



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2012-011

November 20, 2012

College of the North Atlantic

Summary:

The Applicant applied under the *Access to Information and Protection of Privacy Act* (“the *ATIPPA*”) to the College of the North Atlantic (the “College” or “CNA”) for access to records relating to the Vacation Leave Payout of a named individual. The College granted access to all responsive records, however, certain information was severed from those records pursuant to section 30 of the *ATIPPA* (disclosure of personal information). The College also claimed that no provisions of section 30(2) would negate the mandatory exception contained in section 30(1). The Commissioner determined that the College had properly applied section 30 in a majority of the instances; however, it had not met the burden of proof and had failed to establish that section 30(2)(f) did not apply to a small amount of information which had been redacted. Consequently, the Commissioner recommended the release of this information.

Statutes Cited:

Access to Information and Protection of Privacy Act, S.N.L. 2002, c. A-1.1, as amended, ss.2(e), (o), 30(1), 30(2)(f), 64(1)

Authorities Cited:

Reports A-2009-004 and A-2010-008

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 December 19, 2011 to the College of the North Atlantic (“CNA” or the “College”). The request sought disclosure of records as follows:

A document supplied to me by the College of the North Atlantic on or about November 24, 2011 indicates that [named individual], who formerly held the positions of [title] and [title], Qatar campus, was paid a Vacation Leave Payout in the amount of [dollar value].

I am requesting the Payroll Action Memo (PAM) or other College documents which show the following information:

- *The total hours or days that [named individual] was paid for in arriving at the [dollar value] payment.*
- *The names and/or signatures of the College personnel who approved the “vacation leave payout”.*
- *The document which indicated the annual leave days which [named individual] used in the last two years of her employment with the College. I am not requesting documents which indicate the accessing or approval of each vacation day taken in the two year period. I am seeing a document(s) which gives the total vacation days used by [named individual] in that two year period. It is my understanding that the College would have maintained a record of current vacation leave entitlement for employees.*
- *A copy of [named individual’s] most recent contract and benefit document(s) with the College wherein the accumulation of vacation days or annual leave days is set out.*

I am requesting the document(s) submitted by [named individual], if any, wherein she requested the vacation leave payout or wherein she confirmed the hours or dollar value of the vacation leave payout; that payout as referenced herein.

[2] CNA responded to the request on January 26, 2012, following the payment of a fee estimate, and granted access to all of the responsive records, subject to the severing of some personal information pursuant to section 30 of the *ATIPPA*. In a Request for Review received at this Office on February 9, 2012, the Applicant asked that this Office review the College’s severing.

[3] Attempts to resolve this Request for Review by informal resolution were not successful, and by letters dated April 18, 2012 both the Applicant and CNA 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. The parties were informed that the issue to be addressed in the submissions, and which would form the substance of this Report, was:

Did the Public Body comply with section 30 of the ATIPPA (disclosure of personal information) by refusing to disclose personal information to the Applicant?

II PUBLIC BODY’S SUBMISSION

- [4] CNA provided this Office with a formal written submission dated May 11, 2012. In its submission, CNA submits that the severed information is personal information and acknowledges that the severed information falls into one of four categories: employee number, residency status, name, and signature.
- [5] CNA submits that employee numbers are personal information in accordance with section 2(o)(iv) of the *ATIPPA* as an “*identifying number...assigned to the individual.*”
- [6] CNA submits that the residency status of an individual is personal information in accordance with sections 2(o)(ii) and (vii) of the *ATIPPA* as it is indicative of an individual’s “*national or ethnic origin*” and “*financial...status or history.*”
- [7] CNA further submits that an individual’s name is specifically protected from disclosure pursuant to section 2(o)(i) of the *ATIPPA*. CNA goes on to state:

The names redacted by CNA in these records references a locally hired employee (local hire) of CNA-Q. Local hires differ from Canadian hired employees in that:

- *they are employees of a foreign country*
- *they are not recruited by CNA’s Qatar Project Office (QPO)*
- *they do not receive an employment offer signed by the CNA President (as do all Canadian hires)*
- *their pay and benefits are not administered by the QPO*
- *decisions relation [sic] to discipline and/ or termination are not made by CNA*

- *their remuneration is given in Qatar Ryals to a Qatari bank account*
- *Canadian taxes are not deducted from their paychecks and these individuals are not included in CNA's yearly tax reporting to the Canadian Revenue Agency.*
- *Canadian labour law does not apply to their contracts and their contracts are not written in English*
- *their jobs tend to be non-instructional, non-management roles such as clerical and support roles.*

While CNA routinely discloses the names of Canadian hired employees working at CNA-Qatar in accordance with section 30(2)(f) CNA cannot disclose the names of locally hired employees as they are not employees or members of a public body or members of a minister's staff.

