



OFFICE OF THE INFORMATION
AND PRIVACY COMMISSIONER
NEWFOUNDLAND AND LABRADOR

Report A-2026-027

September 14, 2026

Department of Transportation and Infrastructure

Summary:

The Complainant made a request to the Department of Transportation and Infrastructure for records about an architecture firm's report for a mid-size theatre. The Complainant also requested written correspondence between officials at the Department and the architecture firm. The Department provided responsive records to the Complainant but withheld information under section 29 (policy advice), section 31 (security arrangements), section 35 (disclosure harmful to the financial or economic interests of a public body), and section 40 (personal privacy) of the Access to Information and Protection of Privacy Act, 2015. The Complainant claimed that the Department had misapplied the section 35 exception to access, and also argued that section 9 (public interest) applied. This Office found that the Department had appropriately applied section 35 and recommended that the Department continue to withhold the redacted information.

Statutes Cited:

[Access to Information and Protection of Privacy Act, 2015](#), SNL 2015, c A-1.2, sections 9, and 35.

Authorities Relied On: NL OIPC [Report A-2018-003](#).

[Mastropietro v. Newfoundland and Labrador \(Education\)](#), 2016 NLTD(G) 156.

BACKGROUND

- [1] The Complainant submitted a request to the Department of Transportation and Infrastructure (the “**Department**”) under the **Access to Information and Protection of Privacy Act, 2015** (the “**Act**”), for records concerning a report completed by an architecture firm for a mid-size theatre, and written correspondence between officials at the Department and the architecture firm.
- [2] The Department responded by providing partial access to the records but withheld some information, citing the exception to access in section 29 (policy advice), section 31 (security arrangements), section 35 (disclosure harmful to the financial or economic interests of a public body), and section 40 (personal privacy). The Complainant proceeded to file a complaint with this Office asserting that the exception in section 35 was not properly applied, and that section 9 (public interest) ought to apply to allow disclosure.
- [3] As informal resolution was unsuccessful, the complaint proceeded to formal investigation in accordance with section 44(4) of the Act.

PUBLIC BODY’S POSITION

- [4] The Department maintains that it appropriately withheld portions of the records under section 35, and that section 9 did not apply to allow disclosure of the records.

COMPLAINANT’S POSITION

- [5] The Complainant argues that the Department did not appropriately apply section 35 of the Act, or alternatively, that section 9 should be applied to allow the disclosure as a matter of public interest.
- [6] The Complainant does not accept that section 35(1)(d) can be justified on the basis that the information was merely “premature” site-selection material. The Complainant is of the

opinion that the records relate to an identified site that was contractually advanced, not to an unresolved or speculative future location.

ISSUES

- [7] The issues to be addressed in this Report are:
1. Whether the Department properly applied section 35 of the Act, and
 2. The application of the public interest override in section 9.

DECISION

Section 35

- [8] The responsive records include a report that is a completed functional program study produced by an architectural firm under government contract. It contains programmatic requirements, space standards, and planning analysis for a mid-sized theatre facility. During the early stages of the investigation the Department released records pertaining to one of the three sites identified in the report and continued to withhold the remainder of the report under section 35(1)(d) of the Act, which reads as follows:

35. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose
- (d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party

- [9] This Office in report **A-2018-003** found that section 35(1)(d) does not have a harms test incorporated into the exception. Being categorical, if the information is of the kind described in that provision it may be withheld without any need to prove that harm will result from disclosure.

- [10] The Department advises that a purchase agreement for one of the identified sites was drafted and signed by the seller but was never signed by the Department. Ultimately, the Department did not acquire property for a mid-sized theatre, and the entire theatre project was canceled.

[11] The Department has argued that, while the information in this request was gathered for the purposes of the mid-sized theatre (which has been cancelled), it remains relevant to other projects/proposed infrastructure that Department is moving forward with – therefore, disclosure of the information relating to the other sites would still constitute a premature disclosure.

[12] Regardless of a sale agreement, site selection records remain relevant to the other projects/proposed plans and therefore, disclosure of the information relating to the other sites would still constitute a premature disclosure.

[13] I am satisfied that the Department has appropriately applied section 35 of the Act.

Section 9 – Public Interest Override

[14] The Complainant has also argued that the information at issue is of public interest as it relates to the decisions of the Department using public funds to advance a major public infrastructure project. The Complainant further asserts that the public has a direct and legitimate interest in understanding how its money was spent, what was recommended, and how planning decisions were made. The Complainant is of the view that the cancellation of the project means that the public interest now clearly outweighs any residual rationale for withholding a completed study on a defunct project.

[15] At paragraphs 42-44 of [Mastropietro v. Newfoundland and Labrador \(Education\)](#), the Supreme Court of Newfoundland and Labrador held that the burden of proof under section 9 is on the Complainant as they are the one asserting the right to access a record on the basis of public interest. The Court has, however, recognized that an applicant cannot view the records, so this evidentiary burden is relaxed somewhat as outlined by the Court at paragraph 47:

I agree with the general principle that a party asserting a right has the onus of establishing entitlement to that right. I also agree that this onus cannot be absolute but must be relaxed somewhat in a situation such as this, where the Applicants have not had the benefit of reviewing the document on which they are required to make submissions as to whether the public interest override should prevail.

[16] In this case, I have concluded the Complainant has not provided sufficient argument and evidence as to why disclosure of this record would be in the public interest, and furthermore, the information in the record itself, as well as the context provided by the Department, does not support such a conclusion.

RECOMMENDATIONS

[17] Under the authority of section 47 of the **Access to Information and Protection of Privacy Act, 2015**, I recommend the Department maintain its position on this matter and continue to withhold the information pursuant to section 35.

[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 Transportation and Infrastructure 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 14th day of September 2026.



Kerry Hatfield
Information and Privacy Commissioner
Newfoundland and Labrador