

# Access to Information Act

## Existing Act

### ACCESS TO INFORMATION ACT

#### R.S.C. 1985, c. A-1

An Act to extend the present laws of Canada that provide access to information under the control of the Government of Canada

#### SHORT TITLE

1. This Act may be cited as the *Access to Information Act*. R.S. 1985, c. A-1, s. 1.

#### PURPOSE OF ACT

2. (1) The purpose of this Act is to extend the present laws of Canada to provide a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

(2) This Act is intended to complement and not replace existing procedures for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public. R.S. 1985, c. A-1, s. 2.

## Changes Proposed By OIC

1. This Act may be cited as the *Open Government Act*.

2. (1) The purpose of this Act **is to make government institutions fully accountable to the public, and to make the records under the control of those institutions fully accessible to the public, by extending** the present laws of Canada to provide a right of access to information in records under the control of **those institutions** in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government.

(2) as is

**(3) Every government institution shall make every reasonable effort to assist persons requesting access and to respond to each request openly, accurately and completely and without unreasonable delay.**

**Existing Act**

**Changes Proposed  
By OIC**

**2.1 Every officer and employee of a government institution shall create such records as are reasonably necessary to document their decisions, actions, advice, recommendations and deliberations.**

**2.2 Every government institution shall maintain a public register containing a description of every record disclosed in response to a request made under this Act.**

**2.3 Notwithstanding any other provision of this Act, the head of a government institution shall disclose a record or part thereof requested under this Act, if the public interest in disclosure clearly outweighs in importance the need for secrecy.**

**INTERPRETATION**

**3.** In this Act,

"alternative format", with respect to a record, means a format that allows a person with a sensory disability to read or listen to that record;

"Court" means the Federal Court;

"designated Minister", in relation to any provision of this Act, means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of that provision;

"foreign state" means any state other than Canada;

"government institution" means any department or ministry of state of the Government of Canada listed in Schedule I or any body or office listed in Schedule I;

"head", in respect of a government

"government institution" means any department or ministry of state of the Government of Canada , **including the office of the head thereof**, listed in Schedule I or any body or office listed in Schedule I;

**Existing Act**

institution, means

(a) in the case of a department or ministry of state, the member of the Queen's Privy Council for Canada presiding over that institution, or

(b) in any other case, the person designated by order in council pursuant to this paragraph and for the purposes of this Act to be the head of that institution;

"Information Commissioner" means the Commissioner appointed under section 54;

"record" includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof;

"sensory disability" means a disability that relates to sight or hearing;

"third party", in respect of a request for access to a record under this Act, means any person, group of persons or organization other than the person that made the request or a government institution. R.S. 1985, c. A-1, s. 3; 1992, c. 21, s. 1; 2002, c. 8, par. 183(1)(a).

**Changes Proposed  
By OIC**

**“Open Government Coordinator” means the officer of a government institution designated under section 73 to fulfill the duty set out in section 73.1;**

"record" includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, **electronic communication**, and any other documentary material, regardless of physical form or characteristics, and any copy thereof;

**“trade secret” means any information, including a formula, pattern, compilation, program, device, product, method, technique or process,**

**(a) that is used, or may be used, in business for any commercial advantage;**

**(b) that derives independent economic**

**Existing Act****Changes Proposed  
By OIC****ACCESS TO GOVERNMENT RECORDS**  
***Right of Access***

4. (1) Subject to this Act, but notwithstanding any other Act of Parliament, every person who is

(a) a Canadian citizen, or

(b) a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*,

has a right to and shall, on request, be given access to any record under the control of a government institution.

(2) The Governor in Council may, by order, extend the right to be given access to records under subsection (1) to include persons not referred to in that subsection and may set such conditions as the Governor in Council deems appropriate.

(3) For the purposes of this Act, any record requested under this Act that does not exist but can, subject to such limitations as may be prescribed by regulation, be produced from a machine readable record under the control of a government institution using computer hardware and software and technical expertise normally used by the government institution shall be deemed to be a record under the control of the government institution. R.S. 1985, c. A-

**value, whether actual or potential, from not being generally known to the public or to other persons who can claim economic value from its disclosure or use;**

**(c) that is the subject of reasonable efforts to prevent it from becoming generally known to the public; and**

**(d) the disclosure of which would result in harm or improper benefit to the economic interests of a person or entity.**

4. (1) Subject to this Act, but notwithstanding any other Act of Parliament, **any** person has a right to and shall, on request, be given access to any record under the control of a government institution.

**(2) repeal.**

(3) as is.

**Existing Act**

1, s. 4; 1992, c. 1, s. 144 (Sch. VII, item 1)(F); 2001, c. 27, s. 202.

***Information about Government Institutions***

5. (1) The designated Minister shall cause to be published, on a periodic basis not less frequently than once each year, a publication containing

(a) a description of the organization and responsibilities of each government institution, including details on the programs and functions of each division or branch of each government institution;

(b) a description of all classes of records under the control of each government institution in sufficient detail to facilitate the exercise of the right of access under this Act;

(c) a description of all manuals used by employees of each government institution in administering or carrying out any of the programs or activities of the government institution; and

(d) the title and address of the appropriate officer for each government institution to whom requests for access to records under this Act should be sent.

**Changes Proposed  
By OIC**

**(4) Subject to this Act, access to a record shall be given in any reasonable format specified by the person making the request.**

**(5) The identity of a person making a request under subsection (1) may not be disclosed without the consent of the person unless**

**(a) the disclosure is solely within the government institution to which the request is made; and**

**(b) the person's identity is only disclosed to the extent that is reasonably necessary to process and answer the request.**

5. (1) The designated Minister shall cause to be published, on a periodic basis not less frequently than once each year, a publication containing

(a) a description of the organization and responsibilities of each government institution, including details on the programs and functions of each division or branch of each government institution;

(b) a description of all classes of records under the control of each government institution in sufficient detail to facilitate the exercise of the right of access under this Act;

(c) a description of all manuals used by employees of each government institution in administering or carrying out any of the programs or activities of the government institution; and

(d) the title and address of the **Open Government Coordinator** for each government institution to whom requests for access to records under this Act should be

**Existing Act**

(2) The designated Minister shall cause to be published, at least twice each year, a bulletin to bring the material contained in the publication published under subsection (1) up to date and to provide to the public other useful information relating to the operation of this Act.

(3) Any description that is required to be included in the publication or bulletins published under subsection (1) or (2) may be formulated in such a manner that the description does not itself constitute information on the basis of which the head of a government institution would be authorized to refuse to disclose a part of a record requested under this Act.

(4) The designated Minister shall cause the publication referred to in subsection (1) and the bulletin referred to in subsection (2) to be made available throughout Canada in conformity with the principle that every person is entitled to reasonable access thereto. R.S. 1985, c. A-1, s. 5.

***Requests for Access***

**6.** A request for access to a record under this Act shall be made in writing to the government institution that has control of the record and shall provide sufficient detail to enable an experienced employee of the institution with a reasonable effort to identify the record. R.S. 1985, c. A-1, s. 6.

**7.** Where access to a record is requested under this Act, the head of the government institution to which the request is made shall, subject to sections 8, 9 and 11, within thirty days after the request is received,

**Changes Proposed  
By OIC**

sent.

(2) as is.

(3) as is.

(4) as is.

**6.** as is.

**7.** as is.

**Existing Act**

(a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and

(b) if access is to be given, give the person who made the request access to the record or part thereof. R.S. 1985, c. A-1, s. 7.

**8.** (1) Where a government institution receives a request for access to a record under this Act and the head of the institution considers that another government institution has a greater interest in the record, the head of the institution may, subject to such conditions as may be prescribed by regulation, within fifteen days after the request is received, transfer the request and, if necessary, the record to the other government institution, in which case the head of the institution transferring the request shall give written notice of the transfer to the person who made the request.

(2) For the purposes of section 7, where a request is transferred under subsection (1), the request shall be deemed to have been made to the government institution to which it was transferred on the day the government institution to which the request was originally made received it.

(3) For the purpose of subsection (1), a government institution has a greater interest in a record if

(a) the record was originally produced in or for the institution; or

(b) in the case of a record not originally produced in or for a government institution, the institution was the first government institution to receive the record or a copy thereof. R.S. 1985, c. A-1, s. 8.

**Changes Proposed  
By OIC**

**8.** as is.

**Existing Act**

9. (1) The head of a government institution may extend the time limit set out in section 7 or subsection 8(1) in respect of a request under this Act for a reasonable period of time, having regard to the circumstances, if

(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution,

(b) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or

(c) notice of the request is given pursuant to subsection 27(1)

by giving notice of the extension and, in the circumstances set out in paragraph (a) or (b), the length of the extension, to the person who made the request within thirty days after the request is received, which notice shall contain a statement that the person has a right to make a complaint to the Information Commissioner about the extension.

(2) Where the head of a government institution extends a time limit under subsection (1) for more than thirty days, the head of the institution shall give notice of the extension to the Information Commissioner at the same time as notice is given under subsection (1). R.S. 1985, c. A-1, s. 9.

10. (1) Where the head of a government institution refuses to give access to a record

**Changes Proposed  
By OIC**

9.(1)(a) repeal and substitute.

**(a) meeting the original time limit would unreasonably interfere with the operations of the government institution and the request**

**(i) is for a large number of records,  
(ii) necessitates a search through a large number of records, or  
(iii) is part of a group of requests for a large number of records made by the same person on the same subject within a period of thirty days;**

(b) consultations **with other government institutions** are necessary to comply with the request and cannot reasonably be completed within the original time limit, or

(c) as is.

(2) as is.

10.(1) as is.



**Existing Act**

**Changes Proposed  
By OIC**

requested under this Act or a part thereof, the head of the institution shall state in the notice given under paragraph 7(a)

(a) that the record does not exist, or

(b) the specific provision of this Act on which the refusal was based or, where the head of the institution does not indicate whether a record exists, the provision on which a refusal could reasonably be expected to be based if the record existed, and shall state in the notice that the person who made the request has a right to make a complaint to the Information Commissioner about the refusal.

(2) The head of a government institution may but is not required to indicate under subsection (1) whether a record exists.

(3) Where the head of a government institution fails to give access to a record requested under this Act or a part thereof within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access. R.S. 1985, c. A-1, s.10.

**11.**(1) Subject to this section, a person who makes a request for access to a record under this Act may be required to pay

(a) at the time the request is made, such application fee, not exceeding twenty-five dollars, as may be prescribed by regulation;

(b) before any copies are made, such fee as may be prescribed by regulation reflecting the cost of reproduction calculated in the

(2) as is.