[8] Finally, CNA submits that signatures are personal information in accordance with section 2(o)(iv) of the *ATIPPA* as an “*identifying...symbol or other particular assigned to the individual*” and states:

[A signature] reveals more about the individual that [sic] the name typewritten. Handwriting is impacted by many characteristics unique to the individual.

CNA has redacted the signatures of the individuals who authorized the annual leave payout form. By doing this we are only revealing the name. We have replaced the signature with a yellow redaction mark with the caption “Signature of {the employee/the job title of the employee}.” [...] CNA must only disclose the names of Canadian hired employees as employees of the public body College of the North Atlantic. The human resources clerk who signed the annual leave payout form is not an employee of CNA so we must withhold her name.

[9] This Office requested that CNA provide supplementary evidence to support its argument regarding locally hired employees (local hires) of CNA-Q. Specifically, the College was asked to provide evidence in relation to the list of differences between Canadian hired employees and local hires which it has provided in its earlier submission.

[10] In response to this request the College provided a letter from the Executive Committee of CNA-Q which once again simply enumerated the differences between Canadian hired employees and local hires.

III APPLICANT'S SUBMISSION

[11] The Applicant highlighted that his submission was made not in specific reference to any particular redaction but rather the Applicant directed his submission toward the issue of “local hires” generally. The Applicant indicated that his understanding is that information has been redacted from records which he has received on the basis that the information relates to individuals who the College claims are not employees of the College and, therefore, the information cannot be disclosed under the *ATIPPA*. The Applicant states:

The term “local hires” has been used to delineate this set of employees who work at the College’s Qatar campus and yet are claimed by the College to not be employed by the College.

[12] It is the position of the Applicant that the College has not properly applied section 30(2)(f) and that:

[...] the group of employees referenced as “local hires” are in all respects employees of a public body and the reference to the local hires within that set of responsive records is to an employee’s, “position, functions or remuneration as an officer, employee or member of a public body”...

[13] The Applicant admits that there are certain groups of workers who are not employees of the College, but rather are performing contractual services for the College through a separate employer. The Applicant indicates that these individuals are not a part of the discussion of “local hires”.

[14] The Applicant submits that the source and currency used for paying employees is not determinative of an employee-employer relationship. The Applicant alleges that:

[...] all employees at the Qatar campus are in receipt of funds allocated by the State of Qatar [...] the College is paid a specific amount for each employee by the State of Qatar [...] College employees receive that amount in two different allotments. One allotment is received in Canadian dollars as regular salary and typically paid bi-weekly from the payroll in Canada. The other amount is paid by the College’s Qatar campus and received by the employee in Qatari Riyals. All employees, whether they are Canadian hires or local hires receive some of their compensation in Qatari Riyals. [...] The point here is that all employees of the College working at the Qatar campus receive their salary as provided to [the College] from the State of Qatar.

[15] The Applicant further states that it is the norm for employees of the Qatar campus to have employment contracts only in respect to that campus alone.

[16] The Applicant then examines the relationship between the employee and the employer and states:

I assume that the College is not claiming that the local hires are self employed but rather that they are employees of another employer. That claim is very difficult to comprehend because the “other” employer should be performing at least some of the functions of an employer, or as noted above exercising at least some control over that employee. [...] there is no reference in the material put forward by the College to any employer other than CNA directing or engaging employees at the Qatar campus.

[17] To emphasize this point, the Applicant highlights that the website for the Qatar campus refers to Canadian and non-Canadian hires, but states that both categories are employees. The Applicant quotes from the website:

*Our employees come from a diverse background from all over the globe and there are two categories under which they are classified. Canadian Hired (**Canadian Passport is required to be eligible for this position**) and Locally Hired employees. If you are interested in pursuing a career opportunity with College of the North Atlantic-Qatar, please select the appropriate Career Opportunities section for you.*

[18] The Applicant also points out that local hire positions are advertised on the CNA Qatar campus website under the banner of the College and these advertisements refer to supervision by the College and duties being performed for the College. The Applicant also highlights that there is no reference in these advertisements to an employer other than CNA.

[19] The Applicant also directs attention to the Qatar Campus Comprehensive Agreement which states:

All personnel recruited for the College shall be employees of the Contractor [...] The Contractor shall have full responsibility for implementing and administering all such personnel policies.

[20] The “Contractor” in the Comprehensive Agreement is defined as “The Board of Governors of the College of the North Atlantic, A Corporation Created Pursuant To The *College Act, 1996*, Chapter C-22.1, Statutes Of Newfoundland 1996”. The Applicant argues that if the College is alleging there is a category of employees who are not covered by the Comprehensive Agreement then evidence of such should be provided.

[21] To summarize his position the Applicant states:

[The College] does not reference any other employer other than CNA and at all times presents the positions as "our employees". The only reference to the positions not being under the College is when records are redacted by the College based on section 30 of the ATIPPA.

Both from an operational and legal basis (as per the CA), all employees are recruited, hired, supervised and controlled by the College are employees of the College and are subject to the application provisions (section 30(2)(f)) of the ATIPPA.

IV DISCUSSION

[22] As mentioned above, the only issue to be considered in this matter is whether CNA has properly applied section 30 of the *ATIPPA* to sever information within the responsive records.

[23] Section 2(o) of the *ATIPPA* states as follows:

(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;*

[24] CNA has acknowledged that the information which has been severed falls into one of four categories: employee number, residency status, name, and signature. I accept that the information does, indeed fall into these categories. In respect of employee numbers and residency statuses the College has properly applied section 30 of the *ATIPPA*; this information is personal information in accordance with section 2(o). I do not believe these categories of records require any further analysis or comment.

[25] In respect of the signatures, in Report A-2009-004 at paragraph 60 I found that: “*The signature [...] constitute the personal information of an identifiable individual pursuant to paragraph (i) of section 2(o) of the ATIPPA and should not be disclosed to the Applicant.*” Consequently, the signatures which have been severed by CNA have been properly withheld as personal information in accordance with section 30 of the *ATIPPA*. An individual’s signature is an identifying symbol or particular. Signatures are commonly used to confirm an individual’s identity and to disclose this information to another individual may open a door for improper and even malicious uses.

[26] The question which, therefore, remains is whether the College must provide the typewritten names of the signatories which had been withheld in accordance with section 30(2)(f) of the *ATIPPA*. Section 2(e) of the *ATIPPA* states:

(e) "employee", in relation to a public body, includes a person retained under a contract to perform services for the public body;

[27] Section 30(1) and 30(2)(f) of the *ATIPPA* state:

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

(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 or as a member of a minister's staff;

[28] In relation to the severed signatures, CNA has provided the typewritten name of certain individuals on the basis that those individuals are employees of CNA and the information is disclosed in accordance with section 30(2)(f). However, in two instances, signatures have been redacted but no typewritten name has been provided. The College has indicated that it has redacted

this information because the signatories are “local hires” and not employees in accordance with section 2(e). Consequently, CNA claims this information cannot be provided pursuant to section 30(2)(f).

[29] Section 64(1) of the *ATIPPA* states:

64. (1) On a review of or appeal from a decision to refuse access to a record or part of a record, the burden is on the head of a public body to prove that the applicant has no right of access to the record or part of the record.

[30] The burden is on the College to establish that the signatories are not employees of CNA and, therefore, their personal information must be protected in accordance with section 30. The College has failed to prove this issue. Despite requests from this Office, CNA has failed to provide convincing evidence to support its claim regarding local hires and their distinction from Canadian hired employees.

[31] I have in the past, (see Report A-2010-008) found that the College had provided evidence of this claim; however, that matter was decided on a separate set of facts and each matter before this Office must be examined within its own context. Furthermore, that matter involved a different applicant and the “local hire” issue was simply an assertion made by CNA and not disputed by that applicant. The issue was therefore not argued by the parties in their submissions and, as a result, the assertion of the College was accepted in that context. In the case before me now, without further evidence from the College there is nothing to substantiate a claim that local hires are distinct from the definition of employee contained in section 2(e) of the *ATIPPA*.

[32] In fact, while the College failed to meet its burden of proof, the Applicant has, from the alternate perspective, provided sufficient evidence to indicate that the signatories are employees of the College. The evidence provided by the Applicant through the College’s Qatar Campus Comprehensive Agreement clearly indicated that **all personnel** are employees of the College. There is no distinction made between local and Canadian hires as alleged by CNA.

V CONCLUSION

[33] I have concluded that the majority of the information which has been withheld by the College under section 30 of the *ATIPPA* is, in fact, personal information and the College has properly denied access to this information. However, I find that the signatories whose typewritten name have not been provided in place of their redacted signatures are employees of CNA in accordance with section 2(e) and the College should provide the typewritten name in accordance with section 30(2)(f) as it has done with all other signatories.

VI RECOMMENDATIONS

[34] Under the authority of section 49(1) of the *ATIPPA*, I recommend that CNA provide the typewritten names of the currently unidentified signatories to the Applicant

[35] Under the authority of section 50 of the *ATIPPA*, I direct the head of CNA to write to this Office and to the Applicant within 15 days after receiving this Report to indicate the final decision of CNA with respect to this Report.

[36] Please note that within 30 days of receiving the decision of the College of the North Atlantic 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*.

[37] Dated at St. John's, in the Province of Newfoundland and Labrador, this 20th day of November 2012.

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