An earlier version of this report was submitted to the Treasury Board of Canada Secretariat. This PDF has been reformatted to better support navigation.

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Recognition

FIPA extends its sincere gratitude to the groups and individuals who generously provided valuable feedback on early versions and drafts, helping us refine this document. Many have also made their own submissions. Of particular note is the B.C. Civil Liberties Association (BCCLA), whose legal expertise consistently provides important insights that strengthen our arguments for progressive law reform.

About FIPA

The BC Freedom of Information and Privacy Association (FIPA) is a non-partisan, non-profit society that was established in 1991 to promote and defend freedom of information and privacy rights in Canada. While we are based in BC, our membership extends across Canada, and we regularly partner with organizations throughout the country.

Our goal is to empower citizens by increasing their access to information and their control over their own personal information. We serve a wide variety of individuals and organizations through programs of public education, public assistance, research, and law reform. We are one of very few public interest groups in Canada devoted solely to the advancement of freedom of information and privacy rights.

Institutional Funders

The BC Freedom of Information and Privacy Association thanks the Law Foundation of BC, the Province of British Columbia (Gaming Policy and Enforcement Branch), and all our contributors including donors, funders, and volunteers for their ongoing support of our advocacy, programs, projects, and activities.

Treasury Board Submission Template

This portion of FIPA's submission is formatted to reflect the guidelines for Treasury Board submissions found online as the Guidance for Drafters of Treasury Board Submissions and the corresponding template.

Organization: BC Freedom of Information and Privacy Association

Recommendations for the Review of the *Access to Information Act*

Synopsis: This submission focuses on increasing government transparency and accountability with respect to access information rights and legislation. The government is conducting a comprehensive review and now has an opportunity to meaningfully consider recommendations to improve the function of the access system. Key considerations include user experience, reflection of judicial interpretation, and engagement between institutions and the public. Of principal concerns are service quality and efficiency. To ensure that institutions are facilitating the *Access to Information Act's* (the Act) purpose by increasing transparency between the government and the public it serves, it is paramount that this change is backed by adequate resourcing.

Authorities sought from the Treasury Board

FIPA recommends that the Treasury Board consider the following in the Review of the *Access to Information Act:*

- Clearly define objective and publicly available criteria for duties of heads of institutions under subsection 4(2.1) of the Act
- Automatically provide a summary of request processing
- Make the concept of public interest meaningful
- Invest resources to modernize and adequately support the ATI system
- Creation of a culture of transparency among those that work in the ATI system
- Institute mechanisms to require the government to treat Committee and Consultation recommendations seriously
- Broaden the scope of ATIA to include all organizations carrying out a governmental function
- Increase transparency in government procurement
- Reduce reliance on ATIA by parliamentarians

Content

1) Define "reasonable efforts" and automatically provide requesters with a record of those efforts

To increase understanding of duties owed by public institutions, there should be publicly available examples of reasonableness. These duties could be included in a guide for requesters as a non-exhaustive list that provides examples of "reasonable efforts" to inform requesters of the kind of assistance they are entitled to. To ensure that institutions remain accountable to these duties, requesters should have automatic access to a summary of the processing of their request where it does not impact confidentiality. Access to this summary would be provided with the original requested record and include documented efforts related to the processing of the original request. This would allow the requester to have more control of their file and to know when human or non-human methods were involved. Increasing responsiveness, efficiency, and accountability is a key function of FOI legislation identified by the courts[1].

2) Make public interest more meaningful, broaden the scope of the Act and increase transparency in government procurement

The Act defines public interest as matters that relate to public health, safety or protection of the environment[2]. To encourage the notion that transparency is inherently in the public interest, subsection 20(6)(a) should be amended to include other factors for public interest consideration. The courts have consistently upheld the importance of access to information rights as a means to strengthen democracy[3].

Public interest also includes a broad scope of accountability. An increasing number of government functions have been delegated to external bodies since the Act was drafted[4], and the review must account for access to all

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[1] *Dagg v Canada (Minister of Finance),* 1997 CanLII 358 (SCC), [1997] 2 SCR 403 at para 63 [*Dagg*]

[2] *Access to Information Act,* RSC 1985, c. A-1, s. 6(a).

[3] See, e.g., *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3 at para 1 [Merck Frosst] & *Ontario (Ministry of Public Safety & Security) v Criminal Lawyers Association,* 2010 SCC 23 at para 15.

[4] BC Freedom of Information and Privacy Association, *Submission to the Standing Committee on Access to Information, Privacy and Ethics Study of Canada's Access to Information and Privacy Systems,* November 2022, online: < https://www.ourcommons.ca/Content/Committee/441/ETHI/Brief/BR12124551/br-external/BCFreedomOfInformationAndPrivacyAssociation-e.pdf> at 13 [BC FIPA Submission].

governmental records. Expanding the scope of the Act ensures that government transparency is whole and not partial. The public cannot truly partake in decision-making and hold the government accountable if they are prevented from accessing important information that would enable them to do so. Part of this expansion must also focus on increasing transparency during government procurement to ensure a level bidding process for all parties involved.

3) Invest resources to modernize the ATI system and create a culture of transparency

Canadians have consistently expressed dissatisfaction with the current access system[5], to the point where they feel the need to pursue alternate means of accessing information[6]. Modernizing the system would avoid the current pattern of erosion of trust and allow institutions to meet demands and increase accessibility. This can be done by amending subsection 2.1 of the Act to clarify that heads of government institutions are responsible for allocating resources to ensure that the institution can meet its access obligations.

A modern ATI system that prioritizes requester needs should be marked by timely access to information, requester needs being met, maximum fee reduction, ease of navigation and limited use of redaction. Part of proper resource allocation may require the government to consider alternate means to alleviate large request volumes. One means through which the government may conserve resources may be to enable members of parliament to use alternate mechanisms available to them to trigger the release of information. This raises a question of whether they should be competing with the public for scarce recourses in the access system when they have alternate avenues available.

