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Archived [2023-06-27] - Policy on Access to Information

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1. Effective date

- 1.1 This policy takes effect on July 13, 2022.
- 1.2 This policy replaces the *Policy on Access to Information* dated August 20, 2014.

2. Authorities

- 2.1 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) and (d), sections 79 and 89, and paragraph 94(5) of the Act.
- 2.2 The President of the Treasury Board, as designated Minister for the paragraphs of the *Access to Information Act* referenced in 2.1 above, is responsible for establishing policies and prescribing forms concerning the operation of the Act and its Regulations.

3. Objectives and expected results

- 3.1 The objectives of this policy are:
 - 3.1.1 Strengthened openness and transparency of government.
 - 3.1.2 Strengthened accountability of government to its citizens and enhanced democratic participation.
- 3.2 The expected results of this policy are:

- 3.2.1 Government institutions have appropriate processes and tools to support the administration of the *Access to Information Act*.
- 3.2.3 Government institutions offer requesters clear and accessible processes to make access to information requests.
- 3.2.4 Government institutions provide requesters with complete, accurate, and timely responses to requests for government information.
- 3.2.5 Employees understand their obligations under the *Access to Information Act*.
- 3.2.6 Performance is measured and compliance issues are identified and addressed.

4. Requirements

- 4.1 Heads of government institutions are responsible for:

Delegation of powers, duties and functions under Part 1 and Part 3 of the *Access to Information Act*

- 4.1.1 Deciding whether to delegate, pursuant to section 95 of the *Access to Information Act*, any of the powers, duties or functions under the Act that are listed in Appendix B: Powers That Can Be Delegated.
- 4.1.2 When signing a delegation order, giving careful consideration to the delegation of any powers, duties or functions pursuant to section 95 of the *Access to Information Act* and ensuring that:
 - 4.1.2.1 Powers, duties and functions are:
 - 4.1.2.1.1 Delegated only to officers and employees of their government institution, or of another government institution within the same ministerial portfolio when there is a service-sharing agreement between the two government institutions;
 - 4.1.2.1.2 Not delegated to consultants, members of a Minister's exempt staff, employees of other government institutions with which there is no service-sharing agreement, or to individuals from the private sector; and
 - 4.1.2.1.3 Delegated to positions identified by title, not to individuals identified by name.

- 4.1.2.2 Delegates understand that they are accountable for any decisions they make, but ultimate responsibility remains with the head of the government institution.
- 4.1.2.3 Delegates are at the appropriate level to be able to fulfil the duties of their delegated authorities and are well informed of their responsibilities.
- 4.1.2.4 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.
- 4.1.2.5 Delegation orders are reviewed when the circumstances surrounding the delegations have changed. A delegation order remains in force until it is replaced.

General Requirements

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

Access to information awareness

4.2.1 Ensuring that employees of the government institution are aware of policies, procedures and legal responsibilities under the Act.

Contracts and agreements

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

Service Sharing

4.2.3 Ensuring that the requirements of section 96 of the *Access to Information Act* are respected when entering into a service-sharing agreement.

4.2.4 Providing a copy of any new service-sharing agreement, and any material changes to an existing service-sharing agreement, to the President of the Treasury Board and to the Information Commissioner, as soon as possible after entering into the agreement or after any material changes arise. This responsibility rests with the head of a government institution to which the services are provided.

Responding to Requests for Access to Records under Part 1 of the *Access to Information Act*

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

Control of Records

4.3.1 Determining, in a manner consistent with jurisprudence and considering any TBS guidance, whether records are under the control of the government institution.

Exercising discretion

4.3.2 Exercising discretion under Part 1 of the *Access to Information Act* and associated Regulations 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.

4.3.3 With the Information Commissioner's written approval, exercising the discretion to decline to act on a request when, in the opinion of the head or delegate, the request is vexatious, made in bad faith or an abuse of the right to make a request for access to records, only after considering:

4.3.3.1 The purpose of the Act, which is to enhance the accountability and transparency of federal institutions in order to promote an open and democratic society and to enable public debate on the conduct of those institutions, and

4.3.3.2 The core principle of the Act that government information should be available to the public, subject to necessary exceptions that are limited and specific.

Duty to assist

Protecting the identity of requesters

4.3.4 Ensuring that requesters' identities are protected and only used or disclosed when authorized by the *Privacy Act* and where there is a clear need-to-know.

Complete, accurate and timely responses

4.3.5 Ensuring every reasonable effort is made to help requesters in connection with the request, in order to provide complete, accurate, and timely responses.

Access to record in format requested

- 4.3.6 Ensuring that every reasonable effort is made to provide responses to requesters in the format requested, in accordance with the regulations.

Language of access

- 4.3.7 Providing records in the official language requested, in accordance with subsection 12(2) of the Act.

