



Securing The Public's Right To Know

A submission by Canadian Journalists for Free Expression, the Canadian Association of Journalists, the Centre for Free Expression and Newspapers Canada to the Government of Canada concerning the modernization of the Access to Information Act

June 2016

Introduction

This is a joint submission from Canadian Journalists for Free Expression, the Canadian Association of Journalists, the Centre for Free Expression, and Newspapers Canada. Our organizations together represent perhaps the largest concentration of regular users of the Access to Information system in Canada. We welcome the opportunity to make a public submission to the government's consultations on reforms to the Access to Information Act (ATIA).

Canadian Journalists for Free Expression (CJFE) monitors, defends and reports on free expression and access to information in Canada and abroad. Rooted in the field of journalism, CJFE promotes a free media as essential to a fair and open society. CJFE boldly champions the free expression rights of all people, and encourages and supports individuals and groups in the protection of their own and others' free expression rights.

The Canadian Association of Journalists (CAJ) is a professional organization with more than 600 members across Canada. The CAJ's primary roles are public-interest advocacy work and professional development for its members.

The Centre for Free Expression at Ryerson University (CFE) is a university/community partnership to strengthen democracy by advancing free expression and the public's right to know through research, analysis, education and advocacy

Newspapers Canada is the voice of Canada's newspapers, representing over 800 daily, weekly and community newspapers. One of the association's missions is to advance the cause of freedom of expression in Canada generally and to advocate the right to freedom of expression of individuals, including freedom of the press and other media of communication and the right of people to have a press free from governmental control or restraint

Access to Information

Canadians' right to know is at risk because of our badly flawed federal ATI law and ongoing government obstruction. Since Canada's Access to Information Act was enshrined in law in 1983, it has not seen any major updates, and Canadians are regularly unable to access what should be public information. A strong ATI system is vital to maintaining a healthy democracy. The public has the right to obtain the information they need to participate meaningfully in the democratic process, while also holding Canada's public and elected officials accountable. The current ATI system fails to meet those standards.

Access to information is essential for the realization of the civil and political rights of all Canadians. Article 19 of the Universal Declaration of Human Rights says: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Moreover, the right to access to information underpins two sections of Article 21: “Everyone has the right to take part in the government of his country” (Section 1) and, “The will of the people shall be the basis of the authority of government” (Section 2).

An informed citizenry is necessary for a democracy to be truly representative, responsive and open. Without a knowledge base of information that is in the public interest, citizens will be incapable of making decisions that strengthen Canada's democracy.

Recommendations:

While we are encouraged by some of the initial moves the federal government has taken to substantively strengthen Canadians' right to know, we are concerned by the two-stage process that the government has elected to follow in implementing reforms to the Access to Information system. Minister Scott Brison has announced that piecemeal legislation will be introduced in fall 2016 or early 2017, to be followed by a full legislative review in 2018 and more comprehensive legislation at some time thereafter. The justification offered for this delay is to allow the government to evaluate how the first round of legislative changes is working before the whole legislative review takes place.

We believe the stated priority of the government to fix Canada's broken ATI system is best served by abandoning the two-stage process and wholly adopting the recommendations outlined in the Information Commissioner's report *Striking the Right Balance for Transparency* in the first round of legislation. Allowing one year to elapse after tabling the first, incomplete round of legislation will only serve to undermine the momentum this government has built, and cannot possibly represent enough time for meaningful information to be gleaned from the initial reforms.

We urge the government to implement legislative reform in one phase, likely in 2017, in which the Information Commissioner's recommendations are adopted *in toto*. You will have heard from other experts and frequent users that Canada's Access to Information system is wholly dysfunctional, undermining Canadians' right to know and our ability to meaningfully participate in the democratic process. This crisis must be met with urgent action from the government, not hesitant, piecemeal reform and further delay.

The recommendations outlined in the Information Commissioner's report *Striking the Right Balance for Transparency* are a bold and comprehensive answer to this crisis. They provide the

most detailed roadmap to fix our badly flawed system. Crucially, the recommendations outlined in the report are holistic, interdependent measures, the integrity of which depends on them being brought in as a whole. They are all of a piece, and not to be cherry-picked.

In addition, to further ensure the effectiveness of reforms, we would also like to advance the following recommendations:

1. End conflict of interest for ATI coordinators, who currently report to the ministers overseeing their federal government departments, boards and agencies, by making them officials of the Department of Justice rather than of their individual departments.
2. Withdraw consideration of any ministerial or cabinet override of a commissioner's order to release government information, including on national security grounds.

These measures, if adopted in conjunction with the recommendations laid out in the Information Commissioner's *Striking the Right Balance for Transparency*, will help to secure the public's right to know and lay the groundwork for a broader revitalization of participatory democracy in Canada.

All of which is respectfully submitted.