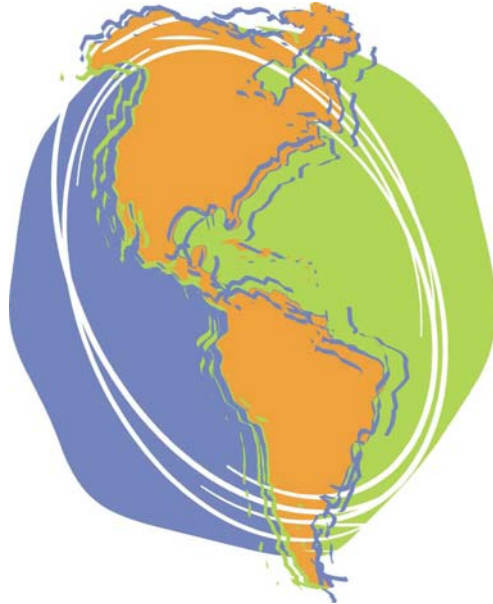


*Civil Society Follow-up of the  
Quebec City Summit of the Americas  
Plan of Action*



Report on Access to Information in  
Canada

Prepared by the Canadian Foundation for the Americas  
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## Executive Summary

This report on Access to Information in Canada is one part of a 34-month, hemispheric-wide analysis of how well national governments in the Americas are complying with the commitments to strengthen democracy made at the 2001 Summit of the Americas in Quebec City.

This report addresses the main issues under debate in Canada regarding freedom of expression by looking at:

- a) Existing legal framework;
- b) Effective Access to information on various topics; and
- c) The impact of education and of new technologies on the dissemination and management of information

The findings of this national study demonstrate the following:

- The current debate about access to information in Canada is framed by the need to define and redefine the private and the public spheres in light of changing realities.
- The Access to Information Act has provided the legal and procedural basis for overcoming barriers to openness, avoiding unreasonable costs and delays in the delivery of information.
- Access to information in Canada is consistent with democratic practices. However, there is concern that the number of exemptions has increased over the years, particularly with the enactment of anti-terrorist legislation.
- By law, all government departments subject to the Access to Information Act have a special office to receive and address information requests. To improve the government's management and response to information requests, Canada has also developed a centralized system to submit requests for information as well as one to evaluate the effectiveness of the response. Although useful to measure the government's compliance with the law, it has also been suggested that this system has also been used to respond selectively to the requests according to the identity of the requester.
- On average around 50% of information requests are completed in the 30-day limit, according to data provided by the Information Commissioner. The delays are explained partly by the nature of the requests. However there are other problems: e.g. flexibility to define that certain information could fall into the exemptions, the temporary hold-up of information to reduce media damage, and lack of sufficient funding to train staff and to manage a good filing system.
- In Canada a large amount of information on various issues is available to the public. But it was flagged that with the changes that have taken place in the Canadian economy and society, more information is needed to hold government officials and private actors providing public services accountable.
- Canada has developed a policy to disseminate information on various issues using a combination of printed and electronic materials. The creation of Internet portals, e.g. InfoSource and the Canada site, has been an important tool to provide up-to-date and timely information and to disseminate it across the country even in remote and rural areas. This however, should be combined with well-managed and well-funded access to information system that serves citizens.

## COMMITMENTS UNDER THE QUEBEC CITY PLAN OF ACTION: ACCESS TO INFORMATION

Considered a human right under Article 19 of the United Nations' *Declaration of Human Rights*, the public's right to access to information is seen as essential to ensure government accountability, and constitutes the basis for an effective and participatory citizenry. Following the values of the *Declaration*, the governments of the Americas committed themselves to strengthen democracy by ensuring access to, and public availability of, information at the Summit of the Americas in Quebec City in 2001.

In the Quebec Plan of Action the participating governments pledged that, in order to increase public institutions' transparency and accountability, they will work together to facilitate cooperation among the national institutions responsible for guaranteeing [...] free access to information, with the aim of establishing best practices to improve the administration of information held by governments about individuals, facilitating citizens' access to this information."

For the purpose of this report, access to information will be understood as the government's "release of information of interest and relevance to [...] media, civil society and citizens in general, in areas such as public finances; the activities of the authorities and high public officials; the results of government actions; support offered to vulnerable groups and individuals; and the finances, accounting and audits of private companies and executives. 'Public availability' of information in these areas implies that the information is timely, up-to-date, comprehensible, useful for the oversight of public and private entities, and sufficient to permit citizens to exercise rights and take advantage of opportunities."<sup>1</sup>

Although not exhaustive, this report will provide an overview of the state of access to information in Canada, the legal provisions to protect this right and some of the main issues that are currently being debated regarding the law. To do so, it will look at three dimensions, presented in the following sections. Section I will analyze the legal framework, reviewing the obligations of the government under the law as well as the current debate on the need to reform the Access to Information Act, current exemptions to access to information, and existing complaints mechanisms. This section will also review the administrative mechanisms of information requests. Section II will evaluate if these access mechanisms are effective at transmitting information required to ensure that citizens can hold governments accountable for their actions. Section III will highlight the impact of new technologies on the dissemination and management of information.

### SECTION I: LEGAL FRAMEWORK OF ACCESS TO INFORMATION.

This section will look at the current legal framework for access to information at the federal level as well as at provincial/territorial level. In order to evaluate the current access to information law in Canada, we will describe and assess the effectiveness of the provisions of the law regarding 1) the responsibilities of government institutions to provide information, 2) the exemptions to the release of information; 3) the complaint mechanisms available when access to information is refused without justification under the law; 4) and the administrative procedures set in place to request information. The fourth part of the section will review the administrative systems that facilitate information requests.

