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Directive on the Administration of the *Access to Information Act*

1. Effective date

1.1 This directive takes effect on January 16, 2012.

1.2 It replaces the following: Directive on the Administration of the *Access to Information Act* dated April 1, 2010.

1.3 Parent Crown corporations and any wholly-owned subsidiaries of these corporations will have until June 1, 2012, to implement the requirements described in subsection 7.13, which subsection deals with the mandatory posting of the summaries of completed [Access to Information Act](#) requests.

2. Application

2.1 This directive applies to government institutions as specified under [section 3 of the Access to Information Act](#), including parent Crown corporations and wholly owned subsidiaries of these corporations.

2.2 The directive, with the exception of clause 7.13, is issued pursuant to [paragraph 70\(1\)\(c\) of the Access to Information Act](#). Clause 7.13 is issued pursuant to [subsection 5\(2\) of the Access to Information Act](#).

2.3 This directive does not apply to the Bank of Canada.

2.4 This directive does not apply to information that is excluded under the *Access to Information Act*.


3. Context

3.1 The *Access to Information Act* gives Canadian citizens, permanent residents and any individual or corporation present in Canada the right of access to records under the control of a government institution, subject to limited and specific exceptions. The *Access to Information Act* further provides that decisions on the non-disclosure of information can be reviewed independently of government.

3.2 The *Access to Information Act* also specifies that it is intended to complement existing procedures for obtaining government information and is not to limit in any way the type of information that is normally available to the public, thereby denoting the importance of informal access. The Government of Canada is committed to openness and transparency and respects both the spirit and requirements of the *Access to Information Act*, [Access to Information Regulations](#) and related policy instruments.

3.3 The administration of the *Access to Information Act* is the responsibility of the heads of government institutions. Heads (or their delegates) process requests for access to information in accordance with the provisions of the *Access to Information Act* and the *Access to Information Regulations*, which include the duty to assist applicants. The *Access to Information Act* and the *Access to Information Regulations* also spell out parameters relating to the transfer of access requests, the extension of time limits, the charging of fees, the grounds for exemptions and exclusions, the process for giving notice to third parties, and the language, format and method of access. This directive is intended to support heads (and their delegates) in the administration of the *Access to Information Act* by providing specific direction for responding to requests under the *Access to Information Act* and by establishing principles for assisting applicants.

3.4 This directive is to be read in conjunction with the *Access to Information Act*, the *Access to Information Regulations* and the [Policy on Access to Information](#). Where there is ambiguity, the *Access to Information Act* precedes this directive.

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4. Definitions

4.1 The definitions to be used in the interpretation of this directive are specified in [Appendix A](#). Additional definitions are specified in [Appendix A of the Policy on Access to Information](#).

5. Directive statement

5.1 Objective

5.1.1 To establish, across all government institutions, consistent practices and procedures for the processing of access to information requests, including requirements to make every reasonable effort to assist applicants without regard to their identity.

5.2 Expected results

5.2.1 Effective, well-coordinated and proactive administration of the *Access to Information Act* within government institutions.

5.2.2 Complete, accurate and timely responses to access requests made under the *Access to Information Act*.

6. Requirements for Heads of government institutions

6.1 Principles for delegation under the Access to Information Act

6.1.1 Respecting the following principles when delegating any powers, duties or functions under the *Access to Information Act*:

- a. Heads can only designate officers and employees of their government institution in the delegation order. Consultants, members of a Minister's exempt staff, or employees of other government institutions or from the private sector cannot be named in the delegation order;
- b. Powers, duties and functions are delegated to positions identified by title, not to individuals identified by name;
- c. Persons with delegated authorities are to be well informed of their responsibilities;
- d. Powers, duties and functions that have been delegated cannot be further delegated by a delegate, though employees and consultants may perform tasks in support of delegates' responsibilities; and
- e. The delegation order is to be reviewed when circumstances surrounding the delegations have changed. A delegation order remains in force until such time as it is reviewed and revised by the head of the institution.

6.2 Access to information awareness

6.2.1 Ensuring that delegates receive Access to Information (ATI) training in the areas specified in [Appendix B](#) of this directive.

