



Report of Findings: 25/26-AP-066
July 2, 2026
Department of Health

Citation: New Brunswick (Health) (Re), 2026 NBOMBUD 4

Summary: The Applicant made an access to information request to the Department of Health for information about the Pharmacist Care Clinic pilot project. The Department provided partial access but refused access to some of the relevant information.

The Applicant challenged this decision, submitting that the Department may have improperly refused access under paragraphs 21(2)(a) (unreasonable invasion of a third party's privacy), 22(1)(c) (disclosure harmful to a third party's business or financial interests), and 26(1)(a) (advice to a public body) of the *Right to Information and Protection of Privacy Act*.

When the matter escalated to formal investigation, the Department released more information to the Applicant but continued to withhold some details under the advice to a public body exception. The Applicant continued to object to the redactions in communications between the Department and outside organizations. The Ombud found that, under the circumstances of this particular case, the Department could protect the remaining withheld information on this ground.

Statutes Considered: [Right to Information and Protection of Privacy Act](#), SNB 2009, c. R-10.6, sections 26(1)(a).

Authorities Considered: N/A

Other Resources Cited: New Brunswick, Department of Health, [Pilot project to offer management of certain chronic diseases at select pharmacies](#), July 26, 2023.

INTRODUCTION

[1] The Applicant made an access to information request under the *Right to Information and Protection of Privacy Act* (“the Act”) to the Department of Health (“the Department”) for the following information between August 1, 2023 and March 18, 2025:

All documents related to the Pharmacist Care Clinics pilot project that saw pharmacists help manage and prescribe for certain chronic conditions such as diabetes and asthma, announced in July 2023. These documents should include (but not be limited to) statistics on usage, measurements of patient satisfaction, evaluations on impacts on emergency departments, costing, and all records of correspondence between government and pharmacists, pharmacist organizations, and/or corporate owners/franchisors of pharmacies.

[2] The Department responded by giving partial access to the requested information. The Department redacted some information and withheld other records in full under several exceptions to disclosure.

[3] The Applicant was not satisfied with the Department’s response and made a complaint to this office.

[4] Informal resolution was not fully successful and I decided to conduct a formal investigation under subsection 68(3) of the Act.

INFORMATION AT ISSUE

[5] After this matter escalated to formal investigation, the Department reconsidered its position and disclosed the information initially refused under paragraphs 21(2)(a) (unreasonable invasion of third party’s privacy) and 22(1)(c) (disclosure harmful to a third party’s business or financial interests), and as well as some of the details it initially protected under paragraph 26(1)(a) (advice to a public body). As a result, the information the Department subsequently released to the Applicant is no longer at issue in this investigation.

[6] The Department continued to withhold some information under paragraph 26(1)(a). The Applicant objected to the use of this exception to protect redactions in two email exchanges between Department staff and outside organizations.

[7] The Applicant did not raise further concerns about other details that the Department continued to withhold and I will not be making findings on this information in this report.

APPLICANT'S REPRESENTATIONS

[8] The Applicant was specifically concerned about the Department's reliance on the advice to a public body exception under paragraph 26(1)(a) to refuse access to portions of email communications between Department staff and outside organizations. The Applicant raised several points to counter the Department's decision to withhold these details, including:

- The redacted portions of the email exchanges are about a pilot program that no longer exists. In the Applicant's view, there is no reason not to disclose advice on a program that was cancelled six months ago. The Applicant further noted that the Minister had granted an interview about the program's successes and challenges.
- The redacted portions of the email exchanges would be the Department telling the outside entity something or the entity communicating something to the government. The widely understood rationale for the "advice" exception is so that civil servants can candidly provide ministers with advice. To stretch the definition as these redactions do would, in theory, allow for the exception of any thought or comment expressed to the government by any stakeholder or member of the public, or any communication by the government explaining its reasoning to a stakeholder.
- Even where this exception could apply, the Applicant was of the view that the Department had the discretion to release the information.

[9] As the formal investigation unfolded, the Applicant made representations that that communications from outside government should not be covered by the advice to a public body exception under paragraph 26(1)(a) of the *Act*.

DEPARTMENT'S REPRESENTATIONS

[10] The Department maintained its position and refused to disclose the contested portions of email communications with outside organizations, which it continued to protect under the paragraph 26(1)(a) advice to a public body exception.

[11] In support of its position, the Department's submissions included:

- The *Act* does not specify who can or cannot provide advice or recommendations to a public body.

- In this case, one of the outside organizations was considered a stakeholder, had a working relationship with the Department on the pilot project, and was involved in the decision-making about the pilot project's launch. For this reason, it can reasonably be assumed that the advice provided in this context would fall under this exception.
- The other outside organization was giving advice and/or making a recommendation as part of a deliberative process, suggesting a course of action to be taken.

[12] The Department was not amenable to exercising its discretion in favour of disclosure with respect to these details.

ISSUES

[13] The issue before me is whether the Department could lawfully refuse access to the redacted portions of the email communications in question under paragraph 26(1)(a) of the *Act*.

[14] The public body has the burden of proving that the applicant has no right of access to the record or part of the record under subsection 84(1) of the *Act*.

ANALYSIS AND FINDINGS

A. Did the Department lawfully refuse access under paragraph 26(1)(a) (advice to a public body)?

[15] Paragraph 26(1)(a) is a discretionary exception that allows public bodies to choose not to share information if it could be expected to reveal details about how decisions are made:

26(1) The head of a public body may refuse to disclose information to an applicant if disclosure could reasonably be expected to reveal

(a) advice, opinions, proposals or recommendations developed by or for the public body or a Minister of the Crown...