#### *1.1 Obligations of the Government Under the Act*

In Canada, access to information practices are consistent with those of democratic countries. Based on the right of expression established in the *Charter of Rights and Freedoms*, in 1982 Canada enacted the *Access to Information Act (AIA)* and the *Privacy Act* aimed at protecting the right to access public records and to prevent the disclosure of private information without consent. Since then, the Canadian government has engaged in making more information available to Canadian citizens. The existence of the AIA has provided the legal and procedural basis for overcoming barriers to openness, avoiding unreasonable costs and delays in the delivery of information, as well as the application of excessive exemptions.<sup>2</sup> Today the Canadian government disseminates a large amount of information through various means – increasingly through the Internet – in order to reach broader audiences. Moreover, in 2002, as part of its Communications Policy, the Government of Canada emphasized the need to provide the public with timely, accurate, clear, objective and complete information about its policies, programs, services and initiatives. Further, it stressed the need to encourage public officials to actively participate in this endeavour.<sup>3</sup>

However, since the law was enacted, the domestic and international reality has changed dramatically. After 20 years in existence there has been a movement to assess the impact of the AIA and its effectiveness, and to overcome some of the identified shortcomings. In the late 1990s, demands to strengthen the existing legislation led to the creation of two bodies to assess the law and to make recommendations. One was an independent commission led by Liberal MP John Bryden. The second was a government appointed Special Task Force, which in 2002 published a report entitled *Access to Information: Making it Work for Canadians*, which recommended new administrative measures to improve the processing of information, but suggested that no additional amendments were needed in the legislation. The conclusions of this report, as well as the way in which the investigation was conducted, were highly criticized by independent groups and the Information Commissioner for being too government-friendly. Until now the government has not responded to the Task Force's recommendations.<sup>4</sup> The debate about the need to reform the AIA has been also permeated by the concerns around the new restrictions on freedom of information and expression imposed under the recently enacted anti-terrorism legislation.

Just as the existence of laws guaranteeing access to information is essential, there are cases where there is the need for "exemptions" – provisions that allow the government to withhold information, to protect the rights and privacy of individuals' personal information, and to guarantee the State's capacity to ensure national security. However, to maintain openness and access, it is imperative that these exemptions be reduced to the 'bare minimum.' Efforts to define and delimit the divide between what constitutes public and private information in a changing reality presents an ongoing struggle: *Should the personal agendas of public officials be made public? Should a private company receiving public funding or providing a public service be subject to the provisions of access to information laws? Or in the context of the war on terrorism, what type of information should fall into the category of security information and thus be restricted?* All of these are relevant questions that are permeating the current debate about access to information in Canada.

In Canada, this debate is characterized by, on one hand, the need to adapt the AIA and the behaviour of government officials to current domestic and international challenges and contexts, while on the other upholding democratic principles and citizens' rights as defined by the *Charter of Rights and Freedoms*. This is an ongoing process that requires continuous exploration and review.

Currently in Canada, access to information is protected under the *Access of Information Act*, which gives **all Canadian citizens and permanent residents** the right to access records under control of a government institution and establishes the conditions under which the right of access to information should be guaranteed. Although not part of the *Canadian Charter of Freedoms and Rights*, **the AIA can override provisions of other federal laws**.<sup>5</sup> In addition to federal laws, the 13 provinces and territories have provincial legislation on access to information and privacy, which in some cases are more comprehensive than the federal laws. Where two laws exist in the same jurisdiction, the more “comprehensive” of the two takes precedence.

Enacted in 1982 and in force since 1983, the AIA was amended in 1992 (to provide information in alternate formats to individuals with sensory disabilities), in 1999 (to make it a criminal offence to intentionally obstruct the right of access by destroying, altering, hiding or falsifying a record, or directing anyone else to do so), and in 2001 (amended by the *Anti-terrorism Act*).<sup>6</sup> The combination of the access to information and privacy laws enable citizens to have access to government records about their activities as well as to personal information gathered by the government.

According to the AIA, Government institutions have the key responsibilities of:

- **Publishing information** about their responsibilities and provide listings of the records under their control (section 5(1));
- Providing **access to records** under their control unless the information requested falls into the exemptions established by law (section 6);

### **Publishing Information**

Canada has developed a policy to create and publish relevant information about their responsibilities, a listing with the records under their control, the manuals and guidelines used by employees, and the contact information of the person in charge of receiving requests for information. However, it was noted by experts that Canada has no law requiring that government departments create records or maintain a well-organized and accessible filing system, as is the case in government departments in the United States and the United Kingdom. While there was a 1999 Criminal Code amendment to establish a penalty of up to two years in prison and/or a \$10,000 fine to punish those that alter, hide or destroy information, or counsel to engage in these activities, there is no law against poor file “housekeeping,” which can also impede the identification and retrieval of information.<sup>7</sup> Moreover, although Canadian government institutions are obliged to report on their activities and on the type of information that they have under their control, they do not have to report on *how* they are complying with the AIA.

### **Providing access to records**

To evaluate whether the current process provides timely and equal access to government records, it is necessary to review if, in practice: the law ensures that any person can request information regardless of the motive; that the time periods to process information are not excessive; and that the administrative fees charged for each request are reasonable.

According to the *Act*, the government must provide access to records under its control to **any Canadian citizen or permanent resident** who requests such information (except in cases of exception), **without being required to state the reason why they are soliciting the information**. This right to request information also includes the right to reproduce it. Although not explicit in the law, the general interpretation has been that in those cases where a record contains a combination of restricted and permitted information, the permitted parts should be made available to the requester. Also, once the request has been made, government institutions are obliged to respond in writing within **30 days**, notifying the requester if the information will be disclosed. If the request is denied, the rationale for that decision must be explicitly stated. Depending on the complexity of the information required, the heads of Government institutions can ask for an extension past the 30-day limit. The length of the extensions granted to government departments to provide information may vary according to the complexity of the request but should be notified to the requester. According to the law, if the head of the institution fails to provide the information within the timeframes stipulated by law, the request is considered to have been officially refused.

