

ALBERTA

**OFFICE OF THE INFORMATION AND
PRIVACY COMMISSIONER**

P2010-ND-002

RICK BRONSON'S THE COMIC STRIP LTD.

August 16, 2010

(Case File #P1629)

I. Introduction

[1] On July 14, 2010, I received a report from Rick Bronson's The Comic Strip Ltd. (The Comic Strip) of an incident involving the loss of and unauthorized access to personal information. Based on the information reported to me, I have decided that there is a real risk of significant harm to some individuals as a result of the incident, and therefore I require that The Comic Strip notify those individuals to whom there is a risk of harm.

II. Jurisdiction

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

[3] 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.

[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 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.

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

III. Background

[6] On July 14, 2010, I received a written report from The Comic Strip describing an incident involving the loss of and unauthorized access to personal information.

[7] On July 20, 2010, my Office contacted The Comic Strip to request that it provide additional information concerning the incident, in order for me to determine whether to require that it notify individuals under subsection 37.1(1) of PIPA. My Office received The Comic Strip's response on July 22, 2010.

[8] The circumstances of the incident reported to me are as follows:

- On or about July 7, 2010, The Comic Strip received a phone call from EPCOR. EPCOR advised it had received a phone call from an individual who had found documents, including EPCOR bills, in a dumpster in Edmonton. EPCOR attended at the dumpster and determined the documents belonged to The Comic Strip, and notified The Comic Strip. EPCOR also notified my Office of this discovery.
- Approximately two hours after receiving the phone call from EPCOR, The Comic Strip's General Manager traveled to the dumpster and retrieved as many of the documents as possible. The Comic Strip was not able to recover all of the documents as it had rained, and some were contaminated by garbage.
- The Comic Strip determined the documents came from a locker it had been using for storage in a condominium complex. The locker had been secured by a lock, but the lock had been cut off. Apparently, The Comic Strip had been using the wrong storage locker for the past two years. The last day The Comic Strip had checked the locker was approximately eight months before it received the phone call from EPCOR.
- The Comic Strip reported the incident to the police on July 15, 2010.
- The Comic Strip did not keep a log as to what records it had stored in the storage locker, but believes the records were company monthly information, daily sales credit card slips and payroll information dating from 2006 to 2009. The credit card slips displayed truncated credit card numbers and customer signatures. The payroll records displayed the employee's name, address, birth date and Social Insurance Number.
- As it did not keep records of what it had stored in the storage locker and was unable to recover all of the documents, The Comic Strip is unable to determine whether it has recovered all of the payroll information from 2006 – 2009, and for which employees it may not have been able to recover information. The Comic Strip estimates the personal information of approximately 68 former and 12 current employees was involved in this incident. It advised that within two days of the incident, it had verbally notified the employees who are still employed by The Comic Strip and were affected by this incident, but has not notified former employees.

- The Comic Strip advised that EPCOR told it the dumpster had been emptied one day prior to the discovery of the documents; however, there is no way of knowing exactly when the storage locker was broken into and the documents taken, or what use of the information contained in the documents was made since The Comic Strip last checked the locker. At this time, it is not known if the storage locker was broken into and the documents taken as an intentional action intended to cause harm.

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

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

[10] In order for me to require that The Comic Strip notify individuals, there must be some harm – some damage or detriment or injury – that could be caused to individuals as a result of the incident; moreover, that harm must be “significant” – it must be important, meaningful, and with non-trivial consequences or effects.

[11] Although credit card numbers are highly sensitive, as the credit card numbers were truncated on customer credit card slips, I do not find that there is a real risk of significant harm to the customers whose credit card slips were involved in this incident. It is unlikely that truncated credit card numbers, even with customer signatures, could be used for fraudulent purposes or to perpetrate identity theft.

[12] In the case of the payroll records, however, the personal information at issue is of moderate to high sensitivity as it includes names, addresses, birth dates and Social Security numbers of current and former employees.

[13] This is information that could be used to cause significant harm to individuals, and provides comprehensive individual profiles that could be used for identity theft and/or fraud.

[14] In order for me to require The Comic Strip to notify individuals, however, there must also be a “real risk” of harm to individuals as a result of the 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.

[15] I note that while The Comic Strip acted quickly to recover the documents once it was notified they had been found in the dumpster, the personal information could have been in the hands of an unauthorized individual for approximately eight months before the incident was discovered. At this time, the cause of the incident is still unknown. It

may be that the documents were recently disposed of by the person to whom the storage locker belonged, with no intent to maliciously use, or actual malicious use of, the personal information. It might also be the case that the storage locker was deliberately broken into to steal the contents and the information on the payroll records has been recorded for nefarious purposes.

[16] Given the sensitivity of the information in the payroll records at issue, and considering that it is not known whether the files were disposed of by the owner of the storage locker, or alternatively, accessed by someone with intent to cause harm, I believe there to be a real risk of significant harm in this case.

V. Decision

[17] Based on the information reported to me by The Comic Strip, I have concluded there is a real risk of significant harm to some individuals, namely current and former employees, as a result of this incident, and I require the The Comic Strip to notify these individuals.

[18] I understand The Comic Strip has notified the individuals who are currently employed by The Comic Strip of this incident; however, as former employees of The Comic Strip have not been notified of this incident, I require The Comic Strip to notify the former employees affected by this incident.

Frank Work, Q.C.
Information and Privacy Commissioner