ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2014-01

March 13, 2014

ATCO ELECTRIC LTD. AND CANADIAN UTILITIES LTD.

Case File Number P2093

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request under the *Personal Information Protection Act* (PIPA) to ATCO Electric Ltd. and Canadian Utilities Ltd. (the Organizations) for his personnel file, including all performance data, performance meetings, salary and bonus discussions, and performance and promotion or change in assignment discussions, even if he were not present at the discussion. He asked the Organizations to include succession planning meeting minutes, performance reviews and correspondence (including e-mail) that contains personal information relating to him. He also requested all payroll, pension, supplementary pension and benefits files and all vacation records.

The Organizations conducted a search for responsive records and provided what they were able to find (records from 1982 – 1996 and an evaluation from 2009) to the Applicant. However, the Organizations were unable to provide performance evaluations for the years 1997 – 2010 as these had been destroyed.

The Applicant requested review of the adequacy of the Organizations' search and response to him.

The Adjudicator found that the Organizations had conducted an adequate search for responsive records and had met their duty to assist the Applicant.

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1, 2, 3, 24, 27, 34, 52

Authorities Cited: AB: Orders P2006-004, P2006-005, P2008-007, P2012-09; Decision P2011-D-003

I. BACKGROUND

[para 1] On April 26, 2011, the Applicant made a request to ATCO Ltd. and Canadian Utilities Ltd. (the Organizations) for access to the following information under the *Personal Information Protection Act* (PIPA):

> My personnel file; including all performance data, performance meetings, salary and bonus discussions, performance and promotion or change in assignment discussions even if I was NOT present. Include succession planning meeting minutes, performance reviews, correspondence (including e-mail) that contains personal information that relates to me.
>
> All Payroll, Pension, Supplementary Pension and Benefits files that are NOT already part of the above personnel file.
>
> All vacation records.

The Organizations located responsive records, including records from 1982 – 1996 and performance evaluation material from 2009, and provided them to the Applicant. The Applicant questioned the adequacy of the search conducted by the Organizations on the following basis:

> No information on my appointment as an officer of the corporation in 2000
> No offer Letter
> No Information with regard to changes of duty or re-deployment.
> No corporate office correspondence, awards or commendations
> No performance evaluation data for the period 1997 to 2010; with the notable exception of the undated and unsigned "assessment" for 2009. It should be noted that this was previously undisclosed.
> No documentation with regard to the payment of bonus in ATCO Electric 2007 through 2010. Including evaluations and recommendations put forward from the ATCO Electric President to the corporate office.
> No correspondence, e-mails or letters between the corporate Chairman, CEO/ President, Managing Director or Principal Operating Subsidiary President both prior to and after August 31, 2010.

The Applicant requested review by the Commissioner of the Organizations' response.

[para 2] The Commissioner authorized mediation. As mediation was unsuccessful in resolving the dispute, the matter was scheduled for a written inquiry.

II. ISSUES

Issue A: Is all the information that is the subject of the inquiry the Applicant's personal information?

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: Is all the information that is the subject of the inquiry the Applicant's personal information?

[para 3] PIPA creates a right in an applicant to request the applicant's personal information from an organization. PIPA create a right in an applicant to request the applicant's own personal information and information about an organization's use and disclosure of an applicant's personal information. Information must be about an identifiable individual and not merely related to an individual before it can be said to be "personal information".

[para 4] As set out in the background, above, the Applicant is seeking his personnel file, in addition to "all performance data, performance meetings, salary and bonus discussions, performance and promotion or change in assignment discussions" including minutes of discussions at which he was not present. The Applicant also seeks succession planning meeting minutes, performance reviews, correspondence (including e-mail) that contains personal information relating to him.

[para 5] He has also requested all payroll, pension, supplementary pension and benefits files that are not part of his personnel file as well as vacation records.

