

Access to Information Act – The Canadian Model

Respect

Excellence

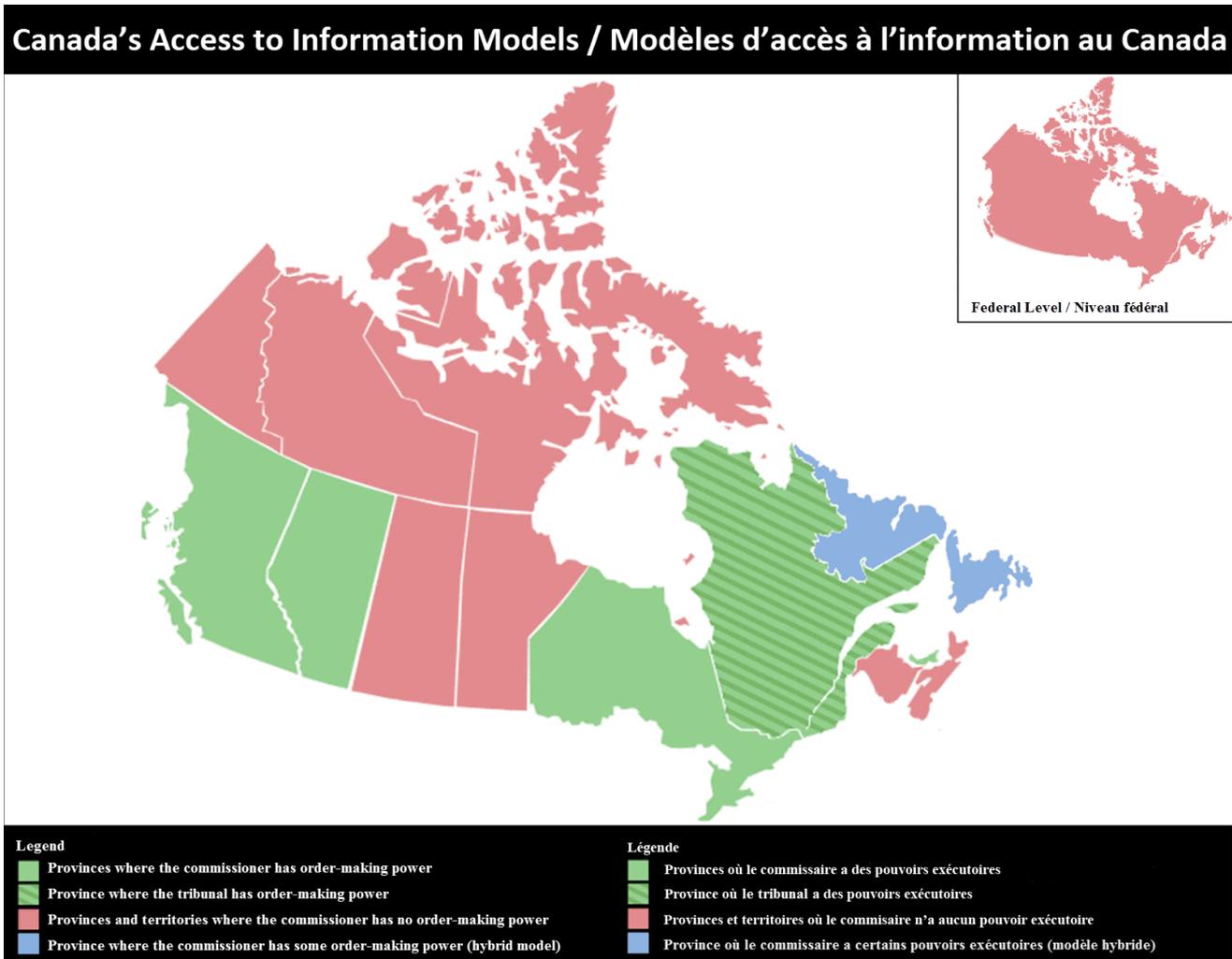
Integrity Intégrité

Leadership

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Access to Information in Canada



Access to Information Act

- In 1997, in *Dagg v. Canada Minister of Finance*, the Supreme Court of Canada stated:

“The overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry.”

- The *Access to Information Act* provides a right of access to information contained in records under the control of a government institution.
- The right of access is recognized as a quasi-constitutional right.

Access to Information Act

- It includes a presumption in favour of disclosure.
- It is intended to complement and not replace existing procedures for access to government information.
- It has precedence over any other act of Parliament.
- Canadian citizens, permanent residents and corporations present in Canada can make a request.
- A request must be made in writing to one of the 250 federal institutions subject to the Act
- There is a \$5 application fee.

