



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2025-049

December 22, 2025

Newfoundland and Labrador Hydro

Summary:

The Complainant made an access to information request to Newfoundland and Labrador Hydro about metadata attached to records sent to the public body by a law firm retained to do work on the memorandum of understanding between Newfoundland and Labrador and Quebec. Newfoundland and Labrador Hydro refused to release this metadata, arguing it was covered by solicitor-client privilege and could be withheld pursuant to section 30 (legal advice) of the **Access to Information and Protection of Privacy Act, 2015**. Upon review, this Office concurred with Newfoundland and Labrador Hydro's application of section 30, determining that the records to which the metadata were attached were covered by solicitor-client privilege and the accompanying metadata would disclose information, such as the dates and names attached to files, that were intended to be covered by solicitor-client privilege.

Statutes Cited:

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

[Management of Information Act](#), SNL 2015 c M-1.01, section 4.1.

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](#).

[Canadian Imperial Bank of Commerce v. The Queen, 2015 TCC 280](#).

NL OIPC Reports [A-2020-027](#); [A-2021-023](#); [A-2024-033](#); and [A-2025-028](#).

BACKGROUND

[1] On August 18, 2025, the Complainant submitted an access to information request to Newfoundland and Labrador Hydro seeking the following:

Metadata (information that identifies the creator, origin and destination of the electronic information, the date and time when it was created, sent or received, see section 4.1 of the Management of Information Act) of the following records stored in the electronic document and records management system used by Newfoundland and Labrador Hydro, including emails:

1. (Approved by OIPC to be disregarded)
2. (Approved by OIPC to be disregarded)
3. Contracts or agreements signed with McInnes Cooper and Stewart McKelvey along with attachments, if any.
4. Payments to McInnes Cooper and Stewart McKelvey for services delivered, including the retainer, if any.

Period covered 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.

[2] Newfoundland and Labrador Hydro conducted a search pursuant to the access request, though it was determined that all responsive records should be withheld pursuant to section 30 of the **Access to Information and Protection of Privacy Act, 2015** (the "Act"), as they were records covered by solicitor-client privilege.

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

COMPLAINANT'S POSITION

[4] The Complainant states the metadata sought in their request is not covered by solicitor-client privilege and, therefore, cannot be withheld pursuant to section 30 of the Act. In support of this position, the Complainant cites the Tax Court of Canada case of **Canadian Imperial Bank of Commerce v. The, Queen**, as well as the definition of electronic records in the

province's **Management of Information Act**. The Complainant also asserts that Newfoundland and Labrador Hydro did not meet its duty to assist, as it failed to reply to an email from them to the public body. This report will not address this assertion as it is not of sufficient substance.

PUBLIC BODY'S POSITION

- [5] It is the position of Newfoundland and Labrador Hydro that the metadata sought by the Complainant is covered by solicitor-client privilege since the records to which the metadata are attached meet the test for solicitor-client privilege. According to Newfoundland and Labrador Hydro, when a record is covered by solicitor-client privilege, the metadata that accompanies that record is also protected by solicitor-client privilege. In this instance, all the records withheld from the Complainant were considered to be subject to solicitor-client privilege and this privilege, therefore, applies to the metadata of those records.

ISSUES

- [6] This report will address whether the records to which the metadata is attached are covered by solicitor-client privilege and, if so, whether the metadata is also covered by solicitor-client privilege.

DECISION

Are the records for which the metadata is sought covered by solicitor-client privilege?

- [7] It is the position of Newfoundland and Labrador Hydro, given recent court decisions, that it does not have to provide this Office with copies of the records that have been withheld under section 30 of the Act. As a result, this Office has not reviewed the metadata sought by the Complainant nor the records to which the metadata are attached. Newfoundland and Labrador Hydro has provided this Office with a summary of the records, noting that they are copies of invoices from a law firm and a retention letter sent by that firm to the public body.
- [8] Whether or not a retention letter is covered by solicitor-client privilege was recently considered by this Office in Report [A-2025-028](#). In determining in that case that the retention

letter presented by the law firm to the government did carry solicitor-client protections, the Commissioner concluded:

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.

[9] There are no reasons to treat the retention letter in this matter any differently than that discussed in Report [A-2025-028](#). In fact, the overall legal matter in both instances is the same. Therefore, this Office agrees with Newfoundland and Labrador Hydro's determination that solicitor-client privilege attaches to the retention letter that is being withheld in the response to the Complainant's access to information request.

[10] The attachment of solicitor-client privilege to legal bills has been considered on several occasions by both the Supreme Court of Newfoundland and Labrador and in reports released by this Office. Determining whether solicitor-client privilege can be applied to legal bills is an issue that requires an understanding of the legal matter and its accompanying facts.

[11] The matter of disclosing legal bills was addressed by the Supreme Court of Canada in **Miranda v. Richer**, which established a presumption that solicitor-client privilege would attach to such invoices. In this province, the issue was also addressed in **Newfoundland and Labrador (Information and Privacy Commissioner) v. College of the North Atlantic** where legal bills were sought for an ongoing legal matter. In determining that solicitor-client privilege attached to such records, Justice Orsborn concluded:

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 these proceedings.

In coming to this conclusion, Justice Orsborn noted that disclosing legal fees during ongoing litigation created significant risk that an assiduous inquirer could draw inferences about communications between a client and counsel.

