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Policy on Access to Information

Provides direction to government institutions for effectively and consistently administering the Access to Information Act and Regulations.

Date modified: 2014-09-22

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▼ 1. Effective date

1.1 This policy takes effect on August 20, 2014.

1.2 It replaces the *Policy on Access to Information* dated April 1, 2008.

▼ 2. Application

2.1 This policy applies to government institutions as defined in section 3 of the *Access to Information Act* (the Act), including parent Crown corporations and any wholly owned subsidiary of these corporations. It does not apply to the Bank of Canada.

2.2 This policy does not apply to information that is excluded under the Act.

▼ 3. Context

3.1 The Government of Canada recognizes the right of access by the public to information in records under the control of government institutions as an essential element of our system of democracy. The government is committed to openness and transparency by respecting both

the spirit and requirements of the *Access to Information Act*, its Regulations and its related policy instruments.

3.2 The Courts have recognized the quasi-constitutional status of the *Access to Information Act*. This is because of the role it plays in:

- Facilitating democracy by providing access to records containing the information required to participate in the democratic process; and
- Ensuring that public office holders and public servants are accountable.

The Government of Canada further acknowledges the importance of facilitating access to records by requiring government institutions to make every reasonable effort to assist applicants. The government must ensure a high standard of care for records under its control. Sound information management plays a key role in facilitating the ability to exercise the right of access under the Act.

3.3 With the enactment of the *Federal Accountability Act*, the scope of the *Access to Information Act* was broadened and now includes well over 200 government institutions. Under the *Access to Information Act*, the Treasury Board President is the designated minister responsible for preparing policy instruments concerning the operation of the Act and its Regulations. The Act establishes that policy and guidelines are the appropriate vehicles for supporting the administration of the Act.

3.4 Heads of government institutions are responsible for the effective, well-coordinated and proactive management of the *Access to Information Act* and the *Access to Information Regulations* within their institutions.

3.5 This policy is issued pursuant to paragraph 70(1)(c) of the *Access to Information Act*. This policy also contains elements that relate to paragraphs 70(1)(b), (c.1) and (d) of the Act.

3.6 This policy is to be read in conjunction with the *Policy Framework for Information and Technology* and the *Policy on Privacy Protection*.

3.7 The President of the Treasury Board will issue specific directives and standards to support this policy regarding the administration of the *Access to Information Act*, duty to assist, the annual report to Parliament, the creation of classes of records for *Info Source* and statistical reporting.

▼ 4. Definitions

4.1 Definitions to be used in the interpretation of this policy are in Appendix A. Certain terms included are defined in the *Access to Information Act* and are provided in Appendix A for ease of reference. Some of these definitions contain additional information not included in the Act.

▼ 5. Policy statement

5.1 Objectives

The objectives of this policy are:

5.1.1 To facilitate statutory and regulatory compliance, and to enhance effective application of the *Access to Information Act* and its Regulations by government institutions.

5.1.2 To ensure consistency in practices and procedures in administering the Act and Regulations so that applicants receive assistance throughout the request process.

5.2 Expected results

The expected results of this policy are:

5.2.1 Sound management and decisions in responding to requests from applicants who are exercising their right to access records under the control of a government institution, regardless of their identity;

5.2.2 Complete, accurate and timely responses to requests made under the Act;

5.2.3 Clear responsibilities in government institutions for decision-making and effective administration of the *Access to Information Act* and the *Access to Information Regulations*; and

5.2.4 Consistent public reporting on the administration of the Act through the government institution's annual reports to Parliament, statistical reports and the annual publication of *Info Source*, produced by the Treasury Board Secretariat (TBS).

▼ 6. Policy requirement

6.1 Heads of government institutions are responsible for:

Delegation under the *Access to Information Act*

6.1.1 Deciding whether to delegate, pursuant to section 73 of the *Access to Information Act*, any of their powers, duties or functions under the Act. Careful consideration should be given as to whether a delegation should be made. The provisions of the Act containing the powers, duties or functions that may be delegated are represented in Appendix B.