#### Response to requests

To test government institutions' compliance with the law and their commitment to the principle of openness, it is important to review how many requests for information were actually received and answered in the allotted time. According to the figures presented for 11 government departments in the annual report 2003 of the Information Commissioner, approximately 50% of the requests received in the fiscal year 2002-2003 were completed within the stipulated 30-day period. Table 1 illustrates the number of requests received and those by select government departments between April 1, 2001-March 1, 2002 and April 1, 2002-November 30, 2002.

**Table 1. Number of information requests and of requests processed on time, by Department (April 2001-November 2002)**

| Government Institution                                | Requests received (% of requests completed in time*) | Requests received (% of requests completed in time) |
|---|--|---|
|   | Apr. 1, 2001-March 31, 2002                          | Apr. 1, 2002-Nov. 30, 2002                          |
| Canada Customs and Revenues Agency                    | 1,009 (64%)  | 780 (44%)   |
| Citizen and Immigration Canada                        | 6,557 (59%)  | 4,971 (57%)   |
| Department of Foreign Affairs and International Trade | 496 (36%)  | 347 (34%)   |
| Fisheries and Oceans Canada                           | 459 (42%)  | 288 (55%)   |
| Health Canada   | 1,474 (65%)  | 960 (62%)   |
| Human Resources Development Canada                    | 448 (42%)  | 345 (54%)   |
| National Defence                                      | 1,358 (44%)  | 791 (41%)   |
| Privy Council   | 299 (48%)  | 240 (47%)   |
| Transport Canada                                      | 362 (45%)  | 410 (40%)   |
| Correctional Service Canada                           | 411 (38%)  | 143 (45%)   |
| Public Works and Government Services Canada           | 760 (46%)  | 680 (37%)   |

\* The percentages were calculated according to the figures provided by the Information Commissioner in his Annual Report 2002-2003.  
Source: Office of the Information Commissioner. [Annual Report 2002-2003](#). Appendix B. Report Cards. *Opus. Cit.*

According to the Government's Special Task Force evaluation on access to information, delays are the result of lack of sufficient funding, coupled with an increase in the number of requests.<sup>8</sup> Although the delays can be partly explained by an increase in the number and complexity of the requests and budget cuts, our respondents stressed that the lack of penalties for non-compliance for government institutions also plays a role.

Access to information specialist Alasdair Roberts, recognizing problem of delay, argues that delays in the release of information are related to the type of request and who the requester is. He notes that contentious/sensitive requests, as well as those from media and members of opposition parties tend to be more prone to be delayed.<sup>9</sup> In his opinion, the data base systems used by the government to organize and track access to information requests (*Coordination of Access to Information Request System (CAIS)* and the *ATIPflow*) allow government institutions to classify requests by type of requester and by topic, and have been used to control and monitor government's responses to requests of information.<sup>10</sup> While these databases were created to facilitate the management of information requests and to measure the responses of the heads of government offices, Roberts argues that with them communications officials have classified requests and entered precautionary codes for some of them – informally called 'red files,' or 'amber lights.' Due to the impact of media on the image of the government, communications officials assess the requests identified as 'sensitive cases' to determine the possible effects of the disclosure of information and to devise strategies to mitigate potential media damage. Although the requests of information might eventually be completed, the delays may mean that the information is no longer current or relevant to those making the request.<sup>11</sup>

Access to information can also be affected by the culture of secrecy that exists among some government officials. In the 2002-2003 report, the Information Commissioner suggested that some officials engage in secretive or non-transparent behaviours to demonstrate institutional loyalty. He did note that there is strong support among senior officers for improve training for their staff to reduce this type of conduct.<sup>12</sup>

### Fees

According to the AIA, individuals making an access to information request should have to pay no more than a maximum CDN\$25.00 administrative fee. At the federal level **the administrative fee to submit a request is currently CND\$5.00**. Additional charges may be added for complex requests and/or for the reproduction of material. Depending of the complexity of the request, government institutions may also require a deposit at the beginning of the research. If the fees to process the request are less than CND\$25.00 the head of the government institution may consider waiving them.

At the provincial level, fees vary and some provinces require an application fee, while some do not (see table 2). However, the case of Nova Scotia is noteworthy. In 2000 this province decided to increase the application fee to the maximum of CND\$25.00 in order to make requesters share the cost of the service. In addition to the application fee there may be an hourly research rate charged for complex requests, which was also increased from CND\$20.00 to CND\$30.00 per hour. Furthermore, a \$25.00 fee to appeal was also imposed. Although government representatives from Nova Scotia argued that these measures were related to the need to manage the costs of this service and to avoid

'frivolous requests,' the measure has raised concerns regarding the public's ability to access information in the future.<sup>13</sup> The opposite case is Quebec, which does not charge application fees for requests for information, and establishes that fees should not exceed the cost of transcribing, transmitting or copying the documents requested.<sup>14</sup>

**Table 2. Fees charged in requests for information at provincial level.**

| Province             | Application fee    | Other charges (Yes/No) |
|----------------------|--------------------|------------------------|
| Alberta              | \$ 25.00           | Y*                     |
| British Columbia     | No application fee | Y*                     |
| Manitoba             | No application fee | Y*                     |
| Nunavut              | \$25.00            | Y*                     |
| Prince Edward Island | \$5.00             | Y*                     |
| Quebec               | No application fee | Y*                     |
| Saskatchewan         | \$20.00            | Y*                     |
| Ontario              | \$5.00             | Y*                     |

\* Additional fees may be charged to cover for photocopying expenses, research for complex requests, shipping costs, reproduction of the documents, etcetera. Each province sets the guidelines to charge for these services and if applicable to waive fees.

