

NEWFOUNDLAND AND LABRADOR
OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER

REPORT 2006-013

College of the North Atlantic

Summary:

The Applicant applied to the College of the North Atlantic (“CNA”) under the *Access to Information and Protection of Privacy Act* (the “ATIPPA”) for access to records which reference him from within a group of e-mails which were compiled by CNA in response to a previous search requested by the Applicant’s spouse. The Applicant also asked that any responsive records which also reference his spouse not be severed. CNA provided access to a number of records as a result of this request, but the Applicant applied to the Commissioner for a Review. The Applicant also filed a separate Request for Review stating that CNA had not notified him of its intention to apply an extension to the time limit for issuing its response. The Commissioner combined both of these Reviews in issuing this Report. During the process of this Review, additional records were disclosed by CNA to the Applicant, some during informal resolution efforts coordinated by this Office, while others were disclosed voluntarily by CNA during the formal investigation phase prior to the release of this Report. The Commissioner found that once these additional records were disclosed, CNA had properly disclosed all e-mail records to which the Applicant was entitled. The Commissioner also found that CNA had erred in not notifying the Applicant of its intention to apply an extension to the time limit for issuing a response. Finally, the Commissioner also commented on some of the other issues of concern raised by the Applicant in his submission.

Statutes Cited:

Access to Information and Protection of Privacy Act, S.N.L. 2002, c. A-1.1, as am, ss. 2(o), 11, 16, 20(1)(a), 21(a), 22(1)(a), 30(1), 49(1), 50, 60.

Authorities Cited:

Newfoundland and Labrador OIPC Report 2005-005 (2005).

Other Resources Cited:

- *Access to Information and Protection of Privacy Act Policy and Procedures Manual*, Access to Information and Protection of Privacy Coordinating Office, Department of Justice, updated September, 2004.
- McNairn, Colin. *Government Information: Access and Privacy*, Toronto: Carswell (1992).

I BACKGROUND

- [1] On 14 February 2006, the Applicant submitted an access to information request to the College of the North Atlantic (“CNA” or the “College”) under the *Access to Information and Protection of Privacy Act* (the “ATIPPA”) with the following request:

I am requesting all personal records which reference [Applicant] or any part of that name or reference me as the spouse, husband or family member of [Applicant’s spouse] from a specific group of emails. The specific group of emails is identified by [CNA Access & Privacy Coordinator] in correspondence dated May 10, 2005 (attached) to [Applicant’s spouse], Re: Access request. In particular I am referring to the 2700 emails which were the results of a search requested by [Applicant’s spouse]. This request included a search of emails maintained on the server and archived emails of [CNA employee A]. A later search was conducted for the emails of [CNA employee A] and I am including those emails in this request.

I am also requesting that any of the records which reference me and also reference personal information regarding [Applicant’s spouse], that the information regarding [Applicant’s spouse] not be severed. I am attaching a letter from [Applicant’s spouse] granting CNA permission to release these records.

- [2] On 21 March 2006 an e-mail exchange was initiated with CNA by the Applicant, advising that he had not yet received a response to his request. The Applicant was advised by CNA that CNA had intended to notify the Applicant that it would be extending the time limit for a response by an additional 30 days, under authority of section 16 of the *ATIPPA*.
- [3] On 22 March 2006 the Applicant forwarded a Request for Review to this Office alleging that “CNA did not respond within the timelines of the *ATIPPA*.”
- [4] On the same date, CNA sent a letter to the Applicant advising that the request had been granted in part, but that 57 e-mail records were being withheld under four exceptions as outlined in the *ATIPPA*:

20. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

(a) advice or recommendations developed by or for a public body or a minister

21. *The head of a public body may refuse to disclose to an applicant information*

(a) that is subject to solicitor and client privilege.

22. *(1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to*

(a) interfere with, disclose information about or harm a law enforcement matter;

30. *(1) The head of a public body shall refuse to disclose personal information to an applicant.*

[5] The Applicant then forwarded a second Request for Review to this Office, stating that

I am requesting a review of the severing of records by CNA, and a review of the supply of records pursuant to my February 14 2006 request.

