



OFFICE OF THE INFORMATION  
AND PRIVACY COMMISSIONER  
NEWFOUNDLAND AND LABRADOR

## Report A-2026-003

February 9, 2026

Executive Council

### Summary:

The Complainant made an access to information request to Executive Council for records about the selection and retention of a law firm to assist with a memorandum of understanding between Newfoundland and Labrador and Quebec. Executive Council conducted a search for responsive records and withheld most records pursuant to section 30(1) (legal advice) and section 35 (disclosure harmful to the financial or economic interests of a public body) of the **Access to Information and Protection of Privacy Act, 2015**. Upon review by this Office, it was determined that Executive Council had met its duty to assist the Complainant and 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. Newfoundland and Labrador \(Justice and Public Safety\)](#), 2023 NLCA 27.

NL OIPC Reports [A-2018-019](#), [A-2020-027](#), [A-2024-033](#), [A-2025-006](#), and [A-2025-028](#).

## 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. The names of the lawyers that received payment from the Public Body (the 'PB') during the period specified below, listing the aggregate amount each lawyer received from the PB during each month of that period. If the period exceeds one year, the aggregate amount can be provided on a quarterly basis.
2. The names of the law firms that received payment from the PB during the period specified below, listing the aggregate amount each law firm received from the PB during each month of that period. If the period exceeds one year, the aggregate amount can be provided on a quarterly basis.

Period covered: preparing, discussing and drafting an agreement (the 'MOU') guaranteeing Hydro-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.

Please refer to Report A-2018-019 (esp. paragraph 33) as the most relevant precedent. The Premier confirmed that the MOU is a matter of significant public interest (<https://vocm.com/2025/09/03/premier-responds-to-resignation-of-churchill-falls-oversight-panel-member/>), which explains the relevance of paragraph 30 of Report A-2018-019.

- [2] Most of the responsive records identified as a result of Executive Council’s search were withheld in their entirety pursuant to section 30(1) (legal advice) and section 35 (disclosure harmful to the financial or economic interests of a public body) of the Act.
- [3] The Complainant disagreed with the decision of Executive Council, asserting the exceptions to access at 30(1) and 35(1) were misapplied. The Complainant further states Executive Council did not discharge its duty to assist.

- [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] Executive Council submits that it did a thorough search for responsive records, searching all relevant databases for records using appropriate search terms adopted from the Complainant's access request; and further consulted with the Clerk of Executive Council and legal counsel regarding the search and the records that were withheld. Executive Council submits the memorandum of understanding is an ongoing issue and releasing any information, even the aggregate amount paid to the lawyers, would undermine solicitor-client privilege.

### **COMPLAINANT'S POSITION**

- [6] The Complainant's position is that the overarching purpose of the Act is transparency and therefore the payment of aggregate fees contained within the responsive records should not fall under the exception for solicitor-client privilege. The Complainant also asserts that Executive Council did not meet its duty to assist.

### **ISSUES**

- [7] The issues to be addressed in this Report are whether Executive Council:
1. has met its section 13 duty to assist the Complainant by conducting a reasonable search,
  2. properly applied sections 30(1) and 35, and
  3. has shown that it considered and applied the s. 9 public interest override.

## DECISION

### Section 30(1)

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

[9] 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.

[10] The information at issue are billing records from Stewart McKelvey. As outlined in **Newfoundland and Labrador (Information and Privacy Commissioner) v. Newfoundland and Labrador (Justice and Public Safety)**, ATIPPA, 2015 does not contain sufficient authority to compel a public body to produce records subject to a claim of solicitor-client privilege to the Office of the Information and Privacy Commissioner. The issue of legal fees and invoices has been considered by this Office and by Courts across Canada. **Maranda v. Richer** established that there is a presumption that legal bills fall within solicitor-client privilege.

[11] In Report [A-2018-019](#) the Commissioner recommended disclosure of the annual aggregate totals paid to the lawyers or their firms. Those aggregate fees were paid by Legal Aid to numerous law firms, over 10 years, without the names of clients, the names of individual lawyers, or any indication of the matters dealt with, in which case it was considered unlikely for anyone to be able to infer confidential communications.

[12] In Report [A-2024-033](#) the issue of aggregate fees was explored further:

- [44] There is at least a possibility that disclosure for amounts paid for legal services could, in this context, reveal something of the confidential

communications that are essential during litigation. This possibility cannot be negated by any level of redaction. Even aggregating the total amount invoiced for services may allow the diligent inquirer to make inferences about CONA's instructions to its solicitors; the simple expedient of making a similar request every month would lead to a greater possibility of making such inferences.

[13] This Office released a similar report on the disclosure of aggregate legal bills. Report [A-2025-028](#) states:

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. Therefore, this Office accepts Executive Council's application of section 30(1) to these records.

[14] In this access request there is only one client, the issue is still ongoing (Report [A-2020-027](#)) and releasing any information, even the aggregate amount paid, would undermine solicitor client privilege. Therefore, this Office accepts Executive Council's application of section 30 to these records.

[15] As noted above, Executive Council also applied section 35(1) to these same records. Not having provided the records for our review, Executive Council has not met the burden of proving that section 35 applies to these records, and we must conclude that the exception does not apply. However, as noted above, we have found section 30 applies and the records can be withheld on that basis.

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

[16] 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. There was no misunderstanding of the request and exploratory discussions were held with the Clerk of the Executive Council, the Deputy Minister of Justice and Public Safety, and a solicitor with Justice and Public Safety to facilitate providing as much information

as possible. The public body has met its duty to assist by responding adequately to the complaint.

[17] 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.

[18] From our review of Executive Council's submissions, we are satisfied Executive Council conducted a reasonable search for responsive records and did meet its duty to assist the Complainant

### **Section 9 – Public Interest Override**

[19] The Complainant has made the argument that because the records relate to the Churchill Falls Memorandum of Understanding, the public interest demands that they be released. Without being able to review the records it is impossible for us to say; however, given the records have been withheld under section 30, the threshold for concluding that public interest in disclosure outweighs the purpose of the exception (to protect solicitor-client privilege) would be quite high and we therefore find that the public interest override in section 9 does not apply.

## **RECOMMENDATIONS**

[20] 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).

[21] 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.

[22] Dated at St. John's, in the Province of Newfoundland and Labrador, this 9<sup>th</sup> day of February 2026.



Kerry Hatfield  
Information and Privacy Commissioner  
Newfoundland and Labrador