Accessible format for requesters

- 4.3.8 Providing a copy of records in an alternative format, in accordance with subsection 12(3) of the Act, when requested by the requester.

Processing requests

- 4.3.9 Establishing effective procedures and systems to respond to requests under Part 1 of the Act to ensure that:
- 4.3.9.1 Requests can be received through the prescribed platform in accordance with *Appendix E: Prescribed Platforms for Receiving and Processing Access to Information Requests* of the *Directive on Access to Information Requests*, unless the institution has received an exception to the use of the platform; and can be received in written format by other means;
 - 4.3.9.2 Requests are processed using prescribed platforms in accordance with *Appendix E: Prescribed Platforms for Receiving and Processing Access to Information Requests* of the *Directive on Access to Information Requests*, when platforms have been prescribed, unless the institution has received an exception to use of the platform;
 - 4.3.9.3 Deliberations and decisions concerning requests received under the Act are documented;
 - 4.3.9.4 The requested records are reviewed to determine whether they are subject to Part 1 of the Act; and, if they are, determining whether any exemptions apply;
 - 4.3.9.5 The principle of severability is applied;
 - 4.3.9.6 Any consultations necessary for the processing of requests made pursuant to the Act are undertaken promptly; and

- 4.3.9.7 Any transfer of an access to information request to other government institutions is performed within the timeline prescribed under the Act.

Confidences of the Queen's Privy Council

- 4.3.10 Consulting the institution's legal counsel, in compliance with established procedures, prior to excluding confidences of the Queen's Privy Council for Canada.
- 4.3.11 Upon the request of the Information Commissioner, acquiring assurances that excluded information is a Confidence of the Queen's Privy Council for Canada, in compliance with established procedures.

Acting upon orders of the Information Commissioner

- 4.3.12 Implementing an order of the Information Commissioner or seeking a review by the Federal Court of the matter that is the subject of the order within the timelines prescribed by the Act.
- 4.3.13 Notifying TBS when the Information Commissioner provides the institution with an initial report that sets out any order that the Commissioner intends to make.

Considering other means of making government information accessible

- 4.3.14 Establishing procedures to review the nature of requests received under Part 1 of the Act and assessing the feasibility of making frequently requested and disclosed types of information available by other means.

Addressing allegations of an obstruction of the right of access

- 4.3.15 Ensuring that appropriate procedures are in place to address any alleged obstruction related to the right of access and the Information Commissioner's duties and functions under the *Access to Information Act*, including conduct described in subsections 67(1) and 67.1(1) of the Act.

Monitoring and reporting

- 4.3.16 Monitoring compliance with this policy and its supporting instruments within their institution.
- 4.3.17 Investigating when issues regarding policy compliance arise and insuring appropriate remedial action is taken to address these issues.

- 4.3.18 Advising the Secretary of the Treasury Board on a timely basis when significant issues regarding policy compliance arise.
- 4.3.19 Preparing and tabling an annual report on the administration of the Act in each House of Parliament in accordance with requirements established by TBS.
- 4.3.20 Providing the Information Commissioner and TBS with a copy of the annual report.
- 4.3.21 Providing TBS with a statistical report on the administration of the *Access to Information Act* within the institution.
- 4.3.22 Updating their government institution's chapter in the prescribed annual index of information about responsibilities, programs, and information holdings; and providing TBS with a copy as directed by TBS.
- 4.3.23 Providing the contact information of the appropriate officer to receive access requests for publication in the prescribed contact list.

Proactive Publication of Information under Part 2 of the *Access to Information Act*

- 4.4 Heads of institutions are responsible for:
 - 4.4.1 Establishing effective procedures and systems, including use of prescribed platforms, to meet the proactive publication requirements under Part 2 of the Act and TBS direction on proactive publication.

5. Roles of other government organizations

- 5.1 This section identifies other key government organizations in relation to this policy. In and of itself, this section does not confer any authority.
- 5.2 Treasury Board of Canada Secretariat is responsible for supporting the President of Treasury Board in:
 - 5.2.1 Issuing direction and guidance to government institutions with respect to the administration of the *Access to Information Act* and the interpretation of this policy and its supporting instruments.
 - 5.2.2 Approving exceptions to any requirement in this policy or its supporting instruments.
 - 5.2.2.1 Advising the Office of the Information Commissioner as required of any exceptions to any requirement in this policy or its supporting instruments that have been granted.

