

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2022-05

June 10, 2022

CANEM SYSTEMS LTD.

Case File Number 009482

Office URL: www.oipc.ab.ca

Summary: Under the *Personal Information Protection Act* S.A. 2003, c. P-6.5 (PIPA), the Applicant made an access to information request to Canem Systems Ltd. (the Organization). The Applicant sought review of the Organization's response to his access request, including whether it met the duty to assist under section 27, timelines prescribed under section 28, and provided the proper contents in its response as required under section 29.

The Adjudicator found that the Organization failed to meet the timelines in section 28 of PIPA, by failing to provide a response within 45 days of receiving the access request. Since the Organization had since provided a response, there was no need to an issue an order in respect of that failure.

The Adjudicator found that the Organization failed to meet the duty to assist under section 27, and failed to provide the required contents of a response under section 29. Regarding the duty to assist, the Adjudicator found that it was not reasonable for the Organization to truncate its search for records on the basis that it would have to pay its employees to do so.

The Adjudicator ordered the Organization to conduct a further search for records, and to provide to the Applicant the information required under section 29.

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1(1)(j), 2, 24(2)(b), 27(1), 27(1)(a), 28, 28(1), 29(1), 29(1)(a), 29(1)(b), 29(1)(c)(i), 29(1)(c)(ii), 29(1)(c)(iii), 29(2), 29(3), 29(4), 32, 32(1.1), 52.

Authorities Cited: AB: Order P2006-004, P2009-005, P2015-05, P2018-05, P2020-04

Cases Cited: *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 593

I. BACKGROUND

[para 1] The Applicant is a former employee of Canem Systems Ltd. (the Organization). In May 2017, he filed a human rights complaint against the Organization concerning termination of his employment.

[para 2] On or around September 7, 2017, the Applicant made an informal request for information from the Organization. He received some information in response.

[para 3] According to the Applicant, on September 14, 2017, he then made an access request by letter to the Organization's Edmonton Office. The access request was made under section 24(1)(a) of the *Personal Information Protection Act*, S.A. 2003, c. P-6.5. The Applicant sought the following information in the access request:

Pension Information
Performance appraisals
Attendance sheets
Contents of personnel file
Contents of benefits file
Returned receipts
Pre-ordered receipts
Computer screen prints of personal information
Handwritten notes about telephone conversations
Email Correspondence

[para 4] The Applicant also specified that he was seeking the following documents and records:

- 1) My complete Employee file April 1, 2015 - PRESENT DATE
- 2) Any work evaluations,
- 3) Daily Work Reports,
- 4) Incident / Accident Reports,
- 5) Employer / Project Managers / Site Foremans / Supervisors / Safety Personnel / Safety Supervisor Witten or Computer notes to each other that pertain to Myself,

- 6) Safety Representatives / Their Safety Supervisors Witten [sic] or Computer Notes to each other that pertain to Myself,
- 7) Any information related to reported injuries, WCB Claims,
- 8) Disciplinary actions / write up's [sic] that pertain to Myself,
- 9) Emails sent between the Employer / Project Managers / Site Foremans / Supervisors and Safety Representatives / Their Safety Supervisors to each other again that pertain to myself in any way,
- 10) Emails sent between Employer, Any Canem Staff as listed above or not listed and WCB / Millard treatment Center / Office of Appeals Advisor that pertain to Myself,
- 11) Emails sent between Any Canem representatives and Any WCB / O.A.A Staff that pertain to Myself,
- 12) Notes taken By Any Canem Staff from Phone calls that relate to Myself,
- 13) A copy of all Foreman Log Books, Safety Log Books, and again ANY and ALL information that pertains to myself or is in correspondence or a record pertaining to Myself

These emails would include communication between ANY and ALL Canem Systems Ltd Representatives, Including [four named employees of the Organization] or Foreman(s) and other Canem Employees that pertains to myself or are in correspondence, or any communication about Myself.

And ANY and ALL other Information and letters that I have not listed that applies to myself while I was employed for Canem Systems in Edmonton, Alberta for the date April 1, 2015 - Present Date.

[para 5] After receiving no response to the access request, the Applicant requested that this Office review the Organization's failure to respond (OIPC file 007584). On January, 29, 2018 this Office sent a letter to the Organization informing it of the request for review.

