

# **National Defence**

## ***Access to Information Act***

### **Standard Operating Procedures**

**Dec 2011**

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## Forward

This manual is intended as a general introduction to the *Access to Information Act* (herein referred to as the *Act*) and provides the internal procedures on the administration of the *Act* within the Department of National Defence (DND) and the Canadian Forces (CF). The manual is a resource for use by DAIP staff and a statement of the Standard Operational Procedures (SOP) on the *Act* for use by military and civilian personnel alike. It should not be considered a legally authoritative document.

The Director Access to Information and Privacy (DAIP) has prepared this manual to help personnel who are asked to identify, review and approve the release of information requested under the *Act*.

DAIP coordinates and formally responds to requesters on behalf of the Minister of National Defence (MND) on all formal requests received by DND/CF under the *Act*. During the processing of a request, DAIP must rely on the timely support of staff throughout DND/CF in order to process the requests within the regulated timeframe.

You may obtain a copy of the *Access to Information Act* on line at:  
[Access to Information Act](#)

You may obtain a copy of an Access to Information Request form at:  
[Access to Information Request Form](#)

You may obtain a copy of the *Privacy Act* on line at:  
[Privacy Act](#)

You may obtain a Privacy Request form at:  
[Privacy Request Forms](#)

For detailed government policy related to access to information issues, other government on-line sites include the Treasury Board Secretariat and Info Source respectively at:  
[http://www.tbs-sct.gc.ca/atip-aiprp/index\\_e.asp](http://www.tbs-sct.gc.ca/atip-aiprp/index_e.asp) and  
[http://www.infosource.gc.ca/index\\_e.asp](http://www.infosource.gc.ca/index_e.asp)

# Chapter One

## Introduction

### 1.1 What is the *Access to Information Act*?

The *Act* came into force on July 1, 1983. It gives Canadian citizens, permanent residents or any person or corporation present in Canada a general right of access to information that is contained in government records. This public right of access to information is balanced against the legitimate need to protect sensitive information and to permit the effective functioning of government while promoting transparency and accountability in government institutions.

*ATIA* requesters who are not Canadian citizens or permanent residents must be physically in Canada both at the time they make their request for access and at the time access is given.

### 1.2 Underlying Principles of the *Access to Information Act*

- Government records should be available to the public
- Exemptions to the right of access must be limited and specific
- A body independent of government, the Information Commissioner of Canada (ICC), may review decisions made by government institutions about the disclosure of information.

The *Act* is intended to complement other informal procedures that allow public access to government information, and is not intended to limit in any way the type of government information that is normally available to the general public. Requests under the *Act* must be made in writing to the government institution that has control of the information. While they can be made using the “Access to Information Request Form”, it is certainly not mandatory. Requests by letter or E-Mail are accepted as long as they specify which *Act* the information is being requested under, and as long as they contain the requisite information. A \$5.00 application fee must accompany an *ATIA* request.

Instructions for completing requests appear on each Form. In the case of the National Defence, the completed form is to be forwarded to:

Director Access to Information and Privacy (DAIP)  
 National Defence Headquarters  
 MGen George R. Pearkes Building  
 101 Colonel By Drive, Ottawa, Canada, K1A 0K2



### Info Source

Info Source is a government publication that describes the information holdings of each federal government institution and which divides that information into Classes of Records and Personal Information Banks (PIBs). Although not necessary, requesters are encouraged to consult Info Source before making a formal request. Instructions for filing requests are located in the first few pages of Info Source along with the mailing addresses of all federal government institutions.

When filing an application by letter, it is important that requesters be as specific as possible as to what information or documentation they are seeking. The *Act* requires that requesters give enough detail in their requests so that documents or information can be located with a reasonable effort.

## Chapter 2

### Access to Information and the Federal Government

There are a number of levels in government with various duties and functions within the *Act*.

#### 2.1 The President of the Treasury Board Secretariat

The President of the Treasury Board Secretariat (TBS) is responsible for overseeing the government-wide coordination and administration of the *Act*. TBS prepares and distributes to government institutions directives and guidelines concerning the operation of the *Act*.

Treasury Board Secretariat Web Site

#### 2.2 The Minister of Justice

The Minister of Justice is responsible for monitoring the implementation and interpretation of the *Act* to ensure that it meets the intentions of the Government. The Department of Justice (DOJ) provides legal advice to all government institutions concerning the provisions of the *Act*.

Justice Web Site

#### 2.3 The Office of the Information Commissioner of Canada (OIC)

The OIC is the independent agent appointed by Parliament to investigate complaints in respect of any matter related to or obtaining access to records under the *Act*. Accordingly, he/she receives complaints from requesters and conducts investigations into any and all matters relating to requesting and obtaining access to records under the *Act*. He/she may also initiate independent investigations to determine if government institutions are complying with the legislation. The OIC has broad investigatory powers and can issue summons and compel individuals to give evidence under oath. The investigators may enter any government premises and examine or take copies of any record he/she consider pertinent (except Cabinet Confidences). However, the OIC only has the power to make recommendations and cannot make binding decisions.

Information Commissioner of Canada Web Site

#### 2.4 The Federal Court

The Federal Court reviews applications for review from requesters, third parties and the OIC concerning the disclosure or non-disclosure of information.

Federal Court Web Page

## **2.5 The Minister of National Defence**

The Minister of National Defence (MND) is the head of the institution and he/she is responsible for the implementation of the *Act* within DND/CF and is required to submit to parliament an Annual Report on the institution's administration of the *Act*.

National Defence Web Site

Defence Information Network (Intranet)

## **2.6 The Director of Access to Information and Privacy (DAIP)**

DAIP has the full-delegated authority from the Minister of National Defence to exercise, within DND/CF, all of the powers, duties and functions conferred upon the Head of the institution under both the *Access to Information Act* and the *Privacy Act*.

Director Access to Information and Privacy Internet Site

Director Access to Information and Privacy DIN (Intranet) Site



## Chapter Three

### Units of Interest in the ATIP Directorate

#### 3.1 Business Management Section (BM)

The Business Management section is responsible for overall administrative functions within the directorate that are not associated specifically with the Access or Privacy Acts. This includes budgetary and business planning functions, human resources, contracting, physical security, accommodations and facility management, mail services, file storage and retrieval, as well as operating a reception desk and a toll-free phone line. Many of these functions are performed by the Business Manager and assistants while others are performed by the General Office (GO) staff, which falls under the Business Manager. As the GO is responsible for reception and dispatch of mail, it is here that requests under both Acts first arrive in the Directorate.

#### 3.2 Tasking Team (TT)

The Tasking Team reviews the data entries and searches to determine if the request is similar to past requests. TT officers review the text of requests and may consult with applicants for the purpose of clarifying or re-scoping requests (see para 5.1 regarding this process).(22 Mar/11) The TT reviews the incoming requests to determine which organization is most likely to hold the requested information if it exists. The TT is responsible for dispatching or “tasking” the files to the appropriate Level 1 Tasking Liaison Officer (TLO). Once the requests have been sent to the appropriate Level 1 organizations, the TT monitors the progress and timing of each request to ensure they are processed in a timely manner. The TT is also responsible for assessing search fees. The TT prepares the final response letter to the applicant in cases where either no records could be located or the Department can neither confirm nor deny the existence of records in response to the request pursuant to section 10(2) of the *Act*.

#### 3.3 ATI Operations Teams (Ops)

The Ops Teams are responsible for processing formal requests submitted under the Access to Information Act (ATIA). Each Team consists of a Team Leader as well as Senior and Junior analysts. Clerical functions are performed by the General Support Team. The Ops Team Leaders allocate to analysts ATI files containing records retrieved from the Office of Primary Interest (OPI) by the Tasking Team. Analysts are responsible for reviewing the records received as well as for conducting the necessary consultations internally within DND, with third parties and other institutions, as well as overseeing incoming consultations received from other institutions. The analysts also coordinate and liaise with investigators of the OIC should any complaints arise from files they were assigned. The main function of analysts is to recommend exemptions pursuant to the ATI legislation based on OPI input, their knowledge of the Act, research they have conducted on the subject matter when reviewing the documents and to prepare the final responses to the requestors, which they forward to their Team Leader for review. Upon



completion of the Team Leader review, they then forward completed files to a Deputy Director for sign-off. The clerks on the General Support Team perform administrative functions such as scanning and indexing records, copying, data input, and dispatch of correspondence and records to requesters. (updated Dec 2011)

### **3.3.1 The General Support Team**

The General Support Team consists of a Team Leader and a number of clerks. They provide all clerical support to ATI Ops. (updated Dec 2011)

### **3.4 The Communications and Ministerial Liaison Officer (CMLO)**

The CMLO reports to the Director. The CMLO examines records to be released by DAIP and prepares Communications Assessments and Questions & Answers as required. The CMLO also provides this service for potential disclosures of consultations material received from other agencies and institutions. The CMLO is additionally responsible for notifying the office of the MND of impending releases under the Act if they have asked to be informed ahead of time.

### **3.5 The Policy and Training Section (P&T)**

P&T provides expert advice on ATIP matters to the Directorate, DND/CF members and to the public. This section also monitors compliance with the Access and Privacy Acts and their associated policies and directives within the department and creates departmental directives as required for approval and promulgation by the Director. P&T handles all administrative complaints from the OIC and often deals with the OIC on behalf of the director by performing such functions as providing data and analysis for the purpose of the annual OIC report card, investigations and other reports. P&T also conducts extensive training on both Acts for DND and CF members.

## **Units of Interest Outside the ATIP Directorate**

### **3.6 The Tasking Liaison Officers (TLO)**

Each Level One organization in DND has a TLO who acts as a conduit between the TT and any information the TLO's branch may contain. The TLOs are, in fact, the branch experts. The TLOs know how their branch is set-up and organized, how their information is dispersed, and who holds it. Upon receiving retrieval tasking notices from the TT, the TLOs forward the tasking to the appropriate branch personnel, also known as Office of Primary Interest (OPI), for the retrieval of records. The TLOs provide monitoring, tracking and quality control and ensure that proper signing authorities on the proposed disclosures have been applied. The TLOs also coordinate between TT and the OPIs for matters relating to retrieval of records, subject matter clarifications and complaints.

### **3.7 The Office of Prime Interest (OPI)**

The OPIs are responsible for finding the information sought by a requester. Because of their familiarity with the history, context and sensitivity of the information, they are

responsible for the initial review of the material and the identification of any information that may qualify for an exemption and/or exclusion under the *Act*. The OPI is responsible also responsible for identifying information provided by third parties or other government agencies requiring external consultation by DAIP and for identifying operations security related information that may require internal consultation with the Information Support Team.

### **3.8 The Subject Matter Expert (SME)**

The SMEs are the individuals who are the departmental experts and/or have direct knowledge of the records requested. They provide expert assistance to DAIP by giving advice, insight and recommendations to DAIP regarding the withholding or the disclosure of the records of interest.

