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Information and Privacy Policy Division
Treasury Board of Canada Secretariat
Flaherty Building, Floor 04
90 Elgin Street
Ottawa, ON
K1A 0R5

Detailed proposal on other ways to improve the *Access to Information Act*

I am a long-time public interest researcher and a frequent user of both the *Access to Information Act* and processes for complaint available through the Office of the Information Commissioner of Canada.

The following is my detailed proposal on other ways to improve the Access to Information Act:

ATIP information use for the initiation of law enforcement and security intelligence investigations

Given the seeding of 1% of active RCMP national security criminal investigations in December 2006 (Request A-2015-02204 and A-2015-02205) through access to information and privacy (ATIP) and the as yet unknown numbers on the further and /or continuing use of ATIP information as a basis to justify national security criminal investigations,

- 1) Immediately discontinue and prohibit further use of *Access to Information Act* requester information to support the initiation, conduct or continuation of a police or security intelligence investigation, absent a warrant issued by a judge of a court of superior jurisdiction;
- 2) Mandate that the Information Commissioner of Canada be notified of all warrants issued by a judge of a court of superior jurisdiction, when a warrant is issued for any police or security intelligence investigation predicated on the use of *Access to Information Act* requester information;
- 3) Mandate that the Information Commissioner of Canada be given the opportunity to make *ex parte* representations, at any time, to a judge of a court of superior jurisdiction who issues a warrant for a police or security intelligence investigation predicated on the use of *Access to Information Act* requester information;
- 4) Mandate that the Information Commissioner of Canada lay before Parliament a quarterly report in respect of all notifications received in the immediately preceding quarter respecting warrants issued for police, or security intelligence investigations predicated on the use of *Access to Information Act* requester information;

Interpretation (s. 3)

- 5) Include, under the definition of "government institution", language sufficient to include the Prime Minister, the Prime Minister's Office, ministers, ministers of state, and parliamentary secretaries as institutions;

Schedule I of the Act

- 6) Include, as institutions in Schedule I, all private and non-profit entities performing executive branch functions which are outsourced (eg. Nav Canada);
- 7) Add the Courts Administration Service and the administrative functions of the Supreme Court of Canada as institutions;
- 8) Add the Speaker of the House of Commons as an institution;
- 9) Add the Governor General as an institution;
- 10) Add, as a separate class of institutions, all private and non-profit entities to whom operational or core functions by institutions are contracted, irrespective of jurisdiction;
- 11) Explicitly enact jurisdictional provisions that grant the Information Commissioner the necessary powers to review institutions outside of strictly federal jurisdiction;

Information Commissioner of Canada

- 12) Vest in the Information Commissioner all powers, in the first instance, to order release of records;
- 13) Vest in the Information Commissioner all powers, in the first instance, to compel compliance with the Act in any respect enforceable by contempt of court proceedings;

Integrity of records and disclosure obligations

- 14) Tie the number of well-founded complaint findings by the OIC *directly* to a statutorily mandated increase in a respective institutional ATIP office's budgetary allocations *from* that institution's operating budget for the next fiscal quarter;
- 15) Completely remove the element of intent in section 67.1 and recreate the offence as a strict liability offence;
- 16) Create a *mens rea* offence prohibiting obstruction of persons filing or pursuing a request, with deemed intent provisions;
- 17) Enact a strict liability offence, making it a crime to directly or indirectly engage in reprisals against any person assisting the Information Commissioner during an investigation;
- 18) Mandate that national security confidentiality claims made by institutions during Office of the Information Commissioner of Canada investigations be rebuttable by a fact-finding standard which sets the standard for determination of findings

surrounding a complaint attracting national security confidentiality claims to "the institution likely contributed to", as distinguished from "the institution likely caused", the fact pattern of subject matter for which records are sought;

- 19) Eliminate the indefinite availability of investigative exemptions, presently routinely abused to shield records from disclosure for what amount to indefinite periods of time, and enact a time limitation for which investigative exemptions may be claimed;

Integrity of investigative representations to the Information Commissioner of Canada

- 20) Mandate that every person using email to communicate with the Information Commissioner in relation to investigations by the Commissioner be required to acknowledge the warning used on Information and Privacy Commissioner of Ontario appeal forms (as paraphrased below) and specifically consent to email communications, without prejudice:

I acknowledge that sending e-mail over the Internet is not secure, in that it can be intercepted and/or manipulated and retransmitted.

Section 24

- 21) Repeal section 24 of the Act;
- 22) All requesters to whom a response was made in which a Section 24 exemption was applied in the previous five (5) years ought to be notified that they may re-initialize their requests absent of further filing fees;

Section 69.1

- 23) Repeal section 69.1 of the *Access to Information Act*;

Mandatory declassification review

- 24) Create a Mandatory Declassification Review (MDR) process, modeled after the one currently existing in the United States, administered at first instance by the Information Commissioner;

Attorney General consent

- 25) The personal and signed consent of the Attorney General of Canada ought to be mandated prior to the application by an institution of subsection 10(2) to neither confirm nor deny existence of records, in each case where subsection 10(2) is invoked in a response to a request;

Deemed date of receipt for requests issued to institutions

- 26) A request ought to be deemed to have been received by the institution on:
- a) the fifth day after it is mailed by the requester;
 - b) the day on which a courier confirms it was delivered;
 - c) the day on which a requester hand-delivers it to the institution;
 - d) the day on which it is e-filed.

Communications between requester and institutions

- 27) Modifications, alterations and rescoping of issued requests negotiated with institutions ought to be deemed of no effect until such time as a requester confirms, in writing, that he/she approves of a modification, alteration or rescoping;
- 28) Institutions ought to record all telephone calls between a requester, including the agent for the requester where applicable, and its ATIP office *and* be required to furnish these to the Information Commissioner upon initiation of any investigation the Information Commissioner undertakes respecting a requester's complaint against that institution;

Posting of summaries

- 29) Summaries of *all* completed responses to requests ought to be made available on Canada's open government access to information portal, within 15 days of release;
- 30) Complaints to the Information Commissioner resulting in release of additional records ought to be duly noted on Canada's open government access to information portal in relation to the respective request, 46 days after the additional records are ordered released where no application has been brought by an institution to have the Commissioner's order judicially reviewed;

Delegation

- 31) A true copy of all delegation authorities and instruments issued by an institution ought to be posted in an easily accessible location, online, and updated with information current to five business days;

Private right of action

- 32) Enact an institutional statutory duty of care to requesters, accompanied by a standard of care wherein there is presumed liability in every case of deemed refusal;

All of which is respectfully submitted,

Fred Joseph Ernst
Public Interest Researcher
Hamilton, Ontario

cc. The Honourable Scott Brison, President of the Treasury Board
The Information Commissioner of Canada
Canadian Journalists for Free Expression