

ACCESSING GOVERNMENT INFORMATION FROM THE

Federal Government

RESOURCES

Privacy Act

<http://laws.justice.gc.ca/en/P-21/index.html>

Treasury Board of Canada information page

http://www.tbs-sct.gc.ca/gos-sog/atip-airp/index_e.asp

Justice Canada information page

<http://www.justice.gc.ca/en/ps/atip/index.html>

Access to Information and Privacy Act Bulletins

http://infosource.gc.ca/bulletin/bulletin_e.asp

Office of the Federal Privacy Commissioner

http://www.privcom.gc.ca/index_e.asp Accessing Government Information from the

Disclaimer:

We have attempted to ensure that the information provided in this Manual is reasonably accurate and complete as of December 2005. However, we cannot guarantee complete accuracy or comprehensiveness; you should consult the relevant legislation and authorities if you seek fully accurate, complete, and up-to-date information.

Moreover, this Manual provides information of a general nature and does not constitute legal advice. Should you need legal advice, seek a lawyer.

Please report any errors or omissions in this Manual to cippic@uottawa.ca

WHO CAN REQUEST GOVERNMENT INFORMATION?

Any Canadian citizen or permanent resident of Canada can request access to information held by the federal government.

WHAT INFORMATION CAN I ACCESS?

Under the *Access to Information Act* you have the right to access any record under the control of a government institution, subject to certain exceptions described below. A list of government institutions can be found in *Schedule 1* of the act, at: <http://laws.justice.gc.ca/en/A-1/157.html#rid-218>.

WHAT ARE THE EXCEPTIONS TO MY RIGHT OF ACCESS?

There are a number of circumstances in which you may be denied access to information, including the following:

Publicly available information

You may be denied access to information that is available to the public. This includes information that will be made available to the public within 90 days of the date when the request is received.

Another Act prevails

If the information you want is governed by an Act that specifies that the *Access to Information Act* does not apply, you cannot access it through an access to information request. For a list of such acts, see: <http://laws.justice.gc.ca/en/A-1/157.html#rid-225>.

Law enforcement and legal proceedings

Your access request may be denied if disclosure could be harmful to the enforcement of federal law. This includes information that could compromise a penal institution, reveal investigative techniques, or facilitate the commission of an offence. It also includes investigations conducted by the RCMP while under contract with a province or municipality other than British Columbia.

If the information is more than 20 years old, it cannot be refused under this rule.

Privileged information

Your request for information may be denied if the information is protected by legal privilege

such as solicitor-client privilege.

Advice

Unless the government institution consents, or unless the information is more than 20 years old, you may be denied access to records that could reveal advice to or from government institutions. The term “advice” is used broadly and includes recommendations to the government, accounts of consultations or deliberations, negotiation positions, and human resources information.

A government institution must, however, give access to information that contributed to a discretionary decision or adjudication that affected someone’s rights. It must also give access to reports prepared by an employee of a government institution.

Cabinet confidences

Your request will be refused if disclosure would reveal Cabinet confidences contained in records that are less than 20 years old. Cabinet confidences include Cabinet memoranda, agendas of meetings, communication records, briefing notes, draft legislation, and discussion papers less than four years old.

Relations with other governments and defence of Canada

Your access request may be denied if disclosure could harm the federal government’s ability to consult, deliberate or strategize regarding federal-provincial affairs. It may also be denied if disclosure could damage international affairs or the defence of Canada. Examples include information on military tactics, weapons, defence establishments, foreign intelligence, and diplomatic correspondence.

Security certificate

You cannot access information for which a security certificate has been issued, nor can you appeal this denial of access.

Information provided in confidence by other governments

You cannot access information that another government, including foreign, provincial and municipal governments, gave to the government institution in confidence. If, however, the other government consents to the disclosure or makes the information public, you can access such information. The government institution must make a reasonable effort to seek consent.

Economic and other interests of Canada

Your access to information request may be refused if disclosure could harm the economic interests of a government institution. Information under this heading includes:

- Government of Canada trade secrets;
- information whose disclosure could prejudice a competitive position;
- research results whose disclosure could affect publication priority; and
- information that could harm Canada's financial interests or its ability to manage the economy.

