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In principle, unless a valid reason for exemption has been provided by the relevant department or agency of the Government of Canada within the periods of time allowed for within the Access to Information Act (hereinafter ATI), the Government of Canada should forfeit the authority and right to keep the information requested from the requester. I have had access to information requests go without the information being released for more than months or even a year past the deadline (I am aware this is not an unusual situation) and, more to the point, without any hint of what allowable reason under the law information is still being withheld. This effectively gives the Government of Canada the ability to circumvent the law by simply refusing to comply with it. Thus, although it is not allowed under the terms of the ATI Act itself, the Government's departments and agencies frequently decline to release information in a timely manner which is clearly considered of some political sensitivity without coming up with an allowable exemption which can be scrutinized by either the Information Commissioner, or the Federal Court of Canada. One civil servant informed me in confidence that his supervisor directed him not to respond to an access request, even though the information was located and releasable within the first couple of weeks after the formal request had been received, until the deadline for replying had arrived. I actually received a notice of the need to refer a request to other departments and agencies (which is allowed under the Act) arrive so late that the postmark on the envelope showed it had been mailed from the PCO after the deadline had expired.

The Office of the Information Commissioner (hereinafter OIC) should be subject as well to the need to respond in a timely manner to formal complaints lodged against departments and agencies of the Government of Canada. I currently have a formal complaint against the handling of a formal request made of the Privy Council Office (hereinafter PCO) with the OIC which has gone unanswered in almost nine (9) months. The need to have to contact the Government institutions concerned more than once shows a protocol of contempt by some elements of the established civil service for the general public which can only be corrected by real penalties enunciated under the Act for failure to comply.

My professional concern has been in getting hold of dated information from the Government of Canada. All confidentiality of Government of Canada records should come with an absolute expiry date. In 1977, a cabinet directive on the release of official information provided for the release of information if it were greater than 30 years old unless it fell within specified areas of continuing confidentiality such as confidences of foreign governments, individual privacy, solicitor-client privilege, national defence, etc. When the current legislation came into effect in 1983, it did not always specify a particular period of time after which the confidence no longer needed to be kept (one of the notable exceptions being personal privacy for up to twenty years after death of the

individual concerned – in order to conform with the principles of the Privacy Act and protect the rights of estates, corporations, etc.). One of the things many members of the public cannot understand is why government records, particularly those that do not involve individuals, are still confidential 50, 75 or even 100 years after being created. This would cut down on the need for formal requests once the deadline had arrived, or the need to evaluate large groups of records for block release.

The charging of fees is predicated on the notion that only a specific individual, the requester, is interested in getting the information requested, even when they are a journalist or academic interested in subsequent publication of the information. At one point, Treasury Board actually had a guideline that fees should be waived for any requester who indicated a desire to publish, or allow public access to, the information. It was also considered that, once released to anyone, information could be made available by the relevant institution itself, often through its website, so others need not ask for the same information in a separate request. While there is a cost to the Government in scrutinizing its own records for public release, this should be less arduous a task as more and more records become electronic (and subsequently searchable) rather than hardcopy (that is, paper or photographic) and the cost would diminish if departments and agencies were required to keep better inventory and catalogue records of where they are putting the information in the first place.

There should be a principle in the ATI Act that, if information has ever been publicly revealed by the Government of Canada, it should not be subsequently withheld under even valid exemptions under the ATI. One such instance was a decision of the Transportation Safety Board of Canada in the 1990s to exempt (ostensibly for privacy reasons) release to the CBC of information concerning an airplane crash in the 1980s in the Maritimes which had been previously released to the CTV television network. There are other instances, and to allow this practice to continue guards the Orwellian conceit that the Government of Canada should decide not just what the public can remember, but what it actually does remember.

All departments and agencies of the Government of Canada should be responsible for information held by subsidiary institutions. In handling a formal request to the Department of Foreign Affairs and International Trade for someone else a couple of years ago, I learned that the Department's ATIP division did not consider itself responsible for checking the availability of relevant records (and therefore information) by the overseas missions of the Government of Canada. I was actually advised to make a formal request to the relevant mission which would, of course, have been forwarded back to the same office in Ottawa for action.

Anyone should be able to use a formal Privacy Act request to access personal information about someone who has been dead for more than twenty years. While this may sound like a way of undermining both the Access to Information and Privacy Acts' protection of personal privacy, the fact is that neither the ATI nor the Privacy Act allow for privacy exemptions beyond twenty years. The benefit this procedure would afford the public over a formal Access to Information request is in allowing requesters to have

Access to Information and Privacy officers concentrate on scrutinizing information in official files which only pertains to the personality concerned, and not other persons or other official matters which might need to be exempted and would therefore lead to a blanket exemption. One former colleague of mine maintains he was allowed to do this, but there is no uniform policy throughout the Government of Canada in allowing it.