



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2025-017

March 24, 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 a proposed legislative amendment. Upon review of the responsive records, the Department determined that all records had to be withheld, either pursuant to sections 27(1) and 27(2) (cabinet records), or section 30(1) (legal advice). This Office reviewed the records subject to sections 27(1) and (2) and concurred with the Department's determination that the records were cabinet records. This Office also reviewed the information provided by the Department to justify its use of section 30(1) and agreed with how that exception was applied to withhold the records.

**Statutes Cited:**

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, sections 27 and 30(1).

**Authorities Relied On:** NL OIPC Reports [A-2016-009](#)

[Newfoundland and Labrador \(Information and Privacy Commissioner\) v. Newfoundland and Labrador \(Justice and Public Safety\)](#), 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:
1. All records, including but not limited to memos, correspondence, meeting minutes, reports, and proposals, discussing or analyzing potential amendments to provincial legislation that would restrict the provision of accounting services to Chartered Professional Accountants (CPAs) in Newfoundland and Labrador.
  2. Records from January 1, 2022, to the present, relating to any consultations or communications with professional accountant organizations, such as the Chartered Professional Accountants of Newfoundland and Labrador (CPA NL), regarding possible changes to the regulation of accounting services.
- [2] The Department’s search did produce 21 pages of responsive records. Upon review of these records, the Department determined that all pages had to be withheld as they were either cabinet records according to section 27(1)(h) of the Act or records containing legal advice subject to section 30(1)(a).
- [3] The Complainant asserted the Department did not justify withholding all the records noting that it is unlikely that the entire content of all records fall within sections 27(1)(h) and 30(1)(a) of the Act. The Complainant sought a review of how these two sections were applied to the responsive records.
- [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 its role in the proposed legislative amendments that are of interest to the Complainant was limited to the drafting of the proposed amendments and communicating with Cabinet Secretariat about them. The Department notes that any consultations with CPAs or their professional association would have been conducted by the

Department of Digital Government and Service NL (“DGSNL”), whose Minister is responsible for the **Chartered Professional Accountants and Public Accountants Act**.

## COMPLAINANT’S POSITION

- [6] The Complainant acknowledges that some of the records could be covered by sections 27(1)(h) and 30(1)(a) but states that the Department should be able to sever this information and still disclose parts of the records.

## DECISION

### Application of Section 27(1)

- [7] Section 27 states:

27.(1) In this section, “cabinet record” means

...

(h) a record created during the process of developing or preparing a submission for the Cabinet;

...

27.(2) The head of a public body shall refuse to disclose to an applicant

(a) a cabinet record;

- [8] Section 27 of the Act is a record-level exception, which means that a public body does not conduct a line-by-line analysis of a record and withhold information that may be covered under the definition of “cabinet record.” Instead, a cabinet record must be withheld in its entirety and no part of it can be disclosed.

- [9] Cabinet records are the responsibility of Cabinet Secretariat. While individual government departments may have custody of some cabinet records, it is the responsibility of Cabinet Secretariat to make the final determination on what is and what is not a cabinet record. In this matter, the Department did provide to Cabinet Secretariat the records it considered to be

cabinet records and Cabinet Secretariat agreed with this determination. As the Department noted in its submissions to this Office, it “consulted with the Cabinet Secretariat and all redactions were applied according to Cabinet Secretariat’s approval and recommendation.”

[10] This Office has reviewed the records that the Department is withholding pursuant to section 27 of the Act, and we concur with the Department’s position. The records in question involve communication between the Department and Cabinet Secretariat about proposed changes to legislation that were included in a submission to cabinet. These records exist because of that submission.

#### Application of Section 30(1)

[11] Section 30 of the Act addresses records that include information containing communications between lawyers and public bodies. Section 30(1) states:

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

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

[12] The Department did not provide this Office with a copy of the records for which it claims section 30(1) applies. The Department cited the decision of the Newfoundland and Labrador Court of Appeal in **Newfoundland and Labrador (Information and Privacy Commissioner) v. Newfoundland and Labrador (Justice and Public Safety)** as its justification for doing so. The Department did provide a table that described the records that were withheld from the Complainant and why those records are subject to section 30(1).

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

1. It 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 confidential.

[14] In this case, the context of the Complainant's request is important. The Complainant is seeking records related to amending legislation, which is inherently a legal process. As such, that increases the likelihood that some records would be captured by section 30(1) as lawyers have a necessary role in the drafting and review of legislation. As noted above, the Complainant acknowledges this fact in their submission to this Office.

[15] Section 30(1) is a discretionary exception and must be applied on a line-by-line basis to a record. However, this Office is unable to perform such an analysis in this case because the Department did not provide the records to which it had applied section 30(1). Instead, the Department provided a table that lists the type of record subject to section 30(1), as well as who created the record, to whom it was addressed, and whether the record contained a legal opinion.

[16] While this Office would prefer that a public body submit an affidavit swearing to the contents of records that are withheld pursuant to section 30(1), in this instance, the Department's table suffices. This Office concurs with the Department's position on the applicability of section 30(1) to the records in question.

## RECOMMENDATIONS

[17] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Department of Justice and Public Safety maintain its position on this matter.

[18] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, the head of 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 24<sup>th</sup> day of March 2025.



Kerry Hatfield  
Information and Privacy Commissioner  
Newfoundland and Labrador