



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2026-024

August 31, 2026

Department of Jobs, Growth and Rural Development

Summary:

The Complainant made a request to the Department of Jobs, Growth and Rural Development for records of a rural internet project. The Department refused to disclose the records on the grounds that withholding the information was justified under section 34 of the Access to Information and Protection of Privacy Act, 2015 (Disclosure harmful to intergovernmental relations or negotiations). The Commissioner concluded that the Department had not met the statutory burden of proving that section 34 applied and recommended that the Department disclose the records.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c. A-1.2, ss. 34, 43.

BACKGROUND

- [1] The Complainant made a request to the Department of Jobs, Growth and Rural Development (“JGRD”) under the **Access to Information and Protection of Privacy Act, 2015** (the Act), for records relating to the Xplore rural internet project in Newfoundland. The Department withheld the entire 247-page package of responsive records on the basis of the exceptions in sections 34 and 39 of the Act.
- [2] During the complaint investigation JGRD withdrew its reliance on section 39 and agreed to release pages 234-247 to the Complainant but maintained its reliance on section 34(1)(a)(i) for the remaining 233 pages.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

DECISION

- [4] The responsive records consist of an agreement between the federal government and Xplore, a Canadian rural internet service provider corporation, to provide high-speed internet connectivity to areas of rural Newfoundland not previously served, and in addition, a project summary, a project description, maps of planned routes, and a PowerPoint presentation. The parties to the agreement are the corporation and the federal government, and not the province, although the province has provided a letter of financing for a share of the project cost.
- [5] This project involves both the federal and provincial levels of government. The project was announced in 2022. The agreement was signed in September 2024, and the project is expected to be completed in 2027. There has been public discussion of this project, and the federal government has publicly disclosed a great deal of information relating to it. The access request was for responsive records in the custody of JGRD.

[6] As part of its review for the ATIPP request, JGRD consulted with the federal department involved, Innovation, Science and Economic Development (“ISED”) and with the provincial Intergovernmental Affairs Secretariat (“IGAS”). JGRD concluded that section 34(1)(a)(i) is applicable to justify withholding the records. That provision reads as follows:

34. (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (a) harm the conduct by the government of the province of relations between that government and the following or their agencies:
- ...
- (i) the government of Canada or a province,

[7] In the application of section 34(1)(a)(i) the focus must be on the expectation of harm to the relationship between the federal and provincial governments. JGRD asserts that harm is likely to result from the disclosure of these records.

[8] JGRD agrees that to satisfy the harm test, there must be a reasonable probability that disclosure would harm, and not merely hinder, impede or minimally interfere with, the conduct of intergovernmental relations or negotiations. JGRD points to confidentiality provisions in the agreement to support its conclusion.

[9] While there are confidentiality provisions in section 15.3 of the agreement, a blanket assertion of confidentiality is not enough to satisfy the harm test. First, that section of the agreement explicitly makes the confidentiality provision subject to federal access to information legislation, which like ATIPPA, 2015, expressly permits disclosure of records subject to certain exceptions. In addition, subsequent sections of the agreement (15.4 to 15.6) contain exceptions to the confidentiality provision which, taken together, could provide a foundation for the disclosure of most or all of the entire agreement. It is therefore not clear from the record what information about the project is really intended to be kept confidential.

[10] JGRD states that in later consultations with ISED the federal department “...has explicitly indicated its position is to protect the agreement and related records from disclosure, indicating if it received a similar ATI request it would only disclose what is already publicly available and been provided to the applicant....”

[11] This sort of general declaration of intention is, however, not enough. Apart from the fact that the federal access to information legislation is different from ATIPPA, 2015, it has not been made clear how or on what basis a refusal of access could reasonably be made.

[12] JGRD submits, quite reasonably as a general proposition, that:

“Where one government has provided or shared information in circumstances giving rise to an expectation of confidentiality, disclosure by the other party may diminish trust and confidence in future intergovernmental dealings, potentially affecting the free flow of information, collaborative decision-making, and the negotiation or administration of joint initiatives.”

[13] The critical link in the present case is missing. No evidence has been presented as part of this investigation showing how the disclosure of any of the specific information in these responsive records could reasonably be expected to lead to any such result.

[14] These federal and provincial public bodies are sophisticated parties, who must be considered to be aware of the provisions of the access to information statutes in the applicable jurisdictions.

[15] Given that the project was announced four years ago to great publicity; that the agreement was signed two years ago; and that the project has been under way for some time, it is not clear what sort of harm to relations between the province and the federal government could be shown to be likely to result from the disclosure of the agreement, the project summary, project description, or maps of planned routes. If there are good reasons for withholding any of the information in the responsive records, it is not apparent from the records, and the Department has not provided sufficient evidence to support withholding it.

[16] Under section 43 of the Act the burden of proving that an applicant has no right of access to a record lies with the public body. JGRD has expressed its concerns, but has not provided the evidence necessary to meet the burden of proof in the present case. Our conclusion is therefore that the records should be disclosed, subject to routine redaction of signatures and similar personal information.

RECOMMENDATIONS

- [17] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that the Department of Jobs, Growth and Rural Development disclose the responsive records to the Complainant, save for the redaction of signatures and any similar personal information in accordance with section 40 of the Act.
- [18] 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 Jobs, Growth and Rural Development 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.
- [19] Dated at St. John's, in the Province of Newfoundland and Labrador, this 31st day of August, 2026.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador