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CANADA

THE STATE OF CANADA'S ACCESS TO INFORMATION SYSTEM

**Report of the Standing Committee on Access to
Information, Privacy and Ethics**

John Brassard, Chair

**JUNE 2023
44th PARLIAMENT, 1st SESSION**

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**John Brassard
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NOTICE TO READER

Reports from committees presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

To assist the reader:

A list of abbreviations used in this report is available on page xi

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THE STANDING COMMITTEE ON ACCESS TO INFORMATION, PRIVACY AND ETHICS

has the honour to present its

NINTH REPORT

Pursuant to its mandate under Standing Order 108(3)(h), the committee has studied the access to information and privacy system and has agreed to report the following:

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LIST OF ACRONYMS

ATIA	Access to Information Act
ATIP	Access to Information and Privacy
BC FIPA	BC Freedom of Information and Privacy Association
CAF	Canadian Armed Forces
CBC	Canadian Broadcasting Corporation
CLD	Centre for Law and Democracy
CSIS	Canadian Security Intelligence Service
DND	Department of National Defence
GRIR	<i>Global Right to Information Rating</i>
IRCC	Immigration, Refugees and Citizenship Canada
LAC	Library and Archives Canada
OLA	Official Languages Act
OIC	Office of the Information Commissioner
PCO	Privy Council Office
PSC	Department of Public Safety and Emergency Preparedness
RCMP	Royal Canadian Mounted Police
TBS	Treasury Board Secretariat
UBCIC	Union of British Columbia Indian Chiefs
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

SUMMARY

The *Access to Information Act* (ATIA) was passed in 1983 at a time when government records were primarily paper-based, and technology was not very advanced. The first substantive reform of the ATIA occurred in 2019 with the enactment of Bill C-58, *An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts*. However, the evidence heard by the Committee confirms that Canada's access to information system continues to have flaws.

In this report, the Committee reviews Canada's access to information system and explains its important role in a democratic society. The report looks at critiques of the access to information system and addresses six specific issues raised by witnesses: systemic delays; access to information in immigration matters; Indigenous peoples' access to information; access to information for victims of abuse in the military; whistleblower protection; and access to historical documents. It also examines the state of access to information in certain federal institutions.

Then, the report examines legislative and non-legislative measures for improving Canada's access to information system. It also looks at the powers, independence, and resources of the Information Commissioner of Canada. Finally, it addresses the report on the review of access to information that Treasury Board presented to Parliament in December 2022.

In light of the evidence heard, the Committee presents recommendations for improving Canada's access to information system and the applicable legislative framework.

LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1

That the Government of Canada conduct a comprehensive review and overhaul of the federal access to information system..... 14

Recommendation 2

That the Government of Canada amend section 9 of the *Access to Information Act* to limit the extension of time limits to a maximum of 60 days, unless permission to exceed that period is provided by the Information Commissioner of Canada..... 19

Recommendation 3

That the Government of Canada create a process by which departments and agencies that face ongoing access to information requests as a last resort to obtain information that should be available to requesters, such as information related to the denial of an immigration application, deal with those requests outside of the access to information system. 22

Recommendation 4

That the Government of Canada work with Indigenous Peoples to remove barriers to access information. 27

Recommendation 5

That the government of Canada work with Indigenous peoples to develop a mechanism of independent oversight that ensures their full and timely access to records held by federal government institutions for purposes of substantiating historical claims..... 28

Recommendation 6

That the Government of Canada amend the *Access to Information Act* to update and align language used in relation to Indigenous peoples and communities, including the definition of “aboriginal government” in the Act. 28

Recommendation 7

That the Government of Canada explore the possibility of creating an expedited access to information system as part of the access to information regime for victims and survivors of military misconduct..... 31

Recommendation 8

That the Government of Canada amend the *Access to Information Act* to insert provisions strictly prohibiting access to information and privacy coordinators from asking requesters to identify themselves..... 31

Recommendation 9

That the Government of Canada review its classification system for secret records and provide classification training to staff responsible for processing access to information requests in relevant government institutions..... 42

Recommendation 10

That the Government of Canada improve the declassification system to provide greater access to Canada’s history. 42

Recommendation 11

That the Government of Canada implement a process for the automatic release of historical documents that are more than 25 years old..... 42

Recommendation 12

That the Government of Canada establish and implement clearer record classification guidelines and a declassification system. 42

Recommendation 13

That the Government of Canada ensure that staff responsible for processing access to information requests in each government institution be required to undergo ongoing training to ensure the integration of a culture of openness and transparency within the institution. 52

Recommendation 14

That the Government of Canada subject Directors General of departments to performance evaluations with bonuses based on their work on access to information under their responsibility. 53

Recommendation 15

That the Government of Canada increase the use of new technology by government institutions to speed up the ability for access to information requests to be fulfilled, including but not limited to artificial intelligence, electronic transcription, and automated translation. 55

Recommendation 16

That the Government of Canada work to strengthen its information management through improved storage and organization, retention requirements, and digital innovation. 57

Recommendation 17

That the Government of Canada amend the *Access to Information Act* to include a duty to document with appropriate penalties for non-compliance. 59

Recommendation 18

That the Government create a framework to ensure that methods of avoiding access to information requirements be stopped, that requirements be clearly laid out in the terms of employment of employees of government institutions, that incidents of avoidance be reported in a report to the Information Commissioner of Canada, and that the report be tabled in Parliament. 59

Recommendation 19

That the Government of Canada prohibit the use of personal emails or encrypted applications for government communications. 59

Recommendation 20

That the Government of Canada amend the *Access to Information Act* to identify the circumstances in which consultation between government institutions must occur and impose a time limit on those consultations. 60

Recommendation 21

That the Government of Canada increase proactively published information under Part 2 of the *Access to information Act*. 66

Recommendation 22

That the Government of Canada amend the *Access to Information Act* to require government institutions subject to the Act to proactively disclose information frequently requested in access to information requests..... 66

Recommendation 23

That the Government of Canada publish all access to information requests not related to personal information in a searchable database, available to the public at no cost, and that those requests be anonymized before publication. 66

Recommendation 24

That the Government of Canada require government institutions that face repeated requests on a specific subject to inform the Information Commissioner of such repeated requests and that a report be sent to Parliament. 66

Recommendation 25

That the Government of Canada amend the *Access to Information Act* to ensure that previously submitted access requests are subject to the *Access to Information Act*. 66

Recommendation 26

That the Government of Canada require each government institution to maintain a public record of its access to information requests and the time required to respond to each request..... 66

Recommendation 27

That the Government of Canada amend the *Access to Information Act* to clarify that the access to information system is based on a culture of openness and transparency and to include in the Act a public interest override, which would apply to all exemptions to make public interest documents open by default..... 67

Recommendation 28

That the Government of Canada create an “Open by Default” approach to access to information and acknowledge that the status quo is not acceptable. 67

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That the Government of Canada order and conduct an impartial review of Cabinet confidences as it relates to the access to information and privacy system. 71

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That the Government of Canada conduct a review of the exemptions and exclusions to access to information contained in the *Access to Information Act*, including but not limited to commercially sensitive information, personal information, political staff, and Cabinet confidences..... 78

Recommendation 34

That the Government of Canada amend section 21 of the *Access to Information Act* to include a list of information to which the exemption relating to operations of government does not apply and to reduce the 20-year-period to 10 years. 78

Recommendation 35

That the Government of Canada limit the application of the exemption relating to personal information to section 19 of the *Access to Information Act* and impose an obligation to consult the Information Commissioner of Canada if the addition to Schedule II of the *Act* of new prohibitions based on other laws is contemplated under section 24, or on other subjects such as artificial intelligence. 78

Recommendation 36

That the Government of Canada amend the *Access to Information Act* to state that the amounts of public funds spent are never confidential information. 78

Recommendation 37

That the Government of Canada amend the *Access to Information Act* to give the authority to the Information Commissioner of Canada to impose fines or penalties where Access to Information and Privacy divisions are late in delivering responses to requests. 85

Recommendation 38

That the Government of Canada establish an independent funding mechanism for the Office of the Information Commissioner of Canada and other Agents of Parliament who do not have access to such mechanism..... 86



THE STATE OF CANADA'S ACCESS TO INFORMATION SYSTEM

INTRODUCTION

On 16 May 2022, Information Commissioner Caroline Maynard [appeared](#) before the House of Commons Standing Committee on Access to Information, Privacy and Ethics (the Committee) and presented a rather bleak picture of the state of access to information in 2022. At the end of the meeting, the Committee adopted a [motion](#) to conduct a study into the Access to Information and Privacy system. This report reflects what the Committee heard.

The Committee began its study on 5 October 2022. It held 11 public meetings, during which it heard 42 witnesses. A few witnesses, including the Information Commissioner, appeared twice. The Committee also received 12 briefs. It thanks all those who participated in the study.

Background

Much has been written about access to information since the passage of the *Access to Information Act* (ATIA) in 1983.¹ For example, in 2015, former Information Commissioner Suzanne Legault issued a report containing 85 recommendations to modernize the ATIA.² In 2016, the Committee issued a unanimous report on its review of the ATIA, in which it made 32 recommendations.³

In 2017, the Government of Canada introduced Bill C-58, *An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts*.⁴ This was the first substantive reform since the adoption of the ATIA. The same

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- 1 Kristen Douglas, Élise Hurtubise-Loranger and Dara Lithwick, [The Access to Information Act and Proposals for Reform](#), Library of Parliament, 6 June 2012.
 - 2 Office of the Information Commissioner of Canada (OIC), [Striking the Right Balance for Transparency](#), March 2015.
 - 3 Standing Committee on Access to Information, Privacy and Ethics (ETHI), [Review of the Access to Information Act](#), June 2016.
 - 4 Chloé Forget, Alexandra Savoie, Maxime-Olivier Thibodeau, [Legislative Summary of Bill C-58: An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts](#), Library of Parliament, 4 December 2019.



year, Commissioner Legault issued a special report to Parliament in which she criticized the bill and made an extensive list of recommendations to improve it.⁵

Bill C-58 received Royal Assent in June 2019.⁶ It introduced certain amendments to the ATIA, such as giving the Information Commissioner additional powers and adding a Part 2, which sets out requirements for the proactive publication of information.

The ATIA provides for a government review of the ATIA one year after the enactment of Bill C-58.⁷ In 2020, the Treasury Board Secretariat (TBS) launched its review of access to information, which was to include reviewing the legislative framework, finding opportunities to improve proactive publication, and assessing processes and systems to improve service and reduce delays.⁸

The TBS report on the review of access to information was presented to the House of Commons and referred to the Committee in December 2022.⁹ A number of the TBS's conclusions, such as the need for improved records management and increased human resources for access to information and privacy (ATIP), are consistent with what the Committee heard during its study.

Structure of the Report

The report is divided into six chapters. [Chapter 1](#) presents an overview of the role of the access to information system and what an ideal system could look like. [Chapter 2](#) examines the criticism concerning Canada's access to information system and discusses six specific issues: systemic delays; access to information in immigration matters; Indigenous peoples' access to information; access to information for victims of abuse in the military; whistleblower protection; and access to historical documents, including those on the Holocaust. [Chapter 3](#) looks at the state of access to information in seven federal institutions. [Chapter 4](#) presents legislative and non-legislative measures to improve Canada's access to information system. [Chapter 5](#) discusses the powers, the independence, and the resources of the Information Commissioner of Canada. [Chapter 6](#) discusses TBS's report on the review of access to information.

5 OIC, *Failing to Strike the Right Balance for Transparency*, 2017.

6 *An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts*, S.C. 2019, c. 18.

7 *Access to Information Act*, R.S.C. 1985, c. A-1, s. 93(1).

8 Treasury Board Secretariat (TBS), *The review process*.

9 TBS, *Access to Information Review Report to Parliament*, 2022.

CHAPTER 1: THE ACCESS TO INFORMATION SYSTEM

Role of the Access to Information System

The purpose of the ATIA 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.”¹⁰ Most witnesses confirmed that an effective access to information system is essential in a modern democracy.¹¹ Many of the witnesses also believe that the current system is inadequate.¹² Two witnesses indicated that the status quo is unacceptable.¹³

The Honourable Mona Fortier, President of the Treasury Board, appeared before the Committee on 18 April 2023. [She](#) too said that public access to government information is central to democracy. [She](#) said that she takes her work on access to information seriously and that her efforts are genuine. [She](#) also said that access to information is a priority for the current government.

[Ms. Maynard](#) said that if Canadians do not know what decisions are being made on what facts and on what data, and if they do not know what money the government is spending, they are not fully aware of the situation. She added that if Canadians are not able to get the answers they are looking for from federal and provincial governments, they may turn to other sources, leading to misinformation. [She](#) believes that one solution to increasing Canadians’ trust in federal institutions is to provide them with information in a timely manner and to respect the ATIA.

10 [Access to Information Act](#), R.S.C. 1985, c. A-1, s. 2(1).

11 ETHI, *Evidence*, [Allan Cutler](#) (Former President, Canadians for Accountability [CFA]), [Ken Rubin](#) (Investigative Researcher and Transparency Advocate, As an Individual), [Duff Conacher](#) (Co-Founder, Democracy Watch [DW]), [Michael Wernick](#) (Jarislowsky Chair in Public Sector Management, University of Ottawa, As an Individual), [Kirk Lapointe](#) (Vice-President, Editorial, Glacier Media Group [GMG] and Publisher and Editor-in-Chief, Business in Vancouver), [Andrew Koltun](#) (Canadian Immigration Lawyers Association [CILA]), [Kukpi7 Judy Wilson](#) (Secretary Treasurer, Union of BC Indian Chiefs [UBCIC]), [Alan Barnes](#) (Project Lead, Canadian Foreign Intelligence History Project (CFIHP) and Senior Fellow, Norman Paterson School of International Affairs, Carleton University), [Mike Larsen](#) (President, BC Freedom of Information and Privacy Association [BC FIPA]), [Patrick White](#) (As an Individual), [Mary Francoli](#) (Associate Dean and Director, Arthur Kroeger College of Public Affairs, Carleton University, As an Individual), [Dean Beeby](#) (Journalist, As an Individual), [Brent Jolly](#) (President, Canadian Association of Journalists [CAJ]), [Andrea Conte](#) (Writer, Researcher and Media Artist, As an Individual), [Hon. Mona Fortier](#), (President, Treasury Board).

12 ETHI, *Evidence*, [Cutler](#) (CFA), [Rubin](#), [Conacher](#) (DW), [Wernick](#), [Lapointe](#) (GMG), [Wilson](#) (UBCIC), [Barnes](#) (CFHIP), [Larsen](#) (BC FIPA), [White](#), [Francoli](#), [Beeby](#), [Jolly](#) (CAJ).

13 ETHI, *Evidence*, [Koltun](#) (CILA), [Conte](#).



[Michel Drapeau](#), lawyer, colonel (retired) and adjunct professor at the University of Ottawa, said that for certain individuals (especially vulnerable ones), the access to information system is the only way to access information controlled by the government. He said that when it is impossible to exercise the right to access or to exercise it within the prescribed time frame, this creates a prejudice.

[Kirk Lapointe](#), Vice-President, Editorial, Glacier Media and Publisher and Editor-in-Chief of Business in Vancouver, explained that access to information requests (“access requests”) allow Canadians to understand their history, the decision-making of those who serve them, and the inherent complexities, challenges, and dilemmas of public administration. He said that when the media does not have access to the process for making public policy decisions, it must resort to working with very limited information, which cheapens the craft and image of journalists.

[Mr. Lapointe](#) added that access to information is an opportunity for journalists to get information that the public wants to know, not just what the government will lay out before the public. [He](#) added that access to information makes it possible to rely on actual official records, rather than on someone’s interpretation of them or anecdotal comments. [Dean Beeby](#), a journalist, made similar remarks. He said that access to information is the answer to the problem of misinformation, since data that has been provided by governments and has been vetted gives a hard, factual basis to investigative journalism.

[Stanley Tromp](#), an independent journalist, told the Committee that since the enactment of the ATIA, there have been over 6,000 news stories produced by access requests. In his view, this demonstrates the value of the system and the danger of losing it.¹⁴ [Brent Jolly](#), President of the Canadian Association of Journalists, said that the inclusion of documents obtained through the access system in news stories is an indictment of the system itself and illustrates the challenges encountered by journalists in accessing these documents.

To recognize the importance of the right to have access to information, [Ken Rubin](#), an investigative researcher and transparency advocate, recommended that the right to information be firmly established in the *Canadian Charter of Rights and Freedoms*. In his

14 ETHI, *Evidence*, [Stanley Tromp](#) (As an Individual). Mr. Tromp provided the Committee with two reference documents that include a number of recommendations to improve access to information: Stanley L. Tromp, *It’s Time for Change!—206 Recommendations for Reforms to Canada’s Access to Information Act*, Centre for Free Expression, Ryerson University, 3 August 2021 (available [online](#)); and Stanley L. Tromp, *Fallen Behind—Canada’s Access to Information Act in the World Context*, BC Freedom of Information and Privacy Association, 2nd Edition, 2020 (available [online](#)).

view until the access to information system is reformed and a constitutional right to information is formally recognized, this right will remain a privilege.¹⁵

Ideal Access to Information System and Current System

[Mike Larsen](#), President of the BC¹⁶ Freedom of Information and Privacy Association (BC FIPA), shared a vision of a strong and effective access to information system, using the metaphor of an onion in which the health of each layer affects the health of the others.

Just like a healthy onion, a strong and effective access to information system for Canada would have several layers. At the core, we would see a robust duty to document embedded in legislation and backed by enforcement measures ...

Moving outwards, the next layer of our transparency onion would be a clear and well-resourced information management framework that makes it possible to efficiently locate and retrieve records...

[T]he next layer of the transparency onion would be an updated and modern *Access to Information Act*. Such an act would need to be informed by a deep commitment to the idea that the right to information is integral to the functioning of a democracy. It would need to be broad in scope and encompass the full spectrum of government organizations, including ministers' offices and entities substantively funded or controlled by government.

[An effective system] would need to be timely and embrace the principle that access delayed is access denied, by imposing clear caps on the length of request extensions. It would need to be accessible, without tollgate application fees or vast in-process fee estimates that function as barriers for transparency. It would be guided by a strong public interest clause that would act as an override for all exemptions in cases where the public interest in disclosure outweighs the interests of secrecy.

Beyond this, it would truly limit the application of exceptions and exemptions... Importantly, such an act would need to be supported by an Office of the Information Commissioner with strong investigative, order-making and enforcement powers.

15 Ken Rubin, [Brief](#), 31 October 2022, p. 5 [*Rubin Brief*]. The brief sets out a five-point transparency action plan (full disclosure process; requirement to document; quick, easy access with no fees; fewer exceptions; and stronger independent review processes). The Supreme Court of Canada has interpreted the *Access to Information Act* (ATIA) and other statutes such as the *Privacy Act* as quasi-constitutional legislation. See: [Lavigne v. Canada \(Office of the Commissioner of Official Languages\)](#), [2002] 2 S.C.R. 773, at para. 24; [Canada \(Information Commissioner\) v. Canada \(Minister of National Defence\)](#), [2011] 2 SCR 306, para. 40.

16 British Columbia.



The next layer of the transparency onion would be a thriving access culture characterized by sincere commitments to transparency at the highest levels of government, by the effective resourcing of access to information and privacy offices within public bodies and by adequate training. Senior leadership would need to set the tone by taking responsibility for transforming organizational cultures of secrecy that treat access to information as a risk to cultures of transparency that recognize access to information as a right.

Finally, we get to the outer layer of the onion, a proactive disclosure framework that builds upon all of the layers below by requiring public bodies to routinely and proactively disclose categories of records that are frequently requested and records whose release is a matter of public interest.

[Mr. Larsen](#) said that reality bears little resemblance to this vision, however. He said that in its current form, the ATIA lacks a legislative duty to document. The access to information system does not encompass the full terrain of government and is characterized by delays and the use of exemptions or exclusions for certain records. It also imposes fees and is underfunded and undermined by a culture of secrecy. In describing the current access system, Mr. Larsen said “there is ... a lot of rot in this onion.”¹⁷

The various components of an effective access to information system as described by Mr. Larsen are addressed in Chapter 4, which discusses the legislative and non-legislative measures to improve this system. General criticism of the current system and more pressing access to information issues are explored further in the next chapter.

The Committee recognizes that there are many issues with the current federal access to information system. The Committee therefore first recommends the following:

Recommendation 1

That the Government of Canada conduct a comprehensive review and overhaul of the federal access to information system.

17 See also: BC FIPA, [Brief](#), November 2022 [BC FIPA Brief].

CHAPTER 2: CRITICISM OF CANADA'S ACCESS TO INFORMATION SYSTEM AND RELATED ISSUES

General Criticism

Several witnesses criticized the current access to information system. For example, [Mr. Drapeau](#) said that the system is now without a destiny as it no longer serves its intended purposes. [Duff Conacher](#), Co-Founder of Democracy Watch, said that the provisions of the ATIA do not serve its purpose. He believes that it is “actually more loophole than it is rules in providing access.”

[Mr. Beeby](#) said that the purpose of the ATIA is to empower ordinary citizens to challenge their government, to hold it to account, and to acquire information about themselves and issues that they are interested in, thereby shifting power over information from the government to the citizenry. However, [he](#) is of the view that in practice, the current government, like previous governments, jealously guards its control of information. [Andrea Conte](#), a writer, researcher, and media artist, shared that view.

[Mr. Rubin](#) said that the access to information legislation enacted since 1983 has merely created more barriers for those seeking information. The current regime, he said, allows only “rigged access” to information.

[Mr. Jolly](#) noted that following decades of promises to modernize the access to information system, it remains broken and “40 years is, frankly, a long time without making any concerted efforts to solve the problem.” He added:

You don't put duct tape on a Formula 1 race car's broken chassis and expect to put in competitive lap times, let alone win races or world championships. What I would suggest you do is retire the car, get it fixed properly for the next time out, and start over again. It's simple engineering.

[Mr. Jolly](#) said that endless government discussion papers, public dialogues, and academic studies already point to a better way forward, but elected officials need to find the political will to take action when it comes to modernizing the access to information system. For [Mr. Conte](#), the current access to information system cannot be reformed, since he believes that it is “a discretionary system of good faith, with far too many root problems.”



