

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

P2011-ND-033

VRV GLOBAL LTD.

September 7, 2011

(Case File #P1962)

I. Introduction

[1] On August 19, 2011, I received a report from VRV Global Ltd. (“VRV” or the “Organization”) 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 individuals as a result of the incident, and therefore I require that VRV 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 VRV 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 VRV 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 August 19, 2011, I received a written report from VRV describing an incident involving the loss of personal information.

[8] On August 22, 2011, my Office contacted VRV to request that it provide additional information concerning the incident, in order for me to determine whether to require VRV to notify individuals under subsection 37.1(1) of PIPA. The additional information was provided in a telephone call.

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

- Sometime before July 21, 2011, VRV sent five work permits via courier from Calgary, Alberta to five clients in St. John’s Newfoundland.
- On July 31, 2011, the five VRV clients contacted the courier company to ask when delivery of the couriered work permits would arrive. The courier company noted that the VRV work permits were delivered on July 21, 2011. The courier company said that no one was at the residence to accept the package, so the package (containing the work permits sent by VRV) was left on the doorstep of the residence. The clients confirmed they did not receive the work permits. The clients then informed VRV that their work permits had not been delivered.
- Information on the work permits for the five affected individuals included:
 - Full name;
 - Date of birth;
 - Citizenship;
 - Occupation; and,
 - Employer
- The work permits that were lost have not been recovered. When VRV contacted the courier company and tried to trace the package using its tracking number, the courier company said the package was delivered and left on the doorstep of the

residence. It is unknown if the package was delivered to the incorrect address, or if it was stolen from the affected individuals' doorstep.

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 VRV 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 VRV 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 order for me to require that VRV notify individuals, there must be some harm – some damage or detriment or injury – that could be caused to VRV's clients 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 moderate to high as it includes client's names, date of birth, citizenship and employment information.

[13] VRV said that it believes it is unlikely that the lost documents will be used fraudulently because Citizenship and Immigration will issue replacement documents and render the old ones void. VRV 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. While Citizenship and Immigration will issue replacement work permits, the personal information of the five affected clients has still been lost.

[14] In order for me to require VRV to notify its clients, however, there must also be a “real risk” of significant harm to the clients 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 the personal information at issue is of moderate to high sensitivity and includes full name, date of birth, and citizenship information of individuals. This is information that could be used to commit identity theft. In addition, the information at issue has not been recovered.

[16] Given the information reported by VRV, 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 not been recovered.

V. Decision

[17] Based on the information reported to me by VRV, I have concluded there is a real risk of significant harm to individuals as a result of this incident and I require VRV 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 on or before September 15, 2011, or such other date as I may specify. VRV stated in its breach notification to me that they had not notified the affected clients because it was the clients who called VRV to report the loss of documents. That said, I require the Organization to notify the affected individuals to ensure that VRV provides the information to the affected individuals as required under section 19.1 of the *Personal Information Protection Act Regulation*.

Frank Work, Q.C.
Information and Privacy Commissioner