

A quick guide for journalists, activists, students and others using the federal Access to Information Act

(April 2017)

Step 1 – What should I ask for?

Start by scanning news websites, aggregators, Twitter, Facebook and newspapers each day for ideas. Ask yourself what federal government document lies behind today's headlines? Is there likely to be a report, audit or briefing note that supports an announcement, for example? Be certain the jurisdiction is federal, rather than provincial or even municipal.

Reporters on specific beats, and activists, should research to understand how records are organized within the appropriate federal department. Does the Public Works deputy minister receive monthly reports on fraud? Does the health minister get weekly updates on new flu outbreaks? Does the executive committee at Canada Revenue Agency produce minutes at its quarterly meetings? Note that the Act gives access to a wide range of record types, including video, photographs, audio, datasets, etc.

The Merx contracting website (www.merx.com) often refers to polls, studies, research projects with future delivery dates. Datebook these. Most but not all federal government tenders are also on a non-subscription website: www.Buyandsell.gc.ca

Each federal department and agency produces a “main estimates” report in the spring (known officially as Estimates, Part III - Report on Plans and Priorities, all available on the web (<http://www.tbs-sct.gc.ca/hgw-cgf/priorities-priorites/rpp/rpp-1617-eng.asp>), which outlines work plans for the coming year, including expected audits and evaluations, studies, etc. Use this document to shape future requests. Also check each department's fall Performance Report (<https://www.canada.ca/en/treasury-board-secretariat/services/planned-government-spending/reports-plans-priorities/2017-18-departmental-plan.html>), often a propaganda tool but sometimes containing useful tips. The Public Accounts of Canada released each fall can also inspire requests (<http://www.tpsgc-pwgsc.gc.ca/recgen/cpc-pac/2016/index-eng.html>), especially sections on losses to the Crown through theft or damage, and ex-gratia payments.

Scan previous requests made by other requesters to get ideas on topics and wording, or to piggyback. As of 2012, each federal department and agency has been required to post each month brief details of completed Access to Information Act requests, including file number, exact wording of the request, and number of pages released, if any. These records can be

accessed informally by contacting the department or agency, without the need to file a formal request. Use the following website as a government-wide search tool to review summaries of completed requests; the database now has about 29,793 entries: <http://data.gc.ca/eng/search/ati>

Make friends with a public servant, who can point the way to specific records without violating the Security of Information Act. With their guidance, file focused requests under the Access to Information Act.

Go on fishing expeditions. Indulge your curiosity. Supplement your daily reporting.

Step 2 – Fill out the form.

Here's the form for hard-copy requests, which you can fill out on your computer, then print off (as an alternative, see below for details of the online request portal):

<http://www.tbs-sct.gc.ca/tbsf-fsct/350-57-eng.asp>

Use plain English or French. Be concrete: ask for documents, such as briefing notes, expense claims, minutes, correspondence, contracts, audits, inventories. Use the word “record” to capture multimedia materials, such as photographs, video, databases; limit time period – a three-month spread or less is often best; exclude newspaper clippings; ask for draft versions if final versions not yet available; try to focus requests to avoid too much material.

Include a \$5 cheque made out to the Receiver General for Canada (except for a handful of agencies that require cheques made out to them, e.g. Bank of Canada, the Royal Canadian Mint, Canada Post). Make a copy for yourself, then send form in a stamped envelop to the Access to Information Act Co-ordinator in the appropriate federal department or agency. Addresses are here:

www.tbs-sct.gc.ca/atip-aiarp/apps/coords/index_e.asp

In April 2013, the federal government launched a pilot project to allow online Access to Information Act applications and fee payments. Only about 33 out of some 260 departments and agencies currently participate, though most of the big departments have signed on. The portal is here:

<https://atip-aiarp.apps.gc.ca/atip/welcome.do?lang=en>

The portal can speed the initial filing, and simplify the payment process, though it is poorly designed for bulk filing and does not allow for client

accounts, requiring each request to be filed from scratch. Even so, the online system can shave a week off waiting times, and gets your request in to the department instantly, starting the clock ticking on processing. Tip: Do not identify your category of requestor on the portal or on the paper form. Always check off “Decline to identify.” It’s none of the government’s business who you are.

Step 3 – Monitor the file.

