

**ADMINISTRATIVE REFORM**  
**OF THE**  
**ACCESS TO INFORMATION ACT**

**Introduction**

On July 1<sup>st</sup> this year, the *Access to Information Act* celebrates its 25<sup>th</sup> anniversary. Although the core provisions remained substantially the same over the years, some notable amendments were made to the Act. For example, in 1999, section 67.1 was added to make a new offence of obstructing the right of access. In 2006, a number of amendments were made to the Act pursuant to the *Federal Accountability Act*, adding a number of new federal institutions to the coverage of the Act, creating new exemptions applicable to these new institutions and codifying a duty to assist the requester. However, there was no major change to the scheme of access to information or the way in which the process of accessing government information works.

In 2000, the President of the Treasury Board of Canada and the Minister of Justice and Attorney General of Canada established a Task Force. This interdepartmental Task Force was mandated to review the *Access to Information Act* and its administration and to make recommendations to the government on how to improve access to government information for Canadians. According to the government, “[t]he challenge was to provide well-researched recommendations to the government on how to modernize the access to information regime in ways that promote open, effective and accountable government, an informed citizenry, and the public interest. The [report](#) makes 139 recommendations for legislative, administrative and cultural reform.”

The government went on to say, “... the report of the Task Force is an in-depth review of access to information, a blueprint for significant and achievable reform, and a lasting reference tool for Canadians.”

Since the Report of the Task Force (more popularly known as the Delagrave Report after the Chairperson of the Task Force) was issued, few of its recommendations have been implemented or pursued further. While many of the Report’s recommendations would require legislative or regulatory amendments to implement, many of them could be implemented administratively. The Office of the Information Commissioner has started discussions with the Department of Justice and the Treasury Board Secretariat about the possibility of working together, with federal institutions, to see which of the recommendations can be implemented administratively.

For purpose of discussion, what follows is the list, taken from the “Report of the Access to Information Review Task Force – Access to Information: Making It Work for Canadians.” It contains the recommendations which, in our view, do not need legislative

or regulatory reform to implement, and our preliminary assessment of whether these recommendations have been implemented or not. These would need to be looked at in the context of the ongoing Treasury Board Secretariat's Policy Suite Renewal on access to information and privacy policies, including the new Access to Information Policy which took effect on April 1, 2008 ([http://www.tbs-sct.gc.ca/pubs\\_pol/gospubs/TBM\\_121/CHAP1\\_1\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/gospubs/TBM_121/CHAP1_1_e.asp)).

## Summary of Administrative Reform Recommendations in the Access to Information Review Task Force

The list that follows is taken from the “Report of the Access to Information Review Task Force – Access to Information: Making it Work for Canadians” as well as from the working papers which are not part of the Report itself. The list contains only those recommendations which do not need legislative or regulatory changes to implement. The list contains recommendations that may require the cooperation of one or more of the OIC, TBS or individual government institutions.

<b>OIC</b>			
<b>Task Force Administrative Recommendations</b>	<b>Preliminary Assessment of Implementation</b>		
	<b>Yes</b>	<b>No</b>	<b>Partially</b>
<p><b>Clarifying and Determining the Scope of Requests</b></p> <p>5-2 The Task Force recommends that the <i>Access to Information Guidelines</i> be amended to encourage Access Coordinators to contact requesters upon receipt of a request, in order to confirm or clarify it, and to ensure that the request is focused on the information the requester really wants.</p>		X	
<p><b>Release of Processed Records</b></p> <p>5-7 The Task Force recommends that Access to Information Coordinators be encouraged to offer to release information to requesters as soon as it is processed, without waiting for the deadline, or for all of the records to be processed.</p>		X	
<p><b>When Time Limits Are Not Met</b></p> <p>5-8 The Task Force recommends that the <i>Access to Information Policy</i> require that:</p>			
<ul style="list-style-type: none"> <li>• where a government institution concludes that it will be unable to respond within the legislated time-frames, the institution inform the requester in writing that its response will be late, explaining the reason for the delay, the expected date of response, and that the requester can complain to the Information Commissioner;</li> </ul>		X	