### **3.9 The Information Support Team (IST)**

The IST plays an important role in identifying sensitive operations information. The IST is part of the Strategic Joint Staff (SJS), which provides military analysis and decision support to the Chief of Defence Staff (CDS) in his role as the principal military advisor to the Government of Canada. In this capacity as departmental SME on operations security, IST reviews all documents containing operations information before their release outside the Department not only through ATI requests but for disclosures to bodies such as the Military Police Complaints Commission and for court cases. The purpose of the review is to protect operations sensitive information that could prejudice the success of Canadian Forces (CF) operations and/or endanger the safety of Canadians and allied personnel. In terms of ATI requests, the IST makes recommendations to DAIP on disclosure or exemption (normally related to section 15 of the Act) and provides rationale for such recommendations as requested. The final decision on disclosure remains with the Director, as the designated head of the institution iaw the designation order issued pursuant to section 73 of the Act.



### 3.10 Institution with Greater Interest

If DAIP receives an access request and determines that another institution has a “greater interest” in the types of records being requested, it may transfer the request to the other institution within 15 days of receipt.

An institution has greater interest in the subject of the request if the material was originally produced by or for another government institution or was initially received by another institution in the case of material produced outside of the government.

The record holder should notify the TT immediately if it appears that another department or government agency could have a greater interest than National Defence in the request.

The other institution **must agree** to accept the request for transfer. Such requests must be expedited as the 30-day limit starts from the date of receipt of the request by the first institution. Under the *Act*, a request can be transferred only once.



## Chapter Four

### Fees

#### 4.1 Entitlement

The requester is entitled to 5 free hours of search. The hours are per request, and not per OPI, therefore when more than one OPI is involved and indicated on the tasking notice, each OPI may be asked to provide details and information regarding the amount of time spent searching, even if your search time was less than 5 hours. All search time estimates from the various OPIs working on any given request may be combined and a complete search fee estimate provided to the applicant.

#### 4.2 Fee Schedule

The applicant may be charged the following fees:

- \$5 application fee;
- \$10.00 per hour for the time required **in excess of the five free hours allowed under the *Act*** to search for, retrieval, or preparation of any part of the records for disclosure.

The *Act* allows departments to charge for time spent retrieving and/or reproducing requested information. The TT needs to be provided timely information in order to provide the requester with a proper and adequate fee estimate. When the OPI estimates or has already spent more than 5 hours to search for relevant records or have identified a larger number of records, the search or review should be suspended and the OPI should contact the appropriate TLO or the TT immediately. The requester will normally be contacted and offered to narrow or re-scope the request to reduce the fees.

**Note:** The time spent Photocopying, Organizing, Filing, Reviewing and Retrieving records are not chargeable under the *ATI Act Regulations*. Nonetheless, the time spent on the superficial review of the documents to determine relevancy is chargeable as it is considered as part of the search for responsive records.

#### 4.3 Search Time Estimate

An OPI must, with the assistance of the TT, conduct a “search time estimate” when more than 5 hours will be needed to locate all the relevant records. Recognizing that information holdings exist in various forms and formats (hard copy, multiple types of database and electronic forms), search estimates can be conducted in a variety of manners. The important point is that the estimate must not only be reasonable based on the situation but the method of estimation must be provided by the OPI, agreed to be reasonable by the TT and recorded on the ATIP file for future reference.

#### 4.4 Example of one method of conducting a Search Estimate

There are 60 files that must be searched through by the OPI in order to pick out the relevant records:

- The OPI will select 4 sample files of average volume from the 60 files;
- Go through the sample files flagging each document that contains information relevant to the request and **note the time** taken to complete the exercise;
- Divide the above time by 4 (number of sample files) to determine the average time per file; and
- Multiply the time by 60 (the total number of files to search) in order to estimate the time required to search through all files.

$$10 \text{ min. (average per file)} \times 60 = 600 \text{ min.} \sim 60\text{min/hr} = 10 \text{ hrs.}$$

In keeping with this example, the OPI has estimated that it will take 10 hrs of search time to locate the relevant records. As the first 5 hrs are borne by the institution, the requester will be responsible for disbursing the following to continue the processing of the request:

$$10 \text{ hrs} - 5 \text{ hrs} = 5 \text{ hrs} \times \$10.00/\text{hr} = \$50.00$$

If several OPIs are involved in the search for records for the same request, the TT will add the combined search times of all OPIs. A copy of the rationale for charging fees will be kept in the ATI white processing file for future reference.

**Note:** The average search time of 10 minutes per sample file was arbitrarily set in this example and is not to be used as a standard in any way. The \$10.00/hr is from the ATIA regulations.

#### 4.5 Preparation Fees

Preparation fees are calculated on the expected time to prepare the records for release to the public.

It is standard guideline within DAIP to assess preparation fees to the requester on requests exceeding 250 pages but smaller files may require more preparation and large files may require little preparation.

The Ops Team will be responsible for assessing the preparation fees. This can be done in various ways, depending on the form and complexity of the material returned by the OPI. Whatever method is used must be explained and noted to file for future reference. One method using the number of pages is as follows:



- The team analyst determines the total number of pages relevant to the request;
- The number of pages are multiplied by 2 (the number of minutes it takes an analyst to prepare each page)
- Divide this by 60 to estimate the total number of hours required for preparation.

**Note:** While 2 minutes is used as a standard, a more accurate estimate may be obtained by taking a sample of a large return of records and conducting a test preparation. This test can be used as a standard for the remainder of the records. If, for example, 1/10 of the records takes 1 hour to prepare then 10 hours is a reasonable estimate.

- The Ops Team then sends a preparation fee letter to the applicant for an amount of **half** the estimate. This is to err on the side of undercharging although it may require another fee letter later.

\* Please note that in the case of emails the time could be considerably reduced due to the number of duplicates. Exact duplicates will not be replicated in order to reduce the cost to the requester.

A copy of the rationale must be kept on the ATI processing file for justification purposes to respond to complaints.

**Note:** If all the documents are disclosed without severance or are withheld in their entirety, there would not be any preparation fees.

#### **4.6 Over/Under Estimation vs. the Actual Search Time and Preparation Fees**

In instances involving discrepancies between the estimated cost and the actual time spent to search and/or prepare the documents;

- Overestimate: DAIP will reimburse the excess amount paid by the requester; and
- Underestimate: DAIP will issue a new cost estimate.

**Note:** All chargeable fees must be fully paid by the applicant before the disclosure of the records.



#### **4.7 Waiver of Fees**

Subsection 11(6) provides that the head of a government institution may waive, reduce or refund any fees payable under the *Act and the Regulations*. The decision to waive, reduce or refund fees should be made on a case-by-case basis by assessing:

- Whether the information is normally made available without a charge;
- The degree to which a general public benefit is obtained through the release of the information.

It should be noted that the circumstances of the requester and the requester's reasons for seeking information may be taken into consideration in a fee waiver decision. It is also the policy of the DND/CF to waive the applicable fees when a request can be processed informally.

\* A Deputy Director will approve all fee waivers on requests processed by DAIP.

#### **4.8 Waiver of Search and Preparation Fees**

In all cases where search and preparation fees are applicable, the requester will normally be contacted by the Tasking or Ops analyst or in order to discuss the scope of the request with a view to eliminate unnecessary search, retrieval and reproduction of documents.

#### **4.9 Waiver of Fees for Alternative Format**

DAIP will consider the waiver of all fees associated with preparing the records in a format that allows a person with a sensory disability to read or listen to the records.

## Chapter 5

### The Access to Information Process at a Glance

#### 5.1 Processing a request

To respond under the *Act*, the institution must ensure that several steps are completed within the time frame allocated by the legislation, before the requested information is disclosed. These steps are described below.

- On reception of a request that satisfies the criteria of section six of the *Act*, an access to information file is created by the Tasking Team (see chapter 7.1 for specifics of evaluating section 6 compliance);(22 Mar/11)
- Applicant's eligibility to make a request under the *Act* is confirmed (see chapter 1.1 and 1.2) and receipt of application fees is confirmed;
- Once the above is confirmed, the file is then assigned to a TT analyst by the TT Leader. The TT analyst reviews the text of the request to determine if it is clear in its wording and scope. If the request is unclear, does not comply with section 6 of the *Act*, or clearly constitutes multiple requests but has already been opened (22 Mar/11), the analyst will put the file on hold and contact the applicant to clarify, re-scope, or split the request into multiple clearly defined requests (which will require an application fee for each request).
- The tasking analyst determines where in the DND/CF the requested records are most likely to reside, that is, which Level 1 Organization(s) is the likely holder of the information;
- A tasking action is created and sent via e-mail with attachments to the designated Level 1 Organization(s) TLO;
- The TLO identifies the OPI who holds the information within his/her organization and tasks appropriately.
- The TLO coordinates the conduct of a reasonable search by the OPI for all existing information holdings to retrieve any and all relevant records;
- The OPI will estimate the expected time to search through all relevant information holdings. Should it be determined that the anticipated search time will exceed 5 hours and/or if the anticipated number of records is significant, the OPI will contact the TLO or the TT and await further instructions. DAIP will then make a determination relating to search fees or extensions pursuant to subsection 9(1)(a) as applicable. In instances where the search time is under 5 hours and a low number of record holdings to search is anticipated, the OPI will retrieve the records and provide preliminary recommendations on the release/disclosure of the responding records.
- The OPI is also expected to identify records containing information pertaining to third parties or other institutions, which may necessitate notification and consultations as well as potential extensions pursuant to section 9(1) of the *Act*. In circumstances where the records contain operations related information, the



OPI must indicate as much so that DAIP can determine if consultation with IST is appropriate;

- The records with recommendations along with copies of the e-mail tasking attachments are then returned to the TT through the chain of command by the Level 1 TLO. The return must be signed off by the designated Level 1 signing authority. It is to be accompanied by a signed statement indicating that no enclosed records are classified above SECRET.
- Once records and recommendations are received, the file is assigned to an Operations Team for processing;
- The assigned analyst compiles the records from all TLOs and conducts an assessment as to whether preparation fees are appropriate;
- The analyst then conducts a triage to organize the records and undertakes a comprehensive review of the OPI recommendations;
- When necessary, the analyst will prepare all notices and consultations with third parties and other external institutions;
- The analyst will consolidate all recommendations and complete a release package;
- The release package is then reviewed by the Team Leader (TL) for comments and/or corrections as necessary;
- The release package is reviewed by one of the Deputy Directors of Operations (DDO) for final approval;
- If the release package contains operations security information, the DDO will direct that consultation be undertaken by the team with IST;
- A copy of the final release package may be prepared for the Assistant Deputy Minister Public Affairs (ADM (PA)) and the Minister of National Defence (MND) in anticipation of questions from the media and/or from the House of Commons Question Period;
- Once the final release package has been signed off by the Deputy Director or the Director, the records are released to the requester;
- In the event the requester complains to the OIC, the Notice of Intention to Investigate will be received by the Policy & Training Section (P&T). If the complaint is of an administrative nature, P&T will record the complaint and coordinate the response on behalf of the director. If the complaint is for refusal, P&T will forward it to Deputy Director Strategic Planning, who will forward it to the appropriate DDO for recording of the complaint and coordination of the response. The OPI, IST and/or the TLO may be asked to provide information in the course of an OIC investigation.