[para 6] In its submissions, the Organization states that it has no record of receiving the access request on September 14, 2017. It confirms it received the letter from this Office of January 29, 2018. In response to that letter, on February 28, 2018, the Organization provided a response to the access request to the Applicant, by letter enclosing responsive records.¹ Since the Organization responded to the access request, the Applicant's request for review of the lack of response was closed. The response to the access request was completed by legal counsel for the Organization's parent company, Stuart Olson.

[para 7] The Applicant denies receiving responsive records on or around February 28, 2018 and states that he did not receive them until April 16, 2018. The Applicant surmises

¹ In its submission the Organization inadvertently references the date of the letter as February 28, 2019. The letter itself is dated 2018.

that the Organization may have prepared a response to his access request on February 28, 2018, but did not send it to him at that time.

[para 8] On May 18, 2018, the Applicant filed another request for review with this Office, this time concerning the Organization's response to the access request. The Applicant's chief concern was that he had not received all responsive records. Investigation and mediation were authorized to try to resolve the issues.

[para 9] In course of mediation and investigation, the Organization conducted a further search for responsive records and provided another batch of records to the Applicant on April 5, 2019. At the same time, the Organization also provided an explanation of how it conducted its search for records. Despite the Organization's further efforts the issues between the parties remained unresolved and the matter proceeded to Inquiry. The Applicant remains concerned that the Organization failed to respond to the access request in a timely manner, failed to meet its duty to assist him as an applicant, and failed to provide a proper response to the access request.

II. ISSUES

Issue A: Did the Organization meets its obligations required by section 27(1) of the Act (duty to assist applicants)? In this case the Commissioner will consider whether the Organization conducted an adequate search for responsive records.

Issue B: Did the Organization comply with section 28 of the Act (Time limit for responding)?

Issue C: Did the Organization comply with section 29(1) of the PIPA (Contents of response)?

III. DISCUSSION OF ISSUES

Preliminary Matter – The Applicant's Human Rights Complaint

[para 10] Both parties referenced the fact that the Applicant had filed a human rights complaint against the Organization when he made the access request. The Organization suggests that the Applicant is pursuing retribution for its decision to terminate his employment. I surmise that the Applicant believes that the Organization is attempting to evade its duty under PIPA to properly respond to the access request in light of his human rights complaint. There is no evidence to support either of these allegations. I do not consider these matters further.

[para 11] I address Issue B first.

Issue B: Did the Organization comply with section 28 of PIPA (Time limit for responding)?

[para 12] The pertinent portions of section 28 of PIPA state,

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.

(2) An organization is not required to comply with subsection (1)(a) if the time period is extended under section 31.

[para 13] I note that the Applicant had made an informal request for information from the Organization's British Columbia Office the week prior to sending the access request.² Based upon a description of events in a faxed letter from the Applicant to a payroll clerk in the Organization's British Columbia Office, the Applicant spoke to the payroll clerk by telephone on September 5, 2017 and then followed up by sending a fax requesting certain documents. Some of the documents requested are the same as those requested in items 1, 2, 3, 7, 8, 9, and 10 of the access request, and very similar to those in items 5 and 11. The Applicant also asked generally for "...ALL and ANY information that may pertain to my employment or have a direct relation to myself with Canem Systems Ltd in Edmonton, Alberta while working at the New Edmonton Downtown Arena Project. (Rogers Place)" and "...any other information that applies to myself while I was employed for Canem Systems in Edmonton, Alberta for the dates listed above." The dates are April, 2015 to June 30, 2016. The Applicant received some of what he asked for from the payroll clerk. However, the Applicant was not satisfied with what he received and proceeded to make a formal request under PIPA, which is the subject of this Inquiry.

[para 14] The parties disagree over when the Organization received the access request.

[para 15] The Applicant states that he sent the access request to the Respondent by registered mail on September 14, 2017, and that it was received by the Organization on September 19, 2017. The Applicant provided photos and screen shots of the documentation from Canada Post confirming when the access request was sent and when it was signed for.

[para 16] The Organization states that it cannot confirm that it received the access request on September 19, 2017 since it has no way of determining what documents were actually sent by the Applicant on that day. It states, "The first official PIPA request it received was on January 29, 2018..."