Related and Pressing Issues

Beyond the general critiques of the system, six specific issues relating to access to information were raised by witnesses: systemic delays; access to information in immigration matters; Indigenous peoples' access to information; access to information for victims of abuse in the military; whistleblower protection; and access to historical documents, including those on the Holocaust.

Systemic Delays

Ms. Maynard pointed out to the Committee that currently 30% of access requests are not responded to within the timeline stipulated in the ATIA.¹⁸ She pointed out that this number is increasing year after year, even though the ATIA provides no dispensation from its requirements, even in extraordinary circumstances.

The President of the Treasury Board brought up the same statistics as the Commissioner, noting that in 2021–2022, a total of 70.7% of requests were processed within the time frame prescribed by the ATIA. However, she acknowledged that this compliance rate is too low.¹⁹ She said that although the number of closed requests is growing, this number is not keeping up with incoming requests. That is why the number of requests carried over to the following year has consistently grown over the past decade. She said that Treasury Board continues to remind departments of their obligations under the ATIA.

The President of the Treasury Board also acknowledged that there is a lot of work to do to make sure that the government processes more access requests and clears the backlog, which has grown in recent years. She said that administrative tools have been developed and implemented to reduce the burden and the load that has increased over the years.

Ms. Maynard said that there are a lot of issues with extensions and that the number of complaints received by her office is steadily growing.²⁰ She said that more and more

18 TBS, *Access to Information and Privacy Statistical Report for 2021–2022*.

19 ETHI, *Evidence*, Fortier. The President of the Treasury Board said that at Treasury Board, 90.2% of requests are processed within the 30-day time frame.

20 *Access to Information Act*, s. 9. This section allows for an extension of the time limit for a “reasonable period of time” in three circumstances (meeting the time limit would unreasonably interfere with the operations of the institution, the necessary consultations make it impossible to meet the time limit, and third-party notice has been given); see also: TBS, *Directive on Access to Information Requests*. The Directive states that an extension should be as short as possible and that inter-institutional consultations should only be undertaken in specific cases (ss. 4.1.28 and 4.1.31). An implementation notice on inter-institutional consultations was issued by TBS in September 2022.

institutions are asking for extensions, not responding within the 30 days, if at all, making requesters wait months without even an acknowledgement. This was confirmed by [Allan Cutler](#), Former President of Canadians for Accountability, who said that for one access request that was active at the time he appeared before the Committee, he was still waiting for an acknowledgement of receipt more than 60 days after filing his request.

[Mr. Drapeau](#) pointed out that access to information processes are increasingly bogged down in excessive delays, not so much at the federal institutional level in his view, but at the level of the Office of the Information Commissioner (OIC). He nevertheless proposed amending the ATIA to allow institutions to respond within 30 business days rather than 30 calendar days, as is the case now.²¹ The BC FIPA recommends reducing the prescribed time limit to 20 calendar days, as is the case in Quebec and in Newfoundland and Labrador.²²

[Mr. Conacher](#) recommends requiring all institutions to obtain permission from the Information Commissioner in order to go beyond the prescribed 30-day time limit and that the maximum extension be of 60 days. The BC FIPA and the Centre for Law and Democracy (CLD) also indicated that extension beyond the allowable amount should require the approval of the information commissioner.²³ [Andrew Koltun](#), who appeared on behalf of the Canadian Immigration Lawyers Association, recommended that Immigration, Refugees and Citizenship Canada (IRCC) comply with the 30-day timeline to respond to an access request and that extensions not be permitted to go beyond 30 days. Access to information in immigration matters is addressed in the next section of this report.

[Mr. Beeby](#) said that the reason for the low percentage of access requests now coming from the media is due to delays. In his view, there should be tougher limits on a department's ability to delay processing requests. He suggested that if an institution misses a deadline, their authority to claim exemptions under the ATIA should be taken away.

[Mr. Lapointe](#) believes that delays in the access to information system are now the largest issue for journalists today. Like Mr. Beeby, he [said](#) that one reason explaining the small percentage of journalists using the ATIA is that they feel frustration with the ATIA and no

21 See also: Michel W. Drapeau, "Access to information: A quasi-constitutional right in peril," MacDonald-Laurier Institute, 17 October 2022. This paper was submitted as a reference document to the Committee.

22 [BC FIPA Brief](#), p. 17.

23 [BC FIPA Brief](#), p. 19; Centre for Law and Democracy, [Brief](#), August 2021 [*CLD Brief*]. The contents of this brief were presented by the CLD to TBS as part of its access to information review.



longer try to access information that way. [He](#) too expressed support for a cap on delays. He also noted that most journalists would be open to partial disclosure during the 30-day window provided for in the ATIA and then receiving the rest gradually.

In fact, because of the delays faced by access to information requesters, including journalists, [Mr. Lapointe](#) said access to information is now “a better instrument of history than it is of journalism.” [Mr. Beeby](#) agreed, saying that he has become a historian rather than a journalist. [He](#) said that investigative journalism that relies on documents is dying because of the inadequacies of the ATIA.

[Mr. Larsen](#) said that “trust in public institutions is achieved through transparency and renewed through transparency.” In an environment where people are exposed to lots of disinformation and misinformation, having timely and accurate access to information is vitally important as an antidote to some of those narratives. He believes that when there is a culture of secrecy and there are systemic delays within institutions, it erodes public trust in government as a whole. For example, [he](#) suggested that if someone files their very first access request and hits a brick wall, that can only amplify other concerns, legitimate or otherwise, around the functioning of our democracy. [Mr. Larsen](#) believes that imposing some clear timelines that are actually followed and enforceable is a vital step to rebuilding trust with Canadians.

A few witnesses told the Committee about the worst delays they have experienced in obtaining the records requested in an access request, ranging from 5 to 10 years.²⁴ For example, [Mr. Conte](#) spoke about an access request where he was asked by the Royal Canadian Mounted Police (RCMP), five or six years after filing the request, whether he still wanted a response. [Mr. Lapointe](#) explained that as part of the university course he teaches, his students make access requests. In 12 years of teaching, there has yet to be a request that has come back within 90 days.

The Committee agrees with many witnesses that extension of the timeline to respond to access requests under the ATIA beyond the statutory 30-days should only occur in limited circumstances. Consequently, it recommends:

24 ETHI, *Evidence*, [Michel Drapeau](#) (Lawyer, Colonel (Retired) and Adjunct Professor with the University of Ottawa, As an Individual), [Cutler](#) (CFA), [Beeby](#), [Tromp](#).

Recommendation 2

That the Government of Canada amend section 9 of the *Access to Information Act* to limit the extension of time limits to a maximum of 60 days, unless permission to exceed that period is provided by the Information Commissioner of Canada.

Access to Information in Immigration Matters

In 2020, the OIC conducted a systemic investigation of IRCC. The investigation report was released in May 2021.²⁵ [Ms. Maynard](#) said that the investigation revealed that information being systematically requested from IRCC is often information that should be available on the department's portal. She compared the situation to forcing an individual to file access requests each time they want to get information about their own tax file.

[Ms. Maynard](#) said that in response to her systemic investigation, IRCC has started putting a new system in place that offers more information, and that officials changed the way their decision letters are written in order to provide further details. [She](#) said that she is very encouraged by the work IRCC is doing, although she acknowledged that the results are not there yet.²⁶

[Mr. Drapeau](#) said that the majority of federal access requests are directed to IRCC.²⁷ [He](#) does not think that applicants should have to go through the access to information regime to obtain this information. [He](#) did acknowledge that the measures that IRCC are putting in place could reduce the number of access requests and complaints. [Mr. Beeby](#) also recommended that requests from immigration consultants and lawyers be handled outside the ATIA regime.

[Mr. Koltun](#), also pointed out that IRCC is the federal department receiving the largest number of access requests. [He](#) believes that the increase in immigration will result in an increase of application refusals, ATIP requests, and then complaints to the Information Commissioner. Removing the reasons that access requests at IRCC consume a large proportion of the Information Commissioner's resources could therefore be helpful.

25 OIC, *Access at issue: Challenging the status quo*, Systemic Investigation of Immigration, Refugees and Citizenship Canada: Special Report to Parliament, 25 May 2021.

26 ETHI, *Evidence*, [Maynard](#).

27 See: Immigration, Refugees and Citizenship Canada, *Access to Information Act, Privacy Act, Annual Report 2021–2022*; TBS, *Access to Information and Privacy Statistical Report for 2021–2022*.



Mr. Koltun said that the new IRCC methods have yet to materialize. At the time of his appearance, IRCC still did not proactively disclose the entirety of the refusal reasons, nor did it disclose notes from the global case management system used by IRCC.

Mr. Koltun explained that since IRCC does not provide reasons for its decisions to refuse an immigration application, the immigration applicant must either file an access request to obtain the reasons for the refusal or challenge IRCC's decision in Federal Court. He added that something similar occurs when immigration applicants must respond to a procedural fairness letter from IRCC asking for an explanation of a discrepancy between a new immigration application and an old one. Since IRCC does not provide a copy of the old application with this letter, an access request must be made to obtain it. The applicant must then request an extension of the response time, as they are awaiting a response to their access request.

With respect to delays, Mr. Koltun explained that the majority of access requests at IRCC used to be processed within the statutory 30-day time frame. During the pandemic, the time frame exceeded 60 days. In the few months prior to his appearance, IRCC has not only stopped meeting the 30-day deadline but has also stopped sending out extension notices. Without communication from IRCC, immigration applicants are left wondering whether their access request will be processed at all. He added that even when IRCC gives extension notice, these extensions are often lengthy and unjustifiable. For example, he explained that IRCC often imposes a blanket 365-day extension to provide a copy of a complete file, whereas the same documents can be provided in one to two weeks by Federal Court order.

According to Mr. Koltun, the "delays and extensions by IRCC impose steep barriers for access to justice for immigration applicants." He said that not having access to documents held by IRCC can have many negative consequences, such as by affecting the ability of immigration applicants to challenge a decision or to submit a credible, robust, and complete immigration application. Mr. Koltun indicated that IRCC should be required to automatically provide the reasons for refusing an immigration application in their refusal letters, without the need for an access request.

Mr. Koltun acknowledged that as a matter of course, immigration lawyers file access requests for all their clients. This is not to clog up the system, but rather because it is often the only way to obtain information or to figure out why an immigration application is delayed.

Tracy Perry, Acting Director General of Integrated Corporate Business within Corporate Services at IRCC, and Sylvain Beauchamp, Director General of Client Experience at IRCC,

appeared before the Committee on 25 April 2023. They discussed the state of access to information at IRCC and recent initiatives to improve their service in this area.

Ms. Perry confirmed that in 2021–2022, IRCC received 204,000 access requests, or nearly 80% of all access requests submitted to federal institutions and 28% of all requests for access to personal information submitted under the *Privacy Act*. She said that the Information Commissioner's 2020 systemic investigation examined the strategies employed by IRCC to address the root cause of the issue: the need for timely, improved communication with IRCC clients on their immigration applications.

Ms. Perry explained that in response to the systemic investigation, IRCC undertook multiple initiatives to modernize its ATIP program, including initiatives to provide clients with access to information in their immigration files. IRCC also developed a comprehensive workforce management strategy whereby employees have access to enhanced training and development opportunities. It implemented new tools, technologies, and processes.

Ms. Perry said that like other federal institutions, IRCC is facing challenges recruiting experienced qualified ATIP staff. IRCC is working to retain its experienced staff by offering them training and opportunities for promotions from within. She also said that IRCC's ATIP team now has three directors and nine managers.

Ms. Perry explained that IRCC is incorporating new tools to create efficiencies in the processing of access requests. This includes the use of robotic process automation that allows employees to complete decision-based work rather than repetitive data entry tasks.

Mr. Beauchamp said that IRCC is building its “digital platform of the future,” where the self-serve concept will be embedded in the new immigration system. The first phase of this modernization is planned for 2023–2024 and the first results are expected in fall 2023. Meanwhile, he noted that IRCC has already launched nine application status trackers for nine different lines of business.

Ms. Perry told the Committee that IRCC is working with TBS to transition to the ATIP online request service portal and is actively working to acquire new software for processing access requests. She added that IRCC is participating with the TBS ATIP Community Development Office initiative. She said that by addressing the root causes driving access request volumes and by improving its processes, IRCC will be in a better position to meet legislative timelines and uphold the values of client service excellence, transparency, and privacy protection.



[Stephen Burt](#), Chief Data Officer and Assistant Deputy Minister, Policy and Performance Sector with TBS, said that what is most important to IRCC is making sure that requests related to immigration files processed by this department are dealt with as service requests, not access requests. [Catherine Luelo](#), Deputy Minister and Chief Information Officer of Canada, said that the program to modernize technology in the immigration sector is well underway. TBS is already working closely with IRCC to further digitize the experience within the department.

[Mr. Beauchamp](#) said that in March 2023 IRCC launched application status trackers for a few selected business lines, including those for permanent and temporary residents. Self service allows clients to access information themselves, reducing their reliance on access requests. [Ms. Perry](#) said that modernization of the IRCC digital platform will allow clients to access the information they are looking for as opposed to coming through the access to information system.

The Committee agrees that most requests for information in immigration matters, and other matters for which information under the control of a federal institution should be readily available to concerned individuals, should be dealt with outside of the access to information regime. While the Committee feels encouraged by the steps that IRCC is currently taking to improve access to information in immigration matters, it recommends:

Recommendation 3

That the Government of Canada create a process by which departments and agencies that face ongoing access to information requests as a last resort to obtain information that should be available to requesters, such as information related to the denial of an immigration application, deal with those requests outside of the access to information system.

Access to Information and Indigenous Peoples

Specific Claims

Representants for the Union of BC Indian Chiefs (UBCIC) appeared before the Committee and shared the challenges that the current federal access to information process poses

for First Nations' access to justice and the settlement of their specific claims against Canada. They also shared its impacts on the efforts towards reconciliation.²⁸

[Jody Woods](#), UBCIC administrative director and research director, said that UBCIC houses one of the largest specific-claims research programs in Canada. It is currently mandated to handle about 220 claims presented by B.C. First Nations. One of the most recurring issues in specific claims is the illegal alienation of lands or resources, or the failure to protect or reserve lands or resources that should have been protected according to colonial law.

[Kukpi7 Judy Wilson](#),²⁹ UBCIC Secretary Treasurer and Co-chair of the B.C. Specific Claims Working Group, summarized the situation surrounding specific claims as follows:

Specific claims arise when Canada fails to fulfill its legal obligations to first nations. Canada's specific claims policy requires first nations to substantiate their claims with documentary evidence. Most of the historical evidence first nations require to support their claim is controlled by Canada and federal government institutions. Since Canada controls access to the evidence, first nations are required to substantiate their historical claims against the Crown through the *Access to Information Act* and *Privacy Act*. This is an unfair and untenable conflict of interest.

[Kukpi7 Wilson](#) specified that most of the evidence relevant to First Nations specific claims is controlled by federal institutions such as Crown–Indigenous Relations, Indigenous Services Canada, and Library and Archives Canada (LAC). She identified Canada's conflict of interest as the main obstacle to full and fair access to justice for First Nations. In [her view](#), this is a conflict of interest "in regard to how the records are managed and accessed."

With regard to access to records, both [Ms. Woods](#) and [Robyn Laba](#), UBCIC Senior Researcher, spoke about how difficult it is for UBCIC to have a sense of certainty that they have been provided with all the documents that are available when a specific claim is presented. [Ms. Woods](#) noted that this is proven true when Canada reviews specific

28 ETHI, *Evidence*, [Wilson](#) (UBCIC); See also: Union of BC Indian Chiefs, [Full Disclosure: Canada's Conflict of Interest in Controlling First Nations' Access to Information](#), 4 November 2022. This discussion paper focuses on the annual review of Canada's information management regime and the various related statutes. One thing that this review argues is that the current regime is neither adequate nor appropriate to upholding and implementing First Nations' right of redress for historical grievances against the federal government and impedes First Nations' access to justice; Union of BC Indian Chiefs (UBCIC)'s British Columbia Specific Claims Working Group, [Brief](#), 5 December 2022.

29 Kukpi7 (Kook-pea) is a Słatsin member democratically elected to serve as chief of the Słatsin Tkwapla7 Nation. The Kukpi7s role is to work for the people and ensure that the lands and resources are protected for future generations. A Kukpi7 does not stand above the people but walks beside them. Each community member is responsible for providing leadership to the Kukpi7 and voicing their concerns and interests.



claims and records and shares documents that UBCIC was unaware existed or was never able to locate or obtain.

Indeed, [Ms. Laba](#) said that there are still “these huge gaps in the historical record” and that “First Nations have no choice but to just submit these incomplete reports,” which prejudices their claim.

Problems With the Access to Information System

[Kukpi7 Wilson](#) pointed out that systemic problems that plague the access to information system impede access to justice for First Nations. [She](#) said that these nations should have to wait “decades, months or years” before finally getting back, in a lot of cases, redacted records.

In response to the fact that the ATIA contains a definition of “aboriginal government” that recognizes nine Indigenous nations, [Ms. Laba](#) said that there are hundreds of Indigenous nations in Canada and that data sovereignty is a right that should be granted to all of them. In her view,

Data sovereignty is a right granted to indigenous peoples and nations, period. You can’t grant a right to select people in this group. It’s a human right. It should be applicable to all first nations. They have to decide what that’s going to look like as it pertains to their own governance structures, indigenous laws, protocols and priorities, I would say.

According to [Ms. Laba](#), federal and provincial access to information legislation does not adequately reflect the First Nations’ OCAP principles: ownership, control, access, and possession.³⁰

[Mr. Rubin](#) confirmed that researchers acting on behalf of various Indigenous groups also hit a wall when trying to obtain useful information. He gave the example of his research on residential schools and added the following:

I’ve applied for different indigenous groups for records. It’s kind of disgraceful that they or their land claims researchers can’t get certain records or have to wait so long for them. The harm was so great, and yet they’re getting exemptions, such as from the [Royal Canadian Mounted police (RCMP)], saying that sexual assault or other things were connected to those files and they can’t release them.

According to [Ms. Maynard](#), reconciliation efforts are certainly being harmed because of access to information challenges. She said that although many institutions release

30 First Nations Information Governance Centre, [The First Nations Principles of OCAP](#).

information outside of the access to information system without being asked, there are still many records, including legal opinions, needed for Indigenous claims. However, she noted that the Minister of Crown–Indigenous Relations has said that his department is in discussions with the Department of Justice and is seeking to have some of this information released.

[Ms. Maynard](#) also said that her office consults Indigenous peoples only when they file a complaint and an investigation is required. However, her office has seen some cases and tries to prioritize them in their investigations, depending on the time frames, the amount of information and the sensitivity of the documents. These complaints are often related to delays. [She](#) also said Indigenous nations have told her that the definition of aboriginal government in the ATIA is problematic for them.

[Ms. Maynard](#) added that complaints received by the OIC from Indigenous peoples are mostly about access requests where they were not satisfied with the response or want to challenge the application of an exemption that was invoked to withhold certain information. She gave the example of solicitor–client privilege, which can be claimed for documents used by the Department of Justice in cases involving Indigenous peoples. She indicated that the “question is whether discretion could be used in that case by the Minister of Justice to allow the information to be provided.” In [her](#) view, Indigenous nations need information to pursue their requests and should not have to ask for this information through an access request.

The [President of the Treasury Board](#) referred to the unique relationship that Indigenous peoples have with the access to information regime. She said that these peoples should have greater control over their information. She noted that the access to information review conducted by TBS identified several needed changes, including broadening the narrow definition of “aboriginal government” in the ATIA.

Compliance With the United Nations Declaration on the Rights of Indigenous Peoples

[Kukpi7 Wilson](#) spoke about the importance of having Treasury Board and the Department of Justice working in partnership with First Nations and their respective organizations to develop a new information management regime that would uphold First Nations’ rights as articulated in the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).³¹ In the interim,

31 [United Nations Declaration on the Rights of Indigenous Peoples Act](#), S.C. 2021, c. 14.



Canada must recognize its duty to full disclosure and uphold the honour of the Crown by working in full partnership with first nations to develop a mechanism of independent oversight that ensures first nations' full and timely access to records.

Canada must make first nations claims researchers' requests for access to information a priority by hiring additional dedicated staff to expedite existing and impending requests.

Canada's information analysts and staff must be informed about first nations-specific claims and first nations' right of redress and information rights, as well as imperative Crown-indigenous reconciliation.

Canada must make meaningful and direct dialogue with first nations and their representative organizations a priority from the outset of all future policy work.

[Kukpi7 Wilson](#) said that just and fair redress for historical losses is a right articulated in Article 28 of the UNDRIP. It is a political imperative in order to move toward reconciliation. She said that the courts and all levels of government have deemed reconciliation to be in the public interest and a political priority. She also reiterated the legal obligation undertaken by the federal government when it passed the *United Nations Declaration on the Rights of Indigenous Peoples Act*, which is "to ensure that all necessary measures are taken to uphold the UN declaration and meet its objectives."

[Ms. Laba](#) said that it is really important, especially under the UNDRIP, to recognize Indigenous rights to data sovereignty when it comes to developing a process whereby First Nations would be able to obtain their own information, especially for legal processes such as specific claims. [Ms. Woods](#) pointed out that the resolution of these grievances could pave the way for cultural, social, and economic development in these communities.

[Ms. Laba](#) explained that issues around data sovereignty are complex because they must involve First Nations governing bodies at all stages as they are the ones who own the information. Facilitating this process will require independent oversight "that ensures that first nations involved in these legal processes, particularly against the Crown, have full access to information made available to them."

[Ms. Laba](#) noted that there is currently work being done to establish an independent centre for the resolution of specific claims.³² It is anticipated that this initiative would lead to the creation of a mechanism by which information would flow freely to the First

32 Crown-Indigenous Relations and Northern Affairs Canada, [Canada and the Assembly of First Nations launch the Specific Claims Reform Co-Development Process](#), press release, 24 November 2022.

Nations involved in this process, without having to be vetted by Canada, which is a party to the claims.

Kukpi7 Wilson said that despite the work to implement the UNDRIP both federally and provincially, it also needs to be implemented in the ATIA and in all the different records. She added that while legislative changes are time consuming, they are essential for addressing the significant backlog of specific claims both federally and provincially.