[para 6] As described in the background above, the Applicant questions why the Organizations have not provided him with the following information in response to his access request:

- information on his appointment as an officer of the corporation in 2000;
- offer letter;
- information with regard to changes of duty or re-deployment;
- corporate office correspondence, awards or commendations;
- performance evaluation data for the period 1997 to 2010;
- documentation with regard to the payment of bonus in ATCO Electric 2007 through 2010, including evaluations and recommendations put forward from the ATCO Electric President to the corporate office;
- correspondence, e-mails or letters between the corporate Chairman, CEO/ President, Managing Director or Principal Operating Subsidiary President both prior to and after August 31, 2010.

[para 7] As will be discussed below, records potentially responsive to the Applicant's request may contain information about the Applicant, although not all the information in the record would necessarily be the Applicant's personal information.

Moreover, some of the records encompassed by the Applicant's access request may not contain the Applicant's personal information within the terms of PIPA at all.

[para 8] Section 1(1)(k) of PIPA defines "personal information" in the following terms:

> *1(1) In this Act,*
> *(k) "personal information" means information about an identifiable individual[…]*

[para 9] In Order P2006-004, former Commissioner Work commented on the extent to which information can be said to be "personal information" within the terms of PIPA. He said:

> The Act defines "personal information" as "information about an identifiable individual". In my view, "about" in the context of this phrase is a highly significant restrictive modifier. "About an applicant" is a much narrower idea than "related to an Applicant". Information that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant - and that is therefore connected to them in some way - is not necessarily "about" that person. In this case, only a part of the information that the [Applicant] asked for was information "about" him. Had he relied on PIPA to obtain information, he would not have received much of the information that was made available to him under the *Legal Profession Act* and the Rules created thereunder, or pursuant to the requirements of fairness.

[para 10] An applicant is only entitled to the personal information in a record (subject to exceptions and whether it is reasonable to provide the information) and is not entitled under PIPA to any information that is not about the applicant.

[para 11] In Decision P2011-D-003, former Commissioner Work commented that in some cases, personal information will amount to meaningless or insignificant "snippets" of information contained in a record. He said:

> I note as well that on the basis of the ability of organizations to take into account what is reasonable in responding to access requests under section 24 of the Act, it is open to an organization to argue, in appropriate circumstances, that it is not reasonable to provide access to an applicant's personal information, or parts of this information. This may apply for information that consists of meaningless or insignificant snippets, particularly if it reveals nothing of substance to an applicant. It may also apply where providing information would require an organization to review a large volume of information only to provide an applicant with minor items of information of which he is already well aware […]

[para 12] In Order P2012-09, the Adjudicator commented that not all the information in an individual's personnel file is about the individual, such that it could be said to be "personal information". She said:

> As noted, some of the records provided to the Applicant contain no information at all about her; the fact that these records may have been located in the Applicant's personnel file does not necessarily mean that they contain her personal information under PIPA. Even the records that contain the Applicant's name are not subject to an access request under PIPA where they contain no "personal dimension." For example, as the Applicant's position with the Organization

> required certain safety training, some of the records provided to the Applicant by the Organization were training materials (for example, pages 622-649 consist of an operator training manual). The Organization's training manuals cannot be characterized as the Applicant's personal information. This is the case even in the instances wherein the training materials included quizzes with the Applicant's answers, as well as her signature affirming that she had read the materials, as there is no personal dimension to the information in these records. I make the same finding with respect to copies of organization-wide policy memos and records of work-related meetings and attendance at those meetings.
>
> Shift-related information, such as voluntary leave forms (signed when an employee voluntarily leaves early due to lack of work), and shift change forms (signed by two employees switching shifts) is also not the Applicant's personal information. A record showing that an employee worked on a particular day does not reveal information that has a personal dimension such that it is personal information about that employee. Although these records show that the Applicant left a shift early or changed a scheduled shift, in my view, this information is better characterized as information about the Applicant's work or position, rather than about the Applicant. The same is true regarding the names of coworkers on the shift change forms and other shift-related records (daily schedules on pages 238, 1095 and 1096, and a letter denying a request to change shifts on page 411). (In saying this I acknowledge that there may be other situations in which shift-related information has a personal dimension).