Testing procedures, tests and audits

You may be denied access to information related to testing or auditing procedures, or to details of specific future tests or audits, if disclosure could prejudice the tests or audits.

Business interests of third parties

You cannot access a third party's trade secrets or other confidential or sensitive information if disclosure could harm the business interests of a third party. This includes tax return information.

You can, however, get access when the third party consents to the disclosure. In addition, you may be granted access if disclosure is in the public interest and that public interest clearly outweighs the harm that would be caused to the third party. Public interest in this exception refers to public health, public safety or protection of the environment.

Third party privacy

Your access request will be denied if disclosure would invade a third party's privacy. Disclosure of the following will be considered an invasion of a third party's privacy:

- information revealing the race, ethnic origin, age or marital status of a third party;
- information relating to the educational, medical, criminal or employment history of an individual or to financial transactions between an individual and the government institution;
- the party's address, fingerprints or blood type, or any number or symbol that could identify the party; or
- a third party's personal opinions or views (except where these are about another individual or a grant proposal or award application to a government institution).

Note that this is not an exhaustive list.

There are, however, circumstances when disclosure of a third party's personal information will be permitted. These include:

- when the relevant third party consents to disclosure; and
- when the public interest in disclosure outweighs the invasion of privacy.

Records held by archives, libraries, galleries and museums

You cannot, under the *Access to Information Act*, access archived and library materials, including:

- published materials or materials available for purchase by the public;
- library or museum materials preserved solely for public reference or exhibition purposes; or
- material placed in the National Archives of Canada, the National Library, the National Gallery of Canada, the Canadian Museum of Civilization, the Canadian Museum of Nature or the National Museum of Science and Technology by or on behalf of persons or organizations other than government institutions.

Individual safety

Your access request may be denied if disclosure could threaten the safety of individuals.

Exceptions related to personal information

For exceptions related to requests for access to your own personal information, see *Accessing Personal Information from the Government of Canada*.

HOW DO I MAKE A REQUEST?

1. Check whether the information is publicly available

There are several ways to find out whether the information you want has been made public. First, you can search Government of Canada Publications and order a copy of the available information. This will usually require you to pay a fee. See: <http://publications.gc.ca/>. You can also obtain the information through the Depository Services Program. See: <http://dsp-psd.pwgsc.gc.ca/index-e.html>. This program requires government departments to submit manuscripts of published information for public distribution. The DSP works with about a 1,000 libraries to send information across Canada. In addition, you can check the database at <http://www.onlinedemocracy.ca/CAIRS/CAIA-OD.htm> to see if someone has already requested the same record. Finally, you can call the government institution and ask whether

the information is publicly available or has been released in response to another request. Contact information for each government institution's Access to Information Coordinator can be found at http://www.tbs-sct.gc.ca/gos-sog/atip-aiprp/apps/coords/index_e.asp.

2. Contact government institutions

Call the government institution and ask if it is willing to provide access to the information you want. Such informal methods can be effective. Note, however, that informal access to information requests do not trigger time limits for responding to you, nor do they trigger certain rights, such as the right to complain to the Information Commissioner.

3. Identify the appropriate government institution

a) Determine whether the institution is subject to access to information law

A list of government institutions can be found at the following websites:

<http://laws.justice.gc.ca/en/A-1/157.html#rid-220>

http://infosource.gc.ca/fed/fed05_e.asp

b) Determine whether the information is in the custody or control of the government institution

Access to information laws only apply to records in the custody or control of a government institution. If a record is destroyed, it is no longer in the custody or control of a government institution, but it is an offence to wilfully destroy records in order to evade an access request.

4. Frame your request carefully

a) Use InfoSource to identify likely sources of information

InfoSource is a website that provides links to government institutions and their information banks. It can be found at: http://www.infosource.gc.ca/enq-ctr/enq-ctr00_e.asp. Click on the link to the government institution that has the records you seek. The menu on the left allows you to access the institution's information holdings. By informing the government institution that the requested information may be in a particular file, your request is more likely to be successful and may take less time to process.