## 1.2 Exemptions to Access to Information

As mentioned earlier, the AIA does stipulate certain restrictions – or exemptions – on the public right to access information, as do the *Privacy Act*<sup>15</sup> and the *Security of Information Act* (also known as the *Secrets Act*).<sup>16</sup>

In an effort to protect personal privacy the AIA states that no personal information should be disclosed to a third party without the person's consent. There are also information restrictions on public disclosure of personal information in the media in order to protect children, juvenile crime suspects or victims of crime. In the new *Youth Criminal Act*, the names of young people suspect of a crime should not be published, in order to facilitate their rehabilitation and reintegration into the community.<sup>17</sup> Similar dispositions are made in *Bill C-79* (proclaimed into force on December 1, 1999), which amended the *Criminal Code*, to protect the identity of victims or witnesses.<sup>18</sup>

Apart from privacy-related issues, the exemptions established in the AIA aim to control information related to **international affairs and defence, law enforcement and investigations, federal-provincial affairs, cabinet confidences, and trade or technological secrets that could harm economic interests of Canada**.<sup>19</sup> While most of these exclusions are clearly defined, the government still retains some discretion to determine what information falls into the accepted categories. Some advances have been achieved in limiting this discretionary power, particularly relating to their ability to block "cabinet confidences" using these exemption categories. For instance, in 2003, the Supreme Court of Canada ruled that government decisions to refuse access to information on the containing cabinet confidences could be reviewed by courts and bodies, such as the Information Commissioner. The Federal Court of Appeal also order that the government narrow the zone of secrecy previously afforded to cabinet confidences. In another ruling the Court restrained the privacy sphere accorded to public officials in order to enhance accountability. More recently, in February 2004 Prime Minister Paul Martin decided to release all cabinet confidences in order to respond to enquires about the misuse of public funds from the Sponsorship Program in the province of Quebec during the 1990s.<sup>20</sup>

Despite these advances in better defining and limiting exemptions, according to our informants the exemptions and exclusions to access to information have increased, not decreased over time, and there remains significant subjectivity in the meaning and understanding of 'bare minimum' when it comes to exceptions. Between 1986 and 2000 the number of legal exemptions to the *Act* rose from 38 to 50. More recently, provisions of *the Anti-Terrorism Act* and amendments to the *Secrets Act* include further restrictions to the disclosure of public information that is considered to be relevant for the security of the State, or to Canadian's interests. The Anti-Terrorist Act gives the Attorney General the capacity to issue secrecy certificates to prevent the disclosure of information for 15 years for the purpose of protecting international relations, national defence or security. The legislation also confers the power to stop any ongoing investigation, appeal or judicial review regarding a complaint once such a certificate had been issued.<sup>21</sup>

The Information Commissioner denounced these amendments, asserting that they would remove the investigative powers of his Office. The Commissioner also pointed out the Federal Court was the only body that was granted limited powers to review the legitimacy or appropriateness of the use of security certificates in questionable cases even though the Federal Court's jurisdiction is confined to decisions about whether the information in question was related to confidential information disclosed by a foreign entity, national defence or security. Although no such certificates have been issued so far, further attention should be paid to the implementation of these new security provisions.<sup>22</sup>

### ***1.3 Complaint Mechanisms***

In the case that a request for information is denied, Canadians have a couple of options to seek recourse.

#### **Access to Information Commissioner**

Should the requester consider that the government's refusal to disclose information was unjust, or that the fees and/or delays to process such information were excessive, the requester is entitled to bring a complaint before the Information Commissioner. The Commissioner has vast powers to investigate the case and to review the information requested.

According to the Information Commissioner the main cause of complaints has been the refusal to disclose information and excessive delays. Between April 2002 and May 2003 the Information Commissioner received 956 complaints against government institutions, that were combined with 928 that were pending from 2001-2002. As of May 2003, 1,004 investigations were completed – of this total, 58.7% (589) were complaints related to disclosure refusals, and 16.2% (163) to delays (deemed refusals). From the total number of complaints related to disclosure refusals, 51% were resolved, 5.2% were not resolved and 36% were not substantiated. From the complaints received for delays, 82% were resolved and 14% were not substantiated. Of the 1,004 investigations, only 2 cases were taken to the courts. The departments of Citizen and Immigration Canada (56 of 111), National Defence (50 of 84), and the Treasury Board of Canada Secretariat (44 of 50) were some of the institutions that received the most substantiated complaints.<sup>23</sup>

If the Commissioner finds the complaint is well founded, he/she can recommend that the head of the government institution release the information. The department can in turn accept or ignore the recommendation, i.e. **the Commissioner's recommendations are not**

**binding.** Despite the impossibility of enforcing its decisions, it is important to highlight that the Information Commissioner has a significant advocacy role and has used his annual reports to expose those government institutions that have refused to comply with the provisions of the AIA.

All provincial and territorial governments have their own legislation on access to information and privacy, with recourse to a provincial/territorial ombudsman.<sup>24</sup> In the opinion of our respondents, the federal law represents the lowest standard and provincial legislation is often more effective, providing increased – and needed – authority to the provincial Commissioner. In Ontario and British Columbia, for instance, the rulings of the provincial Commissioners are final and binding for all institutions under their jurisdiction.