Kukpi7 Wilson said that

Canada's commitment to meaningfully engage with first nations has fallen far too short of expectations and minimum standards for obtaining first nations' free, prior and informed consent, as articulated in article 40 of the UN declaration. Human rights principles—such as self-determination, respect for first nations rights and titleholders, and obtaining first nations' free, prior and informed consent—must be incorporated into, and underpin, all processes for developing, reviewing and amending federal access to information legislation and associated regulatory administrative processes.

Ms. Woods had this to say about Canada's commitment to meaningfully engage with First Nations:

We provided input into DOJ's engagement materials for indigenous nations with respect to the modernization of the Privacy Act, and we have engaged with Treasury Board Secretariat on this process, but I would have to say on those experiences, despite everybody being nice and everything, those experiences have fallen way short of not only what our expectations would be but also what we believe Canada's commitment is under the UN declaration. Everything is very late, very last minute.

Ms. Woods said that when First Nations are not given enough time to prepare for a consultation process, that is not a partnership, which is what they need and expect.

The Committee is of the view that Indigenous peoples should not have to go through access to information requests to access historical documents required to pursue specific claims and that the definition of "aboriginal government" in the ATIA should be updated. Consequently, it recommends:

Recommendation 4

That the Government of Canada work with Indigenous Peoples to remove barriers to access information.



Recommendation 5

That the government of Canada work with Indigenous peoples to develop a mechanism of independent oversight that ensures their full and timely access to records held by federal government institutions for purposes of substantiating historical claims.

Recommendation 6

That the Government of Canada amend the *Access to Information Act* to update and align language used in relation to Indigenous peoples and communities, including the definition of “aboriginal government” in the Act.

Protection of Vulnerable Individuals in the Canadian Armed Forces

Patrick White, a member of the Canadian Armed Forces (CAF) who appeared as an individual, said that he was one of the survivors of sexual misconduct in the armed forces.

Mr. White explained the most vulnerable types of CAF members rely on the ATIP regime for access to essential information and records needed to make informed decisions about their rights and to file fulsome and well-supported complaints. These individuals could be victims of rape or aggravated sexual assault, of threats and abuses from reprisals perpetrated by the chain of command, members wrongfully denied employment opportunities or reimbursement for expenses, or a 16-year-old who received parental consent to join the CAF while completing high school.

Drawing on his personal experience, Mr. White explained that the amount of information required up front before an access request can be processed is one of the difficulties victims and survivors face when using the access to information system. As an example, if a requester files an access request for records relating to the misconduct of the CAF member who assaulted them, the requester is required to provide the service number of the individual involved, which is protected information. This creates an access to information barrier for victims who may have to go to their chain of command to request this service number. The victim in question risks being identified as a potential record requester when the process should be anonymous.

Mr. White added that a member has 90 days to file a grievance from the time an action is taken, or a decision is made, or the member reasonably ought to have known such action or decision had been made. According to Mr. White, the problem is that the Department of National Defence (DND) is extremely tight on timelines, but less so when it comes to ATIA requirements and response times. A victim who needs information in

order to file a grievance may not be able to do so without timely access to the required information.

In response to questions regarding Mr. White's testimony about grievance timelines versus access request response timelines, [Anne Bank](#), Executive Director of Access to Information and Privacy at the Department of National Defense, said that she had no opinion on timelines to submit a complaint to the Information Commissioner.

[Mr. White](#) also said that the ATIP Directorate at DND has to send record requests to the various parts of the CAF or the department (custodians of records) to obtain the required information. He said that this creates additional problems, such as an opportunity for the individual in question to obtain copies of emails, delete incriminating emails, or embarrass someone before providing the records. Mr. White described this fear as a roadblock to ensuring a fulsome and honest disclosure of records.

[Mr. White](#) also explained that when CAF members receive requests for information that require a response, they are told to provide the search terms that they use (e.g., the related search terms in Microsoft Outlook). However, those search terms are not disclosed to the requester unless they file a subsequent access request.

Another problem raised by [Mr. White](#) with using the ATIA system is the risk of suffering reprisals for making such requests. People in the CAF, when they note the subject matter of the request or the timing of the request, make guesses as to who filed that request. He said that it would not surprise him if suddenly there were other administrative actions against this individual or changes made, considering that it is by using very subtle and hard-to-detect means, that individuals are victimized for trying to use the system. For example, [Mr. White](#) acknowledged he was making that "this presentation before the committee today despite fully expecting reprisals or attempts at reprisals from the Canadian Armed Forces and the Department of National Defence."

According to [Mr. White](#), any study of the access system should consider the interactions of victims and survivors of the CAF abuse of power and sexual misconduct crisis with the ATIP system. [Mr. White](#) presented the Committee with the following recommendations:

- conduct a stand-alone study of the abuses of the Access to Information and Privacy regime by the Department of National Defence and Canadian Armed Forces;
- create real penalties for departments which breach ATIP requirements and provide real remedies for victims, survivors and complainants;



- consider creating a fast-track system under the ATIP regime for identified victims and survivors of misconduct;
- change the requirement for certain essential pieces of information to be mandatorily disclosed to victims or complainants, unless explicitly waived with written informed consent;
- mandatory disclosure of the names of all record holders who actively handle or are involved in the decision-making process behind a decision generated by a complaint;
- pause the time limit to submit complaints, such as grievances, if an information request has been made and disclosure of such information would be relevant in drafting the complaint;
- ensure records are retained pre- and post-retirement, with clear administrative and disciplinary sanctions for those who violate such directive and seek to use retirement to abscond from accountability;
- investigate and implement options of eliminating the “honour system” approach to record disclosure;
- create specific administrative and disciplinary sanctions for those who avoid creating records or who prematurely destroy records;
- identify, at the intake stage, requests for records which the chain of command may resist and require extra scrutiny of disclosed records; and
- require mandatory disclosure of search terms used by individual record holders in response to information requests.³³

Mr. White expressed empathy for those who have had difficult experiences and may be so traumatized that they are simply unable to deal with the barriers of the access to information system and the lack of full support and fulsome disclosure. He said that is why this system must be designed with the most vulnerable type of person in mind. He also expressed concern about the level of understanding of the ATIP system among CAF members.

33 Patrick White, *Supplemental Presentation to the House of Commons Standing Committee on Access to Information, Privacy and Ethics*, 7 December 2022.

Lastly, [Mr. White](#) stressed that there are real barriers to victims, complainants and survivors in accessing essential information. [He](#) said that it is possible that no action would be taken in a sexual assault case because the victim was unable to access the required information. [He](#) said that even though steps have been taken, there is still a lot of work to be done to address some of the problems that people are not really aware of.³⁴

Considering Mr. White's testimony, the Committee recommends:

Recommendation 7

That the Government of Canada explore the possibility of creating an expedited access to information system as part of the access to information regime for victims and survivors of military misconduct.

Recommendation 8

That the Government of Canada amend the *Access to Information Act* to insert provisions strictly prohibiting access to information and privacy coordinators from asking requesters to identify themselves.

Whistleblower Protection

[Mr. Cutler](#) believes that gaps in the access to information system are affecting the ability of whistleblowers to come forward. For example, whistleblowers cannot wait indefinitely for documents in an access request. "The longer it sits as a request, the more likely it is that they are going to be spotted and exposed, so they don't want to go there." [Mr. Cutler](#) says whistleblowers are doing everything they can to work around the access regime.

[Mr. Cutler](#) added that more than one of the external whistleblowers he deals with nowadays has told him that "there are long delays and documents are being destroyed" by the government.

The Committee notes that the retention of personal information by government institutions is managed according to section 6 of the [Privacy Act](#) and sections 4 and 7 of the [Privacy Act Regulations](#). Further, examination of document retention policies outside

34 See: National Defence, [Minister of National Defence's Report to Parliament on Culture Change Reforms in response to former Supreme Court Justice Arbour's recommendations](#).



of the access to information system is necessary to ensure potential issues around document disposition processes are resolved.

According to [M. Conacher](#), the current whistleblower protection system actually protects people from having the whistle blown on them, as opposed to protecting whistleblowers who are reporting wrongdoing.

[Mr. Cutler](#), [Mr. Rubin](#), and [Mr. Conacher](#) all agreed that Canada does not have appropriate whistleblower protections.

The Committee notes that while the access to information system is not explicitly used to aid whistleblowers, it is important that it serves all Canadians equally and efficiently. At this time, Bill C-290, An Act to amend the Public Servants Disclosure Protection Act is being considered by the Standing Committee on Government Operations and Estimates³⁵. Concurrently, the government has established an external task force that will explore revisions to the *Public Servants Disclosure Protection Act*³⁶. The access to information system should be improved to compliment these endeavours to improve Canada's whistleblower protections.

Access to Historical Documents

The last of the six urgent issues raised by the witnesses concerns access to historical documents, including access to historical documents of the Holocaust.

[Alan Barnes](#), head of the Canadian Foreign Intelligence History Project and a senior fellow at Carleton University's Norman Paterson School of International Affairs, raised a topic that he believes receives little attention, which is the difficulty of accessing government archives. In his view, the discussion on access to information has been largely focused on current records, but there are also impediments to obtaining historical government records.

[Mr. Barnes](#) said that there are wide ranges of Canadian history that are still restricted, including intelligence, security, international affairs, and defence. These areas are affected by section 15 of the ATIA, which allows for exemptions for anything that could be harmful to Canadian international affairs and defence. Many events that occurred during and after the Cold War therefore remain restricted.

35 [Bill C-290, An Act to amend the Public Servants Disclosure Protection Act.](#)

36 Government of Canada, [Review of the Public Servants Disclosure Protection Act.](#)

Mr. Conte noted that the passage of the ATIA in 1983 ended the previous declassification system. He said that this created a disaster for anyone with any interest in doing historical research in certain areas, including prisons, the military, and other institutional forms of state violence within Canada and abroad. For example, he noted that when looking at LAC's RCMP surveillance files on the 1930s Communist Party of Canada, or the 1969 Sir George Williams University uprising, the documents to be disclosed in response to an access request are heavily redacted, and even published newspaper clippings from *The Globe and Mail* and other mainstream media organizations are redacted in full by the Canadian Security Intelligence Service (CSIS).

Mr. Conte added that a successful challenge to a redaction only grants access to the requester. Anyone else interested in accessing the same historical record must go through the same process again.

Mr. Conte shared examples of the frustrations that journalists have with the ATIA and accessing historical records.³⁷ For example, he said it took five years to write an article because of delays in accessing information on COINTELPRO profiles in Canada.³⁸ He was trying to get archives from LAC, which still categorized them as an operational threat, while in the U.S., the National Archives in Washington, D.C., had already declassified the related documents. As to the impact of not having access to certain contemporary or historical documents related to systemic racism, such as the COINTELPRO documents, Mr. Conte said that this lack of transparency is a demonstration of Canada's institutional white supremacy.

Nicole Giles, Deputy Director and Senior Assistant Deputy Minister of Policy and Strategic Partnerships with CSIS, said that while she was unable to discuss specifics regarding COINTELPRO, CSIS "often [experiences] legacy national security concerns in files," which prohibits CSIS from releasing information that could have consequences for some of their sources.

Dr. Giles said that each of the Five Eyes intelligence partners has its own declassification system that differs from Canada's legislative norms that apply to the declassification of

37 Andrea Conte, Toronto Star, "Canada continues to censor internal interviews on review of Afghan war," reference document submitted to the ETHI Committee, 28 August 2022.

38 Andrea Conte, Briarpatch Magazine, "Administrative sabotage," reference document submitted to the ETHI Committee, 3 March 2022 (available [online](#)). COINTELPRO is short for the Counterintelligence Program of the Federal Bureau of Investigation (FBI), an illegal program that, according to Mr. Conte's article, aimed to disrupt, misdirect, discredit or otherwise neutralize leftist and progressive movements in the U.S. from 1956 to 1971. The RCMP collaborated with the FBI and undertook acts of surveillance, infiltration, sabotage and racial terror similar to those of the FBI. Canadian COINTELPRO archives remain heavily classified and censored in Canada, while the U.S. has declassified all records related to that program.



documents. While CSIS makes every effort to declassify the requested information, Canadian legislation does not always allow as much declassification as foreign legislation does.

In fact, [Mr. Barnes](#) indicated that one of the difficulties in accessing historical documents is explained, among other things, by the fact that Canada still has no mechanism for declassifying or releasing archives after a certain period of time. The primary mechanism for accessing historical government records remains access requests under the ATIA and the *Privacy Act*. These requests are then reviewed through the same process that is used for current records: reviewing officers have no knowledge of the historical context of the records and apply the same considerations of what to redact. Since the government has no mechanism to track declassified records, departments spend considerable time re-reviewing records that have been declassified elsewhere. Frequently this review takes years and in many cases results in complaints to the Information Commissioner.

[Mr. Barnes](#) recognized the need to protect some information from bad actors but stressed that time is a factor that should not be overlooked. He explained that “what might be sensitive today is much less sensitive 20, 30 or 40 years later.” He believes there should be some mechanism to recognize that evolution and to differentiate what is truly sensitive and “what the bureaucracy would prefer others not know about.” He said there is a difference between bureaucratic desire for confidentiality and true threats to national security. In short, [he](#) said that “[t]ime is a very important factor in that consideration.”

[Mr. Barnes](#) said that each government has its own access to information regulations and procedures for allowing for the release of less sensitive records while maintaining necessary controls on those that are much more sensitive, such as political and national defence issues. But this is not the case in Canada, where everything is treated as though it is just as sensitive as it was the day it was created.

[Ms. Maynard](#) also pointed out that over time, the need to maintain the confidentiality of records wanes. She believes that with a declassification program, experts could go through the records and automatically restore access to those that are overclassified after several years, as is often the case.

Like the Commissioner, [Mr. Barnes](#) and believes that Canada should establish a declassification framework, separate from the ATIP process, that would proactively review and release records after a set period of time. [He](#) also noted that, in order to improve access to historical records, there should be greater restraints on the “weaponizing of the consultation process. Departments are using the consultation process to kick the can down the road.”

[Mr. Barnes](#) said that the current system creates a problem for LAC because it means that the great majority of government records on intelligence, international affairs and defence will never be accessible to researchers other than through an access request under the ATIA or the *Privacy Act*. Other departments are also affected by this lack of declassification, including the Privy Council Office (PCO) and the Department of Foreign Affairs, Trade and Development (Global Affairs Canada), whose “records have not yet been transferred to LAC, even though most of them are decades old. For example, [PCO] still holds records from the Second World War.”

However, [Mary Francoli](#), Associate Dean and Director of the Arthur Kroeger College of Public Affairs, said that historical records should not be released automatically, because there are a number of things that would prevent historical documents from being published. This is the case, for example, with documents related to national security that sit within LAC.

[Ms. Francoli](#) noted that, outside the access to information system, LAC is doing some interesting things to promote access to information, such as a block review of files and boxes of old documents to see if they contain any information that could not be released under the ATIA. As a result, millions of pages of historical documents have been released.

[Kristina Lillico](#), Director General of ATIP with LAC, confirmed that more than 45 million pages of documents have been made available in recent years through a risk-based approach. While this number may sound impressive, she believes there are billions more waiting to be discovered that should not be subject to an access request.

Regarding the potential of digital, [Mr. Lapointe](#) expressed hope that advances in machine learning will make it possible to scan and read certain historical documents.

However, some witnesses raised the difficulties and costs of digitizing historical documents. For example, [Ms. Lillico](#) said that there are still a lot of historical documents to digitize, and digitization has a cost. Proper storage is needed to manage, hold, and migrate these items. [Mr. Rubin](#) said that digital stuff “which will make access to information harder and will make personal information and the consent of individual Canadians to give it harder.”

[Michael Wernick](#), Jarislowsky Chair in Public Sector Management at the University of Ottawa and former clerk of the Privy Council, also noted the high cost of digitizing documents. There is also a



labour cost of actually going, retrieving, sorting out, applying the exemptions and sending those up the line. Higher up the line, you're dealing with the scarce time of senior managers who have to sign off on the final release, and so on. ... It's certainly a large number in terms of the cost of servicing this function.

M. Wernick said that government recordkeeping is scattered across more than 300 organizations, thousands of workplaces, and different technical formats: some on paper and some in 1970s or 1980s software. He said there has never been a serious investment in digitizing and catching up on historical records would be a huge task. These documents are the hardest to manage and retrieve, and they don't lend themselves to scanning for keyword searches.

Access to Historical Documents on the Holocaust

On 18 April 2023, Yom HaShoah, Holocaust Remembrance Day, officials from B'nai Brith Canada, the Committee for Justice Canada (B'nai Brith), appeared before the Committee to discuss the particular challenges that this committee has faced in its efforts to obtain historical documents that would enhance understanding and learning the lessons of the Holocaust.

David Matas, senior legal counsel to B'nai Brith, said that

Canada, as a member of the International Holocaust Remembrance Alliance, is committed to Holocaust remembrance. To remember the Holocaust, we must remember the victims, but we must also not forget their murderers. While the murderers are alive, that means bringing them to justice. Once they are gone, it means providing public access to the record of their atrocities.

Mr. Matas explained that after the Holocaust, many Nazi war criminals and collaborators reportedly fled to Canada to seek refuge and escape justice. For example, Canada's Program on Crimes Against Humanity and War Crimes states in one of its reports that since it began its work, the Department of Justice has opened and reviewed over 1,800 such files.³⁹ However, the Department of Justice and the RCMP have not provided a satisfactory response on these files despite B'nai Brith's access requests.

Mr. Matas added that to learn from the Holocaust and provide an authentic and complete picture of that history, the files of those who have been identified to the War Crimes Commission or the Government of Canada, or investigated by them, must

39 Government of Canada, [*Canada's Program on Crimes Against Humanity and War Crimes 2008–2011*](#), 12th Report, p. 16.

be made public. Yet, B'nai Brith's efforts to obtain access to relevant files and documents have been constantly frustrated.

Among the documents to which B'nai Brith is requesting access is Part II of the Report of the Commission of Inquiry on War Criminals headed by the Honourable Jules Deschênes. Part I of the report was released in December 1986.⁴⁰ This commission made several recommendations that were generally accepted by the Government of Canada.⁴¹ However, several important documents related to this inquiry have still not been made public or, if they have, are largely redacted. For example, the Rodal report, a landmark report on Canadian policy with respect to the settlement of Nazi war criminals in Canada, was released but is heavily redacted, significantly undermining the understanding of the context of the report.⁴²

In its written submission to the Committee, B'nai Brith made two recommendations. First, [it](#) recommended to amend the ATIA to mandate disclosure of records relating to Nazi war criminals in Canada and to any other Canadian residents who were complicit in carrying out the Holocaust.⁴³ Second, it recommended establishing a publicly accessible digital archive of all government records relating to the Holocaust and then have LAC organize and make them readily accessible.⁴⁴

[Mr. Matas](#) noted that in some jurisdictions, such as the United States and the European Union, there is specific legislation on Holocaust-related disclosure. [Michael Wenig](#), a lawyer with Matas Law Society and counsel for B'nai Brith, added that U.S. legislation created an "inter-agency working group that was charged with a duty to collect and organize Holocaust records from across the federal government and have the records be delivered to the National Archives." The U.S. National Archives then set up a public archive to make all these records accessible. According to [Mr. Matas](#), an amendment to the ATIA to deal specifically with Holocaust-related records could draw from what is being done in other jurisdictions.

40 Honourable Jules Deschênes, *Commission of Inquiry on War Criminals*, December 1986.

41 B'nai Brith, *Brief*, 14 February 2023, [B'nai Brith first written submission] p. 2.

42 B'nai Brith first written submission, p. 2; citing Alti Rodal, *Nazi War Criminals in Canada: The Historical and Policy Setting from the 1940s to the Present* (the "Rodal" report) (prepared for the Commission of Inquiry on War Criminals led by Mr. Justice Jules Deschênes in 1986).

43 B'nai Brith first written submission, p. 2; B'nai Brith, *Brief*, 25 May 2023. In a second brief, B'nai Brith provides further information on the definition of Holocaust materials and the United States' model for Holocaust Archives. It also mentions other countries that have made efforts to archive Holocaust records.

44 B'nai Brith first written submission, p. 3.



Systems for Classifying and Declassifying Documents

Ms. Francoli said there is a lot of guidance for classifying documents. However, she does not think that it is always applied evenly across departments and agencies. She added that it depends on who is classifying and their level of comfort in terms of classification. She is of the view that there is a tendency to over-classify documents, making them inaccessible. She said that a system of declassification should be looked at.

Mr. Barnes also said that, if government departments transfer records to LAC as open records, then those records could be accessed by researchers. However, as noted above, many government records that are transferred to LAC are restricted, so those all require access requests. He said that, if documents “are being held in a classified form, right now there is no other mechanism besides going through the very cumbersome process of asking for an ATIP release to get access to those records.” Mr. Barnes is of the view that there needs to be a manual on the classification process, for example, so as to have a much clearer idea within government of what is actually sensitive and what isn’t.

Ms. Maynard said that one can certainly wonder whether certain documents should have been classified “Secret” or “Top Secret.” The OIC is trying to show government officials that just because a document is marked “Secret” or “Top Secret” does not mean that the exemptions in the ATIA have to apply. The classification “Secret” or “Top Secret” has to be taken into consideration. However, it should not automatically result in the application of the national security exemption under the ATIA. Attention must be paid to apply the ATIA as it is written, not based on how a document is classified.

With regard to declassification, Leslie Soper, Director General of National Security Policy with the Department of Public Safety and Emergency Preparedness (Public Safety Canada or PSC), described it as the public release of records. She said that “[i]t is worth bearing in mind that the level of classification reflects the extent of the injury to the national interest that would be caused if the information were released.” She explained:

When a document is declassified, it has been determined that the document’s release in full, or perhaps still partially redacted, would no longer cause injury, but even after a document has been declassified it may still need to be redacted to remove information that is sensitive for other reasons, such as the protection of personal information.

Ms. Soper confirmed that Canada does not have a formal national security and intelligence declassification policy framework. To help solve this problem, PSC is working in cooperation with the national intelligence and security community, TBS, and LAC, on the development of a declassification framework setting out a practical approach to proactive declassification within that community.