4) Implement mechanisms to treat committee recommendations seriously

The Standing Committee on Access to Information, Privacy and Ethics provided the government with thirty-eight recommendations to improve the access to information system in 2023[7]. Only approximately fifteen of those

[5] House of Commons, The State of Canada‘s Access to Information System: Report of the Standing Committee on Access to Information, Privacy and Ethics (June 2023) (Chair: Charles Habbard) at 11 [ETHI Report].
[6] ETHI Report at 11.
[7] ETHI Report at 11.

recommendations were addressed in the 2025 *Access Act* Review[8]. The committee consulted with various stakeholders, partners and important witnesses[9], who all provide a clear picture of what the public need. It is in the government's interest to take opportunities to demonstrate their commitment to transparency and their corresponding goal of increasing trust.

Design, Delivery and Implementation

At this time, we do not have an implementation plan for the recommendations above and for those contained in the Appendix.

Cost, source of funds and strategic considerations

At this time, we do not have estimates on the potential cost of implementation as FIPA is external to the government and does not have the information available. There are potential cost savings and strategic benefits in an information management system that reflects a managed or optimized proactive business process that builds public trust rather than an ad hoc reactive system that leads to system friction and diminishes public trust. This can be amplified with technological advancements that would shift costs and increased efficiency.

Results

The results of these recommendations can be measured in two main ways. The first, is through data provided by institutions through their performance reports or other means. Ideally, these recommendations will decrease complaints, backlogs, and the number of requests carried over each year. Robust performance reporting will offer easily identifiable figures for both institutions and the public to see service increases and areas of improvement.

Institutions can also measure the benefits of these recommendations by assessing public trust. At the core of these issues is the need to foster healthy relationships between government institutions and the public they serve.

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[8] Treasury Board of Canada Secretariat, "2025 Review of the *Access to Information* Act" (June 20, 2025) online: <https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/modernizing-access-information/reviewing-access-information-act/2025-review-access-information-act.html . > [2025 Review].

[9] EHTI Report at 95-99.

By implementing recommendations that are grounded in and responding to public concern, institutions will demonstrate through their actions that access to information is a public right rather than a matter of discretion[10].

Risks

At this time, we do not have estimates on potential risks associated with this submission.

[10] *HJ Heinz Co Canada Ltd v Canada*, 2006 SCC 13 at para 22 [*HJ Heinz*].

Appendix 1: FIPA Access Submission Recommendations

Below is the full narrative version of FIPA recommendations. The recommendations include paragraphs explaining alignment with government priorities like transparency and accountability and highlight the importance of adequate resources and engagement with public needs.

1) Clearly define objective and publicly available criteria for duties of the heads of institutions under subsection 4(2.1) of the Act.

Responsibilities of government institutions are defined under subsection 4(2.1) of the Act[11] and state that an institution must "make every reasonable effort to assist the person in connection with the request, respond to the request accurately and completely and, subject to the regulations, provide timely access to the record in the format requested." The key requirement remains making "every reasonable effort." To increase clarity on what constitutes "reasonable efforts", the responsible oversight body should publish a requester-facing guide defining non-exhaustive criteria for "every reasonable effort."

International access regimes provide useful models. The UK[12], Scotland[13], New Zealand[14], and the European Union[15] all pair access rights with duties to assist requesters, clarify unclear requests, help narrow overly broad requests, redirect misdirected requests, explain procedural limits, and publish guidance on institutional obligations. Canada should adopt a similar public standard so that requester assistance is not dependent on institutional capacity, informal practice, or discretion.

Institutions still struggle to consistently meet statutory response timelines[16], which risks a consistent drop in the service standard when responding to

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[11] Access to Information Act, RSC 1985, c. A-1, s. 4(2.1)
[12] Freedom of Information Act 2000 (UK), s 16 & s 45.
[13] Scottish Information Commissioner, "Providing advice and assistance" online at <Providing advice and assistance | Scottish Information Commissioner>.
[14] New Zealand Ombudsman, "Making official information requests: A guide for requesters" online at: <https://www.ombudsman.parliament.nz/resources/making-official-information-requests-guide-requesters>.
[15] Pamela Bartlett Quintanilla & Helen Darbishire, "Guide on Access to EU Documents: Accessing Information from the European Union" (2013) Access Info EU.
[16] Office of the Information Commissioner, "Observations on the state of the access to information system (2024-2025)" (December 16, 2025) Executive Summary, online: < https://www.oic-ci.gc.ca/en/resources/reports-publications/observations-state-access-information-system-2024-2025> [OIC Observations].

access to information requests. Institutions are responding based on their capacity rather than planning according to an expected standard.

Access to Information Act, RSC 1985, c. A-1, s. 4(2.1)

This is especially concerning due to varying complexity of request types, creating a potential for poorer response times. This limits an individual's ability to exercise their rights, contrary to section 4(1) of the Act[17]. A functioning access regime would place non-exhaustive criteria in a guide to provide individuals with robust legal rights regarding the duties owed to them. As stated by the courts, the legislation intends to confer a public right rather than leave access to information as a matter of government discretion[18].

2) Automatically provide a summary of the "reasonable efforts"

Government institutions also generate routine records that document the workflow associated with the processing of ATI requests. It is possible to file a secondary request to access these routine records, but until a requester files this secondary request, they aren't informed of the processes used. Requiring documentation of efforts made to requestors directly increases accountability and transparency.