[para 13] In accordance with the foregoing, some of the information requested by the Applicant is arguably not personal information within the terms of PIPA. For example, information falling under "succession plan meeting minutes" might contain references to the Applicant, but might not be *about* the Applicant. Similarly, "correspondence, e-mails or letters between the corporate Chairman, CEO/ President, Managing Director or Principal Operating Subsidiary President", even if they are addressed to the Applicant, may not contain the Applicant's personal information, other than the Applicant's name.

[para 14] However, neither party addressed the question of whether all the information that is the subject of the Applicant's access request is personal information as defined by PIPA. Rather, the Organizations, in their rebuttal submissions, stated that they assumed, for the purposes of the inquiry, that the records the Applicant requested would contain his personal information. As the position of the Organizations is that it cannot locate these records in any event, it can only speculate as to their contents.

[para 15] As the Organizations does not take issue with the position that all information that would be responsive to the Applicant's access request is personal information under PIPA, and as I find below that it conducted an adequate search for responsive records, in any event, I will make no findings in relation to the question of whether the requested information is personal information. However, this order should not be interpreted as standing for the position that all information in a personnel file, or all records containing information relating to an applicant, are personal information that is properly the subject of an access request under PIPA.

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 16] Section 27 of PIPA creates a duty in an organization to make reasonable efforts to assist applicants. It states, in part:

> *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,*
> *and*
>
> *(b) at the request of an applicant making a request under section 24(1)(a) provide, if it is reasonable to do so, an explanation of any term, code or abbreviation used in any record provided to the applicant or that is referred to.*

[para 17] Past orders of this office have noted that the right of access under PIPA is limited to the personal information of an applicant. The right of access is further limited by the exceptions set out in sections 24(2) – (4) and is subject to what is reasonable in the circumstances. Moreover, the search to be conducted for responsive records is similarly limited by what is reasonable in the circumstances, as is the duty to respond to an applicant accurately and completely.

[para 18] Section 24 of PIPA authorizes an individual to request the individual's personal information in the custody or control of an organization. It states, in part:

> *24(1) An individual may, in accordance with section 26, request an organization*
>
> *(a) to provide the individual with access to personal information about the individual, or*
>
> *(b) to provide the individual with information about the use or disclosure of personal information about the individual.*
>
> *(1.1) Subject to subsections (2) to (4), on the request of an applicant made under subsection (1)(a) and taking into consideration what is reasonable, an organization must provide the applicant with access to the applicant's personal information where that information is contained in a record that is in the custody or under the control of the organization.*

If an applicant requests his or her personal information, and the organization has the personal information in its custody or under its control, the organization must grant the applicant access to the information, subject to the exceptions enumerated in subsections (2) to (4) (not reproduced) and subject to what is reasonable.

[para 19] In contrast to section 24(1.1) of PIPA, section 6 of the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) states:

> *6(1) An applicant has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.*

[para 20] PIPA is dissimilar to the FOIP Act in that it does not create a right of access to a *record*; only to *personal information*. While a purpose of the FOIP Act is to "allow any person a right of access to the records in the custody or control of a public body", the stated purpose of PIPA set out in section 3 is "to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of an individual to have his or her personal information protected and the need of organizations to collect, use or disclose personal information for purposes that are reasonable."

[para 21] In Order P2006-005, former Commissioner Work commented:

> Because a primary purpose of [the FOIP Act] is to provide access to information, access requests are interpreted broadly. In contrast, [PIPA] is intended to protect personal information and to govern the purposes for which an organization may collect, use and disclose personal information. Access requests under [PIPA] are therefore not given a broad interpretation as they are under [the FOIP Act], since the right to make an access request under [PIPA] is intended only to enable an individual to determine whether his or her personal information is being collected, used and disclosed by an organization in accordance with [PIPA]. [PIPA] does not authorize an individual to request information other than the individual's own personal information.