## **5.2 IST Consulting Procedure for Operational Security**

- The TT tasks the TLO;
- The OPI will conduct, the search, the collection, the initial severance recommendations and will forward the return to the TLO to obtain the appropriate sign off by the Level 1 signing authority;
- Should the record contain Operational Security (OPSEC) information, the OPI will indicate as much to DAIP in their return;



- DAIP will determine which records require OPSEC review and forward those to IST
- IST will conduct the OPSEC review;
- IST will submit the recommendations to the Ops Team by the specified submission date;
- The time allotment for this entire process is 14 calendar days. In the case of files requiring OPSEC review, IST will normally be allotted 4 days for this purpose. If the due date given to the TLO or IST is not feasible due to large volume or complexity of subject matter, extensions must be requested from DAIP in order to avoid the file going late.

### **5.3 Procedures in handling Foreign Material Program (FMP)**

All requests against FMP shall be handled as follow:

- J2/RM ATI Coordinator shall establish/control/maintain a separate file for all FMP ATI Act requests;
- J2/STI 2 shall be the OPI for conducting the initial review of all FMP requests and proposing severances;
- Once approved by the CDI, the file with any severed FMP documents shall be appropriately sealed by J2/RM 2 ATI Coordinator and hand carried to DAIP for review;
- Once DAIP has approved the proposed severances of FMP documents it shall have the originals of any severed FMP documents sealed and hand carried back to J2/RM 2 ATI Coordinator. DAIP shall only retain in it's files a copy of the documents actually released as a result of the ATI request;
- J2/RM 2 ATI Coordinator shall store the returned originals of any severed FMP documents in a separated file for all FMP ATI requests and maintain them for a period of two years from the last date of action taken against each individual file; and
- DAIP shall continue to have access to the originals of any severed FMP documents held on file by the J2/RM 2 ATI Coordinator upon request.

### **5.4 Legislated Time Frame**

The Act stipulates that government institutions must respond to an access request within 30 calendar days. Subtracting weekends and holidays from this time frame leaves an average of 21 working days to process a request. DAIP has established critical processing stages and has allotted a number of calendar days during which the related tasks must be completed in order to meet the deadline. Exceeding the time allotted for any one stage reduces the time to accomplish the other stages and ultimately imperils meeting the legislated due date.

The processing stages plotted on the following chart show what stage any given request should be at on any day of the process. The amount of time is based on a request of average or smaller size and complexity.

### Time Line Guide for Processing Requests

DAIP Process	TLO/OPI Retrieval, Review and Internal Consults	DAIP Review & Internal Consults (including IST)	Media review and Notice to MND of Imminent Release	Response to Requester
1-2	3 to 17	18 to 27	28 to 29	30

-----Calendar Days -----

Failure to meet legislative time constraints is called a “deemed refusal” which may result in a well-founded complaint against DND, and for which DND may be taken to Federal Court. Also, citing an extension without the proper grounds may well result in a “well-founded” complaint against DND.

Files that will require consultation with SJS IST will be allotted **4 days** for that purpose. Although 2 days notice to the office of the MND and media review is allotted, such notice and review will not be allowed to cause the file to go into deemed refusal.

The Notice of Release is not a consultation, merely a notice that the records will be released publicly within 48 hours.



## Chapter 6

### Records

#### 6.1 What is a “Record”?

When the term “record” is used, we often think only of those that exist in paper form. However, under the *Act*, a “record” is defined as: “any documentary material, regardless of medium or form”.

The term is very broad and it covers any information produced, received or collected by the Department including:

- Paper and electronic documents;
- Correspondence, memoranda, reports;
- E-mail, information contained in databases, material on web pages;
- Books, plans, maps, drawings, diagrams, graphic works;
- Photographs, film, microfilm, sound/audio recordings, videotapes.

Information created, collected and received in the course of conducting DND/CF business is a strategic business resource and is to be treated as if it is the property of the Government of Canada under the control of the DND/CF.

All employees, while delivering programs and services, will document activities, decisions, positions, policies, significant action taken, processes and incidents in order to account for the programs and services of the department. All records that document the delivery of programs and services will be captured and stored within appropriate manual or automated systems or repositories in accordance with Departmental record management policies.

#### 6.2 How to Search for a Record

The OPI must provide copies of all responsive records to an access request. Records include both annotated and signed versions, draft documents, post-it notes, e-mails, computer data and information which can be produced by a machine readable record (with exceptions described in 6.4).

#### 6.3 Types of records

There are two types of records. Corporate records and Transitory records.

Corporate records are information holdings under the control of the institution, regardless of physical form or medium, which have a policy, program or procedural implications, or that document how and why decisions and actions were taken. This category would be the bulk of DND documents, and may range from a meeting agenda to orders. These



documents may only be disposed of in accordance with the appropriate retention schedule.

Transitory records consist of information required only for a limited time to ensure completion of a routine action or the preparation of a subsequent record. This might include records such as a meeting reminder, duplicates, initial drafts etc. Documents falling in this category may be disposed of at any time after having served their useful purpose. If there is any question about the scope or relevance of records, the OPI should not hesitate to consult the TT. The OPI should forward all relevant records in accordance with the deadline indicated on the retrieval notice form regardless of whether they are corporate or transitory .

Although the *Act* excludes Cabinet Confidences of the Queen's Privy Council for Canada, the OPI must identify and include them in the record package to the TT. The consultation process with the Legal Counsel of the Clerk Privy Council Office will be conducted on behalf of DAIP by the CFLA (see Chapter 11). Any such returns must be clearly marked SECRET CC.

**Note:** Once an access request is received, all relevant records, including all transitory records that have not been disposed of prior to the reception of the *Access to Information Act* request, are part of the file and nothing can be destroyed until the processing has been completed.

#### 6.4 No Records Exist

Where a reasonable search reveals no relevant records, the TT should be notified accordingly. Employees should also note that the *Act* provides a right of access to existing records only and that, with one exception, there is no legal obligation on the Department to create new records to satisfy a particular request.

The exception concerns machine-readable records which do not exist but which could be generated using existing hardware and software resources as well as technical expertise normally used by the department. Such records are considered to be under the control of the Department and must be produced with exceptions as described below. In circumstances where the generation of these records necessitate computer programming or cause the Department to incur other costs, prior to proceeding with the generation of the record, the OPI should notify the TT to confer about the possibility of fees to be assessed to the requester and await further instructions.

In cases where the production of such records would unreasonably interfere with the operations of the institution, it is not necessary to produce the records. An example of such a search would be the recreation of a database using back-up tapes that exist for backing up a computer system in the case of systemic failure. Another example would be searching a hard drive for records that have been deleted but which may potentially be retrievable. The searching of and re-creation of records from such resources as a matter of course constitutes an unreasonable interference with the operations of the institution. When such searches are specifically requested by an applicant, the Director Access to

Information and Privacy will determine on a case-by-case basis whether production constitutes unreasonable interference.

### **6.5 Copies of Documents**

It should be noted that copies of the same document that contain hand-written notations are not considered exact duplicates and both records should be processed. Similarly, documents such as various briefing notes that contain similar material but are not identical should all be included for processing.

When in doubt about the relevancy of a document to a request, it should be included in the package for future determination by DAIP.



## 6.6 Notion of Under the Control

A record is “under the control” of an institution when the institution is authorized to grant or deny access to the record, to govern its use and, subject to the approval of the National Archivist, to dispose of it. A record that is physically held by a government institution, whether at its headquarters, regional, satellite or other offices, either within or outside of Canada, is presumed to be under its control unless there is strong evidence to the contrary. A record held elsewhere on behalf of an institution is also under its control (i.e. National Archives).

## Chapter 7

### Tasking

#### 7.1 Tasking procedure

DAIP receives all *ATI Act* requests sent to DND (17 May 11) Before the request is entered into the ATIP database, the Senior Tasking Advisor (17 May 11) will determine whether the correspondence contains a single request that falls within the scope of section 6 of the ATIA, if it constitutes multiple requests, or for whatever reason does not fall within the scope of section 6.

##### 7.1.1 Duty to Assist

In an effort to comply with legislative timelines, provide complete and accurate records upon request, and to reduce the cost of preparation and search fees to the applicant, the Tasking Team will comply with the section 7.1.2 concerning the acceptance and processing of new requests for records

##### 7.1.2 Acceptance of Request for Records (17 May 11)

The Senior Tasking Advisor(17 May 11) will ensure that the applicant is contacted in cases where the correspondence does not fall within the scope of section 6 in order to assist the applicant to properly scope the request. The Senior Tasking Advisor will also assist the applicant to avoid such phrases as “including, but not restricted to”, “any and all records” or other such phrases that only leave the scope of the request to be uncertain or the possibility of not retrieving all requested records. Requests for multiple items of the same type of record shall not constitute a single request based solely on the form of record (e.g. memo, briefing note, E-mail) without providing sufficient detail relating to a subject matter, event, sender/receiver with timeframe, or other information that could reasonably lead to the identification by an experienced employee of the record(s) requested. The Tasking Team Leader has the discretion to group multiple requests if the subject and OPI are likely to be the same, enabling the requests to be processed concurrently as long as this does not result in time extensions or fees. The Tasking Team Leader also has the discretion to waive any and all fees where he/she deems it is a matter of fairness to the applicant. (17 May 11)

Where DAIP is in receipt of a request for particular, identifiable record(s) that meets section 6 of the ATIA, a single 5.00 application fee will apply to this request. An example of this would be:

- Briefing Note(s) by subject
- Summary Investigation report(s) by subject
- Military Police Report(s) by subject or GO #



- Board of Inquiry report(s) by subject
- Any specific record, report, document, etc. by name and/or subject
- Any record(s), report(s), or document(s) related to a specific, identifiable operation or event within DND and/or the CF

Where the applicant has requested more than one (1) of the above, a 5.00 application fee will be applied to each request. (17 May 11)

Wording such as “All briefing notes received by...”, or “All military police reports for the period...” indicate types of records and it is likely that more information is required to render the request more specific (17 May 11) or that the correspondence may constitute multiple requests. In such cases, the applicant will be informed of the number of requests DAIP considers them to have submitted. If the applicant will not properly scope the request or insist that multiple requests be treated as a single request, they will be informed that no request will be processed. If the applicant chooses to apply the application fee to a single request, the **applicant** will choose which single request will be processed. If an applicant cannot be contacted after reasonable efforts have been made to initiate contact, the file will be closed after 30 days and a letter will be sent to the applicant indicating that the file has not been processed. (22 Mar/11)

Where there is request for ‘emails held by, sent or received by’ for a certain period, the applicant shall provide a ‘subject’ and a ‘timeframe’ for the emails in question or a sender & receiver with timeframe. DAIP shall not accept a request for ‘all emails held, sent by or received by (named individual)’. (17 May 11)

Such requests can only be processed if the requester provides some sort of scope to their request. This can be accomplished if the applicant instead requests a list of emails by title, to/from, date (for example). That list would form their first request and would be subject to exemptions. They can then use that list to form multiple subsequent requests or to group emails with the same subject (or other defining features) into a single request. (30 Jan 12)

Once the scope and subject of the request is clear, the TT determines which Level 1 Organization(s) within the DND/CF is most likely to have the information. Within 24 hours of the reception of the request (or a new scope being agreed upon), a Tasking e-mail with attachment is sent to the Level 1 TLO. The identity of the requester is not provided outside of DAIP as this information is considered “personal information” as defined in the *Privacy Act* and must be protected accordingly.

