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Archived [2016-05-05] - Directive on the Administration of the Access to Information Act

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1. Effective date

1.1 This directive takes effect on May 5, 2014.

1.2 It replaces the Directive on the Administration of the *Access to Information Act* dated January 16, 2012.

2. Application

2.1 This directive applies to government institutions as defined in section 3 of the *Access to Information Act* (Act), including parent Crown corporations and their wholly owned subsidiaries, if any.

2.2 This directive, with the exception of clause 7.13, is issued pursuant to paragraph 70(1)(c) of the Act. Clause 7.13 is issued pursuant to subsection 5(2) of the 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 Act.

3. Context

3.1 The Act gives Canadian citizens, permanent residents within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* 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 Act further provides that decisions on the non-disclosure of information can be reviewed independently of government.

3.2 The 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.

3.3 The administration of the 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 Act and the *Access to Information Regulations* (Regulations), which include the duty to assist applicants. The Act and the 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 Act by providing specific direction for responding to requests under the Act and by establishing principles for assisting applicants.

3.4 This directive is to be read in conjunction with the Act, the Regulations and the *Policy on Access to Information*. Where there is ambiguity, the Act takes precedence over this directive.

4. Definitions

4.1 The definitions to be used in the interpretation of this directive are listed in *Appendix A*. Additional definitions are listed 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 Act in government institutions.

5.2.2 Complete, accurate and timely responses to requests made under the 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 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. Delegates cannot further delegate powers, duties and functions that have been delegated to them, although employees and consultants may perform tasks in support of delegates' responsibilities; and
- e. The delegation order must be reviewed when the circumstances surrounding the delegations have changed. A delegation order remains in force until it is reviewed and revised by the head of the institution.

6.2 Access to information awareness

6.2.1 Ensuring that delegates receive 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 purpose of the Act, which is to provide a right of access to information held in government records, subject to limited and specific exceptions;
- b. Consideration of the relevant provisions of the Act, as well as applicable jurisprudence;
- c. Necessary consultations, for the proper exercise of discretion and application of the exemption and exclusion provisions of the 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 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 Act receive training in the areas specified in [Appendix B](#) of this directive.

7.3 Admissibility of applicants

7.3.1 Ensuring that the requester has the right to make a request under the 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 a requester, unless the requester 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 requester 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 requesters as listed 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 requester the possibility of treating the request informally and explaining that only formal requests are subject to the provisions of the Act.

Contextual information

7.4.6 Providing, as appropriate, general information of a contextual nature in response to an access request to help the requester 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 requesters are charged fees only for the activities and formats described in section 7 of the 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 subsection 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 Regulations.

Estimates

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

Refund of fees

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

Access to records

7.5.6 Providing access to records only when the requester has paid all the 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 requester of the extension within 30 days of the receipt 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 30 days, in accordance with subsection 9(2) of the Act.

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

7.7.1 Limiting and reducing the need for inter-institutional consultations with respect to sections 15 and 16 of the 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 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 requester. Lack of relevance is not a ground for exemption under the Act.

7.10 Notification of right to complain

7.10.1 Ensuring that requesters 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 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 Act, including communications where recommendations are given or decisions are made.

Disclosure of records

7.11.3 Ensuring that any internal process relating to the disclosure of records under the 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 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, to the Government of Canada's mandated website, the summaries of completed access to information requests within 30 calendar days after the end of each month, as indicated in Appendix E.

8. Requirements for Employees of government institutions

8.1 Informal access

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

8.2 Search of records

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

8.3 Estimates

8.3.1 Providing a realistic fee estimate and the rationale for it to the head or the delegate, when required.

8.4 Recommendations

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

8.5 Contracts and agreements

8.5.1 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 of 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 (Access to Information and Privacy)) coordinator. For interpretation of this directive, the ATIP (Access to Information and Privacy) 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 (Access to Information)) training

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

Class test

A test that objectively identifies the categories of information or documents to which certain exemption provisions of the Act can be applied. The following sections of the Act provide for exemptions that 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

An exemption provision of the Act that contains the phrase "may refuse to disclose." The following sections of the Act provide for exemptions that 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

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

Injury test

A test to determine the reasonable expectation of probable harm that must be met for certain exemption provisions of the Act to apply. The following sections of the Act provide for exemptions that 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

An exemption provision of the Act that contains the phrase "shall refuse to disclose." The following sections of the Act provide for exemptions that are mandatory: 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 (Access to Information and Privacy) offices to track access requests and document their processing.

Appendix B - Access to information awareness

Information for all employees

All employees of government institutions should receive training in the application of the Act. The training should cover the following:

- The purpose of the Act;
- The applicable definitions;
- Their responsibilities under the 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 Act, which makes it an offence to obstruct the right of access and which provides for criminal sanctions;
- The requirements found in Treasury Board policy instruments relating to the responsibilities described above; and
- Specific institutional policies and processes relating to the administration of the Act, including policies on information management.

Information for practitioners in the field of Access to Information

All employees of government institutions who have functional responsibility for the administration of the Act and the Regulations should receive training that covers the items listed above and the following:

- 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 Act.

Appendix C - Principles for assisting applicants

The following principles, which are aimed at assisting applicants, are to be communicated to applicants.

In processing your request under the *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 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.
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 in the government institution where you can examine the requested information.

Appendix D - Classification of exemptions

The following table lists all exemptions under the 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 of Canada Secretariat has developed, in consultation with the access to information and privacy community, criteria for posting the summaries of completed access to information (ATI) requests on the Government of Canada's mandated website.

Mandatory Criteria

Institutions must meet the following criteria in relation to the posting of summaries:

1. Post summaries of completed Access to Information requests within 30 calendar days after the end of each month. When no ATI requests are completed in a given month, an update to this effect must still be made. Monthly updates assure website visitors that the information is current.
2. The entry for each summary must include the following:
 - a. The **request number** assigned by the institution;
 - b. A **summary** of the request that reflects the final text of the request after clarification was obtained from the applicant, where applicable. Summaries must not include personal information or any other information that would be exempted or excluded under the *Act*, or that could reveal a requester's identity;
 - c. The **disposition** of the request (i.e., all disclosed; disclosed in part; all exempted; all excluded; or no records exist). Requests that were transferred, abandoned or treated informally are not to be included; and
 - d. The **number of pages** released.
3. Provide the summaries simultaneously in both official languages with translations that must be accurate to meet the requirements of the *Official Languages Act*;
4. Do not include summaries of requests that are uniquely of interest to the applicant, that contain primarily personal information of the applicant (e.g., Citizenship and

Immigration Canada immigration case files), or requests that could reveal a requester's identity.

Date modified: 2014-05-05