(3) as is.

**10.(3.1) Where the head of a government institution is deemed to have refused to give access under subsection (3), a notice thereof shall be given to the person who made the request and to the Information Commissioner.**

**11.**(1) as is.

(a) as is

(b) as is.

**Existing Act**

**Changes Proposed  
By OIC**

manner prescribed by regulation; and

(c) before the record is converted into an alternative format or any copies are made in that format, such fee as may be prescribed by regulation reflecting the cost of the medium in which the alternative format is produced.

(c) as is.

(2) The head of a government institution to which a request for access to a record is made under this Act may require, in addition to the fee payable under paragraph (1)(a), payment of an amount, calculated in the manner prescribed by regulation, for every hour in excess of five hours that is reasonably required to search for the record or prepare any part of it for disclosure, and may require that the payment be made before access to the record is given.

(2) as is.

(3) Where a record requested under this Act is produced as a result of the request from a machine readable record under the control of a government institution, the head of the institution may require payment of an amount calculated in the manner prescribed by regulation.

(3) as is.

(4) Where the head of a government institution requires payment of an amount under subsection (2) or (3) in respect of a request for a record, the head of the institution may require that a reasonable proportion of that amount be paid as a deposit before the search or production of the record is undertaken or the part of the record is prepared for disclosure.

(4) as is.

(5) Where the head of a government institution requires a person to pay an amount under this section, the head of the institution shall

(5) as is.

(a) give written notice to the person of the amount required; and

(b) state in the notice that the person has a right to make a complaint to the

**Existing Act**

Information Commissioner about the amount required.

(6) The head of a government institution to which a request for access to a record is made under this Act may waive the requirement to pay a fee or other amount or a part thereof under this section or may refund a fee or other amount or a part thereof paid under this section. R.S. 1985, c. A-1, s. 11; 1992, c. 21, s. 2.

12.(1) A person who is given access to a record or a part thereof under this Act shall, subject to the regulations, be given an opportunity to examine the record or part thereof or be given a copy thereof.

(2) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given requests that access be given in a particular official

**Changes Proposed  
By OIC**

**(6) The head of a government institution to which a request for access to a record is made under this Act shall waive the requirement to pay a fee or other amount or a part thereof under this section or shall refund a fee or other amount or a part thereof paid under this section, if the request to which the fee or other amount relates is deemed to have been refused pursuant to subsection 10(3).**

**(7) The head of a government institution to which a request for access to a record is made under this Act may waive the requirement to pay a fee or other amount or a part thereof under this section or may refund a fee or other amount or a part thereof paid under this section and shall, in deciding whether or not to waive or refund a fee or other amount, take into account the following factors:**

**(a) whether the requested record has previously been disclosed under this Act;**

**(b) whether the requested record contains information relating to public health, public safety, consumer protection or protection of the environment;**

**(c) whether the requested record contains information relating to eligibility for a service, program or benefit; and**

**(d) whether the disclosure of the information would be in the public interest.**

**12.(1) A person who is given access to a record or a part thereof under this Act may, subject to the regulations, choose to examine the record or part thereof or to receive a copy thereof.**

(2) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given requests that access be given in a particular official

**Existing Act**

language, a copy of the record or part thereof shall be given to the person in that language

(a) forthwith, if the record or part thereof already exists under the control of a government institution in that language; or

(b) within a reasonable period of time, if the head of the government institution that has control of the record considers it to be in the public interest to cause a translation to be prepared.

(3) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given has a sensory disability and requests that access be given in an alternative format, a copy of the record or part thereof shall be given to the person in an alternative format

(a) forthwith, if the record or part thereof already exists under the control of a government institution in an alternative format that is acceptable to that person; or

(b) within a reasonable period of time, if the head of the government institution that has control of the record considers the giving of access in an alternative format to be necessary to enable the person to exercise the person's right of access under this Act and considers it reasonable to cause that record or part thereof to be converted. R.S., 1985, c. A-1, s. 12; R.S., 1985, c. 31 (4th Supp.), s. 100(E); 1992, c. 21, s. 3.

**Responsibilities of Government**

**13.(1)** Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains information that was obtained in confidence from

(a) the government of a foreign state or an institution thereof;

(b) an international organization of

**Changes Proposed  
By OIC**

language, a copy of the record or part thereof shall be given to the person in that language

(a) forthwith, if the record or part thereof already exists under the control of a government institution in that language; or

(b) within a reasonable period of time, **if it is in the public interest** to cause a translation to be prepared.

(3) as is

(a) as is

(b) within a reasonable period of time, if **the giving of access in an alternative format is necessary** to enable the person to exercise the person's right of access under this Act and it is reasonable to cause that record or part thereof to be converted.

**13.(1)** Subject to subsection (2), the head of a government institution **may** refuse to disclose any record requested under this Act if

**(a) the record contains information that was obtained in confidence from**

(i) the government of a foreign state or an

**Existing Act**

states or an institution thereof;

(c) the government of a province or an institution thereof;

(d) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government; or,

(e) an aboriginal government.

(2) The head of a government institution may disclose any record requested under this Act that contains information described in subsection (1) if the government, organization or institution from which the information was obtained

(a) consents to the disclosure; or

(b) makes the information public.

(3) The expression "aboriginal government" in paragraph (1) (e) means

(a) Nisga'a Government, as defined in the Nisga'a Final Agreement given effect by the *Nisga'a Final Agreement Act*; or

(b) the council, as defined in the Westbank First Nation Self-Government Agreement given effect by the *Westbank First Nation Self-Government Act*. R.S. 1985, c. A-1, s. 13; 2000, c. 7, s. 21; 2004, c. 17, s. 16

**14.** The head of a government institution may refuse to disclose any record requested

**Changes Proposed  
By OIC**

institution thereof;

(ii) an international organization of states or an institution thereof;

(iii) the government of a province or an institution thereof;

(iv) a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government; or

(v) an aboriginal government; **and**

**(b) disclosure of the information would be injurious to relations with the government, institution or organization.**

(2) The head of a government institution **shall** disclose any record requested under this Act that contains information described in subsection (1) if the government, organization or institution from which the information was obtained

(a) consents to the disclosure; or

(b) makes the information public.

(3) The expression "aboriginal government" in **subparagraph (1)(a)(v)** means

(a) Nisga'a Government, as defined in the Nisga'a Final Agreement given effect by the *Nisga'a Final Agreement Act*; or

(b) the council as defined in the Westbank First Nation Self-Government Agreement given effect by the *Westbank First Nation Self-Government Act*, **or**

**(c) any other aboriginal government listed in Schedule III.**

**14.** The head of a government institution may refuse to disclose any record requested under

**Existing Act**

under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs, including, without restricting the generality of the foregoing, any such information

(a) on federal-provincial consultations or deliberations; or

(b) on strategy or tactics adopted or to be adopted by the Government of Canada relating to the conduct of federal-provincial affairs. R.S. 1985, c. A-1, s. 14.

**15.(1)** The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs, the defence of Canada or any state allied or associated with Canada or the detection, prevention or suppression of subversive or hostile activities, including, without restricting the generality of the foregoing, any such information

(a) relating to military tactics or strategy, or relating to military exercises or operations undertaken in preparation for hostilities or in connection with the detection, prevention or suppression of subversive or hostile activities;

(b) relating to the quantity, characteristics, capabilities or deployment of weapons or other defence equipment or of anything being designed, developed, produced or considered for use as weapons or other defence equipment;

(c) relating to the characteristics, capabilities, performance, potential, deployment, functions or role of any defence establishment, of any military force, unit or personnel or of any organization or person responsible for the detection, prevention or

**Changes Proposed  
By OIC**

this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct by the Government of Canada of federal-provincial affairs, including, without restricting the generality of the foregoing, any such information

(a) on federal-provincial consultations or deliberations; or

(b) on strategy or tactics adopted or to be adopted by the Government of Canada relating to the conduct of federal-provincial **negotiations**.

**15.** as is.

**Existing Act**

suppression of subversive or hostile activities;

(d) obtained or prepared for the purpose of intelligence relating to

(i) the defence of Canada or any state allied or associated with Canada, or

(ii) the detection, prevention or suppression of subversive or hostile activities;

(e) obtained or prepared for the purpose of intelligence respecting foreign states, international organizations of states or citizens of foreign states used by the Government of Canada in the process of deliberation and consultation or in the conduct of international affairs;

(f) on methods of, and scientific or technical equipment for, collecting, assessing or handling information referred to in paragraph (d) or (e) or on sources of such information;

(g) on the positions adopted or to be adopted by the Government of Canada, governments of foreign states or international organizations of states for the purpose of present or future international negotiations;

(h) that constitutes diplomatic correspondence exchanged with foreign states or international organizations of states or official correspondence exchanged with Canadian diplomatic missions or consular posts abroad; or

(i) relating to the communications or cryptographic systems of Canada or foreign states used

(i) for the conduct of international affairs,

(ii) for the defence of Canada or any state allied or associated with

**Changes Proposed  
By OIC**

**Existing Act**

Canada, or

(iii) in relation to the detection, prevention or suppression of subversive or hostile activities.

(2) In this section, "defence of Canada or any state allied or associated with Canada" includes the efforts of Canada and of foreign states toward the detection, prevention or suppression of activities of any foreign state directed toward actual or potential attack or other acts of aggression against Canada or any state allied or associated with Canada;

"subversive or hostile activities" means

(a) espionage against Canada or any state allied or associated with Canada,

(b) sabotage,

(c) activities directed toward the commission of terrorist acts, including hijacking, in or against Canada or foreign states,

(d) activities directed toward accomplishing government change within Canada or foreign states by the use of or the encouragement of the use of force, violence or any criminal means,

(e) activities directed toward gathering information used for intelligence purposes that relates to Canada or any state allied or associated with Canada, and

(f) activities directed toward threatening the safety of Canadians, employees of the Government of Canada or property of the Government of Canada outside Canada. R.S. 1985, c. A-1, s. 15.

