

March 30, 2001

Access to Information Review Consultation Paper

Access to Information Review Task Force

The Access to Information Review Task Force was established in August 2000 by the President of the Treasury Board and the Minister of Justice. Its mandate is to conduct a broad review of the legislative and administrative aspects of access to information. The Task Force is scheduled to report this fall.

Accessing governmental information

Canadians access government information via web sites and 1-800 numbers, as well as through publications and other written materials. Complementing these ways of obtaining information is the *Access to Information Act*.

The 1983 *Act* gives Canadians and any person present in Canada a right of access to information under the control of federal institutions - with some specific and limited exceptions such as personal information or information related to national security. The *Act* established the Information Commissioner as an Ombudsman appointed by Parliament to investigate complaints from people who believe they have been denied their rights under the *Act*.

The Minister of Justice is responsible for the Access to Information legislation and the President of the Treasury Board is responsible for its administration.

Why a review now?

The *Access to Information Act* was proclaimed 17 years ago. Since then, Canadian society has changed and so have the aspirations of Canadians and their relationship with their government. The structure and processes of the federal government have changed. There has been a revolution in information technology. We are now firmly in the information age.

Our understanding of government's accountability, participation of Canadians in the public policy debate, government services, and the role of government in disseminating information have evolved as well.

It is time to reassess our expectations of the *Access to Information Act*.

Review objective

The objective of the review is to suggest ways to bring the *Act* and its administration up to date by incorporating new insights, and anticipating future developments.

The Task Force is looking at how to modernize access to government information in a way that promotes open and effective government and an informed citizenry in a knowledge society. This must be done in balance with the principles of privacy, ministerial responsibility, respect of Canada's commitments to other governments, and the need for full discussion of issues in the public service and frank advice to Ministers.

The Task Force is gathering data, conducting research, and consulting with individuals, organizations, the federal public service, the provinces, and other countries.

The intent of this paper

This paper is intended to explore possible avenues for reform and encourage public participation in the review process.

The questions posed in this paper underline concerns that have been raised in the past in relation to the *Act* or conveyed to the Access to Information Review Task Force during the course of its work so far. **They are in no way indicative of views on the part of the Task Force.**

Performance data is provided in Annex A on access to information.

We welcome your comments on some or all of the issues raised in this discussion paper or on any other issues relevant to access to information.

We welcome your submission or written comments **by June 1, 2001**. You may send your submission or comments to us by:

The Web : www.atirtf-geai.gc.ca

E-mail: ATIRTF@tbs-sct.gc.ca

Fax: (613) 946-6198

Mail: Access to Information Review Task Force
P.O. Box 1178, Station B
Ottawa, ON K1P 5R2

1. Access to Information Context

In assessing how the Canadian Access to Information framework is working, it is important to look first at the general context in which the *Act* is administered: the evolution of the environment of government, of citizen expectations, and of the management of government-held information.

- 1.1 Most jurisdictions acknowledge that their access to information legislation has resulted in more transparency in government business and greater communication of government information to the public, both informally and formally under their Act. Would you say the 1983 *Access to Information Act* has had the same kind of impact in Canada? Has it changed the way Canadians perceive government and governmental information? What impact has the *Access to Information Act* had on you and/or your organization?
- 1.2 In your opinion, have citizens' needs and expectations of their right of access to information held by the government changed over the last 17 years? If so, in what way? How do you see the needs and expectations of Canadians evolving in the next 15 years or so?
- 1.3 What type of information does the government hold that would be of interest to you / your organization / your business in the future? What method would you prefer to use to access this information?
- 1.4 What types of information do you think should be routinely available from the government without a request under the *Access to Information Act*?

1.5 A request under the *Access to Information Act* can be for one page of records or over a million pages. The access to information legislation in many countries provides for practical limits on a citizen's right of access, such as excessive costs to the taxpayers of providing the information, the undue disruption of governmental operations or repetitive requests. Do you think that there should be some limits set in the Canadian legislation? If so which ones? In your view what should be the criteria?

1.6 The 1983 legislation states that

The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

This Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public.

Do you think that this purpose clause is still adequate?

1.7 In your view, what changes need to be made in the federal government / the federal public service to further the purpose of the *Act* and facilitate effective access by Canadians to information?

