

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2014-07**

October 1, 2014

**CDN POWER PAC MECHANICAL / ELECTRICAL INC**

Case File Numbers  
P2391, P2470

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Applicant requested his personal information from CDN Power Pac, (the Organization) including a video, under the *Personal Information Protection Act* (PIPA). The Organization did not respond to the Applicant's access within 45 days or extend the time limit for responding and the Applicant requested that the Commissioner review the Organization's failure to respond. The Organization subsequently provided two paper records, and stated that it had provided all the information it had in its custody or control. The Organization stated that the video had been destroyed.

The Adjudicator found that the Organization had not responded to the Applicant in a timely manner. However, as it was not now possible for the Organization to comply with this duty, she declined to make an order.

The Adjudicator found that the Organization had met its duty to assist the Applicant. She noted that PIPA does not require an Organization to maintain a record containing personal information until an access request is made for the record. The evidence established that the video requested by the Applicant had been destroyed prior to the Organization's receipt his access request.

**Statutes Cited: AB:** *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 27, 28, 31, 52

## I. BACKGROUND

[para 1] On May 23, 2013, the Applicant made an access request under the *Personal Information Protection Act* (PIPA) to CDN Power Pac (the Organization) for the following information:

All information from my personal employment record which you may have stored both in paper and electronic form from my file. Full disclosure of my employment record created by Canadian Power Pac.

Full video and Audio which you have from September 28, 2013 when I was there to drop off my tools. I would like to see the full video and hear the full audio for the whole time I was there.

All drug testing results and other medical documents you have about me prior to me going out to this job site.

All documents from your Safety Officer at Canadian Power Pac who was notified that I had a disability and I was waiting clearance from [him] in order to be able to go out [to] the job site. He was investigating the matter when I informed Canadian Power Pac that [I] had a disability. All notes and records from this individual related to myself.

I do expect that there will be full disclosure of all information listed above[...] I do expect to see full disclosure of all documents related to me in regards to my employment with Canadian Power Pac.

[para 2] On July 8, 2013, the Applicant made a complaint to the Commissioner that the Organization had not responded to his access request.

[para 3] The Organization responded to the Applicant's access request on September 23, 2013. The Organization provided the Applicant's drug test results and a clearance letter allowing the Organization to hire the Applicant in its response. The Organization stated that it did not have an employment file for the Applicant as he had never been employed by the Organization. The Organization stated that it did not have the video because its "security system stores data for only 90 days". The Organization stated that its safety officer did not have any records.

[para 4] The Organization concluded its response stating:

It is important to note that [the Applicant] never worked for CPP, the incident occurred during his attempt to begin the process of employment with us, as such no file or information beyond that [drug test results and clearance letter] was ever created.

[para 5] On September 30, 2013, the Applicant requested review by the Commissioner of the Organization's response to him. The Commissioner authorized mediation. As mediation was unsuccessful, the matter was scheduled for a written inquiry.

## II. ISSUES

**Issue A: Did the Organization respond to the Applicant in accordance with section 28(1) of the Act (time limit for responding)?**

**Issue B: Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?**

## III. DISCUSSION OF ISSUES

**Issue A: Did the Organization respond to the Applicant in accordance with section 28(1) of the Act (time limit for responding)?**

[para 6] Section 28 requires an organization to respond to an access request within 45 days of receiving the access request. This provision states, in part:

*28(1) Subject to this section, an organization must respond to an applicant not later than*

*(a) 45 days from the day that the organization receives the applicant's written request referred to in section 26, or*

*(b) the end of an extended time period if the time period is extended under section 31.*

[para 7] The Organization did not respond to the Applicant until September 23, 2013. As set out above, the Applicant made his access request on May 23, 2013. The Organization's response was later than 45 days from the date it received the Applicant's access request. The Organization did not extend the time for responding to the access request under section 31. I find that the Organization did not comply with its duty under section 28 of PIPA.

[para 8] Although the Organization did not comply with its duty to respond to the Applicant within 45 days, there is no benefit to ordering it to do so now, given that it *cannot* do so. As a result, while I find that the Organization did not meet its duty in relation to section 28, I decline to make an order in that regard. However, I draw to the Organization's attention that it has a statutory duty to respond within 45 days or extend the time limit under section 31, should it receive an access request under PIPA in the future.

**Issue B: Did the Organization comply with section 27(1)(a) of the Act (duty to assist, including duty to conduct an adequate search for responsive records)?**

[para 9] The Applicant argues that the Organization did not meet its duty to assist him. In particular, he is concerned that the Organization has not provided a video containing his personal information.

[para 10] The Applicant submitted an email for the inquiry that he received from a project manager on October 1, 2012. This email states: “My boss heard and seen what went on Friday and we have it on video and they are in 100% agreement.” This email supports finding that the video was in existence prior to October 1, 2012 and may have been used to support a decision not to hire the Applicant.

[para 11] The Organization provided the sworn statement of its Health and Safety Administrator, who states:

Please be advised that CDN Power Pac (CPP) has given ALL information on [the Applicant] that they have.

Also please note that CPP DOES NOT have the video of [the Applicant] in their possession any more, and that this brief security video has been deleted from CPP’s files.

[para 12] In its submissions of July 15, 2014, the Organization stated:

Our video surveillance system is only set up to record a few minutes and that is based only on motion in front of the camera. As well, the couple minutes that do get recorded get deleted from our server in a limited time. Unfortunately, the only copy of this video if there still is would be in the hands of the union (Local 424).

[para 13] The Organization’s evidence is unequivocal that it had the video to which the Applicant refers at one time, but that it was deleted from its server in the normal course after 90 days. As the video would have been deleted by the time the Applicant made his access request, given that it had been created by October 1, 2012, this is not a case where the video containing the information the Applicant requested was destroyed following his access request.

[para 14] The Applicant argues that the Organization is lying. He also argues that he made his access request within the 90 day time frame referred to in the Organization’s submissions. However, the access request made by the Applicant is dated May 23, 2013, more than 90 days after October 1, 2012, the date of the email from the project manager that refers to the video.

[para 15] I have no reason to doubt the evidence that the Organization has provided for the inquiry. The Organization states that it has provided all the information requested by the Applicant that it has in its custody or control. While PIPA creates a duty to protect personal information from *unauthorized* destruction, it does not prohibit subjecting personal information to authorized destruction in the regular course. The evidence of the parties establishes that the video was deleted before the Applicant made his access request.

[para 16] While the Organization did not respond to the Applicant within the time frame required by section 28, I find that it met its duty to assist the Applicant under section 27 once it finally responded to the access request.

#### **IV. ORDER**

[para 17] I make this Order under section 52 of the Act.

[para 18] I confirm that the Organization met its duty to assist the Applicant within the terms of section 27 of PIPA.

---

Teresa Cunningham  
Adjudicator