**16.(1)** The head of a government institution may refuse to disclose any record requested under this Act that contains

**Changes Proposed  
By OIC**

**16.(1)** The head of a government institution may refuse to disclose any record requested under this Act that contains



**Existing Act**

(a) information obtained or prepared by any government institution, or part of any government institution, that is an investigative body specified in the regulations in the course of lawful investigations pertaining to

(i) the detection, prevention or suppression of crime,

(ii) the enforcement of any law of Canada or a province, or

(iii) activities suspected of constituting threats to the security of Canada within the meaning of the *Canadian Security Intelligence Service Act*,

if the record came into existence less than twenty years prior to the request;

(b) information relating to investigative techniques or plans for specific lawful investigations;

(c) information the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

(i) relating to the existence or nature of a particular investigation,

(ii) that would reveal the identity of a confidential source of information, or

(iii) that was obtained or prepared in the course of an investigation; or

(d) information the disclosure of which could reasonably be expected to be injurious to the security of penal institutions.

(2) The head of a government institution may refuse to disclose any record requested under this Act that contains information

**Changes Proposed  
By OIC**

**(a) repeal.**

**(b) repeal.**

**(a)** information the disclosure of which could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or the conduct of lawful investigations, including, without restricting the generality of the foregoing, any such information

(i) relating to the existence or nature of a particular investigation,

(ii) that would reveal the identity of a confidential source of information, or

(iii) that was obtained or prepared in the course of an investigation; or

**(b)** information the disclosure of which could reasonably be expected to be injurious to the security of penal institutions.

(2) As is

**Existing Act**

that could reasonably be expected to facilitate the commission of an offence, including, without restricting the generality of the foregoing, any such information

(a) on criminal methods or techniques;

(b) that is technical information relating to weapons or potential weapons; or

(c) on the vulnerability of particular buildings or other structures or systems, including computer or communication systems, or methods employed to protect such buildings or other structures or systems.

(3) The head of a government institution shall refuse to disclose any record requested under this Act that contains information that was obtained or prepared by the Royal Canadian Mounted Police while performing policing services for a province or municipality pursuant to an arrangement made under section 20 of the *Royal Canadian Mounted Police Act*, where the Government of Canada has, on the request of the province or municipality agreed not to disclose such information.

(4) For the purposes of paragraphs (1)(b) and (c), "investigation" means an investigation that

(a) pertains to the administration or enforcement of an Act of Parliament;

(b) is authorized by or pursuant to an Act of Parliament; or

**Changes Proposed  
By OIC**

**(3) An officer or agent of Parliament listed in Schedule II shall refuse to disclose any record requested under this Act that contains information obtained from another government institution in the course of a lawful investigation.**

**(4) The head of the Canadian Broadcasting Corporation may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the integrity or independence of the institution's newsgathering or programming activities.**

**(5) For the purposes of paragraph (1)(a) and subsection (3), "investigation" means an investigation or audit that**

(a) pertains to the administration or enforcement of an Act of Parliament;

(b) is authorized by or pursuant to an Act of Parliament; or

**Existing Act**

(c) is within a class of investigations specified in the regulations. R.S. 1985, c. A-1, s. 16.

17. The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to threaten the safety of individuals. R.S. 1985, c. A-1, s. 17.

18. The head of a government institution may refuse to disclose any record requested under this Act that contains

(a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Canada or a government institution and has substantial value or is reasonably likely to have substantial value;

(b) information the disclosure of which could reasonably be expected to prejudice the competitive position of a government institution;

(c) scientific or technical information obtained through research by an officer or employee of a government institution, the disclosure of which could reasonably be expected to deprive the officer or employee of priority of publication; or

(d) information the disclosure of which could reasonably be expected to be materially injurious to the financial interests of the Government of Canada or the ability of the Government of Canada to manage the economy of Canada or could reasonably be expected to result in an undue benefit to any person, including, without restricting the generality of the foregoing, any such

**Changes Proposed  
By OIC**

(c) is within a class of investigations **or audits** specified in the regulations.

17. The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to threaten the safety **or mental or physical health** of individuals, **or that could reasonably be expected to increase the risk of extinction of an endangered species or increase the risk of damage to a sensitive ecological or historic site.**

18. The head of a government institution may refuse to disclose any record requested under this Act that contains

**(a) trade secrets of a government institution;**

(b) information the disclosure of which could reasonably be expected to prejudice the competitive position of a government institution **or to interfere with contractual or other negotiations of a government institution;**

(c) scientific or technical information obtained through research by an officer or employee of a government institution, the disclosure of which could reasonably be expected to deprive the officer or employee of priority of publication; or

(d) information the disclosure of which could reasonably be expected to be materially injurious to the financial interests of **a government institution** or the ability of the Government of Canada to manage the economy of Canada or could reasonably be expected to result in an undue benefit to any person, including, without restricting the generality of the foregoing, any such information relating to

**Existing Act**

information relating to

- (i) the currency, coinage or legal tender of Canada,
- (ii) a contemplated change in the rate of bank interest or in government borrowing,
- (iii) a contemplated change in tariff rates, taxes, duties or any other revenue source,
- (iv) a contemplated change in the conditions of operation of financial institutions,
- (v) a contemplated sale or purchase of securities or of foreign or Canadian currency, or
- (vi) a contemplated sale or acquisition of land or property. R.S. 1985, c. A-1, s. 18.

**Personal Information**

**19.**(1) Subject to subsection (2), the head of a government institution shall refuse to disclose any record requested under this Act that contains personal information as defined in section 3 of the *Privacy Act*.

(2) The head of a government institution may disclose any record requested under this Act that contains personal information if

(a) the individual to whom it relates consents to the disclosure;

(b) the information is publicly available;  
or

(c) the disclosure is in accordance with section 8 of the *Privacy Act*. R.S. 1985, c. A-1, s. 19.

**Changes Proposed  
By OIC**

- (i) the currency, coinage or legal tender of Canada,
- (ii) a contemplated change in the rate of bank interest or in government borrowing,
- (iii) a contemplated change in tariff rates, taxes, duties or any other revenue source,
- (iv) a contemplated change in the conditions of operation of financial institutions,
- (v) a contemplated sale or purchase of securities or of foreign or Canadian currency, or
- (vi) a contemplated sale or acquisition of land or property.

**19.** as is.

**Existing Act**

**Changes Proposed  
By OIC**

***Third Party Information***

20.(1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains

20.(1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains

(a) trade secrets of a third party;

(a) trade secrets of a third party;

(b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;

(b) **Repeal.**

(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

(b) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or

(d) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

(c) information the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a third party.

(2) The head of a government institution shall not, pursuant to subsection (1), refuse to disclose a part of a record if that part contains the results of product or environmental testing carried out by or on behalf of a government institution unless the testing was done as a service to a person, a group of persons or an organization other than a government institution and for a fee.

(2) The head of a government institution shall not, pursuant to subsection (1), refuse to disclose a **record or a part thereof if that record or part contains**

(a) the results of product or environmental testing carried out by or on behalf of a government institution unless the testing was done as a service to a person, a group of persons or an organization other than a government institution and for a fee; **or**

(b) **details of a contract or a bid for a contract with a government institution.**

(3) Where the head of a government institution discloses a record requested under this Act, or a part thereof, that contains the results of product or environmental testing, the head of the institution shall at the same time as the record or part thereof is disclosed provide

(3) as is.

**Existing Act**

the person who requested the record with a written explanation of the methods used in conducting the tests.

(4) For the purposes of this section, the results of product or environmental testing do not include the results of preliminary testing conducted for the purpose of developing methods of testing.

(5) The head of a government institution may disclose any record that contains information described in subsection (1) with the consent of the third party to whom the information relates.

(6) The head of a government institution may disclose any record requested under this Act, or any part thereof, that contains information described in paragraph (1)(b), (c) or (d) if that disclosure would be in the public interest as it relates to public health, public safety or protection of the environment and, if the public interest in disclosure clearly outweighs in importance any financial loss or gain to, prejudice to the competitive position of or interference with contractual or other negotiations of a third party. R.S. 1985, c. A-1, s. 20.

**21.(1)** The head of a government institution may refuse to disclose any record requested under this Act that contains

(a) advice or recommendations developed by or for a government institution or a minister of the Crown,

(b) an account of consultations or deliberations involving officers or employees of a government institution, a minister of the

**Changes Proposed  
By OIC**

(4) as is.

(5) as is.

**(6) Delete this subsection in favour of the general public interest override found in section 2.3.**

**21. (1) Subject to subsection (2), the head of a government institution may refuse to disclose any record requested under this Act that came into existence less than five years prior to the request if the record contains**

(a) advice or recommendations developed by or for a government institution or a minister of the Crown **and disclosure of the record could reasonably be expected to be injurious to the internal advice-giving process of the government institution;**

(b) an account of consultations or deliberations involving officers or employees of a government institution, a minister of the Crown or the staff

**Existing Act**

Crown or the staff of a minister of the Crown,

(c) positions or plans developed for the purpose of negotiations carried on or to be carried on by or on behalf of the Government of Canada and considerations relating thereto, or

(d) plans relating to the management of personnel or the administration of a government institution that have not yet been put into operation,

if the record came into existence less than twenty years prior to the request.

**Changes Proposed  
By OIC**

of a minister of the Crown **and disclosure of the record could reasonably be expected to be injurious to the internal decision-making process of the government; or**

(c) positions or plans developed for the purpose of negotiations carried on or to be carried on by or on behalf of the Government of Canada and considerations relating thereto **and disclosure of the record could reasonably be expected to be injurious to the conduct of the negotiations.**

**(2) Subsection (1) does not apply in respect of a record that contains**

**(a) any factual material,**

**(b) the results of a public opinion poll, survey or focus group,**

**(c) a statistical survey,**

**(d) an appraisal, or a report by an appraiser, whether or not the appraiser is an officer or employee of a government institution;**

**(e) an economic forecast,**

**(f) an environmental impact statement or similar information,**

**(g) a final report, final study or final audit on the performance or efficiency of a government institution or on any of its programs or policies,**

**(h) a consumer test report or a report of a**

**Existing Act****Changes Proposed  
By OIC**

**test carried out on a product to assess equipment of a government institution;**

**(i) a feasibility or technical study, including a cost estimate, relating to a policy or project of a government institution,**

**(j) a report on the results of field research undertaken before a policy proposal is formulated,**

**(k) a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a government institution,**

**(l) a plan or proposal of a government institution to establish a new program or to change a program, or that relates to the management of personnel or the administration of the institution, if the plan or proposal has been approved or rejected by the head of the institution;**

**(m) information that the head of a government institution has cited publicly as the basis for making a decision or formulating a policy;**

**(n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the person making the request, or**

**(o) a report or advice prepared by a consultant or an adviser who was not, at the time the report was prepared, an officer or employee of a government institution or a member of the staff of a minister of the Crown.**

**(3) For the purpose of this section, “advice” is an opinion, proposal or reasoned analysis offered, implicitly or explicitly, as to action.**

(2) Subsection (1) does not apply in

**Repealed due to inclusion above in (n) and**



**Existing Act**

respect of a record that contains

(a) an account of, or a statement of reasons for, a decision that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of a person; or

(b) a report prepared by a consultant or an adviser who was not, at the time the report was prepared, an officer or employee of a government institution or a member of the staff of a minister of the Crown. R.S. 1985, c. A-1, s. 21.