There is no explicit requirement in the Act to document efforts made to fulfil the conditions of section 4(2.1); there is only a requirement to give reasons for declining under section 6(1.4). The Act could be amended to include a duty to document efforts and automatically provide them to the requester as they are available. Part of this summary should include methods used in assisting with a request to allow requesters to know what parts of their request used human or non-human involvement. This would also create an opportunity for an institution to demonstrate that their efforts meet the reasonable threshold.

The requester then has an immediate opportunity to review the efforts made compared to the results of their request. Not only would this increase an individual's understanding of the process but enables institutions to make robust efforts knowing they will be subject to the individual's review. Meaningful transparency involves openness in process as well as in outcome.

An approach that automatically and transparently documents a workflow would be more efficient and build confidence in the process. Increasing responsiveness, efficiency, and accountability was a key function of FOI

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[17] *Access Act*.

[18] *HJ Heinz,* at para 22.

legislation identified by the courts[19]. A principal mechanism through which individuals hold institutions responsible is to complain to the Information Commissioner. Access to a summary of efforts enables complaints to be specific and aid in identifying gaps in service.

3) Make the concept of public interest meaningful

Section 20(6)(a) provides that certain categories of confidential information can be released where it relates to public health, safety, or protection of the environment. Subsection 206(a) should be amended to lower the threshold on what constitutes public interest, as there is inherent public interest in the release of records. Public interest provisions are critical to ensuring the purpose of access legislation[20].

The Charter[21] demands that public interest disclosure include cases "where access is necessary to permit meaningful discussion on a matter of public importance, subject to privileges and functional constraints"[22], such as risk assessments, personal information exemptions, or other confidentiality concerns. This standard should inform statutory language to ensure constitutional compliance. Currently, it protects expression of diverse opinions and enables opportunity for full and fair discussion of institutions that are predicated on an informed public[23]. An additional necessary consideration is the purposes of section 2(b): democratic discourse, self-fulfillment, and truth finding[24].

There exist situations where the release of records is not in the public interest, and this proposed threshold acknowledges the important balancing involved in lowering public interest threshold and protecting legitimate interests. This proposal suggests an expansive list, rather than definitive criteria, that institutions should consider when matters may relate to public interest. The courts stated that defining "public interest" involves a broad interpretation and

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[19] *Dagg,*at para 63.
[20] Moira Paterson & Maeve McDonagh, "Freedom of information and the public interest: The Commonwealth experience," (2017) 17:2 Oxford U Commonwealth LJ 189 at 195.
[21] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
[22] *Ontario (Public Safety and Security) v Criminal Lawyers' Association,* 2010 SCC 23 at para 31 [*Criminal Lawyers*'].
[23] *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, 1991 CanLII 50 at para 23.
[24] *Greater Vancouver Transportation Authority v. Canadian Federation of Students* — British Columbia Component, 2009 SCC 31 at para 39 [*Greater Vancouver*].

depends on whether there would be a “genuine interest” in the subject matter[25]. One potential framework related to public interest is the second part of the ”publication ban test” developed by the courts that considers the salutary and deleterious effects on ”the rights and interests of the parties and the public, including the effects on the right to free expression...”[26].

A public interest threshold that focuses on meaningful participation aligns with some of the core reasons for open government laws and policies, encouraging a participatory and collaborative democratic model[27]. The courts have consistently upheld the importance of access to information rights as a tool to strengthen democracy[28]. If exercising access rights are critical to a functional democracy, public interest should license disclosure of all matters of genuine interest to the electorate, not only urgent situations.

4) Invest resources to modernize and adequately support the ATI system

The proposals outline a review mechanism for improvement but do not mention a plan to dedicate financial, staffing, or educational resources to ensure this improvement is carried out. The Information Commissioner’s report on the state of the ATI system reported an improvement in Library Archive Canada’s capacity to respond to ATI requests because of temporary funding[29]. Implementing strategies with a proven causal connection to improve the ATI system would demonstrate a true commitment to facilitating access.

Since early last year, 65% of access to information requests carried over from 2024 to 2025 were beyond legislated timelines[30], and almost 8% of institutions carried over more requests into this year than they closed the previous year[31]. Further, complaints to the Information Commissioner accounted for almost 8% of requests excluding the IRCC[32]. This represents a 2% increase in the

[25] *Grant v. Torstar Corp.*, 2009 SCC 61 at para 102.
[26] *Sierra Club of Canada v Canada* (*Minister of Finance*), 2002 SCC 41 at para 45.
[27] Jamie Duncan, Alex Luscombe, & Kevin Walby, “Governing through Transparency: Investigating the New Access to Information Regime in Canada.” (2023) The Information Society 39:1 45 at 47.
[28] *Merck Frosst,* at para 1.
[29] OIC Observations, at Institution-specific trends.
[30] OIC Observations at Report Backlogs.
[31] OIC Observations, at Report Backlogs.
[32] OIC Observations, at Access to information requests received compared to complaints (Excluding IRCC) 2020-2021 to 2024- 2025.

proportion of complaints to the Commissioner since last year's report[33]. An increase in complaints to the Commissioner indicates a pressing need to demand resource investment in the ATI system because it speaks to an increase in the proportion of requestors who are dissatisfied with the handling of their ATI requests. Both official complaints and witness statements to Committees report on inadequate service in the current system[34]. Continuous inadequacies require a resource investment response to avoid Canadians turning away from the official system to find information from unofficial sources that may be deeply misleading[35]. The potential for misinformation propagating in public discourse is harmful to a healthy democracy fueled by robust access rights.

Canadians feel as though it has become impossible to exercise their rights within the prescribed time frame in the Act[36], indicating an erosion of trust towards the system that is meant to contribute to an informed citizenry[37]. This improvement should modernize the ATI system to improve capacity, meet current demands, and increase accessibility. Efficiency should be marked by timely access to information, requester needs being met, minimal fees, ease of navigation and limited use of redactions.

