



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-023

May 27, 2025

Department of Justice and Public Safety

Summary:

The Complainant made an access request to the Department of Justice and Public Safety for information about the Supreme Court Rules Committee. The Department provided some records, but withheld others based on sections 5(1)(a) (judicial administration records) and 30(1)(a) (legal advice) of the **Access to Information and Protection of Privacy Act, 2015**. The Commissioner concluded that the Department had appropriately applied sections 5(1)(a) and 30(1)(a) and that there was no evidence that the public interest override at section 9 applied to require disclosure. The Commissioner recommended that the Department maintain its position and continue to withhold the records previously withheld from the Complainant.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 3, 5, 9, 30, 41, and 102.

Authorities Relied On: NL OIPC Report [A-2024-056](#).

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 for:

All records pertaining to the participation of the Minister of Justice and Public Safety's representative [name] in the operation of the Rules Committee of the Supreme Court, including the letter/notification of their nomination by the Minister of Justice and Public Safety.

[2] The Department located 575 pages of responsive records, most of which it withheld under two provisions of the Act: section 30(1)(a), which is an exception to access for both solicitor and client privilege (legal advice) and litigation privilege, and section 5(1)(a), which excludes certain records from the application of the Act. Section 5(1)(a) sets out four types of records where the Act does not apply, and the Department claims that these redacted records are judicial administration records.

[3] The Complainant filed a complaint with our Office, arguing that the Department had in both cases applied the provisions improperly.

[4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

DECISION

[5] The main issues to be dealt with in this Report are:

1. whether either branch of the exception at section 30(1)(a) applies to the withheld records;
2. whether section 9 (public interest) should apply to the solicitor client privilege exception so as to require disclosure; and
3. whether some records are properly excluded as judicial administration records.

Litigation Privilege

- [6] The Complainant made a submission claiming the Department had applied the litigation privilege exception to the withheld records. This exception covers documents created for the dominant purpose of litigation, either anticipated or actual, and encompasses communications, whether confidential or not, made for the dominant purpose of litigation. The purpose of litigation privilege is to create a “zone of privacy” in relation to pending or anticipated litigation.
- [7] The Department confirmed that it is not claiming that litigation privilege applies to any of the withheld information, only legal advice privilege. There is no indication, either in the access request, in the Department’s response to the request, or in the Department’s response to the complaint, that any of the responsive records involved existing litigation or court rules relating to such matters.
- [8] It appears that this issue arose from the fact that in its final response to the Complainant, the Department included a copy of a legal document created by the Complainant in an ongoing matter before the Supreme Court of Newfoundland and Labrador. The Complainant argues that the inclusion of this record in response to the access request demonstrates that the Rules Committee must have discussed prospective rules relating to their matter and must have discussed their court case. The Complainant submits that it is in the public interest that records of such actions should be disclosed to him.
- [9] We have investigated this matter, and the Department has confirmed that the inclusion of that record with the responsive records was in fact an error. Part of the search the Department conducted was a key-word search of the electronic records management system and email system that included the term “Rules Committee.” The record in question was located and returned in that search because the text of the record, as drafted by the Complainant, makes references to the Rules Committee in several places. As such, it formed part of the initial batch of records that were returned as a result of the key-word search.

[10] The record, however, ought to have been removed from the final batch of records to be provided to the Complainant, because it is not in fact responsive to the access request, which was for all records pertaining to the participation of the Minister of Justice and Public Safety's representative in the operation of the Rules Committee.

[11] The Department confirms that this record, which had been emailed to the Department, had been routinely forwarded to the Assistant Deputy Minister (who was also the Minister's representative on the Rules Committee), and to the Deputy Minister for their awareness and possible action in their internal departmental roles. It had not been forwarded to either of them for any role either of them played in relation to the Rules Committee.

[12] The Department has provided to our Office the responsive records withheld from the Complainant under section 5. We have reviewed them and there is no indication in those records that the Rules Committee discussed either the Complainant's ongoing matter specifically, or rules that might relate to the Complainant's ongoing matter, generally. There is no evidence that the legal document in question, created by the Complainant, was discussed by, or brought to the attention of, the Rules Committee.

[13] It is unfortunate that erroneously including the Complainant's document in the records provided led the Complainant to reach the wrong conclusion, but it is clear that litigation privilege is not at issue in this complaint investigation.

Legal Advice

[14] There is a well-known three-part legal test for the application of solicitor-client privilege:

- there must be a communication between a client and their solicitor;
- entailing the seeking or giving of legal advice; and
- it must be confidential.

