



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

A-2012-007

May 31, 2012

College of the North Atlantic

Summary:

The Applicant submitted an access to information request to the College of the North Atlantic (the “College”) for correspondence relating to changes made to a Workplace Assessment report prepared for the College. The College released part of the responsive records but claimed section 30 (disclosure of personal information) of the *Access to Information and Protection of Privacy Act* in withholding the remainder. The Commissioner determined that the College’s application of section 30 was appropriate and had no recommendations.

Statutes Cited:

Access to Information and Protection of Privacy Act, S.N.L. 2002, c. A-1.1, as amended, sections 2(o)(vii), 30(1) and 30(2).

Authorities Cited:

Newfoundland and Labrador OIPC Reports A-2007-013 and A-2007-006.

I BACKGROUND

- [1] On November 10, 2011 the College of the North Atlantic (the “College” or “CNA”) received an access request for:

CNA ATIP request – Workplace Assessment – Edits

According to ATIP records on June 11, 2010 [a college employee] crafted a letter to [an outside contractor] regarding edits to be made to the Workplace Assessment.

- (1) *I would like to have email of other proof that this letter was transmitted to [the outside contractor] and in what form it was done.*
- (2) *I request all copies of any and all communications (emails, attachments, paper records, electronic records or otherwise) that show any of [the outside contractor] responses or communications with [a college employee] or any other CNA employees from June 11, 2010 through to the electronic delivery of the report in Qatar on November 23, 2010.*

- [2] On December 12, 2011, the College responded in writing to the Applicant indicating that they were granting the access request in part. Some information had been withheld in accordance with sections 20(1) and 30(1) of the *Access to Information and Protection of Privacy Act* (the “*ATIPPA*” or “*Act*”). This Office received a Request for Review from the Applicant on December 19, 2011.

- [3] Some of the information previously withheld was released during the informal resolution process, however the matter could not be fully resolved by informal means. On March 21, 2012, 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 *ATIPPA*, and were given the opportunity to provide written submissions to this Office in accordance with section 47 of the *Act*. Neither party made a formal submission.

IV DISCUSSION

- [4] As the claims of section 20(1) were resolved informally, the relevant portions of the *Act* are:

- 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.*

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

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

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

[5] In this case the items that were withheld by the College identify the position of the public body employee referenced in the Workplace Assessment.

[6] Generally the title of a public body employee would have been released in response to an access to information request, as it falls within section 30(2)(f) of the *Act*, as information that falls within section 30(2) is not subject to the exception set out in section 30(1). Determining how the *ATIPPA* applies to a piece of information can be contextual, however. Here, this information forms part of the public body employee's "employment status or history" as set out in section 2(o)(vii). "Employment status or history" is separate and distinct from "position, functions or remuneration" referred to in section 30(2)(f). One is protected as personal information, while the other is exempted and therefore would have been disclosed.

[7] The correspondence in question here references the Workplace Assessment report which amounts to an evaluation of the public body employee in a manner akin to a personnel review. As my predecessor found in A-2007-013

[24] I will apply the interpretation of the term "employment history" that has been given by the Commissioners of Ontario, British Columbia, and Alberta. Therefore, in order for information to be about an individual's "employment history" within the meaning of section 2(o)(vii) of the ATIPPA that information must relate to an individual's work history and must be the type of information that would be found in an employee's personnel file.

[8] The Workplace Assessment report itself has been previously released. Therefore, the College's application of the *Act* in this instance involves applying the "mosaic effect", which was discussed in Report A-2007-006 as an effect "whereby information can be gathered in seemingly innocuous pieces and later put together to reveal the personal information of others."

[9] I find here that the College was correct to withhold the title of the employee because when read together with the Workplace Assessment it would lead to the release of that employee's personnel information, which is prohibited under the *Act*.

V CONCLUSION

[10] Although I have made no recommendations, 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 their final decision with respect to this Report

[11] In addition, I hereby notify the Applicant, in accordance with section 49(2) of the *ATIPPA*, of the right to appeal the decision of the College to the Supreme Court of Newfoundland and Labrador, Trial Division in accordance with section 60. The Applicant must file any appeal within 30 days after receiving a decision of the College referenced above

[12] Dated at St. John's, in the Province of Newfoundland and Labrador, this 31st day of May 2012.



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