

President
of the Treasury Board



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Ottawa, Canada K1A 0R5

Mr. John Brassard
Chair
Standing Committee on Access to Information, Privacy and Ethics
House of Commons
Ottawa, Ontario
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Dear Mr. Brassard:

Pursuant to Standing Order 109 of the House of Commons, I am pleased to respond on behalf of the Government of Canada to the Ninth Report of the Standing Committee on Access to Information, Privacy and Ethics (the Committee), entitled “The State of Canada’s Access to Information System” (the Report), tabled in the House of Commons on June 20, 2023.

I wish to sincerely thank the members of the Committee for their time spent examining the access to information (ATI) system, and for their thoughtful recommendations on the topic. The Committee’s advice is important to our work to improve ATI. I am grateful as well to the stakeholders who appeared before the Committee to express their views and provide evidence and expert advice.

The Government takes ATI very seriously; the *Access to Information Act* (ATIA) is the legislative foundation for an open, transparent, and accountable federal government. Indeed, the ATIA has been recognized as a quasi-constitutional statute in Canada that is vital to civic participation in the democratic process.

As President of the Treasury Board, I am responsible for overseeing the general administration of the ATIA by more than 265 government institutions. In December 2022, following a comprehensive review of the ATI regime, the Government tabled a report to Parliament which outlined key areas of focus to achieve three main strategic outcomes, namely: improving service to Canadians as it relates to ATI; increasing trust and transparency in institutions; and advancing reconciliation with Indigenous Peoples. I am pleased to see that several themes highlighted in that report are echoed in the recommendations brought forward by the Committee.

Overall, the Government shares many of the Committee’s views noted in its recommendations. Having said this, the Government’s current priority is to

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address the most pressing operational and administrative challenges facing the ATI regime. The Government is committed to advancing concrete measures to enable the timely processing of requests, strengthen the ATI workforce and ultimately improve transparency and ATI for all Canadians and users of the regime, including Indigenous Peoples. This work requires close collaboration with key departments such as Justice Canada, Library and Archives Canada, Public Safety Canada, Immigration, Refugees and Citizenship Canada as well as Indigenous Services Canada and Crown-Indigenous Relations and Northern Affairs Canada, to address broad considerations that directly and indirectly impact the administration of the ATIA.

The Government carefully reviewed the Report and the Response, contained herein, addresses the 38 recommendations put forward by the Committee. It is grouped according to the following themes:

- Legislative amendments surrounding the ATI system
- Supporting greater transparency and openness
- Improving culture and leadership
- Engaging on Indigenous ATI and data sovereignty
- Advancing work on declassification and access to historical records
- Enhancing digital tools and information management
- Exploring alternative and expedited pathways to obtain information.

**Legislative amendments surrounding the ATI system
(Pertaining to recommendations 1, 2, 6, 8, 17, 18, 20, 21, 22, 24, 25, 27, 29,
30, 31, 32, 33, 34, 35, 36, 37, 38)**

The Government takes note of the Committee's recommendations on legislative amendments surrounding the ATI system. In 2019, the Government demonstrated its commitment to improving the ATI regime by enacting the first significant changes to the Act since 1983. With the coming into force of Bill C-58, An Act to amend the *Access to Information Act* and the *Privacy Act* and to make consequential amendments to other Acts, the Government strengthened the ATI regime to ensure more accountable and transparent government. Notably, the changes included:

- enacting that the purpose of the ATIA is to enhance the accountability and transparency of federal institutions to promote an open and democratic society;
- providing the Information Commissioner order-making powers, including ordering the release of government records to improve institutions' accountability;
- eliminating all fees apart from the \$5 application fee to reduce financial barriers to ATI;
- creating a requirement to review the Act every five years to ensure it remains responsive to the needs of all Canadians; and,

- requiring institutions, including the Prime Minister's Office and Ministers' Offices, to proactively publish specific information known to be of interest to the public, without a request, to enhance government openness.