Be patient - responses to journalists typically take 60 days or more. Keep a record of every telephone call, voicemail, email or letter from the officer handling your request. Carefully retain any letters from the department. Use your datebook system to ensure promises are kept, deadlines are met. Insist on good service; know your rights; be proactive; be civil; but be a pest.

Step 4 – Negotiate.

Negotiation is a normal part of the process. If the access-to-information officer says the volume of records will mean a lot of processing, and therefore delay, ask for advice on reducing the volume (perhaps an executive summary will suffice instead of the whole report, or a two-month time spread instead of a year’s worth of records). Ask for the material on a CD, provided without charge. Release packages can also be sent by email attachment or epost. (Note: the federal government on May 5, 2016, eliminated all fees, including processing and photocopying, beyond the initial \$5 application fee.) If you’re told the wording of your request is unclear, ask for help in shaping it. Officers are neutral and must keep your identity confidential. The legislation also says they have a legal “duty to assist” the requestor.

Step 5 (optional) – Make a formal complaint about delay.

Complain if the department has taken a significant extension beyond the standard 30-day period, e.g., 90 additional days to process a straightforward request, without adequate explanation. Write a letter in plain English or French to the Information Commissioner of Canada and fax or mail it. There is no fee for making a complaint. Or use the online complaint form, though you must mail in a completed paper form:

<http://www.oic-ci.gc.ca/eng/lc-cj-logde-complaint-deposer-plainte.aspx>

Be forewarned: the commissioner’s office is currently backlogged and complaints take an average of nine months to resolve, and some take years. The office has also abandoned its first-come, first-served principle.

The Liberal government said in 2015 it planned to give the information commissioner the power to order the release of documents, but has not yet done so and has offered no timeline. In the meantime, the information commissioner uses moral suasion to encourage departments to release documents, though on rare occasions will seek an order from a Federal Court judge.

Step 6 – Examine the material carefully.

Once you've received documents, examine them thoroughly – the story often is not obvious. It may be buried in an email exchange on page 278, or may be disguised by thick bureaucratese. Note references to other documents and consider making separate requests for them. Contact department spokespersons with questions to ensure you have a good understanding of the material. Often a first request will give you a road map to make a more focused second request.

Step 7 (optional) – Make a formal complaint about exemptions.

The Access to Information Act allows departments to legally censor material under dozens of exemptions and exclusions, including national security, privacy, commercial confidentiality, cabinet confidences, etc. Read the Act, Sections 13-26, for a complete list:

<http://laws.justice.gc.ca/eng/A-1/index.html>

Departments must cite on the released record itself the specific exemptions it has invoked to justify removal of material. Some sections are routinely abused, such as Section 21, referring to “advice.” Complain in writing to the Information Commissioner of Canada if you feel the exemptions and exclusions are inappropriate (see Step 5). Be forewarned: the commissioner's investigations can take months, sometimes a year or more. But a complaint will also alert a department that you are a fighter, and may result in better treatment of your future requests.

Step 8 – Go back to Step 1

Make regular, frequent requests. The most experienced reporters consider themselves lucky to get one story for every three requests, though it can take as many as 10 requests to produce one story. Make up for delays and frequent problems by cranking up the number of requests. File weekly or even daily requests. Fill the pipeline. Persistence and tenacity will reward you in two or three months with a steady flow of material, much of which can form the basis of stories.

To learn more:

Mike Larsen for BC-FIPA, Access in the Academy: Bringing ATI and FOI to academic research (July 2013). Download:
<https://fipa.bc.ca/access-in-the-academy-bringing-foi-and-ati-to-academic-research/>

Jim Bronskill and David McKie, Your Right to Know: How to Use The Law to Get Government Secrets (2015)

Robert Cribb et al., Digging Deeper: A Canadian Reporter's Research Guide (2006). Chapter 10 has an overview of freedom of information laws in Canada.

Alasdair Roberts, Blacked Out: Government Secrecy in the Information Age (2006). An academic overview of global freedom-of-information laws, primarily in the English-speaking world.

Society of Professional Journalists' web guide to using U.S. freedom of information laws: www.spj.org/foi.asp

For advice, contact:

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Twitter feed, focusing on FOI issues: @DeanBeeby