

Public Service Alliance of Canada

Access to Information Review –Submission to Treasury Board of Canada Secretariat

20 August 2021

The Public Service Alliance of Canada (PSAC) represents more than 225,000 workers in every province and territory in Canada and in a few locations outside Canada. Our members work for federal government departments and agencies, Crown Corporations, universities, casinos, community services agencies, Indigenous communities, airports, and the security sector among others. PSAC is headquartered in Ottawa with 23 regional offices across Canada.

The ATI process has become a key method for the union to receive information central to its labour relations, representation and negotiations responsibilities. We are concerned over the employer's reliance on ATI as a means to avoid its legal obligations to produce documents relevant to bargaining and grievance processes in particular. ATI is a critical method to gain information that should otherwise be provided directly in accordance with the parties' obligations to produce documents. This leads to increased pressure on the system as a whole and potential delays in a wide range of processes in which the union and employer are engaged.

PSAC represents members who process Access to Information Protocol (ATI) requests, including administrative employees, ATI officers and ATI supervisors. PSAC members who work for federal government departments, agencies, Crown corporations and other organizations governed under the Access to Information legislation may find their work subject to ATI requests. PSAC, when representing its members in the union to employer relationship, including through collective bargaining, grievances, arbitrations and other matters, frequently uses the ATI process to obtain relevant information. Thus, our interaction with the review process will reflect all these facets of interaction with Access to Information legislation and protocols.

PSAC participated in the development of, and on the whole, supports and endorses the submission from the Canadian Labour Congress (CLC). This additional document addresses some issues in the CLC submission in more detail and addresses some issues the CLC did not cover.

Corporations, individual contractors and private non-profit entities

The CLC recommends:

- revising section 20 of the Act to limit and restrict its use in withholding vital information from the public
- removing the exemptions outlined in sections 21(1)(a) and 21(1)(b) of the Act
- amending the Act to include a public interest override clause, which would allow for either the full or the partial release of exempted information, if it is in the public interest to do so

- Remove Cabinet confidences as an area that falls outside the scope of the Act (exclusion).
- Extend the scope of the Act to include private entities that deliver substantial public programs, services or functions.

Contracting with the Government of Canada - with the people of Canada - to provide services for a fee is a privilege that must come with significant responsibilities. The public interest at all times must override corporate secrecy or a desire for competitive advantage. Corporations and other private contractors should expect that the contracts and communications about their business with the government will be subject to open data principles and access to information requirements. Requests for access to information about contracts to provide public services are frequently denied or redacted with no obvious justification under the legislation. As an example, PSAC has requested from Public Service and Procurement Canada, regular service audits that are required by statements of work in contracts for building maintenance, to be told that the audits are on file with the end user department. When requesting these documents from the end user department, we are told that the audits are with the private company, which is, of course, not subject to the legislation.

The Parliament of Canada over the years has passed laws to ensure federal government employers give workers in Canada fair access to government jobs, and that people in Canada receive service from a public sector workforce that is qualified, capable and representative. The *Public Service Employment Act* (PSEA) enshrines the principles of fairness, transparency, access, representativeness, and merit. Similarly, the *Employment Equity Act* (EEA) sets as its objective: “...achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.”

Also, the *Employment Equity Act* (EEA) and the Federal Contractors Program (FCP) require that all federally regulated businesses and all contractors with contracts over \$1 million and 100 employees implement employment equity in their workplaces. It is impossible, however, for the public to know if the Federal Contractors Program is meeting the goals of the *Employment Equity Act* as employment equity audits on these private contractors is not available through open data means, nor through the ATI regime.

Thus, PSAC recommends:

- The Access to Information legislation, in particular Section 20 (third party information) but all other relevant sections, and regime, and all relevant legislation and processes pertaining to the procurement of goods and services by the Government of Canada should be amended to include provisions that, by default, release and/or publish contracts with private corporations and related reports, complaints, audits and

communications *unless* it can be shown that such a release will cause undue harm to Canada, or to the public interest or the wellbeing or safety of individuals directly impacted by the release

- “Wellbeing of individuals” does not include the profits or the like for corporate shareholders or owners
- The onus and costs of such proof must lie with the contracting entity and not the requesting entity.
- This requirement should include winning AND losing bids on contracts, tenders, standing offers etc.
- When requests are denied, the denials must be demonstrably in keeping with the legislation.
- *Access to Information legislation and the Employment Equity Act (EEA)* be amended to require any contracts under the Federal Contract Program be released or made available as open data, or through ATI. The same information required by federally regulated employers under the EEA should also be required of any contractors under the Federal Contractors Program.

Open Data and Proactive Publication

The CLC recommends:

- Amend the Act to require the proactive publication of frequently requested information.
- Publish access to information release packages in whole on the Open Government Portal.
- Cease purging release packages after two years and instead keep them on the Open Government Portal for a minimum of 20 years.
- Continue efforts to expand the number and type of information published on the Open Government Portal.