[para 22] In Order P2008-007, the Adjudicator considered what it means to take into consideration "what is reasonable" within the terms of section 24 of PIPA. He said:

> **2. Taking into consideration what is reasonable**
>
> What the Act means by "taking into consideration what is reasonable" under section 24(1) of the Act is informed by section 2:
>
> > *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.*
>
> The Organization states that the secretary approached representatives of the Organization in late February or early March 2007, requesting that they hold the sealed envelope for her until she provided further instructions. The representatives agreed to do so. The Organization states that

> the secretary subsequently came to the Organization to request that the envelope be returned to her. The Organization returned the envelope to her, unopened, on May 16, 2007. It argues that, given the conditions under which it accepted the sealed envelope, it had no legal right to open the sealed envelope or request that its contents be shared by the secretary.
>
> The secretary was one of the Organization's members, and she gave the letter to the Organization in a sealed envelope while she determined whether and how to proceed in an employment-related dispute with the Teacher. Regardless of whether the secretary chose to place the letter in a sealed envelope herself, or was prompted by the Organization, I find that there was an understanding or agreement between the secretary and the Organization that the sealed envelope would not be opened without further instructions from the secretary. I also find that the understanding or agreement was reasonable. It would appear that the secretary did not wish to convey and/or the Organization did not wish to know the actual contents of the letter unless and until it became necessary, or desired by the secretary, for the purposes of the Organization's investigation into the employment matter.
>
> Because there was an understanding or agreement between the secretary and the Organization that the envelope would not be opened, and this understanding or agreement was reasonable, I believe that a reasonable person would consider it appropriate, in the circumstances, that the Organization did not open the envelope that was entrusted to it. Because the Organization was not in a position to open the sealed envelope, it was not in a position to determine the extent to which any exceptions to disclosure applied to the information in the letter, and not in a position to consider granting the Teacher access. Therefore, taking into consideration what was reasonable under section 24(1)(a) of the Act, I find that the Organization was not required to provide the Teacher with access to her personal information contained in the letter.

[para 23] The Adjudicator noted that section 2 of PIPA clarifies that "reasonable" within the terms of PIPA is that which a reasonable person would consider appropriate in the circumstances. In Order P2008-007, the Adjudicator determined that there was an understanding or agreement between the organization and a third party to keep correspondence containing information the third party had written about the applicant confidential. He determined that a reasonable person would consider it appropriate not to provide the applicant with access to the information in the circumstances, given the agreement or understanding of the organization and the third party.

[para 24] In summary, an organization has a duty under PIPA to search for the personal information of an applicant, but not other information, such as information that only relates to an applicant or is the applicant's work product, and this duty is subject to what is reasonable in the circumstances.

[para 25] I turn now to the question of whether the Organizations met their duty to the Applicant when they responded to his access request.

Did the Organizations conduct an adequate search for responsive personal information?

[para 26] The Organizations describe the search conducted for personnel records in the following terms:

> When an executive level employee is transferred from one operating entity to another operating entity within the ATCO Group, their personnel file is transferred with them to their new

employer. In fact, various records related to [the Applicant's] previous employment with other members of the ATCO Group were provided to him from the ATCO Electric Ltd. personnel file.

While it is true that copies of certain records may have been retained by a previous employer within the ATCO Group to comply with its statutory record retention obligations, such records would also form part of the transferred file and, in the instant case, the Relevant Records do not comprise records that would be required to be maintained by a previous employer within the ATCO Group.

In addition, while certain records related to pensions, SERP and executive compensation are managed by [the Senior Vice President's] group at the ATCO Group level, once again, the Relevant Records would not comprise records that would be managed by [the Senior Vice President's] group. In fact, [the Senior Vice President] directly addressed this point in the […] 2013 Affidavit and confirmed that "ATCO's Corporate Head Office does not store [the Relevant Records]"[…]

Further, in respect of [the Applicant's] assertion that the Relevant Records would be maintained at ATCO Gas and Pipeline Ltd. [the Senior Vice President] has confirmed in his affidavit that he had confirmed with ATCO Electric Ltd.'s Sr. Director Human Resources, […] that:

> a) He contacted the individuals responsible for the creation, storage and destruction of the requested records at ATCO Gas and Pipelines Ltd., [the Applicant's] predecessor employer, and asked them to search their records (paper and electronic) and to provide any responsive records that were found to him (responsive records that were found were provided to [the Applicant]); and
> b) He confirmed through such request that ATCO Gas and Pipelines Ltd. did not retain the Requested Records within its personnel records.