² It in its submission the Organization states that the Applicant made the informal request to its Edmonton Office. The evidence, including fax numbers, addresses on letters, and in e-mails indicate that the request was made to the British Columbia Office.

[para 17] I find that the Applicant sent the access request by mail on September 14 2017, and that it was received by the Organization on September 19, 2017. While I understand that the Organization would not be able to confirm what was in the envelope sent by the Applicant, I have no reason to doubt the Applicant's recollection of events, which are supported by the photos and screen shots he provided.

[para 18] It is clear that the Organization did not respond to the access request until after it had received the January 29, 2018 letter from this Office, which is well outside of the 45 day window prescribed by section 28(1) of PIPA. Accordingly, I find that the Organization failed to comply with section 28 of PIPA. Since the Organization has since responded to the access request, I need not make an order in respect of its failure to comply with section 28(1).

[para 19] I now consider Issue C.

Issue C: Did the Organization comply with section 29(1) of the PIPA (Contents of response)?

[para 20] Section 29(1) of PIPA states,

29(1) In a response to a request made under section 24(1)(a), the organization must inform the applicant

(a) as to whether or not the applicant is entitled to or will be given access to all or part of his or her personal information,

(b) if the applicant is entitled to or will be given access, when access will be given, and

(c) if access to all or part of the applicant's personal information is refused,

(i) of the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) of the name of the person who can answer on behalf of the organization the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review under section 46.

[para 21] The Applicant's arguments about whether the Organization complied with section 29(1) frequently revolve around whether he received all of the information that he believes he should have. These types of arguments are germane to whether the Organization met the duty to assist under section 27(1)(a), which I address below under Issue A. The Applicant makes other arguments particular to section 29(1), which I address here.

[para 22] The Applicant argues that he has never been told whether access to all or part of the records will be granted, why access is refused, or who he may contact about the access request, and that he was not informed about his right of review under PIPA.

[para 23] I find that the Organization failed to comply with sections 29(1)(a) and 29(1)(c)(i), (ii), and (iii).

[para 24] Regarding section 29(1)(a), the Organization did not indicate to the Applicant whether he was being given access to all or part of the information that was responsive to his access request. Despite that the access request sought “any and all information” that “applies” to him, the Organization simply excluded payroll records from the scope of the access request, without informing the Applicant that it had done so. It states in a letter dated April 5, 2019 included with its initial submission,

As mentioned above, the initial disclosure emphasized the personnel/employee records and all HSE/WCB documents. The payroll records were not previously provided as they were maintained and managed in a different system, and were inferred to not be what the Applicant was seeking...

[para 25] The Organization inferred that the Applicant was seeking only records related to a human rights complaint. The Organization states,

...As mentioned above, it was inferred that the request was related to [the Applicant’s] parallel Human Rights Commission allegation, as such, emphasis and focus were directed to ensure the Applicant received all documents related specifically to his injury, WCB matters, and similar. At no time did Canem intentionally withhold or purposely fail to disclose any documents containing personal information of which the Applicant requested.

[para 26] At the time when it responded to the access request, the Organization also omitted to inform the Applicant that he would not have access to any information stored in its archives, by reason that the Organization had elected not to search the archives. The Organization states,

The Applicant argued that even additional documents should be provided by Canem, to which Canem advised that either the documents had already been provided, had not been retained and could not be provided or would require extensive review of its archives which would come at a significant cost and therefore was not reasonable.

[para 27] The Organization also determined that it would not provide access to some personal information contained in e-mails because those e-mails were subject to “project confidentiality obligations.” The Organization stated,

...We note that these types of emails do not automatically contain personal information and all emails are not subject to the disclosure obligation provided in the Act. Further, many of these emails are subject to project confidentiality obligations...

[para 28] Regarding section 29(1)(c)(i), when it responded to the access request, the Organization did not provide the above reasons for refusing to provide access to all

responsive information. It may be that some of the information is not personal information, and is therefore outside of the scope of the access right. However, it is not clear if that is the case and to date, the Organization has not identified to the Applicant which sections of PIPA permit it to refuse access for those reasons.

[para 29] Regarding sections 29(1)(c)(ii), at no time has the Organization provided the Applicant with contact information for someone who can answer questions about the access request. The Organization also failed to inform the Applicant of his right to a review under section 29(1)(c)(iii).

