

Your Right To Know

**How to Use The Law
to Get Government Secrets**

**Jim Bronskill and
David McKie**

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Notice to Readers

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— JB

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— DM

Foreword

I am often asked to explain why access to information is important to Canadians. In response, I point out that federal policies, programs, and laws touch so many aspects of our everyday lives — the regulation of health products, international travel, mail delivery, transportation, and food safety, just to name a few.

Canadians give their government the authority to spend their taxpayers' dollars, make policy decisions, and administer programs on their behalf. In return, they want to be informed of the rationale and outcome of government decisions and actions, they want to validate information that is provided to them, or they simply want to obtain more details about an issue of interest. Being able to request and receive government information empowers Canadians to participate in their democratic system.

In Canada, we are fortunate that access to government information has been embedded in most federal, provincial, and territorial laws for more than 30 years. It is true that the federal access legislation and its administration have not kept pace with the rapid proliferation and sophistication of information technologies and new business models being used today, but its purpose and goals still remain sound.

Given the limitations we are currently facing with the federal regime, now more than ever citizens should not take their right to know for granted. It is the role and the responsibility of all of us

to champion the cause of transparency, to ensure accountability wherever taxpayers' dollars are being spent, and to nurture a culture of openness in Canada.

Although more and more Canadians are making access requests, for many, making a request may seem like an overwhelming task. That is why this guide is a fundamental tool, because it will help new users navigate the world of access to information and give them the confidence to exercise their right.

I congratulate Jim Bronskill and David McKie for taking on the task of writing *Your Right to Know: How to Use the Law to Get Government Secrets*.

This book will serve as a valuable resource for Canadians as they exercise their right to know.

Suzanne Legault
Information Commissioner of Canada, July 2014

Introduction

As journalists, we use freedom-of-information laws to help keep an eye on government institutions and other public bodies that do everything from police environmental regulations to protect people from terrorists. It has always been an important part of our jobs, and it has become increasingly necessary in an era of tightly scripted political messaging and rigorous information control.

But journalists are only proxies for the average citizen: We ask the questions and seek out the records you might if you had the time to explore issues of public importance. That's why we believe everyone with an interest in civic affairs can and should learn to use freedom-of-information laws to better inform themselves — and their communities — about the public agencies that touch so many aspects of our lives.

This guide is for the person who wants to know more about the safety of the air they breathe and the water they drink; the researcher curious about government grants to corporations; and the family that wants to discover what their grandfather did as a soldier during the war.

Our goal is to demystify the freedom-of-information process. Each year we ask the journalism students we teach whether they have ever filed an information request. Only a few put up their hands. And that's where we will begin, with an assumption you know little or nothing about using the laws. You might even have

a bit of trepidation about making a request. Laws, after all, can be intimidating. Filling out a form can be tedious and confusing. Government agencies have become synonymous with red tape and bafflegab. And who has the time and money to do all this?

This guide will help you cut through the fog, with simple, step-by-step instructions on researching your subject of interest, drafting a request, dealing with agencies, and ultimately obtaining the records you seek — information that belongs to you.

**Part One:
Background**

1 History

Freedom of information can be traced to the Age of Enlightenment and Sweden's passage in 1766 of the first law to enshrine the principle of a public right of access to government records.

The King's ordinance,¹ issued in Stockholm, decreed that "loyal subjects may possess and make use of a complete and unrestricted freedom to make generally public in print" almost all government documents.

The driving force behind the law, Anders Chydenius,² was a priest and philosopher from rural Finland, which was then part of Sweden. His thinking had a profound and lasting effect on democratic development in the Nordic countries and the principles would later take root around the world.

Though it would be another 200 years before the United States passed its landmark *Freedom of Information Act*, the right to seek, receive, and impart information would be recognized in the Universal Declaration of Human Rights,³ a 1948 resolution of the United Nations.

The right to information has since been reinforced as a tenet of international law through subsequent pronouncements and court rulings.