While these changes were a major step towards modernizing the ATI system, there continues to be a strain on ATI operations that must be addressed. The Government is determined to focus on strengthening operational and administrative processes so institutions can provide the timely and consistent services that Canadians deserve.

I will launch the next review of the ATIA in 2025. This will provide an opportunity for the Government to explore ways to improve the ATI regime further and will leverage the Committee's helpful advice on the proposed reforms of the Act.

**Supporting greater transparency and openness
(Pertaining to recommendations 23, 26, 28)**

The Government agrees in principle with the Committee's recommendations related to increasing transparency for government records and information. Open government is about making government more transparent, accountable, and participatory for everyone. This means giving greater access to high-quality government data and information to the Canadian public. Transparency is fundamental to creating and maintaining Canadians' trust in their government and in democracy as a whole. Citizens expect their government to be transparent, accountable, and responsive, and we take this very seriously.

Canada has been a member of the international Open Government Partnership since 2011 and produces National Action Plans (NAP) that identify key activities the government will undertake to advance open government and drive change. Since joining the Open Government Partnership, Canada has delivered on 78 commitments, including the current five commitments within the 2022-2024 Action Plan, each of which includes concrete milestones and activities. The Open Data for Results theme of the current NAP highlights key activities to expand, improve and prioritize the release of high value data and information.

In recent years, the Government has taken important steps to increase openness and transparency of federal institutions. For example, through the Open Government Portal, Canadians now have access to over two million records in one location, ranging from proactive publication reports falling under Part 2 of the ATIA, to other types of publications not required by the Act, such as government acts of founded wrongdoing, government use of administrative aircraft, departmental audit committees and institutional accessibility plans. This represents a tenfold increase in records since the Open Government Portal's maintenance was transferred to the Treasury Board of Canada Secretariat (TBS)

in 2017. The Open Government Portal also holds the summaries of ATI requests previously processed by institutions subject to the ATIA. It allows Canadians to easily search by keywords, topic or field of interest for previously completed ATI requests and informally obtain the associated responsive records quickly and at no cost. This approach strikes the right balance between simple and timely access to government records, and cost efficiency in terms of translation. In 2022, the Government further strengthened transparency by ceasing to remove ATI summaries from the Open Government Portal after two years. As of January 2020, existing summaries are now available permanently and new summaries continue to be added monthly.

The Government continues to strengthen its policies to provide Canadians with timely and easy access to information they are interested in. The *Policy on Access to Information* and the *Directive on Access to Information Requests* were recently updated to encourage institutions to regularly review ATI requests they receive and consider how to make frequently requested types of information available through other means. In June 2023, the *Directive on Proactive Publication* was issued to help institutions consistently provide Canadians with complete, accurate and timely government information in the form of proactive publications available on the Open Government Portal. We are also currently working on improving the *Directive on Open Government* so that more information of public interest is proactively disclosed and aligned with requirements within the *Policy on Service and Digital*, which requires the release of information and data to the Open Government Portal. Together, these policies send a strong message across federal institutions that the government continues to actively promote Canadians' right to information, and the need to prioritize proactive disclosure, where possible, to support this right.

To measure the performance of institutions in administering the ATI program, the Government of Canada collects a broad range of statistical information, which is broken down by institution and published annually as a dataset for every fiscal year. This dataset provides detailed information, such as the number of requests received, closed and carried over in a reporting period, as well as data related to timeliness. Over 900 separate data points are made available, which is significantly more than many other countries with similar legislation. Moreover, every year, institutions must table in Parliament a report that accounts for their administration of the ATIA. Each report is published online and contains additional key information. Finally, as required under the *Directive on Access to Information Requests*, institutions publish summaries of every ATI request they complete on the Open Government Portal within 30 calendar days after the end of each month. In addition to a description of the request, each of the summaries also indicate the number of pages released, the disposition, and the month and year the request was closed. Summaries dating back to 2011 are available in a dataset format.