[para 30] I recognize that the Organization argues that it has complied with section 29(1) via providing information about the response to the access request in the course of investigation and mediation and in its submissions in this Inquiry. The Applicant argues that responding to the access request only via the review processes of the OIPC is a failure to respond to his access request *directly* to him.

[para 31] Without commenting on the Applicant's argument about whether section 29(1) requires a direct response, or whether an intermediary may be involved, I disagree with the Organization's position.

[para 32] The obvious intention of section 29(1) is that applicants should receive the information specified therein when an organization responds to an request, not afterward at the review stage; there is no point to informing an applicant about the right to review after an application has already sought review. Moreover, the type of information an organization is required to provide under section 29(1) is the sort that an applicant would find useful when deciding whether or not to pursue a review. While providing the information required under section 29(1) in the review stage may remedy a failure to comply with that section, providing information during review cannot itself be said to be compliance.

Issue A: Did the Organization meets its obligations required by section 27(1) of the Act (duty to assist applicants)? In this case the Commissioner will consider whether the Organization conducted an adequate search for responsive records.

[para 33] Section 27(1)(a) of PIPA sets out the relevant part of the Organization's duty to assist; it states,

27(1) An organization must

(a) make every reasonable effort

(i) to assist applicants, and

(ii) to respond to each applicant as accurately and completely as reasonably possible,

[para 34] The terms "reasonable" and "reasonably" are defined in section 2 of PIPA:

2 Where in this Act anything or any matter

- (a) is described, characterized or referred to as reasonable or unreasonable, or*
- (b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,*

the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.

[para 35] The Applicant believes that the Organization failed to conduct a proper search for records since there are numerous documents that he believes the Organization has, that have not been provided. I discuss these documents in more detail below.

[para 36] The Applicant further questions whether the Organization's assertions that records have been destroyed or were not retained are accurate. The Applicant's skepticism was raised by the fact that the Organization asserted that it had provided all responsive records in the package he received on April 16, 2018, but then later provided further information on April 5, 2019. The Applicant remains concerned that even after the additional search, the following documents are still absent:

- 1) all emails correspondence as per listed individuals as I clearly specified,
- 2) all daily notes handwritten notes / correspondence per listed individuals I clearly specified,
- 3) Safety Representatives / Their safety supervisors written or computer notes to each other that pertain to myself,
- 4) Any information related to reported injuries, WCB Claims,
- 5) Emails sent between employer / project managers / site foreman's [sic] / supervisors / and myself in any way.
- 6) Emails sent between employer, any canem staff as listed above or not listed and WCB / Millard Treatment Center / Office of the Appeals Advisor that pertain to myself in any way.
- 7) These emails would include communication between any and all Canem Systems Ltd representatives including [four named employees of the Organization], or foreman(s) and other canem employees that pertains to myself or is in correspondence or a record pertain to myself.

[para 37] The type of evidence that will generally demonstrate that an organization has conducted a reasonable search for records was described in Order P2009-005 at para. 60:

...Here, I add that, in general, evidence as to the adequacy of a search should cover the following points: who conducted the search; the specific steps taken to identify and locate records responsive to the applicant's access request; the scope of the search conducted (e.g., physical sites, program areas, specific databases, off-site storage areas, etc.); the steps taken to identify and locate all possible repositories of records relevant to the access request (e.g., keyword searches, records retention and disposition schedules, etc.); and why it is believed that no more responsive records exist than what has been found or produced [Order F2007-029 at para. 66, discussing the obligation to conduct an adequate search under section 10(1) of the *Freedom of Information and Protection of Privacy Act*].

[para 38] The Organization explained the steps that it took to search for records both in the initial response to the access request, and in its further search for records during the review process.

Upon receipt of the Applicant's request for information, Canem, as directed by Canem's Director of Human Resources, performed a search of relevant files and locations. This included accessing employee personnel files retained and managed by Human Resources, Health, Safety and WCB information files retained by Operations, and any other files retained and managed by Operations and supervisory management.

[para 39] As already noted, the initial search for records focused on those the Organization inferred the Applicant would want in relation to his human rights complaint. Payroll records were excluded. The Organization took steps to rectify that situation in its further search, conducting a "further and more exhaustive search" of its payroll and accounting files.

[para 40] When it conducted its further search for records, the Organization also addressed some of the Applicant's concerns that responsive records were missing from the initial release of documents. The Applicant's concerns, pertinent to the issues in this Inquiry, appear in italics, the Organization's response appears below.