2. Scope of the *Access to Information Act* – Institutions

The list of federal government institutions covered by the *Access to Information Act* is provided in Schedule 1 to the *Act* (copy attached at Annex B). With some variations, the legislation in other countries also applies to all government corporations and the administrative records of the courts, Parliament and Parliamentary officers such as the Information Commissioner, and the Privacy Commissioner.

- 2.1** In your view, is the current coverage of institutions under the *Access to Information Act* adequate?

- 2.2** What criteria should be used to determine whether or not an institution would be subject to the *Act*?

- 2.3** By what mechanism should institutions be added or removed from the list of those subject to the *Act*? (For example, legislation would require Parliamentary approval while regulations would require the approval of Cabinet.)

3. Scope of Access to Information Act – Right of access

- 3.1** Currently only Canadians and those present in Canada have a right of access under the *Act*. In a globalized world, does this restriction still make sense?

4. Scope of the Act - Information

Under the *Act*, exceptions to the right of access to information must be limited and specific in nature. The table below summarizes the grounds for exempting records from disclosure, and indicates whether the exemption is based on the type of information (class test) or a possible adverse result from disclosure (injury test), as well as whether the information must be exempted by the institution (mandatory exemption) or, the institution has a choice to disclose the information (discretionary exemption).

Some records are totally excluded from the application of the *Act*, notably published materials and Cabinet confidences.

	<i>Class test</i>	<i>Injury test</i>
<i>Mandatory exemptions</i>	<ul style="list-style-type: none"> • <i>Personal information *</i> • <i>Trade secrets of Third Party</i> • <i>Commercial or technical information received in confidence from Third Party</i> • <i>Information received in confidence from other governments</i> • <i>Information protected by other, listed statutes</i> • <i>RCMP provincial or municipal policing</i> 	<ul style="list-style-type: none"> • <i>Loss or gain to Third Party</i> • <i>Prejudice to competitive position of Third Party *</i> • <i>Interference with contractual negotiations of Third Party *</i>
<i>Discretionary exemptions</i>	<ul style="list-style-type: none"> • <i>Solicitor-client privilege</i> • <i>Advice or recommendations to government</i> • <i>Information to be published in 90 days</i> • <i>Government negotiation plans</i> • <i>Government management plans</i> • <i>Trade secrets, valuable technical and commercial information of Canada</i> • <i>Information collected by listed investigative bodies</i> 	<ul style="list-style-type: none"> • <i>Injury to federal-provincial relations</i> • <i>Injury to conduct of international affairs</i> • <i>Injury to defence of Canada or allied states</i> • <i>Injury to economic interests of Canada</i> • <i>Threat to safety of individuals</i> • <i>Prejudice to use of audits or tests</i> • <i>Injury to law enforcement or conduct of lawful investigations</i> • <i>Disclosure that could facilitate commission of criminal offence</i>

** This information may be disclosed where the public interest in disclosure outweighs the interest protected by the mandatory exemption*

- 4.1** Do you think that these exemptions / exclusions provide the appropriate balance between the right to information held by the government and the necessary exceptions to that right? Do you think the balance between the mandatory and discretionary exemptions is the right one? Do you think that any exemptions should be removed or added?
- 4.2** The *Act* provides that certain types of third party information may be disclosed where the public interest as it relates to public health, public safety, or protection of the environment, outweighs the likely injury to the third party. Do you think the *Act* should provide a public interest override for any other exemption? Should there be a general public interest override instead of specific ones?

5. Access Process

- 5.1** Do you think the processes for making and responding to requests under the *Act* could be made easier and more effective? How?
- 5.2** Are there ways to reduce the costs of processing access to information requests? Are there ways to make the process more efficient?
- 5.3** Currently all requests are treated the same, whether the results are for personal use, commercial use or a public interest use. Should different categories of requests or requesters be treated differently under the *Act*? (For example: general public / Members of Parliament / commercial users / media / non-profit associations / professional requesters who resell the information.) If so, what criteria should be used to distinguish between requesters? And what different treatment should they receive?
- 5.4** Currently there are no limits on the number of requests that one person or organization can make to any institution at any time. Should the *Act* limit the number of requests from a single requester to be processed at one time? By one institution? Within a year?

