

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2018-05

September 11, 2018

SYNCRUDE CANADA LTD.

Case File Number P2914

Office URL: www.oipc.ab.ca

Summary: The Applicant made an access request to Syncrude (the Organization) under the *Personal Information Protection Act* (PIPA) for specific records which he believed to be part of his “full and complete” employee file. The Applicant had made a similar request to the Organization previously, and had requested review of the adequacy of the Organization’s search for responsive records.

Order P2015-06 reviewed the adequacy of the Organization’s response and required the Organization to conduct a new search for drug testing records; however, the order did not require the Organization to conduct a further search for other records.

The Adjudicator determined that some of the information the Applicant had requested was not his personal information. She found that the Organization’s search for records on the Applicant’s personal file had already been addressed in Order P2015-06 and that she lacked jurisdiction to make a decision regarding records the Applicant believed should have been part of his personal file that were not produced. Finally, she decided that the Organization had responded reasonably to the Applicant’s access request for records that had not been previously addressed in an order.

Statutes Cited: AB: *Personal Information Protection Act* S.A. 2003, c. P-6.5, ss. 1, 24, 27, 52, 53

Authorities Cited: AB: Decision P2011-D-003, Orders P2006-004, P2006-005, P2012-09, P2015-06

I. BACKGROUND

[para 1] On April 2, 2014, the Applicant submitted an access request to Syncrude Canada under the *Personal Information Protection Act* (PIPA). On the request form, he indicated that he was seeking missing documentation, “as per attached letter”. The Applicant attached records he had obtained in the course of litigation with Syncrude and a letter, which stated:

I now request where did [an employee of Syncrude] obtain the information that my “former partner was intending to inform Syncrude that I had lied to obtain her benefits”?
Missing documentation and recording
Please release the documentation where I first reported this to my senior leader [...]
Please release where my senior leader [...] properly reported this statement.
Please release Syncrude’s Human resource request for a statement from myself pertaining to the declaration as stated by senior leader [...]

Further missing documentation as listed

I require a copy from the page from the overtime book that I signed, for the overtime of March 26, 2010. I had signed and requested the overtime and forward to myself. The book was located in the leader’s office. The dates of overtime that I had signed up included March 25, 26, 2010 and forward. My former leader [...] would know of this overtime book as would all other leaders.

Missing documentation

Missing documentation for my bradford index rating and absentee days. Also where my bradford index was adjusted in the spring of 2010 and what adjustment was made.

Please reply within the required 45 days.

[para 2] The Organization responded to the Applicant on June 16, 2014. It stated:

Syncrude can advise that all records regarding the information requested have been previously provided to you by Syncrude in prior access request responses dated April 27, 2010 and July 29, 2011. Any records relating to this request that were not previously disclosed were denied on the basis of legal privilege and information collected for the purposes of an investigation pursuant to sections 24(2)(a) and (c) of PIPA.

In regards to your specific request for “a copy from the page from the overtime book that I signed, for the overtime of March 26, 2010, we can advise that such record no longer exists and is not in Syncrude’s custody and control.

In regards to your specific request for documentation regarding your absences, we can advise that such information was previously disclosed to you on April 27, 2010 and July 29, 2011, but for your convenience is again enclosed with this letter.

In relation to your request for information regarding the Bradford Index, we can advise that the Bradford Index is calculated using the following formula: $S^3 \times D = B$ where:

- S is the total number of separate absences by an individual
- D is the total number of days of absence of that individual

- B is the Bradford Factor score

There were no adjustments made to your Bradford Index in Spring 2010.

[para 3] On September 21, 2014, the Applicant requested that the Commissioner review the Organization's response to his access request. He stated:

This is at least my fourth personal file request from Syncrude and the organization continues to deny having any further documentation. Then they proceed to suddenly find and release further information such as that included in the attached Sharek & Co. documents. Clearly Syncrude has demonstrated a reluctance to produce said documentation I am entitled to in a timely manner and in fact deny documentation such as my Bradford index review and corrections that were discussed in the attached emails. Further these emails clearly show links to other corporate individuals whom they deny have any knowledge of the information.

[para 4] The Commissioner authorized a senior information and privacy manager to investigate and attempt to mediate the matter. Following this process, the Applicant requested an inquiry.

