



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2025-028

June 4, 2025

### Executive Council

#### Summary:

The Complainant made an access to information request to Executive Council for records relating to the use of a private law firm to assist with a memorandum of understanding agreed to between the Provinces of Newfoundland and Labrador and Quebec. Executive Council conducted a search for responsive records but decided to withhold most records pursuant to section 30(1) (Legal advice) and 35 (Disclosure harmful to the financial or economic interests of a public body) of the **Access to Information and Protection of Privacy Act, 2015**. The Complainant disagreed with this decision and filed a complaint with this Office. Upon review by this Office, it was determined that Executive Council had met its duty to assist the Complainant and determined that the withheld records were subject to solicitor-client privilege and could be 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:

[Miranda v. Richer](#) 2003 SCC 67.

[Newfoundland and Labrador \(Information and Privacy Commissioner\) v. College of the North Atlantic](#) 2013 NLTD(G) 185.

NL OIPC Reports [A-2020-027](#), [A-2021-023](#), [A-2024-033](#), and [A-2025-006](#).

## BACKGROUND

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

All records pertaining to the selection and retention of Stewart McKelvey “to provide the government with independent advice” on the Memorandum of Understanding (MOU) with Quebec (acknowledged by Premier Furey’s speech in the House of Assembly on 6 January 2025). Their list includes but it is not limited to:

1. Service request, call for proposals, or initial contacts soliciting advice;
2. Bids of service offers of other providers;
3. “mandate of undertaking a detailed analysis” given to Stewart McKelvey by the Government (from Premier Furey’s speech);
4. Contract or agreement signed with Stewart McKelvey along with attachments, if any;
5. List of deliverables provided by Stewart McKelvey (if different from the list of records responsive to ATIPP request PB-22-2025);
6. Bill submitted to Stewart McKelvey for services delivered and payments to this law firm, including retainer, if any;
7. List of Stewart McKelvey lawyers tasked “to provide the government with independent advice” on the MOU with Quebec and team leader/coordinator/contact person.

Possible location: HP TRIM and/or the other document/email management systems used by government;

Period covered: March 2021 to date (“Premier Legault and Premier Furey met in August of ’21, as acknowledged in Premier Furey’s speech).

- [2] Executive Council’s search produced 100 pages of responsive records, the vast majority of which were withheld in their entirety pursuant to sections 30(1) and 35(1) of the Act.
- [3] The Complainant disagreed with the decision of Executive Council, asserting that the exceptions to access at 30(1) and 35(1) were misapplied. The Complainant further states that the search for records conducted by Executive Council was incomplete.
- [4] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act. Information and Privacy Commissioner Kerry

Hatfield delegated authority for this matter to me, as Director of Research and Quality Assurance, pursuant to section 103 of ATIPPA, 2015.

## **PUBLIC BODY'S POSITION**

- [5] Executive Council submits that it did a thorough examination of responsive records and consulted with legal counsel as to the purpose of the records that were withheld. Legal counsel confirmed that the records are subject to solicitor-client privilege. With respect to the search, Executive Council submits that it searched all relevant databases for records using appropriate search terms adopted from the Complainant's access request.

## **COMPLAINANT'S POSITION**

- [6] The Complainant's position is that the search for responsive records is incomplete. This is based on their belief that the use of the term "mandate" suggests that Executive Council drafted and provided to the law firm a "mandate letter" similar to that provided to ministers and which are frequently made public. As for the material that is being withheld, the Complainant believes that at least some of this information could be disclosed.

## **ISSUES**

- [7] The issues to be addressed in this Report are whether Executive Council met its section 13 duty to assist the Complainant by conducting a reasonable search; and whether Executive Council properly applied sections 30(1) and 35 to withhold certain responsive records.

## **DECISION**

### **Section 30(1)**

- [8] As noted above, some of the responsive records were withheld by Executive Council, with the public body applying both sections 30 and 35 of the Act to the same material that was withheld.

[9] Executive Council takes the position, based on recent jurisprudence, that it is not required to submit records withheld pursuant to section 30 to this Office for review. Executive Council did, however, provide a description of the records to which it has applied section 30. There are two records: a letter of retention between the Government of Newfoundland and Labrador and Stewart McKelvey and a statement of account from the firm that Executive Council has in its custody or control.

[10] To withhold records pursuant to section 30(1), the record in question must meet the following three conditions:

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 confidential.

[11] Providing a retention letter to a client is a common practice amongst lawyers to formalize the solicitor-client relationship. A retention letter is not a mere form to be provided to a client. It often contains an outline of the work that is to be completed, how the client will be charged, how communication will be established between the client and the lawyer, and the obligations and rights of both the solicitor and the client. A retention letter is part of the continuum of legal advice, as it sets out the framework for how the legal issue is to be handled. In this case, the application of section 30(1) to that record by Executive Council appears to be correct.

[12] With respect to the disclosure of legal bills, this Office has taken a more nuanced approach to these records since they contain information on the expenditure of public money. Transparency in how government revenue is expended is central to the access to information framework.