Accordingly, the Relevant Records are not stored at the ATCO Group level or at ATCO Gas and Pipelines Ltd. and, in any event, the Organizations have searched for and confirmed that the Relevant Records are not available.

[para 27] With regard to the search conducted for emails, the Organizations state:

[The Senior Vice President] has confirmed in his Affidavits that:

a) He contacted the individuals responsible for the creation, storage and destruction of the requested records and asked them to search their records (paper and electronic) and to provide any responsive records that were found to him (responsive records that were found were provided to [the Applicant]); and

b) He confirmed with the Organizations' information technology group that:

> i) e-mails are automatically deleted from the Organizations' information technology production environments at ninety (90) days;
> ii) while the Organizations do maintain back-up copies of their applicable e-mail production environments, such copies are retained for a period of less than forty (40) days, after which time, the storage media is re-used and any prior information is overwritten; and
> iii) these e-mail practices are not contained in any formal, written policy but reflect the actual backup protocols for the Organizations' e-mail servers.

Accordingly, e-mails comprising the Relevant Records have been deleted in the ordinary course of the Organizations' e-mail practices and the Organizations have searched for and confirmed same.

[para 28] With regard to the search for records containing information assessing and documenting the Applicant's performance, the Organizations state:

> […] President, Transmission Division, ATCO Electric Ltd. [the Applicant's] direct supervisor, the President of [the Applicant's] employer at the relevant time and the individual responsible for the creation and retention of the responsive performance records), has confirmed in his Affidavit that:
>
> > a) As part of his performance evaluation process, he provides continual feedback to his senior executive team (Copies of agendas relating to such meetings have been produced to [the Applicant] in connection with his lawsuit with the Organizations).
> >
> > b) His standard practice with respect to the performance evaluations of his senior executive team, including [the Applicant], is to delete or shred any performance evaluation data or reviews once the subsequent performance evaluation for the following year is complete. At that point, the performance evaluation material is deemed to be irrelevant from the corporation's perspective and it is deleted or shredded to preserve confidentiality and personal information contained therein; and
> >
> > c) As [the Applicant's] employment was terminated in 2010, no performance evaluation was completed for 2010.
>
> Accordingly, at the time of [the Applicant's] request to access his performance evaluation only the 2009 evaluation was available. This has been produced to [the Applicant] in the lawsuit and pursuant to his request to the Commission. As noted earlier, the Organizations have searched for and confirmed that the Relevant Records are not available.

The Organizations supported these arguments with the affidavits of the Vice President and the President referred to in these arguments.

[para 29] The Applicant takes issue with the Organizations' statements regarding the location of his human resources file, the Organizations' stated practice of deleting emails from their technology production environments, and their stated practice of destroying performance evaluations of senior executives. The Applicant also argues that the Organizations have not provided sufficient explanation of the identities of those who conducted the search for records. He states:

> In the context of the adequacy of the search by the ATCO Group, I must conclude that it most certainly was inadequate; give that, 13 consecutive years of data are missing, and given that those years coincide with my "best career years". [The Vice President's] affidavit does not adequately explain the detail or the nature of the search for my missing executive HR file (2000 – 2010).
>
> 1. It does not deal with the substance or who was actually responsible for the search? He showed that the search was limited to the operating unit (ATCO Electric), while all indications are that ATCO Corporate runs a centralized administration for executive HR management.
>
> 2. The explanation of routine destruction / deletion of e-mail is questionable. Most professionals need to be able to retrieve important e-mail messages from their archives dating back years.
>
> 3. The only personnel details kept at the employer companies (operating units) for executives / officers, is the Code of Conduct and Affiliate Relationship acknowledgement forms. These files

> do not include an officer's appointment, remuneration, bonus, stock options and other significant executive HR data; most of which is directly tied to the CEO and Board of Director sub-committees (e.g. GOCOM)
>
> 4. The specific of [the Director of Human Resources] alleged role in this search for executive data was not detailed.
>
> 5. Any details of ATCO Gas HR involvement in the search was not included
>
> 6. The only piece of data supplied by ATCO Corporate was the so-called "2009 Assessment Summary" which was an undated and unsigned orphan document.
>
> 7. Routine [shredding] of senior executive performance evaluation data based on some obscure security concern is unbelievable! This is especially problematic in the context of a large group of companies like the ATCO Group, which lauds their own succession planning processes and their promotion of people from within the organization.

