



# DRAFT REPORT OF FINDINGS

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## *Personal Information Protection and Electronic Documents Act (“PIPEDA”)*

*Investigation # PIPEDA-039834*

*Investigation into Synergy Credit Union Compliance with PIPEDA*

Date: 17 March 2023

## Overview

The complainant alleged that records were missing from the response to her access request she submitted to the respondent, Synergy Credit Union Inc. (“Synergy” or “Respondent”) and that a portion of the documents she received were unreadable. She also alleged that the respondent collected, used and disclosed a Facebook post she made in a private group. She further raised several concerns in relation to Synergy’s privacy practices that our Office investigated under the accountability and openness principles.

During our investigation, we found that Synergy initially failed to provide the complainant with a complete response to her access request as demonstrated by the missing records later found and the audio recordings likely available but not retrieved at the time of the request. Furthermore, certain of the alleged unreadable records could have been provided in a different format to allow for greater readability. Considering Synergy has since provided the complainant with access to all her personal information that is still available, we consider the matter to be **well-founded and resolved**.

Our investigation also revealed that Synergy collected more personal information than necessary for its purposes when it collected a Facebook post from the complainant. Synergy indiscriminately collected the complainant’s Facebook post for an unidentified purpose and without authority. During our investigation Synergy agreed to delete the Facebook post and we therefore consider this issue to be **well-founded and resolved**.

Finally, our investigation revealed additional deficiencies on how Synergy handles personal information. For instance, Synergy recorded phone calls to its contact center without the caller’s knowledge or consent. Synergy’s privacy policy was quite short and lacked, at a minimum, information on the collection, use and disclosure of personal information gathered on social media. In the course of the investigation, our Office explained to Synergy the value of having an external privacy audit, which Synergy undertook prior to the conclusion of the investigation. The external consultant hired by Synergy provided a gap analysis and an action list. The respondent has committed to implement all the corrective measures identified by the external audit by the end of 2023. With the understanding that Synergy will implement all corrective measures identified by the consultant, we deemed this issue to be **well-founded and conditionally resolved**.

## Background

1. The complainant is a former employee of Synergy Credit Union Inc. (“Synergy” or the “respondent”). She submitted a complaint against Synergy to the Saskatchewan Human Rights Commission in 2011 and the parties reached a settlement in 2014. In 2016, the complainant was subsequently involved in a mortgage dispute with Synergy, and she filed a second complaint to the Saskatchewan Human Rights Commission, but the complaint was eventually dismissed.
2. In December 2019, the complainant submitted an access request to Synergy for all information held about her by Synergy, which included information on her employee file, member file, mortgage loan and any internal communications about her. Synergy provided the complainant with an itemized response of her records, which included an explanation for the records that were withheld.
3. Following the response she received, the complainant alleged that records were missing from Synergy’s initial response. She expressed her dissatisfaction with the response to her access request in multiple correspondences with the respondent. Synergy performed a second search of its records and confirmed that it had provided all the information requested in its initial response before ending communications with the complainant.
4. Unsatisfied with Synergy’s response, the complainant filed the present complaint with our Office. In her complaint, she alleges that Synergy failed to provide her with a complete response to her access request and raised several other allegations. With the complainant’s agreement, we narrowed down the complaint to the following three (3) issues:
  1. Whether the complainant obtained complete access to her personal information in an understandable format?
  2. Whether Synergy collected more personal information than necessary for its purposes, when it collected a Facebook post made by the complainant on a private Facebook page?
  3. Whether Synergy has implemented effective policies and practices to give effect to the principles listed in Schedule 1 of the *Personal Information Protection and Electronic Documents Act* (“PIPEDA” or “the Act”)?

## Analysis

### Issue 1: Did the complainant obtained complete access to her personal information in an understandable format?

5. In our view, and for the reasons outlined below, Synergy initially failed to provide the complainant with access to all her personal information in an understandable format.
6. Principle 4.9 of Schedule 1 of the Act states that an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information upon request. Principle 4.9.4 further states, in part, that the requested information shall be provided or made available in a form that is generally understandable.
7. The complainant alleges the response she received to her December 2019 access request was incomplete as it was missing records such as her complaint to the Saskatchewan Human Rights Commission against Synergy dated 10 November 2011, a direct complaint she made to Synergy dated 19 October 2016, audio recordings of calls she placed or received from Synergy from 2014 to 2019, and proof of the complainant's membership (which included the membership card and Profit Shares account). The complainant also alleges that a portion of the documents she received in response to her access request, namely screenshots from Synergy's banking system, were of such poor print quality that they were unreadable.
8. In response to the complaint, Synergy initially asserted that it had provided the complainant with all of her personal information in their possession; clarifying that certain records were withheld under the solicitor-client and litigation privilege exemption of the Act<sup>1</sup>. However, in the course of our investigation, Synergy later found, and provided the complainant with, the missing information about the complainant's Human Rights complaint and her 2016 complaint to Synergy.
9. Regarding the alleged missing audio recordings, Synergy represented to our Office that they do not have any audio recordings of the complainant.