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• institutions provide the Information Commissioner with a copy of the letter;		X	
• Access Coordinators report on a regular basis to their Deputy Minister, or equivalent, on the number of occasions on which the time limits were not met and the reasons for the delays; and		?	
• government institutions report this information in their annual access to information reports to Parliament.		X	
<b>Fee Waiver Criteria</b> 5-16 The Task Force recommends that:			
• the <i>Access to Information Policy</i> be revised to set out the factors to be considered in making decisions on whether to waive fees; and		X	
• the criteria take into account the degree to which release of the information will serve the public interest, any financial hardship the fees would cause to the applicant, whether the amount payable is less than the expected cost of administering the fee, and the timeliness of the response to the requester.		X	
5-17 The Task Force recommends that institutions be required to:			
• track the time they spend on processing all requests, whether fees are collected or not;		X	
• record the reasons for waiving fees; and		X	
• include information on fee waivers in their annual report to Parliament.		X	

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<p><b>Expedited Delivery</b></p> <p>5-18 The Task Force recommends that requesters be given the option, at their own expense, of expedited delivery by the method of their choice.</p>		X	
<p><b>Education Mandate</b></p> <p>6-5 The Task Force recommends that:</p> <ul style="list-style-type: none"> <li>the Treasury Board Secretariat invite the Information Commissioner to participate in education programs for the public service.</li> </ul>		X	
<p>6-6 The Task Force recommends that:</p> <ul style="list-style-type: none"> <li>the Information Commissioner publish case summaries, including reasons for findings, on an ongoing basis, with a view to providing guidance to the institutions and to requesters; and</li> </ul>			Ten summaries a year are published in the Annual Report
<p>6-8 The Task Force recommends that:</p> <ul style="list-style-type: none"> <li>the Office of the Information Commissioner and the Treasury Board Secretariat collaborate in conducting assessments of institutional practices.</li> </ul>		X	
<p><b>Investigating Complaints</b></p> <p>6-10 The Task Force recommends that the Information Commissioner prepare and publish comprehensive procedural guidelines for investigations, which should be consistent with the requirements of procedural fairness.</p>			Some guidelines were published in Annual Report 2002-2003
<p>6-11 The Task Force recommends that:</p> <ul style="list-style-type: none"> <li>training and information sessions on the investigative process be offered to access officials by the Office of the Information</li> </ul>		X	

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Commissioner;			
<ul style="list-style-type: none"> <li>investigators of the Office of the Information Commissioner meet from time to time with access officials to clarify and resolve general issues related to the investigation process in order to make investigations more efficient and effective;</li> </ul>		X	
<ul style="list-style-type: none"> <li>tools for the investigation be developed that would guide both investigators and institutions in the efficient resolution of a complaint; and</li> </ul>		X	
<ul style="list-style-type: none"> <li>investigators be assigned to specific portfolios of government institutions to enhance their understanding of those institutions, with periodic rotation of assignments.</li> </ul>		X	
<p><b>Clarity as to Issues under Investigation</b></p> <p>6-12 The Task Force recommends that investigators provide institutions, as early as possible in the course of the investigation, with a clear and complete understanding of the issues to be resolved.</p>	X		
<p><b>Documenting the Handling of the Request</b></p> <p>6-13 The Task Force recommends that the Treasury Board Secretariat, with the advice of the Office of the Information Commissioner, work with institutions to develop realistic standards for the documentation of process files.</p>		X	
<p><b>Investigations into Process Matters</b></p> <p>6-14 The Task Force recommends that:</p>			
<ul style="list-style-type: none"> <li>the procedure for investigating process issues such as fees, delays, extensions and format, be reviewed for ways to resolve them in as</li> </ul>		X	