### **Courts as Final Recourse**

The judicial system is another way people who feel that their request for information was unjustly refused can seek recourse. Although the first step for the requester should always be to submit complaints to the Commissioner, if unsatisfied with the result of the investigation, the requester can take his/her case to the Federal Court within 45 days of the results of the Information Commissioner investigation. Once within the judicial system the requester may take their case all the way to the Supreme Court of Canada. With the consent of the requester, the Commissioner can also decide to present a case before the Court if they consider that the case may be used to set a legal precedent and clarify the law. The Commissioner may also represent any requester who decides to independently file a case for court revision. Third parties can also use the judicial system to oppose the disclosure of information.

At both the federal and provincial/territorial levels when an access to information case is brought before the court, the government institution holds the burden of proof. In other words, the government must be the one to prove that the refusal to disclose information is justified under the provisions of the AIA and provincial legislations. After the hearings, if the Court decides that the refusal to disclose information was not justified under the law, it can order the release of the information or parts of it, subject to the conditions that the Court deems appropriate.<sup>25</sup>

It was noted by respondents that despite the existence of the courts as an arbitrator in access to information cases, only a small number of complaints are actually taken to the courts, often because the process is long and costly. Of the 1,004 investigations undertaken by the Information Commissioner between 2002 and 2003, the Commissioner referred only 2 cases to the court for revision. In the same period, 5 applications were filed for court review by unsatisfied requesters, and 14 applications to oppose disclosure of information were filed by third parties.<sup>26</sup> The length and costs of these judicial processes depends on the complexity of the case and on whether the decision of the Federal Court is appealed or not. However, the review process of some of the cases mentioned in the Information Commissioner's 2002-2003 Annual Report took between 2 and 4 years.<sup>27</sup> Regarding costs, the AIA stipulates that the costs of court proceedings are at the discretion of the Court, but that when the case raises a new principle in relation to the law the Court shall order that court costs be awarded to the applicant, even if the applicant was not successful in the result.<sup>28</sup>

### ***1.4 Administration of Information Requests***

In addition to effective legal and procedural regulations to guarantee access to information, governments across the hemisphere must also construct practical, efficient and functional mechanisms that allow them to respond to requests and transfer information to citizens. In Canada, section 73 of the AIA stipulates that the head of each government Department or institution may designate one or more people to exercise and perform the provisions of the Act.

In practice, in each government department and or institution there is a person in charge of receiving requests of information and processing them. The government of Canada also has a centralized system to receive requests, and submissions can be done through the Internet by filling in the form available at **InfoSource**,<sup>29</sup> which is a series of publications and databases published by the Treasury Board of Canada Secretariat –which is in charge of enforcing the administrative issues related to the AIA – aimed at facilitating access to information about the federal government, including departments, programs, personal information banks and telephone numbers of contacts (e.g. Access coordinators' offices). **InfoSource** also publishes the lists of the government institutions and departments that are subject to the AIA. As such, this is a relevant tool in the exercise of access to information. **InfoSource** can be accessed at most major libraries, constituency offices of Members of the Parliament, federal government public enquiry and service offices, or through the Internet (<http://infosource.gc.ca>).<sup>30</sup>

In this report we have mentioned some of the shortcomings of the access to information legislation and the enforcement mechanisms put in place under the AIA. It is also important to underscore that in some cases the problems related to access to information in Canada (i.e. refusal and delays in the delivery of information) are not policy or philosophical issues, but are rather caused by shortcomings in procedural and technical issues: creation of records, transfer of information and files from traditional form to electronic form, and training public officials in the management of information system. Canada has innovated and developed databases to manage information requests, as well as to track of governments' response to these requests, but according to official sources a significant amount of information is being deleted and lost due to lack of proper training and funding.<sup>31</sup>

The Information Commissioner has suggested the need to establish standards among officials in charge of creating files, and provide information so that access to information is ensured. Better training programs need to be implemented in order to facilitate the transfer of information into new formats. The Information Commissioner has also suggested the creation of a record-keeping law that would ensure the creation and maintenance of relevant information by the government.<sup>32</sup>

## **SECTION II. EFFECTIVE ACCESS TO INFORMATION HELD BY THE CENTRAL GOVERNMENT**

In an effort to evaluate if the above-mentioned laws and mechanisms are functioning well, the experts surveyed for this report were asked to rank the quality of access to information on public finance, activities by public and senior officials, the results and impacts of government activities, support for vulnerable groups and the finances, accounting and audits of private firms and executives, using the following categories:

**Satisfactory:** Information is broad, relevant, up-to-date, understandable and accessible in accordance with pre-defined rules.

**Insufficient:** Information is partial, of little relevance, not up-to-date or confusing or unclear.

**Not available:** Scarce information that is irrelevant, not updated or incomprehensible.

The overall impression of the people surveyed is that a fair amount of the information is available, broad, understandable and up-to-date. In the areas of **government spending, on public bids, and on loans and setting rates for basic services, public servant's incomes;** as well as **votes on legislation** consensus was not reached, but the majority considered the information sufficient, while others considered it insufficient, in no case was the information considered not available.

Reviewing the opinions of respondents, the area flagged as the most problematic in terms of access and availability of information was **finances, accounting and audits of private firms and executives.** All respondents agreed – one of two categories where consensus was reached – that there is **insufficient information on performance indicators of private or public companies providing public services.** This response underscores the desire of Canadians to have more access to this sort of information to ensure accountability and transparency. This issue is an important aspect of the current access to information debate in Canada.

Furthermore, regarding **price and quality consumer products,** concern was also expressed that the information currently available is insufficient. The incomplete information on food labelling, especially when Genetically Modified Organisms are involved, was flagged as an example. It was also remarked that most consumer reports are done privately and are not accessible to the public.