Clear and concise tasking directions are sent with the tasking e-mail. The instructions include:

- A reproduction of the request received (with all personal identifiers removed);
- A Memorandum containing a list of the various Level 1 Organizations tasked and, the names of the TT contacts;
- A Notice of Security Classification reminder sheet;
- The OPI Guidance Checklist and Return Form.



**Note:** A 14 calendar Diary Date is allocated. This translates to approximately 12 working days. If the number of days allocated are insufficient i.e., large number of records to be processed and research time, an extension of this time can be sought from the TT.

## 7.2 Role of Level 1 Organization Tasking Liaison Office

The Level 1 Organization TLO:

- Identifies the OPIs within their organization who are the custodians of the requested records;
- Informs TT immediately if the records are likely held by another Level 1 Organization;
- Tasks the OPI to retrieve, review and recommend severance to the records as needed;
- Ensures the OPI understand the legislated requirements;
- Ensures the request is clear to OPI in order that work can begin on retrieving the requested information immediately;
- If the request is unclear, immediately informs the TT to seek clarification;
- Once records have been retrieved by the OPI, severance recommendations are made by the Subject Matter Expert (SME) and any review required by the Level 1 Organization internal procedures is completed;
- OPI Return Form is printed and signed by the appropriate Level 1 authority;
- The Security Classification Form is printed, signed and attached to the return package and the security classification of the return package is modified if necessary to reflect the highest classification or designation level of any record in the return package;
- The TLO ensures National Defence security procedures for the transmittal of classified documents are rigorously followed prior to returning the responding records to DAIP.

**Note:** No document above “Top Secret” (TS) is to be sent to DAIP without proper notification from the OPI. This is because DAIP cannot retain such records on its premises. Prior to sending a TS document it is incumbent to the OPI to communicate with the TT who will in turn identify a person within the Directorate with the appropriate TS security clearance to handle the document.

Please refer to NDSI 26 and 27 at the following link:  
[http://vcds.mil.ca/cfpm/pubs/pol-pubs/ndsi/intro\\_e.asp](http://vcds.mil.ca/cfpm/pubs/pol-pubs/ndsi/intro_e.asp)

## 7.3 Role of Offices of Primary Interest (OPI)

- The OPI must read all instructions and understand the request prior to proceeding;
- OPI must begin their search and compilation of relevant records as soon as they receive a retrieval notice from the Level 1 Organization Liaison Office;
- If no records are available, the Act does not require the creation of a document to satisfy the request (see exception in para 6.4);



- The request is to be interpreted broadly with the evident intent of the requester in mind;
- If the request is unclear, the OPI ensures that the TLO is informed. The TLO will in turn notify the TT immediately and will await further instructions/clarification;
- Each OPI must keep track of the time spent searching for documents and records. If the combined search time of all OPI is expected to exceed 5 hours, the OPI must immediately notify the TLO who is to consult with the TT to await instructions;
- Once the documents are retrieved, the OPI must conduct a preliminary review of all relevant records, regardless of security classification, and recommend information to be exempted or excluded. Proposed exemptions/exclusions must be justified in full. **All recommendations made on the documents themselves for exemptions/exclusions must be made with a yellow highlighter.** This is because DAIP scans all records and the yellow markings are ignored by the scanner and will not be mistakenly scanned as part of the record. No other colours may be used. The documents themselves are not to be marked otherwise. However, OPIs may create and provide whatever separate documents they deem necessary and in whatever form (grids/spreadsheets/text etc..) for the purpose of explaining rationale of exemptions/exclusions or simply for providing a more readable return.
- Documents and/or information originating from external departments or agencies and third parties must also be identified accordingly to allow for appropriate consultations and notifications;
- The OPI will update security classification of the return package as required and will ensure the recommendation form is duly signed;
- All material is then sent to the TLO.

#### 7.4 Review & Transmittal of Records and Recommendations

A total of 14 calendar days is provided to the Level 1 TLO and OPI to locate the records, review them for possible exemptions and exclusions, and to forward the documents to the TT. The timeline includes records necessitating an IST consultation. A written recommendation, signed by the Level 1 Authority or their designated signing delegate, is required.

In the absence of the appropriate signature at the bottom of the OPI Guidance Checklist and Return Form (or equivalent form created by the Level 1 Organization), the return package and all of its content will be returned to the TLO for appropriate action.

#### 7.5 Deadlines & Extensions

Legislated deadlines are a key responsibility for TLO who assist the TT in gathering and reviewing records. Under the law, requests for information must be processed from start to finish within 30 calendar days of their receipt. Extensions may be applied under exceptional circumstances provided that:

- A large number of records are involved and processing would unreasonably interfere with the department's operations (day to day activities, particularly those



of an urgent nature). In these cases, extensions are applied pursuant subsection 9(1)(a) of the ATIA. These extensions are normally applied by the TT analyst. 9(1)(a) extensions are claimed by sending a letter to the applicant before the expiration of the original 30 days. The ATIP processing software has templates of letters to the applicant for this purpose. The rationale for application of the extension must be clearly recorded on the file. Any extensions under 9(1)(a) for more than 30 days will be brought to the attention of the Director and a copy of those extension letters will be CCd to the OIC.

- Consultations with other departments are required. These extensions are applied pursuant to subsection 9(1)(b) and may be applied by a TT analyst or an Ops Analyst, depending on the circumstances. The ATIP processing software has templates of letters to the applicant and to the other government institution for this purpose. The length of the extension will depend upon which institution is consulted as well as the amount and complexity of the records. The TT maintains a list of institutions and the amount of time they have most recently indicated how long they generally expect to take to review a small consultation of low complexity. This list can be used as guidance in some cases it may be best to consult the institution involved by telephone to aid in determining a reasonable extension. A due date given to the institution should be far enough prior to the extended time period to allow for processing time in DAIP. If a consulted institution has not responded by the due date then the responsible analyst must call and inquire as to when a response can be expected.

\* Note: The process for consulting PCO for the purpose of reviewing cabinet confidences is detailed in para 11.2. The process for consulting DFAIT is normally the same as for other government institutions except that the length of extensions is normally longer. When documents have been identified by either the OPI or the DAIP analyst as requiring consultation, the records are sent to DFAIT with the "**CONSULTgovernment**" action code being entered in the ATIP software (this is the same action code as other 9(1)(b) consults). If DFAIT indicates that the records will require foreign government review, they will advise DAIP (either by letter or e-mail ) that the records in question will be forwarded to the appropriate government/international organization for their review and comment. Since DFAIT has no idea of how long the process will take (and in some cases may take years) they will indicate that the records should be withheld in accordance with sections 13 and 15 of the ATIA. At this time the action code CONSULTgovernment is closed and the action code "**CONSULTwithDFAIT**" is used in its place. This clearly identifies the request as undergoing foreign government consultation. If additional records that are not under the consultation process are determined to be releasable, the applicant will be provided with those records with a caveat in the letter stating that portions of the document are still undergoing the consultation process and are withheld in accordance with section 13 and 15 (RESawaitingDFAIT).

Once the file is returned from DFAIT, the recommendations are incorporated into the document and either the material is withheld or released based on the consultation process. The action code CONSULTwithDFAIT is closed. The applicant should then be provided with a letter of explanation (including additional information, if recommended for release) for either action.



- Consultations with third parties are necessary. These extensions may be applied by a TT analyst or an Ops Analyst, depending on the circumstances. The ATIP processing software has templates of letters to the applicant and to the third party for this purpose. The length of the extension is standard and is determined by the timelines in the ATIA. The new due date is automatically calculated and inserted into the applicant letter by the ATIP software.

Informal extensions (within the initial 30-day time limit) may also be provided to TLOs in cases where extra time is required beyond the assigned (not legislated) due date in order to obtain the required signatures and return a completed file to the TT. These extensions must necessarily be short – normally only a day or two – in order to allow sufficient time for the remaining stages of processing within the legislated due date.

## 7.6 Other Special Considerations

Questions or problems may arise when records are being retrieved in response to a request. The TLO must inform the TT immediately about any complications, including the following:

- The request is not clear and further clarification is required;
- Records are missing or cannot be found;
- The number of records is very large;
- It appears that more than 5 hours will be required to locate all the relevant records;
- Another branch or branches would also have responsive records or an interest in the request.

## 7.7 Role of the TT

- Communicates with the requestor;
- Directs the request to appropriate OPI;
- Provides guidance to the OPI as required;
- Ensures all signature authorities are present;
- Verify the security classification of all records responsive to a request to ensure that none exceed the “Top Secret” level;
- Should a document be found to exceed “Top Secret”, it will **immediately** be brought to the attention of the Director or to a person with a TS security clearance;
- Transmits records to the Ops Team for processing.

## 7.8 Role of the Access to Information Analyst

- Determines if processing fees are appropriate
- Compiles and organizes all the records received, and removes duplicates and non-responsive documents;
- Evaluates the relevancy of the proposed exemptions/exclusions, reviews the document(s) for additional severances, and initiates the internal mediation process

with the OPI when required (e.g. when the OPI recommendations are not supported);

- Conducts formal notifications with third parties and consultations with external government agencies;
- Applies exemptions/exclusions using ATIP software;
- Once the first review phase is complete, prepares a release package for the review of the Team Leader and Deputy Director;
- Provides a release copy to the Communications and Ministerial Liaison Officer;
- Creates the final release letter for the requester;
- Documents the processing of all actions and interactions in ATIP software.

### **7.9 Role of the Ops Team Leaders**

- Provide guidance and direction to the analyst;
- Ensures all steps have been meticulously followed;
- Conducts a review of the proposed disclosure package and makes corrections and modifications as required;
- Forwards the proposed release package to one of the Deputy Directors.

### **7.10 Role of the Director and/or Deputy Director, DAIP**

- Provide guidance to the Team Leaders and analysts;
- Last level of review before the release package is confirmed;
- The final sign off authority for National Defence.