Findings were flawed and contradicted [Syncrude's own] policy. New information has surfaced and is still outstanding and remains to be released is still [being] held in Syncrude possession as per attached documentation.

The Applicant attached records to his request that relate to a decision by the Organization to ban him from its site in 2012. These records were provided to him in the course of litigation with the Organization but not in response to his access requests.

[para 5] The Commissioner decided to conduct an inquiry. The parties were sent a notice of inquiry and a schedule for providing submissions. The schedule required the Applicant to make submissions by July 6, 2018.

[para 6] The Applicant did not make submissions by July 6, 2018. However, on July 23, 2018, he emailed the Registrar and provided a submission.

[para 7] The Organization objected to the late submission.

[para 8] I asked the Applicant to provide submissions as to why he did not provide his initial submissions on time and to provide his reasons for believing that it would be fair for me to accept the late submission. The Applicant provided his answers to my questions and the Organization commented on the Applicant's answers. Both the Applicant and the Organization also made submissions in relation to the issues for inquiry

[para 9] I must now decide whether to accept the Applicant's submissions and continue the inquiry.

Decision

[para 10] I have decided that I will accept the Applicant's submissions as there would be no benefit to refusing them and cancelling the inquiry in this case.

[para 11] There is no bar in PIPA to making a new access request for the same information or requesting an inquiry in relation to that information, provided a final decision has not already been made regarding the request. As a result, cancelling the inquiry could result in both the Applicant and the Organization duplicating their efforts in another inquiry regarding the same or similar issues to no one's benefit.

[para 12] In addition, I note that both the Applicant and the Organization have made submissions addressing the substantive issues for the inquiry. Having reviewed the submissions, I am satisfied that I do not need anything further from the parties to decide the issue for the inquiry.

[para 13] In my view, the balance of convenience for both parties weighs in favor of conducting the inquiry.

II. ISSUE

Did the Organization meet its obligations required by section 27(1) of the Act (duty to assist applicants)?

[para 14] Section 1(1)(k) of PIPA defines personal information as information "about an identifiable individual".

[para 15] Section 24(1) of PIPA authorizes an applicant to request the applicant's personal information from an organization. This provision states:

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.

"Personal information" is defined in section 1(1)(k) of PIPA as meaning "information about an identifiable individual". PIPA does not authorize an applicant to make an access request for anything other than the applicant's own personal information. There is no duty in PIPA for an organization to provide information to an applicant that is not the applicant's personal information or to search for it. When determining whether an organization has met its duty to assist an applicant, it is therefore necessary to consider whether the information at issue is personal information.

[para 16] An applicant is 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. For example, if a record contains some information that may be construed as information “about the applicant” but also contains information that is not about the applicant, then the applicant may request the applicant’s personal information where it appears in the record, but not any of the other information in the record.

[para 17] 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 18] In Order P2006-004, former Commissioner Work commented that most information in legal files will not 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.

...

I do not need to decide for the purpose of this inquiry precisely which parts of the information in the documents collected or created for the purpose of the complaint proceedings were "personal information" of the [applicant], as that term is to be understood in PIPA. It is sufficient to say that there is a great deal of information in the documents that is not the [applicant's] personal information even though it was generated in consequence of his complaints. The latter includes information about the persons about whom he complained and their dealings with the [applicant], information about other third parties and their dealings with the [applicant], descriptions of various events and transactions, and correspondence and memos related to the handling of the complaints and other aspects of the complaint process. As well, the fact the [applicant] was the author of documents does not necessarily mean that the documents so authored were his personal information.

[para 19] In Decision P2011-D-003, former Commissioner Work held that the majority of information in a lawyer's file relating to an applicant will not be the personal information of the applicant. He said:

In my view, there is likely to be a close parallel between the type of information that is in the "client file" held by the law firm, and the type of information described in the paragraphs just quoted. The fact the file contains information related to one of the Applicants because he was the opposing party in the legal matters does not of itself make the information "about him". What is "about him" is information such as what he has said or expressed as an opinion, the fact he has done certain things or taken certain steps, details of his personal history, and personal details about him such as his name and other associated information such as where he lives or his telephone number. This is not meant to be an exhaustive list, but is provided to illustrate the type of information that is personal information, in contrast to information other than this type of information, that was generated or gathered by the law firm or its client for the purpose of pursuing the litigation. The point is that much or most of the latter may well not be the first Applicant's personal information even though it relates to a legal matter that involved him. An obvious example would be legal opinions given to the law firm's client as to how to deal with the litigation with the Applicant or associated legal matters. The way in which the law firm was advising its client and dealing with the legal matters may have affected the Applicants, but it was not "about" them in the sense meant by the definition of personal information in the Act. (This information would also be privileged, but the point here is that much or most of it would likely not be the Applicant's personal information within the definition of the term contained in the Act.) [my emphasis]