- 5.2.3 Prescribing forms and platforms to be used in the administration of the Act, as well as the form and content of the annual report to Parliament.
 - 5.2.4 Reviewing regularly, or in accordance with the timing of the five-year review of the Act, the policy, its related directives, mandatory procedures, standards, guidelines, forms, and prescribed platforms, to assess their continued effectiveness and accuracy. When substantiated by risk-analysis, TBS will also ensure an evaluation is conducted.
 - 5.2.5 Overseeing compliance with this policy and its supporting instruments across government institutions, leveraging existing reporting mechanisms as appropriate.
 - 5.2.6 Publishing annually an index that describes government institutions, their responsibilities, programs and information holdings.
 - 5.2.7 Reviewing and publishing updates to government institutions' chapters in the annual index.
 - 5.2.8 Reviewing and publishing updates to the titles and addresses of the officers who receive access requests at each institution.
 - 5.2.9 Reviewing and publishing statistics collected by institutions under 70 (1)(d).
 - 5.2.10 Working with the Canada School of Public Service to integrate knowledge elements related to the *Access to Information Act* and associated policy instruments into training courses, programs and knowledge assessment instruments.
- 5.3 The Information Commissioner is an Agent of Parliament with the duty of ensuring that rights and obligations set out in the *Access to Information Act* are respected.
- 5.3.1 The Commissioner receives and independently investigates complaints from applicants or self-initiated complaints on any matter related to obtaining or requesting access under the Act to records under the control of a government institutions.
 - 5.3.2 At the end of an investigation, the Commissioner reports findings and may make orders and recommendations to government institutions.
 - 5.3.3 The Commissioner's written approval is required for a head of an institution to decline to act on a request for access.
 - 5.3.4 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.

- 5.4 The Privacy Commissioner of Canada is an Agent of Parliament with the duty of protecting and promoting privacy rights in relation to personal information.
- 5.4.1 The Privacy Commissioner may be consulted on complaints to the Information Commissioner regarding disclosures of information that an institution has withheld as personal information.
- 5.5 The Clerk of the Privy Council Office is responsible for ensuring the integrity of the Cabinet process and the stewardship of the documents that support this process. As custodian of confidences of the Queen's Privy Council for Canada of the current and previous ministries, the Clerk is responsible for policies on the administration of these confidences and for the ultimate determination of what constitutes such confidences, and must be consulted in a manner consistent with the guidance in the *Access to Information Manual*.
- 5.6 The Department of Justice is responsible for supporting the Minister of Justice in the role of designated Minister for certain provisions of the *Access to Information Act*, specifically:
- 5.6.1 Designating, by order-in-council, the head of a government institution for the purposes of the Act.
- 5.6.2 Recommending extensions of the right of access by Order in Council.
- 5.6.3 Specifying investigative bodies and classes of investigations.
- 5.6.4 Amending Schedule I of the Act.

6. Application

- 6.1 This policy and its supporting instruments apply to government institutions as defined in section 3 of the *Access to Information Act*, including departments, ministries of state, any parent Crown corporations and any wholly owned subsidiary of these corporations.
- 6.2 This policy does not apply to the Bank of Canada.

7. Consequences of non-compliance

- 7.1 For those government institutions that do not comply with this policy and its related instruments, there may be a requirement to provide additional information relating to the development and implementation of compliance strategies in their annual report to Parliament or to TBS directly. This reporting may be in addition to other reporting requirements.
- 7.2 TBS will work collaboratively with heads of institutions or their delegates to restore compliance.

- 7.3 For those government institutions subject to the Management Accountability Framework (MAF) and to the extent that access to information is considered in the performance measurement indicators of the MAF, non-compliance with respect to this policy and its related instruments will be reported.
- 7.4 On the basis of analysis of monitoring and information received, the designated Minister may make recommendations to the head of the government institution. This could include prescribing any additional reporting requirements, as outlined in section 7.1 above.

8. References

8.1 Legislation

- *Access to Information Act*
- *Access to Information Act Heads of Government Institutions Designation Order*
- *Access to Information Regulations*
- *Canada Evidence Act*
- *Financial Administration Act*
- *Interpretation Act*
- *Library and Archives of Canada Act*
- *Official Languages Act*
- *Privacy Act*
- *Privacy Regulations*
- *Public Servants Disclosure Protection Act*

8.2 Related policy instruments

- *Directive on Access to Information Requests*
- *Policy on Communications and Federal Identity*
- *Policy on Government Security*
- *Policy on People Management*
- *Policy on Privacy Protection*
- *Policy on Service and Digital*

8.3 Related guidance

- *Access to Information and Privacy Notices*
- *Access to Information Manual*
- *Delegation under the Access to Information Act and the Privacy Act*
- *Info-Source Decentralized Publishing Requirements*
- *Principles for Assisting Requesters*

9. Enquiries

- 9.1 Members of the public may contact Treasury Board of Canada Secretariat Public Enquiries regarding any questions about this policy.
 - 9.2 Employees of federal institutions may contact their Access to Information and Privacy Coordinator regarding any questions about this policy.
 - 9.3 Access to Information and Privacy Coordinators may contact the Access to Information Policy and Performance Division for information about this policy.
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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*)