[6] Attempts to resolve these Requests for Review by informal means were not successful, although some additional records were released to the Applicant by CNA during this stage. On 11 May 2006 the Applicant and CNA were notified that these files had been referred to the formal investigation process and each was given the opportunity to provide written representations to this Office under authority of section 47 of the *ATIPPA*. Both parties chose to provide submissions, which are summarized in this report. During the formal investigation phase of this Review, CNA also released additional records in response to issues raised by the Applicant in his submission.

II PUBLIC BODY'S SUBMISSION

[7] A formal submission from CNA on these matters was forwarded to this Office on 16 May 2006. In it, the Access & Privacy Coordinator for CNA (the "Coordinator") first addresses the Request for Review filed by the Applicant on 22 March 2006 in which the Applicant alleges that CNA failed to respond within the timelines set out by the *ATIPPA*. The Coordinator explains that

he began to process the Applicant's request immediately upon receipt, but shortly thereafter he received records relating to three other requests for access whose deadlines were prior to the deadline for the Applicant's request. He says he stopped working on the Applicant's request in order to first complete the other three. The Coordinator indicates that he believed he had extended the deadline for responding to the Applicant's request by an additional 30 days, leaving enough time to complete all of the access requests he was processing. The Coordinator says that on 21 March 2006 he received an e-mail from the Applicant indicating that he had not yet received the records responsive to his request, and it was then that the Coordinator looked at his initial letter to the Applicant acknowledging receipt of the request, and realized that he had neglected to notify the Applicant of his intention to extend the time limit.

[8] The Coordinator says that he had finished processing the other three requests on 16 March 2006, after which time he continued to process the Applicant's request. He says that he was very close to completion when he received the Applicant's e-mail on 21 March 2006, and he sent the records to the Applicant on 22 March 2006.

[9] CNA also references in its submission a point which was raised in the course of this Review in relation to e-mail attachments. CNA notes that the Applicant was informed in the letter of response to the request that attachments had not been searched as separate records "and that if he was mentioned in the attachment, but not in the associated email, then it would not have been returned through the regular search."

[10] CNA notes that the Applicant was dissatisfied with this statement. The Applicant made his position clear on this matter in communications with CNA and this Office subsequent to filing his Requests for Review. During informal resolution efforts conducted by this Office, the Applicant advised that he wished the attachments to be searched manually. CNA notes that after some deliberation, it was agreed that a manual search of attachments would be undertaken. CNA says that this search resulted in the disclosure of several additional records. CNA also notes that additional records were released to the Applicant on 27 April 2006 during continued informal resolution efforts coordinated by this Office as part of these Reviews. CNA says that to the best of its knowledge the Applicant now has all records responsive to his request to which he is

entitled. CNA notes that it complied with all suggestions put forth by my Office during the informal resolution process.

- [11] CNA notes in its submission that following this process, the Applicant remained dissatisfied and requested that these matters proceed to a formal review. CNA reiterates its belief that it has provided to the Applicant all records to which he is entitled,

but can only assume the applicant has a record or records that he believes to be responsive to his request that were not provided. Past experience of doing searches using our email system confirms that it is possible to miss records. If he can provide me with information showing a record or records were missed, I would be happy to explore further to see if an error was made in searching or vetting the records prior to release.

It has always been my intention to assist this and all other applicants to the best of my ability. As the OIPC is aware, there are limitations to the college's email system as it is currently configured that make email searches difficult. When the applicant refuses to provide you with reasonable search criteria, this makes the job of locating all emails responsive to the request that much more difficult.

- [12] On 8 June 2006 CNA forwarded to the Applicant several pages of e-mails in addition to those which it had previously released to him. A copy of this correspondence was also sent to this Office. CNA advised the Applicant that the decision to release this additional material had come about after staff with this Office raised with CNA, during the formal investigation process, some of the particular concerns of the Applicant with reference to additional records to which he believed he was entitled.

III APPLICANT'S SUBMISSION

- [13] On 22 May 2006 the Applicant forwarded a formal submission to this Office outlining issues of particular concern to him in this Review. Only those portions which I believe are relevant to the substance of this Review will be outlined here.

[14] The first issue discussed by the Applicant is the failure of CNA to respond to his request within thirty days. The Applicant states that it was only after he e-mailed CNA on 21 March 2006 that the CNA Access & Privacy Coordinator responded, indicating that he had mistakenly thought that the Applicant had been notified in previous correspondence that the time limit for responding had been extended by thirty days. The Applicant then says in his submission, "I assume that if I had not emailed CNA looking for the already late response then I would not have had any contact from CNA for some time."

