



April 15, 2014

The Right Honourable Stephen Harper M.P.

Ottawa KIA 0A6

Dear Prime Minister Harper,

**RE: Section 67.1 of the *Access to Information Act***

We are writing to you regarding a serious problem with law and law enforcement which results in a small but privileged group of people effectively being above the law.

These 'outlaws' are people who work in ministerial offices or the PMO and the law is the *Access to Information Act*.

Last week Information Commissioner Suzanne Legault issued a report naming three current or former ministerial staff as having "... inserted themselves in various ways into a process that was designed to be carried out in an objective manner by public servants. Consequently, the rights conferred under the *Act* were compromised."

<http://www.oic-ci.gc.ca/eng/ingerence-dans-acces-a-l%E2%80%99information-partie-2-interference-with-access-to-information-part-2.aspx>

Section 67.1 of the *Act* provides penalties of up to two years in jail and a \$10,000 fine for those who undertake certain defined acts with the intention of interfering with someone's access rights. There have never been charges laid under this section of the *Act*, partly because the people most likely to intentionally interfere with Canadians' access rights are apparently above the law.

The Commissioner made a number of recommendations to the Minister of Public Works, who has implemented most of them, with one exception – referring this most recent case to the RCMP for investigation.

The Department's response states that because of the similarity to a related case in 2011 where the RCMP found that "a criminal investigation is unwarranted", it would not ask the RCMP to undertake an investigation in this case as the result would likely be the same.

This is due to a problem with the *Access to Information Act*, which has been found by the Supreme Court of Canada not to apply to either Ministers' offices or to the Prime Minister's office. Similarly, people



working in those offices would appear not to be subject to the law, including the provisions making it an offence to interfere with a Canadian's access rights.

This is unacceptable.

We agree with Commissioner Legault that legislative change is necessary to correct this situation. If the law remains as it is, not only will ministers' offices continue to be a black hole where information disappears, but the people working there will continue to be able to interfere with access rights with impunity.

In 2011 we asked the House Access to Information, Ethics and Privacy Committee to look into this situation on an urgent basis. The Committee has not seen fit to do so.

[http://fipa.bc.ca/library/Letters/Joint\\_Ltr\\_to%20ETHI\\_Comm--Aug\\_30\\_2011.pdf](http://fipa.bc.ca/library/Letters/Joint_Ltr_to%20ETHI_Comm--Aug_30_2011.pdf)

Therefore we are calling on you to make the necessary changes directly as soon as possible, preferably as part of a major overhaul of this desperately outdated law.

Please feel free to contact us if you feel we can be of assistance.

Sincerely,

Vincent Gogolek - B.C. Freedom of Information and Privacy Association

Gregory Thomas - Canadian Taxpayers Federation

John Hinds - Newspapers Canada