5) Creation of a culture of transparency among those that work in the ATI system

The government should provide heads of institutions and staff working with ATI requests with training that promotes a culture of transparency backed by the purpose of the Act. This can be done by amending section 4(2.1) to clarify that designated heads of government institutions are responsible for allocating resources to ensure that the institution can meet its access obligations, like answering requests in the appropriate timeframe. As it stands, ATI offices are unable to develop institutional memory that would enable them to operate an efficient and responsive ATI system[38]. Access is contingent on proper information management and oversight mechanisms[39]. Responsibilities of heads of government institutions could include providing training that explains the significance of the Act and the rights that they confer to the public. Training

[33] OIC Observations, at Access to information requests received compared to complaints (Excluding IRCC) 2020-2021 to 2024- 2025.
[34] ETHI Report at 11.
[35] ETHI Report at 11.
[36] ETHI Report at 12.
[37] *Criminal Lawyers,* at para 37.
[38] Mike Larsen & Kevin Walby, Brokering Access: Power, Politics and Freedom of Information Process in Canada (Vancouver: UBC Press, 2012) at 19.
[39] Larsen & Walby at 17.

should include specific goals like learning how to maintain, organize and search for records, and understanding the positive impact of successful requests[40]. This would aid in understanding institutional duties under the Act and ensure that employees fulfilling a request act according to their statutory obligations.

ATI requests should be treated as a means of exercising democratic rights rather than an inconvenient distraction. The courts have asserted that this is the correct approach regarding access rights[41]. This type of training may enable institutions to respond more promptly and put further efforts into addressing obstacles by viewing requests as essential to democracy rather than a disruption to an already heavily burdened system. This culture shift cannot be completed without the proper resources to enable employees to carry out access requests, which includes calling for a statutory clarification that heads of government institutions are responsible for leading this culture shift.

6) Institute mechanisms to require the government to treat Committee and Consultation recommendations seriously

In 2023, the Standing Committee on Access to Information, Privacy and Ethics provided thirty-eight recommendations for consideration[42], only approximately fifteen of which were addressed wholly or partially in the 2025 Review[43].

The Committee's report involved broad consultation across multiple meetings[44] and holds valuable input that the government should have to seriously consider in reviewing the Act. Requiring meaningful consideration of Committee recommendations allows for dialogue between institutions and public testimony. This provides institutions with an opportunity to put into practice the openness that the laws intend to establish.

Committee statements pointed to growing concerns regarding democratic functioning for first time requesters who encounter common issues like lengthy delays[45] or other structural obstacles[46]. Where the functioning of a system results in doubt about its integrity, -- especially systems which are required for

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[40] BC FIPA Submission at 10.
[41] *HJ Heinz,* at para 22.
[42] ETHI Report at 11.
[43] 2025 Review.
[44] ETHI Report at 95-99.
[45] OIC Observations at Key Observations.
[46] ETHI Report at 18.

an open and democratic society, as the access system is[47] -- public opinion and consultation must be taken seriously. The absence of a robust access system that furthers an informed public is detrimental to democracy[48].

7) Broaden the scope of ATIA to include all organizations carrying out a governmental function

Access rights to government documents are most meaningful if they are broad. All public bodies should automatically fall under the scope of the ATIA and organizations performing public functions under contract should be covered.

Requesters should have a right to all documents related to government services in accordance with section 4(1) of the Act. There should not be a possibility for the government to escape accountability by transferring important services to private organizations who are not subject to the same access regimes. An increasing number of government functions have been delegated to external bodies since the Act was drafted[49], and this current review should adapt accordingly to ensure all government records are covered by the Act.

When the government outsources public services to private companies not covered by the Act, individuals are prevented from accessing government records in relation to these public services. Transparency is especially important in the context of law enforcement interaction with private agencies for the purposes of surveillance[50]. When government agencies contract with private organizations who collect personal information such as Bar Watch, the nature of the information exchange is shielded from public reach[51]. There must be appropriate transparency with respect to collection of personal information and appropriate ATI application to government and private organizations who engage in data-sharing. To ensure data-sharing arrangements remain lawful,

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[47] *John Doe v Ontario (Finance)*, 2014 SCC 36 at para 1.
[48] Office of the Information Commissioner, “Canada’s Information Regulators call on their respective governments to promote a more robust information ecosystem” online at: < https://www.oic-ci.gc.ca/en/resources/news-releases/canadas-information-regulators-call-their-respective-governments-promote >.
[49] BC FIPA Submission at 13.
[50] *British Columbia Civil Liberties Association v. Canada (Royal Mounted Police)*, 2021 FC 1475 (CanLII) at para 3.
[51] BC Freedom of Information and Privacy Association, *Submission to the Special Committee to Review the Freedom of Information and Protection of Privacy Act,* March 2022 online at: < https://fipa.bc.ca/wp-content/uploads/2022/05/2022-Submission-to-the-Special-Committee-to-Review-the-FIPPA.pdf>.

cases of data-sharing between law enforcement agencies and private organizations should be documented and made accessible to the public[52].

The public requires adequate knowledge of government activity to hold the government accountable and effectively contribute to decision making[53]. Without an expansion of the Act's application, the public is only getting a part of the picture, and partial access is not meaningful access.

8) Increase transparency in government procurement

Transparency is a core element of meaningful procurement from a business and labour perspective. Vendors seeking to do business with the government need more open and transparent processes, with competitive and open playing fields for parties competing for government spending. We would like to draw attention to labour organizations that may be making similar submissions, like the BC federation of labour and are addressing a number of recommendations that we would be broadly supportive of.

Labour Union's view the access system as a critical means through which parties could access relevant business information[54]. Interactions between the government and corporations should be subject to similar access to information requirements as those happen between government institutions captured by the Act.