In the same vein, there was also a strong message sent about the need for increased accountability in certain areas of public finance, particularly the availability of information on **economic measures regarding privatization and international agreements.** Although the government provides information, government institutions can still restrict the release of certain information if they consider that disclosure will affect the outcome of an international negotiation.

Other issues flagged by respondents include the fact that while Canada's public servant incomes are public information, the personal assets of senior officials are not considered relevant public information and are protected under provisions of the Privacy Act. It was indicated that the information provided on **senior officials' assets** was insufficient, perhaps indicating that the current law should be modified.

Respondents did not agree about the quality and quantity of the information that government provides on the results and impacts of its activities, particularly related to the categories of poverty and inequity, educational and health indicators. While there was some reservations expressed about the **services for victims of domestic violence and sexual abuse.** It was noted that currently individuals must make a greater effort to identify and retrieve this information. However, it was the general view that information about **police abuse and excessive use of force** and about **accusations of human rights violations** is satisfactory. It was agreed that the category of **sources of support for populations displaced or affected by a war or internal conflict** did not apply to Canada.

### **SECTION III. USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGIES TO FACILITATE ACCESS TO PUBLIC INFORMATION.**

The use of new information and communications technologies (ICT) has the potential to facilitate a broader and rapid dissemination of information in all countries through the Americas. Canada has successfully used technology to facilitate its information policy, and federal, provincial and municipal governments use various means to make information about their departments and institutions available to the general public. As a result, Canada is one of the leading countries in the use of ICT and e-government in the world.<sup>33</sup> When asked, experts consulted concurred, noting that between 80-100% of government departments at the national, regional and municipal level have functioning web pages.

As part of their information strategy the federal government has developed numerous web sites in both official languages and created toll-free *info-lines* to make general information available and to direct people to other sources of information. Information in aboriginal languages is available on the web site of the Nunavut and Northwest Territories government information lines. The Government On-Line Initiative is one of the main components of this strategy, and was developed to disseminate information about Canada and about the government on the Internet. The **Canada Site** ([www.canada.gc.ca](http://www.canada.gc.ca)), is a bilingual service that includes links to federal, provincial and territorial institutions and information on topics of interest to the public. The use of this resource has been extensive in the last three years. Between the 1999-2000 and the 2002-2003 fiscal years, the number of times in which the Canada Site was accessed increased from 23.8 million to 56.9 million, while a similar trend was found in the number of e-mail messages received, increasing from 12,943 to 69,381.<sup>34</sup>

The toll-free **1 800 O-Canada** is another service offered in English and French aimed at providing up-to-date information on government programs and services and at answering questions, taking orders for publications, and directing callers to experts in government departments.<sup>35</sup> The number of enquires answered by 1 800 O-Canada rose from 872,626 to 1,251,785 between the 1999-2000 and the 2002-2003 fiscal year.<sup>36</sup>

In Canada these services are very important tools for the dissemination of information and for providing access to and accountability from governments. They are also an important unifying and equalizing force, providing citizens in all parts of the country the same access to government. The increase in the number of users also indicates that the services are being well used. However useful, Internet and telephone services do not replace a comprehensive, well-managed and well-funded information system that serves citizens, nor do they guarantee adequate access to information.

## CONCLUSIONS

In Canada access to information was incorporated into the legislative framework 20 years ago, and has been evolving since its inception. Overall it can be said that access to information systems are affected by the legislative and legal frameworks, the quality and power of the oversight institutions, as well as organizational capabilities of the information administration system. Although it can be said that Canadian practices on access to information are in concordance to those of a democratic country, the existing legislative framework and the institutions in charge of enforcing these laws in Canada do have important limitations, including the high number of exemptions, low level of compliance with time frames on behalf of government departments, the lack of political clout of the Information Commissioner to order the release information, as well as the inexistence of record-keeping laws. Many of these limitations have been used to argue, successfully and unsuccessfully, for a reform of the law. However, not all of the problems with access to

information are related to the shortcoming of the law; some of the delays are due to deficient procedural mechanisms. In this technology-based era governments, including Canada's, face large administrative challenges, including the creation, filing and administration of information and other data, as they try to ensure access to information.

However, despite its shortcomings, the AIA *has* served to open new spaces for access to information, and progressively extend the scope of its provisions in areas that were previously considered to be restricted. These steps toward greater openness are important in terms of keeping the federal, provincial/territorial and local governments accountable for their behaviour, as well as other actors - private or public - who provide public services.

## PROPOSALS

Having full and sufficient access to information is an ongoing process, one in which the government and society must struggle to define and redefine the contours and limits of the public and private spheres. In the spirit of contributing to this discussion we suggest the following key recommendations:

- Need for stronger enforcement mechanisms, and strengthen the powers of the Commissioner like in Ontario and British Columbia.
- Create legislation to enforce the creation and administration of information to rectify the current the lack of legislation to oblige government institutions to create good records. Make sure that legislation has penalties for non-compliance.
- Reduce the exemptions to access to information. Security and anti-terrorist legislations should not override access to information.
- Promote measures to reduce the lack of compliance within government departments.
- Establish measures to prevent the use of mechanisms designed to manage requests for information and measure institutional responses, such as the CAIS and ATIPFlow, to control the disclosure of information to selected groups of society in order to do media damage control. Access to information should be granted despite the profession of the requester and regardless of the use that the person will make of that information.
- Foster research to evaluate availability of information particularly to hold accountable private firms providing public services

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## ENDNOTES

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<sup>2</sup> Office of the Information Commissioner of Canada. Chapter I: 20th Anniversary Year in Review. *Annual Report: 2002-2003*. Ottawa: Office of the Information Commissioner of Canada, pg. 1

<sup>3</sup> Treasury Board of Canada Secretariat. *Communications Policy of the Government of Canada*. Ottawa: Canada, pgs. 1-2. [http://www.tbs-sct.gc.ca/pubs\\_pol/sipubs/comm/comm1\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/sipubs/comm/comm1_e.asp) (consulted on January 23, 2004).

<sup>4</sup> Office of the Information Commissioner of Canada. *Ibidem*, pgs. 1-3.

<sup>5</sup> Access to Information Review Task Force. *The Access to Information Regime – A Primer*. In *Access to Information: Making it Work for Canadians*. Ottawa: Government of Canada, pg. 15.

<sup>6</sup> Idem.

<sup>7</sup> Office of the Information Commissioner of Canada. Chapter II: Addressing the Crisis in Information Management. In *Annual Report 2002-2003*. *Opus cit.*

<sup>8</sup> Review Task Force. *Access to Information: Making it Work for Canadians*. Opus cit.

<sup>9</sup> Alasdair Roberts. Administrative Discretion and the Access to Information Act: An "Internal Law" on Open Government? Canadian Public Administration 45:2 (Summer 2002).

<sup>10</sup> Ann Rees. Red Files alert: Public Access at Risk. Toronto Star, November 1, 2003.

<sup>11</sup> Alasdair Roberts, Opus cit.; Elaine O'Connor, The X-ed Files, Ryerson Review of Journalism (Summer 2002).

<sup>12</sup> Information Commissioner of Canada. Chapter II: Addressing the Crisis in Information management. In *Annual Report 2002-2003*. *Opus cit.*

<sup>13</sup> Peter McLaughlin, Province hikes price of truth, The Daily News (Halifax), March 27, 2002.

<sup>14</sup> Commission d'Accès à l'Information du Québec. [http://www.cai.gouv.qc.ca/eng/droits\\_en/dro\\_acc\\_en.htm](http://www.cai.gouv.qc.ca/eng/droits_en/dro_acc_en.htm) (consulted on February 25, 2004).

<sup>15</sup> This report will not analyze in depth the Privacy Act or the role of the Privacy Commissioner. Department of Justice. *Privacy Act*. <http://laws.justice.gc.ca/en/P-21/93298.html> (consulted on January 22, 2004.)

<sup>16</sup> Department of Justice. Security of Information Act. <http://laws.justice.gc.ca/en/O-5/text.html> (consulted on January 22, 2004).

<sup>17</sup> Publication would only be possible if the youth was imposed an adult sentence. Department of Justice. Youth Criminal Act. <http://canada.justice.gc.ca/en/dept/pub/ycja/youth.html#1> (consulted on January 23, 2004).

<sup>18</sup> [http://www.parl.gc.ca/36/1/parlbus/chambus/house/bills/government/C-79/C-79\\_4/90080bE.html](http://www.parl.gc.ca/36/1/parlbus/chambus/house/bills/government/C-79/C-79_4/90080bE.html)

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<sup>19</sup> Other exemptions in the application of the Act are the **information obtained confidentially, third party information, advice and policy recommendations developed by or for Ministers, and information that may endanger the safety of individuals**. Department of Justice. Access to Information Act, Opus Cit., sections 4(a) and 13-26.

<sup>20</sup> *CBC News Online*. Sponsorship scandal inquiries. February 24, 2004. [http://www.cbc.ca/news/background/groupaction/sponsorship\\_inquiries.html](http://www.cbc.ca/news/background/groupaction/sponsorship_inquiries.html) (consulted on February 25, 2004).

<sup>21</sup> The Information Commissioner. Chapter I: Performance Overview. In *Annual Report: 2001-2002*. Opus cit. pg. 1.

<sup>22</sup> *Ibid*, pgs. 4-6

<sup>23</sup> Information Commissioner of Canada. Chapter III: Investigations and Reviews. In *Annual Report 2002-2003*. Opus cit.

<sup>24</sup> Nunavut will use the Northwest Territories' legislation until they create their own.

<sup>25</sup> Department of Justice, Access to Information Act. Opus cit., sections 41-52.

<sup>26</sup> Office of the Information Commissioner. Chapter V: The Access to Information Act in the Courts. *Annual Report 2002-2003*. Opus cit.

<sup>27</sup> Office of the Information Commissioner. Chapter V: The Access to Information Act in the Courts. *Annual Report 2002-2003*. Opus cit.

<sup>28</sup> Department of Justice, Access to Information Act. Opus cit., section 53.

<sup>29</sup> <http://www.hrdc-drhc.gc.ca/fas-sfa/access/access.shtml>

<sup>30</sup> For sources of information on various topics see the appendix.

<sup>31</sup> Jim Bronskill. Federal Files Routinely Lost, Destroyed: Government. *Southam Newspapers*. February 7, 2002. <http://www.opengovernmentcanada.org/News/SNS020702.htm> (consulted on October 26, 2003).

<sup>32</sup> Information Commissioner of Canada. Chapter II: Addressing the Crisis in Information management. In *Annual Report 2002-2003*. Opus cit.

<sup>33</sup> OECD. *Seizing the Benefits of ICT in a Digital Economy*. Meeting of the OECD Council at Ministerial Level, 2003. France: OECD. <http://www.oecd.org/dataoecd/43/42/2507572.pdf> (consulted on March 2, 2004).

<sup>34</sup> [http://www.communication.gc.ca/information/canadasite\\_statistics.html](http://www.communication.gc.ca/information/canadasite_statistics.html) (consulted on January 21, 2004).

<sup>35</sup> [http://www.communication.gc.ca/information/1800\\_overview.html](http://www.communication.gc.ca/information/1800_overview.html) (Consulted on January 21, 2004).

<sup>36</sup> The fiscal year in Canada dates from April 1 to March 31. The data presented here is available at [http://www.communication.gc.ca/information/1800\\_statistics.html](http://www.communication.gc.ca/information/1800_statistics.html) (consulted on January 21, 2004).

## APPENDIX

### 1. Legislation on access to information

#### Federal Legislation

- **Access to Information Act:** <http://laws.justice.gc.ca/en/A-1/8.html#rid-14>
- **Access to information laws in Canada:** <http://canada.justice.gc.ca/en/ps/atip/provte.html>
- **Privacy Act:** <http://laws.justice.gc.ca/en/P-21/93298.html>

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- **Security of Information Act:** <http://laws.justice.gc.ca/en/O-5/text.html>
  - **Youth Criminal Act:** <http://canada.justice.gc.ca/en/dept/pub/ycja/youth.html#1>

### Provincial legislation

- **Alberta.** Alberta's Freedom of Information and Protection of Privacy Act: [http://www3.gov.ab.ca/foip/legislation/foip\\_act/index.cfm](http://www3.gov.ab.ca/foip/legislation/foip_act/index.cfm)
- **British Columbia.** Freedom of Information and Protection Act: [http://www.qp.gov.bc.ca/statreg/stat/F/96165\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/F/96165_01.htm)
- **Manitoba.** The Freedom of Information and Protection of Privacy Act: <http://web2.gov.mb.ca/laws/statutes/ccsm/f175e.php>
- **New Brunswick.** Right to Information Act: <http://www.gnb.ca/0062/acts/acts/r-10-3.htm>
- **Newfoundland and Labrador.** Access to Information and Protection of Privacy Act [To be Proclaimed]: <http://www.gov.nf.ca/hoa/statutes/a01-1.htm>
- **Northwest Territories.** Access to Information and Protection of Privacy, S.N.W.T. 1994, c. 20 (In force December 31, 1996): <http://www.canlii.org/nt/sta/tdm.html>
- **Nunavut** has adopted the laws of the Northwest Territories until it has replaced those laws with its own.
- **Ontario.** Freedom of Information and Protection of Privacy Act [FIPPA]: <http://www.gov.on.ca/MBS/english/fip/act/act.html>
- **Prince Edward Island.** Freedom of Information and Protection of Privacy Act: [http://www.gov.pe.ca/law/statutes/pdf/f-15\\_01.pdf](http://www.gov.pe.ca/law/statutes/pdf/f-15_01.pdf) The Act was proclaimed on November 1, 2002.
- **Quebec.** La loi sur l'accès aux documents des organismes publics et sur la protection des renseignements personnels: <http://www.cai.gouv.qc.ca/fra/docu/loiacces.pdf>
- **Saskatchewan.** Freedom of Information and Protection of Privacy Act: <http://www.qp.gov.sk.ca/index.cfm?fuseaction=publications.details&p=527>
- **Yukon.** Access to Information & Protection of Privacy: <http://www.atipp.gov.yk.ca/>

### **Oversight Institutions and Offices**

#### Federal Level

- Department of Justice Canada: <http://canada.justice.gc.ca/>
- Information Commissioner Office: <http://www.infocom.gc.ca>

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## Provincial level

- **Alberta:** Information and Privacy Commissioner of Alberta  
Web Site: <http://www.oipc.ab/home/>
- **British Columbia:** Information and Privacy Commissioner for British Columbia  
Web Site: <http://www.oipc.bc.ca/>
- **Manitoba:** Office of the Ombudsman  
Web Site: <http://www.ombudsman.mb.ca/>
- Web Site: <http://www.gov.mb.ca/chc/fippa/index.html>
- **New Brunswick:** Ombudsman  
Web Site: <http://www.gnb.ca/0073/index-e.asp>
- **Newfoundland:** Department of Justice of Newfoundland  
Web Site: <http://www.gov.nf.ca/just/>
- **Northwest Territories:** Information and Privacy Commissioner of the Northwest Territories  
Web Site: <http://www.justice.gov.nt.ca/ATIPP/atipp.htm>
- **Nova Scotia:** Freedom of Information and Privacy Review Officer  
Web Site: <http://www.gov.ns.ca/foiro/>
- **Nunavut:** Information and Privacy Commissioner of Nunavut  
Email: [atippcomm@theedge.ca](mailto:atippcomm@theedge.ca)
- **Ontario:** Information and Privacy Commissioner of Ontario  
Web Site: <http://www.ipc.on.ca/>
- **Prince Edward Island:** Information and Privacy Commissioner of Prince Edward Island  
Web Site: <http://www.gov.pe.ca/foipp/index.php3>
- **Quebec:** La Commission d'accès à l'information du Québec  
Web Site: <http://www.cai.gouv.qc.ca/>
- **Saskatchewan:** A/Information and Privacy Commissioner of Saskatchewan  
Web Site: <http://www.legassembly.sk.ca/officers/informat.htm>
- **Yukon:** Ombudsman and Information and Privacy Commissioner of the Yukon  
Web Site: <http://www.ombudsman.yk.ca/>

## 2. Main Government Information Databases and Sources

- **Canada Site:** [www.canada.gc.ca/main\\_e.html](http://www.canada.gc.ca/main_e.html)
- **InfoSource:** <http://infosource.gc.ca>
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- **Government Electronic Directory Services** (GEDS) database:  
<http://direct.srv.gc.ca/cgi-bin/direct500/TE?FN=index.htm>

### 3. Information sources by theme:

#### Finding Laws, Bills, Budgets and Policies

- General links page for all Draft Federal Laws (known as "Bills") being considered by Parliament: <http://www.parl.gc.ca/>

Federal Bill being considered by Parliament: <http://www.parl.gc.ca/LEGISINFO/index.asp?Lang=E>