



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025- 039

September 4, 2025

Newfoundland and Labrador Hydro

Summary:

The Complainant made two access requests to Newfoundland and Labrador Hydro for lists of records relating to the work of two law firms on the Churchill Falls agreement between the Governments of Newfoundland and Labrador and Quebec, as well as the contract or agreement with one of the firms and records of payments for its services. NL Hydro responded that lists of such records did not exist, and that any other responsive records were withheld on the basis of section 30 of the **Access to Information and Protection of Privacy Act, 2015** (solicitor-client privilege) as well as other exceptions to access. The Commissioner found that NL Hydro had met its duty to assist the applicant under section 13 of the Act by conducting a reasonable search for records, that it was entitled to withhold the records under section 30 of the Act, and that it was not necessary to consider the application of other exceptions to access.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 13, 29, 30, 34, and 35.

[Management of Information Act](#), SNL 2005, c M-1.01.

Authorities Relied On: [Maranda 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-2025-023](#), [A-2025-028](#), and [A-2025-029](#).

BACKGROUND

- [1] The Complainant made two access to information requests to Newfoundland and Labrador Hydro (“NL Hydro”) under the **Access to Information and Protection of Privacy Act, 2015** (the “Act”). The first access request (PB/216/2025) was as follows:

Printouts or screenshots of the results of the search in the electronic document and records management system used by NL Hydro using the following keywords: [names of persons] "@stewartmckelvey.com." For the sake of clarity, the requester does not seek access to the contents of records so located at this stage. On February 4, he sought, but did not receive a confirmation from the ATIPP coordinator that a search using the above specified parameters had been carried before.

- [2] While it is not the subject of this Report, it should be explained that the Complainant had previously made an access request to NL Hydro (PB/33/2025) for a list of records:

List of records received from, sent to or containing references to Stewart McKelvey, a law firm, or its lawyers when preparing, discussing and drafting the tentative agreement between Newfoundland and Labrador and Quebec announced by the Premier on 12 December 2024 and the individual projects in the agreement. Words that can be used to locate responsive records: “[names]” “Quebec” “@stewartmckelvey.com,” etc.

NL Hydro had processed that previous request and responded that no such list existed. The Complainant then filed the above access request (PB/216/2025), one of the two requests that will be addressed in this Report, contending the public body must have conducted a search in order to respond to the previous request and therefore there must be a record of that previous search, which could then be located in response to the present request.

- [3] The Complainant subsequently made another access request to NL Hydro (PB/514/2025), the second request that will be addressed by this Report. This request was similar, though referring to a different law firm. In this request the Complainant asked for a list of records, and additionally asked for a copy of the contract with the law firm and of invoices paid, as follows:

1. List of records received from, sent to or containing references to McInnes Cooper, a law firm, or its lawyers when preparing, discussing and drafting an agreement guaranteeing Quebec’s access to existing Churchill Falls power generation and the addition of new production through increased capacity at

the existing facility, a new generation station on the Churchill Falls site, and a new facility at Gull Island and the individual projects in the agreement. Words that can be used to locate responsive records: “[names of persons]” “@mcinnescooper.com,” “Gull Island.” For the sake of clarity, the requester does not seek access to the contents of records so located at this stage.

2. Contract or agreement signed with McInnes Cooper along with attachments, if any;

3. Payments to McInnes Cooper for services delivered by this law firm, including the retainer, if any;

[4] In both of the requests under review (PB/216/2025 and PB/514/2025) the public body responded that there was no responsive record containing a printout, a screenshot, or a list of records, and that under the Act there was no requirement for NL Hydro to create one.

[5] In addition, in the case of request PB/514/2025, NL Hydro located records responsive to the second and third parts of the request, but refused to disclose those records on the grounds of section 30 (legal advice), section 29 (policy advice or recommendations), section 34 (disclosure harmful to intergovernmental relations or negotiations), and section 35 (disclosure harmful to the financial or economic interests of a public body).

[6] The Complainant filed complaints with this Office about both requests. As informal resolution was unsuccessful, these two complaints proceeded to formal investigation in accordance with section 44(4) of the Act. Given the similarity of issues in these complaints, made by the same Complainant to the same public body, they will be dealt with in a single Report.

ISSUES

[7] The issues to be dealt with in this Report are as follows:

1. Whether in each case NL Hydro conducted a reasonable search for responsive records as required by section 13 of the Act,
2. Whether section 30 applies so as to justify withholding the records requested in the second complaint, and

3. Whether sections 29, 34, and 35 additionally apply to any of the withheld records.

DECISION

Reasonable Search

- [8] The first issue to be dealt with is whether NL Hydro conducted a reasonable search for records. This is part of the duty of every public body, under section 13 of the Act, to assist the applicant. As our Guidance on that topic states:

In Report A-2009-11, the Commissioner stated: The duty to assist, then, may be understood as having three separate components.