The courts have acknowledged that transparent public procurement is in the interest of both the parties involved and the public[55]. Open procurement policies enable fair processes and a level playing field when bidding on contracts. Insufficient disclosure prevents adequate public knowledge of government spending and impacts businesses and the workers they invest in[56].

[52] Kate Robertson, Cyhthia Khoo & Yolando Song, "To Surveil and Predict: A Human Rights Analysis of Algorithmic Policing in Canada" (2020) Citizen Lab and Human Rights Program, University of Toronto, at 157.
[53] *Ontario (AG) v Ontario (Information and Privacy Commissioner),* 2024 SCC 4 at para 2.
[54] Public Service Alliance of Canada, Access to Information Review –Submission to Treasury Board of Canada Secretariat, 20 August 2021, online: <https://www.ourcommons.ca/Content/Committee/441/ETHI/Brief/BR12160572/br-external/PublicServiceAllianceOfCanada-e.pdf> [PSAC].
[55] *Tercon Contractors Ltd v BC (Minister of Transportation & Highways)* 2010 SCC 4, at para 68 [*Tercon].*
[56] BCCA, "BC associations call on province to practice, fair, transparent procurement," online: < https://canada.constructconnect.com/joc/news/government/2021/10/b-c-associations-call-on-province-to-practice-fair-transparent-procurement>.

Government procurement should involve a level bidding field for all parties involved. The government can increase transparency in these processes by amending the Act to include provisions that order the release of contracts and dealings between the government and private corporations that deliver public services unless there is demonstrable harm to the public or any of the parties involved[57].

9) Reduce reliance on ATIA by parliamentarians.

In an equal and consistent access regime, members of parliament and their staff can and must be able to submit access requests to ensure they receive documents from the Government.

However, members of parliament have a unique role that includes legitimate powers as legislators to compel the release of records in a very different manner than what is available to the public[58]. For instance, members of parliament may use Order Paper questions, Notices of Motion for the Production of Papers, public petitions and committee inquiries to compel the release of government records.

When Government Ministers and Ministries direct Members of Parliament to use the ATIP system rather than these other available mechanisms they: disregard the legitimate power of the Member Parliament in their duly elected role in Government Accountability, may indeed diminish the available records Government is compelled to release to the MP, and place the MP's request in a queue competing for limited resources against the broader public and indeed the constituents they are meant to represent. Neither the public nor constituents have access to the same powers to compel the release of records.

As seen in Hansard, some government ministries and ministers have encouraged MPs to use ATIP requests rather than legitimate parliamentary mechanisms. For example, Prime Minister Jean Chrétien responded to an opposition request for a contract by saying that, if the member wanted the information, "he has access to information" and "can file the application with

[57] PSAC.

[58] See e.g., House of Commons, "House of Commons Procedure and Practice", at Motions for the Production of Papers, online at: < https://www.ourcommons.ca/procedure/procedure-and-practice-4/ch21-6-e.html>, and House of Commons, "House of Commons Procedure and Practice" at Written Questions, online at < https://www.ourcommons.ca/procedure/procedure-and-practice-4/ch11-3-e.html> .

the Department of Finance,"[59]. Every ATIP request MPs are forced to make, reduces the number of resources available to other members of the public. Committee records show MPs themselves have criticized ATIP as an inadequate substitute for parliamentary production powers, notably during the December 2023 OGGO debate where Garnett Genuis said a committee should not simply do what any citizen can do by paying five dollars and filing an ATIP.[60]

There are many potential solutions to avoid this through amendments to either ATIA or other consequential amendments. To encourage the use of these parliamentary mechanisms, members should only be required to make an ATIP request when the information is NOT available through other parliamentary request mechanisms. Parliamentary procedures could likewise be amended to enable an MP to simultaneously file an Order Paper question, Notice of Motion for Production of Papers, or an ATIP request in a more seamless fashion identifying the distinctions in disclosure.

This recommendation does not suggest that this is the only means to make additional resources available to the public, but it is worth consideration. If members of parliament have other means to exercise their own access to information rights, the question remains as to why and whether they should be encouraged to use ATIP given their unique responsibilities, and core powers.

[59] *House of Commons Debates,* 37-1, No 180 (1 May 2002) at 1415 (Right Hon. Jean Chrétien) online : < https://www.ourcommons.ca/DocumentViewer/en/37-1/house/sitting-180/hansard >.

[60]House of Commons, Standing Committee on Government Operations and Estimates, Evidence, 44-1, No 96 (14 December 2023) at 1615 (Mr. Garnett Genuis) online at: < Evidence - OGGO (44-1) - No. 96 - House of Commons of Canada>.

Appendix 2: FIPA Commentary on Policy Proposals

This portion of FIPA's submission is formatted to reflect the online questions for the Treasury board review found online on 2025 review of the Access to Information Act: Policy approaches.

Enhancing transparency, accountability and public participation

Adopt publication schemes – Agree

To increase transparency through publication schemes, the government can look to the Australian model detailed under subsection 8(2) of their *Freedom of Information Act*. This section mentions key publication requirements for institutions that merit meaningful consideration. Most notably, institutions must publish details of arrangements for members of the public to comment on specific policy proposals including how and to whom the comments were made[61], information in documents to which the agency routinely gives access in response to freedom of information requests subject to exemptions[62], and information that is routinely provided to Parliament in response to information requests form Parliament[63].

The Australian legislation provides a clear example of how publication schemes can increase meaningful transparency while protecting legitimate interests for protecting information.

Build in more flexibility for proactive publication categories - Agree

It is important that this built-in flexibility is according to the court's recommendation that access rights remain robust and enforceable, rather than a matter of discretion[64].