Ms. Soper recognized that the release of historical records would assist the public and academic researchers. In her view, therefore, the PSC's work is a step in the right direction, as proactive declassification review would reduce the burden of processing access requests. She noted, however, that supporting the proactive release of historical records requires implementing a complete framework and the commitment of considerable resources.

Ms. Soper added that PSC's declassification work reflects the government's national security transparency commitment. This commitment is to better inform Canadians about national security in support of democratic accountability without providing information that could compromise Canada's security or the safety of Canadians.

The President of the Treasury Board agreed that declassification is an important part of the work to improve the ATIP system. One of the conclusions of the TBS report on the review of access to information is that "a systematized approach to declassification supports government transparency and accountability [and] enhances access to Canada's history." She spoke about TBS's participation in a declassification pilot led by PSC, saying that TBS is still looking at how this pilot might provide guidance on how it could continue with declassification. However, Mr. Burt said that the pilot project has laid bare some of the challenges of looking at historical files and declassifying them, as well as the kinds of resources it requires to do that work.

Mr. Barnes said it is very important to have a systematic process for declassifying records after a given period of time. That way, records can be declassified by people who are familiar with the exceptions to disclosure, rather than having each department trying to interpret things themselves.

Ms. Lillico said that in other countries, having access to information legislation improves the way records are managed. She therefore agrees that a proactive declassification approach would bring Canada in line with the other Five Eyes countries, all of whom have declassification programs. It would manage information at the appropriate level, decreasing costs and effort and reducing the burden on the ATIP system on LAC. A sunset clause would recognize the decreased sensitivity of most information over time and ensure that historical records are open consistently and predictably.

International Approaches

Mr. Barnes reminded the Committee that Canada is the only member of the Five Eyes that does not have a system for declassifying historical records. He said Canada can learn from its close allies without necessarily reinventing the wheel.



Ms. Maynard explained, for example, that unlike Canada, the U.S. has a declassification program. Every 20 years, documents that are secret or top secret go through a review. She was of the view that Canada should also have such program, whether it is for a period of 15 years, 20 years, or 50 years.⁴⁵ She also said that the United Kingdom has a declassification program. In her view, implementing a similar regime in Canada would give historians, librarians, archivists, and others interested in Canadian history—and especially national security records—access to documents more quickly. She noted that in 2020, her office released *A Declassification Strategy for National Security and Intelligence Records*, which suggests possible avenues for establishing such a strategy in Canada.

Mr. Barnes also said that the U.S. has manuals saying what is sensitive and how it should be classified. He added that in that country, it is the Director of National Intelligence who writes those manuals.

While Mr. Barnes said that the U.S. has a “proper system for declassifying records,” he thinks that “the United Kingdom has a much more effective system.” He explained that in the U.K. there is a legislated requirement that government records be reviewed after a certain number of years and in large part declassified and transferred to their national archives.⁴⁶ The U.K. legislation allows for some exceptions for materials to be retained for longer. He added:

[W]hen they’re transferred to the archives, they’re automatically open, whereas in Canada, many of the government records that are transferred to the archives are still restricted. Therefore, [Library and Archives Canada] has to consult with the originating departments on whether they can be released. It’s a much more complicated process.

Mr. Barnes compared the American and British systems to the one in Canada.

The American system is quite complicated. There are several layers. They have a freedom of information act similar to the ATIP act in Canada, but they also have other mechanisms for the release of material proactively. For example, the various intelligence organizations have historical offices, and they will release batches of records proactively. For example, on the anniversary of the Cuban missile crisis or some other specific historical event, they will release a large batch of records, and they will often

45 See: OIC, *Access at issue: The challenge of accessing our collective memory*, Systemic Investigation of Library and Archives Canada, Special Report to Parliament, 26 April 2022. OIC, *A Declassification strategy for national security and intelligence records*, 12 February 2020 (by Wesley Wark).

46 United Kingdom, The national archives, *20-year rule*. Mr. Barnes talked about a 30-year rule. In 2013, the United Kingdom’s government began its move towards releasing records when they are 20 years old, instead of 30.

have an academic conference to support that. That concept is just totally foreign to Canada.

In the U.K. they have a different system. There, materials are much more regularly released after [20] years and go right to the archives, where they are all open. There are some limits to that, but even the British intelligence services have been much more proactive in supporting official and authorized histories of the various intelligence agencies and so on, which have been very helpful for expanding knowledge of how those organizations have operated. That hasn't happened in Canada.

[Mr. Barnes](#) recommended that Canada adopt an approach similar to that of its allies by establishing a “declassification framework, separate from the overtaxed ATIP process, that would proactively review and release records after a set period of time.”

Other Solutions

Other than the implementation of an exhaustive declassification system, Mr. Barnes discussed two other ways in which access to historical documents could be improved.

First, [Mr. Barnes](#) said that various aspects of the current ATIA make it very difficult to access historical records and that it should be improved. He proposed two solutions. First, records that have already been released should be tracked. First, departments have no way of knowing what has already been released by other departments. As a result, government officials spend a lot of time re-reviewing records that have already been released. Second, better information management is needed, since problems managing information affect access to information. For example, if a researcher is not aware a particular file exists, they cannot ask for it, and requests for general information on a given subject usually do not provide useful information.

He then discussed the problem of overclassification of documents, [Mr. Barnes](#) does not believe there is an easy fix. He said departments still have a culture of secrecy and overprotection of records that are no longer as sensitive as they once might have been. For example, he noted that a pilot study on the classification level of a large batch of records from the Canadian Joint Intelligence Committee from the 1950s and 1960s was launched as part of PSC's declassification project. The officials involved in reviewing these records found that most of them could be released. However, the departments that own those records were not yet ready to accept those kinds of recommendations and are still trying to figure out what to do with them. This may mean that improving access to historical records requires a change in culture.

Based on the testimony it heard, and documents and briefs it has received, the Committee believes that Canada would greatly benefit from having a more robust



classification and declassification system. A declassification system would ensure that historical documents are more readily available for the public, researchers, journalists, and other interested parties. It could also reduce the number of access requests. Therefore, the Committee recommends:

Recommendation 9

That the Government of Canada review its classification system for secret records and provide classification training to staff responsible for processing access to information requests in relevant government institutions.

Recommendation 10

That the Government of Canada improve the declassification system to provide greater access to Canada's history.

Recommendation 11

That the Government of Canada implement a process for the automatic release of historical documents that are more than 25 years old.

Recommendation 12

That the Government of Canada establish and implement clearer record classification guidelines and a declassification system.

CHAPTER 3: STATE OF ACCESS TO INFORMATION IN CERTAIN FEDERAL INSTITUTIONS

In addition to the case of IRCC discussed above, the Committee also looked at the state of the access to information system in seven institutions on the list of federal institutions with the highest number of complaints to the OIC in the past year.⁴⁷

Royal Canadian Mounted Police

David Janzen, the Director General of the ATIP Branch at the RCMP, acknowledged that for the last decade, the RCMP has struggled in its responsibility to be compliant under both the ATIA and the *Privacy Act*. The Commissioner's 2020 systematic investigation of the RCMP, at the Minister's request, led to the development of a strategy to address the

47 OIC, *Annual Report 2021–2022*, p. 13.

Commissioner's recommendations. The RCMP's five-year strategy includes an ATIP modernization action plan.⁴⁸

[Mr. Janzen](#) said that the RCMP has resolved one of the Commissioner's key concerns raised in her systematic investigation: the need for leadership. The RCMP now has a director general and three directors leading three streams: information access, privacy, and operational support. These directors are supported by eight managers, and the number of employees in these streams in the RCMP has also grown.

However, [Mr. Janzen](#) confirmed that the RCMP uses consultants to handle access requests. It has contracts with two Canadian consulting firms for a total of about 12 consultants.⁴⁹ The RCMP has about 70 full-time equivalents working in ATIP, and the total number of funded positions is about 110.

[Mr. Janzen](#) said that the RCMP's ability to meet its access to information obligations are affected by the challenge of attracting new ATIP staff. [He](#) did point out that the RCMP has leveraged the lessons from the COVID-19 pandemic to create a more national workforce.

[Mr. Janzen](#) also said that the RCMP is front and centre at the major events of public interest, which results in a significant number of access requests and challenges in processing them. For example, tasking, collecting, and reviewing records in a situation when the very employees who hold them are assisting in a flood evacuation or investigating a tragedy is a unique challenge. [He](#) said that these types of situations also take RCMP members' attention away from processing access requests and files.

Regarding the operational challenges faced by the RCMP, [Mr. Janzen](#) said that its 30,000 employees are spread across Canada and that the RCMP's information management systems are not centralized. A police officer cannot access any information about anyone from a centralized location. The technology used by the RCMP needs to be upgraded.

[Mr. Janzen](#) said that the RCMP has contracted business consultants to improve their access to information processes, created intergovernmental fora to share best practices, and implemented new training and guidance material for its personnel. Past and

48 Royal Canadian Mounted Police (RCMP), [Access Granted: Restoring Trust in the RCMP Access to Information and Privacy Program](#).

49 ETHI, *Evidence*, [David Janzen](#) (Director General, Access to Information and Privacy, RCMP). Mr. Janzen said that the RCMP also works with Altis.



ongoing investments in new technologies also enable the RCMP to process access requests more efficiently.

Mr. Janzen said that in the last fiscal year, the RCMP's ATIA and *Privacy Act* compliance rates increased from 26.4% to 40.1% and from 32.8% to 46.1%, respectively. He said that the RCMP's backlog of access requests goes back to about 2017.

Privy Council Office

Matthew Shea, the Assistant Secretary to the Cabinet for Ministerial Services and Corporate Affairs at PCO, explained that PCO's combination of information holdings is unique compared to other institutions. In addition to more traditional information holdings, the documents within PCO's control include Cabinet confidences, secret and top secret information holdings, including sensitive intelligence assessments. As an aggregator of information, PCO also holds a large volume of information from other government institutions, which requires it to work closely with these institutions to find efficiencies when it comes to access to information.

Mr. Shea said that the pandemic impacted PCO's ability to meet its access to information obligations. The limited number of employees allowed in the workplace at the beginning of the pandemic, and the type of information that PCO holds, led to a sharp increase in the number of active access files and created a backlog. In addition, during summer 2020, PCO also received almost double the number of access requests compared to the same period before the pandemic.

Mr. Shea explained that PCO has taken several steps to address the challenge that the pandemic contributed to. It has transitioned from a largely paper-based process to an electronic process where possible, allowing more non-sensitive files to be processed remotely. It has identified ATIP as a critical service, which allowed it to have more employees in the office to process files and flatten the growth curve of the access request backlog. It has added an increased budget to both its ATIP and information teams to address the backlog. It has also made information management and ATIP a priority within the department and a regular topic of conversation at its departmental management committee.

David Neilson, Executive Director of ATIP and Executive Correspondence Services at PCO, confirmed that his organization does not currently employ any consultants working on access to information.

[Mr. Shea](#) said that in 2021–2022, PCO received 509 new access requests and closed 532. He believed that in 2022–2023, PCO should also close more access requests than it receives. [Mr. Neilson](#) said that PCO's longest outstanding ATIP request is about six years old. Regarding Cabinet confidence exclusions, PCO confirmed that in 2021–2022, they were applied to approximately 32% of closed access to information files.⁵⁰

Global Affairs Canada

[Colleen Calvert](#), Director General and Corporate Secretary with Global Affairs, said that in June 2022, her organization adopted a plan to reduce the backlog of access requests, which includes establishing targets, strengthening the responsibility level of assistant deputy ministers, and implementing accelerated training. At the time of her appearance, Global Affairs had trained 544 departmental employees on access to information.

[Ms. Calvert](#) said that the shortage of qualified ATIP specialists is affecting Global Affairs' ability to clear its backlog of access requests. The organization is holding its own recruitment processes. It is working with TBS and other government departments on the Community Development Office initiative on collective staffing processes. As well, it has an internal professional development program encouraging employees to build a career in ATIP.

[Ms. Calvert](#) confirmed that Global Affairs works with ATIP consultants.⁵¹ An average of 8 to 10 contractors work in its ATIP division. [She](#) said that the division employs 42 indeterminate staff.

[Ms. Calvert](#) said that a new system for processing unclassified documents for ATIP requests was set up last year. It increases efficiency and flexibility for remote work. Over the next fiscal year, Global Affairs will also begin transitioning to a new generation of document processing software for ATIP, which will result in other gains in efficiency and the possibility of using tools such as artificial intelligence.

With respect to the operational challenges experienced by Global Affairs, on top of the difficulty in recruiting qualified staff and the fact that the technology used by the organization is not yet good enough, [Ms. Calvert](#) noted that like the RCMP, which

50 ETHI, *Written response to the Committee*, Privy Council Office, 17 March 2023.

51 ETHI, *Evidence*, [Alexandre Drago](#) (Director, Access to Information and Privacy, Department of Foreign Affairs, Trade and Development). Mr. Drago said that Global Affairs works with Altis and CANADEM.



operates in emergency situations, it can be challenging for Global Affairs to meet operational requirements at the same time as it deals with access requests.

Ms. Calvert said that the proportion of access requests processed on time, which had fallen to 19% during the first year of the pandemic, is now at 57%. This progress comes as Global Affairs is seeing a 30% increase in access requests over the previous fiscal year. She noted that the longest outstanding request at Global Affairs is about five years old.

Public Safety Canada

Ms. Soper explained that PSC plays a key role by ensuring coordination across all departments and agencies responsible for national security and the safety of Canadians. Despite the close cooperation among these organizations, each one is responsible for its own ATIP program.

Regarding PSC's operational challenges with respect to access to information, Derek Melchin, Director of Access to Information and Privacy and Executive Services with Public Safety Canada, cited the shortage of trained personnel, despite TBS putting in place initiatives to help with centralized staffing. He also said that the ongoing recruitment and training of new analysts is time consuming. Other issues such as technology and information management also affect PSC's access to information office. Mr. Melchin said that PSC does not currently employ any consultants working on access requests.

Ms. Soper said that PSC completed over 90% of requests within the legislative timelines in 14 of the last 15 fiscal years. However, she did acknowledge that during the pandemic, the department was limited in its ability to process files containing classified or physical records that could not be accessed by employees working remotely. Over the past year, measures have been taken to restore full capacity to process requests, and substantial progress is being made in addressing the department's backlog in delayed files.

Mr. Melchin said that PSC has at least two outstanding requests around five years old.

Canadian Security Intelligence Service

Dr. Giles explained that the mandate and authorities of CSIS are set out in the *Canadian Security Intelligence Service Act*. CSIS's primary mandate is to investigate threats to the security of Canada, including espionage and sabotage, foreign interference, terrorism and extremism, and subversion.

She added that under its mandate, CSIS provides information and advice to the Government of Canada on these threats so that it can take appropriate measures to reduce them. CSIS also provides security assessments on individuals who require access to classified information or sensitive files within the Government of Canada.

Dr. Giles said that as a national security agency, many activities must remain protected from disclosure. The release of classified information can reveal sensitive sources, methodologies, and techniques, which can be detrimental to CSIS's efforts to protect Canada and Canadians from national security threats. Access to certain information could pose real dangers, including jeopardizing the integrity of operations and posing risks to the physical safety and security of human sources and employees.

Although CSIS must keep some information secret, it must also be transparent. Dr. Giles said that transparency and accountability are core values for CSIS, and that the agency views strong access to ATIP systems as absolutely foundational. That is why the public's right to access information is balanced against the legitimate need to protect sensitive information and to maintain the effective functioning of government.

Dr. Giles added that in administering ATIP requests, CSIS conducts line-by-line reviews to be able to release as much information as possible, while protecting information that could be detrimental if disclosed. Although this takes time, CSIS claims to be able to provide high-quality and timely responses to access requests.

In recent years, CSIS has developed other resources to increase its transparency and engagement with Canadians. For example, it releases an annual public report. It provides threat publications in over seven languages. It provides briefings to engage with the provinces and territories, Indigenous groups, the business sector, and academic and community organizations. It also has a budding social media presence.

Dr. Giles said that in 2021–2022, CSIS's on-time compliance rates for ATIP requests was 94%. In 2019, CSIS received the Information Commissioner's award for excellence in ATIP administration.

Department of National Defence

Ms. Bank is responsible for the implementation of the ATIA and the *Privacy Act* within DND and the CAF.

She described DND's commitment to openness, transparency and respect for the rights granted under the ATIA and the *Privacy Act*. She said that as a result of reviews and investigations in recent years, DND has made positive changes to its practices, including



close collaboration with the Defence Chief Information Officer and the Defence Chief Data Officer to ensure that both transparency and the protection of personal information are considered in the implementation of the defence data strategy.

In July 2020, the OIC submitted a special report to Parliament on its systemic investigation into the processing of access requests at DND.⁵² [Ms. Bank](#) said that since this report, DND put in place specific initiatives, such as establishing letters of agreement signed between each senior official and the Deputy Minister of Defence in which they commit to upholding their ATIP obligations; updating reference tools to support the liaison officers who retrieve records; incorporating access to information objectives into performance agreements for those who have primary or secondary access to information or privacy responsibilities; establishing processes to enhance the rigour around the retrieval process; improving DND's ability to receive electronic records to speed up the process; a commitment to emphasizing the duty to assist principles across the government during the comprehensive review of the ATIP training curriculum; and updating its departmental policies.

Library and Archives Canada

[Ms. Lillico](#) explained the unique challenges of accessing LAC's historical records. She illustrated what a single access request at LAC can look like:

I'd like to give you all a number: Three million. Three million pages. This is just one of the thousands of access to information requests that we're dealing with today at Library and Archives Canada.

Now picture this task. It would mean for one of our expert employees to read all seven Harry Potter books, 4,100 pages, more than 730 times in 30 calendar days. Before that can be done, our experts help requesters to identify the material they want using both digital and analog lists of our collections. This is not a google search.

Some of these lists have few details and the way things are described has changed over time. We need to then locate these records. In the archival world, we may have one description for hundreds of boxes. Our experts have to go through all the boxes to find the records.

52 OIC, Special Report to Parliament from the Office of the Information Commissioner of Canada, [Access at Issue: Nine Recommendations Regarding the Processing of Access Requests at National Defence](#), 22 July 2020.

We have more than 200 linear kilometres of Government of Canada records dating back to 1867. That distance is equivalent to the two-hour drive between Montreal and Quebec City.

To add to this already complex situation, historical records are typically paper and would need to be digitized before an ATIP analyst can even begin their review work.

Now, while LAC shares many of the issues other departments face—labour shortages, employee retention and technology challenges—LAC has a distinct role in that it preserves and makes accessible the historical records of over 300 federal organizations, some of which no longer exist today.

Ms. Lillico said that government archives are either open to the public or they are closed, because they may contain information deemed sensitive. When they are closed, an ATIP request must be submitted to access them. She added that LAC's ATIP team is *de facto* the main channel to provide access to the billions of pages of government records preserved at LAC.

Ms. Lillico added that it can take a significant amount of time to process an ATIP request for historical records, not only because historical records are old, but also because deciding what needs to be redacted requires projecting oneself into the past and understanding the context. It requires an expertise that few departments have immediately on hand.

Ms. Lillico added that every redaction made by an ATIP analyst must be documented to be able to explain it to the requester, the Information Commissioner, or the courts. According to her,

ATIP really should be the last resort to access the historical records of the Government of Canada and this is the future that LAC is building towards. One where we proactively open the government records while respecting privacy and the security of sensitive information.

Ms. Lillico also said that LAC is working to obtain technology it can leverage, including onboarding and using the secure technology systems that the Government of Canada uses. Recently, LAC onboarded the ATIP online portal so that people can make their requests more easily.

CHAPTER 4: IMPROVING CANADA'S ACCESS TO INFORMATION SYSTEM

Various solutions proposed by the witnesses for improving the access to information system are explored in this chapter. Ms. Maynard recommended that the Committee



review the list of 18 recommendations that she submitted to TBS as part of its access to information review and the findings of previous parliamentary committees.⁵³ The Commissioner's 18 recommendations are integrated in this chapter.

Leadership and Culture

Ms. Maynard said that one way to improve access to information that would not require legislative change is leadership, and, by extension, the culture within federal institutions. Leaders must ensure that their institutions live up to their legislative obligations and must be held accountable for their institutions' performance in the area of access to information. That is why during her meetings with ministers and senior officials, she often speaks about a shared commitment to the right of access.

Ms. Maynard said that leaders across government institutions must ensure that their organizations treat access to information as a collective responsibility and treat the right of access as the quasi-constitutional right it is. She pointed out that it is a question of leadership. The departments where the leaders believe in access are showing it. They give the appropriate resources to respond to the access requests they receive and are doing better.

Ms. Maynard reported that her office sees a huge difference when the leader asks for statistics about access to information in order to know where the bottlenecks are. She cited the example of the Canada Revenue Agency, where reports on what is happening with respect to access to information are requested every two weeks.

According to Ms. Maynard, access to information performance indicators should be imposed on management at the director general (DG), deputy minister, and assistant deputy minister levels. Ultimately the minister is the one who is accountable for access to information. In her view, it is not the "poor little analyst who needs to be given objectives." The DGs are the ones who should have performance evaluations and bonuses according to what they are responsible for in terms of access to information.

As to whether there is a culture of secrecy in the government, Ms. Maynard said that such a culture exists "in the sense that when staff receive an access to information request, they think about what information to delete and not what information to

53 OIC, *Observations and Recommendations from the Information Commissioner on the Government of Canada's Review of the Access to Information Regime*, 2021 [OIC Recommendations 2021]. See also: Democracy Watch, *Brief*, 26 October 2022 [DW Brief]. The key changes proposed by Democracy Watch are based in part on OIC reports, the Committee's 2016 report, and the interim report released as part of the ATIA review begun in 2020.

disclose.”⁵⁴ She said that this mindset is very difficult to change. That is why the Commissioner’s office encourages federal institutions to provide training, not just to their access to information units, but also all their staff, who should, collectively, have a sense of responsibility with respect to access.⁵⁵

Ms. Maynard said that she has offered her services to give access to information training to federal institutions, although she does not have an educational mandate under the ATIA. For example, she provides briefings to public servants who do not work in an ATIP unit and who have never dealt with access requests to give them an appreciation of their role with respect to information.

Ms. Maynard does not believe that the culture of access to information has improved in the past few years, although that depends on the institution. Some make access to information a priority. To bring about a culture change, she said that the government should provide clear direction to all institutions that they must comply with the ATIA.