7. Requirements for Heads of government institutions or their delegates

7.1 Exercising Discretion

7.1.1 Exercising discretion in a fair, reasonable and impartial manner after completing the following steps:

- a. Consideration of the *Access to Information Act's* intent, which is to provide a right of access to information held in government records, subject to limited and specific exceptions;
- b. Consideration of the *Access to Information Act's* relevant provisions as well as applicable jurisprudence;
- c. Necessary consultations, for the proper exercise of discretion and application of the exemption and exclusion provisions of the *Access to Information Act* including consultations with other government

- institutions and third parties;
- d. Review of the information contained in records; and
- e. Consideration, in a fair and unbiased manner, of all relevant factors.

The above considerations apply to all provisions of the *Access to Information Act* for which the head or the delegate exercises discretion.

7.2 Access to information awareness

7.2.1 Ensuring that employees of government institutions and officials who have functional responsibility for the administration of the *Access to Information Act* receive ATI training in the areas specified in Appendix B of this directive.

7.3 Admissibility of applicants

7.3.1 Ensuring that the applicant has the right to make a request under the *Access to Information Act*.

7.4 Duty to assist

Protection of applicant's identity

7.4.1 Limiting, on a need-to-know basis, the disclosure of information that could directly or indirectly lead to the identification of an applicant, unless the applicant consents to the disclosure.

Interpretation and clarification of access request

7.4.2 Adopting a broad interpretation of an access request, and promptly communicating with the applicant when necessary to clarify the request.

Revised requests

7.4.3 When an access request has been clarified or its wording altered, documenting the wording of the revised request and the date of the revision in the tracking system.

Principles for assisting applicants

7.4.4 Implementing and communicating the principles for assisting applicants specified in [Appendix C](#) of this directive.

Informal processing

7.4.5 Determining whether it is appropriate to process the request on an informal basis. If so, offering the applicant the possibility of treating the request informally and explaining that only formal requests are subject to the provisions of the *Access to Information Act*.

Contextual information

7.4.6 Providing, as appropriate, general information of a contextual nature in response to an access request to help the applicant understand the record in cases where the record itself may provide misleading information and the access to information analyst has been informed by the office of primary interest that the information contained in the record may be misleading. Government institutions are not obligated to explain all records or complex information being disclosed when responding to an access request.

7.5 Collecting Fees

Fees

7.5.1 Ensuring that applicants are charged fees only for the activities and formats described in [section 7 of the Access to Information Regulations](#).

Waiver, reduction or refunds

7.5.2 Exercising discretion concerning the waiver, reduction or refund of fees while taking into account the applicable steps set out in Section 7.1.1 of this directive.

Reduction of fees for producing records from a machine-readable record

7.5.3 Ensuring that reduced fees are applied when producing any record from a machine-readable record if the actual cost of producing the record is less than the fee prescribed in [paragraph 7\(3\)\(a\) of the Access to Information Regulations](#).

Estimates

7.5.4 Providing sufficient information in fee estimates to enable the applicant to make an informed decision.

Refund of fees

7.5.5 Refunding the difference to the applicant when the actual cost is less than the deposit paid.

Access to records

7.5.6 Providing access to records only when the applicant has paid all required fees.

7.6 Extension of time limits

Notice of extension

7.6.1 Assessing without undue delay all access requests received and, if an extension is needed for processing the request, notifying the applicant of the extension within thirty days of the reception of the request.

Length of extension

7.6.2 Ensuring that any extension taken is as short as possible and can be justified.

Notice of extension to Information Commissioner

7.6.3 Notifying the Information Commissioner of Canada if the extension is for more than thirty days, in accordance with [subsection 9\(2\) of the Access to Information Act](#).

7.7 Limiting and Reducing the Need for Inter-Institutional Consultations with Respect to Sections 15 and 16 of the Access to Information Act

7.7.1 Limiting and reducing the need for inter-institutional consultations with respect to [sections 15 and 16 of the Access to Information Act](#) to two circumstances: i) where the processing institution requires more information for the proper exercise of discretion to withhold; or ii) where the processing institution intends to disclose sensitive information.