[para 20] In Order P2006-005, former Commissioner Work commented on the purpose of the access provisions in PIPA, which he contrasted with the access provisions in freedom of information legislation:

Because a primary purpose of FOIPPA 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 21] Section 27 of PIPA creates a duty in an Organization to make reasonable efforts to assist applicants who make access requests under section 24. 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 22] Section 24(1.1) permits an organization to take into consideration “what is reasonable” when responding to an access request. In addition, the extent to which an organization must make efforts to assist an applicant is qualified in section 27(1) by the phrase “as reasonably possible.” Section 24 also authorizes an organization to withhold certain kinds of information even if the information is the subject of an access request, such as information over which it is asserting legal privilege. Section 24 also requires an organization not to provide any personal information of an applicant that would reveal the personal information of another individual or that would reveal the identity of an individual who has provided a confidential opinion regarding an applicant.

[para 23] 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 noted that it may be reasonable for an organization not to provide such information to an applicant if the information is already known to the applicant or is meaningless, or would take a considerable amount of time and effort to locate and then sever from the 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 [...]

From the Applicant's submissions, I conclude that he is primarily seeking information relating to, or affecting, himself, as opposed to information that is about him. However, such information is not personal information within the terms of PIPA. At the same time, I acknowledge that there will be some information in the requested records that could be said to be factual information about the Applicant and I will address that information in

my analysis regarding the Organization's compliance with the terms of section 27 of PIPA.

[para 24] The Applicant argues in his first submission:

Syncrude Canada imposed a site ban in 2012. I was notified this by the security officer of the site ban when he entered my name into their system. I requested the document from her. She denied me a copy. I was advised to phone syncrude employees relations department to resolve the site ban. I phoned Syncrude employee relations spoke with her and again requested a copy of the site ban only to be denied once again. I then phone [an employee] of Syncrude law department. I requested the documentation of the site ban only to be denied once again. And then again I sent [an] email to [counsel for Syncrude].

All 4 [individuals] were fully aware of a site ban that was imposed in 2012. None personally know me yet all were capable to enter my name and quickly knew that there was a site ban and when it was imposed. Yet I have never been released a site ban nor any documentation showing a ban was imposed and by whom.

When the security guard entered my name and employee number I was able to see the site ban on the screen display and was denied a copy.

[para 25] In his second submission, the Applicant stated:

Syncrude Canada stated that my numerous request for my information was malicious and vindictive. Had Syncrude Canada released my full and complete personal file without any voids or large gaps of information I would not have to [have] made any request for information.

[para 26] The Applicant attached records to his request for inquiry. One letter, sent by the Organization's Law Department to him on July 12, 2010, indicates that the Applicant's employment had terminated by that date. The letter indicates that the Organization planned to institute a site ban if the Applicant did not take particular steps. The Applicant also included correspondence he received following the termination of his employment explaining why the site ban had been imposed. From these records, I infer that the site ban was not imposed until after the Applicant's employment had terminated.

[para 27] The Applicant is primarily concerned that the Organization has not met its duty to assist him as it has not provided all the information he is now seeking. He raised the issue of the site ban to support his position that the Organization has records containing his personal information in its custody or control that it has not yet provided to him.

[para 28] The Organization argues that the issues raised by the Applicant are unrelated to the issues for inquiry. It states

[The Applicant] has made numerous access requests to Syncrude for personal information since 2010, including the following: April 20, 2010 request for personal information from Syncrude for "all records from November 24, 2008 to current"; March 10, 2011 request for a "full and complete personal file"; March 2, 2012 request for "information that was released and also used pertaining to my application with Shell Canada Ltd." and any notes [an employee] took on March 31, 2010 regarding the "truck incident"; September 14 2012 for "information related to the drug test that was administered on the morning of March 26, 2010"; and April 2, 2014 for

additional documentation, including an overtime book and Information relating to his Bradford index (“April 2014 Access Request). The April 2014 Access Request is the subject of this Inquiry.

