

**Brief to the House of Commons**  
**Standing Committee on Access to Information, Privacy and Ethics on**  
**Strengthening the *Access to Information Act* and Enforcement System**  
(Democracy Watch, March 30, 2009)

**BACKGROUND**

Since the federal *Access to Information Act* (*ATI Act*) was passed in 1983, it has been proven to be ineffective in requiring government institutions to make information created, gathered, or maintained by the government (and Members of the House of Commons and Senate of Canada) easily accessible to the public.

Of course, some information must be kept secret by governments to prevent harm or injury, but the *ATI Act* and very weak enforcement system essentially allow for, even encourage, the secrecy exemptions in the *Act* to be abused, denying the public the right to information about actions and decisions it has paid for, and has a clear right to know.

Essentially, the *Act* is currently a “Guide to Keeping Information Secret” law, and many changes are needed to transform it into an actual “Open Government” law. As in all areas of regulating human behaviour in large organizations, especially when there is an incentive to violate the rules, to be effective any regulatory system must meet the following standards: strong rules with no loopholes; a fully independent, fully empowered and well-resourced enforcement agency, and; high penalties for violations.

Therefore, to transform the current *ATI Act* and enforcement system to meet these standards, the following changes must be made:

- any type of record created by any entity that receives significant funding from or is connected to the federal government (including the House of Commons and Senate), or was created by the federal government and fulfills public interest functions, must be automatically covered by the *ATI Act* (as in the United Kingdom);
- the *ATI Act* must require every entity covered by the *Act* (as in the United Kingdom, U.S., Australia and New Zealand): to create detailed records for all decisions and actions; to assign responsibility to individuals for the creation and maintenance of each record; to maintain each record so that it remains easily accessible; to routinely disclose records that are required to be disclosed and maintain a public list of disclosed records, and; to respond to information requests no matter who files the request;
- all exemptions under the *ATI Act* must be discretionary, and limited by a proof of harm test and a public interest override applied by the Information Commissioner (as in B.C. and Alberta);
- the Information Commissioner must be given explicit powers under the *ATI Act*: to approve or reject government institution’s requests to delay disclosure more than 60 days; to order the release of a record (as in the United Kingdom, Ontario, B.C. and Quebec) including mediating between information requesters and government institutions; to reduce fees for records; to extend coverage of the *Act* to any government entity; to require systemic changes in government institutions’ information management systems to improve compliance (as in the United Kingdom), and; to penalize violators of the law;

- significant penalties must be established in the *ATI Act* for not creating records, for not maintaining records properly, for unjustifiable delays in responses to requests, and for denying access to information that clearly is required to be made public;
- information requesters must be given the right to go to court if the Information Commissioner refuses or fails to deal with their complaint within 120 days;
- funding to the access to information and enforcement system must be increased to solve backlog problems instead of increasing administrative barriers such as limiting requests in any way, and fees for access must be decreased overall and standardized for every entity covered by the *ATI Act*; and;
- Parliament must be required to review the *ATI Act* every 5 years to ensure that problem areas are corrected.

Of course, if these changes are made, extensive training programs must be created to ensure everyone in all federal government institutions and public entities are aware of the new standards, interpretations, guidelines and powers under the new system.

Some commentators, such as Donald Savoie of the University of Moncton, have claimed that since the *ATI Act* and system was created, public servants have not been able to “speak truth to power” and Cabinet ministers have not received as good information and advice as before.

Democracy Watch’s position is that if this is true, the problem is not the *ATI Act*, it is the fundamental attitude and operation of the government (and all political parties). An actually democratic government would welcome all information and advice on each issue, even if contrary to the position of its leaders, and would not hesitate to make all information and advice public as part of a process of meaningful consultation with the public to come up with solutions to societal problems (and accountability mechanisms that measure whether solutions are actually working).

It is only when a government seeks to impose its ideology and will on society, in defiance of what the majority wants or best practice standards require, or when it seeks to help its own members, their relatives and friends, that it needs to keep information and advice secret. As too many examples to list from the past have shown, this secrecy consistently causes abuse and waste.

True, it is difficult to imagine a government operating in an open, democratic way. But that is only because governments to date have not operated this way, not because it is not possible, or advisable, for governments to be open, engaging and accountable. Changing the *ATI Act* in the above ways would very much help move the federal government in this democratizing direction.

To be truly effective in opening the federal government, however, these changes to the *ATI Act* should be accompanied by the passage of a law requiring meaningful public consultation by the government before any significant decision is made, as many citizen groups have advocated for many years (including the Canadian Community for Dialogue and Deliberation -- [www.c2d2.ca](http://www.c2d2.ca)).

Democracy Watch  
 P.O. Box 821, Stn. B  
 Ottawa K1P 5P9  
 Tel: 613-241-5179  
 Fax: 613-241-4758  
 Internet: <http://www.dwatch.ca>