**Improving culture and leadership
(Pertaining to recommendations 13, 14)**

The Government agrees that Access to Information and Privacy (ATIP) officials should undergo training to ensure the integration of a culture of openness and transparency within their institution. As was outlined in the ATI Review Report tabled in Parliament in December 2022, improvements to the ATI regime need to be accompanied by broader changes around leadership, culture, and training. TBS plays a key role in addressing these challenges and fostering a culture of transparency and openness through its support to the community. For example, with the recent establishment of the Access to Information and Privacy Community Development Office (APCDO), TBS works with government institutions to develop standard learning materials for use by all institutions to eliminate duplicated efforts and provide greater consistency across their ATI programs.

Moreover, the importance of openness and transparency is reiterated in the various courses available for all employees of the Government through the Canada School of Public Service (CSPS). Openness and transparency are outlined within the multiple courses relating to ATI, information management, data management and digital government. In fact, openness and transparency are reflected within the *Respect for People* category of the Values and Ethics Code for the Public Service, which is covered in the Government's mandatory course *Values and Ethics Foundation for Employees*. Many tools, such as videos, blogs, podcasts and resources are also available on openness, transparency and working in the open by default through the CSPS Digital Academy, which provides public servants with the skills and knowledge they need to deliver digital-era programs, policies, and services.

The Government takes note of the Committee's recommendation related to performance evaluations for access to information work. The administration of the ATI program is a core responsibility of only a fraction of the Directors General across government and several policy instruments serve to enforce the more general accountability of senior government officials towards the ATI regime. As it relates to processing requests under the ATIA, the *Directive on Access to Information Requests* requires the heads of government institutions or their delegates to establish practices and procedures, and monitor compliance with the act. Regarding proactive publication requirements, the recently introduced *Directive on Proactive Publication* requires the heads of government institutions or their delegates to establish consistent practices and procedures for implementing proactive publication requirements for Ministers and government institutions, and to monitor compliance with these requirements. Finally, Directors General are responsible for delivering on all areas of responsibility outlined in the relevant policies, directives and other instruments of their employer including those pertaining to ATI. Deputy heads are accountable for

ensuring that the performance of executives is managed to deliver on these expectations.

**Engaging on Indigenous ATI and data sovereignty
(Pertaining to recommendations 4 and 5)**

The Government agrees with engaging Indigenous Peoples to eliminate barriers to access and increase Indigenous control and oversight of their records. The Government is committed to advancing Indigenous reconciliation and agrees that we must improve ATI for Indigenous users as part of doing so. During the 2020 Access to Information Review, we conducted extensive engagement activities with Indigenous Peoples. This process provided invaluable feedback on Indigenous Peoples' experiences with the federal ATI system and the unique barriers to access they faced. Through these consultations, we were able to better understand the critical purposes for which Indigenous Peoples rely on the federal ATI system, necessitating their access to timely and comprehensive records in order to:

- advance land claims research;
- uncover records related to residential schools;
- establish status claims through genealogical records; and
- retrieve records related to the national inquiry on Missing and Murdered Indigenous Women and Girls

In support of this critical work and as part of ongoing Key Actions on ATI, the Government committed to maintain engagement and outreach activities with Indigenous organizations, reduce administrative and financial barriers, review policy guidance in support of a more inclusive approach, and implement options for raising awareness and providing training to the ATI community related to Indigenous Peoples and their specific ATI considerations. Most recently, my predecessor, the Hon. Mona Fortier, issued the Implementation Notice on Advancing Indigenous Reconciliation: Cultural Awareness to improve the delivery of culturally appropriate services by encouraging ATI officials to follow a series of courses increasing their cultural skills and awareness of the issues faced by Indigenous Peoples.

In addition, the Government remains committed to implementing the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA) and TBS, along with Indigenous Services Canada, Library and Archives Canada and other departments that are co-leading work related to the UNDA action plan measure related to supporting Indigenous data sovereignty and Indigenous-led data strategies.

