

TORIES BLOCKED FULL RELEASE OF SENSITIVE PUBLIC WORKS REPORT

Bureaucrat made mad dash to mailroom last July to retrieve document at last minute under orders from senior aide to Christian Paradis

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A federal cabinet minister's aide killed the release of a sensitive report requested under freedom-of-information in a case eerily similar to a notorious incident in the sponsorship scandal.

A bureaucrat had to make a mad dash to the department's mailroom last July to retrieve the report at the last minute under orders from a senior aide to then-Public Works minister Christian Paradis.

The order was issued by Sebastien Togneri, parliamentary affairs director to Mr. Paradis, in a terse email after he had been told the file was already on its way to The Canadian Press, which had requested it.

"Well unrelease it," Mr. Togneri said in a July 27 email to a senior official in the department's Access to Information section. "What's the point of asking for my opinion if you're just going to release it!"

The document was an annual report on Public Works' massive real-estate portfolio, which contained factual information on high vacancy rates and weak returns on investment. Such reports had never been made public before.

The department's real-estate branch had consented to the full release, and the Access to Information office at Public Works had determined after extensive consultation that there was no legal basis to withhold any of the report.

The file, though, was deemed "sensitive" — partly because it was a media request — and was sent to the Conservative minister's office for review. The office initially gave the green light, but had a change of heart on the very day it was being mailed out.



Figure 1 The Clerk of the Privy Council swears in Christian Paradis as Minister of Natural Resources at Rideau Hall on Tuesday, Jan. 19, 2010.

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Tories Blocked Full Release of Sensitive Public Works Report

Mr. Togneri insisted that only one small section of the report be released, despite the uniform view among Access to Information officials that the entire 137-page document could not be withheld under the legislation.

The matter was eventually brought to the attention of the department's director-general, Sylvia Seguin-Brant, who wrote a memorandum arguing that despite objections from the minister's office, the entire report should indeed be released.

"The decision has been made in a fair, reasonable and impartial manner with respect to the processing of this request," she wrote, referring to the bureaucrats' handling of the file.

The decision to release the entire document was made after consulting with Justice Department lawyers.

In the end, though, the department released only a heavily censored version just as Mr. Togneri had insisted — 82 days later than allowed under the law. The final release included just 30 pages.

Internal documents showing how Public Works handled the file were released to The Canadian Press under the Access to Information Act.

The incident is reminiscent of another Public Works report, on the sponsorship scandal, requested by a Globe and Mail reporter a decade ago.

The Gomery Commission into the scandal determined in 2004 that the minister's office tried to interfere with the release of the report. In that case, the senior public servant in charge of Access to Information, Anita Lloyd, decided the move was unethical and illegal.

After consulting her personal lawyer three times, Ms. Lloyd refused to sign off on the file.

When her resistance became widely known, she was hailed as a hero for standing up to her political masters, when the department was headed by then Liberal minister Alfonso Gagliano.

The latest incident is a rare glimpse into the murky world of so-called "amber-lighted" or "red-flagged" Access to Information requests, terms applied to files the government deems politically sensitive and which are subject to close review by a minister's political staff.

Mr. Paradis was shuffled last month to the Natural Resources portfolio, taking Mr. Togneri with him as his director of parliamentary affairs.

Mr. Togneri did not respond to requests for comment.

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Mr. Paradis's current communications director said Mr. Togneri's intervention was to suggest the Access to Information section offer fewer pages to the requester without charge rather than the entire 137 pages for a fee of \$27.40, which had already been paid.

"He went through and thought that a huge section of a very big report wasn't relevant and that you should be given the option of paying to get it or get the (smaller) chapter" without charge, Margaux Stastny said in an interview. "No one can overrule Access officers."

The options were never provided to the requester, however. Instead, the department simply sent the censored report and refunded the fee.

Ms. Stastny said she could not explain why Mr. Togneri's intervention caused Public Works to miss its legislated deadline by 82 days. "There should not have been a significant delay."

The Canadian Press complained last October about the apparent political interference at Public Works to the information commissioner of Canada. The complaint was fast-tracked last week when the office determined the file raises significant issues related to the accountability of government, said spokeswoman Sandra George.

A lawyer specializing in the Access to Information Act called the case "troubling," saying it was unprecedented.

"This is a manifestation of political interference with the administrative processes," Michel Drapeau said in an interview.

"I've never in my career seen a minister basically do or tell a bureaucrat how to do his job and how to apply the law."

Ms. Seguin-Brant's memo on whether to release the entire document did consider whether The Canadian Press might be persuaded to accept a partial release if fees were waived.

But there were dangers, she said.

"Since he is from the media, he would likely want to know why he cannot get the entire record and what it contains before agreeing to receive the relevant section only," she wrote.

"Nothing can stop the requester from obtaining access to the document. He may perceive this as though the department is not being open and transparent, and is trying to withhold information that can be disclosed."

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After receiving the censored report and complaining to the information commissioner, The Canadian Press requested and received the remainder of the report.

The full report showed, among other things, that Public Works' repair and maintenance costs for its building portfolio is much higher than in the private sector, as are vacancy rates.

The document showed that the average vacancy rate in Public Works-managed real estate was 5.1%, far above its internal target of 3.5%.

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