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<sup>1</sup> Section 9(3)(a) of the Act states that an organization is not required to give access to personal information only if the information is protected by solicitor-client privilege or the professional secrecy of advocates and notaries or by litigation privilege.

10. Synergy provided additional details on their handling of audio recordings which we reviewed. Only phone calls made to the member contact center are recorded and retained for a period of 90 days. After that period, the phone calls are automatically deleted unless they are flagged and escalated for fraud-related concerns. Synergy further represented that audio recordings are not itemized or catalogued in a way that would allow for the retrieval of specific calls. Synergy explained that they did not have the technology to locate the audio recordings in question.
11. We accept that, at the time of the access request, audio recordings from 2014 to September 2019 were no longer available due to Synergy's 90-days retention period. However, the complainant confirmed that she did place phone calls to the member contact center between October 2019 and December 2019. These audio recordings should have been made available to the complainant given Synergy's retention period. Where those recordings were not flagged for escalation, they were deleted after the 90-day retention period such that Synergy no longer has access to them. While we accept that the missing call recordings cannot be provided at this time, we strongly encourage Synergy to implement procedures to itemize and identify audio recordings in their possession to facilitate the retrieval of such personal information upon request.
12. Regarding the proof of the complainant's membership account, Synergy represented that the complainant was provided with a copy of her October 2007 membership application on January 21, 2020, in response to her original access request. Synergy stated that they have since converted their paper files to electronic files and original paper copies of membership applications were destroyed. As for the membership card the complainant was asking for, they were not converted to an electronic format as the original account agreement contains the member's signature and is accessible electronically to verify the member for in-person transactions.
13. As for the proof of the complainant's Profit Shares account, Synergy asserted that the complainant does not own this type of account, and therefore Synergy cannot provide such record. Synergy explained having provided this explanation to the complainant in response to her inquiry. We accept that Synergy could not provide these records to the complainant in response to her access request. We note that the question of whether or not the complainant has a profit shares account remains at issue, however, our Office cannot opine on this issue as this is not a privacy matter.

14. Finally, with regards to the alleged unreadable documents, our Office reviewed the documents at issue and confirmed that the content of some of the pages was of poor print quality and not readable. Upon our request, Synergy provided the complainant with two subsequent packages, which were still unreadable.
15. Synergy later explained that it cannot provide better quality copies of certain of the documents as it does not have the original version of these documents. A portion of the unreadable documents were screenshots from a previous IT system that is no longer in use and would not be available in any other format than the printed copies.
16. As for the other portion of the unreadable records, they were screenshots from Synergy's current banking system that is still in use. For those records, Synergy explained having offered the complainant the option of viewing the records in-person. The complainant explained having declined the offer in part due to the risks posed by the COVID-19 pandemic at the time of Synergy's offer, and in part because the complainant understood she would have been given access to similar copies of the documents she had received, which would still be unreadable.
17. We accept that Synergy could not provide better printed quality of the screenshot of their obsolete IT system. However, for the other portion of the unreadable documents (i.e., screenshots of Synergy's current banking system), it appears that where Synergy provided the option to view the records in person, it did not clearly communicate to the complainant that she could view the banking system pages on screen and not as printed copies only. As the information remains available, Synergy offered the complainant to view the records in person; clarifying access to the actual IT system views would be provided (vs printed copies). The complainant indicated considering the offer, explaining certain measures would likely have to be put in place for her visit because of ongoing litigations with certain employees of Synergy.
18. Ultimately, we are of the view that Synergy failed, at least initially, to provide the complainant with a complete response to her access request as demonstrated by the missing records later found and the audio recordings likely available but not retrieved at the time of the request. Also, considering that certain unreadable records could have been provided in a different format to allow for greater readability, we find Synergy to be in contravention of Principles 4.9 and 4.9.4 of Schedule 1 of the Act. However, considering Synergy has since provided the complainant with access to all her personal information that is still available, we consider the matter resolved. As such, we find this issue to be **well-founded and resolved**.