Importance of consultations

7.7.2 Ensuring that consultation requests from other government institutions are given the same importance as access to information requests.

7.8 Exemptions

Application of exemptions

7.8.1 Invoking exemptions by properly considering the intent of the *Access to Information Act* and relevant jurisprudence.

Citation of exemptions

7.8.2 Citing all exemptions invoked in relation to those on the records, unless doing so would reveal the exempted information or cause the injury upon which the exemption is based.

7.9 Obligation to process non-relevant information

7.9.1 Ensuring that non-relevant information contained in a record is severed only if an exemption applies or if consent is obtained from the applicant. Lack of relevance is not a ground for exemption under the *Access to Information Act*.

7.10 Notification of right to complain

7.10.1 Ensuring that applicants are notified of their right to complain to the Information Commissioner of Canada for all matters relating to requests and access to records under the *Access to Information Act*.

7.11 Internal Processes

Tracking system

7.11.1 Establishing and maintaining an internal management system to keep track of the processing of access requests, consultation requests, complaints, and reviews by the courts.

Documentation

7.11.2 Documenting the processing of requests by placing on file all created and received paper and electronic documents that support decisions under the *Access to Information Act*, including communications where recommendations are given or decisions are made.

Disclosure of records

7.11.3 Ensuring that any internal process related to the disclosure of records under the *Access to Information Act* does not delay the processing of the request.

7.12 Allegations of an obstruction of the right of access

7.12.1 Establishing internal procedures to address suspected obstructions of the right of access, which are defined in [section 67.1 of the Access to Information Act](#). The procedures should outline measures for:

- a. Investigating any allegation of falsification, concealment, mutilation or improper destruction of records;
- b. Reporting any suspected falsification, concealment, mutilation or improper destruction of records immediately to the head of the government institution; and
- c. Reporting a suspected contravention to law enforcement agencies for investigation.

7.13 Posting Summaries of Completed Access to Information Act Requests

7.13.1 Posting, on your institution's Web site, the summaries of completed access to information requests within thirty calendar days after the end of each month as per criteria specified in [Appendix E](#).

8. Requirements for Employees of government institutions

Informal access

8.1.1 Recommending to the head or the delegate when appropriate, that the requested information be disclosed informally.

Search of records

8.1.2 Making every reasonable effort to locate all records under the control of the government institution that are responsive to the request.

Estimates

8.1.3 Providing a realistic fee estimate and its rationale to the head or the delegate, when required.

Recommendations

8.1.4 Providing valid recommendations on the disclosure of the records requested, as well as contextual information when appropriate.

Contracts and agreements

8.1.5 Ensuring, if involved in contracting activities, that contracts and agreements do not weaken the right of public access to information.

9. Monitoring and reporting requirements

9.1 The monitoring and reporting requirements of this directive are set out in [Subsection 6.3 of the Policy on Access to Information](#).

10. Consequences

10.1 The consequences for non-compliance with this directive are identified in [Section 7 of the Policy on Access to Information](#).

11. Roles and responsibilities of government institutions

11.1 The roles and responsibilities of government institutions with respect to this directive are identified in [Section 8 of the Policy on Access to Information](#).

12. References

12.1 Relevant legislation and regulations:

- [Access to Information Act](#)
- [Access to Information Regulations](#)
- [Financial Administration Act](#)
- [Interpretation Act](#)
- [Library and Archives Canada Act](#)
- [Official Languages Act](#)
- [Privacy Act](#)
- [Privacy Regulations](#)
- [Public Servants Disclosure Protection Act](#)
- [User Fees Act](#)

12.2 Related policy instruments and publications:

- [Communications Policy of the Government of Canada](#)
- [Directive on Privacy Requests and Correction of Personal Information](#)
- [Policy on Access to Information](#)
- [Policy on Learning, Training and Development](#)

- [Policy on Privacy Protection](#)
- [Policy on Service Standards for External Fees](#)

13. Enquiries

Please direct enquiries about this directive to your institution's access to information and privacy (ATIP) coordinator. For interpretation of this directive, the ATIP coordinator is to contact:

Information and Privacy Policy Division
 Chief Information Officer Branch
 Treasury Board Secretariat
 219 Laurier Avenue West
 Ottawa ON K1A 0R5

E-mail: ippd-dpiprp@tbs-sct.gc.ca

Telephone: 613- 946-4945

Fax: 613-957-8020

Appendix A - Definitions

Access to information (ATI) training

Refers to all activities that serve to increase access to information awareness, including formal training, research, discussion groups, conferences, ATIP community meetings, shared learning among colleagues, on-the-job training, special projects, job shadowing as well as communications activities that promote learning in the areas specified in Appendix B of this directive.