Together, these actions will help advance Indigenous Peoples' access to and control over their information in federal holdings, remove administrative and financial barriers associated with filing requests, improve Canada's

accountability towards Indigenous requesters, and ensure the delivery of culturally appropriate services. Ultimately, the goal is to enable Indigenous Peoples to realize their respective visions for self-determination and advance reconciliation.

**Advancing work on declassification and access to historical records
(Pertaining to recommendations 9, 10, 11 and 12)**

The Government takes note of the recommendations regarding Canada's declassification framework. The Government has a well-established model to categorize information based on the potential injury resulting from its compromise, as set out in the Standard on Security Categorization of the *Directive on Security Management*. The security categorization process specifically considers the exemption and exclusion criteria of the ATIA and the *Privacy Act* to ensure that resources are not applied to protect information that can be made public.

The current policy clearly states that the timeframe for the protection of information should be kept as short as possible and that, where appropriate and in accordance with privacy requirements and other legal or policy obligations, the security categorization of information holdings should be downgraded when the expected injury is reduced. This is articulated in the Mandatory Procedures for Information Management Security Control of the *Directive on Security Management*.

I will continue working with Public Safety, the National Security and Intelligence community, and Library and Archives Canada towards a declassification initiative that promotes transparency and improves access to national security-related information. More specifically, this initiative includes:

- an Interdepartmental Declassification Working Group responsible for providing advice on the proactive declassification of historical National Security and Intelligence records on an ongoing basis and to inform declassification policy work across government;
- the development of a draft National Security and Intelligence declassification framework, which provides guidance on a consistent and coordinated approach to declassifying those historical records proactively across the community; and
- planned consultations with domestic and foreign stakeholders to inform the draft framework and future declassification proposals and plans.

Moreover, through the APCDO, TBS will continue to help ATI professionals better understand security and declassification requirements, including by developing training and supporting the ATIP community in more efficient and consistent service delivery.

The Government also takes note of the recommendation regarding the automatic release of historical documents. Classified and/or protected information is currently not downgraded, declassified, or made publicly available in an automatic process, as it may still contain sensitive information that must remain protected or require manual review. This includes national security sensitivities, personal information as defined under the *Privacy Act*, or any other information subject an exemption or an exclusion under the ATIA.

**Digital tools and Information Management
(Pertaining to recommendations 15, 16, 19)**

The Government agrees to leveraging centralized technology to speed up the administration of the ATI program as well as explore ways to better manage government record holdings, recognizing these are key components to improving the administration of the ATIA.

The Government has already invested in better and more modern tools to improve the administration of the ATI program. For example, with Budget 2021 we made significant functionality improvements in the ATIP Online Portal, including allowing requesters to sign into the website using Sign-In Canada, a digital credentials authentication application. Moreover, requesters now have the ability to create an account that allows them to track the number and status of requests in real time through their own dashboard, as well as receive their completed request responses via the platform. These changes have made the portal more efficient, secure and user friendly, and the ATIP process more timely, transparent, and accountable. In 2022, with the *Directive on Access to Information Requests*, we mandated the use of ATIP Online for all institutions to receive ATI requests, and the portal now offers a single digital service delivery channel for over 250 federal institutions.

Also, as of May 2022, government institutions can now adopt Request Processing Software Solutions, a new modern tool designed to facilitate the digital management of ATI requests and minimize the work that must be performed manually. New functionalities are already built in, such as secure channels allowing ATIP officials to seamlessly communicate and work with one another, as well as with requesters, and artificial intelligence capabilities to review, redact and process responsive records faster. Also, in order to increase proactive disclosure of information, we will continue to assess the suitability of automatic or machine translation, with careful consideration of the *Official Languages Act* and the *Accessible Canada Act* requirements.

The Government recognizes the importance of effective information and data management practices, which are foundational not only to ATI, but also to all aspects of government services, program areas and business practices. This is reflected in the *Policy on Service and Digital* which outlines rules that articulate

how Government organizations manage service delivery, information and data, information technology, and cyber security in the digital era with the objective of improving client service experience and government operations through digital transformation approaches.