- First, the public body must assist an applicant in the early stages of making a request.
- Second, it must conduct a reasonable search for the requested records.
- Third, it must respond to the applicant in an open, accurate and complete manner.

The Complainant suggests that NL Hydro has failed to comply with all of those requirements.

- [9] First, the public body is expected to assist the applicant in the early stages where it may be necessary to interpret or clarify the request. As noted in Report [A-2025-029](#):

Assistance from the coordinator may be necessary where there is some doubt as to the meaning of the language in the access request.

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With that said, many access requests can be accepted at face value and will not require the ATIPP coordinator to engage in follow-up to clarify the request. In determining whether clarification is needed, consideration should be given to the language of the access request (Is it precise? Does it demonstrate a familiarity with the ATIPP process?). Furthermore, a person making their first ATIPP request may require more guidance on how to frame an access request than a sophisticated user of the ATIPP process who routinely makes such requests.

- [10] In the present cases, the access requests were clear, specific, and concrete. It would also appear from the construction of the requests that the applicant is familiar with the Act and

with the access process. Therefore, there would have been no need in either case for the public body to contact the applicant to clarify or interpret the request.

[11] Second, the public body is expected to conduct a reasonable search for records. In the case of the first complaint, NL Hydro stated as follows:

NL Hydro conducted a “reasonable search”, which included asking the subject matter experts for records, and determined that there were no “printouts or screenshots of the search” for the requested information. This is NL Hydro’s standard procedure, and we followed the NL- OIPC’s guidance on a reasonable search . . .

[12] In the case of the second complaint, NL Hydro advised:

With respect to Bullet 1 of the Complainant’s request, NL Hydro consulted with its subject matter experts and confirmed that there is no such list.

[13] The Complainant’s position is that to be reasonable, the search should have included an electronic search using the key words supplied in the access request. They argue that the results from such a search, as presented to the searcher by the records management system, constitutes a record responsive to their request.

[14] In neither of the present cases did NL Hydro state that it had actually conducted an electronic search. Rather, its argument appears to be that in a clear-cut case such as this, it is sufficient to ask the subject-matter expert whether such a record exists and that discussion constitutes a reasonable search.

[15] As our Office has stated on numerous occasions, the standard for conducting a search for records is not perfection, but reasonableness. The test is often stated to be “whether the search is conducted by knowledgeable staff in locations where relevant records are likely to be located.”

[16] In the present case the public body is a technically sophisticated organization, with modern information management processes and professionally trained staff. The access request was clear, concise, and well-framed. It is our conclusion that to meet the duty to assist in these circumstances, it was sufficient for an experienced coordinator to simply consult with

the public body's subject-matter experts, to determine whether such lists of records exist, without additionally conducting an electronic search. This is not an uncommon practice. For example, public bodies in this Province have routinely transferred requests to other public bodies within the first five days after receiving them, as provided by the Act, without taking the time to conduct electronic searches in cases where it is obvious to experienced staff that the requested records would be in the custody of another public body. Further, it must be noted that the requests at issue were specifically framed to not ask for the records themselves, but for screenshots or other images of search results. It is possible for NL Hydro to determine that it does have such records without conducting an electronic search for them.

[17] We could, however, reach a similar conclusion even if the public body had in fact conducted an electronic search for records in a previous case. The Complainant argues:

There is absolutely no need to create new records, as the PB seems to allege. The responsive information was either already created when responding to the [previous] ATIPP request or stored in the PB's information management system.

[18] One must keep in mind that what the Act requires in response to an access request is a search for records. The Complainant's argument presupposes that conducting an electronic search in a public body's information management system in fact creates a record. However, in the ordinary case a search does not in fact create a "record" within the meaning of the Act. A display of information on a searcher's computer screen is not a record. A record is information that is preserved, that is set down in, or converted to, some permanent form, whether it is a picture, a sound recording, a printed paper document, or a saved electronic document. A search for information, whether a physical search or an electronic search, does not necessarily create a record until the results of that search are saved in some permanent form.

[19] In cases like the present, the public body searcher would have to conduct a search of the kind described using appropriate search terms. The searcher would then have to examine the information produced by the search and make a purposeful decision whether to save it, for example by a printout, a screenshot, or a word processing program document, and record the location in which it was saved, for possible future retrieval.