The President of the Treasury Board said that the government has a culture of openness and transparency, but also a culture of responsibility. She cited the importance of keeping personal information confidential. She believes that it is important to make sure that documents are redacted in accordance with the principles in the TBS directive.⁵⁶

Mr. Burt added that the culture of openness in the government is directly tied to the need to protect what needs to be protected. Not everything can be disclosed, even when working with the intention of disclosing as much information as possible and making data available.

Other witnesses expressed the view that a culture of secrecy exists within the government. Mr. Drapeau believes that officials are often asked to keep information confidential and share it only with those who have authorization, and the exemptions in the ATIA allow them to protect certain information. In his view, this creates a tension between requesters, who want as much information as possible, and the typical public servant who aims to protect as much information as possible. He believes access requests are “perceived as an annoyance or something that upsets the bureaucratic order.”

54 ETHI, *Evidence*, Maynard. The Commissioner made similar comments during her second appearance.

55 See also: BC FIPA Brief, pp. 9–10. The organization echoes the Information Commissioner’s comments and recommends a change in culture and more training for all employees of federal institutions.

56 TBS, *Directive on Access to Information Requests*. A new directive took effect in July 2022, replacing the interim directive from 2016. Section 4.1.33 explains how to apply the disclosure exceptions under the ATIA.



[Mr. Lapointe](#) said that too often in its history, users of the ATIA have been made to feel they are being done a favour to exercise their right to know. [He](#) would also say that too many officials believe that their role is to protect the bureaucracy and the political masters, but he did acknowledge that this is a generalization that does not necessarily apply to everyone working in the access to information system. [He](#) also pointed to the difference between the culture of disclosure in Canada and the United States. For example, when journalists on both sides of the border request records for a story on a cross-border issue, the U.S. generally provides much more information than does Canada.

[Mr. Conacher](#), [Mr. Cutler](#), and [Mr. Rubin](#) also pointed to a culture of secrecy in the government.⁵⁷ [Mr. Rubin](#) said that what is needed to end the culture of secrecy is an automatic, quick, thorough disclosure, guaranteed under freedom of expression and constitutional rights, along with strong penalties built into right-to-know legislation. [He](#) also said that the situation could be improved quickly if ATIP analysts limited their use of exemptions and responded to requests more quickly. He said that analysts have an attitude problem and refuse to act. He did acknowledge, however, that not all public servants are ill-intentioned or silent when it comes to access to information.⁵⁸

[Mr. Wernick](#) said that he thinks people in good faith in the departments are instead trying to respond to access requests and then sort out the various exemptions and reasons why there would be a need for confidentiality.

The Committee acknowledges that many government institutions are respecting their obligations under the ATIA and that many of the public servants working in ATIP have access to information at heart. Nevertheless, as the information commissioner and other witnesses have indicated, oftentimes, it appears that the common reflect is to look for what information should be redacted rather than for what information should be disclosed. Consequently, the Committee recommends:

Recommendation 13

That the Government of Canada ensure that staff responsible for processing access to information requests in each government institution be required to undergo ongoing training to ensure the integration of a culture of openness and transparency within the institution.

57 ETHI, *Evidence*, [Cutler](#) (CFA), [Conacher](#) (DW), [Rubin](#).

58 [Rubin Brief](#), p. 1.

Recommendation 14

That the Government of Canada subject Directors General of departments to performance evaluations with bonuses based on their work on access to information under their responsibility.

Resources and Innovation

Technological Tools and Innovation

Noting that some institutions are already using such tools, [Ms. Maynard](#) said that technology like artificial intelligence would be helpful to find information in records instead of having somebody do it manually. [She](#) said, for example, that since her systemic investigation of IRCC, they have used robots to find and treat information faster. [Ms. Maynard](#) believes that federal institutions must invest in innovations and look at what can help them better manage access requests. [She](#) also believes that the technology developed should be made available to all federal institutions at the same time and that information sharing among them should be facilitated.

As for the ability to file access requests online, the [President of the Treasury Board](#) pointed to the recent launch of an enhanced version of the government's online access to information request platform. This platform makes it more efficient to submit access requests and receive records. She said that the improvement will reduce the government's administrative burden. To date, 251 organizations have been onboarded onto the platform, and more will be added. Within a year, more than 90% of access requests will go through the platform.

[Ms. Maynard](#) said that the updated online access request service makes it easier to submit an access to information request, rather than having to deal with each institution separately.

As for the technological tools used to process access requests, the [President of the Treasury Board](#) explained that TBS has selected two modern systems that will process them faster. The first 13 institutions are being onboarded to the new processing software in 2023. She believes that automating wherever possible will free up teams in government to focus on their core jobs and better serve the public.

[Ms. Luelo](#) remarked that all departments will eventually be onboarded onto the online access request portal, which will provide a common access point for Canadians, and that the new processing software will help automate the process. Ms. Luelo also made a point of noting that while the TBS's report on the review of access to information



presented findings, that did not stop things from moving forward as TBS develops its action plan. The TBS report is addressed in Chapter 6.

Other witnesses made similar comments about the potential of technology. For example, [Mr. Beeby](#) said that responsible artificial intelligence, one that can be audited, could help streamline the processing of access requests. [He](#) also believes that digitizing documents would allow for better access to information while improving statistical analysis of the access to information system.

[Mr. Larsen](#) agreed that digital tools could be used to access and locate records that are pertinent to access requests. However, he believes that there is also a need to ensure that records are released in a timely manner and are comprehensive. This cannot be addressed through digitization; this is a matter of law reform.

[Mr. Wernick](#) said that a considerable investment, not just in information technology, but also in people and training, is needed to improve records and information management in federal institutions.⁵⁹ [He](#) stressed that all the sanctions, deadlines and obligations are futile unless investments are made in systems for the storage, retrieval and classification of documents and records.

Human Resources

Regarding public service employees who respond to access requests, [Ms. Maynard](#) said there is a great need for staff who can negotiate, discuss, read the legislation, and apply it to the records they process. This means that there is a need for training, which is the government's responsibility. [She](#) also acknowledged that it is very difficult to recruit people with the necessary skills, which is why federal institutions, as well as the OIC, sometimes have to hire outside consultants. [She](#) believes that there needs to be pools of qualified and interested candidates that all institutions can draw on for staffing.

With respect to staffing requirements, the [President of the Treasury Board](#) spoke about the launch of the Community Development Office to support the ATI communities through recruitment, retention, training and professional development. [She](#) also said that TBS is focusing on getting staff trained and is trying to find more staff. [She](#) said that there is a pool of potential candidates who could come work for the government. [She](#) confirmed that the government is hiring more ATIP officers today than when she was appointed President of the Treasury Board. [She](#) also confirmed that there are fewer consultants currently hired than there were 10 years ago. In a written response, TBS

59 Michael Wernick, reference document submitted to the ETHI Committee, 21 November 2022.

indicated that in the last three years, 66 federal institutions entered into professional services contracts to support the administration of the ATIA, for a total cost of 36 million dollars⁶⁰.

[Mr. Lapointe](#) said that significant turnover in ATIP branches negatively affects continuity in these teams.⁶¹ [He](#) also recommended investing more resources in the access to information system so as to limit delays in responding to access requests.

[Mr. Drapeau](#) recommended that the Auditor General conduct a system-wide audit to ascertain whether there are sufficient resources at both the OIC and the federal institution level to respond in a timely manner to users exercising their right of access. He noted that each ATIP team should ask their deputy minister for support to ensure that they have enough resources. In his view, ATIP coordinators are doing the best they can with the staff available.

The BC FIPA also recommended that the government increase staffing resources for access to information teams as well as invest in new technologies.⁶²

The Committee acknowledges that investment in innovative tools and in human resources is necessary to improve the access to information system and that many federal institutions face challenges in that respect. Therefore, it recommends:

Recommendation 15

That the Government of Canada increase the use of new technology by government institutions to speed up the ability for access to information requests to be fulfilled, including but not limited to artificial intelligence, electronic transcription, and automated translation.

Information and Records Management

[Ms. Francoli](#) said that the level of information and data available now, the way it is stored, and the way we fail to keep up information and data holdings as technologies

60 ETHI, *Written response to the Committee*, TBS, May 2023.

61 Public Service Alliance of Canada, [Brief](#), 21 August 2021, p. 4 [*PSAC Brief*]. This document was submitted to TBS as part of its access to information review. PSAC also noted the problem of staff turnover. It recommends increasing funding to ATI programming, increasing the staffing levels of those who work with ATI requests, and creating an independent bureau responsible for fulfilling all ATI requests.

62 [BC FIPA Brief](#), pp. 7–8.



change, as software changes, make it really difficult to have good information management.

Ms. Maynard said that often in response to an access request, the requestor receives duplicated items. She said that one source of this problem is poor email management. If five individuals exchange emails, only one person, the author of the original email, should retain the chain of emails. An access request could then be responded to with the records of a single individual. She made similar comments during her second appearance. She also noted, for example, that better email management and the elimination of identical pages would reduce the workload of analysts processing access requests.

Ms. Maynard said that there should be clearer rules concerning who should keep emails and what documents are considered transitory. This does not mean deleting all the content in email inboxes; it means filing the necessary documents on a shared drive where they can be retrieved, even when the author is absent. She added that this does not mean deleting business value documents, but rather getting rid of transitory messages and personal emails.

As for the risk that improved email hygiene will result in important emails being deleted, she said that what can be deleted are personal emails or emails that relate a discussion reflected in a memo that clearly states “this is what we discussed, here are the factors that were considered, and here is the decision that was made.” She likened such a process to the minutes of an unrecorded meeting.⁶³

Mr. Drapeau made comments similar to those of Ms. Maynard. He said that a public servant writing an email is certainly not thinking about the fact that the email could be part of a chain that ends up being disclosed under the ATIA. If that were the case, they would be more disciplined in their communications, and there might be more substance in the records. To improve records management, he recommended holding annual seminars in all departments to remind officials that one of their legal responsibilities is to comply with the ATIA.

Mr. Conacher, for his part, recommended the inclusion of a requirement in the ATIA to have the OIC deliver a set amount of regular training to all politicians, staff, appointees, and government employees concerning the rules of the ATIA and best-practice information and records management systems.⁶⁴

63 OIC, *9 Tips for ATIP-Friendly Email Management from the Office of the Information Commissioner*.

64 DW Brief, p. 4.

However, Mr. Lapointe indicated that building a better system to improve record-keeping can be done now. Then the government will have to “catch up on what has been filed across...300 hundred different [government] institutions.”

The Committee agrees that better information management would likely help government institutions respond to access requests more efficiently. It therefore recommends:

Recommendation 16

That the Government of Canada work to strengthen its information management through improved storage and organization, retention requirements, and digital innovation.

Duty to Document

Ms. Maynard recommended including a duty to document in the ATIA. She said that only British Columbia has a legislative duty to document.⁶⁵ She acknowledged that the hybrid model of work is making it increasingly difficult to know what is being discussed and what is being decided.⁶⁶ She said that after a meeting, attendees need to ensure that minutes are taken and saved properly so they are easy to retrieve and find. She believes that if nobody is taking the time to properly document what is happening and the decisions that are being made, and putting that in a place where a future analyst will find it, the right to access does not exist because there are no records.⁶⁷ Essentially, “access exists only if the record exists.”⁶⁸

According to Ms. Maynard, leaders need to encourage the creation of documents so that Canadians are entitled to get that information when they request it. She also advises organizations to be clearer on taking minutes, making decisions, and ensuring proper documentation. Public servants need to know that this is part of their job.

Mr. Lapointe said that he considers the use of personal email or encrypted apps for government communication and oral briefings instead of written reports to be abuses of

65 Information Management Act, SBC 2015, c 27, ss. 6 and 19.

66 ETHI, *Evidence*, Maynard (Information Commissioner of Canada).

67 TBS, Policy on Service and Digital, s. 4.3.2.10. Under the policy, deputy heads are responsible for recordkeeping, or “ensuring that decisions and decision-making processes are documented.” However, this is not a legal requirement.

68 ETHI, *Evidence*, Maynard.



the letter and the spirit of the ATIA. [Mr. Cutler](#) also expressed concerns about the use of text messaging in the government.

According to [Mr. Tromp](#), “oral government,” which is the sharing of information orally rather than in writing, is the single greatest threat to the access to information regime. He believes that Canada needs a comprehensive law to create and preserve records, with penalties for non-compliance. Mr. Rubin also expressed support for including a duty to document in the ATIA.⁶⁹

[Mr. Conacher](#) recommended amending the ATIA to require every institution to create detailed records of decisions and actions. The CLD made a similar recommendation.⁷⁰ According to [Mr. Conacher](#), if there is a duty to document discussions in the ATIA, it would be clearly a violation of the ATIA if a decision is made and there is no documentation of the discussions that led to that decision.

[Mr. Larsen](#) recommended that Canada adopt New Zealand’s approach. New Zealand’s *Public Records Act of 2005* includes a requirement for the documentation of government work, which makes it mandatory for people who are working for government in that country to create and maintain adequate records of their activities. He said that not only is a legislative requirement needed, but so is a standard, so that there is not an ad hoc approach that deals with each new emerging kind of technology. Modernizing the systems used for information management is also a vital component of the process.⁷¹

[Mr. Wernick](#) stated that “the concept of duty to document is one of those things that sound good if you say them fast enough, but would not work in practice. It could have harmful and unintended consequences.” Instead of including a duty to document in the ATIA, Mr. Wernick proposed limiting the use of certain modes of communication.⁷² [He](#) recommends giving the Chief Information Officer of Canada the power to sign off on the choice of software and devices used for government business and to impose sanctions for communicating government business on unapproved software and devices.

69 [Rubin Brief](#), pp. 1–2. Mr. Rubin recommends fines of up to \$500,000 or sentences of up to five years for officials using creative avoidance tactics as a way to circumvent disclosure requirements.

70 [CLD Brief](#), p. 5.

71 See also: [BC FIPA Brief](#), pp. 11–12.

72 Michael Wernick, document submitted to the ETHI Committee, 21 November 2022. According to Mr. Wernick, a duty to document “would waste a lot of valuable and expensive time and effort creating records of dubious value that would only further clog up the problem of records management and retrieval.”

The Committee agrees with the Information Commissioner and other witnesses that access to information can only exist if proper records exist. Therefore, it recommends:

Recommendation 17

That the Government of Canada amend the *Access to Information Act* to include a duty to document with appropriate penalties for non-compliance.

Recommendation 18

That the Government create a framework to ensure that methods of avoiding access to information requirements be stopped, that requirements be clearly laid out in the terms of employment of employees of government institutions, that incidents of avoidance be reported in a report to the Information Commissioner of Canada, and that the report be tabled in Parliament.

Recommendation 19

That the Government of Canada prohibit the use of personal emails or encrypted applications for government communications.

Consultation Between Federal Institutions

Section 9(1)(b) of the ATIA allows for an extension of the time limit for responding to an access request for a reasonable period of time, having regard to the circumstances, if “consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit.”

Ms. Maynard said that consultations with other federal institutions are problematic. She gave the example of a consultation by the OIC on a two-page document for which the consulted federal institution asked the OIC for an additional 90 days to respond.

Ms. Maynard said that while the need to consult may be invoked to request more time to respond to an access request, these consultations are not mandatory. Many organizations believe that they are, or are treating it like they are, because they do not want to release information from another government institution without consulting it first.

Ms. Maynard acknowledged that in some cases, it is likely that institutions use these consultations as an excuse to delay responding to requests. She recommended that the



ATIA set a firm deadline of 30 days for conducting such consultations. [She](#) said there should be clearly set reasons as to why consultations should or should not be done.⁷³

One issue with consultations noted by [Dr. Giles](#) is that consultations with CSIS is often impeded by other departments not having ready access to secret and top secret systems.

The Committee agrees with the information commissioner's recommendation. It recommends:

Recommendation 20

That the Government of Canada amend the *Access to Information Act* to identify the circumstances in which consultation between government institutions must occur and impose a time limit on those consultations.

Proactive Information Sharing

Distinction Between Transparency, Open Government and Access to Information

Several witnesses acknowledged that Canadians can access much more government information today than they could before. For example, [Mr. Wernick](#) said that Canadian citizens can already access a wide range of information on all of the outputs of government and “see the results of the decisions, the announcements, the procurement contracts, the awarded grants and contributions, the audits, the evaluations, the research studies and so on.” The [President of the Treasury Board](#) said that the Open Government portal contains 37,000 records and two million proactive disclosure records.

[Mr. Wernick](#) also pointed out that in a ranking of the most transparent countries by *U.S. News & World Report*, Canada was second out of 85 countries.⁷⁴ Open Data Watch ranked Canada 15th out of 187 countries.⁷⁵ The rule of law index from the World Justice Project ranks Canada 12th out of 140 on open government.⁷⁶

73 [2021 OIC Recommendations](#), Recommendation 1: “The Act should set out a maximum length of time for consultations needed to respond to access requests.

74 U.S. News & World Report, [Most Transparent Countries](#).

75 Open Data Watch, [Open Data Inventory \(ODIN\)](#), accessed 30 May 2023.

76 World Justice Project, *WJP Rule of Law Index*, Canada, [Open Government](#), accessed 30 May 2023.

However, Canada does not rank as high when it comes to the right to information. Canada ranks 51st out of 135 countries in the Global Right to Information Rating (GRIR).⁷⁷ This index assesses the formal legal framework for the right to information around the world.

Ms. Maynard acknowledged that while some legislation is well drafted, it must also be properly applied, and access properly processed.

Along the same lines, the President of the Treasury Board said that while it is interesting, the GRIR is not a useful scale because it “is based on legal frameworks rather than operational realities.” She does not think that “anyone believes that Russia or Afghanistan are more transparent than Canada because they ranked higher.” She also said that this ranking does not consider proactive publishing, noting for example that Canada ranks 7th out of 86 countries in the Open Data Barometer, a global ranking on open data.⁷⁸

The gap between Canada’s ranking on transparency and its ranking on the right to know illustrates one important fact: transparency and access to information are two related but different concepts.

Ms. Francoli said that access to information is a cornerstone of transparency, but transparency itself is more extensive. She also said that access to information is part of open government, which is a government founded on the ideas of accountability, access to information and civic engagement. In her view, “access to information itself is the big principle of open government that we need to improve here in Canada.”

Ms. Francoli said that Canada has submitted five action plans to the Open Government Partnership, including a range of commitments to improve openness.⁷⁹ These action plans have helped to release information and data via the creation of mechanisms like the open science and data platform.⁸⁰ However, she said that while access to information was included in some of Treasury Board’s early open government work, it appears to have fallen out of place in the open government action plans.

77 Centre for Law and Democracy, [Global Right to Information Rating](#), accessed 30 May 2023; ETHI, *Evidence, Lapointe* (GMG); [Conacher](#) (DW), [Tromp](#).

78 World Wide Web Foundation, Open Data Barometer, [Global rankings](#), accessed 8 May 2023.

79 Government of Canada, [The Open Government Partnership](#).

80 Government of Canada, [Open Science and Data Platform](#).



[Ms. Francoli](#) also drew a distinction between open data and “open by default.” In her view, there has been more movement in Canada on open data than on open by default. In order to be more open by default, it means thinking about the classification of things in advance and proactively releasing things so that withholding information is a rarity and limited to areas such as national security.

[Ms. Francoli](#) also said that Canada has no clear or very coordinated transparency strategy. She recommends that the government adopt such a strategy, which would bring these sorts of dispersed initiatives together and include areas such as access to information, information management systems, storage and retrieval, and the need for adequate resources.⁸¹ She added that Canada is nevertheless engaged in a lot of activities to improve the quantity and quality of information and data disclosure, and to improve transparency and accountability in government. If done well, these activities should help to ease pressure on the ATIP system.

[Mr. Larsen](#) made comments similar to those of Ms. Francoli’s, saying that “open data is one thing. The robust access to information regime with legislated proactive disclosure is something different.” He said that he has been really heartened by some of the government initiatives over the last 10 years involving the more active and proactive release of datasets. However, he maintained that in terms of transparency and access to information, Canada is no longer leading in the way that it could or should be.

Proactive Disclosure

Part 2 of the ATIA, which was added by Bill C-58 in 2019, provides for the proactive publication of certain information. However, [Ms. Maynard](#) said that a lot of the information now requiring proactive publication under this part was already covered by government policies before. While both [Mr. Lapointe](#) and [Mr. Larsen](#) said that proactive disclosure is important, [Mr. Lapointe](#) said that Bill C-58 took only baby steps. Bill C-58 was criticized by several witnesses for not really effecting the desired change.⁸²

Given the limitations of Part 2 of the ATIA, [Ms. Maynard](#) said that she would rather see institutions proactively disclose information that is requested by Canadians and that is not listed in Part 2 of the ATIA. She suggested that a government institution that gets

81 ETHI, *Evidence*, [Francoli](#).

82 ETHI, *Evidence*, [Cutler](#) (CFA), [Conacher](#) (DW), [Rubin](#).

three requests on the same thing should proactively publish the documents.⁸³ [She](#) gave the example of Health Canada, which began proactively publishing laboratory test results because people were asking for them. [She](#) also gave the example of briefing notes, which are often the subject of access requests, saying that when she meets with a minister or deputy minister, she asks if it is possible to proactively post that information on the department's website.⁸⁴

[Ms. Maynard](#) proposed that federal institutions look at the access requests they receive each year and determine the 10 most requested kinds of information and proactively publish them. [She](#) believes that access requests "should always be a last resort and the information should already be public" because "[w]e are talking about information that belongs to Canadians." [She](#) added that there is a need to invest in tools to provide the information that Canadians request, not the information that the government wants to disclose. She also said that it should be possible to determine whether proactive disclosure obligations are being met.

The BC FIPA also recommended proactively disclosing types of records that are frequently requested and released and to make all proactive disclosure requirements subject to oversight by the Information Commissioner.⁸⁵

[Mr. Conacher](#) recommended that there be routine disclosure not only of communications, meetings, and decision-making processes but also of all records online that can be disclosed and that are in the public interest to disclose. This disclosure could be done on a searchable online database, which would reduce the number of access requests. The Public Service Alliance of Canada made a similar recommendation.⁸⁶

[Mr. Lapointe](#) said that a range of information should be proactively disclosed, including internally conducted departmental audits 30 days after their completion. He said this would allow for a real-time assessment of whether programs are actually value for money.

