OPEN GOVERNMENT: ACCESS TO INFORMATION

The myth of access to information

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BY KEN RUBIN

Are we creating myths about Canada's access to government system? Here's a few candidates to put into the pre-election chatter.

Myth One: Canada's access legislation has fallen behind globally. Recent studies and news reports have said that Canada's nearly 30-year access legislation has fallen behind as many countries adopt such legislation. There is no doubt that Canada's ranking would be near the bottom. But this begs the question: did Canada ever rank near the top or really have progressive access legislation?

It was no secret that Canada adopted a rather weak access act in 1982, and indeed, in the 1986-87 Parliamentary statutory review, all parties saw this, recommending a better act. Suggested modest changes were still being presented in 2005 by then information commissioner John Reid in his proposed "Open Government" bill. The Access Act mainly came about after a PCO discussion paper saw it as a means of codifying secrecy in the coming information age. To claim the law was written because of popular demand and pressure (and yes, there was a lobby group called ACCESS) would be pushing matters. If it was such a hot shot piece of disclosure legislation, why has usage been so low (20,000 to 30,000 a year)? Better to have the means to ensure fewer leaks and introduce ground rules favouring liberal amounts of secrecy through multi-exemptions and exclusions.

Myth Two: If only Prime Minister Stephen Harper had followed his open government platform, Canadian legislation would have finally been updated. But this raises the question of whether Harper in his 2005 election transparency platform was ever serious, and whether the platform was coherent, consistent and special.

Much is made five years later that Harper double-crossed those expecting that broken down access legislation was to be reformed. Since when are we to take election platforms and speeches seriously? The Conservative election transparency promises were contradictory as one part called for the information commissioner to be given binding order powers, while another part called for the implementation of Reid's bill that opposed granting the commission such enforcement powers. Nor was anything that bold or flashy in the promises made. It was apparent once the Tories won the election in January 2006, that they had no intention of implementing any progressive disclosure changes. The introduction in April, 2006 of the Accountability Act promoting greater secrecy confirmed this.

Myth Three: By adding to the number of agencies covered under access legislation, Harper's Accountability Act produced the biggest change ever to the nearly 30-year history of Canada's access legislation. That claim, however, is just political spin as those changes were mostly counter productive.

During the 2009 Commons Access Committee hearings on access reforms, Conservative MP Kelly Block continually asked most witnesses the question of whether what the Tories did by extending access legislation to dozens of agencies, including EDC, Canada Post and CBC, was the best thing ever done to improving the legislation.

No, because those agencies got to keep more records secret than even other government institutions under the accountability act amendments. Information Commissioner John Reid testified back in 2006 at the Accountability Act hearings that such extended coverage was compromised because the price for key agencies joining would be new exemptions and exclusions added to the Access Act. The Conservatives, once they hit the election hustings again, will still point to the various measures under the Accountability Act as one of their top crowning achievements.

Myth Four: Canadian access legislation needs better resources and management to get back on track. But is pouring more money into a failing system really going to improve public access to government records?

If only the existing Access Act could get more money and staff, backlogs, delays, poor service, political interference and creative avoidance could end. The Access Act is not really broken, it's just down on resources. But this administrative remedy fix does not address the growing number of secrecy claims preventing release, the unnecessary consultations delaying disclosures or the growing inexperienced personnel handling access requests. Nor does it change the lack of political leadership on the access file or the weak investigation and review process at the backlogged Information Commissioner's Office.

Such a quick fix route isn't possible under a weak access law operating within an entrenched culture of secrecy.

Myth Five: But wait: Canada is perking up by pro-actively disclosing some information. But are officials really actively helping Canadians get information?

Getting answers from government still means waiting in the access queue line. Officials are well versed in the code of silence and under gag orders. They go through the motions of paying lip service to a duty to assist the public getting information. But pro-active disclosure largely means plenty of centrally controlled public relations offensives such as announcing the latest Economic Action Plan project. Nobody who wants to keep their jobs puts the interests of the PMO, senior manda ins, corporate third parties, and others at the back of the line when packaging what is released.

Recent media stories that had headlines like "Can Access to Information be fixed?" and "Canada hits bottom of global FOI rankings" are not exactly filled with hope. But these headlines partially contribute to the grand myth that the current access system is fixable and a work in progress. We need to put aside these myths and get real if we are to tackle excessive secrecy.

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