

Treasury Board's overdue review of Access Act is big on propaganda, light on recommendations

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Kicker: Treasury Board is not capable of being the engine and manager of any access-to-information regime, writes Ken Rubin.

On Dec. 13, Treasury Board tabled its statutory [review](#) of Canada's Access to Information Act—two-and-a-half years after it began. It's a dense, bureaucratic essay without concrete recommendations or proposed amendments, passing itself off as a legislative review.

This expensive exercise (costing more than \$2-million) appears ultimately to be a delay tactic to prevent meaningful changes to access legislation from getting through this Parliament.

For starters, the review is not about issues that the public want to be aired—it's largely about their own information management and workplace needs. It's big on propagandizing what the government has been publishing, separate from access requests, but offers no solutions to prevent delays and clearly avoids loosening secrecy practices.

Instead of decisive conclusions, each section ends with bureaucratic words, like how the Canadian government may “examine,” “re-examine,” look at “opportunities,” “explore,” and think through “considerations.”

The report's only saving grace is the section on [Indigenous access issues](#), which are no different than what any Canadian wants: control of information, better access, less discrimination, less distortion of government-recorded events and a drastic reversal in government access to information-withholding actions.

The only concession to entrenched secrecy hinted at in the report is the possible inclusion of a public-interest override provision in access legislation. But this provision would only apply to some secrecy situations, meaning more disclosures taking place.

Most damaging is the report's lateness and its refusal to go beyond talking points or meaningful reform, which will ensure that action on Canada's out-of-date access legislation is deliberately postponed, at least by the current Liberal government. There simply may not be sufficient time to put forward a bill that could pass before the next election.

The opposition Conservatives, who chair the House Access to Information, Privacy and Ethics (ETHI), did not sit around waiting for this report. This past fall, they initiated their own access-to-information review (No. 16), hearing from users, government and former officials.

Definitely in the new year they'll want to call upon Treasury Board Minister Mona Fortier to testify on her department's vague report that comes with no solid guidance and which looks more like a filibuster exercise to derail ETHI changing secrecy practices.

Any effort to get action before a 2025 election is a long shot. ETHI's report will come out sometime in 2023. By then, the Liberal government, if it does not ignore the committee's report altogether, may be in the mood for a limited access-to-information-amending bill that would in late 2023 or 2024 return to the ETHI for consideration.

Yet one thing the government appears ready to do without a legislative amendment is to increase the cost of application fees. The justification for this is drawn from a Treasury Board 2021-22 commissioned study by Ernest and Young that says ATI administration costs are high and growing. That study was deliberately separate from the review's available background data.

The government could shortly—without ETHI's involvement—impose a regulation to increase the \$5 application fee to \$10 or higher, up to \$25, thus cutting down requests. That possibility was not put directly in the report or available to those taking part in the exercise.

One other study that Treasury Board did separately, referred to in the review, was an internal evaluation and audit done with the help of consultant Goss Gilroy. Its aim appears to be to show ETHI that its Bill C-58 proactive government publishing work is paying off, something the report itself boasts as advancing transparency though the study was never presented to those who took part in the review.

The internal study, however, peels away some of the glamour showing all is not well, scolding some departments for not buying in or providing needed data for the proactive disclosure goodies. The study indicates that no one really knows how much the public is using ATI and taking to heart their multi-million-dollar sanitized summary government disclosures. As I have found out, no one is really independently monitoring the value of these disclosures and their accuracy, or internally keeping track of the enormous expenses involved.

Those failings are not highlighted in the report and were not available at the time of the review's public engagement process.

The key question, then, is how to get on with FOI changes and how to overcome one-sided government publishing "open data" portals as the government's prime "digital information future."

It also raises the issue of whether Treasury Board is capable of being the engine and manager of any access-to-information regime. I think not.

And I am not alone in reporting these missteps.

Independent journalist Dean Beeby has been blogging and tweeting on what's happening on this and other fronts. And *The Globe and Mail* has put reporters Tom Cardoso, Robyn Doolittle and others on the trail of FOI and are putting it on trial. This is so crucial to public understanding; the *Globe* appropriately calls its investigative project "Secret Canada."

In the report, Treasury Board Minister Mona Fortier claims in her introduction it was done to ameliorate the public's access-to-information service, to increase trust and transparency in institutions, and to advance reconciliation with Indigenous peoples. Yet it may have the opposite effects.

Where Fortier and her officials get it right is when they reveal in the review that her department's stewardship of information and data is "the single greatest pain point for the ATI regime."

In the end, it's just one more shelved report shafting the public's right to know what's really going on in Ottawa.

Ken Rubin, an investigative researcher and frequent user of access legislation, has pressed for access legislation, only to be met with a secrecy act, many reviews and hollow promises over four decades. He is reachable via kenrubin.ca