



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

Report A-2025-003

January 27, 2025

## Department of Health and Community Services

### Summary:

The Complainant made an access request to the Department of Health and Community Services for records related to medical assistance in dying. The Department provided records, withholding some information on the basis of sections 6 (personal health information), 29 (policy advice and recommendations), 30 (legal advice), 34 (harm to intergovernmental relations), and 40 (harm to personal privacy) of the **Access to Information and Protection of Privacy Act, 2015**. The Commissioner concluded that the Department had conducted a reasonable search for records and that the redactions were properly applied, and recommended that the Department continue to withhold the redacted information.

### Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 6, 29, 30, 34, 40.

Authorities Relied On: NL OIPC Guidance – [Policy Advice and Recommendations](#).

## BACKGROUND

- [1] The Department of Health and Community Services received an access request under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) for records mentioning the government's policy positions with respect to faith-based organizations opting out of allowing medical assistance in dying (“MAiD”), clarified to include only records of employees directly involved with the MAiD Program.
- [2] The Department located and provided to the Complainant a substantial number of records but withheld all or part of some records under various exceptions to access.
- [3] The Complainant filed a complaint with our Office, requesting that we review the redactions, arguing that the Department had improperly withheld existing policy documents.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

## PUBLIC BODY'S POSITION

- [5] The Department provided details of the search that it conducted. It stated that in the process of applying redactions, it consulted subject matter experts and with other public bodies. It provided to our Office explanations of the rationale for all exceptions claimed.
- [6] The Department has also provided to the Complainant a statement containing a proposed timeline for the completion of its policy development process that is expected to result in a final approved policy in 2025.

## COMPLAINANT'S POSITION

- [7] The Complainant argues that while the government may be considering a change to policy, it appears from the records that were disclosed that there is an existing policy and communications about it are not discussions of a "draft".

- [8] The Complainant argues that it is in the public interest for there to be transparency and accountability for any government policy that results in barriers to access to medical assistance in dying.
- [9] The Complainant asserts that it appears the government may have changed its position on this issue (from a policy referenced in public statements made by the government) or may not be following its own policy. If the redacted records reveal this, then it is in the public interest for them to be released.

## DECISION

- [10] Throughout the responsive records, some information was withheld pursuant to sections 30 (legal advice), 34 (disclosure harmful to intergovernmental relations or negotiations), and 40 (disclosure harmful to personal privacy). On review of the information provided by the Department, we are satisfied this information was appropriately withheld. However, the Complainant's particular concern was with the Department's application of section 29 (policy advice or recommendations) which provides that a public body may withhold ". . . advice, proposals, recommendations, analyses or policy options developed by or for a public body or minister."
- [11] The purpose of this exception is to foster and protect an environment in which public servants can produce full, free and frank advice, without being concerned that their work might be subject to public scrutiny. (For further discussion see our [Guidance on Policy Advice and Recommendations](#).)
- [12] This can include internal correspondence between public body officials, and correspondence from external third parties that contains advice or recommendations on the subject in question. Drafts of documents, such as policies that have not yet been approved, also fall under the exception for policy advice and recommendations because they are, essentially, proposals for the creation of policy that are subject to further discussion and amendment, and ultimately require executive approval. Most of the information redacted by

the Department under section 29 falls into this category, and this was the focus of the objections by the Complainant.

[13] We are satisfied that section 29 was properly applied. None of the records redacted under section 29(1)(a) are final, adopted or approved policy documents. Rather, they are either drafts of potential future policies, or records that fall into one or more other related categories under section 29(1)(a) such as advice, recommendations, proposals or discussions of options.

[14] The Complainant has made strong arguments, as noted above, about the process of policy development. However, the OIPC's role in a case like the present is limited to reviewing the search for records conducted by the Department, and assessing the Department's application of exceptions to access. Despite what the Complainant asserts some government officials may have stated, or the interpretation placed on such statements by the Complainant, we have concluded that the Department has properly conducted its search for responsive records, and that none of the records located was a final, approved policy on medical assistance in dying relating to faith-based institutions.

[15] In our discussions with the Complainant, we observed that policy development often takes time, particularly where there are a number of different stakeholders with differing views and interests, and that sometimes a system continues to function, even without a formally approved policy. The Department has also provided to the Complainant a statement containing a proposed timeline for the completion of its policy development process.

[16] Section 29 is a discretionary exception to which section 9 (public interest) applies. The Complainant has made a strong argument about the importance of transparency and accountability for government policies relating to medical assistance in dying. We agree that the public interest in disclosure of such records must be considered. However, in the present case, where the Department has stated its expectation that a final policy will be approved in 2025, it has not been clearly demonstrated that the public interest outweighs the reason for the exception so as to require disclosure of draft policy records at the present time.

[17] We conclude, therefore, that the Department is entitled to continue to withhold the redacted information.

## RECOMMENDATIONS

[18] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** I recommend that the Department of Health and Community Services continue to withhold the information redacted from the records responsive to the access request.

[19] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, the head of the Department of Health and Community Services must give written notice of his or her decision with respect to these recommendations to the Commissioner and any person who was sent a copy of this Report within 10 business days of receiving this Report.

[20] Dated at St. John's, in the Province of Newfoundland and Labrador, this 27<sup>th</sup> day of January, 2025.



Kerry Hatfield  
Information and Privacy Commissioner  
Newfoundland and Labrador