[15] Another issue addressed by the Applicant in his submission involves efforts by CNA to search for attachments. The Applicant says that in correspondence to him dated 22 March 2006, CNA indicated that if the Applicant was only referenced in an attachment and not in the body of the e-mail to which the attachment was appended, then an electronic search would not identify the attachment as a responsive record. Even though this issue was eventually resolved during informal resolution efforts coordinated by this Office, the Applicant wished to note this particular issue as one of concern for him.

[16] With respect to specific e-mail records, the Applicant outlined his belief that he may not have received all of the records to which he is entitled. One such series of e-mails involved a bank account which was jointly held by he and his spouse. I will refer to this as "Record 1." The Applicant notes that even if he is not named in the e-mail, he should be entitled to any record which references his financial status as per the definition of personal information found in section 2(o) of the *ATIPPA*:

2(o) "personal information" means recorded information about an identifiable individual, including

(vii) information about the individual's educational, financial, criminal or employment status or history

[17] The Applicant provided specific reference in his submission to a string of e-mails referencing this subject matter, and asked that these and any other associated e-mails and attachments be reviewed in order to determine whether he was entitled to the disclosure of additional records. Also in relation to the definition of personal information noted above, the Applicant requested

that this Office recommend the release of any record which references him in the context of criminal status or history. Although the Applicant indicated in his submission that he is not aware that there is any such reference in writing, he alleges that “repeated references have been made by a senior CNA officer, while under oath” to such matters.

[18] On another matter, the Applicant, in his submission raised questions about the application by CNA of section 22(1)(a):

22. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to

(a) interfere with, disclose information about or harm a law enforcement matter

[19] The Applicant notes in his submission that he engaged in correspondence with CNA during the process of his request and review in which he asked CNA to identify “the specific law enforcement matter that is referenced by CNA as being sufficient reason to withhold a record.” The Applicant indicated in his correspondence, that it is important that the College is able to say what specific law enforcement matter is being referenced, in order for the Applicant to know whether and how to respond to the assertion that certain information of that nature can be withheld from him. The Applicant stated that identifying any such law enforcement matter would also establish a time frame and any other relevant parameters in order to further assess the use by CNA of that section of the *ATIPPA*.

[20] The Applicant acknowledges in his submission that this series of correspondence between he and CNA resulted in the statement from CNA on 23 May 2006 that the law enforcement matter in question is his termination of employment by CNA, including any subsequent actions taken by either he or the College. The Applicant further acknowledges that he was advised by CNA that any record citing section 22 as an exception to access in this matter is also being withheld under section 21 (solicitor-client privilege).

[21] Another concern raised by the Applicant in his submission involves a particular e-mail record which was supplied to his spouse from among the 2700, but not to him, even though there is a reference to both the Applicant and his spouse within the e-mail record. I will refer to this later in the Report as “Record 2.” This e-mail had previously been of concern to the Applicant’s spouse, as it also was not initially disclosed to the Applicant’s spouse during her previous request. The Applicant explains his understanding of the matter in that there were two e-mails from the 2700 which had a common beginning, but later split into two different directions. In an e-mail provided to this Office as part of the Applicant’s submission, which was originally sent by CNA to the Applicant’s spouse, CNA explained that in sorting duplicate records involving strings of e-mails from among the 2700 e-mails originally identified using an electronic search, CNA accidentally deleted the wrong thread. It was further shown in the Applicant’s submission that once the problem was pointed out by the Applicant’s spouse (who was the Applicant at the time), CNA apologized, corrected the error and disclosed the record (severing personal information as per section 30) to the Applicant’s spouse, (who, again, was the Applicant at that time).

[22] Be that as it may, the same problem arose again with the same e-mail record in this Applicant’s case as it did in his spouse’s access request, in that the same e-mail was again not provided to the Applicant. The Applicant notes that if this is accepted as a reasonable explanation, one would have to assume that the e-mail in question was returned in the initial electronic search for his spouse which yielded the 2700 e-mail records, and because it relates to both he and his spouse, it should have been released to him as part of this access request, at least in part.

