

# Can You Charge Employees a Fee to Access Their Payroll Records?



Privacy laws like the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) require covered organizations to provide individuals access to their own personal records. That includes letting your employees get copies of the payroll records you keep on them if the employee or somebody representing the employee requests the information. The costs of compiling and photocopying all of the information an employee requests can be significant. This raises an important question: Can you charge a fee to process an employee's request for personal information? Under provincial privacy laws in Alberta, BC, and Québec, the answer is no. However, the federal PIPEDA rule which governs employment relations in other jurisdictions is less clear. Principle 4.9.4 of PIPEDA requires an organization to provide access "at minimal or no cost" to the individual. Is the imposition of a processing fee a minimal cost allowed under Principle 4.9.4? Here are 2 cases in which the agency that hears complaints under the privacy laws came out on opposite sides of this question.

## **EMPLOYEE PAYROLL RECORD ACCESS FEE CHARGE IS ALLOWED**

**Situation:** A lawyer representing a former employee writes to a company to request a copy of his client's file. The file contains more than 1,000 pages. So, the company imposes a \$0.20 per page fee to compile and photocopy the information, plus a \$20 storage fee—\$245 in total. The lawyer claims that charging fees violates PIPEDA and files a privacy complaint with the Office of the Privacy Commissioner of Canada.

**Ruling:** The Commissioner rules that the company can charge the \$225 processing fee but not the \$20 storage fee.

**Reasoning:** According to the Commissioner, PIPEDA doesn't require organizations to provide copies of personal information. It just requires them to provide **access** to that personal information. The Commissioner also finds that the \$0.20 per page processing fee is "minimal," noting that it was the standard fee charged by government organizations. But the Commissioner has trouble stomaching the \$20 storage fee. Storing files on employees is a cost that the company would have incurred anyway, regardless of whether somebody filed a request for the information under PIPEDA, the Commissioner explains.

[PIPEDA Case Summary #354](#), *Fees for access questioned*, 2006 CanLII 51516 (PCC).

## EMPLOYEE PAYROLL RECORD ACCESS FEE CHARGE IS NOT ALLOWED

**Situation:** An employee suing his former employer asks the company to provide all the information it had about him at the time of his firing. The company complains that the request is “sweeping” and that identifying all of the relevant information will require a “forensic audit.” The company demands that the employee pay about \$1,500—the amount it estimates it will cost to process the request. The employee files a complaint with the Privacy Commissioner.

**Ruling:** The Commissioner rules that the \$1,500 fee is a violation of PIPEDA.

**Reasoning:** Unlike the \$0.20 per page processing fee in the other case, the fee in this case isn’t “minimal,” according to the Commissioner. PIPEDA doesn’t define “minimal,” the Commissioner acknowledges. However, she continues, the “implication is that the fee should be a token one.” And the \$1,500 the company proposed to charge the employee was far from a token fee. So, the fee violated Principle 4.9.4 of PIPEDA.

[PIPEDA Case Summary #285](#), *Company refuses former employee’s request for access*, [2004] CanLII 52857.