**22.** The head of a government institution may refuse to disclose any record requested under this Act that contains information relating to testing or auditing procedures or techniques or details of specific tests to be given or audits to be conducted if the disclosure would prejudice the use or results of particular tests or audits. R.S. 1985, c. A-1, s. 22.

**23.** The head of a government institution may refuse to disclose any record requested under this Act that contains information that is subject to solicitor-client privilege. R.S. 1985, c. A-1, s. 23.

**24.(1)** The head of a government institution shall refuse to disclose any record requested under this Act that contains information the disclosure of which is restricted by or pursuant to any provision set out in Schedule II.

(2) Such committee as may be designated or established under section 75 shall review every provision set out in Schedule II and shall, not later than July 1,

**Changes Proposed  
By OIC**

**(o).**

**22.** as is.

**23.** The head of a government institution may refuse to disclose any record requested under this Act **if**

**(a) the record contains information that is subject to solicitor-client privilege; and**

**(b) disclosure of the information could reasonably be expected to be injurious to the interests of the Crown.**

**24.(1) Repeal.**

**24.(2) Repeal.**

**Existing Act**

1986 or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting, cause a report to be laid before Parliament on whether and to what extent the provisions are necessary. R.S. 1985, c. A-1, s. 24.

**25.** Notwithstanding any other provision of this Act, where a request is made to a government institution for access to a record that the head of the institution is authorized to refuse to disclose under this Act by reason of information or other material contained in the record, the head of the institution shall disclose any part of the record that does not contain, and can reasonably be severed from any part that contains, any such information or material. R.S. 1985, c. A-1, s. 25.

**26.** The head of a government institution may refuse to disclose any record requested under this Act or any part thereof if the head of the institution believes on reasonable grounds that the material in the record or part thereof will be published by a government institution, agent of the Government of Canada or minister of the Crown within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it. R.S. 1985, c. A-1, s. 26.

**Changes Proposed  
By OIC**

**25. (1)** Notwithstanding any other provision of this Act, where a request is made to a government institution for access to a record that the head of the institution is authorized to refuse to disclose under this Act by reason of information or other material contained in the record, the head of the institution shall disclose any part of the record that does not contain, and can reasonably be severed from any part that contains, any such information or material.

**(2) Where, under subsection (1), a part of a record is, for the purpose of being disclosed, severed from a record that is otherwise subject to solicitor-client privilege, the remaining part of the record continues to be subject to that privilege.**

**26.** The head of a government institution may refuse to disclose any record requested under this Act or any part thereof if the head of the institution believes on reasonable grounds that the material in the record or part thereof will be published **in any form** by a government institution, agent of the Government of Canada or minister of the Crown within **sixty** days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

**26.1 The head of a government institution may, if the Information Commissioner so recommends after the investigation of a complaint under paragraph 30(1)(d.2), disregard an access request that is contrary to the purposes of this Act.**

**Existing Act****Changes Proposed  
By OIC****THIRD PARTY INTERVENTION**

**27.**(1) Where the head of a government institution intends to disclose any record requested under this Act, or any part thereof, that contains or that the head of the institution has reason to believe might contain

**27.**(1) Where the head of a government institution intends to disclose any record requested under this Act, or any part thereof, that contains or that the head of the institution has reason to believe might contain

(a) trade secrets of a third party,

(a) trade secrets of a third party,

(b) information described in paragraph 20(1)(b) that was supplied by a third party, or

(b) **Repealed**

(c) information the disclosure of which the head of the institution could reasonably foresee might effect a result described in paragraph 20(1)(c) or (d) in respect of a third party,

(c) information the disclosure of which the head of the institution could reasonably foresee might effect a result described in paragraph 20(1)(b) or (c) in respect of a third party,

the head of the institution shall, subject to subsection (2), if the third party can reasonably be located, within thirty days after the request is received, give written notice to the third party of the request and of the fact that the head of the institution intends to disclose the record or part thereof.

the head of the institution shall, subject to subsection (2), if the third party can reasonably be located, within thirty days after the request is received, give written notice to the third party of the request and of the fact that the head of the institution intends to disclose the record or part thereof.

(2) Any third party to whom a notice is required to be given under subsection (1) in respect of an intended disclosure may waive the requirement, and where the third party has consented to the disclosure the third party shall be deemed to have waived the requirement.

(2) as is.

(3) A notice given under subsection (1) shall include

(3) as is.

(a) a statement that the head of the government institution giving the notice intends to release a record or a part thereof that might contain material or information described in subsection (1);

(b) a description of the contents of the record or part thereof that, as the case may

**Existing Act**

be, belong to, were supplied by or relate to the third party to whom the notice is given; and

(c) a statement that the third party may, within twenty days after the notice is given, make representations to the head of the government institution that has control of the record as to why the record or part thereof should not be disclosed.

(4) The head of a government institution may extend the time limit set out in subsection (1) in respect of a request under this Act where the time limit set out in section 7 is extended under paragraph 9(1)(a) or (b) in respect of the same request, but any extension under this subsection shall be for a period no longer than the period of the extension under section 9. R.S. 1985, c. A-1, s. 27.

**28.** (1) Where a notice is given by the head of a government institution under subsection 27(1) to a third party in respect of a record or a part thereof,

(a) the third party shall, within twenty days after the notice is given, be given the opportunity to make representations to the head of the institution as to why the record or the part thereof should not be disclosed; and

(b) the head of the institution shall, within thirty days after the notice is given, if the third party has been given an opportunity to make representations under paragraph (a), make a decision as to whether or not to disclose the record or the part thereof and give written notice of the decision to the third party.

(2) Representations made by a third party under paragraph (1)(a) shall be made in writing unless the head of the government institution concerned waives that requirement, in which case they may be made orally.

**Changes Proposed  
By OIC**

(4) as is.

**28.** as is.

**Existing Act**

**Changes Proposed  
By OIC**

(3) A notice given under paragraph (1)(b) of a decision to disclose a record requested under this Act or a part thereof shall include (a) a statement that the third party to whom the notice is given is entitled to request a review of the decision under section 44 within twenty days after the notice is given; and

(b) a statement that the person who requested access to the record will be given access thereto or to the part thereof unless, within twenty days after the notice is given, a review of the decision is requested under section 44.

(4) Where, pursuant to paragraph (1)(b), the head of a government institution decides to disclose a record requested under this Act or a part thereof, the head of the institution shall give the person who made the request access to the record or the part thereof forthwith on completion of twenty days after a notice is given under that paragraph, unless a review of the decision is requested under section 44. R.S. 1985, c. A-1, s.28.

**29.**(1) Where the head of a government institution decides, on the recommendation of the Information Commissioner made pursuant to subsection 37(1), to disclose a record requested under this Act or a part thereof, the head of the institution shall give written notice of the decision to

(a) the person who requested access to the record; and

(b) any third party that the head of the institution has notified under subsection 27(1) in respect of the request or would have notified under that subsection if the head of the institution had at the time of the request intended to disclose the record or part thereof.

(2) A notice given under subsection (1)

**29.**(1) Where, **during the course of an investigation by the Information Commissioner**, the head of a government institution decides to disclose a record requested under this Act or a part thereof, the head of the institution shall give written notice of the decision to

(a) the person who requested access to the record; and

(b) any third party that the head of the institution has notified under subsection 27(1) in respect of the request or would have notified under that subsection if the head of the institution had at the time of the request intended to disclose the record or part thereof.

(2) as is.

**Existing Act**

shall include

(a) a statement that any third party referred to in paragraph (1)(b) is entitled to request a review of the decision under section 44 within twenty days after the notice is given; and

(b) a statement that the person who requested access to the record will be given access thereto unless, within twenty days after the notice is given, a review of the decision is requested under section 44. R.S. 1985, c. A-1, s. 29.

**COMPLAINTS**

**30.**(1) Subject to this Act, the Information Commissioner shall receive and investigate complaints

(a) from persons who have been refused access to a record requested under this Act or a part thereof;

(b) from persons who have been required to pay an amount under section 11 that they consider unreasonable;

(c) from persons who have requested access to records in respect of which time limits have been extended pursuant to section 9 where they consider the extension unreasonable;

(d) from persons who have not been given access to a record or a part thereof in the official language requested by the person under subsection 12(2), or have not been given access in that language within a period of time that they consider appropriate;

(d.1) from persons who have not been given access to a record or a part thereof in an alternative format pursuant to a request made under subsection 12(3), or have not been given such access within a period of time that they consider appropriate;

**Changes Proposed  
By OIC**

**30.**(1)(a) – (d) as is.

**Existing Act**

(e) in respect of any publication or bulletin referred to in section 5; or

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Nothing in this Act precludes the Information Commissioner from receiving and investigating complaints of a nature described in subsection (1) that are submitted by a person authorized by the complainant to act on behalf of the complainant, and a reference to a complainant in any other section includes a reference to a person so authorized.

(3) Where the Information Commissioner is satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to records under this Act, the Commissioner may initiate a complaint in respect thereof. R.S. 1985, c. A-1, s.30; 1992, c. 21, s. 4.

**Changes Proposed  
By OIC**

**(d.2) from heads of government institutions who believe that an access request should be disregarded as being contrary to the purposes of this Act;**

(e) as is.

**(e.1) in respect of the addition of, or failure to add, any department, ministry of state, body or office to Schedule I pursuant to subsection 77(2);**

(f) as is.

(2) as is

**(3) The Information Commissioner may initiate a complaint into any matter relating to requesting or obtaining access to records under this Act.**

**(4) An investigation into a complaint under this section shall be completed, and any report required under section 37 shall be made, within 120 days after the complaint is received or initiated by the Information Commissioner unless the Commissioner**

**(a) notifies the person who made the complaint, the head of the government institution concerned and any third party involved in the complaint that the Commissioner is extending the time limit, and**

**Existing Act**

**Changes Proposed  
By OIC**

**31.** A complaint under this Act shall be made to the Information Commissioner in writing unless the Commissioner authorizes otherwise and shall, where the complaint relates to a request for access to a record, be made within one year from the time when the request for the record in respect of which the complaint is made was received. R.S. 1985, c. A-1, s. 31.

