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# Archived [2012-01-16] - Directive on the Administration of the <em>Access to Information Act</em>

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## 1. Effective date

1.1 This directive takes effect on April 1, 2010.

## 2. Application

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

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

2.3 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, and provides that decisions on the disclosure of information are to be reviewed independently of government. 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. 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.

3.2 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, 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 supports heads (or their delegates) in the administration of the *Access to Information Act* by providing specific direction for responding to requests under the *Act* and by establishing principles for assisting applicants.

3.3 This directive is issued pursuant to paragraph 70(1)(c) of the *Access to Information Act*.

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*.

## 4. Definitions

4.1 The definitions to be used in the interpretation of this directive are attached in Appendix A. Additional definitions are found 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

### 6.1 Heads of government institutions are responsible for

#### 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*:

- Heads can only designate officers and employees of their government institution in the delegation order—consultants or employees of other government institutions or from the private sector cannot be named in the delegation order;
- Powers, duties and functions are delegated to positions identified by title, not to individuals identified by name;
- Persons with delegated authorities are to be well informed of their responsibilities;
- Powers, duties and functions that have been delegated cannot be further delegated, though employees and consultants may perform tasks in support of delegates' responsibilities; and
- 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.

#### Access to information awareness

6.1.2 Ensuring that delegates receive access to information (ATI) training in the areas outlined in Appendix B of this directive.

### 6.2 Heads of government institutions or their delegates are responsible for:

#### Discretion

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

- Consideration of the Act's intent, which is to provide a right of access to information held in government records, and of its limited and specific exceptions;
- Consideration of the Act's relevant provisions as well as applicable jurisprudence;
- Consultation with all government institutions, third parties and other individuals or organizations that provided the information or have an interest in its disclosure;
- Review of the information contained in records; and
- Consideration, in a fair and unbiased manner, of relevant factors.

Note: The above considerations apply to all provisions of the Act for which the head or the delegate exercises discretion.

### **Access to information awareness**

6.2.2 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 outlined in Appendix B of this directive.

### **Admissibility of applicants**

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

### **Duty to assist**

#### **Protection of applicant's identity**

6.2.4 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**

6.2.5 Adopting a broad interpretation of an access request, yet communicating with the applicant to clarify the request if it is unclear or too general so as to understand what information is requested by the applicant without unnecessarily delaying processing of the request.

#### **Principles for assisting applicants**

6.2.6 Implementing and communicating the principles for assisting applicants listed in Appendix C of this directive.

#### **Informal processing**

6.2.7 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**

6.2.8 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.

### **Processing of access requests**

## **Tracking system**

6.2.9 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**

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

## **Revised requests**

6.2.11 Documenting, when an access request has been clarified or its wording altered, the wording of the revised request and the date of the revision in the tracking system.

## **Disclosure of records**

6.2.12 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.

## **Notification of right to complain**

6.2.13 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.

## **Extension of time limits**

### **Notice of extension**

6.2.14 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**

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

### **Notice of extension to Information Commissioner**

6.2.16 Notifying the Information Commissioner of Canada if the extension is more than thirty days, in accordance with subsection 9(2) of the Access to Information Act.

## **Collecting Fees**

### **Fees**

6.2.17 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**

6.2.18 Exercising discretion concerning the waiver, reduction or refund of fees while taking into account the applicable steps set out in Section 6.2.1 of this directive.

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

6.2.19 Ensuring that reduced fees are applied when producing any record from a machine-readable record because 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**

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

### **Refund of fees**

6.2.21 Refunding the difference to the applicant when the actual cost is determined to be less than the estimate provided.

### **Access to records**

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

### **Exemptions**

#### **Application of exemptions**

6.2.23 Invoking exemptions by properly applying the provisions of the *Access to Information Act*. As defined in Appendix A and listed in Appendix D of this directive, exemptions are based either on a class test or an injury test and are either discretionary or mandatory in nature.

#### **Citation of exemptions**

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

#### **Obligation to process non-relevant information**

6.2.25 Ensuring that non-relevant information contained in a record for which access was provided can only be severed if it is covered by an exemption or if consent is obtained from the applicant. Lack of relevance is not a ground for exemption under the Act.

### **Consultations**

#### **Mandatory consultations**

6.2.26 Consulting with the appropriate government institutions in all instances involving the application of sections 15 and 16 of the *Access to Information Act*, as specified in Appendix E of this directive.

#### **Importance of consultations**

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

### **Internal procedures for a suspected obstruction of the right of access**

6.2.28 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 will outline measures for:

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

## **6.3 Employees of government institutions are responsible for:**

### **Informal access**

6.3.1 Recommending to the head or the delegate, as appropriate, that the requested information be disclosed informally.

### **Search of records**

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

### **Estimates**

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

### **Recommendations**

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

### **Contracts and agreements**

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

## **6.4 Monitoring and reporting requirements**

6.4.1 The monitoring and reporting requirements of this directive are set out in Subsection 6.3 of the *Policy on Access to Information*.

## 7. Consequences

7.1 The consequences for non-compliance with this directive are identified in Section 7 of the *Policy on Access to Information*.

## 8. Roles and responsibilities of government institutions

8.1 The roles and responsibilities of government institutions with respect to this directive are identified in Section 8 of the *Policy on Access to Information*.