[para 30] The Applicant argues also argues that in his experience, emails are not automatically deleted every 90 days. The Applicant argues that his performance data from 2000 – 2010 would be located at the ATCO Corporate Head Office and not ATCO Electric. He also questions ATCO's stated practice of shredding executive performance reviews and argues that ATCO has provided insufficient evidence regarding the search it conducted.

Emails

[para 31] The Organizations have submitted evidence that electronic records were searched. Emails are examples of electronic records. I note from the schedule that the Organizations provided for my review that they located and produced emails dated January 19 – 22, 2009, as well as emails dating from June to December 2010.

[para 32] The Organization has also provided information regarding its retention schedule for emails. Reproduced above, these are:

> i) e-mails are automatically deleted from the Organizations' information technology production environments at ninety (90) days;
> ii) while the Organizations do maintain back-up copies of their applicable e-mail production environments, such copies are retained for a period of less than forty (40) days, after which time, the storage media is re-used and any prior information is overwritten; and
> iii) these e-mail practices are not contained in any formal, written policy but reflect the actual backup protocols for the Organizations' e-mail servers.

[para 33] From the context provided by ii) and iii), and the fact that that the Organizations searched for and produced emails dated older than 90 days, I conclude that "information technology production environment" refers to the Organizations' *email servers*, and not their employees' computer hard drives or email folders. I do not interpret the Organizations' evidence as meaning that all emails are automatically deleted after 90 days from employee's hard drives or folders, but only those emails located on their servers and nowhere else. As the affidavit notes, the information regarding email deletion is offered as evidence regarding the *backup protocols* of its email servers.

[para 34] From the evidence, I conclude that the Organizations did search for responsive emails and did locate some emails, which it provided to the Applicant. The dates of these emails indicate they are more than 90 days old. However, the Organizations are unable to recover any emails containing the Applicant's personal information that may have been deleted because any such emails would have been deleted and overwritten as a result of the backup protocols. In addition, as I noted above, it is unclear that the emails the Applicant requested in his access request and described in his request for review would necessarily contain his personal information as defined in PIPA.

Past performance data

[para 35] The Applicant challenges the Organizations' search for past performance data on two grounds; first, he argues that the information is located at ATCO's corporate head office, and secondly, he questions its practice of deleting information regarding past performance reviews.

[para 36] The evidence of the Organizations is that any information regarding the evaluation of an executive's performance would be kept at ATCO Electric Ltd. The evidence supplied by the affidavit of the Group Vice President is the following:

> I confirmed with ATCO Electric Ltd.'s President, […] and Sr. Director Human Resources […], that:
>
> Performance documentation for ATCO Electric Ltd.'s employees is not held outside of ATCO Electric Ltd.;
>
> ATCO Electric Ltd. has produced copies of its relevant documentation through the current lawsuit;
>
> ATCO Electric Ltd. does not have copies of the requested emails or performance evaluation data other than what has already been produced;
>
> [The President] created and was the custodian of the requested performance evaluation data. He shared summaries of that information with others within the ATCO Group of Companies as part of the compensation approval process. Such summaries have been produced as part of the court process;
>
> ATCO Electric Ltd. has a practice of deleting or shredding any and all performance evaluation data relating to senior executives reporting to its President […]. [The President] specifically advised that his practice is not to keep performance evaluations or reviews once the subsequent performance evaluation for the following year is completed and that at that point, the previous year's information is considered irrelevant for the Organization's purposes and is deleted or shredded to protect the confidential and personal information contained therein.