[20] The evidence before us is that no such search was completed, but even if it was, the results were not saved as a permanent or even a transitory record. Nor is there any evidence to suggest that such actions should have been taken by the public body in the present case.

[21] The Complainant has further argued that the **Management of Information Act**, in section 4.1 provides that information that identifies the origin and destination of electronic information, and the date and time when it was sent or received constitutes an integral part of government records. He argues that therefore printouts or screenshots that contain such information are responsive to his request and therefore should have been provided.

[22] However, section 4.1 is about the requirement to retain records, and the provision to which the Complainant refers applies only to information that has been sent or received. For example, if a record, such as an email, is required by that Act to be retained, its retention would not be considered compliant with that Act unless the “header information” showing the origin, destination, date and time are saved as a part of it. That is not an issue in these present cases, since the responsive lists were found not to exist.

[23] We therefore accept that NL Hydro conducted a reasonable search for records in both of the present cases, and determined that a list of records as requested by the Complainant did not exist. We also agree that NL Hydro was not required to create a record, in either of those cases, in order to comply with the Act. Its response to the Complainant was accurate and complete. It has therefore met the duty to assist the Complainant in both cases.

Solicitor-Client Privilege

[24] NL Hydro cites several recent Reports ([A-2025-023](#), [A-2025-028](#), and [A-2025-029](#)) from our Office, and the “robust set of decisions” cited therein to support the application of section 30(1)(a) to the records sought in the second access request (PB/514/2025). In keeping with current jurisprudence on this issue, NL Hydro declined to provide our Office with copies of the records for which solicitor-client privilege was claimed. However, NL Hydro did provide additional information about the records in its custody or control that are responsive to the

second and third parts of the Complainant's access request, sufficient for our Office to make a determination about whether the records are covered by the privilege.

[25] There are two types of records requested by the Complainant. One is the contract or agreement with the law firm. NL Hydro states that there is a record, a retention letter, that is responsive to this part of the request. NL Hydro cites our recent Report [A-2025-028](#), in support of its position that such retention letters are subject to solicitor-client privilege:

[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.

[26] We have no difficulty in concluding in the present case as well, that the application of section 30(1)(a) to the requested record, the retention letter, is correct.

[27] The second type of record requested by the Complainant is payments to McInnes Cooper for services. NL Hydro located a number of responsive records, containing information about fees and invoices. For this type of record, it should be sufficient to reiterate the position expressed in the above Report [A-2025-028](#):

[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.

...

[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.

[28] It is abundantly clear that the considerations expressed in the above Report also apply to the facts of the present case. We therefore conclude NL Hydro has met the burden of proof at section 43(1) that it is entitled to withhold the responsive records from the Complainant under section 30.

[29] The Complainant has argued that there is no evidence that the public body considered the application of the public interest override, in section 9 of the Act, to the exception in section 30. In Report [A-2025-023](#) we noted that the application of section 9 to the exception for legal advice 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's submissions have not met that test.

[30] For completeness we should add that, in the present case, NL Hydro has agreed with the view that our Office expressed in the above Report, that if negotiations and agreements were concluded between NL Hydro and Hydro-Quebec, there is a possibility that NL Hydro would make a different decision about whether to release or withhold the records. That of course would be a matter for another access request at the appropriate time.

Other Exceptions to Access

[31] In its response to the Complainant's second access request, NL Hydro also claimed that sections 29, 34, and 35 also apply to the withheld records. As stated above, NL Hydro did not provide the withheld records to our Office for review. Without having the records to review, we

cannot conclude NL Hydro has met its burden of proving these exceptions to access apply. However, given our conclusion that section 30 applies so as to justify withholding all of those records, the failure to prove these exceptions apply does not change our recommendations about withholding these records.

[32] The Complainant also alleged, during the course of our investigation, that the head of the public body has not properly delegated the authority to make decisions under section 110 of the Act. As we have explained in previous Reports, our Office will normally assume the designation and delegation of functions under section 110(2) of the Act. As the Act does not prescribe any form of delegation, that is an internal matter for each public body to decide.

RECOMMENDATIONS

[33] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015** I recommend that Newfoundland and Labrador Hydro maintain its position on each of the present complaints and continue to withhold the responsive records pursuant to section 30(1)(a) of the Act.

[34] As set out in section 49(1)(b) of the **Access to Information and Protection of Privacy Act, 2015**, the head of Newfoundland and Labrador Hydro 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.

[35] Dated at St. John's, in the Province of Newfoundland and Labrador, this 4th day of September 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador