quality of information required for Canada Life to properly evaluate risk and underwrite the policy.
- Insurance contract delivery by the field representative, who must review the accuracy of the information contained therein, is also necessary since any change in health since the time the application was first made can nullify the insurance contract.

[38] Given the above, I find that Canada Life used the Complainant’s personal information for purposes that were reasonable: for Investors Group’s trained and licensed contractor to perform field underwriting for proper risk evaluation, review accuracy of information and confirm insurability, and deliver the entire insurance contract on the Organization’s behalf. This was in compliance with section 16(1) of the Act. Pursuant to the *Insurance Act*, this insurance contract included the application containing lifestyle information, paramedical exam results and health

information, all of which had to be reviewed and confirmed. Canada Life used the Complainant's personal information to the extent reasonable, in compliance with section 16(2) of PIPA.

**c) Did the Organization make reasonable security arrangements to protect the Complainant's personal information, in compliance with section 34 of PIPA?**

[39] PIPA places the following duty to safeguard personal information on organizations:

*34 An organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.*

[40] This section of the Act encompasses issues related to "need-to-know" access by employees and service providers. Generally, need-to-know access ensures that employees, contractors and other parties only have access to the least amount of personal information required to carry out their approved duties and functions. I must examine whether Canada Life fulfilled its duty under section 34 of the Act to protect the Complainant's personal information in light of the Financial Advisor's access to the Complainant's personal information.

[41] In the preceding section, I established that Investors Group Financial Advisors who sell insurance are specifically licensed and regulated by the Alberta Insurance Council and trained through an approved program after which they must pass an examination. I also found that as Canada's Life's authorized representative, and according to the insurance regulator's approved program, a Financial Advisor's function is to conduct "field underwriting", deliver the insurance documents, and review the policy with an applicant on the Organization's behalf. This is standard industry practice for insurance agents. I therefore determined that it was reasonable for Canada Life to use the Complainant's full medical history and health information in her insurance documents delivered to her so that Investors Group could conduct field underwriting, review the accuracy of the information, and confirm whether any changes to insurability had occurred at the time of delivery.

[42] Given the above, I am of the view that Investors Group, and the Financial Advisor in particular, had authorized access to the Complainant's medical information, application, policy and insurance contract. Investors Group was contracted to perform specific duties on Canada Life's behalf through its appointed representatives. The Organization does not employ its own field personnel to carry out this function and therefore agents are assigned this role as representatives of Canada Life. This role requires access to the information at issue.

[43] I also note that the LLQP addresses privacy and confidentiality of the sensitive information collected by insurance agents. This is also addressed in Canada Life's agreement with Investors Group, in which Investors Group has responsibility for maintaining the confidentiality of policyholder information. The agreement also requires Investors Group to ensure compliance with Canada Life's underwriting requirements. The Organization's underwriting requirements, which are made available to agents selling Canada Life products on an intranet site, outline the need to maintain a complete and accurate client file while only collecting information required for the job. Various privacy guidelines are offered and agents are instructed not to retain copies of insurance applications, including medical and lifestyle information. Thus, Canada Life requires by contractual means, and in its policy documents, that personal information collected by Investors Group not be retained, be maintained in confidence and in accordance with privacy law.

[44] Canada Life makes alternative arrangements for those individuals who do not wish to receive their insurance documents through their Financial Advisor. Since trust is the foundation for an individual's relationship with such an advisor, often these people may be friends or relatives of the individual. Regardless, an individual may not wish for the Financial Advisor to be privy to medical information. In such cases, Canada Life explained that the paramedical examiner could ask the lifestyle questions or a telephone underwriting interview could also be performed if necessary. The questionnaires could be sent separately from the items delivered by the Financial Advisor. These are not standard methods since face-to-face contact is preferred in the life insurance industry and field underwriting and contract delivery are part of the insurance agent's assigned role.

[45] In the Complainant's case, Canada Life was not made aware of her concerns about the Financial Advisor accessing her personal information, though she asked him whether she could send the health questionnaire to Canada Life directly, and did so. I was not satisfied that this request represented definitive instructions about the Complainant's preferences for her personal information and conclusively triggered a duty for Investors Group to advise the Organization to make alternative arrangements for the delivery of insurance documents.

[46] I find that Investors Group had authorized access to the Complainant's personal information, and Canada Life made reasonable security arrangements through its policy, guidelines, contract, and alternative procedures to protect personal information, in compliance with section 34 of PIPA. Although the alternative procedures for insurance document delivery were not employed in this case, the Organization did not contravene section 34 of the Act since Canada Life was not aware of the Complainant's preference.

## **VI. FINDINGS & RECOMMENDATIONS**

[47] In this investigation, I determined that Canada Life and Investors Group have a contractual relationship, and section 5(2) of PIPA holds the Organization

responsible for its service provider's compliance with the Act. For the purposes of the Act, the Financial Advisor is an employee of Investors Group. Section 5(6) of PIPA ensures that Investors Group shares accountability with Canada Life for compliance with PIPA. I was also satisfied that Investors Group is authorized and specifically contracted to carry out particular duties on Canada Life's behalf through licensed representatives it appoints.

[48] I was persuaded that the Organization acted in compliance with section 16 of PIPA in using the Complainant's personal information for reasonable purposes (field underwriting, confirmation of accuracy and insurability, and contract delivery), and to the extent reasonable when it included all of her medical information in the insurance documents presented to her by Investors Group who had to perform approved duties. I also found that the Financial Advisor had authorized access to the Complainant's personal information, and Canada Life made reasonable arrangements, through its policies, contract, and alternative procedures for underwriting and contract delivery to protect personal information, in compliance with section 34 of the Act.

[49] The Complainant asked the Financial Advisor whether she could send her medical questionnaire directly to Canada Life. In my view, with some probing questions, this could have been understood as an expression of privacy concerns. As the intermediary, Investors Group should notify Canada Life that alternative arrangements ought to be made for document delivery if privacy concerns are clearly expressed by an individual. In order for Canada Life to be more responsive, it is worthwhile to strengthen Investors Group's capacity to identify customers' privacy concerns where Canada Life can make accommodations to its usual practices. I therefore recommend that Canada Life undertake the following:

1. Review the details of this investigation with Investors Group.
2. Ensure that Investors Group trains its insurance agents to
  - a. better identify customers expressing concerns about the confidentiality of personal information, and
  - b. make arrangements for Canada Life to accommodate special requests for field underwriting and document delivery.

[50] The Organization agreed to implement the recommendations and the Complainant considered her complaint to be resolved. This matter is therefore closed.

Preeti Adhopia  
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