[15] The Department did not provide our Office with the records withheld under section 30(1)(a). The Department did, however, provide a description containing the page numbers of those records, information about the sender and recipient, and the nature of the

communication. From that information, viewed in the context of the other surrounding correspondence, we are satisfied that the Department has met the burden of proving that section 30(1)(a) applies.

Public Interest Override

[16] The legal advice privilege in section 30(1) is a discretionary exception to which the section 9 public interest override applies. The Complainant argues that if the Rules Committee did discuss their court application, that the record should be disclosed as a matter of public interest.

[17] First, as we have explained above, there is no evidence that the Rules Committee discussed either the Complainant's case in particular or rules that might relate to the specifics of their case. Secondly, it should be noted that the application of section 9 to the solicitor-client privilege exception would require clearing a very high bar, since it has been stated in several court decisions that the privilege is close to absolute. The Complainant has not, in their submissions, come close to meeting that test.

Judicial Administration Records

[18] The other provision applied by the Department to withhold some of the records was section 5(1)(a). Of the four types of records set out in that provision, the Department is claiming the records are "judicial administration records." Section 5(1)(a) reads:

5. (1) This Act applies to all records in the custody of or under the control of a public body but does not apply to
- (a) a record in a court file, a record of a judge of the Court of Appeal, Trial Division, or Provincial Court, a judicial administration record or a record relating to support services provided to the judges of those courts;

[19] Judicial administration records are defined in section 2(m) as follows:

- (m) "judicial administration record" means a record containing information relating to a judge, master or justice of the peace, including information respecting:
 - (i) the scheduling of judges, hearings and trials,
 - (ii) the content of judicial training programs,

- (iii) statistics of judicial activity prepared by or for a judge,
- (iv) a judicial directive, and
- (v) a record of the Complaints Review Committee or an adjudication tribunal established under the *Provincial Court Act, 1991*.

[20] The Complainant argues that the records of the Rules Committee are not included in the above list. The list in the definition is not, however, exhaustive, as it uses the term “including.” It must therefore be interpreted using the ordinary principles of statutory interpretation.

[21] On examination, the withheld pages contain information related to communications regarding membership on the Rules Committee and about the substantive work of the Rules Committee, including email discussions amongst its members, minutes of meetings, and drafts of changes to court rules or forms.

[22] Our Office has had occasion to review similar records in a recent [Report A-2024-056](#). As we stated in that Report, such documents are records of a committee that serves an important function in maintaining the integrity of the administration of justice. We conclude that such records therefore fall into the category of judicial administration records. Section 5(1)(a) is a record-level provision, excluding the entire record from the application of the Act if it falls within the definition. The records in question were appropriately withheld by the Department.

[23] The Complainant argues that our Office should take account of the fact that proceedings of judicial rules committees are publicly available in some other Canadian jurisdictions. With respect, it is the legislation and jurisprudence in this province that must be interpreted. If legislation in another jurisdiction were identical or substantially similar, experience from that jurisdiction might have application, but that is not the case here. The legislature in this province has chosen to exclude judicial administration records from the operation of the Act.

Additional Issues

[24] The Complainant requested that he be provided with an official statement of an error from the Department, about the inclusion of the litigation document in the responsive record. The Complainant also demands to know who made subsequent submissions to our Office on the

Department's behalf, and whether they were made under oath and duly approved by the proper authorities. The Complainant also requested that the Department be required to provide, to the Complainant, a description of records over which the solicitor-client privilege is claimed, including sender, receiver, date, and subject. This is not the role of this Office and there is nothing in the Act that would give a Complainant the right to require such information from a public body.

[25] As section 3 of the Act provides, our Office acts as the statutory intermediary between a complainant and the public body. Its role is to provide independent review of decisions made by public bodies under the access provisions of this Act. We request and receive submissions from the parties, interpret applicable legislation, draw our conclusions, attempt to resolve each complaint informally, and issue reports when that is not possible. Our investigative processes are under our control and are confidential under sections 41(c) and 102 of the Act.

[26] Public bodies rely on that process to be able to provide records and submissions in confidence to our Office for review, with the assurance that such information will not be disclosed to the Complainant or anyone else without the public body's consent. Complainants also rely on the integrity of our investigative process to be assured that our conclusions and recommendations are the result of a thorough professional assessment.

[27] In conclusion, we find that the Department has properly applied sections 5(1)(a), section 30(1), and section 9 of the Act to withhold records from the Complainant.

RECOMMENDATIONS

[28] 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 and continue to withhold the records previously withheld from the Complainant.

[29] 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 Justice and Public Safety must give written notice of

their 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.

[30] Dated at St. John's, in the Province of Newfoundland and Labrador, this 27th day of May 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador