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Ottawa spent \$90-million in 2021 on strained access-to-information program

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The Confederation Building reflects off the windows of a building in downtown Ottawa on April 7, 2020. The number of access-to-information and privacy requests received by the federal government has grown dramatically in recent years, straining departments
SEAN KILPATRICK/THE CANADIAN PRESS

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Federal Information Commissioner Caroline Maynard warned a House of Commons committee that her office was on track for a record 10,000 complaints this year, as Canada's freedom-of-information systems have buckled under a surge of access requests and inadequate resources.

Every government department is struggling to keep up with its legally required access-to-information duties, Ms. Maynard told the House of Commons standing committee on access to information, privacy and ethics on Wednesday.

“Nobody’s doing great,” Ms. Maynard said. Last year, 30 per cent of requests were completed after their legislated deadlines, according to data from the Treasury Board of Canada Secretariat.

“Respecting the law as it currently exists would represent an important first step to improving the state of access to information,” she said during her opening remarks.

Access-to-information laws exist at all levels of government in Canada, and allow people to formally request the disclosure of otherwise-secret government records. Access requests are routinely used by businesses, researchers, journalists, lawyers and other individuals to learn more about government decision-making.

Ms. Maynard’s office is responsible for mediating access disputes on the federal level. For 90 minutes in front of the House committee, she discussed the litany of issues that have plagued Canada’s system: long delays, excessive redactions and outdated legislation. “We need more resources, we need more innovation, and we definitely need more leaders that believe in access,” she said.

The number of access-to-information and privacy requests received by the federal government has grown dramatically in recent years, straining departments. Requests to federal organizations more than doubled in seven years, from roughly 136,000 requests in the fiscal year ending March, 2014, to more than 285,000 by 2021. Immigration, Refugees and Citizenship Canada alone accounts for much of the increase: In both 2020 and 2021, the department received more requests than the rest of the government combined.

In 2021, the federal government spent \$90-million on its access-to-information program.

As requests have flooded the government, so have grievances. Earlier this year, the Office of the Information Commissioner revealed that it had received a record number of complaints during the 2021-22 fiscal year.

“Every year, it’s a record,” Ms. Maynard told the committee.

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The ethics committee meeting on Wednesday kicked off a parliamentary study of the federal access-to-information regime. At least four more meetings are planned, though it is not yet known who else will be invited to give evidence.

In addition, there is an ongoing government review of access-to-information policies. Under amendments to the Access to Information Act passed in 2019, two reviews of the law and policies are required every five years: a ministerial review by the Treasury Board of Canada Secretariat, and a review via parliamentary committee. (However, the ethics committee's access-to-information study is not part of those mandated reviews.)

The Treasury Board review began in June, 2020, and was slated to be completed in January, 2022. The review's website indicates that two outstanding reports – a summary of engagements on access issues with Indigenous communities, and the final report to Treasury Board president Mona Fortier – are due “later in 2022.”