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short a time as possible; and			
<ul style="list-style-type: none"> <li>institutions come up with standards for responding to investigations, and plan for reasonable resources to meet these standards.</li> </ul>		X	
<p><b>Reviews Conducted in Writing</b></p> <p>6-15 The Task Force recommends that the Information Commissioner, in consultation with the Treasury Board Secretariat, study the suitability of reviews conducted in writing for some types of investigations.</p>		X	
<p><b>Role of Complainant</b></p> <p>6-17 The Task Force recommends that the Commissioner's procedural guidelines allow for greater involvement of complainants in the investigation process.</p>			Some guidelines were published in Annual Report 2002-2003
<p><b>Formal Investigations – Ensuring Procedural Fairness</b></p>			
<p><b>Confidentiality of the Investigations</b></p> <p>6-18 The Task Force recommends that:</p>			
<ul style="list-style-type: none"> <li>investigation procedures, including the need for confidentiality, not prevent government institutions or individuals from presenting a full response in the course of an investigation.</li> </ul>			Some guidelines were published in Annual Report 2002-2003
<p><b>Subpoenas</b></p> <p>6-20 The Task Force recommends that:</p>			
<ul style="list-style-type: none"> <li>subpoenas be limited to investigations of specific complaints, not broadly based inquiries about the functioning of the access process;</li> </ul>		X	

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<ul style="list-style-type: none"> <li>• subpoenas only be issued to officials who have actual knowledge of the file; and</li> </ul>		X	
<ul style="list-style-type: none"> <li>• the Information Commissioner’s procedural guidelines provide that appropriate notice be given to institutions, witnesses and Access Coordinators that a subpoena will issue.</li> </ul>	This is the usual practice		
6-21 The Task Force recommends that:			
<ul style="list-style-type: none"> <li>• the Commissioner’s procedural guidelines provide that notice will be given to any person whose actions or conduct are called into question by a complaint; and</li> </ul>		X	
<ul style="list-style-type: none"> <li>• the Commissioner’s procedural guidelines provide that a notice of possible adverse findings will be given to individuals as soon as there is an indication that they might be adversely affected by any findings or comments in the Commissioner’s report.</li> </ul>	This is the usual practice		
<b>Helping Canadians to Access Information</b> 7-1 The Task Force recommends that:			
<ul style="list-style-type: none"> <li>• the Government of Canada Web site, and those of individual government institutions, include easily retrievable information on submitting requests under the <i>Access to Information Act</i>, and on the organization and responsibilities of those institutions; and</li> </ul>		Unknown	
<ul style="list-style-type: none"> <li>• this information include descriptions of their programs and functions, the types of records they hold and how their records can be effectively identified.</li> </ul>		Unknown	
7-2 The Task Force recommends that the Treasury Board Secretariat take steps, in conjunction with institutions across government, to		X	

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make both the hard-copy and Web-based versions of <i>InfoSource</i> more user-friendly.			
<p><b>Facilitating the Openness of the Access Process</b></p> <p>7-3 The Task Force recommends that the Co-ordination of Access to Information Request system (CAIR) be redesigned to make it more user-friendly, and that its component containing information on completed requests across government be made available to the public on a government Web site.</p>		X	
7-4 The Task Force recommends that government institutions be encouraged to post summaries of the information they have released which may be of interest to others, in addition to depositing a hard copy of the documents in their reading rooms.			A very few departments do something similar
<p><b>Facilitating Electronic Request Processing</b></p> <p>7-5 The Task Force recommends that the Treasury Board Secretariat investigate ways to encourage initiatives that support electronic processing of requests.</p>		X	
<p><b>Central Resourcing</b></p> <p>7-6 The Task Force recommends that the government allocate increased resources to:</p>			
<ul style="list-style-type: none"> <li>• the central policy and legal advice areas of the Treasury Board Secretariat and the Department of Justice;</li> </ul>		Unknown	
<ul style="list-style-type: none"> <li>• the Office of the Information Commissioner; and</li> </ul>			X
<ul style="list-style-type: none"> <li>• the access units of institutions.</li> </ul>			X

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<p><b>Resourcing of Individual Institutions</b></p> <p>7-7 The Task Force recommends that government institutions manage their Access to Information responsibilities in the same way that they manage other programs, and establish resource planning mechanisms, including resource forecasting, performance measurement and system analysis, as part of their operations.</p>		Unknown	
7-8 The Task Force recommends that:			
<ul style="list-style-type: none"> <li>• Treasury Board Secretariat work with institutions to develop resourcing standards and costing models based on workload analyses; and</li> </ul>		X	
<ul style="list-style-type: none"> <li>• the government encourage firms to create pools of qualified individuals who could be hired on contract as necessary to meet unanticipated demands, through such means as master standing offer arrangements.</li> </ul>		X	
<p><b>Making Decisions in Response to Requests</b></p> <p>7-9 The Task Force recommends that every institution examine their decision-making process for factors affecting timeliness and quality, including their delegation of authority under the Act, to ensure that as few approvals as possible are required, and that responsibilities are delegated as far down the organization as possible.</p>		X	
<p><b>Roles and Responsibilities</b></p> <p>7-10 The Task Force recommends that the role, duties and responsibilities of Access to Information Coordinators be described in more detail in the <i>Access to Information Policy and Guidelines</i>, in the access policies of individual government institutions, and in information about the access process provided to the general public.</p>		X	