To strengthen Canada's information management framework, in 2022 TBS also issued the *Standard on Systems that Manage Information and Data* under the *Directive on Service and Digital*. This sets out enterprise requirements for all digital systems that manage information and data. A *Standard on Metadata Management* is also under development to entrench effective metadata management as a core aspect of strategic management of information and data assets. The recently published 2023-2026 Data Strategy for the Federal Public Service further builds on this policy foundation and articulates a vision to strengthen data-driven results and outcomes. With regard to ATI, the Government is committed to continue identifying opportunities to increase the efficiency of the records search and retrieval process, with the aim of improving the timeliness of responses to ATI requests and record-keeping overall.

In terms of managing government communications, the *Policy on Service and Digital* and the *Directive on Service and Digital* require that public servants use only Government-approved systems, applications, and devices in conducting government business. The same policy and directive impose a duty to document activities and decisions of business value. This also means implementing security practices and tools, including encryption, that are offered by the Government technology infrastructure to ensure sensitive information is properly safeguarded.

Alternative and expedited pathways to obtain information (Pertaining to recommendations 3 and 7)

The Government takes note of these recommendations, recognizing that while there may be benefits to an independent process, the time and resources needed to support such an initiative may be better used improving the existing system. As it relates to alternate pathways to deal with information related to immigration applications, the Committee heard testimonials from witnesses about the ongoing work and measures Immigration, Refugees and Citizenship Canada (IRCC) is undertaking to improve the information available to its clients and their representatives outside of the ATI system. For example, in March 2023, IRCC expanded its application status trackers to enable more of its clients to self-serve and access information on their application at their fingertips, thus reducing reliance on the ATI system to obtain this information. IRCC is also working on a systematic approach for the proactive release of officers' decision notes to enhance the information some applicants receive with respect to the reason(s) for their refusal, including a breakdown of the officer's rationale when finalizing the application. Lastly, IRCC continues to leverage digital

technologies to improve client satisfaction and increase program effectiveness. This includes through Digital Platform Modernization, which will enhance client access to key information about their file and improve communications channels. The new online experience will be introduced starting in late 2023/early 2024.

With respect to creating an expedited pathway for victims and survivors of military misconduct, while the government agrees that providing access to records related to cases of misconduct to victims and survivors is of vital importance, careful balance must also be struck with the legislated principle that requests should be processed without regard to the identity of the requester, ensuring their equal treatment. The Department of National Defence (DND) is exploring ways to expedite access to these records through new or existing mechanisms and processes. For example, DND is working to modernize and streamline the conflict and complaint resolution process, using a more human-centric and trauma-informed approach. The goal is to ensure fair, equitable, and efficient resolutions for all involved, and to make it easier for all members of the Defence Team to access a range of services and find the best recourse options available to them. This includes the creation of a new complaint management information system that will provide an enhanced capacity to issue reports on time, significantly reducing the response time for requests of information.

National Defence also introduced several changes that strengthen the rights of victims of service offences, which will in-turn support ATI for individual cases by providing alternative avenues for receiving relevant information. For example, the June 2022 *Declaration of Victims Rights* enshrines rights for victims of service offences within the military justice system. Notably, victims of service offences can request information about the military justice system, including their role in it, and services and programs available to them. Victims of service offences also have the right to request information about the status and outcome of an investigation, the location of proceedings, when they will take place, as well as their progress and outcome, and certain information about the offender. A victim of service offence can also request that a Victim's Liaison Officer (VLO) be appointed, who can assist the victim by explaining how service offences are charged, dealt with, and tried under the Code of Service Discipline. The VLO can also help obtain and transmit information that the victim has requested and has a right to receive under the *Declaration of Victims Rights*.

I wish to thank the Committee and stakeholders once again on completing the Report and issuing the thoughtful and timely recommendations. The Government remains committed to strengthen access to information for Canadians and building on that solid foundation to improve transparency, in order to create and maintain trust.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Anita Anand", with a long horizontal flourish extending to the right.

The Honourable Anita Anand, P.C., M.P.