Missing my Complete Employee/Personnel file and All hire date documents/policies/tax forms; April 2015-present date

- [The Applicant's] employee/personnel file as maintained and managed by Human Resources was disclosed in its entirety previously - its sole contents related to [the Applicant's] health, safety and WCB matters. With the inclusion of the additional documents appended hereto, the Applicant's payroll and tax information has now been fully disclosed.

• *Missing Performance Evaluations; April 2015-present date*

- With the appended documents Canem has now provided all performance reviews of [the Applicant.]

• *Missing Attendance sheets: April 205 [sic] -present date*

- Canem has no retained records of attendance sheets relating to [the Applicant's] attendance.

- *Missing Daily Work Reports; April 2015 - present date*
 - Aside from the daily work reports previously disclosed, which were specifically retained as they related to [the Applicant's] injury return to work program, Canem has no retained records of daily work reports.
- *Missing hand written notes; April 2015 - present date*
 - Canem has not retained any hand written notes containing personal information of [the Applicant.]
- *Missing emails/lack of emails - April 2015 - present date*
 - Canem is confident that all documents containing personal information have been disclosed. [The Applicant] seems to be suggesting that he expects that all emails that he sent, received or is mentioned within should be disclosed. We note that these types of emails do not automatically contain personal information and all emails are not subject to the disclosure obligation provided in the Act. Further, many of these emails are subject to project confidentiality obligations. If [the Applicant insists] that we do an exhaustive search of all archived Canem emails, the time and expense of this would be great. It is expected that it would take approximately 3 full-time days by an IT systems professional to build and run this search. Approximately 120 hours of a Human Resources professional to review the retrieved emails and filter for personal employee information. And an additional 40 hours by legal counsel to review these findings. As such, the cost is estimated to be 24 Hours x \$60/Hr x 120 Hours x \$75/Hr x 40 Hours x \$350/Hr = \$24,440. In any event, Canem is confident that this search will yield minimal if any results relating to documents containing personal information of the Applicant;
- *Missing records/lack of records; April 2015 - present date*
 - All records on employee personnel file, payroll, WCB/HSE management and Operations files have been disclosed.
- *Again, ANY and ALL Information that pertains to myself that I have listed or not listed I am asking to be released to Myself*
- *Also information regarding myself from specific individuals which include [five named employees of the Organization], Foreman's [sic], Supervisors, Other Canem employees (reference my September 14, 2017 PIPA Letter)*

[para 41] The Organization did not specifically reply to the Applicant's last two concerns, above.

[para 42] Given the above, I am satisfied that the Organization has conducted a reasonable search for the Applicant's personnel file managed by Human Resources, Performance Evaluations, Attendance Sheets, and Daily Work Reports. These categories of records discussed here are of a specific type (for example, attendance sheets) and/or are from a specific location (the Applicant's personnel file managed by Human Resources). The Organization has demonstrated a concerted effort to locate and provide

these documents, and has explained why it believes no further records exist. The Applicant may question the Organization's assertions that it did not retain any further daily work reports or attendance sheets; however I have no reason to doubt the Organization's statements about what it did and did not retain.

[para 43] I find that the Organization has failed to conduct a proper search for records in several ways.

[para 44] In general, the Organization's evidence falls short of establishing that it conducted a reasonable search for the same reasons given in *Edmonton Police Service v. Alberta (Information and Privacy Commissioner)*, 2009 ABQB 593, at paras. 53 and 54:

As recognized by the Commissioner, it would be impractical to require the head of a public body to either conduct or supervise the searches mandated by FOIPP. This obligation can be delegated. However, the public body must be in a position to establish that reasonable efforts were taken to search records in order to be able to respond openly, accurately and completely to the request. It follows that the person to whom the obligation is delegated must be in a position to provide evidence sufficient to establish what was done.

In this case, McCloskey was tasked with organizing the search. Her letter of January 18, 2006 does not detail the steps taken to search for records. It simply asserts that she conducted searches with various individuals and categories of individuals and located the records itemized in the letter. There is no evidence from McCloskey as to the steps which she took to supervise the search.