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7-11 The Task Force also recommends that the <i>Access to Information Policy and Guidelines</i> articulate the roles and responsibilities of heads of institutions, Deputy Heads, program managers and other employees in meeting their statutory obligations under the Act.		X	
7-12 The Task Force recommends that the <i>Access to Information Policy</i> require that Coordinators have ready access to the Deputy Head and senior management of their institution.		X	
7-14 The Task Force recommends that the Department of Justice enhance its capacity to provide expertise in, and advice on, issues of access to information law to government institutions, as well as to the access community, through the Departmental Legal Services Units and through such avenues as information sessions for access officials.		Unknown	
<b>Training for Access to Information Officials</b>			
7-15 The Task Force recommends that:			
• Treasury Board Secretariat take the lead in developing enhanced training and learning opportunities for access to information officials;			X
• access officials be required to complete the parts of the training appropriate to their level of responsibility;		X	
• information technology training be included in the compulsory training for access officials;		X	
• Treasury Board Secretariat support training in access to information by educational institutions across Canada; and			
• access officials be provided with regular opportunities, through learning networks, to share information and best practices with their			

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counterparts in other institutions.			X
<b>Careers in Access</b> 7-16 The Task Force recommends that the Treasury Board Secretariat:			
• consider including access to information positions in classification groupings with other related disciplines;		X	
• assess the appropriateness of classification levels of ATI positions across the government; and		X	
• develop standardized statements of qualifications for ATI positions, along with tools to help institutions determine the qualifications needed for particular positions.		X	
<b>Tools</b> 7-17 The Task Force recommends that the Treasury Board Secretariat encourage the use of, and consider providing smaller institutions with, request-tracking software.			X
<b>Meeting the Information Needs of Canadians Outside the Access to Information Act</b> 8-2 The Task Force recommends that the Government of Canada Web site provide an explanation of the different ways that government information can be accessed.		X	
<b>Proactive Dissemination</b> 8-3 The Task Force recommends that government institutions more			

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systematically identify information that is of interest to the public and develop the means to disseminate it proactively. These means should include regular publication, and the use of Web sites, or special arrangements or partnerships with the private sector, where appropriate.			X
<b>Passive Dissemination – Libraries and Virtual Reading Rooms</b> 8-4 The Task Force recommends that, where there is an identified need or interest, and where the information is not sensitive, government institutions make as much information as possible available to the public either in hard copy or electronically.			X
<b>Informal Release</b> 8-5 The Task Force recommends that government institutions:			
• routinely release information, without recourse to the Act, whenever the material is low-risk in terms of requiring protection from disclosure; and			X
• establish protocols for use in identifying information appropriate for informal disclosure.		X	
8-6 The Task Force recommends that government institutions describe their informal disclosure and proactive and passive dissemination practices in their annual reports to Parliament under the <i>Access to Information Act</i> and on their Web sites.			X
<b>Special Disclosure Mechanisms for Research Purposes</b> 8-7 The Task Force recommends that, where there is an ongoing, regular demand for access from researchers, government institutions establish processes outside the <i>Access to Information Act</i> , building on			