At all times, Syncrude has made every reasonable effort to assist [the Applicant]. Syncrude has, at all times, responded to his access requests in a timely manner, has conducted reasonable searches for all personal information requested and provided [the Applicant] with all of his personal information that is in Syncrude’s custody and control, subject to specified exceptions to access set out in the *Personal Information Protection Act*, SA 2003, c P-6.5 (“PIPA”).

[The Applicant] has also filed a number of complaints against Syncrude in relation to his access requests (Inquiries P1963 and P2166). The OIPC issued its decision (P2015-06) regarding Inquiries P1963 and P2166 on May 15, 2015 (the “Order”). Specifically, the Order considered [the Applicant’s] numerous complaints against Syncrude and found that Syncrude had made all reasonable efforts to locate records in response to [the Applicant’s] access requests with one minor exception. The OIPC required Syncrude “to search all other possible repositories for records responsive to [the Applicant’s] first access request for his personnel file and to provide [the Applicant] with any additional records located, subject to any exceptions to disclosure listed In the Act”.

Syncrude complied with the Order and completed another fulsome search of ‘other possible repositories for any other records in its custody and control. On July 2, 2015, Syncrude confirmed that it had conducted a further search of [the Applicant’s] personnel file and ‘all other possible repositories’.

[para 29] With regard to its search in this case, the Organization states:

[The Applicant] has raised new issues which are unrelated to the matter giving rise to the inquiry. In the April 2014 Access Request, [the Applicant] requested additional documentation, including an overtime book and information relating to his Bradford Index. Syncrude responded to the April 2014 Access Request on June 16, 2014 and advised [the Applicant] that the information requested had been previously produced to you in prior access request responses dated April 27, 2010 and July 29, 2011” (those responses were part of Inquiries P1963 and P2166). Syncrude further confirmed that other documentation requested by [the Applicant], including a page from an overtime book, no longer existed and was not in Syncrude’s custody and control. To assist [the Applicant], Syncrude again included documents that had been provided in a previous access request. In particular, Syncrude provided information relating to his absences. In addition, Syncrude provided [the Applicant] with the formula for calculating the Bradford Index (despite not being personal information under PIPA). Syncrude further addressed [the Applicant’s] specific questions regarding adjustments made to his Bradford Index and confirmed that “there were no adjustments made to your Bradford Index in Spring 2010”. Syncrude advised there were no additional documents in Syncrude’s custody and control which were responsive to [the Applicant’s] April 2014 Access Request.

[The Applicant] then submitted a written request to the OIPC for review of the April 2014 Access Request. The review concluded that Syncrude had assisted the Applicant and responded accurately and completely to his April 2, 2014 access request and therefore met its duty under section 27(1)(a)(i)(ii) of PIPA’. [The Applicant] then made a written Request for Inquiry. The issue in the Inquiry is whether Syncrude met its obligations required by section 27(1) of PIPA, in response to the Applicant’s April 2014 Access Request. However, [the Applicant] now seeks documentation from Syncrude regarding a site ban”, which is unrelated to the April 2014 Access Request and unrelated to the subject of this Inquiry. [The Applicant] acknowledges in his Request for Inquiry that such records are not part of his April 2014 Access Request as he stated “I realize that this [documents regarding “site ban”] was not part of my Bradford index request [April 2014 Access Request...” [the Applicant] is attempting to inappropriately change the scope of the Inquiry.

Permitting [the Applicant] to add a new issue to the Inquiry at this late point would be permitting an applicant to circumvent the process pursuant to PIPA, in particular sections 46(1), 47, 48(1) and the

discretionary provisions for investigation and mediation in sections 36(1) and (2)(a) and 49. Instead, an applicant would be permitted to proceed directly to the inquiry state with new issues which the Commissioner's officers have not had the opportunity to previously investigate or mediate and which the respondent was not given notice of or given the opportunity to previously respond to.

[para 30] I turn now to the issues the Applicant has raised for the inquiry.

Is the information that is the subject of the Applicant's access request, and requests for review and inquiry, personal information?

