

NEWSLETTER

FOCUS ON ACCESS TO INFORMATION LAW

THE BASIS OF DEMOCRACY

In the past few decades, the pressures arising from population growth, technological development, improved communications and education levels, increased personal expectations, diversification of values and life-styles have combined to involve governments in an ever-increasing variety of functions and services for an ever-increasing variety of sectors of our society. In order to carry out these activities effectively government collects, aggregates, and analyzes large amounts of data relating to public problems. As a result, government has become perhaps the most important single institutional repository of information about our society and its political, economic, social, and environmental problems. In some areas i.e. foreign affairs and national security, the government is virtually the only significant source of information.

RIGHT OF ACCESS TO RECORDS

Recognizing the basic principle that since such information is developed at public expense and that it ought to be publicly available wherever possible Parliament has decreed that individual citizens and permanent residents be given a '*right of access*' to government documents which, often, contain information vital to the effective participation of citizens and organizations in the taking of public decisions in which they are interested. Parliament recognized also that access to

information strengthens the democratic consultative process as citizens' access to the documentary basis of management and investigation of public problems as an element of monitoring helps maintain the probity of administration, the consistency of the handling of individual cases, and the quality of the analysis of policies and programs.

NUTS AND BOLTS OF ACCESS

- 1. What is covered by the Act?** The Act allows access to "records" which are under the control of a government institution. The word 'records' includes any correspondence (letter, memorandum, aide-memoire, analysis, reports, summaries, book report, media reports, minutes of meetings, summary of decisions, briefing note, working papers), book, study, briefing, slide deck, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, sound recording, videotape, machine readable record, or any other documentary material.
- 2. Who is covered by the Act?** Most government institutions including Crown corporations are covered by the Act. The Governor General, the Senate of Canada, the House of Commons, the Supreme Court, the Federal Court, the Tax Court are exempt from the Act.
- 3. Ask for records, not information.** The Act creates the right of access to information in records under the control of government institutions. There is no obligation for the government institutions to create records to comply with a particular access request. You will be given access only to information that is already contained in records
- 4. National Archives. Library or museum material are not covered.** The Act does not apply to

library or museum material preserved for public purposes or exhibition purposes or to material placed in the National Archives, the National Library, the Canadian Museum of Civilization, the Canadian Museum of Nature or the National Museum of Science or Technology.

5. 20-year wait for Cabinet Confidences. The *Act* does not apply to confidences of the Queen's Privy Council for Canada, including Memorandum to Cabinet, Discussion Papers presenting analyses or policy options to Cabinet, agendas of Cabinet meetings, records of discussions of Cabinet, briefings to ministers in relation to Cabinet matters, draft legislation, and records that contain information about the contents of any of the foregoing.

6. To whom do I address the access request?

Few people understand the structure and organizational logic of a modern government. It takes years of study or practical experience, in central agencies such as the Privy Council Office or the Treasury Board Secretariat or the Public Service Commission, to acquire a reasonable familiarity with the machinery of government. Having determined the parameters of a given access request, it is important to address the request to the applicable organizational body.

7. Application Fee. The *Act* provides for an application fee for each request. It is currently set at \$5.

8. Photocopying and search fees. The *Act* provides also for the payment of copying fees consisting of \$0.20 per page, \$2. per microcomputer diskette, and \$0.40 for microfiche duplication, non-silver. Each request entitles to five hours of free search time. A \$10-per-hour fee is charged for time spent by any person on search and preparation, in excess of the 5 hours.

9. The 30-day statutory delay. Where access to records is requested, a government institution has 30 days after the request is received to give written notice to the person who made the request as to whether or not access to the record will be given. If consultations are required to comply with the request, or if the request is for a large number of records, or a search through a large number of records is required and meeting the 30-day time limit would 'unreasonably interfere with the operations of the institution', a government institution may extend the 30-day limit, for a reasonable period of time.

10. Your identity as a requester is protected under the *Privacy Act*.

Although your identify as a requestor is protected under the *Privacy Act*, there is nothing preventing a departmental coordinator processing your access request from informing his or her superiors, including the Deputy Minister and the Minister of your identity of a requester.

OUR SERVICES

Given our expertise in the access-to-information legislation, we would be happy to assist you to gain access to government records. Acting on your behalf, your identity is protected under the client-solicitor privilege. We can also represent you in the submission of complaints to the Information Commissioner of Canada should a federal institution fails to disclose the requested records to which you are entitled. Again, your identity is protected.