[23] The Applicant raises a number of questions as a result of this particular point, including the following: Did the College remove all e-mails which were sent to, from, or were cc’d to his spouse before searching the 2700 records in response to his request? Did the College conduct a search only after an initial vetting process to remove duplicates? The Applicant also questions in his submission whether this e-mail was ever part of the 2700, a notion he considers to be disturbing, given that his spouse was advised by CNA at the time of her request that CNA had gone to the employee’s archive and retrieved the correct thread once the mistake was pointed out.

[24] The Applicant raises four additional possibilities in this case:

1. The email is part of the 2700 but [CNA Access & Privacy Coordinator] did not search the entire 2700, as per my request.

2. In the process of vetting of the 2700, [CNA Access & Privacy Coordinator] repeated his previous error.

3. The email is not part of the 2700 records because [employee's] emails were not thoroughly searched as per [Applicant's spouse's] request.

4. The email is not part of the 2700 because it was removed prior to the search being conducted but it was later imported back into [employee's] archives where it was located on September 6th.

[25] The Applicant also listed two additional e-mails which his spouse had received in her initial access request, but which were not provided to him as a result of his access request. These will be discussed later in this report, referenced as records "3" and "4." Record 3 is an e-mail which references the Applicant and was dated in May 2003, and it contains an originating e-mail sent on 12 May and a response sent on 13 May. The Applicant indicated that he already has a copy of the originating e-mail from 12 May, but the response sent on 13 May was withheld from him. Record 4 is an e-mail which was sent by the Applicant's spouse, dates from August 2004, and contains a reference to the words "my family." The Applicant contends in his submission that he should have access to these e-mails. The Applicant says that "the email appears to be in a chain and the top portion of the chain is missing as well."

IV DISCUSSION

[26] The only records which are now subject to this Review are those which CNA has not already released. I will begin this section by briefly reiterating the exceptions claimed by CNA. The first is section 20, which gives a public body the discretion to withhold advice or recommendations:

20. (1) The head of a public body may refuse to disclose to an applicant information that would reveal

(a) advice or recommendations developed by or for a public body or a minister

[27] I undertook an extensive analysis of section 20 in my Report 2005-005, in which I examined definitions of terms, Commissioner's Reports from other jurisdictions, as well as relevant court decisions. While I do not intend to repeat that analysis here, I do accept for the purpose of this Report, as I did in Report 2005-005, the interpretation found in the *ATIPPA Policy and Procedures Manual*, which is produced by the Access to Information and Protection of Privacy Coordinating Office of the Provincial Department of Justice. Section 4.2.3 of the Manual says that:

Section 20 is intended to allow full and frank discussion of policy issues within the public service, preventing the harm which would occur if the deliberative process were subject to excessive scrutiny, while allowing information to be released which would not cause real harm.

[28] I am satisfied that the use by CNA of section 20 in withholding some of the e-mail records responsive to the Applicant's request is consistent with a reasonable interpretation of section 20 as set out in the *ATIPPA* and as summarized in the *ATIPPA Policy and Procedures Manual*.

[29] The second exception applied by CNA gives it the discretion to withhold information which would qualify as solicitor – client privileged.

21. The head of a public body may refuse to disclose to an applicant information
(a) that is subject to solicitor and client privilege.

[30] Solicitor-client privilege is a concept borne out of the common law, which is found in the *ATIPPA* as well as equivalent access legislation in other jurisdictions across Canada. Generally speaking, it is meant to protect communication between a lawyer and his or her client for the purpose of seeking or giving legal advice. Further, McNairn in *Government Information: Access and Privacy* expresses an additional aspect of this form of privilege as follows:

Solicitor-client privilege is intended to facilitate full and frank consideration and discussion of the circumstances on which legal advice is sought, so that the advice may be informed and effectual, and to facilitate the preparation of a case for trial.

[31] It is irrelevant whether the communication takes place between an “in-house” legal counsel or someone who is contracted by a public body to serve such a role, as long as such communication between the lawyer and the public body takes place within the context of a solicitor-client relationship. In the case of the records subject to this Review, I believe that CNA has appropriately applied section 21.

[32] The third exception claimed by CNA is another discretionary exception which allows a public body to withhold certain information which may be harmful to law enforcement:

22. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to

(a) interfere with, disclose information about or harm a law enforcement matter;

[33] CNA has indicated, and I have confirmed this, that there are no records subject to this Review which were withheld by CNA solely on the basis of section 22. In fact, section 22 is only applied by CNA in a minority of cases, and only when section 21 is also applied. As noted above, in all cases where section 21 is applied, I believe CNA has done so correctly and appropriately. Therefore, I will not engage in further analysis of the concerns raised by the Applicant with regard to the application of section 22, as it is a moot point.