- 5.5** Currently there is a \$5 application fee for every access request. Additional fees are calculated on the basis of \$10 for every hour of search and preparation over five hours, and the cost of reproduction of the record. How should the fees for Access to Information requests be determined? Should the nature of the request, the purpose of the request, the volume of information sought, the speed with which it is required, the timeframe for processing the request or other factors affect the amount of fees charged?
- 5.6** Should the handling of access requests under the *Act* be an entirely open process itself? This could mean public availability of information on the content of information requests, the status and content of responses and the names of requesters.

6. Redress Process

- 6.1** In jurisdictions with similar access to information laws, a range of models to deal with complaints is found, from direct appeal to courts of law or to administrative tribunals, quasi-judicial information commissions, Information Commissioners with order making powers and traditional ombudsman models.

The Federal Information Commissioner plays multiple roles in investigating and resolving complaints and promoting access rights. The Commissioner makes recommendations to government institutions on individual cases and systemic issues, and makes regular reports to Parliament. As an Ombudsman he has extensive investigative powers but no power to make binding orders for the disclosure of records.

In your view, is this still the best redress model to support access to information? If not, which one do you suggest? If the current redress model is the right one, could any improvements be made or clarification brought to the current powers and responsibilities of the Information Commissioner?

- 6.2** In many countries, institutions are required to provide a fast internal review mechanism. This mechanism is often successful in resolving issues before they result in a formal complaint to the Information Commissioner. Should Canada consider this?
- 6.3** Currently the role of the Federal Court is limited to determining whether the government improperly applied the law in a decision to exempt records from disclosure. Should the Court have the authority to start over and decide whether records should be disclosed? Should the Court have the authority to make decisions about fees, time extensions, and other access issues?

ANNEX A

Access to Information
Disposition of Requests – 1999-2000

Requests received ¹		19,294
Requests completed (Includes requests brought forward from previous year)	100.0%	18,489
<u>Disposition of requests completed:</u>		
All disclosed	40.6%	7,491
Some disclosed	33.7%	6,234
No records disclosed – excluded	0.3%	62
No records disclosed – exempted	2.8%	521
Transferred	1.7%	306
Treated informally	2.3%	433
Could not be processed (Reasons include insufficient information provided by applicant, no records exist and abandonment by applicant)	18.6%	3,442

1. A request can cover one page of information or a million pages of information. Statistics are not kept on size or complexity of requests.

Requesters per category 1999-2000

	Number	%
Requests received	19,294	100
Public *	7,857	40.7
Business	6,167	32.0
Media	2,774	14.4
Organizations	2,291	11.9
Academia	205	1.0

* It is estimated that about 7% of these requests are from Parliamentarians

Source: Info Source Bulletin, 1999-2000

ANNEX A (cont.)**Ten Institutions Receiving Most Requests - 1999-2000**

Requests received by all institutions	100.0%	19,294
Citizenship and Immigration	24.5%	4,726
National Archives	11.0%	2,114
Health	7.2%	1,389
Human Resources Development	5.6%	1073
National Defence	5.5%	1063
Public Works and Government Services	3.8%	737
Royal Canadian Mounted Police	3.4%	661
Immigration and Refugee Board	3.3%	643
Canada Customs and Revenue Agency	3.1%	594
Foreign Affairs and International Trade	2.9%	561
Other Departments	29.7%	5,733

Time Required to Complete Requests - 1999-2000

Requests completed	100.0%	18,489
0 - 30 days	63.2%	11,686
31 - 60 days	16.4%	3,036
61 + days	20.4%	3,767

The Act provides that the requests must be dealt with within 30 days. This time limit may be extended for a reasonable time if the request is for a large number of records or necessitates search through a large number of records or consultations are necessary.