Facilitating access

Enable fair and equitable access – Somewhat disagree

The above proposal suggests preventing a small number of requesters or bots from overloading the ATI system by extending response timelines when institutions receive multiple ATI requests from the same source, or by

[61] *Freedom of Information Act* 1982 (Australia), 1987/31, s 8(2)(f) (Austl).
[62] *Freedom of Information Act* 1982 (Australia), 1987/31, s 8(2)(g) (Austl).
[63] *Freedom of Information Act* 1982 (Australia), 1987/31, s 8(2)(h) (Austl).
[64] *HJ Heinz,* at para 22.

requesting the Information Commission's approval to decline to act on requests that are unduly repetitive or systematic or would unreasonably interfere with an institution's operations.

This creates multiple pathways through which institutions can delay or deny access requests. There is reason to identify what requests are made in good faith, and ensure requests are made for the purpose of access and not solely to consume an institution's resources. However, the above proposals do not address this issue specifically and are too broad. Receiving multiple ATI requests should not be enough of a reason to extend a timeline. For an ATI system already characterized by delays[65], opportunities for timeline extension should be restricted to necessary circumstances. The government could provide examples of when multiple requests constitute an unreasonable interference in their affairs to ensure extensions are consistent with the purpose of the Act. This would further ensure that access rights remain robust for the public, as intended by the courts[66].

Individuals should not be unfairly limited in the number of requests they seek, or worried that their request will take even longer if they hit the vague "multiple" threshold. This proposal in action will add obstacles for requesters rather than remove them.

Requesting permission from the Information Commissioner to deny acting on a request that is unduly systematic or repetitive is a practice that could improve institutional capacity to respond to requests. However, requesting permission to deny acting on requests that "unreasonably interfere with an institution's operations" prioritizes the institutions' perspective over the requestor. Access rights should be as broad as possible to increase public trust in institutions and should function to affirm its international recognition as a basic human right[67]. A vague definition of "unreasonable interference" risks institutional overuse due to ongoing challenges with resources and capacity.[68] The burden of limited resources should not be passed ~~on~~ to the Information Commissioner, nor to the

[65] ETHI report 2023 page 17.
[66] *HJ Heinz,* at para 22.
[67] Canada, Canadian International Development Agency, Amending Access to Information Legislation: Legal and Political Issues (Access to Information Program) (The World Bank) at 25 [Canadian International Development Agency].
[68] Treasury Board of Canada Secretariat, "Access to Information and Privacy Statistical Report for 2024–2025 Fiscal Year" (March 23, 2026) Access to information program data, online: < https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/statistics-atip/information-privacy-statistical-report-2024-2025.html> [Privacy and Statistical Report for 2024-2025].

public. Permission to deny a request should be treated as seriously as any other denial of a recognized human right, where the fulfillment of the request would unreasonably interfere with another's ability to exercise their access to information rights.

Establish objective criteria for time extensions – somewhat agree

Considerations for the objective criteria are strong but are only suggestions. The suggested considerations include nature and scope of the request, size and complexity, and institutional capacity. Despite being important considerations, the current suggestions focus more on the institution's perspective than on the requester's perspective.

As recognized by the courts, access is meant to serve the public and not to enable greater discretion[69] to prevent access by civil servants in the public body. Therefore, time extensions should highlight both the institutions and the requester's point of view. Balancing these two perspectives demonstrates willingness to engage the public with meaningful considerations to the value of access requests from their perspective.

As an increasing amount of information is available online, younger generations are growing up accustomed to open access[70]. This is indicative of a pressing need to include the public in any decisions for the additional purpose of evolving with changing expectations.

Allow time extensions during emergencies – somewhat disagree

Further restrictions are needed to ensure that time extensions are not overused during emergencies, creating a potentially unmanageable backlog. In certain circumstances, a duty to assist can accommodate some time extension, but it is important that the time on the extension starts once the request has been received. Time extensions should follow a consistent objective high standard of "unreasonable interference," and should not be relaxed due to emergencies unless the necessary threshold is met. If defining time extensions for emergencies is considered, then equal consideration should also be given to the definition or emergencies as temporary. British Columbia provides a cautionary tale. 2026 marks the 10-year anniversary of a public health

[69] *HJ Heinz,* at para 22.
[70] Canadian International Development Agency at 19.

emergency in the province[71]. The matter is and was serious. Identifying and applying an emergency label and then using that as a continued excuse to reduce access to information after a decade speaks to failing public accountability and a potential effort to evade accountability rather than public resource management constraints.

Provide time for clarifying requests – disagree

The Act requires a request to be in writing and in sufficient detail under section 6 of the Act. This proposal would enable institutions to allow delays if a request is "unclear or overly broad," without a clear definition as to what that constitutes. This is another mechanism through which institutions may delay a request and contribute to an increasing issue of lengthy wait times.

Requesters must be given an opportunity to understand what constitutes "unclear or overly broad" so that they can ensure their requests are not subject to a delay. Delaying requests based on an undefined threshold of whether the amount of detail is "sufficient" or not, limits public rights to access based on vague rules[72]. Limitations based on vagueness prevent a requester from reasonably anticipating their legal obligations and responsibilities[73] and from framing their request appropriately. Given the difficulties of fulfilling requests within legislated timelines[74], there is a risk of overuse in granting institutions broad powers to extend timelines.

There should be a limit on the number of avenues available for institutions to delay requests, and clarification should be a part of the duty to assist imposed by section 4(2.1) of the Act. A duty to assist involves back and forth to ensure sufficient detail is provided, and resources should be provided to fulfill this duty without it causing delay. Only where a delay is required for clarification and the institution is unable to meet the deadline should a delay be permitted for clarification purposes.