[34] Fourthly, CNA has indicated that some records have been severed based on the protection of other people’s personal information, as set out in this mandatory exception:

30. (1) The head of a public body shall refuse to disclose personal information to an applicant.

[35] Personal information is defined in the *ATIPPA* as follows:

2. In this Act

(o) "personal information" means recorded information about an identifiable individual, including

(i) the individual's name, address or telephone number,

- (ii) *the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,*
- (iii) *the individual's age, sex, sexual orientation, marital status or family status,*
- (iv) *an identifying number, symbol or other particular assigned to the individual,*
- (v) *the individual's fingerprints, blood type or inheritable characteristics,*
- (vi) *information about the individual's health care status or history, including a physical or mental disability,*
- (vii) *information about the individual's educational, financial, criminal or employment status or history,*
- (viii) *the opinions of a person about the individual, and*
- (ix) *the individual's personal views or opinions;*

[36] As noted above, section 30(1) is a mandatory exception, and as such there is no discretion afforded to a public body in choosing whether or not to use this exception, nor is there a harms test to be applied. I referenced this in my Report 2005-005:

77 It is noted that [section 30(1)] of the ATIPPA does not include a harms test. Unlike some other jurisdictions, there is no test of reasonableness when dealing with the release of personal information. In the absence of any discretion, a public body simply has to determine if information meets the definition set out in section 2(o) and, if so, they must not release it....

[37] Generally speaking, the information which has been severed by CNA using section 30 involves references to items such as passing references to family and friends of the CNA officials who are writing the e-mails, references to personnel matters of CNA employees not referenced in the Applicant's request, and other such references which fall under the definition of personal information quoted above.

[38] It should be noted, however, that I have been very mindful not to accept as being protected from disclosure any personal information which falls under section 30(2). That section sets out the circumstances under which section 30(1) does not apply:

30. (2) *Subsection (1) does not apply where*

(a) the applicant is the individual to whom the information relates;

(b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;

(c) there are compelling circumstances affecting a person's health or safety and notice of disclosure is mailed to the last known address of the third party to whom the information relates;

(d) an Act or regulation of the province or Canada authorizes the disclosure;

(e) the disclosure is for a research or statistical purpose and is in accordance with section 41 ;

(f) the information is about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff;

(g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;

(h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;

(i) public access to the information is provided under the Financial Administration Act ;

(j) the information is about expenses incurred by a third party while travelling at the expense of a public body;

(k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit; or

(l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including

- (i) *personal information that is supplied in support of the application for the benefit, or*
- (ii) *personal information that relates to eligibility for income and employment support under the Income and Employment Support Act or to the determination of assistance levels.*

[39] In summary, upon reviewing the records, I believe that CNA has correctly applied the above sections of the *ATIPPA*. I do note, however, that I did not find it necessary to discuss section 22, as all those records claimed under section 22 were appropriately withheld by CNA under section 21. I must conclude, therefore, that all records which are now being withheld by CNA in relation to this Review are being properly withheld under the *ATIPPA*. Having made this determination, I will nevertheless address some of the other issues which the Applicant has identified as being of some concern to him.

[40] Before getting into some of the general issues presented by the Applicant in his submission, I will first focus on the specific e-mails which he believes were wrongly withheld from him. Record 1 involves a reference to a bank account jointly held by the Applicant and his spouse, but does not name the Applicant, nor does it refer to him in any way which would make this particular record responsive to his access request as it was worded. The Applicant's position that the bank account information is not only his spouse's personal information, but is also his personal information is correct, but the fact is that he requested "personal records" which "reference" him in some way. Discussion of a jointly held bank account qualifies as personal information in this case, but nowhere does the record actually reference him. On that score, the College was correct in withholding the record on the basis that it was not responsive to the request. Be that as it may, once the matter was raised with the College by this Office (after being raised by the Applicant during the formal investigation process), the College provided the record to the Applicant in correspondence dated 8 June 2006 and copied to this Office.