[13] There does exist a relatively robust set of decisions – both judicial and released by this Office – to provide guidance on this matter. In general, the Supreme Court of Canada in **Maranda v. Richer** established that there is a presumption that legal bills fall within solicitor-client privilege. This presumption was considered in the context of an access to information request in this province in the Supreme Court decision of **Newfoundland and Labrador (Information and Privacy Commissioner) v. College of the North Atlantic**. In that decision, Chief

Justice Orsborn stated that disclosing the total amount of legal fees in the context of ongoing litigation created significant risk that an assiduous inquirer could draw inferences about the communications between a client and counsel. The Chief Justice expanded upon this point in paragraph 43 of the decision:

[43] Disclosing information on expenditures for legal services during the litigation for which the services were or are being provided poses a serious risk to the confidentiality that must attach to the communications between solicitor and client during those proceedings. The fair conduct of litigation, while it relies on full disclosure of the substantive factual elements of the claim and dispute, also relies on the ongoing ability of the client to discuss confidentially with his or her solicitor matters such as resolution strategy, trial strategy, assessment of the case and the many other issues on which advice may be sought during litigation.

[14] Since the College of the North Atlantic decision, this Office has released several reports on the disclosure of legal bills and the factors that militate for or against their release. These include:

- Whether the legal matter was ongoing (Report [A-2020-027](#));
- Whether the applicant is familiar with the legal matter subject to the invoice (Report [A-2021-023](#)); and
- Whether there is a single identifiable client, specific proceedings, and the status of the legal proceedings ([Report A-2024-033](#)).

[15] The primary differences between the circumstances in the above-noted cases and the case at issue is that the legal bills covered in those reports were for specific litigation that was either ongoing or concluded. However, in our view, it would be arbitrary to draw a firm distinction between the disclosure of legal bills for ongoing litigation and other legal matters. Most legal matters do not end up in litigation, but that does not mean that the presumption of solicitor-client privilege as applied to legal fees is any less important, nor does it lessen the impact of any violation of that privilege.

[16] In this case there is only one identifiable client and the issue for which the legal fees are paid is well-publicized. Perhaps most importantly, the legal matter is still ongoing with many aspects of it still unresolved. It is entirely possible that disclosing information on this legal bill – even just the aggregate amount paid – could undermine solicitor-client privilege in the present context. Such information could be used to draw inferences that could impact how

other actors react or respond. As well, releasing such information could conceivably affect the province's options in its ongoing negotiations.

[17] If all negotiations and agreements related to this matter were concluded, it is possible that this Office would take a different position on this complaint. But that is not the case, and to release any information on the current legal bills incurred by the province in this matter would, at the present time, be a breach of solicitor-client privilege. Therefore, this Office accepts Executive Council's application of section 30(1) to these records.

[18] As noted above, Executive Council had also applied section 35(1) to these same records. Having found that section 30(1) applies, it is not necessary to assess the application of section 35(1).

### **Section 13(1) – Duty to Assist**

[19] In its submissions, Executive Council provided a description of the steps it took in conducting its search for responsive records and the efforts it undertook to assist the Complainant. The search request was detailed and specific, which guided Executive Council's search for records. Executive Council searched relevant databases and emails and consulted with appropriate employees within Executive Council and with the Department of Justice and Public Safety.

[20] The standard to be applied to a search for records by a public body has been stated in many past Reports issued by this Office, including recently in Report [A-2025-006 \(at paragraph 24\)](#):

. . . The Act does not require the public body to prove with absolute certainty that records do not exist. The public body must provide evidence to show that it has made a reasonable effort to locate records responsive to the request. A reasonable search is one in which an employee, experienced in the subject matter, expends a reasonable effort to locate records which are reasonably related to the request. The standard is not perfection, but one of reasonableness.

[21] The Complainant contends that a "mandate letter" should have been located and provided in response to their request and highlights the existence of mandate letters issued to

ministers. In response, Executive Council submitted that the request was not for a mandate letter, but simply the mandate given to Stewart McKelvey, which Executive Council did describe to the Complainant in its final response as “the provision of legal advice and legal opinions on issues with respect to discussions with the Province of Quebec relating to CF(L)Co power agreements/assets.” As noted above, the letter of retention between the Government of Newfoundland and Labrador and Stewart McKelvey, which would outline the work the law firm would perform on behalf of the Government of Newfoundland and Labrador, was located but was withheld under section 30(1).

[22] From our review of Executive Council’s submissions, and its explanation with respect to the Complainant’s assertion that a “mandate letter” exists, we are satisfied Executive Council conducted a reasonable search for responsive records and did meet its duty to assist the Complainant.

## RECOMMENDATIONS

[23] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Executive Council maintain its position on this matter and continue to withhold the records pursuant to section 30(1).

[24] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, the head of Executive Council 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.

[25] Dated at St. John’s, in the Province of Newfoundland and Labrador, this 4<sup>th</sup> day of June 2025.



Sean Murray  
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Office of the Information and Privacy Commissioner  
Newfoundland and Labrador