1 "The World's First Freedom of Information Act," Right to Information, accessed September, 2014. <http://rtieng.wordpress.com/2011/07/29/the-worlds-first-freedom-of-information-act/>

2 "Publication on the World's First Freedom of Information Act," Chydenius.net, accessed September, 2014. www.chydenius.net/eng/articles/artikkeli.asp?id=1021&referer=1&pages=1

3 "The Universal Declaration of Human Rights," UN.org, accessed September, 2014. www.un.org/en/documents/udhr/

Canada was among the first countries to institute a freedom-of-information law. The *Access to Information Act*⁴ was passed in 1982 and took effect on Canada Day the following year. All provinces and territories have followed suit with their own legislation.

At last count, 99 countries⁵ — from Australia to Yemen — had adopted laws.

According to an analysis by the group Right2Info,⁶ the right of access to official information is constitutionally protected in 59 countries.

Various international organizations have advanced the cause through the creation of model laws and the promotion of high standards of openness.

The trend is clear: The right to information is seen as a key element of the cherished right of free expression, a seemingly unstoppable movement that could help entrench democracy worldwide.

4 *Access to Information Act*, Government of Canada, accessed September, 2014.

<http://laws-lois.justice.gc.ca/eng/acts/A-1/>

5 “Countries with Access Regimes,” FreedomInfo.org, accessed September, 2014.

<http://freedominfo.org/documents/Countriesaccesslist.pdf>

6 “Constitutional Protections of the Right to Information,” Right2Info.org, accessed September, 2014.
www.right2info.org/constitutional-protections

2

The Laws

Governments have developed laws to guarantee, or at least facilitate, greater access to information. The main thrust of this book is Canada's federal law (the *Access to Information Act*) but, in general — whether we're discussing other jurisdictions such as provinces and municipalities, or foreign jurisdictions such as Sweden, the United Kingdom or the United States — access to records is a legal right to be fought for, protected, and enhanced. We will also cover essential information about the US federal law (the *Freedom of Information Act*), which helped kickstart the modern era's global drive for government transparency.

Though they may differ in specifics, the access-to-information or freedom-of-information laws, as they're called in provincial, municipal, and many foreign jurisdictions, embody the same general principles. The following sections discuss some of them.

1. The Right to Information

Though far from absolute, these laws assume that members of the public, no matter what they do for a living, how much money they make, or whether they are citizens of that particular jurisdiction, have the right to information that has been collected using taxpayers' money.

2. Balancing the Right to Know with Certain Protections

Few would argue that citizens should have the unfettered right to all government information. As a result, access-to-information laws contain provisions that categorize records, giving institutions the legal right to invoke secrecy when deemed necessary. For instance, the most sensitive records — such as those involving national security — are usually withheld entirely or in part.

3. The Privacy Side

Access-to-information laws are usually only one-half of the equation; the other half is privacy. The very same citizens demanding information should also have a reasonable expectation that details about their personal lives — such as medical and income tax records — stay private. That being said, citizens can use the privacy provisions to gain access to government records of their own personal history. For instance, you might want to know how the federal department responsible for unemployment insurance handled your file, or why one of its investigators knocked on your door to find out if you were really looking for work.

4. Fees

Although freedom of information is seen as a government service and a right, you are usually required to pay a minimal fee for the initial query, and then a bit more for any extensive searching that might have to be done. Such fees do not cover the actual cost of processing a request, nor are they meant to. Rather, they help defray a small percentage of government costs and remind requesters to be judicious in their use of the laws. Many argue there should be no fee for submitting an application.

4.1 Exemption from fees

Laws recognize that, in general, it is in the public good to release information. As such, some laws contain provisions that take public benefit into account, allowing for the fees to be waived. This could apply if the issue involved food or drug safety, for instance. Fee waivers will be discussed in Part Two: How to Request Information.

5. The Right to Complain

As the old rock 'n' roll refrain goes, “You can’t always get what you want.” The search fees may be too high, or the institution may have held back too much information, or taken too long to produce the records. In these instances, you have the right to complain to a commissioner or ombudsman who has legal powers to advocate on your behalf. We will look at the complaint process in Part Four: The Response to Your Request.

When used correctly, access laws can be powerful instruments of public policy and government accountability.



“The overarching purpose of access to information is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the right to information required to participate meaningfully in the democratic process, and secondly, that politicians remain accountable in the citizenry.”

— Supreme Court of Canada
in the 1997 case *Dagg v. Canada*
(Minister of Finance)