Class test

Is a test that objectively identifies the categories of information or documents to which certain exemption provisions of the *Access to Information Act* can be applied. The following exemptions spelled out in the following sections of the *Access to Information Act* are based on a class test: 13(1), 16(1)(a), 16(1)(b), 16(3), 16.1, 16.2, 16.3, 16.4, 16.5, 18(a), 18.1, 19(1), 20(1)(a), 20(1)(b), 20(1)(b.1), 20.1, 20.2, 20.4, 21(1), 22.1, 23, 24 and 26.

Discretionary exemption

Is an exemption provision of the *Access to Information Act* that contains the phrase "may refuse to disclose." The following exemptions are discretionary: 14, 15(1), 16(1), 16(2), 16.3, 17, 18, 18.1, 21(1), 22, 22.1, 23 and 26.

Every reasonable effort

Means a level of effort that a fair and reasonable person would expect or would find acceptable.

Injury test

Is a test to determine the reasonable expectation of probable harm to be met for certain exemption provisions of the *Access to Information Act* to be applied. The following exemptions are based on an injury test: 14, 15(1), 16(1)(c), 16(1)(d), 16(2), 17, 18(b), 18(c), 18(d), 20(1)(c), 20(1)(d) and 22.

Mandatory exemption

Is an exemption provision of the *Access to Information Act* that contains the phrase "shall refuse to disclose." The following exemptions are mandatory and spelled out in the following sections of the *Access to Information Act*: 13(1), 16(3), 16.1, 16.2, 16.4, 16.5, 19(1), 20(1), 20.1, 20.2, 20.4 and 24.

Tracking system

Is an electronic or paper-based internal case management system used in ATIP offices to track access requests and document their processing.

Appendix B - Access to information awareness

Information for all employees

All employees of the government institution should receive access to information training in the following areas:

- Application of the *Access to Information Act*, including:
 - The purpose of the *Access to Information Act*;

- The applicable definitions;
- Their responsibilities under the *Access to Information Act*, including the principles for assisting applicants;
- Delegation, exemption decisions and the exercise of discretion;
- The requirement to provide complete, accurate and timely responses;
- The complaint process and reviews by the courts;
- Section 67.1 of the *Access to Information Act*, which makes it an offence to obstruct the right of access and provides for criminal sanctions;
- The requirements found in Treasury Board policy instruments related to the responsibilities described above; and
- Specific institutional policies and processes related to the administration of the *Access to Information Act*, including policies on information management.

Information for practitioners in the field of Access to Information

Ensuring that employees who have functional responsibility for the administration of the *Access to Information Act* receive ATI training in the above-mentioned areas as well as in the following:

- Application of the *Access to Information Act* and the Access to Information Regulations, including:
 - The provisions concerning the extension of time limits, fees, exemptions and exclusions, the third-party notification process, and the language, format and method of access;
 - Reporting requirements, including annual reports to Parliament; and
- Information on the activities and operations of Standing Committees relating to the *Access to Information Act*.

Appendix C - Principles for assisting applicants

The following principles for assisting applicants are to be communicated to the applicant.

In processing your access request under the *Access to Information Act*, we will:

1. Process your request without regard to your identity.
2. Offer reasonable assistance throughout the request process.
3. Provide information on the *Access to Information Act*, including information on the processing of your request and your right to complain to the Information Commissioner of Canada.
4. Inform you as appropriate and without undue delay when your request needs to be clarified.
5. Make every reasonable effort to locate and retrieve the requested records under the control of the government institution.
6. Apply limited and specific exemptions to the requested records.
7. Provide accurate and complete responses.
8. Provide timely access to the requested information.
9. Provide records in the format and official language requested, as appropriate.
10. Provide an appropriate location within the government institution to examine the requested information.