**32.** Before commencing an investigation of a complaint under this Act, the Information Commissioner shall notify the head of the government institution concerned of the intention to carry out the investigation and shall inform the head of the institution of the substance of the complaint. R.S. 1985, c. A-1, s.32.

**33.** Where the head of a government institution refuses to disclose a record requested under this Act or a part thereof and receives a notice under section 32 of a complaint in respect of the refusal, the head of the institution shall forthwith advise the Information Commissioner of any third party that the head of the institution has notified under subsection 27(1) in respect of the request or would have notified under that subsection if the head of the institution had intended to disclose the record or part thereof. R.S. 1985, c. A-1, s.33.

**34.** Subject to this Act, the Information

**(b) provides an anticipated date for the completion of the investigation.**

**(5) A complaint made under this section in respect of a request made to the Office of the Information Commissioner or in respect of any other matter concerning that office shall be made to and investigated in accordance with this Act by an independent person authorized under section 59.**

**31. (1) A complaint under this Act shall be made to the Information Commissioner in writing unless the Commissioner authorizes otherwise.**

**(2) A complaint under this Act that relates to a request for access to a record shall be made within 60 days after the request was answered.**

**32.** as is.

**33.** as is.

**34.** as is.



**Existing Act**

Commissioner may determine the procedure to be followed in the performance of any duty or function of the Commissioner under this Act. R.S. 1985, c. A-1, s. 34.

**35.** (1) Every investigation of a complaint under this Act by the Information Commissioner shall be conducted in private.

(2) In the course of an investigation of a complaint under this Act by the Information Commissioner, a reasonable opportunity to make representations shall be given to

(a) the person who made the complaint,

(b) the head of the government institution concerned, and

(c) where the Information Commissioner intends to recommend under subsection 37(1) that a record or a part thereof be disclosed that contains or that the Information Commissioner has reason to believe might contain

(i) trade secrets of a third party,

(ii) information described in paragraph 20(1)(b) that was supplied by a third party, or

(iii) information the disclosure of which the Information Commissioner could reasonably foresee might effect a result described in paragraph 20(1)(c) or (d) in respect of a third party,

the third party, if the third party can reasonably be located,

but no one is entitled as of right to be present during, to have access to or to comment on representations made to the Commissioner by any other person. R.S. 1985, c. A-1, s. 35.

**Changes Proposed  
By OIC**

**35.** (1) Every investigation of a complaint under this Act by the Information Commissioner shall be conducted in private.

(2) In the course of an investigation of a complaint under this Act by the Information Commissioner, a reasonable opportunity to make representations shall be given to

(a) the person who made the complaint,

**(b) where the complaint is made under paragraph 30(1)(d.2), the person who made the request giving rise to the complaint;**

(c) the head of the government institution concerned, and

(d) where the Information Commissioner intends to recommend under subsection 37(1) that a record or a part thereof be disclosed that contains or that the Information Commissioner has reason to believe might contain

(i) trade secrets of a third party,

(ii) **Repealed**

(iii) information the disclosure of which the Information Commissioner could reasonably foresee might effect a result described in paragraph 20(1) **(b) or (c)** in respect of a third party,

the third party, if the third party can reasonably be located,

but, **unless authorized by the Information Commissioner, and subject to section 64,** no one is entitled as of right to be present during, to have access to or to comment on representations made to the Commissioner by

**Existing Act**

**36.**(1) The Information Commissioner has, in relation to the carrying out of the investigation of any complaint under this Act, power

(a) to summon and enforce the appearance of persons before the Information Commissioner and compel them to give oral or written evidence on oath and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;

(b) to administer oaths;

(c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the Information Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;

(d) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;

(e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out therein such inquiries within the authority of the Information Commissioner under this Act as the Commissioner sees fit; and

(f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation.

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Information Commissioner may, during the investigation of any complaint under this Act, examine any

**Changes Proposed  
By OIC**

any other person. R.S. 1985, c. A-1, s. 35.

**36.**(1) as is.

(2) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, **or solicitor-client privilege**, the Information Commissioner may, during the investigation of any complaint under this Act,

**Existing Act**

record to which this Act applies that is under the control of a government institution, and no such record may be withheld from the Commissioner on any grounds.

(3) Except in a prosecution of a person for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Act, in a prosecution for an offence under this Act, or in a review before the Court under this Act or an appeal therefrom, evidence given by a person in proceedings under this Act and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceedings.

(4) Any person summoned to appear before the Information Commissioner pursuant to this section is entitled in the discretion of the Commissioner to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

(5) Any document or thing produced pursuant to this section by any person or government institution shall be returned by the Information Commissioner within ten days after a request is made to the Commissioner by that person or government institution, but nothing in this subsection precludes the Commissioner from again requiring its production in accordance with this section. R.S., 1985, c. A-1, s. 36; R.S., 1985, c. 27 (1<sup>st</sup> Supp.), s. 187 (Sch. V, item 1(1)).

**37.** (1) If, on investigating a complaint in respect of a record under this Act, the Information Commissioner finds that the complaint is well-founded, the Commissioner shall provide the head of the government institution that has control of the record with a report containing

(a) the findings of the investigation and

**Changes Proposed  
By OIC**

examine any record to which this Act applies that is under the control of a government institution, and no such record may be withheld from the Commissioner on any grounds.

(3) Except in a prosecution of a person for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Act, in a prosecution for an offence under **section 67 (obstruction)** or in a review before the Court under this Act or an appeal therefrom, evidence given by a person in proceedings under this Act and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceedings.

(4) as is.

(5) Any **original** document or thing produced pursuant to this section by any person or government institution shall be returned by the Information Commissioner within ten days after a request is made to the Commissioner by that person or government institution, but nothing in this subsection precludes the Commissioner from again requiring its production in accordance with this section **or from making and retaining copies of any document or thing.**

**37.** (1) as is

**Existing Act**

any recommendations that the Commissioner considers appropriate; and

(b) where appropriate, a request that, within a time specified in the report, notice be given to the Commissioner of any action taken or proposed to be taken to implement the recommendations contained in the report or reasons why no such action has been or is proposed to be taken.

(2) The Information Commissioner shall, after investigating a complaint under this Act, report to the complainant and any third party that was entitled under subsection 35(2) to make and that made representations to the Commissioner in respect of the complaint the results of the investigation, but where a notice has been requested under paragraph (1)(b) no report shall be made under this subsection until the expiration of the time within which the notice is to be given to the Commissioner.

(3) Where a notice has been requested under paragraph (1)(b) but no such notice is received by the Commissioner within the time specified therefor or the action described in the notice is, in the opinion of the Commissioner, inadequate or inappropriate or will not be taken in a reasonable time, the Commissioner shall so advise the complainant in his report under subsection (2) and may include in the report such comments on the matter as he thinks fit.

(4) Where, pursuant to a request under paragraph (1)(b), the head of a government institution gives notice to the Information Commissioner that access to a record or a part thereof will be given to a complainant, the head of the institution shall give the complainant access to the record or part thereof

(a) forthwith on giving the notice if no notice is given to a third party under paragraph 29(1)(b) in the matter; or

**Changes Proposed  
By OIC**

(2) The Information Commissioner shall, after investigating a complaint under this Act, report to **any person or third party** entitled under subsection 35(2) to make and that made representations to the Commissioner in respect of the complaint the results of the investigation, but where a notice has been requested under paragraph (1)(b) no report shall be made under this subsection until the expiration of the time within which the notice is to be given to the Commissioner.

(3) as is.

(4) as is.

**Existing Act**

(6) forthwith on completion of twenty days after notice is given to a third party under paragraph 29(1)(b), if that notice is given, unless a review of the matter is requested under section 44.

(5) Where, following the investigation of a complaint relating to a refusal to give access to a record requested under this Act or a part thereof, the head of a government institution does not give notice to the Information Commissioner that access to the record will be given, the Information Commissioner shall inform the complainant that the complainant has the right to apply to the Court for a review of the matter investigated. R.S. 1985, c. A-1, s. 37.

**REPORTS TO PARLIAMENT**

**38.** The Information Commissioner shall, within three months after the termination of each financial year, submit an annual report to Parliament on the activities of the office during that financial year. R.S. 1985, c. A-1, s. 38.

**Changes Proposed  
By OIC**

(5) as is.

**37.1 Notwithstanding any other Act of Parliament, a person does not commit an offence or other wrongdoing by disclosing, in good faith to the Information Commissioner, information or records relating to a complaint under this Act.**

**38. (1)** The Information Commissioner shall, within three months after the termination of each financial year, submit an annual report to Parliament on the activities of the office during that financial year.

**(2) If, in the opinion of the Information Commissioner, the head of a government institution failed, without valid reason, to take any action required by this Act, the Information Commissioner shall include the name of the institution and the particulars of the failure in the annual report that relates to the financial year in which the failure occurred.**

**(3) Before naming a government institution under subsection (2), the Information Commissioner shall provide the head of the institution with an**

**Existing Act**

**39.** (1) The Information Commissioner may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereof should not be deferred until the time provided for transmission of the next annual report of the Commissioner under section 38.

(2) Any report made pursuant to subsection (1) that relates to an investigation under this Act shall be made only after the procedures set out in section 37 have been followed in respect of the investigation. R.S. 1985, c. A-1, s.39.

**40.** (1) Every report to Parliament made by the Information Commissioner under section 38 or 39 shall be made by being transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling in those Houses.

(2) Every report referred to in subsection (1) shall, after it is transmitted for tabling pursuant to that subsection, be referred to the committee designated or established by Parliament for the purpose of subsection 75(1). R.S. 1985, c. A-1, s.40.

**REVIEW BY THE FEDERAL COURT**

**41.** Any person who has been refused access to a record requested under this Act or a part thereof may, if a complaint has been made to the Information Commissioner in respect of the refusal, apply to the Court for a review of the matter within forty-five days after the time the results of an investigation of the complaint by the Information Commissioner are reported to the

**Changes Proposed  
By OIC**

**opportunity to make representations in respect of the failure to take the required action.**

**39.** as is.

**40.** as is.

**41. (1) Any person who believes that the Governor in Council has failed to make an addition to Schedule I that is required by subsection 77(2), whose access request has been disregarded pursuant to section 26.1, who has been refused access to a record requested under this Act or a part thereof, or who has received a notice under subsection 9(1) or 11(5), may, if a complaint has been**

**Existing Act**

complainant under subsection 37(2) or within such further time as the Court may, either before or after the expiration of those forty-five days, fix or allow. R.S. 1985, c. A-1, s. 41.