[para 37] An affidavit of the President confirms that it his practice to shred past performance evaluation data.

[para 38] The evidence of the Organizations confirms that if there were responsive evaluative data, such data would be kept at ATCO Electric Ltd. and not elsewhere. The evidence of the Organizations is that it does not maintain records of past evaluations of senior executives once the past evaluation has been replaced by a current evaluation. Other than speculation, the Applicant has given no reason to doubt this evidence on either point. I acknowledge the Applicant's view that destroying employees' evaluations appears to be an unusual practice. The Applicant suggests that the Organizations' evidence regarding this practice should be doubted, because of the unusual nature of the practice; however, I have no basis on which to make such a determination and I am unable to discount the Organizations' evidence on this point.

[para 39] Moreover, while unusual, a practice of destroying evaluations does not contravene PIPA. Section 34 of PIPA requires an organization to take security measures to guard against *unauthorized* disposal or destruction of information; however, destruction and disposal of personal information that is not unauthorized does not contravene PIPA.

The search

[para 40] The affidavit of the Group Vice President states at paragraph 20 that he contacted "the individuals responsible for the creation, storage, and destruction of the requested records and asked them to search their records (paper and electronic) and to provide any responsive records that were found" to him. He also states that any responsive records that were found were given to the Applicant. As noted above, the Organization located and provided to the Applicant records from 1982 – 1996 and a record containing evaluative information from 2009.

[para 41] The Group Vice President determined where responsive records were likely to be located by contacting human resources employees. The Group Vice President also asked anyone responsible for creating and managing responsive records to search the paper and electronic records they managed for records responsive to the Applicant's access request. In my view, the Organizations have provided sufficient detail regarding the searches they conducted and who conducted them to establish that an adequate search was conducted for the Applicant's personal information under PIPA. The Group Vice President took the step of determining where records containing responsive information were likely to be located and also asked the people responsible for managing such records to locate any records responsive to the Applicant's access request.

[para 42] The Organizations do not provide the names of those who conducted the searches for responsive records; however the Organizations have established that those employees who conducted the searches were those responsible for the creation and management of any responsive records and that the Organizations' Director, Human Resources was also consulted. The Organizations also submitted schedules of records they located and provided to the Applicant as part of the discovery process.

[para 43] The evidence of the Organizations establishes that they conducted a reasonable search for the Applicant's personal information. With regard to the personal information that they have not produced, such as emails and evaluation records, their evidence is that they searched for responsive information and were unable to locate any, other than that which they produced to the Applicant in discoveries. Their evidence also establishes that any information that they have not located, but that existed at one time, has likely been destroyed. I find that the Organizations have searched for and located all the personal information of the Applicant in their custody or control.

[para 44] In making the finding that the search was reasonable, I take notice of the fact that the Organizations refer to documents that were located and produced as a result of the discovery process, as having satisfied its duty to search for responsive personal information under PIPA. As stated above, the duty to search and produce responsive personal information is subject to what it reasonable. If an organization has already produced records containing responsive personal information to an applicant through the discovery process, then it reasonable in the circumstances for the organization not to produce "snippets" of the same personal information (as described by former Commissioner Work in Decision F2011-D-003) from the same records that have already been produced to the Applicant in a parallel process, and which the Applicant would not likely want in any event.

[para 45] In Decision F2011-D-003, former Commissioner Work also noted the differences between the records that may be obtained through the discovery process and the personal information that may be obtained through an access request under PIPA. He said:

> […] Thus, the organization who receives such a request must still respond to it, and in withholding information under section 24(2)(c), it must exercise its discretion taking into account the purposes of the Act and the particular provision on which it is relying. Furthermore, under PIPA, requestors are, again, entitled only to their own personal information, with the result that it may not be so much an "abuse of process" that the request is made, as a waste of time and effort for both sides. To the extent this is so, it is to be hoped that once requestors and respondents are aware of the limited extent of their rights and obligations in this context, it may become unnecessary, over time, to deal with access requests that do not serve any useful purpose for requestors.