## **Issue 2: Did Synergy collect more personal information than necessary for its purposes when it collected a Facebook post from the complainant?**

19. We find that Synergy indiscriminately collected a Facebook post that the complainant made to a private Facebook group, for unidentified purposes and without authority.
20. Principle 4.4 of the Act states that the collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Furthermore, Principle 4.4.1 of Schedule 1 of the Act states that an organization shall not collect personal information indiscriminately.
21. When the complainant reviewed the records she received in response to her access request, she noted that an employee collected a Facebook post she made to a private Facebook group. She further noted that this information was later included in her employee file and was shared with other employees, Board members of Synergy Credit Union and the Saskatchewan Human Rights Commission.
22. We reviewed the social media post at issue. It was about Synergy's service charge whereby the complainant made a negative comment on Synergy's service fees.
23. Synergy represented to our Office that their marketing manager is frequently alerted by members, staff members, relatives of staff members or personal/business acquaintances to social media posts that mention the organization. Synergy also explained they monitor social media comments to ensure that members have the correct information on their product or service.
24. Synergy also represented it could not explain for what reasons its employee collected the Facebook post since the employee that collected it is no longer employed by the organization. Synergy assumes the employee potentially collected this information for the purposes described above. As a resolution to the matter, Synergy agreed to destroy the personal information collected and remove the social media post from the complainant's employee file.
25. Considering that Synergy assumed that the collection of the Facebook post was for quality assurance purpose but could not provide the actual purpose for the collection of the complainant's information, we find that Synergy indiscriminately collected the complainant's personal information in contravention of Principle 4.4 and 4.4.1 of Schedule 1 of the Act. However, Synergy now having confirmed deletion of the information, we consider the matter resolved. As such, we find the issue to be **well-founded and resolved**.



### **Issue 3: Did Synergy implement effective policies and practices to give effect to the principles listed in Schedule 1 of the Act?**

26. In her complaint to our Office, the complainant listed several deficiencies on how the respondent handled her access request and how it handles personal information in general. For instance, the complainant alleged that the lack of complete response to her access request was symptomatic of a broader issue with Synergy's processes for handling access requests. The complainant also raised with our Office that Synergy recorded phone calls made to its contact center without the caller's knowledge or consent. She also alleged that the respondent failed to disclose its retention period specifically regarding audio recordings and employees' files.
27. Pursuant to discussions between our Office and the complainant, we scoped the investigation to look at these deficiencies as potential evidence of the respondent's lack of accountability and openness.
28. Principle 4.1.4 of Schedule 1 of the Act states that organizations shall implement policies and practices to give effect to the principles of the Act including communicating to staff information about the organizations policies and practices and developing information to explain these policies and procedures.
29. Principle 4.8 of Schedule 1 of the Act further states that an organization should make readily available to individuals' specific information about its policies and practices relating to the management of personal information.
30. In addition to the concerns raised by the complainant, during our investigation, we noticed that the retention periods for the various types of personal information collected by Synergy were not documented such that they could not be shared with employees or clients. For instance, Synergy's retention period for audio recording was not generally communicated to employees such that they were not able to address related requests from clients. In analysing issue 2 above, we also noted that the respondent's privacy policy was quite short and lacked, at a minimum, information on the collection, use and disclosure of personal information gathered on social media.
31. We raised the complainant's allegations and our observations with Synergy.



32. Regarding the recordings of phone calls without knowledge or consent, Synergy confirmed that phone calls made to and from its Member Contact Centre are recorded and that, at the time of the request, there was no message to alert clients that calls could be recorded. In response to our inquiry, Synergy added, in June 2020, a recorded message that advises callers that any call made to or from the Member Contact Center may be recorded and monitored for training or quality assurances purposes.
33. With regard to the documentation of its retention schedule, Synergy represented that it had retention periods in place but that they did not generally communicate them with clients. Where the complainant had concerns regarding the retention period of her employee file which contained sensitive medical information, Synergy explained that the retention period for employees' files is ten years but in the specific case of the complainant, her employee file had been kept longer due to ongoing litigation. To address the complainant's concern regarding the ongoing retention of sensitive medical information found in her employee file, Synergy agreed to destroy that specific information from her employee file.
34. In discussions with Synergy, our Office explained the value of an external privacy audit, which Synergy undertook prior to the conclusion of our investigation. The external consultant hired by Synergy provided a gap analysis and an action list. In response to the external audit, Synergy has since added to their privacy code a section addressing social media and they have deleted all social media post that had been saved prior. Synergy provided their staff with guidelines on the appropriateness of the collection of social media posts. Furthermore, Synergy, developed a Privacy Policy and employees are now receiving annual training on their obligations under PIPEDA for the handling of Synergy's members' and employee's personal information. Synergy also implemented a destruction and retention program.
35. Synergy provided to our office an itemized action plan and confirmed its intent to implement the corrective measures identified by the external consultant by the end 2023. With the understanding that Synergy will implement all corrective measures identified by the consultant, we deemed this issue to be **well-founded and conditionally resolved**.