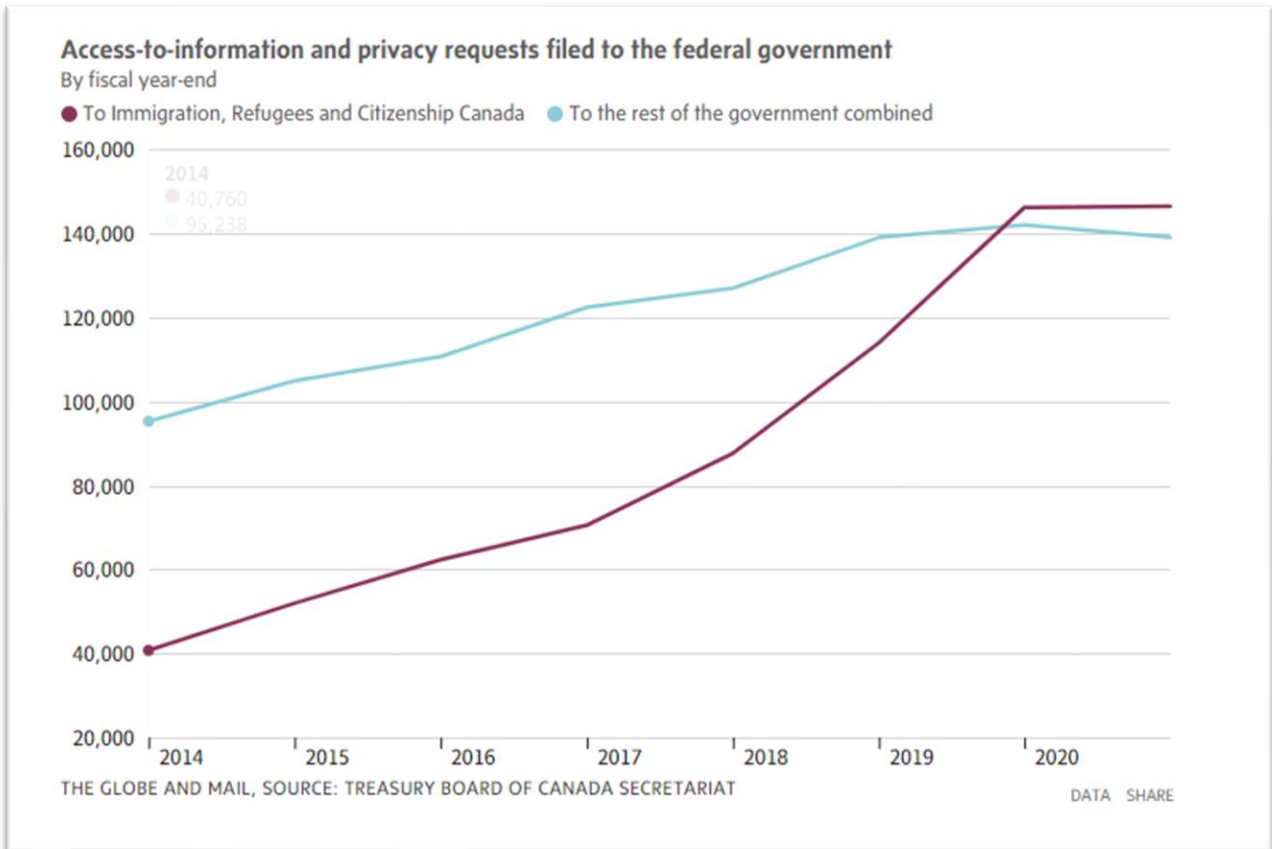
The parliamentary study was formally requested in May by Ryan Williams, a Conservative MP sitting on the committee. Mr. Williams's motion stated that the federal access-to-information system “routinely violates its own mandate for open government through delays and mismanagement.”

Committee studies usually hear testimony from several expert witnesses ahead of a final report outlining recommendations, some of which may eventually inform new legislation.

As the federal government once again looks at its broken access regime, The Globe and Mail is embarking on its own investigation: Secret Canada, a large-scale research project into Canada's hamstrung freedom-of-information systems. The investigation will dig into problems at the federal, provincial, territorial and municipal levels and explore solutions to the country's culture of secrecy.

During the 2015 federal election campaign, Liberal Leader Justin Trudeau vowed to make sweeping changes to access to information. These included making government information “open by default,” allowing requests to be filed to ministers' offices, undertaking a review of the law every five years, eliminating filing fees and giving the Information Commissioner the power to order institutions to disclose documents.

Seven years on, several changes have yet to materialize. While legislative reviews, eliminating fees and giving the commissioner order-making powers have come to pass, the Treasury Board's review is overdue, ministers' offices are still exempt from access requests and government information is still routinely locked away.



Brian Beamish, a former information and privacy commissioner for Ontario, says that while access-to-information regimes in each province, territory and at the federal level are all slightly different, the problems are universal: delays, costs, the overuse of redactions and a lack of proactive disclosure.

The throughline is that political leaders do not view access as a priority. Mr. Beamish said governments have dedicated a lot of energy and resources in tackling issues around privacy. They do this because they understand there is a political price to pay if citizens think that political leaders are being negligent with their personal information.

“I don’t think that same focus and approach is taken on the access-to-information side,” he said. “I think governments say they believe in transparency and accountability – and I think Canadians want to hear that – but I don’t think [politicians] completely understand what that means until they get involved in the process ... complete transparency can be embarrassing and hurt you politically.”

Governments should still do it, Mr. Beamish said, but instead they “use privacy as a shield” to block information that the public has a right to know.

Michel Drapeau, a lawyer and author of one of the few books written about access-to-information law in Canada, was more blunt.

“Access rights are a quasi-constitutional right. Access to information is a fundamental right of citizenship. The access regime is one of the most abused constitutional rights [in Canada],” he said. “No other act that I know of has been so unfilled and so inured and so blatantly discounted as the access regime.”

Mr. Drapeau, a retired military colonel, says it’s not unusual to wait two years for a request to come back. And, even then, it may be incomplete. The only recourse is to file a request for an appeal – and that process also takes years.

“The system was broken before, and now, after COVID, it’s almost as if there are no rules,” he said.

Help us investigate Canada’s broken freedom-of-information regimes. We’re looking to speak with people who use and interact with the system at all levels of government. Are you a current or former FOI analyst? A public servant? A citizen, academic, researcher or advocate who has filed requests? Are you a current or former appeals adjudicator? A lawyer with experience in this area of law? We want to talk to you. You can get in touch with us at secretcanada@globeandmail.com.

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