



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-010

March 3, 2025

Department of Justice and Public Safety

Summary:

The Complainant made an access to information request to the Department of Justice and Public Safety seeking records regarding an ongoing legal matter between the Complainant and the Department. The Department's search did produce responsive records, many of which were withheld pursuant to section 30(1) (legal advice) of the **Access to Information and Protection of Privacy Act, 2015**. The Complainant challenged the applicability of that exception to the records while also asserting the Department failed to meet its section 13(1) duty to assist by not performing a reasonable search and failing to disclose all responsive records. Upon review, this Office found the Department did meet its duty to assist and agreed with the Department's application of section 30(1) to the records that were withheld.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 13(1) and 30(1).

Authorities Relied On: NL OIPC Report [A-2016-009](#).

[Newfoundland and Labrador \(Justice and Public Safety\) v. Newfoundland and Labrador \(Information and Privacy Commissioner\) 2023 NLCA 27](#).

BACKGROUND

- [1] The Complainant made an access request under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”) to the Department of Justice and Public Safety seeking the following:

All records pertaining to MUN’s vexatious litigant application and the appeal from Whalen C.J.’s relevant decision. The scope of the request covers but is not limited to – the information “TRIMMED”, stored on, and managed through Justice – Records Centre (HP records manager (TRIM) including files with .TR% extensions (Key words “[Named Individual]”, “[Named Individual]”, “[File Number]”, “[File Number]”, “[File Number].” Period covered: May 25, 2024, to date. The information related to the Notice of Constitutional Questions sent to the Attorney General on 6 September 2024 and its transfer to JPSO [Named Individual] in September 2024 – the information related to the watching briefs related to the hearings of 24 and 26 September in the Court of Appeal.

- [2] The Department’s search did produce several responsive records. 13 pages of records were withheld in their entirety as the Department determined that these records constituted legal advice pursuant to section 30(1) of the Act.
- [3] The Complainant challenged the applicability of section 30(1) to the records. The Complainant also stated that the Department did not meet its section 13(1) duty to assist, as it failed to provide information from HPRM and records relating to correspondence with the Assistant Deputy Minister for Legal Services.
- [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 states that the withheld records contain legal advice, which the Department has the discretion to withhold. The Department did not provide copies of these records to this Office, citing the decision in **Newfoundland and Labrador (Information and Privacy Commissioner) v. Newfoundland and Labrador (Justice and Public Safety) 2023 NLCA**

27 as its justification for not doing so. The Department did provide this Office with a table describing the records that are withheld and why they are covered by section 30(1).

COMPLAINANT'S POSITION

- [6] The Complainant asserts that the records withheld are not covered by section 30(1), though there was no evidence put forward to substantiate this claim. With respect to the claim that the Department did not meet its duty to assist, the Complainant is in possession of a record that they say is responsive to their access request, but which was not disclosed by the Department. The Complainant submits, therefore, that the Department's search is flawed and should be redone. The Complainant also states that the Department failed to disclose information related to the Department's HPRM database.

DECISION

Section 13. (1)

- [7] Section 13 imposes on public bodies a duty to assist access to information applicants:

13.(1) The head of a public body shall make every reasonable effort to assist an applicant in making a request and to respond without delay to an applicant in an open, accurate and complete manner.

- [8] As has been held in numerous reports released by this Office, the duty to assist is a fundamental component of the access to information process. A key component of the duty to assist is ensuring that the public body conducts a reasonable search for responsive records based on the applicant's request. A public body's search does not have to be perfect, but a reasonable effort must be made to locate possible records.

- [9] Given that the Complainant's access request was very specific, going even as far as to put forward search terms, there was no ambiguity as to specific records being sought. The Department's ATIPP Coordinator reached out to subject matter experts within the Department, particularly those within the Civil Division, for guidance and assistance in finding records. Various individuals were asked to search emails for key terms and to look at physical documents and other databases. All key terms suggested by the Complainant were used in

conducting the search. From the perspective of this Office, the Department's search appears reasonable, and this Office found that the Department applied a reasonable effort, searched the appropriate databases, and used its subject matter experts in conducting the search.

[10] In support of their position the Department had not conducted a reasonable search, the Complainant produced a copy of an email from the former Minister of Justice and Public Safety to the Department's Deputy Minister and Assistant Deputy Minister for Legal Services. The Minister's email contains no message, it only forwards a message from the Complainant to the Minister. This email was not disclosed to the Complainant in their access request, though the Complainant acquired a copy of the forwarded message through an earlier access request.

[11] This Office did bring this record to the attention of the Department, and the Department replied that it was aware of the record but now considers it to be covered under section 30(1) of the Act. Withholding information pursuant to section 30(1) is discretionary, and the Department may exercise that discretion differently in response to different access requests, so long as it can justify the exception. It is also possible that as a legal matter progresses, the context of how that record is viewed could also change. In this instance, the record disclosed to the Complainant as part of an earlier access request is now, from the perspective of the Department, part of a lengthy record containing legal opinions. As a result, the Department now states that section 30(1) applies to the record.

[12] The Complainant also asserts that the Department failed in its duty to assist by not providing specific information contained in the government's HPRM database, or TRIM, as it is commonly referred to. To the Department, the Complainant's request was not for the information that appears when a record is entered into HPRM; rather, the Complainant was seeking information that was "trimmed," (filed in the HPRM database). Our Office concurs with this perspective. As the Department notes, all the information provided to the Complainant or withheld pursuant to section 30(1) was "trimmed."

Section 30. (1)

[13] Section 30 (legal advice) states:

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

- (a) that is subject to solicitor client privilege or litigation privilege of a public body; or
- (b) that would disclose legal opinions provided to a public by a law officer of the Crown.

[14] For a public body to sustain a claim of section 30(1)(b) for a record, the following three conditions, as set forth in [Report A-2016-009](#), must be satisfied:

1. The record must be a communication between a solicitor acting in a professional capacity and a client;
2. The communication must entail the seeking or giving of legal advice; and
3. The communication must be intended to be and remain confidential.

[15] The context of the Complainant's request is important in this instance. The Complainant's request is seeking records directly related to an ongoing legal matter. As such, it is likely that a search for responsive records would return records to which section 30(1) could apply.

[16] Section 30(1) is a discretionary exception and must be applied on a line-by-line basis to a record. As noted above, the Department did not provide the records to this Office for review. Instead, the Department provided a table that states the type of record against which section 30(1) was applied, along with who created the record, to whom it was addressed, the type of legal record it is, and whether a legal opinion or a legal question was included. According to the Department, the records withheld were reviewed and the application of section 30(1) approved by the Deputy Minister and the Assistant Deputy Minister, both of whom are active solicitors and subject to the Law Society of Newfoundland and Labrador's Code of Conduct. While this Office would prefer to be provided with an affidavit swearing to the content of the records, in this case the information in the table suffices. After a review of the information contained in the table, this Office concurs with the determination of the Department that section 30(1) applies to the records in question.

RECOMMENDATIONS

- [17] Under the authority of section 47 of the **Access to Information and Protection Act, 2015**, I recommend that the Department of Justice and Public Safety maintain its position with respect to the records currently being withheld.
- [18] As set out in section 49(1)(b) of the **Access to Information and Protection Act, 2015**, the head of the Department of Justice and Public Safety 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.
- [19] Dated at St. John's, in the Province of Newfoundland and Labrador, this 3rd day of March 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador