

SECRET CANADA

# The dustbin of history

Canada's access-to-information system is more a hurdle than a help to historians, who are denied decades-old files because there's no process for declassifying them and poor records of what's available

**ROBYN DOOLITTLE AND TOM CARDOSO**

THE GLOBE AND MAIL

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Jean-Michel Smith, director of the collection management division with Library and Archives Canada, gives The Globe a tour last November of the warehouse in Gatineau, Que., where LAC stores historical documents.

ASHLEY FRASER/THE GLOBE AND MAIL

Historian Patricia McMahon studies nuclear policy, a famously difficult subject to research as so much of the material is classified.

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So when a legal issue involving Canadian conscription practices during the First World War piqued the York University professor's interest, she figured it would be a nice change of pace from her usual work.

"I thought, 'This will be easy. Who is going to withhold records that are 100 years old?'"

The answer: the Canadian federal government.

Her first requested batch of files were initially denied for privacy reasons, even though everyone involved had been dead for multiple generations. When she tried again, the government claimed the documents were protected under solicitor-client privilege, which Prof. McMahon says is legally debatable and ethically wrong given how much time had passed. At one point, officials tried to withhold the contents of a century-old telegram.

"I had to explain that there is no presumption of privacy with a telegram. It's like a postcard," said Prof. McMahon, who teaches legal history at York's Osgoode Hall in Toronto.

It took six years and five complaints to the federal Office of the Information Commissioner for Prof. McMahon to get her hands on the documents. And unfortunately, she said, her experience is typical for Canadian historians.

Robyn Doolittle [spoke with The Globe and Mail's news podcast](#) about the FOI frustrations of Canadian historians. Plus, [learn more](#) about how federal access policies got so broken in the first place.



Patricia McMahon, a historian at York University in Toronto, says any researcher hoping to obtain historical documents in Canada is going to face barriers.

FRED LUM/THE GLOBE AND MAIL

For the past two years, The Globe and Mail has been investigating the country's broken freedom of information (FOI) regime through a project called Secret Canada. The series has documented a litany of problems, from public institutions regularly violating their statutory deadlines and the overuse

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of redactions, to years-long appeals backlogs. But one of the starkest examples of Canada's dysfunctional access system is the chaos around historical documents.

Many factors have contributed to the turmoil – inadequate resources, outdated technology, a lack of political will to fix longstanding problems – but at the root of the rot is the fact that Canada, unlike so many other democracies, has no system in place to open government records after a set period of time.

The result is that everything that isn't voluntarily released by government is closed by default – forever – until someone applies for it through an access request. From there, the information is scrutinized under modern FOI legislation, which was not designed to deal with decades-old documents.

In interviews with The Globe, dozens of historians, researchers, archivists and academics who regularly deal with Library and Archives Canada say the situation has become so dire that Canadian historians now often rely on the public archives of other countries to do research.

Even worse, many academics – especially PhD students working toward a thesis – have chosen not to study Canadian history, because it's too hard to predict if the source material will be available, says Timothy Sayle, an associate professor of history and the director of the international relations program at the University of Toronto.

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“I am of the opinion it’s a national security problem for Canada ... Not being able to study the past means we aren’t as prepared as a public, a government, and as a country, to make good policy decisions today,” he said.

As an example, Prof. Sayle explained that during the Cold War, the Canadian government had to think through complex scenarios such as: What happens if a nuclear weapon goes off in Europe? What are the pros and cons of each course of action? The experts of the time analyzed these questions in great detail, but almost nothing is publicly known about that work. At a time when the war in Ukraine has forced countries to once again contemplate how they would respond to a nuclear scenario in Europe, Prof. Sayle suggests a proper, scholarly study of that previous work would be beneficial today.

Many great thinkers have opined on the dangers of ignoring history’s lessons, including philosopher George Santayana, who famously warned: “Those who cannot remember the past are condemned to repeat it.”

But in Canada, those lessons are trapped inside cardboard boxes in archival storage warehouses. And despite decades of scholars and experts pointing out why this is so harmful to the country, successive federal governments have done little to clean up the mess.

VIDEO 2:52

For the Secret Canada project, reporters Tom Cardoso and Robyn Doolittle investigated the state of the access-to-information system and how it gets jammed up. Here, they speak with Decibel host Menaka Raman-Wilms about what was involved.

THE GLOBE AND MAIL



## It's your right to know

Accessing information in Canada has been too difficult for too long. [Explore Secret Canada](#), a database of FOI requests and a resource for learning how to submit your own

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FOI laws – which are sometimes called right to information or access to information laws – exist across Canada at multiple levels of government, and in countries around the world. They provide a legal framework for people to obtain public records. Under FOI legislation, records in the possession of public institutions are supposed to be available to the public, except in specific circumstances in which releasing information could cause harm, such as documents that would reveal national security secrets.

But information becomes less sensitive over time.

This is why many countries have “sunset clauses” built into their laws. Under these provisions, previously closed records become open after a defined period of time, often 20, 25 or 30 years – with some exceptions, such as highly classified material. Canada’s access law does include a small number of time limits; there’s a section that deals with information gathered by federal investigative bodies, which states records can be withheld for up to 20 years. But the vast majority of exemptions and exclusions are indefinite and there is no overarching strategy to open records.

This is not the case elsewhere.



The United States, United Kingdom, Australia, and New Zealand – all the other countries in the “Five Eyes” intelligence alliance – as well as places such as France, Germany and Sweden, all have processes in place to open historical records. There are declassification programs relating to the security designation of documents, and sunset clauses, which give clear direction around when a record is no longer sensitive and can be opened.

Among its closest allies, Canada alone has no such programs in place, which creates a cascade of problems.

Experts who spoke to The Globe describe a system marred by lengthy delays – it is common for access requests to take more than a year to complete, with more complicated asks extending multiple years – and confusing redactions. Many researchers complained about the lack of consistency in what types of files are considered sensitive.

“I study the Cold War, the era of the carbon copy. So multiple departments have the same records. It happens frequently that I’ll get back an open document and then, a year later, receive the same one heavily sanitized,” said Prof. Sayle. “So someone has been paid to go through it line by line, when that document is already open.”

In fact, things became so bad at Library and Archives Canada – LAC, for short – that the Office of the Information Commissioner opened a systemic review of the institution. In her 2022 report, Commissioner Caroline Maynard chastised many of LAC’s practices, particularly around consultations with other departments to assess the sensitivity of materials, which caused unnecessary delays.

But even in her report, Commissioner Maynard acknowledged that the challenges with historical records could not be fixed by LAC alone. In her final remarks, she wrote in bold: “Canada is in urgent need of a declassification system.”



Supplies are stacked in a shelter at the Diefenbunker, Canada's Cold War museum, on the outskirts of Ottawa last fall. Studying this era can be a challenge for historians in Canada, which has no declassification process like those of British and U.S. intelligence services.

LARS HAGBERG/AFP VIA GETTY IMAGES

The reality is that FOI legislation was written with contemporary records in mind.

For example, the federal access law has strong protections in place for documents that contain confidential communication between Canada and foreign countries. This is necessary to maintain diplomatic relations. But these are the types of records that become less sensitive over time and that could be released years later without causing diplomatic strife. They're also the kind of source material that historians need to investigate the past.

“The fact that you and I are using the same Act to request completely different types of records – I’m looking at NATO in the 1950s and you’re requesting stuff that happened last week – speaks to the challenges,” said Susan Colbourn, the associate director of the Program in American Grand Strategy at Duke University, and a Canadian who has been based in the United States since 2018.

Prof. Colbourn is primarily a NATO historian. She has worked extensively in countries on both sides of the Atlantic.

“Canada would rank towards the bottom of the pile,” she said. While each country has its unique challenges, the lack of a declassification framework in Canada means there is a tremendous amount of ambiguity around what information even exists.

Recently, Prof. Colbourn was on a research trip to Berlin. While there, she came upon a cache of Canadian foreign policy briefing notes from the early 1990s. “It

was the first time I'd seen that material, despite having spent a fair amount of time researching Canadian records" from that time, she said.

Like Prof. Sayle, she says the secrecy isn't just frustrating for researchers, but has real-world consequences for the present. She pointed to divided Berlin in the 1950s, before Soviet troops suddenly blocked free passage between the East and West. During this period, Canadian officials were closely monitoring developments and considering issues such as territory defence. These files are still closed.

"Look at Ukraine, the defence of Taiwan – what could we have learned from those documents around how policy makers from a previous generation thought about managing escalating risk?"



In 1953, Germans throw stones at Russian tanks in East Berlin; in 2023, Kyiv residents pass destroyed Russian tanks. Canadian historians who want to use one era to analyze the other are out of luck because many 1950s records are off-limits.

THE ASSOCIATED PRESS

The absence of sunset clauses aren't the only problem with the access legislation. The law is written in a way that gives FOI co-ordinators – the people who handle requests within institutions – a significant amount of discretion. Without guideposts indicating the agreed upon moment when a record is no longer considered sensitive, public servants are prone to err on the side of extreme caution.

And here's the kicker: Canada used to have a policy that automatically opened up most historical records, but it disappeared because of the federal access law.

Before the federal government proclaimed the Access to Information and Privacy Act in 1983, Canada operated on a "30-year rule," which came from cabinet directives in the 1970s. Prior to that, the process to obtain historical records was done on a more ad hoc basis. The system wasn't perfect, but it worked well enough and it offered a degree of predictability for researchers. Academics could plan projects around when certain records were due for release.

But the new access law overrode the 30-year directive. Overnight, hundreds of years of available history became closed.

"I was a bit of a Pollyanna when all this came about. I thought that the access law would make a lot more records available," said Glenn Wright, a retired archivist who was working in the national archives at the time the new legislation came

into effect. He remembers some of his colleagues were skeptical. They were concerned about having to suddenly review files that had previously been cleared for release.

Right away, Mr. Wright said, federal departments – which he says didn't want to deal with their new access obligations – began shipping files to the national archives, now called LAC. Stacks of cardboard boxes began piling up. Many had no indication of what was inside. Others came with vague or incomplete inventories. Typically, there was no marking of sensitive versus innocuous material. (Federal departments still rarely do this, despite urgings from Information Commissioner Maynard, who has recommended that federal institutions review and, when possible, declassify files before transferring them to LAC.)

To this day, troves of historical documents in Canada are essentially invisible, because they have not been catalogued or digitized.

“They transferred over 15,000 feet of records in one day in late 1983 – 15,000 feet of records without a list of what was in the boxes,” said Paul Marsden, who worked as an archivist with LAC in the years after federal access legislation was enacted. It was only in the last decade or so that LAC began forcing federal departments to include lists of what is inside each box. These lists are typically high-level information rather than detailed, page-by-page inventories.



Paper records in LAC's collection can be hard to organize without clear labels about what they show or how sensitive they really are.

ASHLEY FRASER/THE GLOBE AND MAIL

In the early 2000s, Mr. Marsden went on to become the lead archivist at NATO. It was during his time in Brussels that he says he came to understand how behind Canada was with its record practices.

Mr. Marsden said that while working at LAC, it was impossible to keep up with the amount of paper being dumped onto the national archives. “The volume of annual transfers tripled almost overnight,” he said. That pace continued for years.

Forty years later, Library and Archives Canada is still digging out of that hole.



Geoff Keelan opens up boxes of documents at LAC's Gatineau facility. He is strategic advisor with the complaints team in the access branch.





The rows of boxes reach up 16 shelves, and accessing the highest ones requires special machines that Mr. Smith demonstrated. Climate controls aim to keep documents fresh as long as possible: LAC says a new piece of paper placed here today would still be readable 500 years later.

ASHLEY FRASER/THE GLOBE AND MAIL

The pages of Canada's past are buried in hundreds of thousands of cardboard boxes, stacked 16 shelves high, on rows that seem to go on forever, in a vast warehouse located just off the highway in Gatineau, QC.

To stand in the space, which has the same feeling as the cavernous military hangar shown in the final scenes of *Raiders of the Lost Ark*, is to understand the impossibility of the challenge. This is why LAC brought a Globe reporter to the building, which is one of six archival storage facilities.

Emily Gusba, LAC's Director General of Government Record Branch, said that as part of their continuing effort to pay for past sins, the institution executed a massive inventory clean-up.

"We located hundreds of thousands of items that had been essentially lost because they had been disconnected from their metadata. Poor past practices led us to not have a good handle on the information," she said.

Conversations are under way at LAC about how technology, such as AI, could help handle the backlog. Extensive work has been undertaken to limit consultation time with the originating departments. They've also explored the feasibility of creating an online repository of records that have already been vetted and released through the FOI process.

"Nothing is off the table in terms of ways to stop the bleeding," she said.

But there's no solution for the reality that LAC is handcuffed by the federal Access to Information Act. Common sense may dictate that a document from 1867 shouldn't be subject to the same disclosure law as a document from last week, but in Canada, that's the situation.

Kristina Lillico, the director general for the access branch at LAC, noted that if Canada was able to implement a declassification system and more sunset clauses – both of which she is "very in favour of" – it wouldn't mean archivists would suddenly start releasing blocks of records without looking at them. In many cases, academics and other interested parties would likely still need to submit FOI requests to obtain files. But declassification would make Canada's onerous system infinitely faster.

“What it could do is bring a government-wide clarity around what is still considered sensitive,” she said. This uncertainty, coupled with the legislation’s discretion, is what feeds the backlog.

But for now, the chances of change seem slim.

In October, following a 9-month review of federal access legislation by a House of Commons committee, the Liberal government announced they would not be making any changes to the law. Among the recommendations that went ignored was a call to automatically release historical records after 25 years and establish a proper declassification program. In a statement, Treasury Board President Anita Anand said the government would look at the legislation again in 2025.

For historians such as Prof. McMahon, the lack of political will to address this problem is maddening.

When she reflects on her years-long battle for First World War conscription files, she thinks of all the time and effort she wasted on administrative work, rather than research. And more importantly, she is frustrated by the fact that some of the records officials had tried to keep secret showed examples of government and judicial overreach during wartime – exactly the type of actions that need scrutiny and analysis.

“History’s messy. So what? Governments shouldn’t be like children who simply hide their messes in the closet, pretending everything is fine. It’s trite but true: sunlight is the best disinfectant.”

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