



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2026-025

September 1, 2026

NL Health Services

Summary:

The Complainant made an access request to Newfoundland and Labrador Health Services (“NLHS”) for a copy of the CorCare contract. NLHS provided the records, withholding some information relying primarily on section 39 (Disclosure harmful to business interests of a third party) of the **Access to Information and Protection of Privacy Act, 2015**. The Complainant disagreed with NLHS’s decision and made a complaint to this Office. Late in our investigation we discovered that some information which had been withheld under section 39 was already publicly available. This Report acknowledges that some portion of the withheld information would very likely qualify for protection against disclosure under section 39, but we were unable to make a conclusive finding due to the discovery of the publicly available information. This Report recommends that NLHS release any information now known to be public and reconsider its decision on the remainder of the information, releasing any information it determines does not meet the test for section 39.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, section 39.

BACKGROUND

- [1] The Complainant made a request to NL Health Services (“NLHS”), seeking a copy of the CorCare contract between a Third Party and NLHS.
- [2] NLHS provided a copy of the contract to the Complainant, withholding some information on the basis of sections 31(1)(l) and 39(1) of the **Access to Information and Protection of Privacy Act, 2015** (“ATIPPA, 2015”). During the informal resolution period it was determined that section 31 was properly applied and therefore the investigation would focus on section 39.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of ATIPPA, 2015. 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

- [4] NLHS’s position is that the information was properly withheld under section 39 because disclosure could reasonably be expected to result in harm to the Third Party as described in that section. NLHS relied on previous submissions and representations made by the Third Party in relation to a previous complaint regarding the same records to make its assessment and to respond to this complaint.

COMPLAINANT’S POSITION

- [5] The Complainant argues that the contract should be released in full and is seeking a review of the exceptions to access claimed by NLHS. The Complainant maintains that taxpayers have an interest in knowing the projected costs, and transparency surrounding the expenditure of public funds is an important aspect of the right of access under ATIPPA, 2015.

ISSUES

- [6] Whether section 39(1) has been correctly applied to the information withheld by NLHS.

DECISION

- [7] Section 39(1) of *ATIPPA, 2015* is as follows:

39.(1) The head of a public body shall refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of a third party;
- (b) that is supplied, implicitly or explicitly, in confidence; and
- (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

- [8] Section 39 is a mandatory exception to the right of access which consists of a three-part test. All three parts must be satisfied and, in this case where it is being asserted by NLHS, the public body bears the burden of proof pursuant to section 43(1). Failure to meet any part of the test will result in disclosure of the requested records. The test can be summarized as follows:

1. Does the record contain information that would reveal the trade secrets, commercial, financial, labour relations, scientific, or technical information of a third party?
2. Was the information supplied, implicitly or explicitly, in confidence?
3. Is there sufficient evidence of the harm that could result from disclosure of the information, that harm being:

- a) Significant harm to the competitive or negotiating position of the third party,
- b) Similar information not being supplied to the public body,
- c) Undue financial loss or gain to any person, or
- d) Revelation of information supplied to, or the report of a person appointed to resolve a labour relations dispute.

[9] Having reviewed the withheld information, this Office acknowledges that a significant portion of that information would likely meet all three parts of the three-part test. However, late in the investigation this Office discovered portions of the withheld information that are publicly available on the internet.

[10] When information is already publicly available it is very difficult to maintain all three parts of the test. Depending on how and why the information was posted online, it can seriously undermine any claim of the information having been supplied in confidence to the public body, and certainly any claim that further disclosure of the same information will cause harm. On a balance of probabilities, I must conclude that information which is already publicly available fails parts two and three of the three-part test and must be released.

[11] The Complainant argued that there is a significant public interest in release of the entire contract. Section 9 contains the public interest over-ride provision, however it does not apply to section 39. Public bodies should always consider the public interest when deciding whether to apply a discretionary exception, however when it comes to the mandatory exception in section 39, if a public body finds that the exception applies, it has no discretion, whether for public interest reasons or otherwise, to disclose the record.

RECOMMENDATIONS

[12] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend that Newfoundland and Labrador Health Services, within 30 business days of receipt of this Report:

1. Conduct a review to determine what portion of the withheld information is already publicly available and release it to the complainant, and
2. Reconsider its decision to apply section 39 to the remainder of the records and release any information to which an exception does not apply.

[13] 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 Health Services 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.

[14] Dated at St. John's, in the Province of Newfoundland and Labrador, this 1st day of September 2026.



Sean Murray
Commissioner's Delegate
Office of the Information and Privacy
Commissioner
Newfoundland and Labrador