[12] Since the **College of the North Atlantic** decision, this Office has considered the release of legal fees under a variety of circumstances. These decisions and the factors to consider include:

- Report [A-2020-027](#): whether the legal matter is ongoing,
- Report [A-2021-023](#): whether the Complainant is familiar with the legal matter subject to the invoice, and
- Report [A-2024-033](#): whether there is a single identifiable client or specific proceedings notorious to the legal matter.

[13] The records at issue in this matter are very close to those considered in Report [A-2025-028](#), which sought the disclosure of legal bills for work done on the Churchill Falls memorandum of understanding, though with a different public body. As in that Report, the request made by the Complainant in this matter involves an ongoing legal issue, which is one of the leading political and economic issues in the province, and there is but one client. As stated in Report [A-2025-028](#):

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 and respond. As well, releasing such information could conceivably affect the province’s options in its ongoing negotiations.

[14] Similar to the conclusion in Report [A-2025-028](#), if the legal matter at issue was concluded, this Office may look differently upon the release of the legal bills.

Is the metadata also subject to solicitor-client privilege?

[15] Having determined that the records for which the metadata is sought are covered by solicitor-client privilege and can be withheld pursuant to section 30 of the Act, it must now be determined whether the metadata of these records is subject to the same privilege.

[16] It is the Complainant’s position that metadata of records covered by solicitor-client privilege do not receive the same protections. As mentioned above, the Complainant relies upon the decision in **Canadian Imperial Bank of Commerce** as definitive proof that their position is correct. This Office has reviewed **Canadian Imperial Bank of Commerce** and we do not agree with the Complainant’s interpretation of that decision.

[17] The consideration of metadata in **Canadian Imperial Bank of Commerce** is related to a dispute over whether certain files are subject to solicitor-client privilege and the use by the Canadian Imperial Bank of Commerce of metadata to describe records in question. The Crown argued that metadata did not provide enough information to properly make such a determination.

[18] The use of metadata as a descriptor for records in **Canadian Imperial Bank of Commerce** does not mean that such information is not subject to solicitor-client privilege. Metadata would disclose the author, date, file name, and other information depending on the type of digital file. In **Canadian Imperial Bank of Commerce** the bank disclosed the metadata as a means of disclosing as little information about certain records as possible, whereas the Crown sought more. It is the bank's prerogative if it determined to release some information that could be subject to solicitor-client privilege in order to prove that a larger amount of information held the same privilege. Its decision to do that in a complex litigation involving billions of dollars does not vitiate the principle that metadata of certain documents carries solicitor-client privilege. The matter under consideration in this report can be distinguished from **Canadian Imperial Bank of Commerce** based on the determination in this matter that the records for which to metadata is sought are already determined to be covered by solicitor-client privilege. In **Canadian Imperial Bank of Commerce** that point remained outstanding.

[19] A final determination on whether the metadata of records covered by solicitor-client privilege also enjoys solicitor-client privilege must rest, first and foremost, on the following: the metadata in question is inextricably attached to the records for which solicitor-client privilege is deemed to exist. The metadata is part of these records. If, for example, the retention letter from the law firm to Newfoundland and Labrador Hydro did not exist, the metadata would also not exist. Therefore, it is difficult to determine that the metadata is not actually part of the records withheld under section 30 of the Act.

[20] Nonetheless, assuming that the metadata can be treated as a separate record or a separate part of a solicitor-client privileged record, it is still subject to the test that this Office to determine whether solicitor-client privilege should apply to a record. This test consists of three parts:

- The record must be a communication between a solicitor acting in a professional capacity and a client.
- The communication must entail the seeking or giving of legal advice.
- The communication must be intended to be confidential.

[21] With respect to the first part of the test, the metadata in question is part of the communication between a solicitor and a client. It does not exist but for the remainder of the communication between the solicitor and the client and makes sense only as it relates to that privileged communication. Information embedded into privileged communication are part of that privileged communication.

[22] The second part of the test also supports the position that the metadata is covered by solicitor-client privilege. As this Office has determined in past decisions, a retention letter from a solicitor and statements of accounts are part of the process of receiving legal advice. The metadata of those records are part of that communication.

[23] As for the third part of the test, there is nothing to suggest that Newfoundland and Labrador Hydro and the law firm in question had any intention of not treating all aspects of the retention letter and legal with strict confidentiality. Solicitor-client privilege is treated with the utmost respect and deference. A large part of that privilege is the ability to maintain communication whenever it is needed, without any sort of surveillance, to discuss specific matters. Metadata reveals a lot of information, such as names, times, and dates, that are critical to the provision of legal services and the proper handling of legal matters. The information sought by the Complainant would disclose, at a minimum, who drafted the retention letter and when that occurred and who drafted the statement of account and when that occurred. Such information has always been viewed as confidential because it is part of the trust relationship between a lawyer and a client.

[24] To further support their position, the Complainant also cites the province's **Management of Information Act**. In particular, the Complainant notes that the legislation's definition of electronic records does not reference solicitor-client privilege. This argument is based on a very limited interpretation of the **Management of Information Act**. It does not address solicitor-

client privilege; rather, it considers how the provincial government should manage its own records. The lack of inclusion of solicitor-client privilege in the definition of electronic records does not mean that the former cannot apply to the latter.

RECOMMENDATIONS

- [25] 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 and continue to withhold the responsive records pursuant to section 30(1) of the Act.
- [26] 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.
- [27] Dated at St. John's, in the Province of Newfoundland and Labrador, this 22nd day of December 2025.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador