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November 26, 2020

ATIPPA Statutory Review 2020
3rd Floor, Beothuck Building
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St. John's, NL
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To the Committee Chair, the Honorable David Orsborn:

College of the North Atlantic welcomes the opportunity to make a submission to ATIPPA Statutory Review Committee 2020. Our experience is generally positive and leads us to conclude that the Access to Information and Protection of Privacy Act, 2015 (ATIPPA), works well. CNA has completed over 70 ATI requests since the ATIPPA came into force in 2015 and based on these experiences we submit the following:

The Role and Identity of the Applicant

- 1. Create a provision to ensure ongoing contact with the applicant.*

College of the North Atlantic is fully in support of the anonymity of an applicant as set out in section 12 of the ATIPPA and we remain fully committed to the duty to assist an applicant as set out in section 13 of the ATIPPA. It was however abundantly clear from some of our experiences that the identity of the applicant needs to be formally validated. We respectfully submit that all requests for information should be accompanied by the applicant's email address, mailing address and phone number. This information would only be made available to the Coordinator and protected in accordance with section 12.



Further to this we respectfully request some provision be added to the ATIPPA by which a public body can discontinue a request or subsequent court challenge if the applicant ceases to respond after a reasonable time period.

Privacy Breach Notification

2. Quarterly reporting of minor breaches to the OIPC.

CNA recommends that some consideration be given to categorizing privacy breaches and adjusting the reporting requirements accordingly. Statistics on minor privacy breaches should be maintained by the public body and provided to the OIPC in aggregate format at the end of each quarter. Minor breaches include emails misdirected inside the organization or letters mailed out to the wrong person that are minor in significance. Other breaches such as willful and deliberate breaches of privacy, or breaches involving sensitive personal data should be immediately reported to the OIPC and the Department responsible for the ATIPPA.

Records Requiring Greater Protection

CNA is committed to protecting the privacy of all of our students and staff. We submit that the records of an educational institution are unique and require greater and more specific protection under the ATIPPA.

3. Specific access and privacy provisions for records of student support services.

CNA's values diversity and we strive to provide excellence in education to all individuals. This sometimes requires us to collect and use a wide variety of personal information, some of which is highly sensitive such as personal information related to disability accommodations and educational counselling. Decisions have to be made and plans executed to ensure everyone



gets a fair opportunity to achieve excellence. To inform these decisions community based individuals like counsellors and caregivers or government agencies such as other educational bodies, health authorities or funding agencies may need to be consulted to provide the best educational experience for an individual. We request a provision be set out in the ATIPPA to enact a circle of care approach to these records. This would allow for the involvement of necessary third parties in these processes.

4. Specific access and privacy provisions for records of alumni services.

Currently, section 67 of the ATIPPA only allows for the use of information about students for fundraising purposes. We would like to see this expanded to include more general outreach. This ensures that we can reach former students with opportunities to engage with each other and with current students of the college. With the acknowledgement that the individual always has the right to opt out of receiving communications from us, CNA requests that s.67 be broadened to include alumni engagement activities more generally.

5. Specific access exemption for records related to contracts where the public body acts as a service provider.

The principle that third party contracts with public bodies should be publicly available is beyond dispute. The expenditure of public funds should be open and transparent. CNA remains committed to openness and accountability but we respectfully ask for greater protection of records which relate to contracts where the public body acts as a service provider to third party entities and is earning revenue rather than expending funds.

Section 35 of the ATIPPA protects records which, if released, could harm the economic interests of a public body. CNA requests that a provision be added to the ATIPPA that recognizes the harm that results when records related to a contract, as described below, are not protected



from disclosure. For example, records relating to the conduct of the third party's business in relation to the project and records provided to the public body to perform the duties required by the contract. The release of these records is a reputational risk owing to the fact our partner/contractor expects confidentiality for the business information they entrust to us. It is also a significant financial risk due to the potential damage to existing contracts and the possibility of sabotaging future contracts.

CNA's external-facing division, Partnerships, Innovation and Entrepreneurship, supports engagement and partnerships with industry, communities, donors, researchers, government and other post-secondary institutions. The contracts we have secured with these outside entities have resulted in significant financial and experiential benefits - not only to CNA's staff and students but to all Newfoundlanders and Labradorians. For example, since the beginning of the contractual agreement with the State of Qatar (College of the North Atlantic – Qatar) CNA has received over 100 million dollars in revenue. The CNA-China Project provides international working opportunities and working experiences for people involved such as administrators and faculty as well as promotes the educational and cultural exchange between Canada and China. By responding to educational needs, technology changes, industry developments, and research opportunities CNA has established a growing revenue stream and it is in the best interest of the college and the province that it be protected.

6. Workplace Investigation Records

CNA respectfully submits that the mandatory disclosure provision s. 33 of the ATIPPA should be changed to allow for the consideration of other exceptions to disclosure. In particular we would like to emphasize s. 37 – Disclosure harmful to individual or public safety.

We believe the current version of s.35 of the ATIPPA (specifically the potential for the release of the name of witnesses and complainant) is a deterrent to people who want to come forward



and report harassment or other misconduct in the workplace. Fear of being smeared on social media, confronted at a local store or assaulted physically is a real concern for individuals when considering reporting workplace misconduct. We recognize that the identity of the complainant and witnesses may already be known or reasonably guessed by the respondent but the suggested change to the ATIPPA would remove the requirement to explicitly confirm it. CNA maintains that the identity of the complainant and witnesses is only always relevant to the individuals who are completing the workplace investigation. It is not always relevant to the respondent or the other witnesses. The allegations must be assessed on their own merit and not obscured by the identity of the complainant or witnesses.

Resources

The ATIPPA sets a very high standard for access to information and protection of privacy. Overall CNA's experience has been very positive. We do however offer the following observations and recommendations:

7. Reconsider timelines for complaints and investigations

CNA supports the time frames set out in the ATIPPA for processing an ATI request and we commend the excellent work the OIPC has done to streamline the processes for requesting a time extension, disregarding a request etc.

We would respectfully request an increase in the 65 day timeframe set out in section 46 of the ATIPPA in which a formal investigation of the OIPC must be completed. The changes made to the ATIPPA in 2015 greatly impacted the investigation process. For example, the only option to dispute the recommendations of a report of the Commissioner's formal investigation is to seek a declaration of in the Supreme Court. It is therefore critical that a public body be able to take the necessary steps, complete the necessary consultation and develop the necessary legal



representations to fulfil the burden of proof. The current timeframe can make doing this overly burdensome.

8. *Revise the current fee structure to include more of the work involved in completing an ATI request.*

In our experience the most time-consuming work involved in processing an ATI request is excluded from consideration when assessing a fee under the current structure. For example, the college tracked the time spent in relation to the line by line review of the records, consulting about the information in the records and preparing the records for release for five requests in late 2019. The average number of hours spent on a request was 35. If we assume the rate of pay for employees doing the work is 35 dollars per hour we see that on average each of these ATI request cost \$1225.00. None of this is accounted for in the current fee structure. CNA respectfully suggests the current fee structure does not adequately address the burden some requests place on a public body.

Thank you for this opportunity. If you would like to discuss any aspect of this submission further please contact me by telephone at 709 643 7912 or by email at atipp@cna.nl.ca.

Sincerely,

A handwritten signature in blue ink that reads 'Donna Eldridge'.

Donna Eldridge
Access and Privacy Coordinator