From the foregoing, I conclude that while an applicant may make an access request under PIPA, in addition to obtaining information through the discovery process, the information that may be obtained through an access request under PIPA is less than that which can be obtained through discoveries and may be of limited or no value to an applicant.

[para 46] As former Commissioner concluded in Decision F2011-D-003, it may reasonable in the circumstances for an organization not to include personal information in a response if the information would reveal nothing of substance to an applicant, or where providing information would require an organization to review a large volume of information only to provide an applicant with minor items of information of which he is already well aware. Following former Commissioner Work's reasoning in Decision F2011-D-003, if records containing personal information responsive to an access request

under PIPA, is duplicative of information already produced to the Applicant in discovery, then it is reasonable for an organization not to provide access to it as part of its response under PIPA.

[para 47] In any event, the Applicant does not seek personal information that has already been provided to him through the discovery process.

Did the Organizations make every reasonable effort to assist the Applicant and to respond to the Applicant as accurately and completely as reasonably possible?

[para 48] In Order P2012-09, the Adjudicator found that the duty to respond to an Applicant under section 27 includes the duty to clarify the access request. She said:

> Past orders of this office have found that the similar provision under the FOIP Act requires a public body to clarify the nature of the access request with the applicant where there is doubt as to its scope. However, clarification is not necessary when the request is, on the face, very clear (Order 2001-013, at para. 21). Again, I find that this requirement is applicable to section 27(1) of PIPA.

[para 49] I note that in the response of June 14, 2011 to the Applicant, the Organizations stated:

> While ATCO has attempted to comply with your requests, some of the personal information you have requested is too broadly framed and does not contain sufficient detail for ATCO to identify the personal information in respect of which your request is made. For example "correspondence (including e-mail) that contains personal information that relates to me" is too broad and does not provide sufficient information as to what documentation you are looking for. If you have further information as to specific documents and the time frame that you are looking for, please advise and ATCO would be happy to conduct reasonable efforts to attempt to locate same.

The foregoing excerpt indicates that the Organizations sought clarification of a portion of the Applicant's access request that it considered ambiguous. I agree with the Organizations that this aspect of the access request was ambiguous, although for different reasons than those given by the Organizations. In their response, the Organizations appeared concerned with determining what kind of correspondence the Applicant was seeking so that it could determine where it would be located. In my view, ambiguity arises from the fact that the Applicant was requesting correspondence containing personal information relating to him. If information only *relates to* an applicant, but is not *about* an applicant, then the information is not personal information for which an access request can be made under PIPA. Moreover, an applicant cannot make an access request for "correspondence" but only for the personal information correspondence may contain.

[para 50] In their rebuttal submissions, the Organizations stated:

> We note that there are two issues in this Inquiry. However, as the Organizations were not able to provide the Relevant Records as they had been deleted or destroyed, we are not able to comment as to whether or not such records were comprised solely of [the Applicant's] personal information. For the purposes of this Inquiry we have assumed that the Relevant Records would

> contain his personal information and that, had they been available, any information that was not [the Applicant's] personal information would have been redacted from same.

As discussed above, it is not clear to me that records such as meeting minutes or the correspondence described in the access request would necessarily be about the Applicant, such as to be comprised of his personal information.

[para 51] Ideally, the Organizations would have drawn to the Applicant's attention the limits of a PIPA access request, in addition to seeking clarification of the kinds of correspondence the Applicant was seeking. However, as the Organizations conducted a search for the requested records, and provided any records they located to the Applicant, apparently in their entirety, the failure to clarify the scope of PIPA does not appear to have been detrimental to the Applicant.

[para 52] As the Organizations conducted a reasonable search for responsive personal information, and sought clarification of ambiguous portions of the Applicant's access request, in addition to explaining why they were unable to provide to the Applicant all the personal information he sought, I find that the Organizations made reasonable efforts to respond to the Applicant's access request as completely and reasonably as possible.

IV. ORDER

[para 53] I make this Order under section 52 of the Act.

[para 54] I confirm that the Organizations met their duties to the Applicant under section 27 of PIPA.

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Teresa Cunningham
Adjudicator