If the goals of the legislation are truly to ensure public access to government data, to increase and ensure democracy, then simply loading those data onto a website is not sufficient. True open government data includes supports for accessing those data for all possible users.

PSAC further recommends that:

- The Open Government Portal *and Services* be administered by library and information science-based processes and staffing that includes proper indexing, no cost to users, and publicly accessible information officers to provide assistance to the public and requesters.
- After information is removed from the Open Government Portal (minimum 20 years), it be archived indefinitely in accessible formats.
- The Open Government Portal and Services be interwoven with academic and public libraries throughout the country but operated and maintained by Government of Canada employees.

Staffing, Processes and Systems

The CLC recommends:

- Increase funding to ATI programming and increase the staffing levels of those who work with ATI requests. This increase should be reflective of the rise in ATI requests and of other functions and programming of the ATI regime.
- Cease the practice of outsourcing ATI work to the private sector and cease the use of temporary help agencies to fulfill ATI work.
- Launch a parliamentary study on the internal government culture surrounding the release of information through Canada's ATI regime, with consideration given to launching a pilot project to create a central and independent government bureau responsible for fulfilling all ATI requests and for carrying out other functions of Canada's ATI regime.

Staffing of ATI roles and department processes are mismatched with the current timeline expectations and the current and ongoing volume of ATI work. Contracting out of ATI work to temporary help agency workers, or secondments of workers from other departments does not provide the continuity, expertise or efficiency necessary to meet the goals of the legislation and the system. As requesters, we find that our ATI files are regularly transferred from officer to officer, frequently are restarted from the beginning after transfer or are incompletely filled. As those who fill ATI requests, our members tell us that they spend unacceptable numbers of hours processing information that should be openly available, responding to requesters with information that they will not meet deadlines, or interpreting murky legislation and departmental rules. One member commented "Because of the timelines, you're always behind – always failing". Staff turnover is high because the intensity of the work itself, unmanageable workload, workplace culture and stress lead to frequent resignations or transfers to other roles.

Members express that there can often be conflicts in the workplace, should they be working on a request that includes their supervisor(s) or colleagues. The power and control dynamic can create significant pressure to not reveal information. Collegial relationships can become difficult.

Furthermore, PSAC members and other employees across the federal public service are exposed to or may potentially be exposed to traumatic situations and/or materials when they perform their jobs. Our members frequently report that they experience significant stress and even trauma, in the course of their work with few or inadequate supports in the workplace. For example, members may experience trauma in departments providing services to people who are in distress or have mental health related disabilities. Departments include, but not restricted to Corrections, Justice, Defence, Immigrations, the Refugee Board, Veterans Affairs, Indigenous Services, and providing services to anyone experiencing harassment, or discrimination may be especially at risk. Members have told us that "you never know what

you're going to see or read until you open the file – someone's tragedy can be in photos before your eyes – and then you just get the EAP brochure dropped on your desk”.

Thus, PSAC recommends:

- An immediate analysis of vacancies and contracted out positions to develop a staffing plan that meets workload and timeline requirements.
- ATI work be removed from the direct hierarchical and peer structure of each department by creating a stand-alone bureau for fulfilling ATI requests and carrying out functions of the ATI regime as in the CLC recommendation above.
- A tiered process for triaging requests that ensures that immediate releases are provided for
 - Documents that can be released in their entirety.
 - Information that is needed for time-sensitive processes and events that have a significant impact on the well-being and safety of individuals (e.g., grievances, arbitrations, court cases, tribunals, collective bargaining, human rights processes).
- A trauma informed approach to assignments and workload that provides workers with peer support, professional support, and time between trauma-inducing assignments. ATI workers must receive adequate on-going trauma informed training to prepare and enable them to do this work in a healthy and productive way. Employees must be made aware during the hiring process that they may be exposed to traumatic material while working as an ATI officer.

Privacy and Information Commissioner

In our work, PSAC staff regularly come across breaches of privacy of members' information through ATI requests, not just names but also medical history and quite detailed material. In one case, we identified more than 14 breaches for one member. Complaints to the Privacy Commissioner only result in a determination of whether the complaint is founded or not founded – there is not accountability or recourse. Complaints to the Information Commissioner do nothing to solve the ongoing problem of delays in receiving material, and in fact, contribute to the amount of work that we do with little result. When we do receive a ruling from the Information Commissioner, it is usually long past the time to be relevant to our work. To put it bluntly, the Privacy Commissioner has no teeth and the Information Commissioner cannot help due to system inadequacies. We are also aware that the offices of both the Privacy and Information Commissioners are sorely understaffed. When a complaint is founded in our favour, there is still no accountability, recourse or restitution.

Thus, PSAC recommends:

- The offices of the Privacy and Information Commissioners receive increased staffing and resources in order to respond to complaints quickly and effectively.
- The legislation be structured to require accountability of department heads for breaches in privacy or in adherence to access to information provisions.
- The legislation be structured to provide recourse and restitution for individuals whose privacy is breached or who, because of delays in ATI processing, suffer damage to their well-being.