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[71] Government of British Columbia, News Release, "Provincial health officer declares public health emergency" (14 April 2016), online: < https://news.gov.bc.ca/releases/2016hlth0026-000568 >.
[72] Luscombe & Walby at 56.
[73] Luscombe & Walby at 56.
Privacy and Statistical Report for 2024-2025.

Establish a public interest override – agree

Establishing a public interest override is a step in the right direction. It requires meaningful enactment and consideration. The proper course of action is clearly articulating what the public interest override enables, when it can be applied and corresponding regulation, definition and interpretive guides to ensure it can be exercised. A public interest override placed in legislation that is never meaningfully acted upon or enabled by the public body and courts diminishes its quality as a meaningful piece of written law. This is further discussed in Appendix 1 of this submission.

Make government operations more transparent – agree

Although the proposal suggests including factual information, including from Cabinet, from internal deliberation under the scope of the Act, there is no specification to expand this to Cabinet confidences.

Canada is one of the few Commonwealth Countries that doesn't have independent review of Cabinet confidences[75]. It is significant that the Act excludes Cabinet documents rather than apply an exemption[76]. The Information Commissioner should have a right of review to ensure documents requested are Cabinet Confidences to prevent the overuse of this exclusion. The Supreme Court of Canada has interpreted the Act to favour more disclosure, not less, based on the permissive language in the legislation encouraging the minister to "refrain from invoking privilege unless it is in the public interest to do,"[77] so. The overall scheme of the Act is aimed at promoting release of information in the government's possession[78] doubts related to the statute should be determined in favour of dislocure[79].

The fact of having freedom of information legislation itself indicates a belief that the government should be open and citizen-driven[80]. Public access rights are significantly undermined by the complete exclusion of deliberations related to issues directly impacting the electorate and the public. The courts have stated that access to information statues codify the right access to information

[75] ETHI Report at 67-68.
[76] BC FIPA Submission at 23.
[77] *Blank v Canada (Department of Justice)*, 2006 SCC 39 at para 52 [*Blank*].
[78] *Blank,* at para 51.
[79] *Lavigne,* at para 31.
[80] Larsen & Walby at xv.

and that the burden of persuasion is for the party against the disclosure[81]. Consistency with the court's interpretation of the legislation requires a discretionary exemption rather than an exclusion.

Declassification and disclosure of historical records

Establish more time limits on the protection of information - agree

Time elapsing between the creation of a record and its potential release may mitigate harm and decrease risks associated with the release of information. It is important to remember that time is not the only determinant to measure risk, and longer periods alone are not indicative of completely safe disclosure. The focus of declassification should be on the impact as well as time elapsed, despite time being a helpful measure. More recent records may be appropriately disclosed compared to older ones that should remain unavailable to the public.

Establish a systematic approach to declassification and disclosure – agree

No additional commentary.

Information management

Establish a duty to document in official repositories - agree

As identified in "Drawing Access Together: A FIPA Access Assessment report of findings and recommendations" a meaningful duty to document includes allocating resources to ensure record keeping remains a core component of the access system[82]. Establishing a duty to document is an important step, but it cannot reach full potential without the resourcing to position it as a central part of the ATI system. It is essential that institutions develop an "organizational memory"[83] to ensure documentation evolves from a duty to a key aspect of an institution's ATI system. Robust and resourced record keeping further demonstrates a commitment to transparency and accountability, by easing access to an institution's records.

[81] *Reyes v. Secretary of State (1984)*, 9 Admin. L.R. 296, at p. 299 quoted with approval from the Supreme Court of Canada in *Lavigne*, at para 31.
[82] Spencer Izen, "Drawing Access Together: Access Assessment" (2026) 1 at 27.
[83] Izen, at 27.

Enable better records management for access and accountability – somewhat agree

This proposal suggests updating the definition of "record" to "official record" and removing transitory records from the scope of the Act. There is importance in ensuring official records are not disposed of prematurely, but this can be done without the removal of transitory records from the Act. Of course, access to information was never about putting government employees under surveillance at the water cooler, and legislators must strike a careful balance when considering these interests.

Institutions should establish a system that differentiates between official and transitory records, while keeping both under the scope of the Act to ensure accountability and transparency. Access is dependent on proper information management[84] and this should involve additional resources to broaden the scope of documents covered under the Act, not reduce it. Removing transitory records from the scope of the Act risks needless secrecy that worsens public perception of the system[85]. As time goes on, there is a greater need for efficient administration of these systems to promote citizen participation[86].

Depending on the context, transitory records may be of profound importance or interest to the requester when tied to decision making, and legitimate interests should be protected in the context of access rights. For example, public bodies frequently have their administrative decisions quashed or are penalized in costs for improperly withholding documents or breaching privacy during litigation[87]. Courts enforce strict rules requiring the disclosure of relevant records, and improper release can lead to serious legal consequences

Publish retention and disposition schedules – agree

No additional commentary

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[84] Larsen & Walby, at 17.
[85] Stanley Trom, Fallen Behind: Canada's Access to Information Act in the World Context, 2nd edition (Vancouver: BC Freedom of Information and Privacy Association, 2020) at 48.
[86] Pierre R. Desrochers, "Access to Information and Privacy: practical approaches for public service reform" (2024) 67:4 Canadian Public Administration 562 at 564.
[87] "Legal blunder on B.C. Government leads to reinstatement of school board trustees", *CTV News,* (May 25, 2026) online at: <https://www.ctvnews.ca/vancouver/video/2026/05/26/legal-blunder-on-bc-government-leads-to-reinstatement-of-school-board-trustees/ >

Indigenous access to and protection of information

Reflect self-determination in the ATIA

No additional commentary

Update the definition of "aboriginal government"