ANNEX A (cont.)**Exemptions claimed - 1999-2000**

Total exemptions	100.0%	16,155
Section 19 - Personal information	28.0%	4,526
Section 20 - Third party information	26.0%	4,177
Section 21 - Operations of government	17.6%	2,836
Section 16 - Law enforcement and investigations	6.8%	1,106
Section 23 - Solicitor-client privilege	5.5%	889
Section 15 - International affairs and defence	5.0%	801
Section 13 - Information obtained in confidence	4.6%	748
Section 14 - Federal-provincial affairs	2.3%	373
Section 18 - Economic interests of Canada	2.0%	326
Section 24 - Statutory prohibitions	1.4%	224
Section 22 - Testing procedures	0.3%	56
Section 17 - Safety of individuals	0.3%	53
Section 26 - Information to be published	0.2%	40

Costs and Fees for Operations - 1999-2000

Requests completed	18,489
Cost of operations ¹	\$17,143,480
Cost per request completed	\$927
Fees collected	\$217,832
Fees collected per request completed	\$12
Fees waived	\$165,564
Number of completed requests where fees waived	8,680

1 Departmental salaries and administration costs, including training and consultation.

ANNEX A (cont.)**Disposition of complaints - 1999-2000**

CATEGORY	FINDING				TOTAL	%
	Resolved	Not Resolved	Not Substantiated	Discontinued		
Refusal to disclose	276	3	222	36	537	35.0
Delay (deemed refusal)	685	-	27	37	749	49.0
Time extension	70	-	59	5	134	8.8
Fees	31	-	16	8	55	3.6
Language	-	-	-	-	-	-
Publications	-	-	-	-	-	-
Miscellaneous	26	-	26	3	55	3.6
TOTAL	1088	3	350	89	1530	100.0
%	71.2	0.1	22.9	5.8	100.0	

Source: Annual Report, Information Commissioner 1999-2000

ANNEX A (cont.)**Cost of access to information**

A comprehensive review of the cost of administering the Federal *Access to Information Act* was conducted in 1999 by Canada Audit and Consultation on behalf of the Treasury Board Secretariat. The survey included all departments and agencies subject to the legislation, as well as the costs of the Information Commissioner Office, central agencies, legal services units and the Federal Court.

	1998-99	
<u>Direct Costs</u>		
<i>Handling Costs</i>		
Search	\$1,625,000	
Preparation	2,380,000	
Review	9,105,000	
Administration and Other	3,060,000	
<i>Total Handling Costs</i>	\$16,170,000	
Complaints	\$1,405,000	
<i>Total Direct Costs</i>		\$17,575,000
<u>Indirect Costs</u>		
<i>ATIP Unit Overhead Costs</i>		
General Management	\$2,225,000	
Training and Orientation	1,090,000	
Other O&M	585,000	
Facilities	1,925,000	
Minor Capital	90,000	
<i>Total ATIP Unit Overhead Costs</i>	\$5,915,000	
TBS/Justice/PCO/Federal Court	\$1,455,000	
Information Commissioner	\$3,900,000	
<i>Total Indirect Costs</i>		\$11,270,000
Total Costs		\$28,845,000
Average Cost per Completed Request (14,340 Completed Requests)		\$2,010

**COVERED INSTITUTIONS
ACCESS TO INFORMATION ACT
(SCHEDULE I)**

Departments and Ministries of State

Department of Agriculture and Agri-Food

Department of Canadian Heritage

Department of Citizenship and Immigration

Department of the Environment

Department of Finance

Department of Fisheries and Oceans

Department of Foreign Affairs and International Trade

Department of Health

Department of Human Resources Development

Department of Indian Affairs and Northern Development

Department of Industry

Department of Justice

Department of National Defence

Department of Natural Resources

Department of Public Works and Government Services

Department of the Solicitor General

Department of Transport

Department of Veterans Affairs

Department of Western Economic Diversification

Other Government Institutions

Atlantic Canada Opportunities Agency

Atlantic Pilotage Authority

Bank of Canada

Belledune Port Authority

British Columbia Treaty Commission

Business Development Bank of Canada

Canada Council

Canada Customs & Revenue Agency

Canada Deposit Insurance Corporation

Canada Employment Insurance Commission

Canada Industrial Relations Board

Canada Information Office

Canada Lands Company Limited

Canada Mortgage and Housing Corporation

Canada-Newfoundland Offshore Petroleum Board

Canada-Nova Scotia Offshore Petroleum Board

Canadian Advisory Council on the Status of Women

Canadian Artists and Producers Professional Relations Tribunal

Canadian Centre for Management Development

Canadian Centre for Occupational Health and Safety

Canadian Commercial Corporation

Canadian Cultural Property Export Review Board

ANNEX B (cont.)