**42.**(1) The Information Commissioner may

(a) apply to the Court, within the time limits prescribed by section 41, for a review of any refusal to disclose a record requested

**Changes Proposed  
By OIC**

**made to the Information Commissioner in respect of any such matter, apply to the Court for a review of the matter within 45 days after the results of an investigation of the complaint by the Information Commissioner are reported to the complainant under subsection 37(2).**

**(2) If a person has made a complaint to the Information Commissioner in respect of a matter referred to in subsection (1) and has not received a report from the Information Commissioner by the expiration of the time limit for making the report under subsection 30(4), the person may apply to the Court for a review of the matter within 45 days after the day on which the time limit expired.**

**(3) A person referred to in subsection (1) or (2) may, either before or after the expiration of the applicable 45 day period, apply to the Court for an extension of that period.**

**(4) For the purposes of subsection (1), the words “refused access to a record” include being denied access to a record, or a part thereof, by**

**(a) an unreasonable refusal to provide a record, or a part thereof, in the official language requested by the person;**

**(b) an unreasonable refusal to provide a record, or a part thereof, in an alternative format;**

**(c) a requirement that the person pay an amount under section 11 that is unreasonable; or**

**(d) an unreasonable extension of the time limits under section 9.**

**42.** (1) The Information Commissioner may

**(a) apply to the Court, within the time limits prescribed by section 41, for a review of any matter in respect of which an**

**Existing Act**

under this Act or a part thereof in respect of which an investigation has been carried out by the Information Commissioner, if the Commissioner has the consent of the person who requested access to the record;

(b) appear before the Court on behalf of any person who has applied for a review under section 41; or

(c) with leave of the Court, appear as a party to any review applied for under section 41 or 44.

(2) Where the Information Commissioner makes an application under paragraph (1)(a) for a review of a refusal to disclose a record requested under this Act or a part thereof, the person who requested access to the record may appear as a party to the review. R.S. 1985, c. A-1, s. 42.

**43.** (1) The head of a government institution who has refused to give access to a record requested under this Act or a part thereof shall forthwith on being given notice of any application made under section 41 or 42 give written notice of the application to any third party that the head of the institution has notified under subsection 27(1) in respect of the request or would have notified under that subsection if the head of the institution had intended to disclose the record or part thereof.

(2) Any third party that has been given notice of an application for a review under subsection (1) may appear as a party to the review. R.S. 1985, c. A-1, s.43; 1992, c. 1, s. 144 (F).

**44.** (1) Any third party to whom the head of a government institution is required under paragraph 28(1)(b) or subsection 29(1) to give a notice of a decision to disclose a record or a part thereof under this Act may, within twenty days after the notice is given, apply to the Court for a review of the matter.

**Changes Proposed  
By OIC**

**investigation has been carried out by the Information Commissioner under this Act;**

(b) as is

(c) as is

**(2) Where the Information Commissioner makes an application under paragraph (1)(a) the person who made the complaint that gave rise to the investigation may appear as a party to the review.**

**43.** as is.

**44.** as is.



**Existing Act**

(2) The head of a government institution who has given notice under paragraph 28(1)(b) or subsection 29(1) that a record requested under this Act or a part thereof will be disclosed shall forthwith on being given notice of an application made under subsection (1) in respect of the disclosure give written notice of the application to the person who requested access to the record.

(3) Any person who has been given notice of an application for a review under subsection (2) may appear as a party to the review. R.S., 1985, c. A-1, s. 44; R.S., 1985, c. 1 (4th Supp.), s. 45(F).

**45.** An application made under section 41, 42 or 44 shall be heard and determined in a summary way in accordance with any special rules made in respect of such applications pursuant to section 46 of the *Federal Courts Act*. R.S. 1985, c. A-1, s.45.

**46.** Notwithstanding any other Act of Parliament or any privilege under the law of evidence, the Court may, in the course of any proceedings before the Court arising from an application under section 41, 42 or 44, examine any record to which this Act applies that is under the control of a government institution, and no such record may be withheld from the Court on any grounds. R.S. 1985, c. A-1, s. 46.

**47.** (1) In any proceedings before the Court arising from an application under section 41, 42 or 44, the Court shall take every reasonable precaution, including, when appropriate, receiving representations *ex parte* and conducting hearings *in camera*, to avoid the disclosure by the Court or any person of

(a) any information or other material on the basis of which the head of a government institution would be authorized to refuse to disclose a part of a record requested under this Act; or

**Changes Proposed  
By OIC**

**45.** as is.

**46.** Notwithstanding any other Act of Parliament or any privilege under the law of evidence, **or solicitor-client privilege**, the Court may, in the course of any proceedings before the Court arising from an application under section 41, 42 or 44, examine any record to which this Act applies that is under the control of a government institution, and no such record may be withheld from the Court on any grounds.

**47.** as is.

**Existing Act**

(b) any information as to whether a record exists where the head of a government institution, in refusing to disclose the record under this Act, does not indicate whether it exists.

(2) The Court may disclose to the appropriate authority information relating to the commission of an offence against any law of Canada or a province on the part of any officer or employee of a government institution, if in the opinion of the Court there is evidence thereof. R.S. 1985, c. A-1, s.47.

**48.** In any proceedings before the Court arising from an application under section 41 or 42, the burden of establishing that the head of a government institution is authorized to refuse to disclose a record requested under this Act or a part thereof shall be on the government institution concerned. 19R.S. 1985, c. A-1, s.48.

**49.** Where the head of a government institution refuses to disclose a record requested under this Act or a part thereof on the basis of a provision of this Act not referred to in section 50, the Court shall, if it determines that the head of the institution is not authorized to refuse to disclose the record or part thereof, order the head of the institution to disclose the record or part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate. R.S. 1985, c. A-1, s.49.

**50.** Where the head of a government institution refuses to disclose a record requested under this Act or a part thereof on the basis of section 14 or 15 or paragraph 16(1)(c) or (d) or 18(d), the Court shall, if it determines that the head of the institution did not have reasonable grounds on which to refuse to disclose the record or

**Changes Proposed  
By OIC**

**48.** as is.

**49.** as is.

**50.** as is.

**Existing Act**

part thereof, order the head of the institution to disclose the record or part thereof, subject to such conditions as the Court deems appropriate, to the person who requested access to the record, or shall make such other order as the Court deems appropriate. R.S. 1985, c. A-1, s.50.

**51.** Where the Court determines, after considering an application under section 44, that the head of a government institution is required to refuse to disclose a record or part of a record, the Court shall order the head of the institution not to disclose the record or part thereof or shall make such other order as the Court deems appropriate. 1R.S. 1985, c. A-1, s.51.

**52.** (1) Any application under section 41 or 42 relating to a record or a part of a record that the head of a government institution has refused to disclose by reason of paragraph 13(1)(a) or (b) or section 15 shall be heard and determined by the Associate Chief Justice of the Federal Court or by such other judge of the Court as the Associate Chief Justice may designate to hear such applications.

(2) An application referred to in subsection (1) or an appeal brought in respect of such application shall

(a) be heard *in camera*; and

(b) on the request of the head of the government institution concerned, be heard and determined in the National Capital Region described in the schedule to the *National Capital Act*.

(3) During the hearing of an application referred to in subsection (1) or an appeal brought in respect of such application, the head of the government institution concerned shall, on the request of the head of the institution, be given the opportunity to make representations *ex parte*. R.S. 1985, c. A-1, s.52.

**Changes Proposed  
By OIC**

**51.** as is.

**52.** as is.

**Existing Act**

**53.** (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

(2) Where the Court is of the opinion that an application for review under section 41 or 42 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result. R.S. 1985, c. A-1, s.53.

**OFFICE OF THE INFORMATION  
COMMISSIONER**

***Information Commissioner***

**54.**(1) The Governor in Council shall, by commission under the Great Seal, appoint an Information Commissioner after approval of the appointment by resolution of the Senate and House of Commons.

(2) Subject to this section, the Information Commissioner holds office during good behaviour for a term of seven years, but may be removed by the Governor in Council at any time on address of the Senate and House of Commons.

(3) The Information Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.

(4) In the event of the absence or incapacity of the Information Commissioner, or if the office of Information Commissioner is vacant, the Governor in Council may appoint another qualified person to hold office instead of the Commissioner for a term not exceeding six months, and that person shall, while holding that office, have all of

**Changes Proposed  
By OIC**

**53.** as is.

**54.**(1) The Governor in Council shall, by commission under the Great Seal, appoint an Information Commissioner after approval, **by a two-thirds majority**, of the appointment by resolution of the Senate and House of Commons.

(2) Subject to this section, the Information Commissioner holds office during good behaviour for a term of seven years, but may be removed by the Governor in Council at any time by resolution, **passed by a two-thirds majority**, of the Senate and House of Commons.

(3) as is.

(4) as is

**Existing Act**

the powers, duties and functions of the Information Commissioner under this or any other Act of Parliament and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council. R.S. 1985, c. A-1, s. 54.

**55.** (1) The Information Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of Information Commissioner under this or any other Act of Parliament and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

(2) The Information Commissioner shall be paid a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice or the Associate Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this or any other Act of Parliament.

(3) The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to the Information Commissioner, except that a person appointed as Information Commissioner from outside the Public Service, as defined in the *Public Service Superannuation Act*, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Information Commissioner from the date of appointment and the provisions of the

**Changes Proposed  
By OIC**

**(5) A person appointed under subsection (4) may not be appointed as Information Commissioner under subsection (1).**

**55.** as is.

**Existing Act**

*Public Service Superannuation Act* do not apply.

(4) The Information Commissioner is deemed to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*. R.S. 1985, c. A-1, s.55.

**56.** (1) The Governor in Council may, on the recommendation of the Information Commissioner, appoint one or more Assistant Information Commissioners.

(2) Subject to this section, an Assistant Information Commissioner holds office during good behaviour for a term not exceeding five years.

(3) An Assistant Information Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding five years. R.S. 1985, c. A-1, s.56.

**57.** (1) An Assistant Information Commissioner shall engage exclusively in such duties or functions of the office of the Information Commissioner under this or any other Act of Parliament as are delegated by the Information Commissioner to that Assistant Information Commissioner and shall not hold any other office under Her Majesty for reward or engage in any other employment for reward.

