



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  

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NEWFOUNDLAND AND LABRADOR

## Report A-2025-026

May 28, 2025

### Department of Justice and Public Safety

#### Summary:

The Complainant made an access request to the Department of Justice and Public Safety for records about the selection and retention of the Independent Churchill Falls Negotiation Oversight Panel. The Department located some records responsive to one part of the request; however, there were no responsive records for the majority of the items in the Complainant's request. The Department relied on section 27 (Cabinet Confidences) of the **Access to Information and Protection of Privacy Act, 2015** to withhold the records that it had located. The Commissioner concluded that the application of section 27 to the records was appropriate and recommended the Department continue to withhold the records.

#### Statutes Cited:

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

Authorities Relied On: NL OIPC Report [A-2025-006](#).

## BACKGROUND

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

All records pertaining to the selection and retention of the Independent Churchill Falls Negotiation Oversight Panel to "provide reliable and transparent oversight on the ... issues associated with the ongoing negotiations process in respect of new contracts and developments with Hydro-Quebec" (Provincial Government Announces Independent Churchill Falls Negotiation Oversight Panel, <https://www.gov.nl.ca/releases/2025/jps/0127n06/>). Their list includes but is not limited to records regarding:

1. Nomination of [named individual] or [their] expression of interest;
2. Other nominations or expressions of interest;
3. Initial contacts and negotiations with [named individual];
4. Mandate mentioned in the above referenced news release;
5. Contract or agreement signed with [named individual] and members of the Panel along with attachments, if any;
6. List of deliverables to be provided by the Panel;
7. Budget allocated to the Panel and its source;
8. Bills submitted by the Panel to date and payments made to date, including the retainer, if any.

If JPS chooses to exempt some responsive records from disclosure, the requester seeks access to their list describing exempted information in neutral language (sender, receiver, date sent/received, subject matter, type of record: email, memo...). Format requested: the format in which a record was made, sent or received or in a format that does not materially change the information that was originally created, sent or received.

- [2] The Department provided the Complainant with a response advising that there were no records responsive to items 1, 2, 3, 5, 6, 7, or 8 of the request and that the records that were located (records responsive to item 4) were being withheld pursuant to sections 27(1)(c), 27(1)(e) and 27(2)(a) (Cabinet confidences) of the Act.
- [3] The Complainant made a complaint to this Office seeking a review of the Department’s decision.

- [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 records at issue are cabinet records and are properly withheld in their entirety under sections 27(1)(c), 27(1)(e) and 27(2)(a) of the Act.

### **COMPLAINANT'S POSITION**

- [6] The Complainant submits the Department improperly applied the exceptions to withhold the records and further argues that even if the records are appropriately withheld, that the Complainant should be given access to a “list describing exempted information in neutral language (sender, receiver, date sent/received, subject matter, type of record: email, memo...)”.

- [7] The Complainant takes issue with the classification of “mandate” and “memorandum”. The Complainant states that item number 4 in the access request specifically asked for information about the “mandate” referenced in the Government of Newfoundland and Labrador’s news release. The Department located a responsive record but withheld it under section 27(1)(c) which defines a cabinet record under that section as a memorandum. The Complainant states that a mandate is not a memorandum.

- [8] The Complainant also takes issue with Department’s decision to withhold the responsive records in their entirety without providing a list or description of the records to the Complainant. The Complainant submits that such a list describing the withheld records would not qualify as a cabinet record and therefore a line-by-line analysis must be completed.

### **ISSUES**

- [9] The issues to be addressed in this report are whether the Department properly applied sections 27(1)(c), 27(1)(e), and 27(2)(a) to withhold the records and whether there is a

requirement for the Department to provide a “list describing exempted information in neutral language”.

## DECISION

### Section 27 (Cabinet Confidences)

[10] The relevant sections of the Act are as follows:

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

...

(c) a memorandum, the purpose of which is to present proposals or recommendations to the Cabinet;

...

(e) an agenda, minute or other record of Cabinet recording deliberations or decisions of the Cabinet;

...

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

(a) a cabinet record; or

...

(3) Notwithstanding subsection (2), the Clerk of the Executive Council may disclose a cabinet record or information that would reveal the substance of deliberations of Cabinet where the Clerk is satisfied that the public interest in disclosure of the information outweighs the reason for the exception.

[11] Section 27(2) is a mandatory exception to access for cabinet records, as defined by section 27(1). However, section 27(3) gives the Clerk of the Executive Council discretion to release records where the public interest in the disclosure of the information outweighs the reason for the exception.

[12] The first issue to determine is whether the responsive records at issue are cabinet records as defined under sections 27(1)(c) and 27(1)(e). After reviewing the responsive records, it is

clear that pages 1-12 are a memorandum to Executive Council providing recommendations. These records are appropriately classified as a memorandum, the purpose of which is to present proposals or recommendations to the Cabinet, as set out in section 27(1)(c). Our Office cannot disclose the content of records that have been withheld and while the Complainant alleges a distinction between the terms “memorandum” and “mandate”, we can confirm that the record is responsive to the access request and was properly withheld under this mandatory exception to access.

[13] Page 13 of the responsive records is withheld as a cabinet record pursuant to section 27(1)(e). This record is a minute recording a decision of Cabinet and is appropriately classified and withheld.

[14] The Department advised that under section 27(3), the Clerk of the Executive Council concluded there was no public interest in disclosure and that it would not be appropriate to release the records.

[15] We therefore conclude the Department properly withheld the records pursuant to sections 27(1)(c), 27(1)(e), and 27(2)(a) of the Act.

#### Obligation to Create a New Record

[16] The second issue to determine is whether the Department is required to provide a list describing the withheld records in neutral language with such details as the date sent or received, the author, or type of records.

[17] The Complainant specified in the access request that if the Department chose to exempt some responsive records from disclosure, then the Complainant was seeking access to a “list describing exempted information in neutral language (sender, receiver, date sent/received, subject matter, type of record: email, memo...)”. The Department relies on [Report A-2025-006](#) from this Office stating that there is no requirement that a public body provide to an applicant information such as date, sender, subject, receiver, or similar information about a withheld record. The Complainant takes issue with the Department’s position and withholding the responsive records in their entirety.

[18] As noted above, the records are properly withheld under section 27 of the Act. What the Complainant is asking the Department to do is to create and disclose a new record describing the records that have been withheld. There is nothing in the Act, however, that requires a public body to create a new record in response to an access to information request nor to describe to a complainant records that have been withheld.

## RECOMMENDATIONS

[19] 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 pursuant to sections 27.

[20] 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 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.

[21] Dated at St. John's, in the Province of Newfoundland and Labrador, this 28<sup>th</sup> day of May 2025.



Kerry Hatfield  
Information and Privacy Commissioner  
Newfoundland and Labrador