[para 45] The Organization's explanation of its search lacks sufficient detail for me to conclude that it took reasonable steps to locate responsive records. The Organization identified who was in charge of its search for records – it's Director of Human Resources – but not who carried out the searches, the steps they took, or how any individuals involved determined whether or not they had any responsive records. If any of the locations in which it searched for files were electronic, key words used to search those databases, if any, have not been identified. Physical locations that were searched, or might contain records have not been identified. The Organization also appears to have limited its search to Operations and Management personnel, but has not described why that is a reasonable approach, or explained why other personnel would not be expected to have responsive records.

[para 46] While the above comments relate to the Organization's search in general, they are also particularly germane to the search for hand-written notes, which the Organization also asserts were not retained.

[para 47] In contrast to records of a specific type, or from a specific place discussed above, I do not find the Organization's assertion that it did not retain any hand-written notes establishes on balance of probabilities that it conducted a reasonable search for them, or provides a basis to conclude that none exist. Hand-written notes may have been prepared by any of the Organization's employees, and retained by them in locations or files known only to the employee who prepared them. The Organization has not indicated

whether any employees conducted a search that had a reasonable prospect of locating such records, if there are any.

[para 48] Regarding searches for e-mails, the Organization has not indicated whether e-mails were searched at all, and if so, which accounts, and by whom. The access request named several employees and identified a swath of positions from which the Applicant specifically asked for e-mail records. I do not have enough information to determine on the balance of probabilities if they have been reasonably searched for. It is not clear whether e-mail accounts are included in “relevant files and locations” or “other files retained and managed by Operations and supervisory management” as mentioned in the Organization’s description of its search.

[para 49] The Organization also truncated its search for archived e-mails due to costs. For the reasons below, I find that it was not reasonable for the Organization to do so.

[para 50] In calculating the cost for the search, the Organization included hourly wages paid to its employees. The mere fact the Organization would have to pay its employees spend their time responding to the access request does not, in any way, itself lead to a finding that the costs of the search are unreasonable. PIPA imposes a duty on organizations to respond to access requests, and with the exception of reasonable fees that may be charged under section 32, places the cost of responding to an access request on an organization. Indeed in this particular case, given the specific types of information sought in the access request, much responsive information likely fits under the definition of “personal employee information” in section 1(1)(j). Per section 32(1.1) the Organization may not charge fees at all in respect of that information.³ That the Organization enlists its paid employees to respond to the access request is simply part of performing its duty to respond. If it does not like how much it pays its employees to do so, or would prefer that

³ (j) “personal employee information” means, in respect of an individual who is a potential, current or former employee of an organization, personal information reasonably required by the organization for the purposes of

- (i) establishing, managing or terminating an employment or volunteer-work relationship, or
- (ii) managing a post-employment or post-volunteer-work relationship

between the organization and the individual, but does not include personal information about the individual that is unrelated to that relationship;

* * *

32(1) Subject to subsection (1.1), an organization may charge an applicant who makes a request under section 24(1)(a) or (b) a reasonable fee for access to the applicant’s personal information or for information about the use or disclosure of the applicant’s personal information.

(1.1) An organization may not charge a fee in respect of a request for personal employee information.

they spend their paid time on other tasks, that is no reason to diminish the Applicant's access rights. I also note that while responding to an access request will necessarily involve having someone search for records, there is no requirement for the Organization to involve legal counsel. That choice was made by the Organization. If it finds it does not like paying legal counsel to perform that task, then it need not have legal counsel perform it. It cannot decide to involve legal counsel, or other highly paid employees, and then declare that the costs incurred by doing so make conducting a proper search for records unreasonable.

[para 51] The Organization also indicates that conducting an "exhaustive search of all Canem archived e-mails" would include three days' work by an IT professional to "build and run the search." The Organization's estimate is the costs of these activities would be \$60.00/hr x 24hrs, for a total of \$1440.00. The Organization does not, however, indicate how, if at all, the amount is unreasonable. PIPA does not put an economic value on the access right, and it seems to me that the value, monetary or otherwise, of receiving requested information lies in the eye of the Applicant. Neither is there a prescribed limit on how much an Organization must spend on a responding to an access before the cost becomes unreasonable. I also note that the Organization's estimate is neither supported by particulars nor evidence from an IT professional, or anyone else who has expert knowledge about "building and running a search." Even if that amount was, in some way, unreasonable, I have no basis to conclude that it is accurate to begin with.