Processing a request

- 30 calendar days to respond from receipt of request.
- “Reasonable” extension of that initial period possible.
- Must release any part of document or information not exempt or excluded.
- Produce document or cite exemptions – Notify requester of right to complain.

Limitations on disclosure

- The Act protects information through the use of exemptions and exclusions:
 - Class-based and injury-based;
 - Mandatory and discretionary;
 - Most exemptions are not time limited;
 - Some protected information may be disclosed with the consent of the “owner” of the information;
 - No general public interest override.
- Most used exemptions:
 - Personal information;
 - International affairs and defence (including national security);
 - Operations of government (including advice and recommendations, and provision of free and frank advice within public authorities);
 - Law enforcement and investigations;
 - Third party information;
 - (no exemptions for classified information)
- Government decisions made by members of Cabinet are excluded from the Act and are not subject to oversight by the Commissioner.

Oversight

- **First level** – Information Commissioner of Canada



Information
Commissioner
of Canada

Commissaire
à l'information
du Canada

- **Second level** – Federal Court of Canada



Information Commissioner of Canada

- Independent from the executive:
 - Appointed by the Governor in Council after consultation with the leader of every recognized party in Parliament (the Senate and House of Commons). The approval of the appointment is done by resolution of both houses.
 - Term of seven years, with possibility to renew tenure once.
 - Salary equal to the salary of a Federal Court judge.
 - Reports directly to Parliament by tabling annual and special reports.
 - May only be removed for cause by the Governor in Council on address of both houses of Parliament.
 - Free from political influence in the exercise of the Commissioner's mandate.

Information Commissioner of Canada

- The Commissioner protects access to information rights.
- Mandate is to investigate complaints relating to requesting or obtaining access to records under the *Access to Information Act*.
- Possesses strong investigative powers, for example:
 - summon and enforce appearance of people;
 - production of documents - power to review nearly all records;
 - enter any premises of any government institutions.
- Ability to initiate own investigations.
- Resolves complaints through mediation and suasion.
 - Annually, about 99-percent of all complaints are resolved.
- The Commissioner makes recommendations.

Information Commissioner of Canada

- Master of her own procedure.
- Procedural fairness built into the Act.
- Subject to stringent confidentiality provisions.
- Investigations must be thorough, unbiased and conducted in private.
- Investigative activities dictated by Canadian administrative law.
- Offences in the Act:
 - Obstruct the Information Commissioner in performing her duty;
 - Obstruct the right of access by destroying, mutilating or altering a record, falsifying a record, concealing a record, or causing any person to obstruct the right of access.

Complaints

- Requesters have 60 days to file a complaint.
- Types of complaints:
 - Administrative complaints (delays);
 - Refusals complaints.
- Any other matters about requesting or obtaining records.

Federal Court of Canada

- If the Commissioner's recommendations are not followed, the Commissioner may, with the requester's consent, take the matter to the federal court.
- If the requester is not satisfied with the Commissioner's decision, the requester may, on his/her own, take the government institution to court.
- Federal Court reviews the institution's decision, not the Commissioner's recommendations (*de novo* review).
- If the Court finds that the head of an institution was not authorized to refuse disclosure, it may order that the records, or parts thereof, be released.

Parliament

- Advises Parliament:
 - Standing Committee on Access to Information, Privacy and Ethics;
 - Any other parliamentary committee.
- Reports to Parliament:
 - Annual Reports;
 - Special Reports.



Striking the Right Balance for Transparency

- ***Striking the Right Balance for Transparency*** tabled in Parliament on March 31, 2015

The report contains **85 recommendations** that can be organised under eight broad categories:

1. Extending coverage of the Act;
2. Improving procedures for making access requests;
3. Setting tighter timelines for responding to requests;
4. Maximizing disclosure;
5. Strengthening oversight;
6. Disclosing more information proactively;
7. Adding consequences for non-compliance; and
8. Ensuring periodic review of the Act.

Proposed Amendments to the Act

- The Act came into force in 1983
 - Since that time, there have been repeated calls for its modernization
- Bill C-58 was tabled on June 19, 2017
- It proposes to:
 - Impose a proactive disclosure regime on ministers' offices, government departments, parliamentary entities and certain judicial institutions;
 - Empower the Information Commissioner to order the release of government information; and
 - Require requesters to provide additional details when making a request, while at the same time adding new grounds for institutions to ignore a request.
- The Commissioner tabled a special report in Parliament, *Failing to Strike the Right Balance*, on September 28, 2017 recommending 28 amendments to improve the bill. Areas of concern included:
 - The right of access
 - Coverage of Minister's offices, Parliament and courts
 - Fees
 - The Commissioner's oversight

Contact information

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Thank you.

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