



Access to Information Act - Revitalizing access to information consultation

**Submitted by
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June 2016**

CARL would like to express its strong support for the Government of Canada's policy direction of open-by-default.

Many countries (Sweden is the classic example) understand that, in a democracy, elected officials and the public service govern under a public trust; and that those in opposition, academia, the media, and indeed all citizens, have the right to scrutinize the activities of their governments. In effect, such countries accept as a sweeping principle that government records belong to the people.

As we believe that a default to openness within the federal government requires significant culture change, we see the need for active promotion of the policy, for finding ways to reward openness, and for enhanced monitoring of departmental compliance. These will all help the policy gain buy-in and momentum.

In fact, we urge the government to enforce the new Interim Directive. It is a good test of the feasibility of reform and will begin to change the culture of secrecy where it exists.

We acknowledge the need for nuance in an open-by-default policy direction to allow specific exceptions. Clearly there are certain types of information that should not default to open—at least, not immediately at the time of creation—owing to privacy, confidentiality or security considerations. As a principle, this is already embedded in the Act: “The core principle of the Access to Information Act is that government information should be available to the public, subject only to limited and specific exceptions to protect privacy, confidentiality and security.” (Interim Directive – Context).

But these exceptions have sometimes been liberally interpreted. While the Interim Directive is a good start toward addressing this, it remains an important challenge to change the mindset of government officials, to clarify the application of the exceptions (especially when discretion applies), and then to monitor and enforce compliance. For example, in terms of changing the mindset, we believe that most departments could consider their mandates and find that there are, at most, only very select pockets of records that could not be open by default.



Furthermore, we support the Information Commissioner's proposal that there be a general public interest override that is applicable to all exemptions. We understand that broadening openness by constraining exclusions and exemptions will require careful study to ensure the public interest is optimally served and that harm does not inadvertently result.

We support that all government institutions, and now also Ministerial records (that are not personal or political – and this may need better definition) will be subject to the Act.

Also, we firmly believe that all records—even those that are initially earmarked as classified or protected—should be opened at some point. No government record of any type should be closed to the public in perpetuity. Some records may need to be closed for practical purposes for some length of time, but the complete historical record should be open to all as soon as (safely) possible. This should be a foundational principle.

Specifically, we suggest that:

- Information that can be open (records that do not, by their nature, constitute legitimate application of the three above-noted exceptions), should default to a status of open at the time of creation.
- Within that body of content (open-by-default at creation), more in-demand information should be proactively disclosed to the public. Proactively disclosing more sought-after records would reduce ATI administrative burden. We do acknowledge that an ATI status of open is not the same as making the information openly available online for the user to search and find themselves (open access); and that there can be practical reasons such as Official Languages and accessibility policy requirements that preclude open online availability for all content that is not protected or classified.
- Information that can't be open based on any of the three legitimate reasons should be scheduled for automatic opening without any redaction at a future point. We advocate for a *predictable, mandatory declassification regime*. Time limits may be able to be tied to the exception that applies. For example, Cabinet secrecy and trade secrecy both have merit, but only for a limited period of time.
- The delay to opening should be as short as possible. Timeframes for mandatory declassification and release should be developed, clear, published, and monitored/enforced.

- Depending on the class of record (and therefore what kind of exception is applicable), a known timeframe (such as 10, 20, 30 and 90 years) should apply for mandatory release. For example, a policy could be considered wherein every type of record should be fully automatically opened at 30 years except 1) personal records; 2) security records that would place individuals at risk; and, 3) solicitor-client privilege records. But these all must be opened at 90 years.
- Discretionary release prior to the mandatory timeframe should remain possible.
- Cabinet documents, currently exempted from the Act for 20 years, should be subject to the Act and most (except perhaps those pertaining to national or international security) should be subject to automatic release within a 10 year timeframe. The decisions of those running government, and the information upon which the decisions are made, are of vital public interest.
- As no type of record should ever be closed in perpetuity, the legal advice given to government under solicitor-client privilege should not be protected in perpetuity. Like any other form of information, legal advice is part of the historical record.
- Documents should be released in their original format if so requested. The current practice of sometimes converting spreadsheets to PDFs renders the data unmanipulable. We are pleased that the Interim Directive appears to address this.

To implement these changes, we anticipate a need to develop supporting policy instruments, procedures, and systems.

Opening and protecting Canada's historical record

For those records of enduring value that have been transferred over the years to Library and Archives Canada (LAC), we applaud the process of “block review,” whereby LAC takes a risk-based approach to proactively opening blocks of historical records whose status upon transfer was ‘closed’ but which are unlikely to meet any exception listed in the Access to Information Act. This process should be strengthened to allow more bodies of records to be available more quickly for public consultation. The initiative needs to move beyond small pockets of “low hanging fruit” to be a systematic and systems-supported review of all LAC’s historical holdings.



LAC recognizes that, while block review starts to address the long-standing problem of closed historical records, it is vital going forward that records arrive at LAC open. An ‘open at transfer’ policy, while desirable, also carries a risk. If not nuanced, some departments (e.g. security agencies) may choose not to transfer records to Canada’s national archives for long-term safe-keeping, owing either to lack of resources to review records or to the department’s determination that their records should not (perhaps ever) be opened. In turn, this could place the records at risk of becoming unusable—and thus lost to history forever—given that they are digital and thus require active preservation interventions to endure. It is therefore important that LAC and such departments come to agreement on workable policy, so that LAC assumes timely custody of historical records including some that are not yet scheduled to open.

We believe that clearer mandatory release dates applicable to all records (wherever housed) will assist in both block review and in open-upon-transfer processes.

Again, we appreciate the opportunity to contribute our ideas toward Canada’s Access to Information reform.