



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2013-016

October 21, 2013

College of the North Atlantic

Summary:

The Applicant requested, from the College of the North Atlantic, bi-weekly billings for contract payroll to Qatar for November 2008, December 2008, and January 2009. The College declined to provide the records, citing 23(1)(a) and (b) (disclosure harmful to intergovernmental relations) section 24(1) (a), (b) and (g) (disclosure harmful to the financial or economic interests of a public body) and section 30(1) (disclosure harmful to personal privacy) of the *ATIPPA*. With respect to sections 23 and 24, the Commissioner found that the College, by not providing any formal submission in support of its position, had not met the burden of proof under section 64(1) and as such, these sections could not be used to withhold the documents. The Commissioner found that section 30 did apply to some information in the record, but recommended that the record be provided to the Applicant with this information severed accordingly.

Statutes Cited:

Access to Information and Protection of Privacy Act, S.N.L. 2002, c. A-1.1, as amended, ss.23(1), 24(1), 64(1) and 30.

Authorities Cited:

Newfoundland and Labrador OIPC Report A-2013-015.

I BACKGROUND

- [1] Pursuant to the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*”) the Applicant submitted an access to information request on November 20, 2012 to the College of the North Atlantic (“CNA” or the “College”). The request sought disclosure of records as follows:

According to the recent PSI Review of Qatar Overbillings report, CNA submitted bi-weekly billings for contract payroll to Qatar. I request fully detailed copies of these billings as were sent to Qatar during the following periods.

November 2008

December 2008

January 2009

I would like electronic copies of the records please and would also request that they be emailed to me electronically

- [2] The College denied access to the records on December 19, 2012, citing sections 23(1)(a) and (b) (disclosure harmful to intergovernmental relations), 24(1)(a), (b) and (g) (disclosure harmful to the financial or economic interests of a public body) and 30(1) (disclosure harmful to personal privacy) of the *ATIPPA*.
- [3] In a Request for Review received at this Office on December 19, 2012, the Applicant asked that this Office review the College’s decision. Attempts to resolve this Request for Review by informal resolution were not successful, and by letters dated July 26, 2013 both the Applicant and the College were advised that the Request for Review had been referred for formal investigation pursuant to subsection 46(2) of the *Access to information and Protection of Privacy Act* (“*ATIPPA*”). As part of the formal investigation process, both parties were given the opportunity to provide written submissions to this Office in accordance with section 47.

II PUBLIC BODY’S SUBMISSION

- [4] The College declined to provide a submission.

III APPLICANT'S SUBMISSION

- [5] The Applicant did not provide a formal submission with respect to the applicability of sections 23, 24 and 30 to the requested information.

IV DISCUSSION

- [6] The issues to be addressed in this Report are the applicability of sections 23, 24 and 30 to the information requested by the Applicant. The records at issue essentially consist of payroll information of individual employees at the College.

- [7] Section 23(1) of the *ATIPPA* states as follows:

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

(a) harm the conduct by the government of the province of relations between that government and the following or their agencies:

- (i) the government of Canada or a province,*
- (ii) the council of a local government body,*
- (iii) the government of a foreign state,*
- (iv) an international organization of states, or*
- (v) the Nunatsiavut Government; or*

(b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies.

- [8] Section 24(1) states as follows:

24. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

- (a) trade secrets of a public body or the government of the province;*

- (b) *financial, commercial, scientific or technical information that belongs to a public body or to the government of the province and that has, or is reasonably likely to have, monetary value;*
- (c) *plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;*
- (d) *information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;*
- (e) *scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee of priority of publication;*
- (f) *positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations;*
- (g) *information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body; or*
- (h) *information, the disclosure of which could reasonably be expected to be injurious to the ability of the government of the province to manage the economy of the province.*

[9] As just discussed in Report A-2013-15, section 64(1) of the *ATIPPA* places the burden of proving that an exception applies to requested records squarely on the public body. Again, the College, in this case, has made no formal submission with respect to the applicability of these sections to the records at issue. While the College offered some explanation for its application of these sections to the requested information during the informal resolution stage, this explanation cannot be referred to here given the confidential nature of the informal resolution process.

[10] The standard of proof required to show that sections 23 and 24 are applicable to the records for which they were claimed was also just set out in Report A-2013-015 and need not be repeated again here.

[11] Given the lack of evidence put forward by the College to support the application of either section 23 or 24 to the requested information, I will not speculate about how or why these sections may apply. Once again, on its face, it is difficult to accept that financial documents of a public institution should not be released. Given the fact that there was no submission at all by the College to support its position, it clear that the College has not met the burden of proof.

[12] Section 30 states that a public body may not disclose personal information to an applicant where it would be an unreasonable invasion of privacy. The section then goes on, in s. 30(2), to provide circumstances where disclosure is an unreasonable invasion of privacy. Further, in s. 30(4) the legislation sets out circumstances where there is a presumption of unreasonable invasion of privacy. These are rebuttable presumptions and section 30(5) sets out some relevant considerations for determining whether the disclosure is an unreasonable invasion of privacy.

[13] With respect to section 30, the College has claimed that releasing the information would be an unreasonable invasion of the privacy of employees at the college. Section 30(2)(f) states that information about a third party's salary range, as an employee of a public body is not an unreasonable invasion of privacy. The information at issue consists of more than salary range. It includes details of payroll deductions and benefits. In section 30(5)(a), the *ATIPPA* further states that a relevant factor to be considered when determining whether there is an unreasonable invasion of privacy is if the disclosure is desirable for subjecting the activities of a public body to public scrutiny.

[14] I believe there are definitely circumstances where disclosure of the amounts being paid to employees for salaries and benefits is desirable for subjecting the activities of a public body to public scrutiny. However, I am cognizant of the privacy rights of the employees concerned, and the specific provision in the *ATIPPA* that disclosure of a salary range is not an unreasonable invasion of privacy. In this case the Applicant has indicated that he is not interested in individual employee details, so both of these objectives can be met for the purposes of this request by simply severing the names of individual employees.

V CONCLUSION

[15] Given that the College has failed to satisfy the burden of proving that the exceptions to access apply, as set out in section 64, it is my conclusion that neither section 23 nor section 24 is applicable to the requested information. Further, section 30 will be applied to employee names where they appear in connection with detailed salary information, as there is a privacy interest in this information and the applicant has indicated that he is not interested in individual employee details.

Therefore, the record should be released to the Applicant with individual employee names severed where they appear in connection with detailed salary information.

VI RECOMMENDATIONS

- [16] Under the authority of section 49(1) of the *ATIPPA*, I recommend that the College provide the requested records to the Applicant, severed to remove individual employee names where they appear in connection with detailed salary information.
- [17] Under the authority of section 50 of the *ATIPPA*, I direct the head of the College to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the final decision of the College with respect to this Report.
- [18] Please note that within 30 days of receiving the decision of the College under section 50, the Applicant may appeal that decision to the Supreme Court of Newfoundland and Labrador Trial Division in accordance with section 60 of the *ATIPPA*.
- [19] Dated at St. John's, in the Province of Newfoundland and Labrador, this 21st day of October 2013.

E. P. Ring
Information and Privacy Commissioner
Newfoundland and Labrador