

Office of the Information Commissioner of Canada

Stopping the erosion of access to information in Canada

The Information Commissioner's recommendations to modernize the Access to Information Act

Gatineau, March 31, 2015 – Suzanne Legault, Information Commissioner of Canada, tabled a special report in Parliament today that proposes an in-depth reform of the *Access to Information Act*.

"There has been a steady erosion of access to information rights in Canada over the last 30 years" said Commissioner Legault. "Although the Act was intended to shine a light on government decisions, it has become a shield against transparency and has encouraged a culture of delay."

The special report contains 85 recommendations that propose fundamental changes to the Act which would resolve recurring issues and strike the right balance for transparency.

Some of the key points contained in the report are aimed at creating a culture of openness by extending coverage of the Act to all branches of government, setting tighter timelines in the processing of requests, maximizing disclosure by ensuring that exemptions protect only what is strictly necessary, and strengthening the oversight of the access to information regime.

"Having a modern access to information law will facilitate the creation of a government culture that is open by default – a foundational commitment of the Government of Canada to the Open Government Partnership," said Commissioner Legault. "It would also re-establish Canada's position as a world leader in access to information."

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The special report is available on the [OIC website](#).

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Highlights

1. Coverage of the Act

A modern access to information law provides for broad coverage of all branches of government. The Information Commissioner recommends a series of criteria to extend the coverage of the *Access to Information Act* (Act) to, for example, institutions that perform a public function or that are controlled or funded, in whole or in part, by the government. The Information Commissioner also recommends that specific institutions be covered by the Act. These are: the Prime Minister's and Ministers' offices, institutions that support Parliament and institutions that provide administrative support to the courts.

2. The Right of Access

The Information Commissioner recommends a number of improvements to facilitate the exercise of the right of access such as extending this right to all persons no matter their residency, establishing a legal duty to document and a legal duty to report the unauthorized destruction or loss of information. The Information Commissioner also recommends allowing institutions to refuse to process requests that are frivolous or vexatious and limiting the circumstances under

which an institution can refuse to confirm the existence of a record. Finally, information should be made available free of charge, in an open, reusable and accessible format.

3. Timeliness

As the Federal Court of Appeal recently stated “timely access is a constituent part of the right of access”. It ensures that requesters receive responses while the information is still relevant, and that they are able to hold governments to account for their decisions. In order to reverse the culture of delay, the Information Commissioner recommends to limit extensions to what is strictly necessary, based on a rigorous, logical and supportable calculation, and up to a maximum of 60 days. Any extensions longer than 60 days would require the permission of the Information Commissioner. Her recommendations also include a tighter framework for consultations and a more detailed notification to requesters when requests are extended.

4. Maximizing disclosure

The Act provides that government information should be available to the public and disclosure may only be restricted by limited and specific exemptions. In the way the Act is currently constructed, however, exemptions are overly broad and some information is outright excluded. The Information Commissioner recommends a new framework where exemptions protect only what requires protection, to maximize disclosure. The recommendations include exclusions including for Cabinet confidences (to be replaced with exemptions where necessary). Changes are proposed to all most commonly used exemptions including personal information (section 19), national defence (sections 15 and 69.1), law enforcement and investigations (section 16), advice and recommendations (section 21) and third party information (section 20) as well as to the exemptions for information obtained from other governments (sections 13, 14 and 15) and solicitor-client privilege (section 23). The Commissioner also recommends the review of restrictions to the right of access found in other legislation and a review of the exemptions and exclusions for institutions brought under the coverage of the Act as a result of the *Federal Accountability Act*.

5. Strengthening oversight

Independent and effective oversight is essential to the effectiveness of the access to information regime. The Information Commissioner recommends strengthening oversight by adopting an order-making model. The Information Commissioner also recommends the ability to undertake education activities, research and compliance audits as well as the statutory authority to provide advice on access to information matters.

6. Open Information

The Information Commissioner recommends amending the Act to reflect the government's open government initiatives and commitment to a culture of openness by default, including additional requirements for proactive disclosure, the obligation to publish information of public interest and the requirement to adopt publication schemes.

7. Criminal Liability and civil responsibility

The Information Commissioner recommends adding a spectrum of sanctions for non-compliance with the requirements of the Act including criminal sanctions, administrative monetary penalties and disciplinary measures.

8. Mandatory review of the Act

The Information Commissioner recommends a mandatory parliamentary review of the Act every five years.

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