DAIP has the full-delegated authority from the Minister of Defence to exercise or perform all of the powers, duties and functions under that ATI and Privacy Acts on the Minister's behalf. The application of exemptions to documents within DND/CF is a meticulous process that requires careful analysis and specialized expertise for a wide variety of fields. It is the responsibility of DAIP to ensure on behalf of the Department that exemptions are properly applied. This includes ensuring that documents are severed in accordance with section 25 of the *Access to Information Act* and that discretion is properly exercised. In cases of significant disagreement regarding proposed severances, DAIP may conduct negotiations with the Level 1. As the designated head of the institution under the Act, the Director has the final say on disclosure in all cases requiring discretion.

You may refer to the Ministerial Delegation Order at the following link:  
[http://admfincs.mil.ca/daip/DND\\_ATIP\\_Designation\\_Order\\_e.asp](http://admfincs.mil.ca/daip/DND_ATIP_Designation_Order_e.asp)

### **7.11 Consultation with other Government Institutions**

All documents and information provided by other agencies should be identified by the SME and/or the OPI. The Ops analyst will conduct all consultations with other external government institutions.

### **7.12 Third-Party Notification**



A “third party” is defined in the Act as any person, group of persons or organization other than the person making the request or a federal government institution that is subject to the Act. When the Department intends to disclose information that **might** fall under the categories of third-party information outlined in subsection 20(1) of the *Act*; i.e. trade secrets, confidential commercial, financial or technical information, information that could result in material financial loss or gain or prejudice the third party’s competitive position, or information that could interfere with a third party’s contractual or other negotiations, a formal notice of intent to disclose is issued to the third party pursuant to section 28 of the *Act*. OPIs and TLOs are expected to notify the TT analyst if records contain third party information. Third party notices will be sent by the Ops analyst as required.

## Chapter 8

### Responsibilities

#### 8.1 Responsibilities of DAIP

The mission of DAIP is to deliver Access to Information and Privacy Services, offer professional advice and training within DND/CF.

The mandate of DAIP is to act on behalf of the Minister of National Defence in enforcing compliance with legislation, regulations, and government policy and to create departmental directions, including standards, in all matters relating to the *Access to Information Act* and the *Privacy Act*. DAIP’s authority in this regard extends to all elements of the Canadian Forces and the Department of National Defence, with the exception of the Office of the Ombudsman, the Military Police Complaints Commission and the Canadian Forces Grievance Board who have their own ATIP sections. At DND/CF, DAIP administers and co-ordinates both the *ATIA* and the *PA*. DAIP falls under the authority of the Assistant Deputy Minister Finance and Corporate Services via the Director General Corporate and Shared Services. DAIP seeks advice on legal, public affairs, and policy matters from other NDHQ organizations and specialists as required.

#### 8.2. Duty to Assist the Requester

In accordance with the provisions of subsection 4(2.1) of the *Act*, DAIP provides guidance and assistance to requesters on how to obtain departmental information of interest. In circumstances where a request is unclear or vague DAIP will communicate with the requester and assist him/her in re-formulating the request. DAIP staff are also expected to assist in other ways upon request such as:

- Explain the process and its deadlines to requesters,
- Provide guidance as to how to request information held by the DND/CF,
- Provide clarification on the types of records held by the institution.

In the event that a request is not receivable under the *Act* (no application fee, request unclear, requester inadmissible) DAIP will communicate with the requester, in writing or

by phone, and explain why the department is unable to accept the request. DAIP will offer assistance to the applicant to help the requester understand any of the difficulties that may be encountered in processing the request.

DAIP is committed into delivering a timely and complete response to each request and will give written notice of the requester's right to complain to the OIC as appropriate.



### 8.3 Protecting the Identity of the Requester

Identities of *ATI Act* requesters are considered personal information and must be protected from disclosure from those who have no “need to know”. In circumstances where an *ATI Act* requester is a corporation, the identity of the corporation, as defined in the *Privacy Act*, is not personal information, however, in the spirit of the *Act*, the information is not disclosed. The identity of the requester will not have any bearing on decisions about whether to disclose information under the *Act*. The disclosure of personal information to those with no “need to know” is a contravention of the *Privacy Act*.

### 8.4 The Department

DAIP exercises leadership and direction with regards to:

- The implementation and application of the *ATI Act* and *Privacy Act* throughout the Department;
- Develops and implements policies, procedures and guidelines for the effective application of the *Acts* in the Department,
- Responds to all formal requests that are made to the Department in accordance with the *Access to Information and Privacy Acts*, their Regulations, the most current jurisprudence and Treasury Board policies and guidelines;
- Promotes awareness and understanding of the *Acts* and its implications within the DND, by means of advice and training of DND/CF employees to ensure compliance with its requirements;
- Provides advice regarding the interpretation and application of the *Acts* in connection with requests, complaints, and related information management practices;
- Contributes policy advice on ATIP related departmental initiatives;
- Provides policy advice and other assistance to legal counsel responding to applications for review before the Federal Court;
- Provides ATIP tailored training sessions.

### 8.5 Other government institutions

The DAIP provides recommendations on the disclosure/non-disclosure of National Defence records or information further to consultations from other government institutions.

### 8.6 The Office of the Information Commissioner of Canada (OIC)

The DAIP cooperates with the OIC to resolve complaints from requesters by providing records and assistance to the OIC as well as rationale and explanation of the Department’s actions and decisions concerning the processing of ATI requests.

## 8.7 Training and Information Sessions

The *Access to Information* and *Privacy Acts* work in concert with other policies and legislation that support effective information management practices. These include security, records management, communications, information technology, privacy and data protection. The DAIP delivers formal training sessions to familiarize military and civilian personnel with the requirements of the *Access to Information* and *Privacy Acts*. Information sessions are also held for different sections of the Department on an as-needed basis. These sessions emphasize the aspects of the Acts that are directly related to the employees' areas of responsibility.

## 8.8 Policy:

The DAIP is also involved in developing internal policy and direction related to the implementation of both the Access to Information and Privacy Acts within DND/CF.

## 8.9 Reports

The DAIP prepares a number of reports to keep interested parties up to date on the status of ATIP in the Department including: a weekly 'on-time report' for use by the DM, executive heads and the TLO, which tracks all ATI requests currently being processed under the *Act*, and an annual report to Parliament on the administration of the *Acts*. The *ATI Console* is an information portal available online for all branches to monitor their status in meeting legislative deadlines and to ensure accountability for delays/timelines. Records disclosed under the ATIA may also be available to OPIs via the *ATI Console*.

## 8.10 Info Source

The DAIP is responsible for coordinating the annual update of the departmental entry in the Info Source published by the Treasury Board Secretariat. Info Source is designed to assist individuals who want to become more familiar with the Government of Canada, its organization, and its information holdings. This publication is important to those who wish to exercise their rights under the Access to Information Act and the Privacy Act. [Infosource website](#)



## Chapter 9

### Processing of Formal and Informal Requests

#### 9.1 Informal Requests

Informal processing by the record holder is highly recommended where possible. The informal processing of requests is in keeping with subsection 2(2) of the *Act*, which describes the purpose and procedures of the Act as follows:

“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”.

Informal requests may include material already released in response to previous access requests, requests for documents releasable with no or very few exemptions and information that is publicly available. These are guidelines only; a determination is made for each request and, whenever feasible a request should be processed on an informal basis.

Unlike formal requests, DND/CF cannot collect fees for informal requests. There are no statutory deadlines for responses and the requester has no statutory right of complaint to the OIC. However, if an informal access is granted a response should be given within the 30 days of the reception of the request.

When a person requests information informally that may qualify for exemption or exclusion under the *Act*, the requester should be advised to submit a formal request.

You may also refer to DAOD 1001-2.

[http://admfincs.mil.ca/admfincs/subjects/daod/1001/intro\\_e.asp](http://admfincs.mil.ca/admfincs/subjects/daod/1001/intro_e.asp)

#### 9.2 Informal Requests for Information Previously Disclosed by DAIP

To request records that have been previously released pursuant to a formal ATI request, the procedure in the following link should be followed:

<http://www.admfincs.forces.gc.ca/aip/cr-dc-eng.asp>

The requests will be processed by DAIP, normally without any cost to the requester.

#### 9.3 Formal Requests

Departmental employees who receive a formal request filed under the *Access to Information Act* must forward it in a secure fashion and on an urgent basis to DAIP for processing at the following address:

National Defence  
Access to Information and Privacy Coordinator  
North Tower  
101 Colonel By Drive, 8th Floor  
Ottawa, Ontario K1A 0K2  
Tel.: (613) 992-0996  
Other Tel.: (1-888) 272- 8207  
Fax: (613) 995-5777

You may also refer to DAOD 1001-1  
[http://admfincs.mil.ca/admfincs/subjects/daod/1001/intro\\_e.asp](http://admfincs.mil.ca/admfincs/subjects/daod/1001/intro_e.asp)



## Chapter 10

### Exemptions

#### 10.1 Exemptions

Recommendations to exempt records from release must be accompanied by a supporting rationale. The Department must be prepared to defend its exemptions before the OIC and ultimately in the Federal Court.

The *Act* provides a limited and specific number of exceptions to the general right of access. Allowable exemptions applicable to information contained in records under the control of federal institutions are set out in Sections 13 to 26 of the *ATIA* (see list of Exemptions Grid).

#### 10.2 Categories of Exemptions

Exemptions are divided into two categories: mandatory and discretionary.

**Mandatory** - exemptions normally require the institution to refuse to disclose the records in whole or in part. In some instances, records subject to mandatory exemptions may be disclosed. Examples include situations where a third party affected consents to the disclosure or in instances where the information is already publicly available. Mandatory exemptions are introduced by the phrase, “the head of the government institution **shall** refuse to disclose....”

**Discretionary** - exemptions provide government institutions with an opportunity to disclose the information where it is felt that **no injury** will result in the disclosure, or where the head of the institution is of the opinion that the interest in disclosing the information outweighs any injury which could result from disclosure. Discretionary exemptions are introduced by the phrase, “the head of the government institution **may** refuse to disclose”

#### 10.3 The Injury Test

Exemptions based on an injury test provide that access to information requested under the *Act* may be denied if disclosure “could reasonably be expected to be injurious” to the interest specified in the exemption. Injury in this context means having a detrimental effect. Disclosure of the information must reasonably be expected to prove harmful or damaging to the specific public or private interest covered by the exemption in order for access to be refused. The fact that the disclosure could result in administrative change in a government institution is not sufficient to satisfy an injury test. Under the law, it must be possible to identify an actual detrimental effect on the interest specified in the exemption.

A large number of considerations will be involved in making a judgement as to injury but three general factors should be taken into account by government institutions in making such decisions; these are the degree to which the injury is:

(a) **Specific:** Is it possible to identify the detrimental effect with the actual party or interest that will suffer injury, rather than identifying only with a vague general harm?

