

The Hon. Scott Brison
President of the Treasury Board
90 Elgin Street
Ottawa, Ontario
K1A 0R5

28 September 2017

Dear Minister Brison,

We are writing to you as Canadian and international organisations and individuals who are committed to ensuring a strong access to information (ATI) system in Canada.

Today is International Right to Know Day, a date when groups around the world celebrate the importance of freedom of information to both democracy and good governance. Yet there is little to celebrate in Canada. Canada's access to information system is broken, putting at risk citizens' fundamental right to hold their government accountable.

The Access to Information Act (ATIA), now nearly 35 years old, is in desperate need of major reforms to reduce delays and provide for an effective right to access information held by public authorities. This challenge calls for bold and thoroughgoing reforms to the ATIA to align it with international standards and better practice in other countries.

Unfortunately the government's proposed ATIA reform, Bill C-58, comprehensively fails to meet this challenge. Indeed, this long-awaited bill fails to address a number of serious problems in the Act, including the vastly overbroad regime of exceptions, the broad discretion of public authorities to delay in responding to requests, the absence of any duty for public authorities to document important decision making processes, and the limited scope of coverage of the Act. In some areas, it even weakens the current rules.

Canada is ranked a miserable 49th out of 111 countries on the RTI Rating, a global methodology for assessing the strength of a country's legal framework for the right to information (RTI). Bill C-58 would only lift Canada three positions to 46th globally, according to an analysis by the Centre for Law and Democracy (CLD). We can and must do better. A healthy and effective access to information system is critical to free expression, public participation and holding government to account. By introducing legislation of such inadequacy the government is failing these basic values.

We call for Bill C-58 to be scrapped, and for government officials to be tasked with crafting a bill that takes seriously the crisis undermining our right to know. The resulting bill must, at bare minimum, include the following changes:

BARE MINIMUMS FOR REFORMING THE ACCESS TO INFORMATION SYSTEM

- Deliver on the promise to expand the scope of the Act to cover the Office of the Prime Minister and Ministers' Offices by allowing individuals to make requests for information from these bodies, as they may do with other public authorities, while retaining the proposed proactive publication obligations.
- Introduce a formal duty to document for public authorities, and require them to preserve records of their decision making.
- Put in place a robust system for limiting the discretion of public authorities to extend the time limits for responding to requests and formalise in law the fee waivers contained in the May 2016 Interim Directive on the Administration of the *Access to Information Act*.
- Ensure that exceptions and exclusions to the right of access are narrowly defined and subject to both a test of actual harm and a mandatory public interest override.
- Give the Information Commissioner binding, enforceable order powers over all complaints regarding requests for information. This was one of the few significant reforms included in Bill C-58, and it should be retained.

The public has the right to obtain the information they need to participate meaningfully in democratic processes, while also holding Canada's public officials and Members of Parliament accountable. The current system signally fails to meet minimum standards, and Bill C-58 will not fix it. The government should withdraw Bill C-58 and present Canadians with a bill that addresses seriously the broken access to information system.

For further information please contact:

Toby Mendel
Executive Director
Centre for Law and Democracy (CLD)
toby@law-democracy.org
902-431-3688

Duncan Pike

Campaigns and Advocacy Coordinator, Canadian Journalists for Free Expression
dpike@cjfe.org
416-787-8156 x203

Signed,

Organisations:

1. AMINA Corp.
2. Amnesty International Canada (English Branch)
3. Atlantica Party
4. British Columbia Civil Liberties Association (BCCLA)
5. British Columbia Freedom of Information and Privacy Association (BC FIPA)
6. Canadian Association of Journalists (CAJ)
7. Canadian Council for International Co-operation (CCIC)
8. Canadian Federation of University Women (CFUW)
9. Canadian Journalists for Free Expression (CJFE)
10. Canadian Taxpayers Federation
11. Canadians for Accountability
12. Centre for Law and Democracy (CLD)
13. Department of Women's and Gender Studies, University of Regina
14. Committee to Protect Journalists (CPJ)
15. Ecology Action Centre (EAC)
16. Fédération professionnelle des journalistes du Québec (FPJQ)
17. Greenpeace Canada
18. International Civil Liberties Monitoring Group
19. Isomer Design
20. Lawyer's Rights Watch Canada (LRWC)
21. Ligue des droits et libertés
22. MiningWatch Canada
23. OpenMedia
24. Open North
25. Our Right to Know
26. Pen Canada
27. Privacy and Access Council of Canada — Conseil du Canada de l'Accès et la vie Privée (PACC-CCAP)
28. Queer Ontario
29. Reporters Without Borders (RSF)
30. Research and Education for Solutions to Violence and Abuse (RESOLVE),
Saskatchewan
31. Rideau Institute
32. RightOnCanada.ca
33. Rocky Mountain Civil Liberties Association (RMCLA)
34. Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC)
35. Voices-Voix

Individuals:

1. Elizabeth Ball, Academic Librarian (retired)
2. Donna Bowman, Librarian
3. Bruce Campbell, 2016 Law Foundation of Ontario, Leadership in Justice Fellow
4. Stephen Chapman, Isomer Design
5. Ann D. Cooper
6. Phyllis Creighton, Order of Ontario
7. Lisa Di Valentino, Law and Public Policy Librarian, University of Massachusetts
8. Mary Francoli, Associate Professor, School of Journalism and Communication, Carleton University
9. Michael Geist, Canada Research Chair in Internet and E-commerce Law, University of Ottawa
10. Dr. Brydon Gombay, Community Psychologist
11. Carla Graebner, Librarian for Research Data Services and Government Information, W.A.C. Bennett Library, Simon Fraser University
12. Larry Hannant, PhD historian, University of Victoria
13. Dr. Steve Hewitt, Senior Lecturer, University of Birmingham
14. Laverne Jacobs, Associate Professor, Faculty of Law, University of Windsor
15. Vincent Kazmierski, Associate Professor, Department of Law and Legal Studies, Carleton University
16. Gregory S Kealey, Professor Emeritus, University of New Brunswick
17. Abby Lippman, Professor Emerita, McGill University
18. Claire McNeil, Dalhousie Legal Aid Service
19. Eugen Melinte, M. Eng
20. Sharon Polsky, MAPP, Data Protection Advocate & Privacy by Design Ambassador
21. J.M. Porup, Editor, MuckRock Canada
22. Marian Ramage, Brandon, Manitoba
23. Teresa Scassa, Canada Research Chair in Information Law, University of Ottawa
24. Jacquelyn Shaw
25. Tania Thomas, Youth Services Librarian – Outreach to Newcomer Families, Surrey, British Columbia
26. Stanley Tromp, Journalist and Author