[para 31] As set out in the background, above, the Applicant requested information as to where an employee of the Organization obtained information about the Applicant's former partner's intentions to report the Applicant to the Organization.

[para 32] As he has described it, the information to which the Applicant refers is not his personal information. Rather, the requested information appears to be about the circumstances in which an employee of the Organization obtained information about the Applicant. As discussed above, "personal information" is defined in PIPA as information about an identifiable individual. Past orders, cited above, have held that information that relates to an individual, or affects an individual, is not personal information, unless the information is also *about* the individual. Information that is about how an employee learned information about the Applicant, would not be information "about the Applicant".

[para 33] As I find that information about where an employee of the Organization obtained information about the Applicant's former partner's intentions is not the Applicant's personal information, it follows that I find that PIPA does not authorize the Applicant to make an access request for the information. Further, it follows that I find that PIPA does not impose a duty on the Organization to search for or produce records with regard to this aspect of the Applicant's access request.

Has the Applicant made an access request under PIPA for the site ban information?

[para 34] As noted above, the Applicant states that the Organization produced records in the course of litigation regarding a decision it made to institute a site ban following the termination of his employment with the Organization. He reasons that because the Organization did not produce these records in response to his previous requests for a copy of his personal file, the Organization has not made reasonable efforts to assist him, within the terms of section 27.

[para 35] The Applicant's request is for records from his personal file. He makes this point in his request for review where he states "this is at least my fourth personal file request". In his reply submissions, the Applicant indicates that he is seeking "his full and complete personal file".

[para 36] A personal file is a file compiled by an employer relating to an individual employee and the employee's employment with the employer. The information regarding the Organization's decision to institute a site ban *postdates* the Applicant's employment

with the Organization. As a result, this information would not form part of the Applicant's personal file, given that he was not an employee when any records were created and there was, accordingly, no employment relationship between the Applicant and the Organization. In my view, it was reasonable for the Organization not to include the site ban records in its response, given that the Applicant confined his request to records in his personal file. To put the point differently, the site ban records were nonresponsive to the access request as it was framed, given that they would not be part of the applicant's personal file. As a result, I find that the site ban records do not constitute evidence that the Organization has failed to meet its duty to assist the Applicant.

Has the Organization conducted a reasonable search for responsive records?

[para 37] The Applicant also requested records documenting where he first reported a matter to his senior leader, where the senior leader "properly" reported the statement, his Bradford index rating, and absentee days and where the index was adjusted in the spring of 2010. He has also requested a copy of a page from an overtime book he signed on March 25 and 26, 2010.

[para 38] The Organization replies that the overtime book no longer exists and that it has provided information to the Applicant regarding his absences. The Organization also explained that the Bradford Index was not adjusted in the spring of 2010, and provided an explanation of how the Bradford Index was calculated. The Organization explained that it has searched in all possible repositories for information forming part of the Applicant's personal file, as it was directed to do in Order P2015-06 and that it has produced all responsive records to the Applicant in its custody or control.

[para 39] In Order F2015-06, an Adjudicator issued an order in relation to an April 20, 2010 access request made by the Applicant for his full and complete personal file. She concluded that the Public Body had conducted a reasonable search, but for drug testing information that had not yet been placed on the personal file. She said:

I was advised by the Organization that drug testing information is collected by the "Health Centre". The records collected by the Health Centre are in paper format and are eventually transferred to the P-File Centre where they are filed. There is no set timeline as to when this transfer of information or filing ought to happen. Given that there appears to be a significant lag in time between when a record is created and when it is filed in an employee's personnel file, in order to perform an adequate search for an employee's personal information, it is necessary for the Organization to search beyond its personnel file. In this case, the Organization did just that to an extent. However it should also have searched for any records being held by the Health Centre and any records held by the P-File Centre that had not been filed on the Applicant's personnel file. Because the Organization did not search these other two possible repositories, I cannot find that it performed an adequate search for responsive records.

[para 40] The Adjudicator made the following order at paragraph 44:

I find that the Organization failed to fulfill its duty under section 27 of the Act when, in spite of the lag between when a record is created and filed in an employee's personnel file, it did not search other repositories for responsive records. I order the Organization to search all other possible repositories for records responsive to the Applicant's first access request for his

personnel file and to provide the Applicant with any additional records located, subject to any exceptions to disclosure listed in the Act.