(b) **Current:** Is it possible to identify the detrimental effect at the time the exemption is claimed or in the foreseeable future? Information which has been protected from disclosure in the past should be reassessed when a new request is received to ensure that present or future injury is still a factor; and

(c) **Probable:** Is there a reasonable likelihood of the injury occurring?

**Note:** While the security classification of a document is an indicator that the document contains sensitive information, it does not constitute by itself an injury recognized under the *Act*.

#### 10.4 The “Mosaic Effect”

Cases may arise where there is a mosaic effect inherent in the disclosure involved. An injury test may not be satisfied if the particular information requested is considered in isolation. However, where the effect of the disclosure of the information is considered as one in a series of requests and where this indicates that the request forms part of a crucial segment of a larger picture that could reasonably be expected to be injurious to the interest specified in an exemption, an institution can exempt the information. It must be able to demonstrate, however, that the cumulative effect of a series of disclosures, similar or complementary to the disclosure being considered, could reasonably be expected to be injurious.

According to the jurisprudence, when the information requested falls within a list of specific types of information included for purposes of illustration in an injury test exemption (such as, for example, in subsections of 15, International affairs and defence) the refusal to disclose must still be based upon the injury which would result to the interest specified in the exemption. The classes of information are included in these injury test exemptions to illustrate specific types of information to which the injury test probably will apply. However, the fact that information requested is described in the classes listed does not automatically qualify the information for exemption.

The following are injury test exemptions: sections 14, 15, paragraphs 16(1)(c), 16(1)(d), subsection 16(2), sections 17, subsections 18(b), 18(c), 18(d), paragraphs 20(1)(c), 20(1)(d), and section 22.



## 10.5 Some factors when exercising discretion include the following

- The general purpose of the *Act* i.e, government transparency and accountability by providing a right of access to information in government records;
- The wording of the discretionary exemption and the interests, which the exemption attempts to protect or balance;
- Would the government, organization or individual consent to the disclosure or the information or has it been made public?
- Would the disclosure of the information be in the public interest as it relates to public health, public safety or protection of the environment, or in the case of personal information where the public interest outweighs any invasion of privacy?
- The specific content of the documents, such as;
  1. The nature of the record and sensitivity of the information;
  2. Whether the issues are current;
- The age of the record;
  3. The possibility of partial disclosure;
  4. The historical practice of the institution;
- Jurisprudence;
  5. The context—confidentiality of the information, timing;
  6. The impact of disclosure.

## 10.6 Principle of Reasonable Severability

Section 25 of the *Act* provides that a government institution **shall** disclose any part of a record that does not contain information that may be exempt if it can be reasonably severed from any part that does contain exempt information.

This provision establishes the principle of reasonable severability. This means that a record containing information that may be exempt should not be exempted from access as a whole if exempt information can be severed from it and the rest of the record disclosed.

## 10.7 The Recommendations from Level 1 and OPIs:

The OPI's advice will be taken into consideration in determining whether circumstances require the protection of information, which falls within a discretionary exemption. The OPI or the Liaison Officer (as delegated by the Branch Head) submits the relevant records to the TT, along with a covering memorandum that provides a description of the recommended exemptions, exclusions and/or other sensitivities. Information recommended for exemption or exclusion or that which is deemed releasable but sensitive information should be identified either in a narrative format in the cover letter or by highlighting. Highlighting in yellow is necessary if a highlighter is used. **OPI should not mark the records in pen or pencil as those markings will show up as part of the original record when they are scanned by DAIP.**



## 10.8 Access to Information Act and Privacy Act Exemption Grid

\*This chart is meant for general reference only. The Acts should be consulted for more specific details concerning the exemptions.

### Exemptions:

Access Section	Privacy Section	Subject	Nature of Exemption	Comments
n/a	18(2)	exempt bank information	discretionary – class test	information contained in a personal information bank designated as an exempt bank
13(1)	19(1)	information obtained in confidence	mandatory – class test	obtained in confidence from a foreign, international, provincial, municipal or aboriginal government
14	20	federal-provincial affairs	discretionary – injury test	injurious to the conduct of federal-provincial affairs
15(1)	21	international affairs and defence	discretionary – injury test	injurious to the conduct of international affairs, defence of Canada
16(1)	22(1)	law enforcement and investigation	discretionary – class test – injury test	information obtained/prepared by a government institution that is an investigative body; information relating to investigative techniques or plans for specific lawful investigations; injurious to enforcement of any law of Canada; injurious to the security of penal institutions
16(2)	n/a	security	discretionary – injury test	reasonably expected to facilitate the commission of an offence
16(3)	22(2)	policing services for provinces or municipalities	mandatory – class test	information obtained/prepared by the RCMP while performing policing services for a province or municipality
16.1	22.1	relating to investigations, examinations and audits	mandatory – class test	information obtained/created by the Auditor General, Commissioner of Official Languages, Information Commissioner or Privacy Commissioner in the course of an investigation, examination or audit



16.2	n/a	investigations	mandatory – class test	information obtained/created by the Commissioner of Lobbying in the course of an investigation
16.3	n/a	investigation, examination or review	discretionary – class test	information obtained/created by a person who conducts an investigation, examination or review in the performance of their functions under the Canada Elections Act
16.4	22.2	investigation or settlement	mandatory – class test	information obtained/created by the Public Sector Integrity Commissioner in the course of an investigation or in an attempt to reach a settlement pursuant to the Public Servants Disclosure Protection Act
16.5	22.3	disclosure pursuant to the <i>Public Servants Disclosure Act</i>	mandatory – class test	information created for the purpose of making a disclosure under the <i>Public Servants Disclosure Act</i> or an investigation into a disclosure under that <i>Act</i>
17	25	safety of individuals	discretionary – injury test	disclosure could reasonably be expected to threaten the safety of individuals
n/a	23	security clearances	discretionary – class test	information obtained/prepared by an investigative body in determining whether to grant security clearances
n/a	24	individuals sentenced for an offence	discretionary – class test	information collected/obtained by Correctional Service Canada or the National Parole Board while the individual was under sentence for an offence
18	n/a	economic interests of Canada	discretionary – class test – injury test	trade secrets/financial/ commercial/scientific/technical information belonging to the Government of Canada; information that would prejudice the competitive position of a government institution/interfere with contractual or negotiations; scientific or technical information obtained through research by an employee, the disclosure of which could deprive the officer or employee of priority of publication; information the

				disclosure of which could be materially injurious to the financial interests of a government institution
18.1	n/a	economic interests	discretionary – class test	trade secrets, financial, commercial, scientific or technical information that belongs to and is consistently treated as confidential to the Canada Post Corporation; Export Development Canada; the Public Sector Pension Investment Board; or VIA Rail Canada Incorporated
19(1)	26	personal information	mandatory/ discretionary – class test	personal information about an individual other than the individual who made the request
20(1)	n/a	third party information	Mandatory – class test	information belonging to a third party that contains trade secrets, financial, commercial, scientific or technical information; information that could result in material financial loss or gain to, prejudice the competitive position; information that could interfere with contractual negotiations
20.1	n/a	third party investment information	mandatory – class test	investment information received in confidence from a third party by the Public Sector Pension Investment Board
20.2	n/a	third party investment information	mandatory – class test	investment information received in confidence from a third party by the Canada Pension Plan Investment Board
20.4	n/a	details of a contract or the identity of a donor	mandatory – class test	contract details for services of a performing artist/the identity of a donor who made a donation in confidence to the National Arts Centre Corporation
21(1)	n/a	advice etc.	discretionary – class test	Advice/recommendations, consultations/deliberations, positions/plans for negotiations, or plans about personnel management that have not yet been put into operation
22	n/a	testing procedures, tests and audits	discretionary – class test	information relating to testing or auditing procedures or techniques or details of specific tests to be given or audits to be conducted



22.1	n/a	internal audits	discretionary – class test	draft report of an internal audit of a government institution
23	27	solicitor-client privilege	discretionary – class test	information subject to solicitor- client privilege
24	n/a	statutory prohibitions	mandatory – class test	information the disclosure of which is restricted by a provision set out in Schedule II
n/a	28	medical records	discretionary – class test	Personal information that relates to the physical or mental health of the individual

## Chapter 11

### Exclusions

#### 11.1 Exclusions

In accordance with section 69, the *Access to Information Act* does not apply to confidences of the Queen's Privy Council of Canada, which include the following:

- Memoranda presenting proposals or recommendations to Council;
- Discussion papers presenting background explanations, analyses of problems, or policy options to Council for consideration in making decisions;
- Agenda of Council or records indicating deliberations or decisions of Council;
- Records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- Records briefing ministers of the Crown in matters before, or proposed to be brought before, Council;
- Draft legislation and;
- Records that contain information about the contents of the types of records described above.

**Note:** "Council" means the Queen's Privy Council of Canada, committees of the Privy Council, Cabinet, and Cabinet committees. The following exceptions are subject to review for release under the *Act*:

- Confidences of the Queen's Privy Council that are more than 20 years old; and
- Discussion papers if the related decisions have been made public or,
- Where decisions have not been made public, four years have passed since the decisions were made.

*For more information on Cabinet Confidences see DAODs 9000 & 9001*

[http://admfincs.mil.ca/admfincs/subjects/daod/9000/1\\_e.asp](http://admfincs.mil.ca/admfincs/subjects/daod/9000/1_e.asp)

[http://admfincs.mil.ca/admfincs/subjects/daod/9000/0\\_e.asp](http://admfincs.mil.ca/admfincs/subjects/daod/9000/0_e.asp)

#### 11.2 Processing Cabinet Confidences (CC)

If the OPI identifies a document believed to be a CC he/she should identify the document and immediately upgrade the security classification of the package to "SECRET" and place the document in a **separate** "Secret" folder. All Cabinet Confidences deemed relevant to the request must be forwarded to the TT. These include all duplicate records or repetition thereof.

The final decision as to whether a document or information contained therein is a CC is the responsibility of the Clerk of the Privy Council, as custodian of the Cabinet Confidences of all Prime Ministers.



At the reception of the recommendations of the OPI, the analyst, pursuant to the Treasury Board Guidelines, will initiate a consultation through the Department's Legal Service. If any representations concerning an ATI request are required, DND/CF Legal Counsel (CFLA) on behalf of DAIP will make the representations to PCO counsel. The exact procedures for consulting PCO regarding cabinet confidences may vary. The following process may be superseded by specific PCO guidelines or directives.

The covering letter to CFLA should contain a standard first paragraph asking for the review of documents for the application of section 69 of the *ATI Act*. The letter should also contain a reference to specific details of the request:

- The statutory due date;
- The file number;
- Dates of previous requests which concern the same subject matter;
- The file number(s) of any similar requests;
- Cross references to same subject matter or same documents;
- A Schedule that list all the documents for review, **including all duplicates**.