Canadian Dairy Commission

Canadian Environmental Assessment Agency

Canadian Film Development Corporation

Canadian Food Inspection Agency

Canadian Forces

Canadian Forces Grievance Board

Canadian Government Specifications Board

Canadian Grain Commission

Canadian Human Rights Commission

Canadian Human Rights Tribunal

Canadian Institutes of Health Research

Canadian International Development Agency

Canadian International Trade Tribunal

Canadian Museum of Civilization

Canadian Museum of Nature

Canadian Nuclear Safety Commission

Canadian Polar Commission

Canadian Radio-Television and Telecommunications Commission

Canadian Security Intelligence Service

Canadian Space Agency

Canadian Tourism Commission

Canadian Transportation Accident Investigation and Safety Board

ANNEX B (cont.)

Canadian Transportation Agency

Copyright Board

Correctional Service of Canada

Defence Construction (1951) Limited

Director of Soldier Settlement

The Director, The Veteran's Land Act

Economic Development Agency of Canada for the Regions of Quebec

Energy Supplies Allocation Board

Ethics Counsellor

Farm Credit Corporation

Federal-Provincial Relations Office

Fisheries Prices Support Board

Fraser River Port Authority

Freshwater Fish Marketing Corporation

Grain Transportation Agency Administrator

Great Lakes Pilotage Authority, Ltd.

Gwich'in Land Use Planning Board

Gwich'in Land and Water Board

Halifax Port Authority

Hamilton Port Authority

Immigration and Refugee Board

International Centre for Human Rights and Democratic Development

ANNEX B (cont.)

Hazardous Materials Information Review Commission

Historic Sites and Monuments Board of Canada

International Centre for Human Rights and Democratic Development

International Development Research Centre

The Jacques Cartier and Champlain Bridges Inc.

Laurentian Pilotage Authority

Law Commission of Canada

Mackenzie Valley Environmental Impact Review Board

Mackenzie Valley Land and Water Board

Merchant Seamen Compensation Board

Military Police Complaints Commission

Millennium Bureau of Canada

Montreal Port Authority

Nanaimo Port Authority

National Archives of Canada

The National Battlefields Commission

National Capital Commission

National Capital Commission

National Farm Products Council

National Film Board

National Gallery of Canada

National Library

ANNEX B (cont.)

National Museum of Science and Technology

National Parole Board

National Research Council of Canada

National Round Table on the Environment and the Economy

Natural Sciences and Engineering Research Council

North Fraser Port Authority

Northern Pipeline Agency

Northwest Territories Water Board

Office of Privatization and Regulatory Affairs

Office of the Comptroller General

Office of the Co-ordinator, Status of Women

Office of the Correctional Investigator of Canada

Office of the Inspector General of the Canadian Security Intelligence Service

Office of the Inspector General of the Canadian Security Intelligence Service

Office of the Superintendent of Financial Institutions

Pacific Pilotage Authority

Parks Canada Agency

Patented Medicine Prices Review Board

Pension Appeals Board

Petroleum Compensation Board

Petroleum Monitoring Agency

Port Alberni Port Authority

ANNEX B (cont.)

Prairie Farm Rehabilitation Administration

Prince Rupert Port Authority

Privy Council Office

Public Service Commission

Public Service Staff Relations Board

Québec Port Authority

Regional Development Incentives Board

Royal Canadian Mint

Royal Canadian Mounted Police

Royal Canadian Mounted Police External Review Committee

Royal Canadian Mounted Police Public Complaints Commission

Saguenay Port Authority

Sahtu Land and Water Board

Sahtu Land Use Planning Board

Saint John Port Authority

Security Intelligence Review Committee

Sept-Îles Port Authority

Social Sciences and Humanities Research Council

St. John's Port Authority

Standards Council of Canada

Statistics Canada

Statute Revision Commission

ANNEX B (cont.)

The Federal Bridge Corporation Limited

The Seaway International Bridge Corporation, Ltd.

Thunder Bay Port Authority

Toronto Port Authority

Treasury Board Secretariat

Trois-Rivières Port Authority

Vancouver Port Authority

Veterans Review and Appeal Board

Windsor Port Authority

Yukon Surface Rights Board

Yukon Territory Water Board