6.1.2 Signing an order, if a decision is made to delegate, authorizing one or more officers or employees of the institution, who are at the appropriate level, to exercise or perform the powers, duties or functions of the head, specified in the order. Once an order is signed, the powers, duties or functions that have been delegated may only be

exercised or performed by the head of the institution or by the named officer(s) or employee(s). Delegates are accountable for any decisions they make. Ultimate responsibility, however, still rests with the head of the government institution.

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

Exercising discretion

6.2.1 Exercising discretion under the *Access to Information Act* in a fair, reasonable and impartial manner with respect to decisions made in the processing of requests and the resolution of complaints pursuant to the Act, subject to the conditions set out in the Regulations.

Access to information awareness

6.2.2 Making employees of the government institution aware of the policies, procedures and legal responsibilities under the Act.

Protecting the identity of applicants

6.2.3 Ensuring that requestors' identities are protected and only disclosed when there is a clear need to know in order to perform duties and functions related to a lawful program or activity.

Duty to assist

6.2.4 Ensuring that every reasonable effort is made to help applicants receive complete, accurate and timely responses in the format requested, in accordance with the Regulations and without regard to the applicant's identity. This includes developing and implementing written procedures and practices that will effectively assist applicants.

Processing access requests

6.2.5 Establishing effective processes and systems to respond to access requests as well as documenting deliberations and decisions made concerning each request received under the Act.

6.2.6 Establishing procedures to ensure that:

- The requested records are reviewed to determine whether they are subject to the Act. If subject to the Act, then determine whether any exemptions apply. Exemptions to the right of access are to be limited and specific;
- The principle of severability is applied; and

- Any consultations necessary for the processing of requests made pursuant to the Act are undertaken.

Cabinet Confidences

6.2.7 Consulting departmental legal counsel, in compliance with established procedures, prior to excluding confidences of the Queen's Privy Council for Canada.

6.2.8 Acquiring, in compliance with established procedures and upon the request of the Information Commissioner, assurances that excluded information is a Confidence of the Queen's Privy Council for Canada.

Contracts and agreements

6.2.9 Establishing measures to ensure that the government institution meets the requirements of the *Access to Information Act* when contracting with private sector organizations, or when establishing agreements or arrangements with public sector institutions.

Addressing obstruction of the right of access

6.2.10 Ensuring that appropriate procedures are in place in cases of an alleged obstruction of the right of access under the *Access to Information Act*. These procedures must align with the *Public Servants Disclosure Protection Act*. Obstructing the right of access is a criminal offence.

6.3 Monitoring and reporting requirements

Within government institutions

6.3.1 Heads or their delegates are responsible for monitoring compliance with this policy as it relates to the administration of the *Access to Information Act*.

By government institutions

6.3.2 Under the Act, the head or the head's delegates are responsible for:

- Preparing and tabling in each House of Parliament an annual report on the administration of the Act;
- Updating the government institution's chapter in *Info Source*; and
- Providing TBS with:
 - A copy of the annual report;
 - An update to its chapter in *Info Source*; and
 - A statistical report on the administration of the *Access to Information Act* within the institution.

Government-wide

6.3.3 Treasury Board Secretariat will monitor compliance with all aspects of this policy by analyzing and reviewing public reporting documents required by the *Access to Information Act* and other information, such as Treasury Board submissions, Departmental Performance Reports, results of audits, evaluations and studies, to assess the government institution's administration of the Act. For those government institutions subject to the Management Accountability Framework (MAF), information obtained from monitoring of compliance with this policy will be used in MAF assessments.

6.3.4 The Treasury Board Secretariat will review the policy, its related directives, standards and guidelines, and their effectiveness, five years following the implementation of the policy. When substantiated by risk-analysis, TBS will also ensure an evaluation is conducted.

▼ 7. Consequences

7.1 For those government institutions that do not comply with this policy, its directives and standards, there will be a requirement to provide additional information relating to the development and implementation of compliance strategies in their annual report to Parliament. This reporting will be in addition to other reporting requirements and will relate specifically to the compliance issues in question.

7.2 For those government institutions subject to the MAF, non-compliance, compliance and exemplary performance with respect to this policy, and related directives and standards will be reported in the assessment prepared as part of the MAF process.

7.3 On the basis of analysis of monitoring and information received, the designated minister may make appropriate recommendations to the head of the government institution. This could include prescribing any additional reporting requirements, as outlined in subsection 7.1 above.