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the examples already established in several departments.			X
8-8 The Task Force recommends that the National Archives play the lead role in developing and adopting processes for the systematic bulk review and release of historical records.		X	
<b>Measuring and Reporting on Performance</b>			
<b>Improved Assessment of Access Activities</b>			
10-1 The Task Force recommends that the Treasury Board Secretariat, working with the Office of the Information Commissioner, develop several common performance measurement indicators, giving priority to a measure of the complexity of requests.		X	
10-2 The Task Force recommends that institutions develop performance measurement indicators to help them identify those areas of their institutions that are having difficulty, or systemic problems affecting their institution that senior management could address.		Unknown	
10-3 The Task Force recommends that institutions' annual reports to Parliament be expanded to include:			
• information on strategies to provide information outside the Act;		X	
• initiatives undertaken to improve the access to information system;		X	
• issues arising during the year that significantly affected the institution's Access to Information program; and		X	
• planned improvements to respond to identified problems or trends.		X	
10-4 The Task Force also recommends that the Treasury Board Secretariat's annual aggregate report provide a much broader view of			X

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how the system is working across government, and include analysis of trends on key issues.			
<b>Creating a Culture of Access to Government Information</b>			
<b>Fundamental values of the Public Service</b> 11-1 The Task Force recommends that:			
<ul style="list-style-type: none"> <li>the Statement of Principles of the Public Service of Canada refer to the responsibilities of public servants as stewards of government information and as providers of access to that information; and</li> </ul>		X	
<ul style="list-style-type: none"> <li>training modules for public servants, including orientation sessions for new employees and courses for managers, stress the linkages between access to information and core public service values.</li> </ul>		X	
<b>Awareness and Training for Public Servants</b> 11-2 The Task Force recommends that:			
<ul style="list-style-type: none"> <li>awareness of access to information and information management be part of orientation programs for new public servants;</li> </ul>		X	
<ul style="list-style-type: none"> <li>generic training modules on access to information be developed for the training of program staff, in a form that can readily be customized to meet the needs of individual government institutions; and</li> </ul>		X	
<ul style="list-style-type: none"> <li>all managers receive access to information training, including the efficient management of access requests from a program perspective and best practices in managing information and in creating a culture of access.</li> </ul>		X	

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<b>Embedding Access in the Worklife – Incentives and Accountability</b> 11-3 The Task Force recommends that:			
• responsibilities related to access to information and information management be included in the job description of officers and managers;		Unknown	
• objectives related to access to information and information management be part of the accountability agreement and performance reviews of all managers;		Unknown	
• government institutions discuss their performance on access to information on a regular basis at management meetings;		Unknown	
• when new programs are established, an access to information component be included from the outset as an integral part of the program; and		Unknown	
• access to information goals be integrated in annual corporate plans for government institutions.		Unknown	
<b>Serving Ministers</b> 11-4 The Task Force recommends that:			
• Deputy Ministers brief Ministers on their responsibility for implementing the Act;		Unknown	
• Deputy Ministers assist Ministers in making their support for access and their expectations for compliance clear to the government institutions for which they are responsible; and		Unknown	

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<ul style="list-style-type: none"> <li>• staff in Ministers' offices receive access to information and records management training soon after their appointment.</li> </ul>		Unknown	
<p><b>Providing Corporate Leadership</b></p> <p>11-5 The Task Force recommends that the Treasury Board Secretariat strengthen its role as the centre of excellence for access to information in the government and as access “champion” for the government as a whole.</p>			X
<p><b>Signaling Change and Fostering Key Attitudes</b></p> <p>11-6 The Task Force recommends that the training of public servants emphasize that they are stewards of government information on behalf of Canadians; that the provision of information is an integral part of their job; and that the records they create in the course of their work are records of the Government of Canada, and for the most part can be made public.</p>		X	
<p>11-7 The Task Force recommends that, in conjunction with its response to our recommendations, the government launch a broad campaign in the public service to enhance awareness of access to information, appreciation of its principles and pride in providing information to Canadians.</p>		X	
<p><b>Last Word: Enhanced Dialogue on Access to Information</b></p> <p>12-1 The Task Force recommends that:</p>			
<ul style="list-style-type: none"> <li>• the Treasury Board Secretariat consider setting up an advisory committee of stakeholders and access officials to provide ongoing advice on the administration of the Act;</li> </ul>		X	
<ul style="list-style-type: none"> <li>• a full review of the Act and its operation be conducted every 5 to 10</li> </ul>		X	

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years; this could be done either by reviewing the Act as a whole, or by looking regularly at specific areas of legislation and practice; and			
<ul style="list-style-type: none"> <li>• there be enhanced ongoing Parliamentary oversight of the access to information regime.</li> </ul>			X