

NEWS

‘COVID is just purely an excuse’: Advocates call for auditor general review of access to information regime

By NEIL MOSS NOVEMBER 24, 2021

A September report from Information Commissioner Caroline Maynard found that nine separate complaints of access to information delay were 'well founded.'



Treasury Board President Mona Fortier oversees the Access to Information Act which governs how members of the public can request information from federal government departments. *The Hill Times* photograph by Andrew Meade

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With government departments still citing COVID-19 as causing delays in processing access to information requests more than 20 months since the onset of the pandemic, those who use the system are asking why the government can operate as usual, but not the regime that gives it transparency.

Experts and advocates are calling for Auditor General Karen Hogan to perform an audit of the access to information regime.

“The auditor general should do a system wide audit to make sure that we know as a public, as a people, whether or not the information system is engineered to fail or in fact due to inefficiency or whatever is not delivering what it should be,” said Michel Drapeau, a lawyer who specialized in access to information.

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Prolonged issues with the access to information system have worsened during the pandemic with government departments citing health restrictions as reasons behind delays in processing access to information requests. Requests are used by opposition MPs, journalists, the private sector, and members of the public to gain access to information on the operation of the federal government—a bureaucracy which isn't inclined to publicly releasing information.

Mr. Drapeau said an audit should look to see if ATIP offices and the Office of the Information Commissioner is properly staffed to fulfill the obligations of the Access to Information Act, noting it isn't necessarily a question of quantity but making sure there are enough investigators and ATIP officers and not an abundance of executive-level bureaucrats.

“[The audit] should take a look to see if our ambition to have records released in 30 days is fair and reasonable and attainable or whether or not it’s pie in the sky,” he said. “If it’s not 30 days, let’s make it 60 days, but abide by it and change the law.”

Mr. Drapeau said he doesn’t see how the government can continue operating as normal, but the work of ATIP offices is stalled.

“The machinery of government has continued to work reasonably well during COVID-19,” he said, noting the work of many departments continues while civil servants are working from home. “If there is anything that should be able to work at a distance, I think, it is the management of records—all of that is done electronically.”



A recent report from Information Commissioner Caroline Maynard noted that she will be monitoring Global Affairs to ensure access to information issues are ‘not systemic in nature.’ *The Hill Times* photograph by Andrew Meade

While some departments can operate the same as they did while in the office, Mr. Drapeau said it is not the case for ATIP offices because “delays are expected.”

“We’ve grown accustomed to having a lot of delays in the access regime,” he said, noting that the regime wasn’t working famously well before the pandemic, and the health restrictions give “an easy and perhaps more acceptable offramp” to explain the delays.

Information Commissioner Caroline Maynard [released a report in September](#) concerning nine separate complaints about delays in processing requests under the Access to Information Act by Global Affairs, in which she found all the complaints were “well founded.”

Of the nine complaints, Global Affairs cited the COVID-19 pandemic as having a “significant impact” on processing the requests. According to the report, Global Affairs’ ATIP office was closed from mid-March to September 2020, which led to one of their “information repositories” not being accessible due to its security status.

The report noted that Global Affairs is responsible for having “appropriate internal processes in place” to meet the 30-day legislative deadline set out by the Access to Information Act.

“This is not the first time that Global Affairs has failed to meet its legislative obligations under the Access to Information Act and I will be monitoring the situation closely to ensure that these issues are not systemic in nature,” Ms. Maynard noted.

She ordered the release of all nine requests by Oct. 15—a power the federal information commissioner was given when the Access to Information Act was amended.

Global Affairs did not respond to *The Hill Times* before publication deadline regarding if it has made changes to quicken the processing of access to information requests.

As part of the passage of Bill C-58 in June 2019, which amended the Access to Information Act, it committed the Treasury Board to a review of the access to information regime within a year of coming into force. That review began in March and a final report is scheduled to be submitted to Treasury Board President Mona Fortier (Ottawa-Vanier, Ont.) by Jan. 31, 2022.

Mr. Drapeau said there is insufficient will to fix the delays that have been ingrained in the system as it isn't a top priority for the Canadian public.

“Where there is a will, there is a way. Obviously in departments or maybe across the government, starting with the Treasury Board, which is responsible for access, they know that in this particular area the public has no limit when it comes to its patience.”



Conservative MP Kelly McCauley says ATIP departments are treating Treasury Board rules as ‘suggestions.’ *The Hill Times* photograph by Andrew Meade

A spokesperson for the Treasury Board didn't respond to questions on delays in the access to information system before publication deadline.

Conservative MP Kelly McCauley (Edmonton West, Alta.), his party's Treasury Board critic, echoed Mr. Drapeau, noting that if others can work throughout the pandemic, so should ATIP offices.

“COVID is just purely an excuse. ATIPs were a mess with this government before COVID and it's no better now—it is just getting worse,” he said. “If it's safe enough for Starbucks or Tim Hortons employee to go and serve coffee, surely it's safe enough for one person to go in from the ATIP team to do this work.”

Ms. Maynard said during an appearance at the House Committee on Government Operations and Estimates in February that the right of access “cannot be suspended because of the pandemic.” She added that the government has not “seized the opportunity for change” during the pandemic.

Mr. McCauley, who noted that the complaints to the information commissioner on the Global Affairs access to information requests were submitted by a staffer that works in his office and that of another MP, said departments aren’t even returning calls or emails about information requests.

“It requires strong political will to get these departments to do their job and to follow the required mandate,” he said. “The Treasury Board rules [aren’t] suggestions, they are rules. Under this government, they are treating them as suggestions.”

He endorsed Mr. Drapeau’s desire to see a review of the access to information system by the auditor general, saying it is a “fantastic suggestion.”

Canadian Association of Journalists president Brent Jolly also supported the idea of an auditor general review.

“I would be completely in favour of the auditor general doing something to push this along. I think we’ve gotten in a habit of sort of accepting the status quo. Over time the status quo continually depreciates in terms of its functionality,” he said.

Mr. Jolly said there have been decades of inconsequential action on the access to information system.

“A lot of problems that have been amplified because of the pandemic—exemptions, delays, all the usual stuff—hasn’t been acted on for the better part of a quarter [century],” he said. “You reap what you sow at this point.”

He said he is hopeful that action will be taken following the Treasury Board's review of the system.

“You can't get cynical about this stuff because if you do then you're just going to sort of allow the system to disintegrate like it has over the past 25 years,” Mr. Jolly said. “I don't think that is in any of our interest to do. You have to stay hopeful and you have to keep pushing for change.”

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