[16] This exception attempts to balance two competing interests: ensuring that advice and similar information can be developed for a decision maker and letting the public know how decisions are made.

[17] To rely on this exception, a public body must show two things:

- the information is or could be expected to reveal advice, opinions, proposals or recommendations, and;
- the public body made a considered choice in deciding not to share it.

[18] Public bodies can refuse to share information about their decision-making under paragraph 26(1)(a). However, they should not automatically deny all requests for such information. Public bodies must consider each request separately and consider factors, like the public interest in knowing the information, when deciding access rights.

[19] In reviewing the exercise of discretion, I may find that the public body erred in exercising its discretion where, for example:

- it did so in bad faith or for an improper purpose;
- it took irrelevant considerations into account; or
- it failed to take into account relevant considerations.

[20] Where this is the case, I can ask the public body to reconsider its position and exercise of discretion; however, I cannot substitute my own discretion for that of the public body.

[21] Paragraph 26(1)(a) of the *Act* gives public bodies the choice to protect information that could reasonably be expected to reveal “advice, opinions, proposals, or recommendations developed **by or for** the public body or a Minister of the Crown” [emphasis added]. I note that it does not specifically require that the advice, opinions, proposals, or recommendations only come from within the civil service or government entities.

[22] I also understand the Applicant’s concerns about a potential over-application of this exception being used to refuse access to any sort of comments or suggestions made to government, regardless of the reason why they were made and whether they were solicited or not.

[23] As a starting point, it is important to understand the underlying context and how the pilot project was developed and delivered.

[24] In July 2023, the Department announced that it was launching a Pharmacist Care Clinic at six locations across the province as a 12-month pilot project. The pilot project

gave expanded authority to pharmacists to assess and prescribe for some chronic conditions, aiming to improve access to primary health care across the province.

[25] The Department's July 26, 2023 press release announcing the pilot project stated that "[t]he project is a collaboration between the New Brunswick College of Pharmacists and the Department of Health".¹ The press release explained that at the conclusion of the pilot project, "the Department of Health will evaluate its impact and effectiveness through a study conducted by the New Brunswick Institute for Research, Data and Training."

[26] As is often the case in determining access rights, context matters. The public sector routinely contracts with outside organizations for consulting services, program reviews, project proposals, and so on. This office has in the past accepted that advice, opinions, proposals, and recommendations through these kinds of contractual agreements can fall within the scope of the section 26 exception, giving public bodies the choice to either protect or disclose information. If the public body can show that the information falls within the scope of this exception and that it made a considered decision on access rights, it may lawfully refuse access while still meeting its transparency obligations under the *Act*.

[27] In this case, the Pharmacist Care Clinic was a collaboration between the Department and the New Brunswick College of Pharmacists to explore new ways of delivering primary health care services to New Brunswickers around the province. This was a substantive policy decision to explore possible changes to health care delivery and to evaluate the feasibility and effectiveness of the model that was introduced through the pilot project.

[28] As the New Brunswick College of Pharmacists was acting in partnership with the Department to plan and deliver the pilot project, I can appreciate that there was a genuine need for the Department to be able to have frank discussions with private sector health care partners to bring the pilot project, and possible future changes to health care delivery, to fruition.

[29] Similarly, the New Brunswick Institute for Research, Data and Training was engaged to evaluate and report on the impact and effectiveness of the pilot project, with the results of this work being released as published reports.

¹ New Brunswick, Department of Health, [Pilot project to offer management of certain chronic diseases at select pharmacies](#), July 26, 2023.

[30] Having reviewed the redacted portions of the emails in question, I am satisfied that, under the circumstances, these details can be considered as advice or opinions that were developed and shared with the Department as the pilot project processes unfolded. The fact that they were provided by officials from outside organizations in this particular case does not impact my finding.

[31] I am also satisfied that the Department exercised its discretion in deciding to withhold these details and took relevant factors into account in arriving at the decision to refuse access.

[32] This finding does not imply that any comment or opinion expressed to government by outside parties is automatically protected under the paragraph 26(1)(a) exception. The circumstances of this case show that this was not a situation where outside parties were seeking to influence government or providing unsolicited comments or feedback.

[33] As a general rule, advice, opinions, proposals, and recommendations will usually come from internal expertise within a public body. This case shows that there may be situations where the paragraph 26(1)(a) exception might apply when government partners with outside organizations. In this case, the circumstances stem from a partnership between government and an outside organization that had a significant impact on public services. There was a need to ensure that the outside organization that the Department partnered with to deliver the pilot project could freely share advice and opinions.

[34] Individuals and outside organizations can provide advice, opinions, proposals, and/or recommendations to government and these details may be protected under this exception in rare and limited cases.

[35] The circumstances of the collaborative pilot project and subsequent evaluation process as part of government's overall policy making role in delivering public health care services meets the test in this case.

RECOMMENDATION

[36] Based on the above findings, under clause 73(1)(a)(ii)(A) of the *Act*, I confirm the Department's decision to refuse access to the remaining information at issue under paragraph 26(1)(a) of the *Act*.

This Report is issued in Fredericton, New Brunswick this 2nd day of July, 2026.

Marie-France Pelletier
Ombud for New Brunswick