(2) An Assistant Information Commissioner is entitled to be paid a salary to be fixed by the Governor in Council and such travel and living expenses incurred in the performance of duties under this or any other Act of Parliament as the Information Commissioner considers reasonable.

(3) The provisions of the *Public Service Superannuation Act*, other than those

**Changes Proposed  
By OIC**

**56.** as is.

**57.** as is.

**Existing Act**

relating to tenure of office, apply to an Assistant Information Commissioner.

(4) An Assistant Information Commissioner is deemed to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*. R.S. 1985, c. A-1, s.57.

**Staff**

**58.**(1) Such officers and employees as are necessary to enable the Information Commissioner to perform the duties and functions of the Commissioner under this or any other Act of Parliament shall be appointed in accordance with the *Public Service Employment Act*.

(2) The Information Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties and functions of the Commissioner under this or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of those persons. R.S. 1985, c. A-1, s. 58.

**Delegation**

**59.**(1) Subject to subsection (2), the Information Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this or any other Act of Parliament except

(a) in any case other than a delegation to an Assistant Information Commissioner, the power to delegate under this section; and

**Changes Proposed  
By OIC**

**58.**(1) as is.

(2) The Information Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties and functions of the Commissioner under this or any other Act of Parliament and **[amended by omitting words]** may fix and pay the remuneration and expenses of those persons.

**59.**(1) as is.

**Existing Act**

(b) in any case, the powers, duties or functions set out in sections 38 and 39.

(2) The Information Commissioner may not, nor may an Assistant Information Commissioner, delegate the investigation of any complaint resulting from a refusal by the head of a government institution to disclose a record or a part of a record by reason of paragraph 13(1)(a) or (b) or section 15 except to one of a maximum of four officers or employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting those investigations.

(3) An Assistant Information Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Assistant Information Commissioner may specify, any of the powers, duties or functions of the Information Commissioner under this or any other Act of Parliament that the Assistant Information Commissioner is authorized by the Information Commissioner to exercise or perform. R.S. 1985, c. A-1, s. 59.

**60.** The principal office of the Information Commissioner shall be in the National Capital Region described in the schedule to the *National Capital Act*. R.S. 1985, c. A-1, s.60.

**Changes Proposed  
By OIC**

(2) The Information Commissioner may not, nor may an Assistant Information Commissioner, delegate the investigation of any complaint resulting from a refusal by the head of a government institution to disclose a record or a part of a record by reason of paragraph 13(1)(a) or (b) or section 15 except to one of a maximum of

**(a) eight officers or employees of the Commissioner specifically designated by the Commissioner for the purpose of conducting those investigations; or**

**(b) such greater number of officers or employees than the number referred to in paragraph (a) as may be authorized by regulation.**

(3) as is.

**60.** as is.

**60.1 The Information Commissioner is generally responsible for monitoring the administration of this Act to ensure that its purposes are achieved. Accordingly, the Information Commissioner may**

**(a) make public comment on the**



**Existing Act**

**Changes Proposed  
By OIC**

**transparency and accountability implications of proposed legislative schemes or government programs;**

**(b) undertake initiatives to inform individuals and government institutions of their rights and obligations under this Act;**

**(c) receive comments from the public concerning the administration of this Act;**

**(d) bring to the attention of the head of a government institution any failure by the government institution to assist applicants under subsection 2(3); and**

**(e) engage in or commission research into any matter that may affect the attainment of the purposes of the Act.**

**61.** The Information Commissioner and every person acting on behalf or under the direction of the Commissioner who receives or obtains information relating to any investigation under this or any other Act of Parliament shall, with respect to access to and the use of that information, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of that information. R.S. 1985, c. A-1, s.61.

**61.** as is.

**62.** Subject to this Act, the Information Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act. R.S. 1985, c. A-1, s.62.

**62.** as is.

**63.(1)** The Information Commissioner may disclose or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information

**63.(1)** The Information Commissioner may disclose or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information

(a) that, in the opinion of the

**(a) that, in the opinion of the**

**Existing Act**

Commissioner, is necessary to:

- (i) carry out an investigation under this Act, or
- (ii) establish the grounds for findings and recommendations contained in any report under this Act; or

(b) in the course of a prosecution for an offence under this Act, a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Act, a review before the Court under this Act or an appeal therefrom.

(2) The Information Commissioner may disclose to the Attorney General of Canada information relating to the commission of an offence against any law of Canada or a province on the part of any officer or employee of a government institution if in the opinion of the Commissioner there is evidence thereof. R.S. 1985, c. A-1, s. 63; R.S. 1985, c. 27 (1st Supp.), s. 187 (Sch. V, item 1(2)).

**64.** In carrying out an investigation under this Act and in any report made to Parliament under section 38 or 39, the Information Commissioner and any person acting on behalf or under the direction of the Information Commissioner shall take every reasonable precaution to avoid the disclosure of, and shall not disclose,

(a) any information or other material on the basis of which the head of a government

**Changes Proposed  
By OIC**

**Commissioner, is necessary to**

- (i) carry out an investigation under this Act,**
- (ii) give a reasonable opportunity to make representations under subsection 35(2),**
- (iii) establish the grounds for any findings or recommendations contained in a report made under this Act; or**
- (iv) make the public aware of any matters related to the Commissioner's duties as he or she considers appropriate.**

(b) as is;

(2) as is.

**64.** In carrying out an investigation under this Act and in any report made to Parliament under section 38 or 39, **or in any communication to the public,** the Information Commissioner and any person acting on behalf or under the direction of the Information Commissioner shall take every reasonable precaution to avoid the disclosure of, and shall not disclose,

(a) as is.

**Existing Act**

**Changes Proposed  
By OIC**

institution would be authorized to refuse to disclose a part of a record requested under this Act; or

(b) any information as to whether a record exists where the head of a government institution, in refusing to give access to the record under this Act, does not indicate whether it exists. R.S. 1985, c. A-1, s.64.

(b) as is.

**65.** The Information Commissioner or any person acting on behalf or under the direction of the Commissioner is not a competent or compellable witness, in respect of any matter coming to the knowledge of the Commissioner or that person as a result of performing any duties or functions under this Act during an investigation, in any proceedings other than a prosecution for an offence under this Act, a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Act, a review before the Court under this Act or an appeal therefrom. R.S., 1985, c. A-1, s. 65; R.S., 1985, c. 27 (1st Supp.), s. 187.

**65.** as is.

**66.** (1) No criminal or civil proceedings lie against the Information Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.

**66.** as is.

(2) For the purposes of any law relating to libel or slander,

(a) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation by or on behalf of the Information Commissioner under this Act is privileged; and

(b) any report made in good faith by the Information Commissioner under this Act and any fair and accurate account of the

**Existing Act**

report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged. R.S. 1985, c. A-1, s.66.

**67.** (1) No person shall obstruct the Information Commissioner or any person acting on behalf or under the direction of the Commissioner in the performance of the Commissioner's duties and functions under this Act.

(2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars. 1980-81-82-83, c. 111, Sch. I "67"

**67.1** (1) No person shall, with intent to deny a right of access under this Act,

- (a) destroy, mutilate or alter a record;
- (b) falsify a record or make a false record;
- (c) conceal a record; or
- (d) direct, propose, counsel or cause any person in any manner to do anything mentioned in any of paragraphs (a) to (c).

(2) Every person who contravenes subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding \$10,000, or to both; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding six months or to a fine not exceeding \$5,000, or to both. 1999, c. 16, s. 1.

**GENERAL**

**Changes Proposed  
By OIC**

**67.** as is.

**67.1** (1) No person shall, with intent to deny a right of access under this Act.

- (a) destroy, mutilate or alter a record;
- (b) falsify a record or make a false record;
- (c) conceal a record;

**(c.1) fail to create a record in accordance with section 2.1; or**

**(d)** direct, propose, counsel or cause any person in any manner to do anything mentioned in any of paragraphs (a) to **(c.1)**.

(2) as is.

**Existing Act**

**68.** This Act does not apply to

(a) published material or material available for purchase by the public;

(b) library or museum material preserved solely for public reference or exhibition purposes; or

(c) material placed in the Library and Archives of Canada, the National Gallery of Canada, the Canadian Museum of Civilization, the Canadian Museum of Nature or the National Museum of Science and Technology by or on behalf of persons or organizations other than government institutions. R.S. 1985, c. A-1, s. 68; R.S. 1985, c. 1 (3rd Supp.), subs. 12(5) (Sch., item 1(1)); 1990, c.3, s. 32 (Sch., item 1(1)); 1992, c. 1, s. 143 (Sch. VI, item 1)(E); 2004, c. 11, s. 22.

**69.**(1) This Act does not apply to confidences of the Queen's Privy Council for Canada, including, without restricting the generality of the foregoing,

(a) memoranda the purpose of which is to present proposals or recommendations to Council;

(b) discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;

(c) agenda of Council or records recording deliberations or decisions of Council;

(d) records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or

**Changes Proposed  
By OIC**

**68.** This Act does not apply to

(a) published material or material available for purchase by the public **if such material is available at a reasonable price and in a format that is reasonably accessible;**

(b) as is.

(c) as is.

**69. (1) The head of a government institution shall refuse to disclose any record requested under this Act that contains confidences of the Queen's Privy Council for Canada.**

**(a) repeal.**

**(b) repeal.**

**(c) repeal.**

**(d) repeal.**

**Existing Act**

the formulation of government policy;

(e) records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d);

(f) draft legislation; and

(g) records that contain information about the contents of any record within a class of records referred to in paragraphs (a) to (f).

(2) For the purposes of subsection (1), "Council" means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

(3) Subsection (1) does not apply to

(a) confidences of the Queen's Privy Council for Canada that have been in existence for more than twenty years; or

(b) discussion papers described in paragraph (1)(b)

(i) if the decisions to which the discussion papers relate have been made public, or

(ii) where the decisions have not been made public, if four years have passed since the decisions were made. R.S. 1985, c. A-1, s. 69; 1992, c. 1, s. 144 (Sch. VII, item 3)(F).

**Changes Proposed  
By OIC**

**(e) repeal.**

**(f) repeal.**

**(g) repeal.**

**(2) In this section, "confidences of the Queen's Privy Council for Canada" means information which, if disclosed, would reveal the substance of deliberations of Council or the substance of deliberations between or among ministers;**

"Council" means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet.