Appendix D - Classification of exemptions

The following table lists all exemptions under the *Access to Information Act* and indicates whether they are based on a class test or an injury test and whether they are mandatory or discretionary.

Exemption	Mandatory	Discretionary	Class	Injury
Subsection 13(1)	yes	no	yes	no

Section 14	no	yes	no	yes
Subsection 15(1)	no	yes	no	yes
Paragraph 16(1)(a)	no	yes	yes	no
Paragraph 16(1)(b)	no	yes	yes	no
Paragraph 16(1)(c)	no	yes	no	yes
Paragraph 16(1)(d)	no	yes	no	yes
Subsection 16(2)	no	yes	no	yes
Subsection 16(3)	yes	no	yes	no
Section 16.1	yes	no	yes	no
Section 16.2	yes	no	yes	no
Section 16.3	no	yes	yes	no
Section 16.4	yes	no	yes	no
Section 16.5	yes	no	yes	no
Section 17	no	yes	no	yes
Paragraph 18(a)	no	yes	yes	no
Paragraph 18(b)	no	yes	no	yes
Paragraph 18(c)	no	yes	no	yes
Paragraph 18(d)	no	yes	no	yes
Section 18.1	no	yes	yes	no
Subsection 19(1)	yes	no	yes	no
Paragraph 20(1)(a)	yes	no	yes	no
Paragraph 20(1)(b)	yes	no	yes	no
Paragraph 20(1)(b.1)	yes	no	yes	no
Paragraph 20(1)(c)	yes	no	no	yes
Paragraph 20(1)(d)	yes	no	no	yes
Section 20.1	yes	no	yes	no
Section 20.2	yes	no	yes	no
Section 20.4	yes	no	yes	no
Section 21	no	yes	yes	no
Section 22	no	yes	no	yes
Section 22.1	no	yes	yes	no
Section 23	no	yes	yes	no
Section 24	yes	no	yes	no
Section 26	no	yes	yes	no

Appendix E - Criteria for posting summaries of completed access to information requests

To promote consistency among government institutions, the Information and Privacy Policy Division of the Treasury Board Secretariat has developed, in consultation with the ATIP Community, criteria for posting the summaries of completed access to information requests on individual institution's Web sites. Institutions are required to adopt the following mandatory criteria.

Mandatory Criteria

1. Post on your institution's web site the summaries of completed access to information requests within thirty calendar days after the end of each month. Where no ATI requests are completed in a given month, the month must still appear in the listing and be accompanied by the statement, "Nothing to report". Where no ATI requests are received in a given month or ever, the institution must still report monthly through the use of the month and statement, "Nothing to report". Monthly updates assure website visitors that the information is current.
2. Post the summaries in both official languages at the same time. Translations must be accurate to meet the requirements of the *Official Languages Act*.
3. Post the summaries in chronological order, by year, month and request number.
4. Post the summaries of the text for completed requests, including requests where no records were found and requests where records were all exempted or all excluded. However, do not include summaries of requests that are uniquely of interest to the applicant, that contain primarily personal information of the applicant (i.e., Citizenship and Immigration Canada immigration case files), or requests that may possibly reveal the identity of the requester.
5. Include the disposition of the request and the number of pages disclosed.
6. Do not post summaries of informal requests, requests made under the *Privacy Act*, requests that were transferred to another government institution or requests that were treated informally or abandoned.
7. Ensure that the summaries do not contain personal information or any other information that would be exempted or excluded under the *Access to Information Act*, or that may possibly reveal the identity of a requester. Ensure that the summaries reflect the final text of the request when clarification was obtained from the applicant.
8. Place the hyperlink "Completed Access to Information Requests" above the hyperlink "Proactive Disclosure" on the home page of your institution's Web site. Once the institution has implemented the Directive on Web Usability the content will reside on the page linked from "Transparency" in the footer.
9. Provide the link of your Web site to the Information and Privacy Policy Division of the Treasury Board Secretariat at ippd-dpiprp@tbs-sct.gc.ca.

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