No additional commentary

Protect Indigenous knowledge from disclosure

To ensure the government is meeting its obligations under international law, the Constitution, and the laws of Indigenous Nations to Indigenous Peoples and to facilitate self-governance through data sovereignty, meaningful consultation is paramount. FIPA would like to emphasize that we are not intending to speak on behalf of Indigenous Nations or Peoples in these statements but are using this as an opportunity to amplify the importance of meaningful consultation with Indigenous Nations. We understand that the Treasury Bord Secretariat is engaging some Indigenous organizations and encourage them to continue doing so. Indigenous nations must be included in this process to ensure knowledge is protected according to their concerns. It is important that these suggestions regarding Indigenous access to and protection of information do not contribute to any existing access issues or create impediments to access to information that may be used as a scapegoat to prevent access where it is warranted. Institutions should consider frameworks like the First Nations Governance Centre's principles of OCAP® (Ownership, Control, Access, and Possession) and ensure these measures are not weaponized to prevent release. Data sovereignty is directly related to self-determination[88] and this principle must be considered when exercising discretion. Institutions should emphasize the interests of Indigenous Nations to ensure there is no risk of undermining the very rights that the government seeks to protect.

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[88] Treasury Board Secretariat of Canada, "Access to Information Review Indigenous-specific What We Heard Report" Message from the President of the Treasury Board, online: <https://www.canada.ca/en/treasury-board-secretariat/services/access-information-privacy/modernizing-access-information/the-review-process/indigenous-specific.html> [Indigenous-specific What We Heard Report].

Exclude from disclosure third-party information provided to Indigenous-affiliated institutions

In practice, this measure of exclusion should be done in collaboration with Indigenous Nations to avoid misuse that could prevent an Indigenous Nations or individuals from accessing information that is rightfully theirs.

Recognize collective rights in the ATIA

No additional commentary

Establish an alternative pathway for access

No additional commentary

Permanently waive the $5 application fee for Indigenous requesters

No additional commentary

Oversight compliance

Improve performance reporting - agree

To ensure that performance reporting is meaningful, this policy proposal should include important commitments that the government has made. For example, Canada is a signatory to Open Government Partnerships, and there is an opportunity to assess whether the government is meeting those expectations with regard to access to information. Public trust is an additional means against which the government can measure the performance of these institutions, based on whether they are adhering to external promises made by the government.

The government of Canada has added that their commitment to Access to Information is "complete,"[89] yet a significant number of improvements remain

[89] Open Government Partnership, "Canada Action Plan 2018-2021: Access to Information" online: https://www.opengovpartnership.org/members/canada/commitments/ca0070/?_gl=1*16qeh4t*_ga*NTExNTQ0Mjk3LjE3Nzk5MjAyNTY.*_ga_T47DS22V65*czE3Nzk5MjAyNTUkbzEkZzEkdDE3Nzk5MjA0ODQkajUwJGwwJGgw [Open Government Partnership].

to be made. Although they have fulfilled their intention of doing a full review of the Act, the government must undertake to improve tools available to requesters and improve transparency about personal information that the government holds.

Specific promises of paramount concern to Canadians are improving timeliness, broadening the range of institutions subject to the Act, the use of new technologies, proactive publication, and improving transparency[90]. These are a few examples of many commitments that the government undertook, any of which could be used in performance reporting. Including important commitments in the reports would increase accountability and trust that the government seeks to cultivate.

Canada's access regime will improve if institutions are subject not only to better performance reporting practices, but also to specific reporting practices that allows Canadians to hold them to account. Accountability is one of the core ideas the act is meant to support[91]. As stated by the Director of the Fundamental Freedoms Program, access to information is the most "basic building block of open government" without which "the rest falls short".[92]

Establish standard criteria related to orders – agree

No additional commentary.

Give more weight to the Information Commissioner's Orders – agree

The proposal suggests amending the Information Commissioner's order-making powers so that orders, once registered with the Federal Court, are enforceable as court orders. The Information Commissioner's orders are based on complaints and are a clear avenue for holding institutions responsible. The need to expand the Information Commissioner's powers has been pressing for over a decade[93].

[90] Open Government Partnership.
[91] *Dagg,* at para 61.
91 Open Government Partnership.
[93] Canadian International Development Agency at 8.

Require action plans to address compliance issues – agree

No additional commentary.

Establish standard criteria related to orders – agree

No additional commentary.

Prioritize mediation to resolve complaints – somewhat agree

The Information Commissioner states that she has already prioritized mediation to resolve complaints[94] and that this does not address the real issue, which is institutional capacity to implement orders in a timely manner. Mediation should be prioritized without institutions escaping the accountability of orders. Further, mediation should not be prioritized as a result of an overloaded complaint mechanism. Rather, complaint mechanisms should be adequately resourced to ensure the dispute resolution method that best serves the requester's needs is chosen.

A dynamic where mediation becomes just a "checkbox" should be avoided (mandatory procedure). Its use as a genuine tool for resolution depends entirely on the context and the participants' willingness to negotiate and must be voluntary. It best functions as a strategic opportunity to reach a mutual settlement when both parties agree[95]. It increases power distance, delay and system dissatisfaction if used as a mandatory checkbox.

To encourage the use of alternative tools to resolve complaints with efficiency, resources should be dedicated to identifying difficulties with implementation of the Information Commissioner's orders while giving the Information Commissioner more flexible tools to resolve complaints.

[94] Office of the Information Commissioner, "Information Commissioner expresses reservations with Government's initial step in the review of the Access to Information Act" (March 6, 2026) online: < https://www.oic-ci.gc.ca/en/resources/news-releases/information-commissioner-expresses-reservations-governments-initial-step >.

[95] Occupational Health and Safety Tribunal Canada, "Mediation" (February 13, 2017) online: < https://www.canada.ca/en/occupational-health-and-safety-tribunal-canada/services/mediation.html >.

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