[41] Record 2, identified by the Applicant in his submission, is more problematic. In his submission, the Applicant proposes various theories as to why it was not released to him, and indeed, why it was not initially provided to this Office for review. During the course of the investigation conducted by this Office, CNA was asked once again to explain why this e-mail

was missing from the responsive records. The CNA Access & Privacy Coordinator explained in an e-mail to this Office that the process first involves sorting the records. As these are electronic records, the sorting is also done electronically. Given that the subject records were previously assembled as a result of a search by the Applicant's spouse, the first step required that the Coordinator "open each sub folder in the .pst file and perform a search using the criteria agreed to by the applicant." Once the records were identified, the CNA Coordinator began the process of narrowing them by placing the e-mails in various sub-folders, such as duplicates; threads; not responsive; disclosure; to, from or cc'd to the Applicant; etc. Once that was finalized, the Coordinator then determined what information could be released to the Applicant.

[42] As for the Record 2, (the missing e-mail), the Coordinator explained to this Office that he does not "intentionally permanently delete any records. Instead they are simply relocated to various sub folders." Although the Coordinator had proposed during the Applicant's spouse's review that this e-mail may have been accidentally deleted, the Coordinator now states that "the only scenario I can think of is that I inadvertently dropped the copy of this record in a sub folder outside the main set contained in that particular .pst file." He further went on to explain that

These folders are very small and are extremely close together. I have, on occasion, dropped files into the wrong folders, however I normally notice this as it happens and am able to correct it. I believe this may have been what happened to the email record in question here and thus, when it came time to review the same .pst file for [Applicant's] review, that particular record was not there. My personal archive folder is located adjacent to the .pst folder when it is opened, so it is possible it ended up there. If that was the case, it would have been deleted with my 2005 archive. Fortunately, we were able to recover the email from [employee's] mailbox for the first review, and again for [Applicant]. That particular email has since been added back to the .pst file.

[43] The Coordinator went on to say that he does not believe it to be likely that the e-mail was never among the 2700, because it was clearly responsive, and the group of 2700 contains other e-mails from e-mail accounts of the same CNA personnel. As part of the formal investigation relating to this Review, staff from this Office visited the Coordinator in order to view a demonstration of the search procedure used in this case, and to view the techniques used in processing searches of this nature. I think it is also worth noting a couple of factors here. One

factor is that based on the content of this record I am unable to conclude that CNA would have wished to intentionally withhold it from both the Applicant and this Office. Therefore, any supposed motive on the part of CNA to hide this e-mail is not present. Another factor is that CNA acknowledged that a mistake was made here. While it has only been able to provide a theory as opposed to a definitive reason for the loss of this e-mail, in the overall context of a search and vetting process involving thousands of records, I can accept that this was simply a mistake, and it should be seen in that light.

[44] I will continue with the final two e-mails noted in the Applicant's submission, referred to as Records 3 and 4. Both were provided to this Office by CNA for review. During the investigation process, CNA was asked about both e-mails. Part of the e-mail thread in Record 3 had already been disclosed to the Applicant. I have determined that the portion of Record 3 which was withheld was correctly severed on the basis of section 21 of the *ATIPPA*. The "top portion" of Record 4 referenced by the Applicant was also correctly severed by the College as per section 21. The Applicant indicated that he already had part of Record 4, and CNA states that the reference to "my family" was simply missed when the e-mails were sorted, and thus there was initially a failure to identify it as a responsive e-mail. A correctly severed copy of e-mail Record 4 was provided to the Applicant by CNA on 8 June 2006.

[45] On another issue, CNA, in its initial response to the Applicant, indicated that there were difficulties in searching attachments in cases where the originating e-mail did not contain any references responsive to the electronic search. The Applicant complained about this during the informal resolution stage, and following some discussion between this Office and both parties, CNA agreed to undertake a manual search of all attachments within the 2700 e-mails, leading to the disclosure of several additional records. If a public body is aware that its ability to undertake an electronic search of attachments is limited in this way, alternate methods of searching for responsive records in attachments must be explored. Given that CNA did agree in the informal stage to undertake a manual search of attachments, no recommendation will be made on this issue.