▼ 8. Roles and responsibilities of government organizations

8.1 Treasury Board Secretariat is responsible for issuing direction and guidance to government institutions with respect to the administration of the *Access to Information Act* and interpretation of this policy. As such, TBS:

- Publishes an annual index that describes government institutions, their responsibilities, programs and information holdings;
- Reviews and publishes updates to government institutions' chapters in *Info Source* and prescribes forms to be used in the administration of the Act, as well as the format and

content of reports made to Parliament;

- Advises all members of the Access to Information and Privacy community of any updates to the policy instruments; and
- Works closely with the Canada School of Public Service to determine the extent to which knowledge elements related to the *Policy on Access to Information* will be integrated into the required training courses, programs and knowledge assessment instruments.

8.2 The Clerk of the Privy Council is responsible for policies on the administration of Confidences of the Queen's Privy Council for Canada and determines what information constitutes a Confidence of the Queen's Privy Council for Canada.

8.3 The Information Commissioner is an Officer of Parliament who is assigned the duty of ensuring that rights and obligations set out in the *Access to Information Act* are respected. The Commissioner receives and independently investigates complaints from applicants or self-initiates complaints on any matter related to obtaining or requesting access under the Act to records held by government institutions. The Commissioner reports findings and may make recommendations. The Commissioner can also initiate or intervene in Court proceedings. In addition, the Commissioner reports to Parliament on activities annually and can report at any time on any important matter within the scope of the Commissioner's powers, duties and functions.

8.4 The Department of Justice supports the Minister of Justice in the role of designated minister for specific provisions of the *Access to Information Act*. The Minister is responsible for:

- Designating, by order-in-council, the head of a government institution for the purposes of the Act;
- Extending the right of access by order;
- Specifying investigative bodies and classes of investigations; and
- Amending Schedule I of the Act.

▼ 9. References

Other relevant legislation and regulations:

- [Canada Evidence Act](#)
- [Financial Administration Act](#)
- [Library and Archives of Canada Act](#)
- [Official Languages Act](#)
- [Privacy Act](#)
- [Privacy Regulations](#)
- [Public Servants Disclosure Protection Act](#)
- [User Fees Act](#)

Related policies and guidelines:

- [Communications Policy](#)
- [Government Security Policy](#)
- [Guidelines on Access to Information](#)
- [Guidelines on Privacy](#)
- [Policy Framework for Information and Technology](#)
- [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 policy to your institution's ATIP Coordinator. For interpretation of this policy, the ATIP Coordinator is to contact:

Information and Privacy Policy Division
Chief Information Officer Branch
Treasury Board Secretariat
219 Laurier Avenue West, 14th Floor
Ottawa ON K1A 0R5

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

Telephone: 613- 946-4945

Fax: 613-952-7287

▼ Appendix A – Definitions

Note: Certain terms contain excerpts (in quotation marks, with the reference cited) from the *Access to Information Act (the Act)*.

access request (*demande d'accès*)

Is a request for access to a record made under the *Access to Information Act*.

annual report (*rapport annuel*)

Is a report submitted by the head of a government institution to Parliament on the administration of the Act within the institution during the financial year.

applicant (*auteur d'une demande*)

Is a Canadian citizen, a permanent resident or any individual or corporation present in Canada who requests access to a record under the Act.

complainant (*plaignant*)

Is an individual who makes a complaint to the Information Commissioner on any of the grounds outlined in subsection 30(1) of the *Access to Information Act*.

delegate (*délégué*)

Is an officer or employee of a government institution who has been delegated to exercise or perform the powers, duties and functions of the head of the institution under the Act.

designated minister (*ministre désigné*)

Is the President of the Treasury Board for the purpose of this policy.

excluded information (*renseignements exclus*)

Is the information to which the Act does not apply as described in sections 68, 68.1, 68.2, 69 and 69.1 of the Act.

exemption (*exception*)

Is a mandatory or discretionary provision under the Act that authorizes the head of the government institution to refuse to disclose records in response to an access request.

government institution (*institution fédérale*)

Is "any department or ministry of state of the Government of Canada, or any body or office, listed in Schedule I, and any parent Crown corporation, and any wholly-owned subsidiary of a Crown corporation, within the meaning of section 83 of the *Financial Administration Act*" (section 3). The term "government institution" does not include Ministers' Offices.

head (*responsable*)

Is the Minister, in the case of a department or ministry of state. In any other case, it is the person designated by the *Access to Information Act Heads of Government Institutions Designation Order*. If no such person is designated, the chief executive officer of the institution, whatever their title, is the head.