## 9. References

### 9.1 Relevant legislation and regulations:

*Access to Information Act*

*Access to Information Regulations*

*Financial Administration Act*

*Library and Archives of Canada Act*

*Official Languages Act*

*Personal Information Protection and Electronic Documents Act*

*Privacy Act*

*Privacy Regulations*

*Public Servants Disclosure Protection Act*

*User Fees Act*

### 9.2 Related policy instruments and publications:

*Communications Policy of the Government of Canada*

*Directive on Privacy Requests and Correction of Personal Information*

*Policy Framework for Information and Technology*

*Policy on Access to Information*

*Policy on Government Security*

*Policy on Information Management*

*Policy on Learning, Training and Development*

*Policy on Management of Information Technology*

*Policy on Privacy Protection*

*Policy on Service Standards for External Fees*



## 10. 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](mailto:ippd-dpiprp@tbs-sct.gc.ca)

Telephone: 613- 946-4945

Fax: 613-952-7287

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## Appendix A—Definitions

**Access to information (ATI) training** (*formation AI*)—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 outlined in [Appendix B](#) of this directive.

**Class test** (*critère objectif*)—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 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** (*exception discrétionnaire*)—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** (*tous les efforts raisonnables*)—Means a level of effort that a fair and reasonable person would expect or would find acceptable.

**Injury test** (*critère subjectif*)—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** (*exception obligatoire*)—Is an exemption provision of the [Access to Information Act](#) that contains the phrase "shall refuse to disclose." The following exemptions 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** (>*système de suivi*)—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

Ensuring that employees of the government institution receive ATI training in the following areas:

- Application of the *Access to Information Act*, including:
  - 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; and
  - Section 67.1 of the *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 access to information employees

Ensuring that officials 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 *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;
  - Public reporting requirements, including annual reports to Parliament; and
  - Important court decisions; and
- Information on the activities and operations of Standing Committees.

## 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
<u>Subsection 13(1)</u>	yes	no	yes	no
<u>Section 14</u>	no	yes	no	yes
<u>Subsection 15(1)</u>	no	yes	no	yes
<u>Paragraph 16(1)(a)</u>	no	yes	yes	no
<u>Paragraph 16(1)(b)</u>	no	yes	yes	no
<u>Paragraph 16(1)(c)</u>	no	yes	no	yes
<u>Paragraph 16(1)(d)</u>	no	yes	no	yes
<u>Subsection 16(2)</u>	no	yes	no	yes
<u>Subsection 16(3)</u>	yes	no	yes	no
<u>Section 16.1</u>	yes	no	yes	no

<u>Section 16.2</u>	yes	no	yes	no
<u>Section 16.3</u>	no	yes	yes	no
<u>Section 16.4</u>	yes	no	yes	no
<u>Section 16.5</u>	yes	no	yes	no
<u>Section 17</u>	no	yes	no	yes
<u>Paragraph 18(a)</u>	no	yes	yes	no
<u>Paragraph 18(b)</u>	no	yes	no	yes
<u>Paragraph 18(c)</u>	no	yes	no	yes
<u>Paragraph 18(d)</u>	no	yes	no	yes
<u>Section 18.1</u>	No	yes	yes	no
<u>Subsection 19(1)</u>	yes	no	yes	no
<u>Paragraph 20(1)(a)</u>	yes	no	yes	no
<u>Paragraph 20(1)(b)</u>	yes	no	yes	no
<u>Paragraph 20(1)(b.1)</u>	yes	no	yes	no
<u>Paragraph 20(1)(c)</u>	yes	no	no	yes
<u>Paragraph 20(1)(d)</u>	yes	no	no	yes
<u>Section 20.1</u>	yes	no	yes	no
<u>Section 20.2</u>	yes	no	yes	no
<u>Section 20.4</u>	yes	no	yes	no
<u>Section 21</u>	no	yes	yes	no
<u>Section 22</u>	no	yes	no	yes
<u>Section 22.1</u>	no	yes	yes	no
<u>Section 23</u>	no	yes	yes	no
<u>Section 24</u>	yes	no	yes	no
<u>Section 26</u>	no	yes	yes	no

## Appendix E—Mandatory consultations

The following charts list the instances where consultation is mandatory and the government institutions to be consulted.

<b>Exemption</b>	<b>Institutions</b>
<b><u>Section 15: International affairs and defence</u></b>	
International affairs	Department of Foreign Affairs and International Trade
Defence of Canada or of any state allied or associated with Canada	Department of National Defence
Detection, prevention or suppression of subversive or hostile activities	Government institution with primary interest (i.e., Department of Public Safety, Royal Canadian Mounted Police, Canadian Security Intelligence Service, Department of National Defence or Department of Foreign Affairs and International Trade)

<b>Exemption</b>	<b>Institutions</b>
<b><u>Section 16: Law enforcement, investigations and security of penal institutions</u></b>	
Paragraph 16(1)(a)	The investigative body that originally obtained or prepared the information
Paragraph 16(1)(b)	The investigative body or other government institution with primary interest in the investigative technique or the specific investigation involved
Paragraph 16(1)(c)	The investigative body or other government institution with primary interest in the law being enforced or the investigation being undertaken
Paragraph 16(1)(d)	Correctional Service of Canada

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