[46] The final matter I will address is that of CNA's failure to respond to the Applicant's request within the required time period. Section 11 sets out the time limit for a response under the *ATIPPA*:

- 11. (1) The head of a public body shall make every reasonable effort to respond to a request in writing within 30 days after receiving it, unless*
- (a) the time limit for responding is extended under section 16 ;*
 - (b) notice is given to a third party under section 28 ; or*
 - (c) the request has been transferred under section 17 to another public body.*
- (2) Where the head of a public body fails to respond within the 30 day period or an extended period, the head is considered to have refused access to the record.*

[47] Section 16 outlines the circumstances under which the time limit for a response may be extended by a public body, and sets out a procedure for notifying the Applicant:

- 16. (1) The head of a public body may extend the time for responding to a request for up to an additional 30 days where*
- (a) the applicant does not give sufficient details to enable the public body to identify the requested record;*
 - (b) a large number of records is requested or must be searched, and responding within the time period in section 11 would interfere unreasonably with the operations of the public body; or*
 - (c) notice is given to a third party under section 28 .*
- (2) Where the time limit for responding is extended under subsection (1), the head of the public body shall notify the applicant in writing*
- (a) of the reason for the extension;*
 - (b) when a response can be expected; and*
 - (c) that the applicant may make a complaint under section 44 to the commissioner about the extension.*

[48] Clearly, the Applicant is dissatisfied with CNA in general, to the point that he felt it necessary to file a separate Request for Review about this matter, which is certainly his right under the *ATIPPA*. While I acknowledge that there is every indication that CNA simply erred in failing to include in its initial correspondence to the Applicant its intention to extend the deadline by 30 days, it is important that CNA be aware of its obligations under the *ATIPPA*. Given that CNA has been the subject of several Reports by this Office, oversights of this nature will continue to result in comments and recommendations from this Office. I do note, however, that when the Applicant advised CNA that the response was overdue, CNA apologized to the Applicant, advised him that the response was almost ready, and indicated that it would be forwarded to him within days. Compared to the Applicant's other issues with CNA in relation to the *ATIPPA*, I would simply note this as an error by CNA and caution that it be more careful in the future.

V CONCLUSION

[49] The first point that must be made is that CNA has released all e-mail records which I believe should be released to the Applicant under the *ATIPPA*. Most of these were released to the Applicant as a result of his initial access request. Some additional records were released during informal resolution efforts undertaken after the Applicant had filed his Request for Review, including those which were released after CNA undertook a manual search of attachments. The remainder were not brought to my attention nor to CNA's by the Applicant until he raised concerns about some e-mails in his formal submission to this Office. When these concerns were presented to CNA by this Office in the course of the investigation, CNA released the remaining records as appropriate.

[50] I note that CNA clearly expressed during this Review a willingness to work cooperatively with the Applicant towards addressing the Applicant's needs. However, some of the Applicant's concerns about particular e-mails to which he believed he was entitled were only raised for the first time in his formal submission, after any chance of informal resolution had passed. Even though CNA is not without fault, most notably in its failure to notify the Applicant of an

extension of the time limit for a response, it is most unfortunate that the Applicant did not allow for a greater effort at informal resolution by fully communicating his concerns at the initial stage of the process when this was an option.

[51] Clearly, the Applicant ended up with more records than before by coming to this Office to request a review. In terms of the records themselves, there were a few errors and oversights which were corrected by CNA when pointed out. CNA has cooperated fully and openly with this Office during the course of this Review, and even though early mistakes were made, I am satisfied that the final result is a fair one for the Applicant.

VI RECOMMENDATIONS

[52] I find CNA has now released all records to which the Applicant is entitled, and I therefore issue no recommendation with respect to the responsive records. With respect to CNA's error in not advising the Applicant of its intention to apply an extension of the time limit for responding to the Applicant's request, I hereby issue the following recommendation under authority of Section 49(1) of the *ATIPPA*:

1. That the College take more care in the future to ensure that Applicants are immediately notified of any intention to extend the time limit for a response as outlined in section 16 of the *ATIPPA*.

[53] Under authority of section 50 of the *ATIPPA* I direct the head of the College of the North Atlantic to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the College's final decision with respect to this Report.

[54] Please note that within 30 days of receiving a decision of the Department under section 50, the Applicant may appeal that decision to the Supreme Court Trial Division in accordance with section 60 of the *ATIPPA*.

[55] Dated at St. John's, in the Province of Newfoundland and Labrador, this 1st day of August, 2006.

Philip Wall
Information and Privacy Commissioner
Newfoundland and Labrador