However, [Mr. Beeby](#) argued that the proactive release of more documents does not necessarily result in fewer access requests. According to him, governments may proactively release innocuous documents, but documents tied to decision-making will

83 TBS, [Directive on Access to Information Requests](#), section 4.1.44. This section encourages regularly reviewing the nature of requests received under Part 1 of the Act and assessing the feasibility of making frequently requested types of information available by other means.

84 ETHI, *Evidence*, [Maynard](#).

85 [BC FIPA Brief](#), p. 26.

86 [PSAC Brief](#), p. 3.



never be proactively released unless they have been scrubbed clean. [He](#) said that “[a]ll information is not created equal.” Useful, core information is needed. [Mr. Jolly](#) agreed with Mr. Beeby.

Furthermore, [Mr. Beeby](#) and [Mr. Wernick](#) noted that, despite the proactive disclosure of a lot of documents, access requests are not decreasing because this is not the type of information people want.⁸⁷ [Mr. Wernick](#) pointed out that people want information about the deliberative processes of government before decisions are made.

[Mr. Wernick](#) recommended that the ATIA include an obligation for routine, regular, and proactive disclosure of a much longer list of categories of information. [He](#) raised the possibility of adding such a list to the ATIA through regulation. However, [he](#) pointed out that national security must be considered when drafting proactive disclosure provisions.

[Mr. Wernick](#) also recommended that departments and agencies subject to the ATIA be required to post every request that has been filed, every request for which documents have been released, and the time between filing the request and releasing the documents so as to create a feedback loop.

[Ms. Francoli](#) highlighted the importance of putting emphasis on proactive disclosure and open by default where appropriate. She gave the example of the National Security Transparency Advisory Group, which recommended that the national security community develop a statement committing to transparency, including what it means to the different security institutions and how it will be measured.⁸⁸

[Mr. Larsen](#) recommended the inclusion of a “public interest override” in the ATIA. This override would require information that is deemed to be in the public interest to be released and in some instances proactively released. He believes this override should be expanded to cover all other grounds on which information can be withheld.⁸⁹ Currently, the ATIA contains only a limited public interest override.⁹⁰ The CLD and the Public

87 Mr. Wernick noted the proactive disclosure of the following documents: contracts, grants, contributions, travel, hospitality, research studies, audits and evaluations.

88 Government of Canada, [The National Security Transparency Advisory Group \(NS-TAG\)](#).

89 [BC FIPA Brief](#), pp. 15–16. The BC FIPA gave the example of Newfoundland and Labrador’s [Access to Information and Protection of Privacy Act, 2015](#), which contains a general public interest override that applies to all exemptions.

90 [Access to Information Act](#), section 20(6). Under this section, the head of a government institution may disclose all or part of a record that contains third party information if the disclosure would be in the public interest as it relates to public health, public safety or protection of the environment.

Service Alliance of Canada made a similar recommendation.⁹¹ [Ms. Maynard](#) also recommended that the concept of “public interest” be added to the ATIA. She believes that if the public interest were mentioned in the introduction to the ATIA, it would mean that it overrides any other factor in terms of discretionary decisions.

[Mr. Conte](#) pointed out that, in the U.S., federal access to information legislation contains a provision that allows requests on urgent public policy matters to be expedited. [He](#) said that, in the U.S., if an urgent matter of government activity arises, an access request relating to that matter is given priority. [Ms. Maynard](#) confirmed that, in Canada, it is first come, first serve.

Matt Malone, an assistant professor at Thompson River University School of Law, criticized the inability to challenge the government’s failure to respond to an informal access request for records that have already been requested and for which summaries are available online. He recommended that records relating to completed access requests be retained for more than two years and proactively made public.⁹²

As to the possibility of disclosing information in the public interest, such as proceedings of Cabinet and its committees, [Mr. Wernick](#) said it raises the question as to “who decides what’s in the public interest.” [He](#) believes the Federal Court should decide, while [Mr. Tromp](#) said it should be the Information Commissioner and the courts.

[Ms. Maynard](#) also noted that there is an impediment to proactive disclosure because documents must be published in both languages. Institutions often say that they do not have the resources to translate these documents. However, [Ms. Maynard](#) said that there are not huge numbers of complaints concerning the language in which documents are provided in response to access requests.

[Ms. Francoli](#) said that obligations under the *Official Languages Act* (OLA) make Canada’s situation in terms of access to information and open government different from that of other countries. [She](#) said that the OLA is often held up as an impediment to openness in government and to further transparency.

91 [PSAC Brief](#), pp. 1–3; [CLD Brief](#), p. 10. The CLD noted that the Supreme Court of Canada held that the public interest must be taken into account when deciding whether or not to apply discretionary exceptions in *Ontario (Public Safety and Security) v. Criminal Lawyers’ Association*, 2010 SCC 23.

92 Malone [Brief](#), p. 2; [PSAC Brief](#), p. 3. PSAC recommended ceasing the purging of release packages after two years and instead keeping them on the Open Government Portal for 20 years. Since July 2022, summaries of completed access requests remain publicly available online after two years. See: TBS, *Directive on Access to Information Requests*, [Appendix D: Mandatory Procedures for Publishing Summaries of Completed Access to Information Requests](#), 13 July 2022.



The Committee recognizes that the government shares vast quantities of information with Canadians. However, as some witnesses have indicated, available data does not necessarily correspond with the information that is being sought by Canadians. That is why they continue to submit access requests. The Committee believes that proactive disclosure should be tailored to what Canadians want access to. If it is in the public interest, information should be accessible without the need for an access request. Consequently, the Committee recommends:

Recommendation 21

That the Government of Canada increase proactively published information under Part 2 of the *Access to information Act*.

Recommendation 22

That the Government of Canada amend the *Access to Information Act* to require government institutions subject to the Act to proactively disclose information frequently requested in access to information requests.

Recommendation 23

That the Government of Canada publish all access to information requests not related to personal information in a searchable database, available to the public at no cost, and that those requests be anonymized before publication.

Recommendation 24

That the Government of Canada require government institutions that face repeated requests on a specific subject to inform the Information Commissioner of such repeated requests and that a report be sent to Parliament.

Recommendation 25

That the Government of Canada amend the *Access to Information Act* to ensure that previously submitted access requests are subject to the *Access to Information Act*.

Recommendation 26

That the Government of Canada require each government institution to maintain a public record of its access to information requests and the time required to respond to each request.

Recommendation 27

That the Government of Canada amend the *Access to Information Act* to clarify that the access to information system is based on a culture of openness and transparency and to include in the Act a public interest override, which would apply to all exemptions to make public interest documents open by default.

Recommendation 28

That the Government of Canada create an “Open by Default” approach to access to information and acknowledge that the status quo is not acceptable.

Scope of the *Access to Information Act*

Application of the *Access to Information Act* to Cabinet Confidences

Section 69(1) of the ATIA provides that Part 1 of the Act, which provides the right to access records under the control of a government institution, does not apply to Cabinet confidences. This is a blanket exclusion.

Ms. Maynard argued that Cabinet confidences as well as the Prime Minister’s Office and ministers’ offices should be subject to the ATIA.⁹³ She said that, because Cabinet documents are excluded from the ATIA and not under her jurisdiction, all the OIC receives is confirmation by the institution that certain pages requested by a complainant were excluded. She believes that these documents should be submitted to the OIC for independent review to confirm that they are indeed Cabinet confidences.⁹⁴ She raised the following question: if she does not have access to these documents that nobody else can review, how can she confirm to Canadians that these documents are actually Cabinet confidences?

Ms. Maynard pointed out that she already has the ability to conduct an independent review with respect to documents covered by solicitor-client privilege. She said that her office has access to documents for other exemptions under the ATIA and can compare

93 [2021 OIC Recommendations](#), Recommendation 7: “Cabinet confidences should be subject to the Act.”

94 *Ibid.*, Recommendation 8: “The Commissioner should have access to records containing Cabinet confidences that the head of an institution has withheld from disclosure;” Recommendation 13: “The Act should contain an independent review mechanism to ensure that institutions comply with the requirements with respect to the publication of information set out in Part II of the Act.”



the redaction with the original. [She](#) noted that this includes secret and top secret documents.

[Ms. Maynard](#) said that her role in reviewing Cabinet confidences would be to determine whether the section 69 exclusion was properly applied, not to disclose documents to the public. [She](#) mentioned that Canada is one of the few Commonwealth countries that does not have an independent review of Cabinet confidences.

The [President of the Treasury Board](#), for her part, said that it is important that Cabinet be able to express themselves freely during meetings and therefore protect Cabinet confidences. She also pointed out that Part 2 of the ATIA now provides for proactive disclosure of certain Cabinet documents. [Mr. Burt](#) added that “there needs to be some flexibility to have the discussions required for the running of the government.”

[Ms. Francoli](#) also noted that there are a lot of reasons for the ATIA to apply to Cabinet confidences, even though decision-making in Cabinet is not easy and there needs to be room for discussion and deliberation. Nonetheless, [she](#) said that the Information Commissioner should be able to look at Cabinet confidences.

[Mr. Beeby](#) agreed that some government deliberations need to be protected for open and honest discussion but, like Ms. Maynard and Ms. Francoli, criticized the absence of an oversight mechanism for Cabinet documents. [He](#) said that the Information Commissioner should have the power to review decisions to withhold Cabinet documents.

[Mr. Tromp](#) also recommended that the Information Commissioner be able to review Cabinet confidences. He also recommended that the blanket exclusion of Cabinet confidences from the ATIA be eliminated and replaced by an exemption.⁹⁵ [He](#) said that Canada and South Africa are the only countries to have such an exclusion in their legislation. He gave the example of Ghana, where the right to information act, which passed in 2019, has a harm test for Cabinet documents. They can only be withheld if they would “undermine the deliberative process.”

[Mr. Lapointe](#) also agreed that it is entirely reasonable to maintain the confidentiality of Cabinet documents in the course of deliberations leading up to a decision. However, he argued for an earlier disclosure of information after the decision has been made. [He](#) said that the blackout period for Cabinet confidences should be reduced to 10 or 15 years, citing the example of British Columbia, where Cabinet confidences remain confidential for 15 years. [Mr. Wernick](#) stated that a period of 10 to 12 years would be adequate.

95 See also: [BC FIPA Brief](#), p. 24. BC FIPA recommends that section 69 of the *Access to Information Act* be removed and replaced with a limited exemption.

[Mr. Beeby](#) recommended a 10-year period. [Mr. Tromp](#) and the BC FIPA also recommended a shorter period.⁹⁶

[Mr. Beeby](#) said that the data and background information on which Cabinet based its decision should be proactively released soon after the decision. [He](#) believes it is important to know what went into the deliberations that led decisions in order to know whether there has been undue influence on Cabinet by corporations, developers, or other stakeholders. [He](#) recommended that the deliberations be protected, but that the information provided to inform those deliberations be made public.

However, [Mr. Wernick](#) argued that it is not in the public interest to make it harder for Cabinet to deliberate and make decisions. [He](#) said that, if deliberative processes before a Cabinet decision do not have a degree of confidentiality, Cabinet's ability to make decisions will be impaired.

Application of the *Access to Information Act* to the Prime Minister's Office and Ministers' Offices

In the OIC's brief on the review of the government's access to information regime, Ms. Maynard recommended that Part 1 of the ATIA be extended to the Prime Minister's Office and to ministers' offices.⁹⁷ Mr. Rubin, the CLD and the BC FIPA made the same recommendation.⁹⁸ According to [the Commissioner](#), "having a transparent government means that everybody who's elected and everybody who makes decisions on behalf of the government, including ministers' offices, should be subjected to the [ATIA]."

[Mr. Conacher](#) also recommended that the ATIA apply to ministers' offices. [Mr. Wernick](#) recommended that the ATIA be extended to ministers' staff, and [Mr. Beeby](#) recommended that it be extended to ministers' aides.⁹⁹

[Mr. Wernick](#) argued that the access to information regime should apply to all taxpayer-funded staff and ministers' offices, including the Prime Minister's Office, to create a level playing field between political staff and public servants. [He](#) explained that Cabinet and its committees, which include the Treasury Board, produce agendas, papers, and deliberations related to Cabinet processes. Political staff in ministers' offices take part in

96 [BC FIPA Brief](#), p. 25.

97 [2021 OIC Recommendations](#), Recommendation 3: "The Offices of the Prime Minister and Ministers should be subject to Part I of the Act."

98 [Rubin Brief](#), p. 1; [CLD Brief](#), pp. 4–5; [BC FIPA Brief](#), p. 14.

99 ETHI, *Evidence*, [Beeby](#).



the whole upstream process of sorting out options and advice. They meet with each other and with public servants. Right now, the access to information regime only brings out the part that is public servant to public servant.

Application of the *Access to Information Act* to Other Institutions and Individuals

Ms. Maynard recommended that any organization that functions on behalf of the government and that is using public funds to provide services to Canadians on Canada's behalf should be subject to the ATIA.¹⁰⁰ That would make both Crown corporations and private entities that are sometimes contracted to work for the government subject to the ATIA.¹⁰¹

Mr. Conacher agreed. He recommended that the ATIA be changed to cover all government institutions, including publicly funded institutions and public-purpose institutions.

Mr. Rubin agreed that more entities should be subject to the ATIA, particularly in the private sector.¹⁰² He said that it is hard to keep track of all the subsidiaries of some Crown corporations and to know whether they are subject to the ATIA or not.

Mr. Tromp also recommended that the ATIA should apply to public entities that perform public functions and spend taxpayers' dollars, such as the Canadian Blood Services, the Nuclear Waste Management Organization and NAV CANADA. The CLD recommended that the ATIA's scope be expanded to all information held by all authorities that engage the responsibility of the state.¹⁰³ The BC FIPA recommended that the ATIA's scope be expanded to all organizations delivering public services.¹⁰⁴

Mr. Wernick recommended that the ATIA's scope be expanded to become a transparency act. The Information Commissioner would be restyled as a transparency commissioner

100 ETHI, *Evidence*, Maynard.

101 2021 OIC Recommendations, Recommendation 2: "Agencies to whom the government has outsourced the delivery of programs, that provide government services or that carry out activities of a governmental nature should be subject to the Act."

102 Rubin Brief, pp. 1 and 5.

103 CLD Brief, p. 4.

104 BC FIPA Brief, p. 13.

and given a broad mandate to examine transparency practices across the federal public sector, including Crown corporations, Parliament, and the courts.

Mr. Conacher also recommended that the ATIA be changed to allow anyone, even if they don't live in Canada, to file an access request.¹⁰⁵

Lastly, Ms. Maynard acknowledged that expanding the scope of the ATIA could increase the number of access requests and the number of people who have to respond to them. However, she believes that Canadians should be given exactly what they are looking for and that currently there is a lot of information that they are not entitled to get under the ATIA, including information from ministers' offices, third-party institutions, providers, and contractors. Since this is a lot of information, she feels that the scope of the Act needs to be increased.

The Committee shares the view of many witnesses that the scope of the ATIA should be increased, particularly when it comes to the application of Part 1 to the Prime Minister's Office and ministers' offices. The Committee also recognizes that it is important for Cabinet to be able to discuss freely when making decisions. However, it is of the view that the blanket exclusion for cabinet confidences in the ATIA should be eliminated and replaced with an exemption. It is also of the view that the Information Commissioner should be able to conduct an independent review of Cabinet confidences. Consequently, the Committee recommends:

Recommendation 29

That the Government of Canada order and conduct an impartial review of Cabinet confidences as it relates to the access to information and privacy system.

Recommendation 30

That the Government of Canada extend the application of Part 1 of the *Access to Information Act* to Cabinet confidences, except where an exemption applies, and give the Information Commissioner the power to review such records to determine whether the exemption has been properly applied.

105 *Ibid.*; The BC FIPA made the same recommendation.



Recommendation 31

That the Government of Canada extend the application of Part 1 of the *Access to Information Act* to the Prime Minister’s Office and Ministers’ offices.

Recommendation 32

That the Government of Canada extend the application of the *Access to Information Act* to any organization operating on behalf of the government and using public funds to provide services to Canadians.

Limitations on the Use of Exemptions and Exclusions Under the *Access to Information Act*

The ATIA contains exemptions in sections 13 to 26 allowing the head of a government institution to refuse to disclose certain information. The Act also contains exclusions in sections 68 and 69, the latter on Cabinet confidences discussed in the previous section of this report.

Ms. Maynard said that claiming the exemptions provided in the ATIA should always be the exception. For example, as part of the review of the government’s access to information regime, she recommended limiting the application with respect to personal information in section 19 of the ATIA and imposing an obligation to consult the Information Commissioner if the addition of new statutory prohibitions to Schedule II of the ATIA is contemplated under section 24 of the ATIA.¹⁰⁶

Ms. Luelo said that one of the challenges in applying the ATIA’s exceptions and exclusions is that some departments are interpreting them themselves, despite TBS guidance on how it wishes to see these rules applied.¹⁰⁷

Mr. Conacher recommended that all exceptions to disclosure be clearly and narrowly defined and limited to areas in which secrecy is required in the public interest. He also recommended that exclusions be turned into exceptions and that each exception be

106 [2021 OIC Recommendations](#), Recommendation 4: “The Act should allow heads of government institutions to provide access to personal information where disclosure does not constitute an unwarranted invasion of privacy;” Recommendation 5: “The Act should allow heads of government institutions to provide a deceased’s person’s spouse or close relatives access to their personal information on compassionate grounds;” Recommendation 6: “The Act should permit the disclosure of a person’s business or professional contact information;” Recommendation 11: “The Information Commissioner should be consulted during the process of adding new statutory prohibitions to Schedule II of the Act.”

107 TBS, [Directive on Access to Information Requests](#).

more narrowly defined.¹⁰⁸ He argued that the exemptions in the ATIA are too broad. The CLD also recommended that the scope of the exceptions be limited.¹⁰⁹

[Mr. Larsen](#) believes that a harms test is needed for the operation of exceptions rather than having categorical exceptions that deal with certain kinds of information. This test should also be applied to Cabinet records. That way, the public will have confidence that when information is withheld from the public, it is because releasing it would cause some kind of demonstrable harm, not simply because the government is exercising its power of secrecy.

[Mr. Rubin](#) said that because of “excessive rules from central agencies like Treasury Board, the Prime Minister’s Office and the PCO,” the fact that corporations can object to the release of information, and the fact that law enforcement agencies can say it is a matter of national security, the average person doesn’t stand a chance of getting the information they want. For example, [he](#) said that it is not uncommon for an access request to result in blank pages.

[Mr. Beeby](#) added that when documents finally do land on a reporter’s desk “they’ve been picked clean of meaningful content.” He argued that the ATIA gives officials “a rich menu of excuses to keep things buried.” [Mr. Barnes](#) said that a lot of information is redacted based on a very subjective view and that there are no clear guidelines within the system about whether a document is sensitive or not. In his view, “something that’s truly sensitive should be immediately apparent to any reasonable person.”

[Mr. Lapointe](#) brought up Germany’s transparency law, which provides for automatic disclosure unless the party that must disclose the information argues against its release. Mr. Lapointe said that this approach puts the onus on where it was initially designed to be.

[M. Wernick](#) agreed with Mr. Lapointe that the onus could be flipped to disclose information unless not doing so was justified. He noted, however, that this would require clear definitions of “national security” and “cabinet confidences.” He also said that it was important to keep in mind that the ATIA is used by all sorts of people, such as brokers and resellers, lawyers, lobbyists and special interests, businesses, and foreign governments. Every access request must therefore be carefully screened.

108 For example, Cabinet documents are excluded from the application of Part 1 of the *Access to Information Act* under section 69 of the Act. Exemptions are listed in sections 13 to 26 of the Act; ETHI, *Evidence*, [Duff Conacher](#) (DW)

109 [CLD Brief](#), p. 9.



[Mr. Beeby](#) pointed out that the ATIA already has a reverse onus in section 2(2)(a), which sets out the specific purposes of Part 1: to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be made available to the public, subject to limited and specific exceptions. As to the use of the ATIA by brokers and dealers, [he](#) said that they're selling a service to Canadians and therefore have every right to request information, just as journalists or any other person does.

With respect to the process for redacting records released as part of an access request, [Mr. Wernick](#) said that the first step is to improve clarity and definitions in the ATIA by adopting clear and precise language. Second, the Information Commissioner should be given the role of flagging what they see as inappropriate redactions. Lastly, requesters should be able to go to the Federal Court, which he believes should have final say on any issue to do with Cabinet confidences.

[Mr. Lapointe](#) agreed with Mr. Wernick that the Commissioner should be empowered to have greater oversight with respect to redacted documents. If necessary, he suggested that a small agency, a small board, or a small adjunct to the OIC could help arbitrate redactions so that the public interest is served better.

National Security

As indicated in the section of this report on access to historical documents, section 15 of the ATIA allows the head of a government institution to refuse to disclose certain information relating to international affairs or the defence of Canada.¹¹⁰

With respect to the possibility that a contract may not be disclosed in the name of national security, [Ms. Maynard](#) said it depends on how the contract was drafted. Each case is different. If a contract does raise national security issues, it is processed differently. However, the aim must really be to avoid a danger or a breach of trust. [She](#) added that as soon as people see a document classified as confidential, secret, or top secret, they tend to think that the information should not be disclosed. However, the test requires a determination of whether there will be consequences should the information be disclosed.

Like Ms. Maynard, [Mr. Drapeau](#) said that the national security exemption can be invoked in a wide range of circumstances. Depending on the nature, purpose, or requirements of the contract, it may be in the government's interest not to disclose certain information.

110 [Access to Information Act](#), section 15.

Each case is unique. [He](#) added that, when cases involve national security, he expects all government employees, including those who work in access to information, to take a very careful and conservative approach, disclosing only what is possible, practical, relevant, and legal to disclose. As indicated in Chapter 3, Dr. Giles explained that there are important reasons to keep certain information related to national security protected from disclosure. She outlined the importance of balancing the right to access information with the need to protection sensitive information.

Third Party Information

Section 20 of the ATIA provides that the head of a government institution shall, subject to all other provisions of this section, refuse to disclose any record containing various types of information including but not limited to trade secrets of a third party or financial, commercial, scientific, or technical information that is confidential.