In addition, the DAIP analyst will prepare a Schedule of Documents that describes the documents in detail with supporting evidence for any claims for severance or exclusion of information as a CC.

The covering letter and Schedule of Documents will be sent by the analyst to:

Mrs. Anne Boudreault  
 Director,  
 DND-CFLA Public & Labour Law CFLA,  
 305 Rideau Street, 10<sup>th</sup> Floor  
 Room AC 07  
 Ottawa, Ont.

### **11.3 Schedule of Document**

#### **1- Description of Documents**

Each document should be listed with a complete and accurate description and should be numbered on the schedule of documents. It is not sufficient for the purpose of legal analysis of documents to describe a document as "a report". Context and purpose determines whether CC privilege applies. Details of the context, purpose, for whom it was prepared and its relation to Cabinet should be included. Attachments **should not** be separated.

The description of documents should refer to specific pages of documents i.e., doc. #1, pp. 1-49; doc. #2, pp. 72-85. It is not necessary to re-number the pages of the request in relation to the PCO consultation.

Documents **must** be listed in their chronological order so that the information can be reviewed in the context in which it was initially prepared. Documents should also be accurately dated. If an exact date is not available on the document itself, an approximate date must be provided.

## 2- Exclusion and Severance of Documents for CC

In respect to documents recommended for severance, the description of the severance must be clearly specified on the Schedule of Documents i.e., whole paragraph, complete sentence or series of words.

## 3- Citation of the legislation

The specific paragraph of the relevant legislation to which the exclusion is recommended must be cited in the Schedule of Documents e.g., 69((1)(a) or 69(1)(b) etc.

## 4. Comments Section

Use the comments section to explain in detail the purpose and context of a specific document and why it should be excluded under 69 of the *ATI Act*.

## 5. Incremental Submissions

The analyst should prepare only one submission per request. If it becomes necessary to make further submissions, the new documents should be added to the initial Schedule of Documents and continue the numbering of documents to follow the last previously submitted document.

## 6. Schedule of Documents on Diskette/CD-Rom

The analyst will supply a diskette or CD-Rom that contains a copy of the Schedule of Documents.

## 11.4 Sample Format for Schedule of Documents

The following is an example of the recommended submission format involving CC consultation. The Schedule of Documents is to be submitted on diskette or CD-Rom:

### SAMPLE FORMAT

List of Documents Attached to  
 Letter from Anne Boudreau  
 Dated: To be filled in by CFLA  
 (File Number)

SECRET

Request Type



**Document**      **Description and Recommendations**

1.                      Provide an accurate description of the document including attachment  
                            (Memorandum, letter, Briefing Note, etc)

TIF #  
pp. 1 to 27

To:                      The Minister

From:                   The Deputy Minister

Re:                      What is the subject?  
                            What was the purpose of the  
                            document? (Title of BN or subject of  
                            Memorandum etc.)

Date:                      Date of the document or approximate date if  
                            Unknown.

Comment:              Include any relevant information, which should  
                            identify the purpose of the document or which  
                            would explain why the document should be  
                            severed, excluded in full or whether your  
                            recommendation is not a confidence.

Recommendation:      Exclude entire document or list all portions to be  
                            excluded. Regardless whether these are full  
                            sentences or full paragraphs, the actual severance  
                            should be listed. Highlight the severance on the  
                            actual document as well.  
                            e.g.

EXCLUDE:

- Pages 22 to 26 in their entirety 69(1)(g) re (a)

SEVER:

- Page 27, paragraph 3, last sentence

“Mrs. Brown...as told me.” 69(1)(g) re (a)

**The following are not acceptable**

SEVER:

- Page 27, paragraph 3 last sentence 69(1)(g) re (a)
- References to the MC, pages 22-27

**PCO Conclusion:** Leave at least 2 blank spaces

For more information on exemptions/exclusions refer to Appendix IV and the Treasury Board web Site: [http://www.tbs-sct.gc.ca/pubs\\_pol/gospubs/TBM\\_121/CHAP2\\_8-1\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/gospubs/TBM_121/CHAP2_8-1_e.asp).

### 11.5 Access to Information Act and Privacy Act Exclusion Grid

\*This chart is meant for general reference only. The Acts should be consulted for more specific details concerning the exemptions.

#### Exclusions:

Access Section	Privacy Section	Subject	Comments
68	69(1)	Act does not apply to certain materials	material published or available for purchase, library or museum material
68.1	69.1	journalistic, creative or programming activities	information under the control of the Canadian Broadcasting Corporation that relates to journalistic, creative or programming activities
68.2	n/a	under the control of Atomic Energy of Canada Limited	any information under the control of Atomic Energy of Canada Limited other than information that relates to general administration and its operation of any nuclear facility
69(1)	70(1)	confidences of the Queen's Privy Council for Canada	memoranda or discussion papers presented to Council, agenda, communications, or briefings of Council and draft legislation

## Chapter 12

### DAIP Review of Records



## 12.1 DAIP Analyst Review

A full review of the relevant records begins at this stage. The analyst analyses each record to determine if it can be released or if it should be exempted or excluded in whole or in part. Consultations are sent to departments that have an interest in the records and notices are sent to third parties to obtain their comments and recommendations on the disclosure/non-disclosure of the records.

During the course of the records review, the analyst may need to re-consult with the OPI. If there are no issues with the OPI's proposed approach to the disposition of the records, the analyst proposed release package to their Team Leader for their Deputy Director's review and approval.

## 12.2 Quality Control

For quality control purposes:

- The analysts and Team Leaders must review the hard copy that contains the OPI's recommendations and compare the electronic version to ensure indexing and scanning is 100% accurate;
- If there are inconsistencies the electronic record will be modified accordingly;
- Once the review is complete the quoted remark will be added to ATIPflow "review both electronic version and hard copy" to confirm completion of this review process;
- Do not dispose of the hard copy of the OPI's recommendations. It must be kept on file for further reference.

## 12.3 Declassification of Documents

The Originator and/or the SME of a document is required to assess the content of their documents in order to determine if a security classification or designation is required at the time of creation of the document. They may also conduct this assessment at any point afterwards, including upon receipt of an ATIA request.

The reconsideration of classified/designated matter may be undertaken by any person with authority to classify or designate who:

- Was the originator or who equates to the originator;
- Has a clear proprietary responsibility for the information; or
- Has a detailed knowledge of the sensitive asset concerned;

\* In accordance with the above, DAIP will not declassify any document. If the record is exempted or excluded in whole or in part as a result of the ATI process, the classification of the record is unaffected. If the record is released in its entirety as a result, the record effectively becomes unclassified but the classification or designation on the record is not

altered or removed because it is also part of the record. Records released under the ATIA will be marked with a stamp indicating that they have been released under the ATIA.

## Chapter 13

### Complaints

#### 13.1 The Complaint Process

Under the *Act* the requester has a right to complain to the OIC. Reasons for complaint include delays in responding, fees assessed, exemptions applied, incomplete responses, or any other matter relating to the request. Requesters have 60 days from the date of the response to file a complaint.

#### 13.2 The Office of the Information Commissioner's (OIC) Investigation

The OIC notifies DAIP on receipt of a complaint, assigns an investigator to the case, and provides a summary of the complaint. All investigations with the OIC are conducted in confidence.

#### 13.3 Disclosure of Documents to the OIC Investigator

The OIC has broad powers of access to records pursuant to subsection 36(2) of the *Access to Information Act*. During the course of an investigation, DAIP will make available to the investigator all relevant records, **except** for Confidences of the Queen's Privy Council.

Generally speaking, legal opinions obtained during the processing of a request or complaints are, with the agreement of the OIC, not provided during an investigation. There may be cases where either the OIC insists on reviewing these legal opinions or whether it would be in the Department's best interest to provide them with the opinion. In these cases, DAIP will carry out the appropriate consultations before it provides the legal opinions to the OIC investigator, and will confirm in writing to the OIC that the solicitor-client privilege has not been waived.

#### 13.4 Investigation of the Complaint

The investigation is carried out in consultation with the analyst, the Team Leader and the concerned OPI. The investigator will focus on the completeness of the search and on the exemptions that were applied; especially their validity and any exercise of discretion that was made to withhold information. Where documents have been released in part, the application of severability will be examined. The length of time taken to respond and, if any extensions of the response deadline were made, the validity of the extensions will also be reviewed, as will the appropriateness of any fees charged.



The analyst represents the Department in this process. The analyst will introduce the investigator to the SME involved in the request. He/she will also provide the context and sensitivities, outline the administrative process followed to arrive at the final response and explain and defend the application of exemptions.

During the course of an investigation, DAIP may decide, in consultation with the OPI, to release new information or apply new exemptions to the information already exempted. Should DAIP wish to cite a new exemption not previously claimed to protect information, it must do so prior to the conclusion of the IC investigation.

On completion of the investigation, the OIC investigator delivers a report to the Information Commissioner. The Information Commissioner (IC) will in turn present his recommendations to the complainant and DAIP (in some instances, the Commissioner may write directly to the Deputy Minister). The recommendations are not legally binding but carry the authority of the IC as the Officer of Parliament charged with monitoring the proper functioning of the *Act*.

If the Department is persuaded that with the passage of time the information is no longer sensitive and the injury no longer exists, additional information may be released to the applicant to resolve the complaint. Conversely, should the Department believe that information the IC recommends be disclosed fell properly within an exemption and was too sensitive to release, it will stand firm on its original decision to deny access to the information.

### **13.5 Review by the Federal Court**

Following the completion of an investigation, the requester or the IC may, within 45 days after the time the results of the investigation are reported to the complainant, ask for a review by the Federal Court of the decision not to disclose information. The Court can review the Department's decision to deny access to information, including the exercise of administrative discretion, and has the power to order the disclosure of any information it finds has been improperly withheld. Of course, decisions of the Court may be appealed to the Federal Court of Appeal Division and to the Supreme Court of Canada for a final binding decision.

### **13.6 Offences Under the *Act***

- **Obstructing the Information Commissioner of Canada**

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*.

Offence and punishment

(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.

- **Obstruction to the Right of Access**

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).

#### Offence and punishment

(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.

### **13.7 Interpretation – Common Sense**

In the absence of a specific request, records may be destroyed in accordance with the Retention and Disposal Schedules set out by the National Archives.

However, even in the absence of a specific *ATIA* request, anything done to intentionally “deny a right of access” under the *ATIA* can result in criminal prosecution i.e., a decision-making document is shredded because it may fall under the scope of a future request.

A suspected violation of section 67.1 of the *ATIA* is treated in a similar fashion to a suspected theft, destruction of property or other security breach that may involve criminal activity. Once DAIP or delegate has been made aware of the allegation, a decision will be made with respect to notifying the appropriate law enforcement agency.

While employees must be aware of this provision of the *ATIA*, it should not generate great concern if the individuals are practicing good information management that is in accordance with federal government legislation and policies.