The InfoSource menu will also indicate whether the institution has manuals. Manuals can sometimes contain the information you are looking for and can be accessed without a formal request by visiting the institution's reading room or by having it send a copy to your local library. There is no fee for this service.

b) Request "records"

Request access to records, not to information, because "record" has a specific and broad definition which includes: "any correspondence, memorandum, book, plan, map, drawing,

diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof.”

c) Request indexes, catalogues, and other records-management aids

If you are seeking information that spans a broad area or could involve many records, you should first consider requesting indexes, file lists, file plans, and other records-management aids. These records of records can help you narrow your request and choose only the most relevant materials. This process can also shed light on other issues you may not have been aware of. The only drawback is that this is a two step request process: once you decide which records you would like, you must file another request to which the government institution will have 30 days to respond.

d) Indicate that your request is in the public interest

If disclosure of the information you are requesting is in the public interest, mention it, since this is a factor that supports disclosure.

e) Be specific

Unless you absolutely need it, try not to request everything available on a subject so as to ensure a faster and less costly response. In addition, the more specific your request is, the less likely the government institution will request a time limit extension on the grounds that answering the request within 30 days would unreasonably interfere with its operations.

5. If you need help

If you need help, ask the access staff of the relevant government institution. They are required to help you with your request.

DO I HAVE TO USE A FORM?

You do not have to use a form, but one is available and it can help you structure your request. The form can be found at: http://www.tbs-sct.gc.ca/tbsf-fsct/350-57_e.asp.

WHAT WILL IT COST?

There is a \$5 application fee for requesting government information. In addition, fees may be charged for the following:

- making copies or converting a record into an alternative format; and
- search and preparation time for each hour (the first five hours are free).

The government institution will send a written notice of the applicable fees and any deposit due. Payment of the \$5 fee and any deposit must be sent with your request. Cheques should

be made out to the Receiver General of Canada.

You may ask to have some or all of the fees waived. This request may be granted if:

- you can't afford the fee, or it would otherwise be fair to waive the fee; or
- disclosing the information is in the public interest and relates to public health or safety.

If disclosure is in the public interest and you'd like to have the fees waived, mention this in your application. You may, for example, want to phrase your request as follows: "As this request is in the public interest, I ask that all fees please be waived."

HOW LONG WILL IT TAKE?

The government institution must make every reasonable effort to respond to your request within 30 days of receiving it. If your request is transferred to another government institution, the new institution must respond to you within 15 days of receiving your request.

A transfer to another body is only allowed when:

- the record is in the custody or under the control of the government institution to which your request is being transferred; or
- the record originated with, or was first obtained by, the government institution to which your request is being transferred.

A government institution can extend the time limit for responses when:

- you have requested a large number of records and responding within 30 days would unreasonably interfere with the operations of the government institution; or
- the government institution needs time to consult with, or give notice to, a third party or another government institution before deciding whether to grant access to a record.

Failure to respond to a request within 30 days is considered a denial of access. You can complain to the Information Commissioner about both denial of access and failure to respond on time. For more information, see "What else can I complain about?" below.

WHAT ARE MY OPTIONS REGARDING FORMAT?

Copies v. originals

You may have copies sent to you or you may view the originals. A government institution may impose one format (copy or original) depending on considerations of length and the nature of the record.

Language

You have the option of requesting that information be provided in French or English. If it exists only in one of these languages, the government institution may have it translated if to do so would be in the public interest.

Alternative formats

A government institution is required to provide records in alternative formats for the hearing or seeing impaired if records already exist in such formats. If they do not exist in such formats, the government institution will give access in that format if necessary to enable the individual to exercise his or her Access to Information rights.

What can I do if my request for access is denied?

If you are not satisfied with a government institution's response to your access request, you have the right to appeal its decision to the Office of the Information Commissioner. For more information, see *Appealing Federal Access to Information Decisions*.