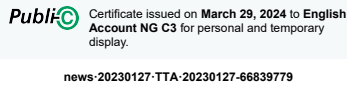


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Privacy czar hammers Home Depot Canada

Probe finds retailer sent customer data to Meta without obtaining consent

Josh Rubin Toronto Star

Home Depot Canada routinely shared customer data with Facebook parent company Meta without obtaining proper consent, according to an investigation by the federal privacy commissioner.

"It is unlikely that Home Depot customers would have expected that their personal information would be shared with a third party social media platform simply because they opted for an electronic receipt," commissioner Philippe Dufresne said in a press release Thursday.

In a press conference, Dufresne said Home Depot's practice was a clear breach of the federal Personal Information Protection and Electronic Documents Act (PIPEDA).

"They did not obtain valid, meaningful consent," said Dufresne, who warned other companies using similar practices that they need to stop. "This report is a reminder to all companies.... Our sense is this technique is... widely used."

In an emailed statement, Home Depot said it shared "only non-essential information," through a Meta analytics tool,

but agreed to stop as soon as Dufresne's office reached out.

"We value and respect the privacy of our customers and are committed to the responsible collection and use of information," the company said. "We'll continue to work closely with the Office of the Privacy Commissioner of Canada." Meta declined to comment.

Dufresne's office currently has no power to levy fines, but can investigate and issue recommendations. Bill C27, a proposed piece of legislation called the Artificial Intelligence and Data Act, would give him that power.

"That bill would provide even greater ability," said Dufresne. "The real issue is our laws need to evolve."

Michael Geist, a law professor at the University of Ottawa, agreed that Dufresne's ability to punish companies who fall afoul of privacy law is limited.

"This has been an ongoing problem with the law. The Privacy Commissioner has not had significant powers so the best you can get is a non-binding finding," said Geist, the Canada Research Chair in internet and e-commerce law.

Bill C27, said Geist, envisions penalties in the millions of dollars for privacy infractions, something that's needed to get the attention of large companies.

"With the large multinationals that people envision when they think of this, unless you're dealing with serious penalties, you run the risk of smaller fines being seen just as a cost of doing business," said Geist, who said a class-action lawsuit against Home Depot - and potentially Meta - is a real possibility.

"We've definitely seen an increase in privacy class actions in Canada and this kind of misuse of personal information is typically at the heart of those cases," Geist said.

Geist said there's a "creep factor" to what Home Depot had been doing.

The investigation found Home Depot had been collecting customer email addresses at store checkouts for the stated purpose of providing customers with an electronic copy of their receipt since at least 2018.

Information sent to Meta was used to verify if a customer had a Facebook account. If they did, Meta compared the

person's in-store purchases to Home Depot's advertisements sent over the platform to measure and report on the effectiveness of those ads.

"There's a creep factor, it seems to me, where someone's taking your email for one purpose, using it for another purpose and then linking all kinds of other data associated with that," Geist said.

Even though Dufresne can't issue fines, he's got another powerful tool at his disposal, argued privacy lawyer David Elder.

"I think that public shaming is a very important tool, and it was used here," said Elder, head of the privacy and data protection group at Toronto law firm Stikeman Elliott. "For most reputable companies, public shaming is a very powerful incentive not to do something."

Former Ontario privacy commissioner Ann Cavoukian blasted Home Depot's behaviour.

"I'm appalled. Home Depot should be drawn and quartered for this. Customers should be outraged," said Cavoukian. "The key to privacy is consent and control over your own information. And Home Depot has thrown that out the window."

Dufresne said Home Depot cited "consent fatigue" as the reason for not fully informing customers at checkout that email addresses provided would be shared with Meta.

During the investigation, Home Depot said it relied on "implied consent," and that its privacy policies made clear that it could share customer data with third parties. Dufresne rejected that explana-

tion.

"The explanations provided in its policies were ultimately insufficient to support meaningful consent," Dufresne said. "When customers were prompted to provide their email address, they were never informed that their information would be shared with Meta by Home Depot, or how it could be used by either company. This information would have been material to a customer's decision about whether or not to obtain an e-receipt."

According to Dufresne, Home Depot stopped sharing customer data in October 2022, and cooperated with the investigation. Home Depot also agreed with the privacy commissioner's recommendation to get full, informed consent from each customer if it decides to resume sharing data with Facebook.

The investigation was prompted by a complaint from a customer who noticed that when he went to delete his Facebook account, Meta had a record of his recent purchases from Home Depot.

Home Depot, the report says, told the customer incorrectly that they hadn't shared his information with Meta.