## Appendix I – Glossary

**Applicant / Requester** - is a Canadian citizen, permanent resident or any person or corporation present in Canada who makes a formal request to access records under the *Act*.

**Director Access to Information and Privacy (DAIP)**- is the delegated official designated by the Minister of National Defence to coordinate and administer all activities relating to the application of the *Act*, *regulations*, directives and guidelines within the institution.

**Complainant** - is a requester who files a complaint with the Information Commissioner on any of the grounds set forth in subsection 30(1) of the *Act*.

**Court** - means the Federal Court-Trial Division.

**Excluded information** - means information to which the *Act* does not apply and consists of published material or material available for purchase by the public; library or museum material made, acquired and preserved solely for public reference or exhibition purposes; private material placed in the National Archives, National Library or the National Museums of Canada; and Confidences of the Queen's Privy Council. As of 2007-09-01 the exclusions will also apply to information of the CBC collected, uses or discloses for journalistic, artistic or literary purposes and to some information pertaining to Atomic Energy Canada.

**Exemption** - is a provision of the *Act*, which entitles the head of the institution to refuse to disclose information in response to a request received under the *Act*.

**Formal Access Request** - is a request to obtain records under the control of a government institution that is made in writing, makes specific reference to the *Act* and is accompanied by the \$5.00 application fee.

**Information Commissioner** - is an ombudsman appointed by Parliament to investigate complaints in respect of any matter relating to requesting or obtaining access to records under the *Act*.

**Info Source** - is a Treasury Board Secretariat (TBS) publication containing details of the organization, programs, functions, information holdings and Personal Information Banks (PIB) of all institutions subject to the *Act*. Info Source is a TBS publication that contains an index and a description of all PIBs as well as classes of personal information under the control of each federal institution. It is updated annually by individual departments such as the DND and is available electronically on the Access to Information and Privacy (ATIP) website on the Defence Information Network and also on the TBS web site. The publication also provides contact information for government institutions and agencies as well as summaries of court cases and statistics on access requests under the *Acts*.

**Manual** - is any set of directives, instructions, guidelines or procedures used by employees in administering or carrying out any operational programs or activities of the institution.

**Need to Know** - an information handling principle that limits access to information to only those employees whose duties require access to the information. Employees are not entitled to access information simply because of their status or rank within an organization.

**Office of Primary Interest (OPI)** - refers to the departmental unit whose functions, work and information holdings are most relevant to the subject matter of a request.

**Record** – means any documentary material, regardless of medium or form.

**Records Management Practices** - all persons working with information in the federal government are responsible for managing federal government records according to the policies set out by the Treasury Board Secretariat. The policies of most relevance are those dealing with information management, security, privacy and data protection, communications and access to information. A comprehensive, accurate and up-to-date records system is essential to the provision of a proper response to requests for information made under the *Act*. Records, which are misplaced, stored without reference to their content or disposed of prematurely will be difficult or impossible to include in the response to a request even though they are relevant. In consequence, the legal rights of requesters will be compromised and the Department will have failed to comply with its statutory obligations under the *Act*. For this reason, access to information responsibilities extend to how employees undertake their day-to-day work and go well beyond the simple gathering of records for a particular request.

**Third Party** - means any person, group of persons or organization other than the person that made the request or a government institution.

**Transitory Records** - Transitory records are records of temporary usefulness that are needed only for a limited period of time in order to complete a routine action or prepare an on-going record. Transitory records are not incorporated in standard records control or filing systems.

**Examples of materials that may be removed from files include:**

- Exact duplicate material;
- Telephone message slips used simply to forward a message;
- Draft documents reflecting the initial thoughts of an employee before a document is shared with others;
- Photocopies or excerpts from books or magazines that contain no material of precedential value.

**Examples of materials that should not be removed from files include:**



- Original letters or documents;
- Original court documents;
- Copies of letters or memoranda that have notes or messages written on them;
- All copies of legislation drafts;
- All material of precedential value.

**Under the control** - a record is under the control of a government institution when that institution is authorized to grant or deny access to it, to govern its use and, subject to the approval of the National Archivist, to dispose of it. Records in the physical possession of an institution and its officials, consultant or contractors are a clear indicator that the information is under the institution's control. Records held elsewhere on behalf of an institution are also under its control. Records in the physical possession of an institution, whether at headquarters, regional, satellite or other office, either within or outside Canada, are presumed to be under its control. Records held elsewhere on behalf of an institution are also under its control. (NOTE: The definition of "control" is presently under Court review).

\* Personal or political papers of a minister and ministerial records not relating to the administration or operation of the institution for which the minister is responsible and which are kept separate and apart from the institutional files are not under the control of the institution.

## Appendix II

### Frequently Asked Questions by OPI

**1. What is a record? Does this include my e-mails, agenda books, and notes from meetings? Do we have to send the scribbled notes found in files with the records?**

A. The *Access to Information Act* defines a record as follows: “Any documentary material, regardless of medium of form.” The above definition also includes e-mails, agenda books and meeting notes. Scribbled notes, whether these are written directly on the document or attached (e.g. post-it notes, routing slips, action request notes) also form part of the record. A requester may ask for any information under the control of the institution. The branch holding the information must provide all relevant information to TT for review. However, because the information can be requested, this does not necessarily mean it is releasable. DAIP depends heavily on the SME to identify sensitive information and to provide the rationale necessary to withhold the information.

**2. I sit on an interdepartmental committee, which distributed a copy of a confidential private sector paper on copyright to all members for their comments. Now I have a request for information on the same subject. Do I have to include the paper among the relevant records?**

A. Yes. If a relevant document is physically present in the Department on receipt of a request, it must be included in the search. A promise to treat information confidentially or copyrighted information does not take precedence over the right of access provided by the *Act* and, unless the information provided in confidence qualifies for an exemption or exclusion, it must be made available to the requester.

**3. I have priority projects with tight deadlines and I don’t have time to deal with this ATI request now. Can’t it wait for a couple of weeks?**

The deadline we attach to our retrieval notices is very important. DAIP understands that everyone is very busy however, there is a statutory obligation to abide by the ATI deadlines. The Department must respond to the requester within 30-calendar days unless an extension is requested pursuant to section 9 of the *Act*. Should a problem arise where our deadline simply cannot be met due to other deadlines you are facing, DAIP asks that you contact the TT immediately so that we may adjust the deadline to one that is suitable for both of us.

If it is not possible to meet our deadline due to an excessive amount of records that need to be reviewed, we ask that you also contact the TT immediately. Section 9(1)(a) of the *ATI Act* states:

“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 or 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,”



What this means for you is that you need to provide the TT an estimate of the amount of time you believe it will take to retrieve the records so that DAIP can take the necessary extension.

**4. It's going to take me hours to review all my documents, discuss them with my Director and prepare our recommendations. Can't we charge for this time?**

A. No. The *Act* is very specific about fees chargeable to the requester. Time spent reviewing information and developing recommendations is not chargeable under the *Act*. Fees can only be charged for the time spent finding the records, removing sensitive information, and for the reproduction of the releasable records. The requester is required to pay \$10 per hour for additional search and preparation fees for documents exceeding 250 pages, the first five hours of search time is free of charge. The requester can also be expected to pay for photocopies of more than 125 pages, these costs may be reduced if the requester wants to examine the records in person or want it on CD. All charges are in addition to the \$5 application fee. ATIP is not a cost-recovery program. The fees have been kept to a minimum so that all Canadians can afford to access records through the ATI process. All Canadians are entitled to equal access to their government's records.

**5. I have twelve earlier drafts of a report, which are very similar to the final version. Do I have to send them all to the TT for review?**

A. Yes, all relevant records must be included in the search and review. Draft documents are preliminary versions used to create a final document and may be used to solicit comment and input from others before a document is finalized. Draft documents are considered institutional information holdings under Treasury Board Secretariat Information Management Policy. Thus drafts prepared in the process of making a decision or implementing a policy or other operation before the activity was completed and copies of drafts relating to such activities will be retained and filed where they are annotated or otherwise added to in a fashion which indicates the evolution of the document as it goes through the approval processes. However, if you have many drafts you may want the TT to check back with the requester to see if he/she wants the final version only. Such records, including those prepared by consultants, fall within the ambit of the *Access to Information Act* when a request involves a subject to which they relate.

However, some draft documents including previously "saved" versions of electronic documents need not be retained where they are working versions not communicated beyond the individual creating them or are copies used for information or reference purposes only. Such documents may be treated as transitory records and routinely destroyed. There will exist a very limited number of instances where an institution may wish to totally disassociate itself from records created within the institution or on its behalf. The easiest and most effective way to accomplish this end is to have the record prominently marked on its face and on each subsequent page with a diagonal line and the words "not forwarded or used". Such documents are, however, to be considered as part of any access request relating to the subject matter involved.



## Sample Scenario

You have drafted a report from research notes. You make ten copies of the first draft and circulate them to various colleagues for comment. Once you have received their comments you make changes to the report and submit a second draft to your supervisor. After your supervisor's changes are incorporated the report is given to your Branch head as a final document. Once the report is final, you may destroy your research notes. You may also destroy any of the returned first draft copies **if you kept a master version** to indicate any significant changes. The same is true of your supervisor's comments if they are editorial in nature, however changes in policy, approach or recommendations should be documented.

### **6. For whom do you work? Is DAIP a part of National Defence or the Information Commissioner's Office?**

**A.** Every department has their own ATIP office. Here in National Defence DAIP falls under Assistant Deputy Minister Finance and Corporate Services.

### **7. I found a cabinet document marked "Secret" which has not even been seen by the Minister yet. Shouldn't I set it aside since there is no possibility that it will be released?**

**A.** No. All relevant records, regardless of their security classification or the un-likelihood of their disclosure must be reviewed by DAIP. While the security markings "Protected", "Confidential", "Secret" and "Top Secret" may be an indicator of sensitive information, they cannot in themselves be a reason for withholding information from a requester. To deny access, a specific applicable exemption must be invoked.

### **8. Does the Department have a policy that advice to the Minister will be automatically exempted?**

**A.** No. Having a policy to exempt ministerial advice would be contrary to the proper exercise of administrative discretion. For discretionary exemptions such as advice, each case must be considered on its own merits and the decision to apply the exemption must be based on the harm the specific disclosure would cause. For example: "If we release this information, it will embarrass our Minister - shouldn't we withhold it?" Embarrassment is not recognized by the *Act* as a reason for withholding information. Unless a valid exemption applies, it will have to be disclosed.



**9. I have an ongoing investigation; do I still have to send the file to the TT for processing? Why can't it just be simply exempted?**

**A.** Yes. As the Delegated Head of the institution, pursuant to section 25 of the *Access to Information Act*, DAIP **must** disclose any part of the record that can reasonable be severed from the protected material. This statutory obligation imposed on DAIP can only be exercised after reviewing all pertinent documents. DAIP needs to be informed of ongoing investigations if the release of any portions of the record could affect the outcome of the investigation.