[para 41] On reviewing Order P2015-06, I note that the Organization's compliance with section 27 of PIPA with regard to its response to the Applicant's request for his "full and complete personal file" was before the Adjudicator. The Adjudicator directed the Organization to conduct a new search in relation to drug testing records, which the Organization had acknowledged were intended for the personal file, but had not yet been placed on it. The Adjudicator concluded that the Organization's efforts to locate responsive records were otherwise reasonable. While the Adjudicator's order is drafted in broad terms, it is clear from the body of the order that the Adjudicator found that the only records subject to the lag referred to in the order portion of her decision were the drug testing records held at the Health Centre and the P-File Centre.

[para 42] The Adjudicator did not address records regarding the Bradford Index, stating:

In the Applicant's submissions, he argues that the Organization failed to release the correction to his "Bradford Index". It is my understanding from reading both the Applicant's and Organization's submissions that the "Bradford Index" issue is the subject of another Request for Review and does not form part of this inquiry. Therefore, I will not make any findings regarding this particular record.

I will address the Bradford Index records below.

[para 43] I find that records documenting where the Applicant first reported a matter to his senior leader, where the senior leader "properly" reported the statement, his absentee days, and a copy of a page from an overtime book he signed on March 25 and 26, 2010 are all records that, if they exist, would form part of the Applicant's "full and complete personal file". As a result, these records were addressed in the Adjudicator's finding in Order P2015-06 that the Organization conducted a reasonable search for the full and complete personal file, except for the drug testing records. Again, the full and complete personal file would not contain additional documents following the termination of the Applicant's employment, other than the addition of the drug testing records to which Order P2015-06 refers.

[para 44] The Applicant has listed records he feels that should have been part of the personal file that were not expressly discussed in Order P2015-06. However, this does not change the fact that these records, if they existed, would be part of the personal file that was the subject of Order F2015-06, in which the Adjudicator reviewed the adequacy of the Organization's search for the entire personal file. As the records the Applicant now lists are not drug testing records, they cannot be part of the portion of the order that required a new search.

[para 45] Under section 53 of PIPA, an order of the Commissioner (or her delegated adjudicator) is final. As a result, it is not open to a party to obtain new decisions about a record when the record has already been the subject of final decision of this office. I accept that the Applicant may not have made specific arguments to the adjudicator

regarding the records he now seeks; however, that does not change the fact that a final decision was made regarding the search for the full and complete personal file, in which these records, if they existed, would have been located at the time of the final decision.

[para 46] If I were to issue an order in relation to the Organization's search for records the Applicant believes are part of his personal file (other than drug testing records), I would be allowing the applicant to obtain a new decision by making different arguments, even though the issue has already been finally decided by an order of this office.

[para 47] To conclude, I find that the question of whether the Organization's search was reasonable in relation to:

- records documenting where the Applicant first reported a matter to his senior leader,
- records documenting where the senior leader "properly" reported the statement,
- records documenting absentee days, and
- a copy of a page from an overtime book he signed on March 25 and 26, 2010,

has already been decided in a final order of this office. I therefore lack jurisdiction to address these issues further.

Bradford Index

[para 48] Finally, I turn to the issue of the Bradford Index and the Applicant's request for records relating to the Bradford Index and changes made to it in March 2010.

[para 49] The Organization states that it addressed the Applicant's specific questions regarding adjustments made to his Bradford Index and confirmed that there were no adjustments made to his Bradford Index in the spring of 2010. Syncrude also states that it advised the Applicant that there were no additional documents in Syncrude's custody and control which were responsive to [the Applicant's] April 2014 Access Request.

[para 50] I find the Organization's response to be reasonable, and I note that there is no evidence before me that would contradict the Organization's position that it did not adjust the Applicant's Bradford Index at the relevant time, and so records responsive to his aspect of the Applicant's request would not exist. Moreover, I note that the Organization took the additional step of informing the Applicant that it did not adjust the Bradford Index and does not have responsive records. I conclude that the Organization complied with its duty under section 27 of PIPA in its response to the Applicant regarding the Bradford Index.

III. ORDER

[para 51] I make this Order under section 52 of the Act.

[para 52] I confirm that the Organization had met any duties to the Applicant imposed by PIPA.

Teresa Cunningham
Adjudicator