

ALBERTA
OFFICE OF THE INFORMATION AND
PRIVACY COMMISSIONER

P2011-ND-019

ADRENALIN AUDIO INC.

July 11, 2011

(Case File #P1887)

I. Introduction

[1] On May 25, 2011, I received a report from Adrenalin Audio NC. (“Adrenalin” or the “Organization”) 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 individuals as a result of the incident, and therefore I require that Adrenalin 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 Adrenalin 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 Adrenalin 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 May 25, 2011, I received a written report from Adrenalin describing an incident involving the loss of and unauthorized access to personal information.

[7] On May 30, 2011, my Office contacted Adrenalin to request that it provide additional information concerning the incident, in order for me to determine whether to require Adrenalin 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 May 30, 2011 and June 20, 2011.

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

- In March, 2011, Adrenalin moved its store location to 4415 97th Street, Edmonton AB. The breach incident occurred sometime between April 1 and April 15, 2011. During the move, credit applications were thrown in the dumpster behind the new store location. The Organization states they were slated for shredding, but were inadvertently thrown out. The credit applications thrown in the dumpster were for customer purchases between the years 2003 to 2006.
- When applying for credit to purchase merchandise from Adrenalin, potential customers filled out an HFC (now called HSBC) credit application form. HFC was a third party lender that Adrenalin used to provide financing to Adrenalin customers.
- On May 18, 2011 a Constable with the Edmonton Police Service (“EPS”) contacted Adrenalin and told the Owner that EPS had arrested an individual(s) who had two credit applications of Adrenalin customers in their possession.
- Information on the credit application forms included, but was not limited to:
 - Name;
 - Credit card number; and,
 - Social Insurance number
- When asked by this Office, the Organization notes that the exact number of individuals affected is not known, but Adrenalin believes the number is

approximately 150. The Organization is currently working with HSBC to identify the actual number of individuals who submitted credit applications from Adrenaline to HSBC during the years 2003 to 2006 in an effort to identify those individuals affected.

- With the exception of the two credit applications recovered by EPS, the remainder of the application forms thrown in the dumpster have not been found.

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 Adrenalin 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 Adrenalin 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 Adrenalin notify individuals, there must be some harm – some damage or detriment or injury – that could be caused to Adrenalin’s customers 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] In this case, the personal information at issue is of moderate to high sensitivity as it includes customers’ names, credit card numbers, and social insurance numbers.

[12] Adrenalin also noted that the type of harm that could result from the unauthorized access to or disclosure of this information is identity theft, which, in my view, is a significant harm.

[13] In order for me to require Adrenalin to notify its customers, however, there must also be a “real risk” of significant harm to the employee 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.

[14] In deciding whether there exists a “real risk” of harm in this case, I considered that the personal information at issue is of moderate to high sensitivity and includes credit card numbers and social insurance numbers of individuals. This is information that could be used to commit identity theft. In addition, the information at issue was found in the possession of individuals who were arrested by EPS which makes it more likely that identity theft could occur. Moreover, the remainder of the credit applications have not been recovered.

[15] Given the information reported by Adrenalin, 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, which is a significant harm, and the information has been found in the possession of individuals arrested by Police.

V. Decision

[16] Based on the information reported to me by Adrenalin, I have concluded there is a real risk of significant harm to individuals as a result of this incident and I require Adrenalin to notify individuals in accordance with section 19.1 of the *Personal Information Protection Act Regulation*, and confirm in writing to my Office that it has done so for the two individuals whose credit applications were recovered by EPS on or before July 15, 2011. For the remaining 2003 to 2006 affected individuals, I require the Organization to confirm in writing to my Office that it has notified these affected individuals by August 31, 2011.

Frank Work, Q.C.
Information and Privacy Commissioner