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

annual report (*rapport annuel*)

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

complainant (*plaignant*)

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*)

An officer or employee of a government institution, or of another government institution within the same ministerial portfolio when there is a service-sharing agreement between the two government institutions, who has been delegated to exercise or perform the powers, duties and functions of a head of an institution under the Act.

designated minister (*ministre désigné*)

A person who is designated as the Minister under subsection 3.1(1). For the purposes of this policy, the designated minister is the President of the Treasury Board.

excluded information (*renseignements exclus*)

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

exemption (*exception*)

A mandatory or discretionary provision under the Act that authorizes the head of the government institution to refuse to disclose information in response to a request received under the Act.

government institution (*institution fédérale*)

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

head (*responsable*)

The member of the Queen's Privy Council for Canada who presides over 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.

Implementation Notice (*avis de mise en oeuvre*)

A notice issued by TBS to provide guidance on the interpretation and application of the *Access to Information Act* and its related policy, directives, standards and guidelines.

Information about programs and information holdings (*Renseignements sur les programmes et les fonds de renseignements*)

The TBS-directed webpage published by each government institution in which the institution describes their program responsibilities and information holdings. The descriptions are to contain sufficient clarity and detail to facilitate the exercise of the right of access under the *Access to Information Act*. The webpage also provides contact information for government institutions as well as summaries of court cases and statistics on access requests. This webpage must be updated at least once per year.

Information Commissioner (*commissaire à l'information*)

An Agent of Parliament appointed by Governor in Council who is mandated to ensure that rights and obligations set out in Part I of the *Access to Information Act* are respected

Privacy Commissioner (*commissaire à la protection de la vie privée*)

An Agent of Parliament appointed by the Governor in Council who is mandated to ensure that rights and obligations set out in the *Privacy Act* are respected.

record (*document*)

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

requester (*demandeur*)

A Canadian citizen, a permanent resident or any individual or corporation present in Canada who requests access to a record under Part 1 of the Act.

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*)

Provides data on the administration of the Act in the previous fiscal year as described in paragraph 70(1)(d) of the Act. The statistical report is included in government institutions' annual reports to Parliament. The forms used for preparing the report are prescribed by the designated minister, as provided under paragraph 70(1)(b) and subsection 94(5) of the *Access to Information Act*.

Appendix B: Powers That Can Be Delegated

Pursuant to section 95 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, or, in the case of a service-sharing agreement, employees of another government institutions within the same ministerial portfolio, 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

Part 1

4(2.1)	Responsibility of government institutions
6.1(1), (1.3) (1.4), (2)	Reason for declining to act on the request
7	Notice where access requested
8(1)	Transfer of request to another government institution
9	Extension of time limits
10	Where access is refused
11(2)	Application Fee
12(2)(b)	Language of access
12(3)(b)	Access to record 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
16.1*	Exemption – Records relating to investigations, examinations and audits
16.2*	Exemption – Records relating to investigations
16.3*	Exemption – Investigations, examinations and reviews under the <i>Canada Elections Act</i>
16.4*	Exemption – Public Sector Integrity Commissioner
16.5	Exemption – <i>Public Servants Disclosure Protection Act</i>
16.6*	Exemption – Secretariat of National Security and Intelligence Committee of Parliamentarians
17	Exemption – Safety of individuals
18	Exemption – Economic interests of Canada
18.1	Exemption – Economic interest of the Canada Post Corporation, Export Development Canada, the Public Sector Pension Investment Board and VIA Rail Canada Inc.
19	Exemption – Personal information
20	Exemption – Third party information
20.1*	Exemption – Public Sector Pension Investment Board
20.2*	Exemption – Canada Pension Plan Investment Board
20.4*	Exemption – National Arts Centre Corporation
21	Exemption – Advice, etc.
22	Exemption – Testing procedures, tests and audits
22.1	Exemption – Internal audits
23	Exemption – Protected Information – solicitors, advocates and notaries
23.1	Exemption – Protected Information – patents and trade-marks
24	Exemption – Statutory prohibitions
25	Severability
26	Exception – Information to be published
27(1), (4)	Notice to third parties
28(1)(b), (2), (4)	Representations of third party and decision

33	Notice to third parties – Investigations
35(2)(b)	Right to make representations
37(4)	Access to be given to complainant
41(2)	Review by Federal Court – government institution
43(2)	Service or notice
44(2)	Notice to person who request record
52(2), (3)	Special rules for hearings

*Note: The exemptions identified with an asterisk may only be claimed by the institutions named in the provision

Part 3

94(1), (4)	Annual report – government institutions
96(3), (4), (5)	Provision of services related to access to information

Access to Information Regulations

6(1)	Transfer of request
8	Providing access to record(s)
8.1	Limitations in respect of format

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