

PATTERN OF DELAY: OTTAWA'S KAFKAESQUE INFORMATION DENIAL

The Globe asked why federal agencies were taking so long to release information. The answer took two-and-a-half years to come

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The Access to Information Act requires Ottawa to respond to requests in 30 days — unless that query is about how the federal government follows its own rules, in which case the response can take two-and-a-half years.

Thirty-two months ago, as a slowdown became apparent in the processing of access to information documents, The Globe and Mail filed requests with about a dozen federal agencies seeking an explanation.

Responses trickled in. The most recent arrived last week: a 27-page package of heavily redacted documents from the Treasury Board of Canada, the department responsible for this piece of legislation. E-mails between Treasury and the Privy Council seem to confirm what information officers in several departments had confided to The Globe — bottlenecks exist, the result of orders that the Privy Council review information requests.

The documents received last week included a November, 2006, e-mail in which the ATIP co-ordinator for the Treasury Board asked the deputy director and counsel for the Privy Council about why a request was taking so long: “Our due date has now passed for [a particular request]. If we can get something today for [another request] we could maybe make our due date. Maybe this process of reviewing the doc with the list should be revisited as I cannot see any added benefit ...”

Responses to some of the requests The Globe made in May, 2007, were received within months. Most were delayed. Some were refused altogether.

A Treasury Board spokesman, who emphasized that his department usually provides documents expeditiously, said “the request required a longer time than normal.”

When told about the Kafkaesque nature of the response to The Globe's requests, the Information Commissioner said delays are a concern, and underscore the obstacles facing those seeking documents from the government.

Only a small percentage of Canadians use the Access to Information law regularly. However, it is an important tool for media organizations, including The Globe, which used access requests to uncover the sponsorship scandal where money was improperly funnelled to Liberal-friendly advertising firms.

1:

"Timeliness is the focus of our report card this year," said Suzanne Legault, interim Information Commissioner. When she releases her annual report in March, Ms. Legault will join a succession of information commissioners who have complained of government obstruction.

Justice Minister Rob Nicholson's office said in an e-mail this week that proposed reforms to the Access to Information Act that were tabled in Parliament in 2006 have yet to be considered by the Commons Standing Committee on Access to Information, Privacy and Ethics. "This work [of the committee] is essential before the government can proceed further," the e-mail stated.

In fact, opposition members of the committee said they did not learn of the proposals until this fall. The committee had conducted its own study of the law and had come up with 12 "quick fixes," said chairman Paul Szabo, a Liberal MP.

Mr. Nicholson dismissed that report and urged the committee members to study the draft of the government's proposals, Mr. Szabo said. "I had never seen it. The clerk had never seen it," Mr. Szabo said of the document containing proposals from the government. "No members on the committee could ever recall seeing any document like that or being aware of any document like that."

The committee requested a copy of the draft. It was received in November, not long before Parliament rose for the Christmas break.

2:

Vetting Of Requests

In 2006 and early 2007, reporters in Ottawa noticed that documents requested through federal Access to Information and Privacy (ATIP) laws were taking longer and longer to arrive.

Information officers in various government departments privately blamed a new requirement, imposed by the Harper government, that requests be vetted by the Privy Council, the departmental arm of the Prime Minister's Office.

The Globe and Mail issued a dozen requests in early May, 2007, to different departments asking, through ATIP, for "any correspondence between [the department] officials and those in the PCO/PMO related to the amount of time involved in processing ATIP requests."

The Access to Information law requires the government to respond to a request within 30 days. Departments can ask for additional time as circumstances arise.

This is a sample of the responses.

Treasury Board

- ✿ May 31, 2007: Sent a request asking for a 50-day extension.
- ✿ Jan. 25, 2010: Sent 27 pages of heavily redacted documents.

Environment Canada

- ✿ June 7, 2007: Sent a request asking for a 45-day extension.
- ✿ Feb. 28, 2008: Denied the disclosure of any documents on the basis that they contained personal information or were a matter of solicitor-client privilege.

Department of Fisheries and Oceans

- ✿ June 7, 2007: Sent a notice asking for a 30-day extension.
- ✿ July 10, 2007: Sent four pages of documents. They include a letter from PCO to Fisheries, dated March 13, 2007, that says: "Your file has not been completed. Unfortunately, we have a huge backlog of files and are working through the high volume of files received in our office in November/December. Since your file was received mid-January, I cannot at this time give you an estimated time of return."

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Department of Finance

- ✿ June 5, 2007: Sent a notice asking for a 60-day extension.
- ✿ Feb 3, 2009: Responded with 88 pages of documents. They include an e-mail from Finance to PCO, dated Nov. 10, 2006, that says: "Our best efforts with your staff seem to be failing lately so I was wondering if you have any suggestions as to how we can improve the consultation to ensure timely response."

Public Safety and Emergency Preparedness

- ✿ June 4, 2007: Sent a notice asking for a 45-day extension.
- ✿ March 31, 2008: Denied the disclosure of any documents on the basis of solicitor-client privilege.
- ✿ April 1, 2008: The Globe filed another ATIP request with Public Safety asking for correspondence between Public Safety and PCO regarding the original access request of May, 2007. Also filed a complaint with the Office of the Information Commissioner of Canada regarding Public Safety's refusal to disclose the documents from the original request, arguing that Public Safety was not the solicitor for PCO, nor was PCO the solicitor for Public Safety.
- ✿ May 5, 2008: Public Safety sent a request for a 45-day extension for the second request related to the first request.

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- ✿ June 24, 2008: Public Safety released heavily redacted documents related to the second request. They include a letter from Public Safety to PCO, dated Nov. 9, 2007, saying “we need to have this matter resolved. The file’s statutory deadline was July 30, 2007.”
- ✿ March 03, 2009: Public Safety released the 11 pages of documents from the first request. They were now disclosed “in their entirety.”
- ✿ May 21, 2009: The Office of the Information Commissioner writes to say the complaint about Public Safety’s handling of the original request had been “discontinued.”