[para 52] Aside from costs of performing a search of its archives, as already discussed under Issue C, the Organization did not search for e-mail records since it expected some were subject to "project confidentiality obligations." While by reference to section 24(2)(b) this may potentially be a ground for withholding personal information that has been located, it is not a ground for refusing to look for such information.⁴

[para 53] Responding to an access request involves multiple steps. There must be a reasonable search for records. After conducting a reasonable search, an Organization may then apply exceptions to disclosure under sections 24(2), and must apply exceptions under section 24(3). Under section 24(4) an Organization has an obligation to reasonably sever information it may withhold from a record, in order to provide an applicant the balance of information to which they are entitled. Under section 29(1)(c)(i), an Organization must explain why access to withheld information is refused. An Organization cannot elect to forgo a reasonable search on the basis that it believes that the search will turn up personal information it may be authorized not to disclose.

⁴ (2) *An organization may refuse to provide access to personal information under subsection (1) if*

(b) the disclosure of the information would reveal confidential information that is of a commercial nature and it is not unreasonable to withhold that information;

...

[para 54] Lastly, I address the Organization’s assertion that it is “confident that this search will yield minimal if any results relating to documents containing personal information of the Applicant”.

[para 55] The Organization cites an earlier order from this Office stating that information that mentions an applicant in the course of discussions about some workplace issue that relates to them is not necessarily “about” them in the sense that it constitutes personal information, and also that an applicant’s personal information may be so intertwined with third party personal information that an applicant’s personal information need not be provided (Order P2015-05).⁵ It also correctly observes that if particular documents clearly contain no personal information, PIPA does not entitle an applicant to make a request for such records, and an organization is not obliged to look for or provide them (Order P2006-004). However, while the Organization cites relevant case law that would apply to particular facts, it has not provided an evidentiary foundation establishing the facts relevant to the case law it cites. The Organization may believe that the exceptions to disclosure apply to certain records or information but it has not established that that is in fact the case.

[para 56] In sum, the Organization’s mere belief, however confident, that a search will yield little responsive information does not demonstrate that it conducted a reasonable search. The Organization must demonstrate that it is reasonable to exclude archived e-mails from the search. If there is so little chance that a search would turn up responsive information that it is unreasonable to perform the search, then the Organization must explain how it determined that is the case. It has not done so here. To the extent the emails are reasonably likely to contain information that does qualify as personal information, the Organization has an obligation to look for them.⁶

[para 57] For the preceding reasons, I find that the Organization failed to meet the duty to assist in section 27(1).

IV. ORDER

[para 58] I make this Order under section 52 of PIPA.

[para 59] I order the Organization to conduct a further search for responsive records including its archived e-mails, and provide to the Applicant any further responsive

⁵ At the same time, however, discussions of the sort just described may contain information that is personal information – for example, statements made about what an applicant said or did, or their personal attributes or conditions. To give a simple example, in a supervisor’s statement that “Given that employee X was caught stealing from the till, they should be terminated”, only the fact that X was caught stealing from the till is their personal information. If they are indeed terminated, then that fact will also be their personal information. But the fact the supervisor made the statement, and the view they expressed regarding termination, is not the Applicant’s personal information. Similarly, in a statement by a supervisor that “employee X has medical condition Y, which entitles them to take disability leave”, only the fact the employee has the condition is their personal information within the context of the statement.

⁶ Some cases have held that personal information that amounts to meaningless snippets of information do not have to be provided in response to an access request. See for example Orders P2018-05 and P2020-04.

records it locates, subject to the limits of reasonable efforts stated in section 27(1) and exceptions to disclosure under sections 24(2) and (3) PIPA.

[para 60] I order the Organization to respond to the Applicant as required by section 29. This will include informing the Applicant of reasons why access to records are refused, and where applicable, the section of PIPA that permits it to refuse access. In the event that the Organization does not locate any further responsive records, it will inform the Applicant of the same.

[para 61] I will retain jurisdiction to review the Organization's further search for records in the event that the Applicant seeks a review. If the Applicant wishes to seek a review, he must inform this Office within 30 days of the date on which he receives the results of the search.

[para 62] I Order the Organization to confirm to me in writing that it has complied with this Order within 50 days of receiving a copy.

John Gabriele
Adjudicator