(3) Subsection (1) does not apply to

(a) confidences of the Queen's Privy Council for Canada that have been in existence for **fifteen years or more;**

**(b) background explanations, analyses of problems, or policy options presented to Council for consideration by Council in making decisions, if**

**(i) the decisions to which the information relates have been made public, or**

**(ii) four years have passed since the decisions were made; or**

**Existing Act**

**69.1** (1) Where a certificate under section 38.13 of the *Canada Evidence Act* prohibiting the disclosure of information contained in a record is issued before a complaint is filed under this Act in respect of a request for access to that information, this Act does not apply to that information.

(2) Notwithstanding any other provision of this Act, where a certificate under section 38.13 of the *Canada Evidence Act* prohibiting the disclosure of information contained in a record is issued after the filing of a complaint under this Act in relation to a request for access to that information,

(a) all proceedings under this Act in respect of the complaint, including an investigation, appeal or judicial review, are discontinued;

(b) the Information Commissioner shall not disclose the information and shall take all necessary precautions to prevent its disclosure; and

(c) the Information Commissioner shall, within 10 days after the certificate is published in the *Canada Gazette*, return the information to the head of the government institution that controls the information. 2001, c. 41, s. 87.

**70.**(1) Subject to subsection (2), the designated Minister shall

(a) cause to be kept under review the manner in which records under the control

**Changes Proposed  
By OIC**

**(c) decisions of the Queen's Privy Council for Canada if**

**(i) the decisions or the substance of the decisions have been made public; or**

**(ii) four years have passed since the decisions were made.**

**69.1** (1) as is.

(a) all proceedings under this Act in respect of the **information**, including an investigation, appeal or judicial review, are discontinued;

(b) as is.

(c) as is.

**70.**(1)(a) – (d) as is.

**Existing Act**

of government institutions are maintained and managed to ensure compliance with the provisions of this Act and the regulations relating to access to records;

(b) prescribe such forms as may be required for the operation of this Act and the regulations;

(c) cause to be prepared and distributed to government institutions directives and guidelines concerning the operation of this Act and the regulations; and

(d) prescribe the form of, and what information is to be included in, reports made to Parliament under section 72.

(2) Anything that is required to be done by the designated Minister under paragraph (1)(a) or (c) shall be done in respect of the Bank of Canada by the Governor of the Bank of Canada. R.S. 1985, c. A-1, s. 70.

**Changes Proposed  
By OIC**

**(e) collect statistics appropriate to an annual assessment of the government's performance under this Act, including, without limiting the generality of the foregoing,**

**(i) the percentage of requests received that were answered within 30 days;**

**(ii) the percentage of requests received that were deemed to have been refused pursuant to subsection 10(3);**

**(iii) the percentage of requests in respect of which an extension of 60 days or more was claimed;**

**(iv) the percentage of requests granted in full, granted in part and denied in full;**

**(v) the costs directly attributable to the administration of this Act; and**

**(vi) the amount of fees collected and waived.**

(2) as is.



**Existing Act**

**71.(1)** The head of every government institution shall, not later than July 1, 1985, provide facilities at the headquarters of the institution and at such offices of the institution as are reasonably practicable where the public may inspect any manuals used by employees of the institution in administering or carrying out programs or activities of the institution that affect the public.

(2) Any information on the basis of which the head of a government institution would be authorized to refuse to disclose a part of a record requested under this Act may be excluded from any manuals that may be inspected by the public pursuant to subsection (1). R.S. 1985, c. A-1, s. 71.

**72.(1)** The head of every government institution shall prepare for submission to Parliament an annual report on the administration of this Act within the institution during each financial year.

(2) Every report prepared under subsection (1) shall be laid before each House of Parliament within three months after the financial year in respect of which it is made or, if that House is not then sitting, on any of the first fifteen days next thereafter that it is sitting.

(3) Every report prepared under subsection (1) shall, after it is laid before the Senate and the House of Commons under subsection (2), be referred to the committee designated or established by Parliament for the purpose of subsection 75(1). R.S. 1985, c. A-1, s. 72.

**Changes Proposed  
By OIC**

**71. (1) The head of every government institution shall provide public access, at the locations set out below, to any manuals used by employees of the institution in administering or carrying out programs or activities of the institution that affect the public:**

**(a) the headquarters of the institution;**

**(b) if reasonably practicable, the offices of the institution, and**

**(c) the institution's website.**

(2) as is.

**72.(1) The designated minister shall prepare for submission to Parliament an annual report on the administration of this Act by government institutions and on the discharge of the obligations set out in subsection 70(1).**

(2) as is.

(3) as is.

**72.1 Where it is not reasonably practicable to give notice to a person in the manner**

**Existing Act**

**73.** The head of a government institution may, by order, designate one or more officers or employees of that institution to exercise or perform any of the powers, duties or functions of the head of the institution under this Act that are specified in the order. R.S. 1985, c. A-1, s. 73.

**74.** Notwithstanding any other Act of Parliament, no civil or criminal proceedings lie against the head of any government institution, or against any person acting on behalf or under the direction of the head of a government institution, and no proceedings lie against the Crown or any government institution, for the disclosure in good faith of any record or any part of a record pursuant to this Act, for any consequences that flow from that disclosure, or for the failure to give any notice required under this Act if reasonable care is taken to give the required notice. R.S. 1985, c. A-1, s.74.

**75.(1)** The administration of this Act shall be reviewed on a permanent basis by such committee of the House of Commons, of the Senate or of both Houses of Parliament as may be designated or established by Parliament for that purpose.

(2) The committee designated or established by Parliament for the purpose of

**Changes Proposed  
By OIC**

**specified by a provision of this Act, notice may be given in a substitute manner if it is reasonable to expect that the contents of the notice will thereby be brought to the attention of that person.**

**73. The head of a government institution shall, by order, designate an Open Government Coordinator for that institution to exercise or perform any of the powers, duties or functions of the head of the institution under this Act that are specified in the order and may, by order, delegate to other officers or employees of the institution the powers necessary to assist the Open Government Coordinator.**

**73.1 It is the duty of the head, deputy head and Open Government Coordinator of a government institution to ensure, to the extent reasonably possible, that the rights and obligations set out in this Act are respected and discharged by the institution.**

**74.** as is.

**75.(1) The administration of this Act shall be reviewed every five years by such committee of the House of Commons, of the Senate or of both Houses of Parliament as may be designated or established by Parliament for that purpose.**

**(2) The committee designated or established by Parliament for the purpose**

**Existing Act**

subsection (1) shall, not later than July 1, 1986, undertake a comprehensive review of the provisions and operation of this Act, and shall within a year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including a statement of any changes the committee would recommend. R.S. 1985, c. A-1, s. 75.

**76.** This Act is binding on Her Majesty in right of Canada. R.S. 1985, c. A-1, s.76.

**77.(1)** The Governor in Council may make regulations

(a) prescribing limitations in respect of records that can be produced from machine readable records for the purpose of subsection 4(3);

(b) prescribing the procedure to be followed in making and responding to a request for access to a record under this Act;

(c) prescribing, for the purpose of subsection 8(1), the conditions under which a request may be transferred from one government institution to another;

(d) prescribing a fee for the purpose of paragraph 11(1)(a) and the manner of calculating fees or amounts payable for the purposes of paragraphs 11(1)(b) and (c) and subsections 11(2) and (3);

(e) prescribing, for the purpose of subsection 12(1), the manner or place in which access to a record or a part thereof shall be given;

(f) specifying investigative bodies for the purpose of paragraph 16(1)(a);

(g) specifying classes of investigations for the purpose of paragraph 16(4)(c); and

(h) prescribing the procedures to be

**Changes Proposed  
By OIC**

**of subsection (1) shall, within one year after each review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon, including a statement of any changes the committee would recommend.**

**76.** as is.

**77.(1)** The Governor in Council may make regulations

(a) prescribing limitations in respect of records that can be produced from machine readable records for the purpose of subsection 4(3);

(b) prescribing the procedure to be followed in making and responding to a request for access to a record under this Act;

(c) prescribing, for the purpose of subsection 8(1), the conditions under which a request may be transferred from one government institution to another;

(d) prescribing a fee for the purpose of paragraph 11(1)(a) and the manner of calculating fees or amounts payable for the purposes of paragraphs 11(1)(b) and (c) and subsections 11(2) and (3);

(e) prescribing, for the purpose of subsection 12(1), the manner or place in which access to a record or a part thereof shall be given;

**(f) delete**

**(f)** specifying classes of investigations for the purpose of paragraph 16(5)(c);

**(g)** prescribing the procedures to be followed

**Existing Act**

followed by the Information Commissioner and any person acting on behalf or under the direction of the Information Commissioner in examining or obtaining copies of records relevant to an investigation of a complaint in respect of a refusal to disclose a record or a part of a record under paragraph 13(1)(a) or (b) or section 15.

(2) The Governor in Council may, by order, amend Schedule I by adding thereto any department, ministry of state, body or office of the Government of Canada. R.S. 1985, c. A-1, s. 77; 1992, c. 21, s. 5.

**Changes Proposed  
By OIC**

by the Information Commissioner and any person acting on behalf or under the direction of the Information Commissioner in examining or obtaining copies of records relevant to an investigation of a complaint in respect of a refusal to disclose a record or a part of a record under paragraph 13(1)(a) or (b) or section 15;

**(h) increasing the maximum number of officers or employees designated for the purpose of conducting investigations into complaints resulting from the refusal of government institutions to disclose records by reason of paragraph 13(1)(a) or (b) or section 15;**

**(i) adding to the list of aboriginal governments set out in Schedule III: and**

**(j) adding to the list of officers or agents of Parliament set out in Schedule II.**

**(2) Subject to subsection (3), the Governor in Council shall, by order, amend Schedule I so that it includes**

**(a) all departments and ministries of state of the Government of Canada;**

**(b) all bodies or offices funded in whole or in part from Parliamentary appropriations;**

**(c) all bodies or offices wholly- or majority-owned by the Government of Canada;**

**(d) all bodies or offices listed in Schedules I, I.1, II and III of the Financial Administration Act; and**

**(e) all bodies or offices performing functions or providing services in an area of federal jurisdiction that are essential to the public interest as it relates to health, safety or protection of the environment.**

**(3) The Governor in Council may not add to**

**Existing Act**

**Changes Proposed  
By OIC**

**Schedule I**

**(a) the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, or any component part of these institutions; or**

**(b) the offices of members of the Senate or the House of Commons.**

**SCHEDULE II**

**[Section 16. (3)]**

**Auditor General of Canada  
Chief Electoral Officer of Canada  
Information Commissioner of Canada  
Commissioner of Official Languages  
Privacy Commissioner of Canada**