[Ms. Maynard](#) said that her office encourages people who prepare government contracts to be as transparent as possible and to let the contractor know that the information is going to be accessible to Canadians.

In the OIC's brief on the review of the government's access to information regime, Ms. Maynard recommended repealing the section requiring the Commissioner to give written notice to a third party if the Commissioner intends to order the head of a government institution to disclose all or part of a record that may contain information described in section 20.¹¹¹

[Mr. Drapeau](#) said that, if a request involves information provided to a department by a third party, the department must consult with the third party regarding potential disclosure. The third party may require that certain information be treated as a trade or business secret. If this information is released despite the representations made by the third party, the third party can take the case to court. [He](#) noted that this can result in delays in access to information.

[Mr. Conacher](#) argued that contracts and commercial information are far too protected. In his view, "All that needs to be protected is proprietary information that is very much the basis of a corporation's operations." He added that anything more than that, such as protecting contractees and subcontractees, is excessive.¹¹² Mr. Malone recommended

111 [2021 OIC Recommendations](#), Recommendation 18: "The notice to third parties set out in section 36.3 of the Act should be repealed."

112 [PSAC Brief](#), p. 1. This document was submitted to TBS as part of its access to information review. PSAC recommends restricting the use of section 20 of the *Access to Information Act*.



that the ATIA be amended to affirm that amounts of public funds expended are never confidential information.¹¹³

Operations of Government

Section 21 of the ATIA provides that the head of a government institution may refuse to disclose records that are less than 20 years old prior to the request and that contain various types of information, including advice or recommendations developed by or for a government institution or a minister of the Crown (section 21(1)(a)).

[Ms. Maynard](#) said that the exemption in section 21(1)(a) is overused. The OIC often orders a government institution to disclose factual or statistical information that does not contain advice or recommendations. In the OIC's brief on the review of the government's access to information regime, she recommended that the ATIA include a list of information to which the exemption in section 21(1)(a) should not apply.¹¹⁴ She said that this clarification in the equivalent Ontario legislation helps officials.¹¹⁵ [She](#) made similar comments during her second appearance.

[Ms. Maynard](#) said that people should "at least get the basis" even if they don't know what was recommended or what the advice was, so that they can know whether the right facts were used. She also recommended that the 20-year period in section 21 be reduced to 10 years.¹¹⁶

The BC FIPA recommended that section 21 be amended to ensure that it does not prevent the disclosure of factual and background information that does not constitute advice or recommendations. The BC FIPA also recommended reducing the time for which records are exempt from disclosure.¹¹⁷

In the same vein, [Mr. Tromp](#) recommended adding a harms test to section 21 of the ATIA, a 10-year time limit, and a clear statement that background facts and analysis

113 [Malone Brief](#), p. 2.

114 [2021 OIC Recommendations](#), Recommendation 9: "Subsection 21(2) of the Act should be amended to add a list of categories of information not covered by the exemption."

115 [BC FIPA Brief](#), p. 25. The British Columbia, Ontario, Nova Scotia and Newfoundland and Labrador access to information acts contain lists of material to which the exemption for advice and recommendations from public officials does not apply.

116 [2021 OIC Recommendations](#), Recommendation 10: "The 20-year-period provided for in subsection 21(1) of the Act should be reduced to 10 years."

117 [BC FIPA Brief](#), pp. 20–22. See also: [PSAC Brief](#), p. 1.

cannot be withheld as policy advice.¹¹⁸ [Mr. Beeby](#) recommended defining the word “advice” in the ATIA more narrowly to prevent the exemption from being used “as a catch-all for withholding information.”

Solicitor-Client Privilege

Section 23 of the ATIA provides that the head of a government institution may refuse to disclose records containing information that is subject to solicitor-client privilege or the professional secrecy of advocates and notaries or to litigation privilege.

[Ms. Maynard](#) said that not all communications between lawyers are privileged and that each case must be reviewed. [She](#) explained that under the ATIA she has the authority to review records for which solicitor-client privilege is claimed by a government institution when a complaint is filed with the OIC. The OIC determines whether the exemption was properly applied to the documents released to the complainant. She said that the exemption is properly applied 75% of the time.

[Ms. Maynard](#) said that, when a complaint pertains to the application of the exemption in section 23 of the ATIA, she can compare the original and the redaction to confirm whether the redacted information involves a legal opinion, which cannot be disclosed.

Exclusion Relating to the Canadian Broadcasting Corporation

Section 68.1 of the ATIA excludes from the application of Part 1 of the ATIA “any information that is under the control of the Canadian Broadcasting Corporation (CBC) that relates to its journalistic, creative or programming activities.” Part 1 applies to information that relates to its general administration.

According to Patrick McCurdy, Assistant Professor in the Department of Communication at the University of Ottawa, this exclusion presents challenges and obstacles for researchers interested in CBC’s history. While recognizing the importance of safeguarding the CBC’s independence and freedom of expression, he recommended

118 See also: [CLD Brief](#), pp. 9–10. The CLD recommends adding a harm test for several exemptions in the *Access to Information Act*; and [Rubin Brief](#), p. 2. Mr. Rubin recommends limiting the exceptions and requiring that no documents may be withheld unless substantial injury can be shown.



modifying section 68.1 to include a sunset clause, limiting the period during which the CBC can withhold certain information.¹¹⁹

The Committee is of the view that as indicated in the purpose of the ATIA necessary exceptions to disclosure should be limited and specific. The use of an exemption should be the exception not the norm. Consequently, it recommends:

Recommendation 33

That the Government of Canada conduct a review of the exemptions and exclusions to access to information contained in the *Access to Information Act*, including but not limited to commercially sensitive information, personal information, political staff, and Cabinet confidences.

Recommendation 34

That the Government of Canada amend section 21 of the *Access to Information Act* to include a list of information to which the exemption relating to operations of government does not apply and to reduce the 20-year-period to 10 years.

Recommendation 35

That the Government of Canada limit the application of the exemption relating to personal information to section 19 of the *Access to Information Act* and impose an obligation to consult the Information Commissioner of Canada if the addition to Schedule II of the *Act* of new prohibitions based on other laws is contemplated under section 24, or on other subjects such as artificial intelligence.

Recommendation 36

That the Government of Canada amend the *Access to Information Act* to state that the amounts of public funds spent are never confidential information.

Managing Vexatious Requests

Ms. Maynard said that, with the passage of Bill C-58, an institution may seek the OIC's approval not to respond to a request. A head of a government institution, with the Information Commissioner's written approval, can refuse to comply with an access

119 Patrick McCurdy, *Brief*, 6 December 2022. See also: *CLD Brief*, pp.10–11. The CLD recommends that all blanket exclusions in the *Access to Information Act* be removed and that all exemptions that protect public interests be subject to sunset clauses so that they no longer apply after a maximum of 20 years.

request, “if, in the opinion of the head of the institution, the request is vexatious, is made in bad faith or is otherwise an abuse of the right to make a request for access.”¹²⁰

[Ms. Maynard](#) added that it is not frequently used. It has been used only a couple of times in the last two years. A backgrounder provided by the Information Commissioner to the Committee shows that between April 2019 and March 2023, the OIC received a total of 55 applications to decline to act on an access request from government institutions. Of those, only five were granted by the Information Commissioner.¹²¹

[Ms. Maynard](#) added that she is publishing her decisions on section 6.1 to give guidelines to federal institutions on the use of this provision. However, [she](#) cautioned that the ATIA is about making government more accountable and improving democracy. It would therefore be difficult to be too restrictive about what people, such as journalists, can request from government institutions.

[Mr. Lapointe](#) also expressed caution. He said that “bad faith” and “vexatious” are subjective terms. Before rejecting such requests, it is important to ensure that they’re truly vexatious.

[Ms. Maynard](#) acknowledged that malicious access requests do indeed exist. Most institutions have a requester or two who, for some reason, have a chip on their shoulder and decide to overwhelm an institution with a number of requests or a request that is frivolous. Before 2019, there was no way to deal with these types of requests. Now there is a way to not respond to them with the Information Commissioner’s approval. [She](#) said the impact of vexatious and frivolous requests is huge. For example, at the OIC, only three people deal with access requests. Last year, her office received a request that ended up in 33,000 pages being sent out. The OIC itself had to request an extension under the ATIA to exceed the 30-day time limit.

However, [Ms. Maynard](#) explained that, when someone requests an enormous number of files, it is not because there are a lot of documents that the request itself is unreasonable. The government institution should go back to the requester and talk to

120 [Access to Information Act](#), section 6.1.

121 OIC, [Backgrounder ETHI March 7, 2023](#).



them before asking the OIC for approval not to respond to the request because it is vexatious. This reflects the duty to assist in the ATIA.¹²²

Application Fees

With respect to application fees, [Mr. Larsen](#), [Mr. Conacher](#), Mr. Rubin, and the CLD, believed that access requests should be free of charge since fees are a barrier to access.¹²³ [Mr. Larsen](#) said that in British Columbia, where access fees are charged, they are a deterrent fee rather than a fee to recover the costs of access to information. He said that reducing barriers to access to information is fundamental in a democracy. Access fees are a barrier.

For her part, [Ms. Maynard](#) believes access should be free, but that the current \$5 filing fee is very reasonable.¹²⁴ As for [Mr. Drapeau](#), he shared the view that a higher fee for access requests is needed to limit the number of frivolous or vexatious requests and to enable deputy ministers to hire more staff to respond to requests.¹²⁵

CHAPTER 5: INFORMATION COMMISSIONER'S POWERS, INDEPENDENCE, AND RESOURCES

Powers of the Information Commissioner

Power to Make Orders

[Ms. Maynard](#) said Bill C-58 brought two positive changes: the power to make orders and the ability to publish investigative reports.

[Ms. Maynard](#) indicated that the fact that she can now make orders, not just recommendations, helps deal with complaints and get informal resolutions. According to her, when institutions know that an order may be coming, they move a little faster.

122 [Access to Information Act](#), section 4(2.1). This section states: "The head of a government institution shall, without regard to the identity of a person making a request for access to a record under the control of the institution, make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested."

123 [Rubin Brief](#), p. 10; and [CLD Brief](#), p. 7.

124 ETHI, *Evidence*, [Maynard](#).

125 ETHI, *Evidence*, [Drapeau](#) and [Drapeau](#).

She explained that since she can order disclosure or order that a certain time for disclosure be done, fewer negotiations with federal institutions are taking place. Her office asks the federal institution why they are late or why an exemption has been applied. If the explanation is not persuasive, her office disagrees, and an order is issued. This makes the process much faster and more efficient.

However, Ms. Maynard said that her orders are sometimes being ignored, since she does not have a certification process to go to the Federal Court to make sure that these orders are seen as having the power of a court order. She said that when she issues an order, the federal institution can either accept it or go to court to challenge it. She added that “we’re seeing now a trend of institutions that are not saying they’re going to challenge it, but they’re just taking more time to actually comply with my orders.”¹²⁶ She believes that a process by which the orders can be certified in court should be included in the ATIA.

The President of the Treasury Board stated that regarding the Commissioner's recommendations that she already has the power to appeal to a Federal Court to require compliance, but to the President's knowledge has not yet done so.¹²⁷

Mr. Drapeau said that the Commissioner has been too timid in her use of order-making power. For his part, Mr. Conacher said that while the Information Commissioner can make orders, she can't impose penalties if the law is violated. Her power to make orders is therefore not strong enough.

Mr. Tromp also noted shortcomings in the Commissioner's order-making power, such as the *de novo* review of the Information Commissioner's orders and their lack of enforcement. Mr. Beeby and the CLD made similar comments.¹²⁸

Ability to Publish Decisions

Ms. Maynard said that it was not possible to publish investigation reports under the old ATIA. She said that “35 years of jurisprudence [is missing] from my office, with all kinds of cases that were investigated and positions that were taken that were not publicized until the annual report.” The OIC can now use the published reports to explain to

126 ETHI, *Evidence*, Maynard.

127 All reviews under the ATIA are *de novo* reviews.

128 CLD Brief, p. 13. The CLD recommends that the Information Commissioner's orders be made directly enforceable by the Federal Court and that the judicial review process be amended so that it is the Information Commissioner's orders, not the decisions of public authorities, that are under consideration.



complainants what is likely to happen in a case similar to theirs, or to explain to institutions that a certain position has already been taken by the Commissioner and is therefore likely to be taken again. Essentially, this gives Canadians and federal institutions access to her office’s interpretation of the ATIA, which will help resolve issues more quickly.¹²⁹

However, [Ms. Maynard](#) pointed out that, under the current ATIA, she can only publish reports on investigations. Decisions she makes under section 6.1 of the ATIA on whether to allow an institution to refuse to respond to a frivolous or vexatious request for access are not supposed to be published.¹³⁰ She summarizes these decisions so as not to give the institution’s name or too many details but does provide guidance about what types of cases the OIC sees as frivolous and in bad faith.

[Mr. Conacher](#) recommended that the ATIA require the OIC to publish its decisions on every complaint it receives and every situation it reviews and include the right for any member of the public to appeal a decision to court.

Investigation Powers

With respect to her powers of investigation, [Ms. Maynard](#) said that she does not have the power to carry out criminal investigations. Her investigations are administrative. However, where there is evidence that a criminal offence has taken place, she can refer the matter to the Attorney General of Canada, who decides whether a criminal investigation is warranted.

During her mandate, [Ms. Maynard](#) has referred approximately seven cases to the Attorney General, most of which were about the destruction of documents. [She](#) noted that the ATIA already provides that, if the Commissioner sees evidence of intentional measures to change, erase or destroy a document, it could be a criminal offence and the Commissioner can refer it to the Attorney General. [She](#) was unable to say whether any of the seven cases were pursued.

[Ms. Maynard](#) explained that the two types of investigations, administrative and criminal, have to be separate. However, the ATIA provides that any information she receives is confidential, which limits the evidence that can be shared with the Attorney General.

129 ETHI, *Evidence*, [Maynard](#).

130 [2021 OIC Recommendations](#), Recommendation 14: “The Information Commissioner’s power of publication should be extended to cover decisions rendered with respect to applications to decline an access request set out in section 6.1 of the Act.”

The OIC's brief on the review of the government's access to information regime recommended that more information sharing be allowed.¹³¹

[Ms. Maynard](#) also said she would like to be able to refer cases directly to provincial or federal law enforcement rather than having to go through the Attorney General. She would therefore eliminate that step under the ATIA.¹³²

Additional Powers

With respect to the possibility of having additional powers, [Ms. Maynard](#) said that the commissioners' offices in the United Kingdom and in Scotland were interesting models¹³³. Unlike the OIC, these offices have a direct monitoring capacity on institutions. Reports from these institutions go directly to the commissioner. If the commissioner sees after three months that a government institution is struggling or has difficulties responding to access requests, it can intervene. Ms. Maynard said that this model is interesting because it allows for proactive action and outreach instead of just waiting for complaints.

[Ms. Maynard](#) said that in Canada, the annual statistical reports presented by institutions are useless for her office. They only present the results one year later and do not allow for proactive action. [She](#) believes that these reports should be replaced by a format that is easily entered into a database, with no reporting necessary.

[Mr. Beeby](#) also expressed the view that a centralized system would provide better access to actual statistics. In [his](#) opinion, most of the access to information statistics are not reliable. For instance, he said that the President of the Treasury Board stated that 70% of access requests are processed within the legislated timelines. In his view, this statistic is misleading, as the legislated timelines include the significant extensions allowed under the ATIA.

131 Ibid.; Recommendation 16: "Subsection 63(2) of the Act should be amended to enable the Information Commissioner to disclose information relating to the commission of an offence against a law of Canada or a province by any person."

132 Ibid.; Recommendation 17: "Subsection 63(2) of the Act should be amended to enable the Information Commissioner to disclose to the appropriate authority information relating to the commission of an offence against a law of Canada or a province by any person."

133 Scotland has its own Information Commissioner who regulates the [Freedom of Information \(Scotland\) Act](#) which covers Scottish public authorities. The United Kingdom (U.K.) Information Commissioner has jurisdiction in Scotland over data protection, and with respect to freedom of information in relation to U.K. public authorities based in Scotland.



[Mr. Conacher](#) recommended that the Information Commissioner be given the power to require systemic changes in government institutions to improve compliance with the ATIA. However, [he](#) pointed out that in the federal and most provincial access to information laws, information commissioners do not have enough power “to stop the denials and delays because there are no penalties for violating the law”. He said that, in Canada, parking illegally has more serious consequences than violating the ATIA:

If you park illegally anywhere in Canada, even if you’re doing no harm and you’re not parked in front of a fire hydrant and it’s no bother to anyone, you’ll pay a higher fine and receive more of a penalty for that than for a fundamental denial of the public’s right to know key information that would reveal government wrongdoing and wastes of billions of dollars. That’s a perverse system we have.

[Mr. Conacher](#) said that “while some of the provinces have a public interest override,” it is not strong enough because the commissioners’ enforcement powers aren’t strong enough. [He](#) recommended that the Commissioner be empowered to penalize violations of the ATIA, with a sliding scale of fines depending on the seriousness of the violation. Offences could include intentionally obstructing access, not creating records, not maintaining records properly, or delaying responding to a request.¹³⁴ [He](#) also recommended that the Commissioner be given the authority to review any refusal to disclose and to order disclosure if it would not cause harm or would be in the public interest.

[Mr. Conte](#) also noted that there are currently no consequences for not complying with the ATIA.¹³⁵ Even the Commissioner’s orders can be challenged in court. [He](#) said that the U.S. has a more adequate system of civil liability compared to Canada. [He](#) recommended adopting, “financial penalties that are leveraged on government officials and departments.” Mr. Rubin also recommended tougher penalties for government officials using creative tactics to avoid meeting their disclosure obligations.¹³⁶

Mr. Conacher also recommended that the ATIA be changed to expand the OIC’s mandate and budget to include promotion of the right of access and public awareness activities.¹³⁷ Similarly, [Mr. Wernick](#) recommended that the Information Commissioner should have a

134 ETHI, *Evidence*, [Conacher](#) (DW). Mr. Conacher also recommended adding penalties in the ATIA for public servants attempting to avoid penalties under the *Access to Information Act* by retiring. Such penalties could include loss or partial clawback of any severance or pension payments.

135 ETHI, *Evidence*, [Conte](#).

136 [Rubin Brief](#), p. 2.

137 [DW Brief](#), p. 4.

broader mandate to conduct studies, issue reports and make recommendations on access to information practices and the continuing improvement of transparency practices.

The Committees is of the view that the information commissioner should have greater powers, including the ability to impose sanctions in cases of non-compliance with the ATIA. It recommends:

Recommendation 37

That the Government of Canada amend the *Access to Information Act* to give the authority to the Information Commissioner of Canada to impose fines or penalties where Access to Information and Privacy divisions are late in delivering responses to requests.

Independence of the Office of the Information Commissioner

Ms. Maynard said she is confident that her office is very independent of government. The OIC has launched investigations against all departments, including the PCO, which is under the purview of the Prime Minister. She said the only thing that might affect the OIC's independence is funding. There is no independent process for agents of Parliament, such as the Information Commissioner, to get the funding they need. If they want more funding, agents of Parliament have to go through Treasury Board and the Department of Finance, two departments the OIC investigates on a daily basis. In her view, the current funding model is contrary to the oversight role of agents of Parliament. The manner in which these various agents are funded should reflect this independence.

As a potential solution, Ms. Maynard said there was a recommendation in the past for an independent parliamentary committee to review funding requests from agents of Parliament.¹³⁸ In a letter sent to the Committee in April 2023, the Commissioner reiterated the need for an independent funding mechanism. She reminded the Committee that in 2005, it made such a recommendation in its report entitled *A New Process for Funding Officers of Parliament*.

The President of the Treasury Board said that the government supports the independence of the Information Commissioner.

On another aspect of the independence of commissioners, Mr. Conacher recommended establishing a fully independent, non-partisan appointments commission to search for and nominate qualified candidates to fill commissioner positions. This commission

138 ETHI, *Evidence*, Maynard.



should also have the power to decide whether the Information Commissioner's mandate will be renewed.

The Committee recognizes the importance for agents of Parliament to be fully independent and perceived as such. Consequently, it recommends:

Recommendation 38

That the Government of Canada establish an independent funding mechanism for the Office of the Information Commissioner of Canada and other Agents of Parliament who do not have access to such mechanism.

Adequacy and Allocation of the Office of the Information Commissioner's Resources

During her first appearance before the Committee on 5 October 2022, [Ms. Maynard](#) said that her office has received 70% more complaints this year than last year. She added that, if things continue the way they have, the OIC could receive 10,000 complaints this year. [Ms. Maynard](#) said that the OIC is funded to close 4,000 cases a year. At the time of her appearance, the OIC had already received 7,000 complaints¹³⁹.

[Ms. Maynard](#) said that last year the OIC had resolved 6,500 complaints, many informally. However, she explained that the OIC reduced the number of complaints in its inventory by putting all its money into investigations, which is not sustainable. The OIC needs to put money into corporate services, legal services, and translation services. [She](#) said that the limit of what her office can do with current funding levels has been reached. She also pointed out that since she arrived at the Office five years ago, complaints have increased by 180%. As a result, her office's resource requirements are increasing year after year.

For her part, the [President of the Treasury Board](#) said that the government believes in funding ATIP and the Information Commissioner. She said that the OIC's funding has increased by 54% in recent years.¹⁴⁰

With respect to the time required to complete an investigation, [Ms. Maynard](#) said that while she would love to be able to complete her investigations within a year, this is

139 See: OIC, [Backgrounder ETHI March 7, 2023](#). The backgrounder provides information and statistics relating to the OIC's investigation of complaints.

140 TBS, [2016–17 Estimates](#); TBS, [2023–24 Estimates](#).

difficult with her office's inventory of complaints, which sometimes involve secret or very complex information. [She](#) said that the number of complaints continues to grow, and as a result, her office must decide which cases to tackle. [She](#) would like to have at least temporary funding for additional investigators in order to "get rid of those files that are stuck in the inventory," which always stays at around 3,500 or 4,000 cases. However, even if her office had more resources, the lack of resources in organizations subject to the ATIA means that they may not be able to respond to investigators. This points to a need to invest in the entire access system.

