

## Upcoming access to information changes? It's a secret

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kicker: The government is staying mum about the mandatory review of previous changes to the Access to Information Act due this summer.

A minority parliament should want greater transparency, hold Prime Minister Trudeau to account and review his false starts and fresh initiatives. That's hard to do under current access-to-information legislation.

One chance to change that is fast approaching. A mandatory review of the Access to Information Act is due in June, under the terms of the law passed by Bill C-58 in the last Parliament. That's getting close but so far the government is keeping its plans about the access law to itself.

The Trudeau government's changes to the Access to Information Act under Bill C-58 were given royal ascent last June, but are not producing much in the way of transparency advances.

Bill C-58 allowed the government to produce more sanitized briefing notes "pro-actively". That's a plus for controlling its messaging but not that helpful for revealing the workings of government operations.

As well, Bill C-58 gave the information commissioner limited order making powers, but to date that's not made much of a difference. The length of delays in responding to access requests keeps increasing as does the number of broad exemption claimed.

The commissioner has not issued any orders, though she was about to issue a deemed refusal order against the RCMP. But at the last moment the RCMP agreed to produce some records.

Expectations were that the commissioner would be already issuing orders that count. When questioned, the commissioner's office would only say that it does not track how many of its investigations have moved towards inquiries where orders can be issued.

Further, access to information records from Information Commissioner Caroline Maynard's office reveal that only four requests from the government to bar access users for "frivolous and vexatious" were received. The government suggested the number would be at least a few hundred if not more, making it an important feature of Bill C-58.

The four agencies making those requests to bar user access use were the Public Sector

Pension Investment Board, the Canadian Space Agency, the Canadian Dairy Commission and Canada Revenue Agency.

In one case, the commissioner agreed to bar access by a person who had filed 893 requests over the years, and a dozen more recently, that the commissioner found to be repetitious.

Maynard rejected two other requests to bar the individuals from making access requests, given insufficient evidence. One case involved an individual asking for documents that had already been released, but covering a larger time frame. The other case was a former employee requesting data in a way the institution judged to be abusive. A fourth case has yet to be published on the commission web site.

Part of the thrust of Bill C-58 was to put a damper on the rising number of requests, not to openly welcome and deal promptly with them, while putting forward sanitized government disclosures outside access to information's formal coverage.

The previously announced “second” phase of access changes were designed to tinker with the exemptions and to consider adding a limited public interest override clause to some exemptions claimed.

Prime Minister Trudeau started his government's minority term in the 43<sup>rd</sup> Parliament by saying he wanted transparency, at least in the case of what happened with Flight 752, suggesting that the Iran government take fuller responsibility for shooting down the plane. The Iran government changed from denying its missile downed the flight to saying it was accidental, without as yet providing full access to all information. Anger is still there among the families, friends and colleagues of Canadian victims and in Iran, there are protests and information being suppressed.

But to date in Canada, the prime minister has not moved forward from his entrenched secrecy positions, including on air safety disclosures. No indication has been given that his government wants to repeal some of Bill C-58's flaws. Secrecy still acts like a virus pervading every Canadian government action.

Built into Bill C-58 was that the government would deliver a report by this June setting the tone of any access to information changes.

But with summer coming, the Conservative leadership campaign underway, and pressing public health, economic and environment issues, will the statutory review exercise in the end amount to the bureaucrats getting to decide on further controlling what Canadians need to know?

Another CORVID-19 causality: access to information

With the growing CORVID-19 crisis and federal employees being told to work from home with limited access to government files, the access-to-information system is going into a temporary meltdown and shut down.

Add this into lengthy delays and backlogs. Expect releases down the road to have more exemptions and reliance on only pro active government statements and releases.

Here's one sample government access to information letter received: "In light of current events related to COVID-19, our capacity to process requests is limited, as well as the capacity of parties involved in the retrieval of records and/or representations. This has an impact on our regular ATIP operations. With this in mind, we are placing your request on hold for the time being....." Our apologies for the delay in completing your request. We thank you in advance for your consideration and understanding."

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