Information Commissioner (*commissaire à l'information*)

Is an Officer of Parliament appointed by Governor in Council.

Implementation Report (*rapport de mise en oeuvre*)

Is a notice issued by Treasury Board Secretariat to provide guidance on the interpretation and application of the *Access to Information Act* and its related policy, directives, standards and guidelines.

Info Source (*Info Source*)

Is a series of annual Treasury Board Secretariat publications in which government institutions are required to describe their organizations, program responsibilities and information holdings, including classes of records. The information is to contain sufficient clarity and detail to facilitate the exercise of the right of access under the *Access to Information Act*. The *Info Source* publications also provide contact information for government institutions as well as summaries of court cases and statistics on access requests.

record (document)

Is "any documentary material regardless of medium or form" (section 3).

severability (prélèvements)

Relates to the principle under the Act in which the protection of information from disclosure must be limited to the portions of information or material that the head of the government institution is authorized or obligated to refuse to disclose under the Act. The principle applies to records that are the subject of an access request.

statistical report (rapport statistique)

Is intended to provide up-to-date statistics on the operation of the legislation. The reports allow the government to monitor trends and to respond to enquiries from Members of Parliament, the public and the media. The reports also form the statistical portion of the government institutions' annual reports to Parliament. The forms used for preparing the report are prescribed by the designated minister, as provided under paragraphs 70(1)(b) and (d) of the *Access to Information Act*.

▼ Appendix B – Powers that can be delegated

Pursuant to section 73 of the *Access to Information Act*, the head of a government institution may, by order, designate one or more officers or employees of that institution, who are at the appropriate level, to exercise or perform any of the powers, duties or functions that are to be exercised or performed by the institutional head under the following provisions of the Act and the *Access to Information Regulations*.

Access to Information Act

4(2.1)	Responsibility of government institutions
7(a)	Notice when access requested
7(b)	Giving access to record
8(1)	Transfer of request to another government institution
9	Extension of time limits
11(2), (3), (4), (5), (6)	Additional fees
12(2)(b)	Language of access

- 12(3)(b) Access in an alternative format
- 13 Exemption – Information obtained in confidence
- 14 Exemption – Federal-provincial affairs
- 15 Exemption – International affairs and defence
- 16 Exemption – Law enforcement and investigations
- 16.5 Exemption – *Public Servants Disclosure Protection Act*
- 17 Exemption – Safety of individuals
- 18 Exemption – Economic interests of Canada
- Exemption – Economic interest of the Canada Post Corporation, Export
- 18.1 Development Canada, the Public Sector Pension Investment Board and VIA Rail Canada Inc.
- 19 Exemption – Personal information
- 20 Exemption – Third-party information
- 21 Exemption – Operations of Government
- 22 Exemption – Testing procedures, tests and audits
- 22.1 Exemption – Audit working papers and draft audit reports
- 23 Exemption – Solicitor-client privilege
- 24 Exemption – Statutory prohibitions
- 25 Severability
- 26 Exception – Information to be published
- 27(1), (4) Third-party notification
- 28(1)(b), (2), (4) Third-party notification
- 29(1) Where the Information Commissioner recommends disclosure
- 33 Advising Information Commissioner of third-party involvement
- 35(2)(b) Right to make representations
- 37(4) Access to be given to complainant
- 43(1) Notice to third party (application to Federal Court for review)
- 44(2) Notice to applicant (application to Federal Court by third party)
- 52(2)(b), (3) Special rules for hearings
- 71(1) Facilities for inspection of manuals
- 72 Annual report to Parliament

Access to Information Regulations

- 6(1) Transfer of request
- 7(2) Search and preparation fees
- 7(3) Production and programming fees
- 8 Providing access to record(s)
- 8.1 Limitations in respect of format

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