In fact, to reduce the number of complaints, [Ms. Maynard](#) said three things need to happen. First, federal institutions have to respond to access requests within the legislated timelines. Second, ATIP units need to be resourced, and public servants need to be made aware of their collective duty to provide access to information. Third, institutions need to better manage their information.

Other witnesses commented on the allocation of resources at the OIC and its impact on complaints investigations. Mr. Drapeau criticized the allocation of human resources at the OIC. [He](#) said that the OIC is a particularly top-heavy organization, with a senior leadership team composed of one commissioner, three assistant commissioners and five senior executives. [He](#) suggested that the OIC's reporting structure means that less than 50% of the staff investigate complaints. [Mr. Cutler](#) added that there is a problem in the allocation of resources at the OIC and in its ability to do the job.

[Mr. Drapeau](#) suggested that the Office of the Auditor General examine how many complaints come in and how long it takes to review them to determine whether there is a better way to do things and whether more staff is needed.

[Mr. Conacher](#) made a similar recommendation. He recommended amending the ATIA to require Parliament to provide the OIC with the annual funding needed to ensure effective, timely enforcement of the ATIA, effective training, and effective promotion of the right of access. This funding should be based on the budget presented by the OIC and an assessment by the Auditor General or the Parliamentary Budget Officer.¹⁴¹

[Mr. Drapeau](#) said that it is not unusual to wait a minimum of two years for an OIC investigation to be completed. He added that these delays have a very negative impact on users. Under the ATIA, they can only apply to the Federal Court after the OIC has published its investigative report. [He](#) therefore recommended putting a one-year time limit on completing an investigation, failing which a complainant should have the right to

141 [DW Brief](#), p. 4.



go to Federal Court. Mr. Rubin agreed with Mr. Drapeau’s recommendation.¹⁴² [Mr. Beeby](#) recommended an even shorter period of six months.

In a [brief](#) to the Committee, Mr. Malone recommended amending the ATIA to allow anyone who is dissatisfied with the government’s response to an access request to seek judicial review of government conduct without having to wait for a complaint to be assessed by the Information Commissioner or for an investigation report to be issued.

[Mr. Conte](#) argued that the ATIA “obstructs access to the courts through a drawn-out preliminary appeals process with the Office of the Information Commissioner.” He said that this restricts the capacity of journalists to do their job. He noted that the U.S. permits direct access to the courts without delay, allowing journalists to obtain documents through a lawsuit.

However, [Ms. Maynard](#) is worried that if someone has to go to court, they will not be able to represent themselves without review and advice from an independent commissioner to help them win their case. Unlike individuals, her office is able to review documents and challenge an institution based on the information it has on hand. Individuals receive redacted documents.

[Mr. Conacher](#) disagreed with the recommendation to put a one-year time limit on completing an investigation before being able to apply to the Federal Court. He said that the courts don’t move any more quickly and also have a backlog. [Mr. Wernick](#) also noted that the Federal Court is a busy place dealing with all aspects of federal law. He believes the court could become clogged if it is too easy to access it for smaller matters that could be solved by a dispute settlement mechanism or an intermediate body.

CHAPTER 6: TREASURY BOARD REPORT ON THE REVIEW OF ACCESS TO INFORMATION

In June 2020, one year after Bill C-58 came into force, the TBS launched a review of access to information, which included a review of the ATIA. In its [Terms of Reference for the Access to Information Review](#), TBS stated that the review would focus on three things: reviewing the legislative framework; opportunities to improve proactive publication to make information openly available; and assessing processes and systems to improve service and reduce delays.

142 [Rubin Brief](#), p. 10.

According to the [Access to Information Review Timeline](#), TBS held discussions in 2020 with Indigenous groups and representatives, the Information Commissioner, and the Privacy Commissioner, as well as with federal institutions. In 2021, TBS launched public engagement and held workshops and round tables on the three streams of the review. It also continued its engagement with Indigenous groups and representatives and with federal institutions that year.¹⁴³

In December 2021, the TBS issued an interim [What We Heard Report](#). The spring of 2022 was devoted to more Indigenous engagement. A second interim report, the [Indigenous-specific What We Heard Report](#), was published late 2022.

The [President of the Treasury Board](#) said that TBS used a very thorough approach to ensure Indigenous participation in the review of access to information. [Ms. Luelo](#) said that Indigenous communities were consulted over a nine-month period.

In 2022, TBS also published a [Costing Study of the Access to Information Regime](#) and a document entitled [Key actions on access to information](#). This document contains a list of key actions to improve access to information and transparency that do not require legislative amendments and are either implemented, planned or underway in government.¹⁴⁴

On Tuesday, 13 December 2022, the President of the Treasury Board presented her [report to Parliament](#) on the review of access to information.¹⁴⁵ The report does not recommend any specific legislative changes.

During her appearance in April 2023, the [President of the Treasury Board](#) explained that the TBS review focused on consulting Canadians, especially Indigenous peoples, to learn more about the access barriers they were facing. [She](#) said that the purpose of the report was to identify challenges, not to develop an action plan. Instead, it provides the foundation for the work that TBS is doing to improve the access to information system and has the following objectives: improve service delivery, enhance staff capacity, meet the needs of Indigenous populations more effectively, and continue to develop measures such as declassification.

143 TSB, [Access to Information Review Timeline](#).

144 TBS, [Key actions on access to information](#), 2022.

145 See also: Government of Canada, [The review process](#) (provides a list of all reports issued as part of the review).



The [President of the Treasury Board](#) said that an action plan setting out the next steps that the government will undertake for administrative purposes and looking at possible legislative changes is being developed. TBS will present it by the end of the year.¹⁴⁶

Regarding amendments to the ATIA, the [President of the Treasury Board](#) said the following: “Some have advocated changing the act. My current priority is to improve administration of the existing law.” She added that the government “strengthened the act less than four years ago” and that there is a lot of work to do to address the underlying systemic issues surrounding the access to information system. The government continues to take action to achieve that. It will take the time needed to look into next steps, which could include legislative changes.¹⁴⁷

When asked if the government will soon launch a major reform of the ATIA, the [President of the Treasury Board](#) said the following:

When we announced Bill C-58, we said that we would carry out a review of the act in five years. Part of that work is already under way, to see how we can make legislative changes. The most important thing to note at this point is the necessity of putting tools in place. The digital system plays a vital role in meeting the demand. As Ms. Luelo mentioned, in the past, records tended to be paper-based, but today, many records are available through Teams meetings, for instance, or are stored in databases. That means the data are not limited to paper records, so we are in the process of introducing administrative tools to enhance the system.

The [President of the Treasury Board](#) also pointed out that Bill C-58 was the first bill to amend the ATIA after it had not been reviewed in 30 years. It gave order-making power to the Information Commissioner and put a proactive publication system into the ATIA.¹⁴⁸ [She](#) added that the review of access to information helped TBS understand the need for a digital system able to support the processing of access requests.

Comments by the Information Commissioner

[Ms. Maynard](#) expressed disappointment with the TBS report on the review of access to information. Although she was pleased that the government took note of the concerns she raised regarding lengthy consultations between institutions, as well as the lack of a declassification framework and the resulting negative impacts these have on the access

146 ETHI, *Evidence*, [Fortier](#).

147 ETHI, *Evidence*, [Fortier](#).

148 ETHI, *Evidence*, [Fortier](#).

regime, she found it unfortunate that there are no proposals for concrete actions to go with the government's analysis. She said:

I find few, if any, tangible commitments within the report's pages that will begin to effect change now in areas that require immediate attention. More importantly, it appears that the government has decided that no further modifications to the law are to be made, at least not in the near term.

[Ms. Maynard](#) said that while the report is a good summary of the issues facing the access to information system, these issues are already known, and were known before Bill C-58 was passed in 2019. She expressed disappointment that the report does not come with an action plan.

For example, [Ms. Maynard](#) said that the report contains comments and findings about exemptions and exclusions that are not consistently applied or understood properly. However, it does not have any recommendations for changing the wording of these exemptions in the ATIA or reviewing the extensions of these exemptions. She believes it is time to look at each exemption and exclusion and to make decisions, for example, by answering the following questions:

Do we want section 21 on advice and recommendations to be for 20 years? Do we want cabinet confidence to still be prohibited from my review? Do we want to put a timeline for consultations in the act so that we don't rely on an institution's policy about that?

[Ms. Maynard](#) said that the ATIA needs to be considered section by section. [She](#) believes that "the act has to be reviewed as much as the system needs to be addressed."¹⁴⁹ In [her](#) view, Canada needs to have an access to information act that is modernized up to 2023.

[Ms. Maynard](#) said that she has no confidence "that bolstering Canadians' right of access to information will figure prominently in the government's financial priorities," adding that access to information disappeared from ministerial mandate letters.¹⁵⁰

Comments by Other Stakeholders

[Mr. Larsen](#) found it discouraging to read in the TBS report on the review of access to information that "the greatest complaint about the ATI regime is poor compliance with the law." He spoke about the importance for senior officials, elected representatives and Cabinet to set the tone. When witnesses, commissioners and committees describe an

149 OIC, *Letter to Committee*, 27 April 2023. The Commissioner reiterated that in her view, the *Access to Information Act* has to be reviewed as much as the system needs to be addressed.

150 See also: ETHI, *Evidence*, [Maynard](#).



access to information system as broken, fallen behind or dysfunctional, and the response is the status quo, this comes across as “an endorsement of opacity, not a commitment to transparency.”

[Mr. Larsen](#) said that the TBS report on the review of access to information mentions a number of possibilities. For the BC FIPA, the priorities should be:

First is creating a legislated duty to document to ensure that core decisions are recorded. Second is embedding a strong public interest override in the act. Third is imposing caps on extensions to requests, rather than relying on the open-ended and nebulous reference to extensions for a reasonable time, and requiring commissioner authorization for further extensions. Fourth is shifting the exemption framework to reflect a harms-based approach, rather than categorical or discretionary exemptions based on classes of record types. Fifth, following UNDRIP, is removing barriers to access to information for indigenous communities and moving towards indigenous data sovereignty, particularly as it pertains to records pertinent to specific claims and reconciliation. Sixth, though it was not emphasized by the TBS, is including all entities that deliver public programs or services under the scope of the act, including the PMO and ministers’ offices, and ensuring that federal political parties fall under the scope of federal privacy laws, recognizing voters’ rights to know about how their personal information is being used. Finally, we have radically revising and limiting the section 69 exclusion of cabinet confidences, shifting it to a limited exemption, subject to review.

[Mr. Larsen](#) added that the TBS report discusses worthy initiatives such as administrative supports, the modernization of technology and processes, and expanding commitments to open government beyond the auspices of the ATIA. However, these cannot take the place of a modernization of the ATIA. In his view, administrative reform should not take precedence over legislative reform.

During his second appearance, [Mr. Beeby](#) commented on the TBS report and the President of the Treasury Board’s testimony. He said that he felt duped by the TBS process to review the access to information system.¹⁵¹ He pointed out that the review was to focus on three things: the legislative framework, proactive publication, and the administration of access to information. He noted that while many submitted proposals for legislative amendments, the President of the Treasury Board said that the current priority is to improve the administration of the current ATIA.

151 On 27 May 2021, Dean Beeby submitted a brief to TBS containing 9 recommendations for legislative amendments as part of the public consultations on the review of access to information. During his appearance before the Committee, Mr. Beeby noted that none of his recommendations were accepted by TBS, nor did TBS recommend any legislative amendments. Dean Beeby, “[Brief from Dean Beeby submitted to Treasury Board Secretariat for its public consultation on the Access to Information Act review, May 27, 2021](#),” written response to ETHI, 26 April 2023.

[Mr. Conacher](#) also referred to Minister Fortier's lack of interest in introducing legislative reform. On this point, he recommended that a private member's bill based on the many reports and recommendations already available be introduced in Parliament. Mr. Rubin made a similar recommendation.¹⁵²

In fact, on the issue of legislative reform, several witnesses indicated throughout the study that Bill C-58 did not bring enough changes to the access to information legislative regime. For example, [Mr. Lapointe](#) said that recent reforms to the law have made progress in recapturing some of its original spirit but that there is a long road ahead to fulfill that vision. [Ms. Francoli](#) said that "Bill C-58 just didn't revolutionize the system in a way that a lot of people were really hoping it would", which she described as not being bad, but a bit of a letdown. [Mr. Conacher](#) characterized Bill C-58 as "a step backwards in some ways", because, for example, it did not make government information open by default. [Mr. Rubin](#) was of the view that "Bill C-58 destroyed the [ATIA]" with Part 2, which he described as "phony proactive measure." [Mr. Beeby](#) noted that Bill C-58 had some improvements, but also added some restrictions for users like the provision relating to frivolous and vexatious requests.

[Mr. Rubin](#) described the TBS review as inept and self-serving. In his view, TBS should have its central role in access to government records removed and replaced by an arm's-length freedom of information agency set up under a revised law to handle and promote public information disclosures.

CONCLUSION

The Committee notes, as did most witnesses, that despite the changes brought by Bill C-58 in 2019 and the best efforts of those working in ATIP in federal institutions, Canada's access to information system still has many shortcomings. Considering the importance of access to information in a democratic society, it is imperative that actions to improve access to information be taken immediately.

That is why, considering the evidence it heard, the Committee makes several recommendations throughout this report for improving the access to information legislative regime and the system to which it applies. It hopes that these recommendations will be implemented.

152 [Rubin Brief](#), January 2023. In this brief, Mr. Rubin is critical of Treasury Board's review of access to information.

APPENDIX A LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee’s [webpage for this study](#).

Organizations and Individuals	Date	Meeting
Office of the Information Commissioner of Canada Caroline Maynard, Information Commissioner	2022/10/05	38
As an individual Michel W. Drapeau, Adjunct Professor	2022/10/24	41
As an individual Ken Rubin, Investigative Researcher and Transparency Advocate	2022/10/26	42
Canadians for Accountability Allan Cutler, Former President	2022/10/26	42
Democracy Watch Duff Conacher, Co-Founder	2022/10/26	42
As an individual Michael Wernick, Jarislowsky Chair in Public Sector Management, University of Ottawa	2022/11/21	47
Glacier Media Group Kirk LaPointe, Vice-President, Editorial, Glacier Media, Publisher and Editor in Chief, Business in Vancouver	2022/11/21	47
BC Freedom of Information and Privacy Association Mike Larsen, President	2022/11/23	48
Canadian Foreign Intelligence History Project Alan Barnes, Senior Fellow, Norman Paterson School of International Affairs	2022/11/23	48
Canadian Immigration Lawyers Association Andrew Walter Laszlo Koltun	2022/11/23	48

Organizations and Individuals	Date	Meeting
<p>Union of British Columbia Indian Chiefs</p> <p>Robyn Laba, Senior Researcher</p> <p>Judy Wilson, Secretary Treasurer</p> <p>Jody Woods, Administrative Director, Research Director</p>	2022/11/23	48
<p>As an individual</p> <p>Mary Francoli, Associate Dean and Director, Arthur Kroeger College of Public Affairs</p> <p>Patrick White</p>	2022/11/28	49
<p>Department of Foreign Affairs, Trade and Development</p> <p>Colleen Calvert, Director General, Corporate Secretary</p> <p>Alexandre Drago, Director, Access to Information and Privacy</p>	2022/12/05	51
<p>Department of Public Safety and Emergency Preparedness</p> <p>Derek Melchin, Director, Access to Information and Privacy and Executive Services</p> <p>Lesley Soper, Director General, National Security Policy</p>	2022/12/05	51
<p>Privy Council Office</p> <p>David Neilson, Executive Director, Access to Information and Privacy and Executive Correspondence Services</p> <p>Matthew Shea, Assistant Secretary to the Cabinet, Ministerial Services and Corporate Affairs</p>	2022/12/05	51
<p>Royal Canadian Mounted Police</p> <p>David A. Janzen, Director General, Access to Information and Privacy</p> <p>Danielle Golden, Director, Privacy</p>	2022/12/05	51

Organizations and Individuals	Date	Meeting
As an individual Dean Beeby, Journalist Andrea Conte, Writer, Researcher and Media Artist Stanley Tromp	2022/12/07	52
Canadian Association of Journalists Brent Jolly, President	2022/12/07	52
Office of the Information Commissioner of Canada Caroline Maynard, Information Commissioner	2023/03/07	60
As an individual Ken Rubin, Investigative Researcher	2023/04/18	64
BC Freedom of Information and Privacy Association Mike Larsen, President	2023/04/18	64
B'nai Brith Canada David Matas, Senior Legal Counsel Michael Wenig, Lawyer, Matas Law Society	2023/04/18	64
Treasury Board Hon. Mona Fortier, P.C., M.P., President of the Treasury Board	2023/04/18	64
Treasury Board Secretariat Stephen Burt, Chief Data Officer and Assistant Deputy Minister, Policy and Performance Sector Catherine Luelo, Deputy Minister and Chief Information Officer of Canada	2023/04/18	64
As an individual Dean Beeby, Journalist	2023/04/25	66
Canadian Security Intelligence Service Nicole Giles, Deputy Director and Senior Assistant Deputy Minister, Policy and Strategic Partnerships	2023/04/25	66
Democracy Watch Duff Conacher, Co-Founder	2023/04/25	66

Organizations and Individuals	Date	Meeting
Department of Citizenship and Immigration Sylvain Beauchamp, Director General, Client Experience Tracy Perry, Acting Director General, Integrated Corporate Business, Corporate Services	2023/04/25	66
Department of National Defence Anne Bank, Executive Director, Directorate Access to Information and Privacy	2023/04/25	66
Library and Archives of Canada Kristina Lillico, Director General, Access to Information and Privacy	2023/04/25	66

APPENDIX B LIST OF BRIEFS

The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [webpage for this study](#).

BC Freedom of Information and Privacy Association

Beeby, Dean

B'nai Brith Canada

Centre for Law and Democracy

Democracy Watch

Malone, Matt

McCurdy, Patrick

Public Service Alliance of Canada

Rubin, Ken

Union of British Columbia Indian Chiefs

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 38, 41, 42, 47-49, 51, 52, 60, 64, 66, 73, 75 and 76](#)) is tabled.

Respectfully submitted,

John Brassard
Chair

Liberal Dissenting Opinion

To the Report of the Standing Committee on Access to Information, Privacy and Ethics

“Access to information and Privacy Systems”

The current performance of the Access to Information system is not good enough. In 2021-22, 70.7% requests were processed within the time frame prescribed in the Act.¹ That’s why the government’s priority is to improve service under the existing law, not to re-open the Act that Parliament strengthened less than four years ago.

The goal of our work is fourfold: improve service delivery, enhance staff capacity, meet the needs of Indigenous populations more effectively, and continue to develop measures such as declassification. We will have more details to share within a year.

It will build on improvements that the government has already made. We recently launched an enhanced ATIP online platform to make it more efficient to submit a request and receive records, while reducing administrative burden. We have onboarded 251 institutions onto the platform, with more to come. Within a year, over 90% of requests will go through the platform. TBS has selected two modern systems that will provide faster processing of requests. The first 13 institutions are being onboarded to the new processing software this year. The more we automate where we can, the more teams can focus on their core jobs and the better the public will be served. To help address staffing challenges, we launched a new community development office to support ATI communities through recruitment, retention, training and professional development.

As committee members from the Liberal Party, we were proud to join our colleagues in studying the Access to Information system. It is a testament to Canada that all parties support the Access to Information system and want to improve it, not undermine it. We’re also grateful to the many witnesses who appeared to advocate for a range of improvements to the system, from its timeliness to the accessibility of historical information, which is an essential condition for many communities that are seeking closure.

While the committee’s report advances a number of proposals that will help improve Access to Information, unfortunately others are well intentioned, but unworkable. As the governing party, it is our responsibility to explain some of those challenges in this dissenting opinion.

A recommendation suggests to “prohibit the use of personal emails or encrypted applications” for government work. While the former is already required to comply with security policies, prohibiting encryption would put sensitive information at risk from malicious actors and cyber threats.

The report recommends a review of the system. Such a review was already concluded only last December, and the next legislative review will be held in 2025, only a year and a half from now.

¹ Because IRCC received the bulk of requests last year (79.7%), its data is not included in this statistic, so as not to skew the overall results.

The report recommends ATI employees be prevented from altering requests, something that is already illegal under the law—section 4 (2.1) requires officials to provide accurate and complete responses.

One recommendation is that all Access to Information responses be published online, a dramatic expansion of the current approach of posting summaries. While currently records are shared in the language in which they were created and, if requested, translated into the other official language, to comply with the Official Languages Act, they would all need to be translated before being posted online. In 2021-22, that would have meant translating 8.8 million pages, which would have a very considerable cost (indeed, recent years have seen as many as 24.8 million pages released). Those resources would be better used to improve service.

It recommends a universal limit on extensions of 60 days; however, the length of requests can vary from several pages to millions of pages of documents. Larger requests require additional time to review to ensure no information is inappropriately released, such as the private information of individuals.

One recommendation suggests dealing with certain requests outside the existing system. That system ensures that laws governing privacy and other limitations are upheld, and any alternative system would need to as well. It is unclear how resourcing a brand new second ATI system would be a better use of resources than improving the system we have.

Another recommendation is for Directors General to receive bonuses tied to ATI. However, the ATI system is a core responsibility of only a fraction of the Directors General across government.

Another recommendation suggests the Access to Information Act be amended to ensure old requests are subject to the Act—which, of course, they already are.

One recommendation proposes that cabinet confidences be subject to the Act. The Supreme Court of Canada has recognized that Cabinet confidentiality is essential to good government, saying: "The process of democratic governance works best when Cabinet members charged with government policy and decision-making are free to express themselves around the Cabinet table unreservedly."

This recommendation is political posturing. The Conservative Party of Canada would never implement such a recommendation should it form government again. Don't expect to see it in their platform anytime soon.

Public access to government information is central to democracy. Our government is proud to have brought in the first measures to reform the act in more than three decades. Under those reforms, we gave the Information Commissioner order-making power, waived all fees in excess of five dollars and introduced a proactive disclosure regime. Today, the Open Government portal provides access to 37,000 records and two million proactive disclosure records. According to the Open Data Barometer, Canada ranks seventh in the world when it comes to open data.

The Liberal government will continue to build on these accomplishments and strengthen the Access to Information system.

Respectfully submitted:

Iqra Khalid, Parm Bains, Greg Fergus, Lisa Hepfner, Ya'ara Saks