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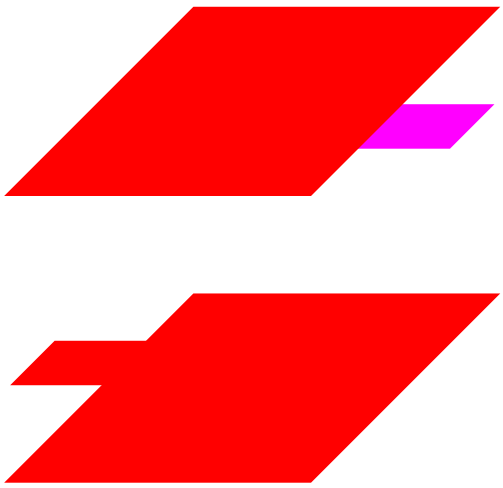
Canada

Access to Information Review

Report to Parliament



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Message from the President of the Treasury Board

The Honourable Mona Fortier
President of the Treasury Board

I am pleased to present to Parliament the Government of Canada's report on the review of Access to Information in Canada.

The *Access to Information Act* enhances the accountability and transparency of Canada's federal institutions. It is in place to create a more open and democratic society by providing all Canadians with important information and encouraging public engagement with their government.

In 2019, Parliament passed Bill C-58, an Act to amend the *Access to Information Act* and the *Privacy Act* and to make consequential amendments to other Acts, the first major reform to this law in over 30 years. Among other improvements, the amendments gave the Information Commissioner order-making power, entrenched a system of proactive disclosure and established a regular review of the Act.

This report represents the first of such review. It was informed by an open, accessible, and inclusive engagement process with feedback from Canadians, Indigenous governing bodies and organizations, experts, access to information advocates, provincial and territorial governments, and federal Information and Privacy Commissioners—all of whom will help shape the next steps.

Through an examination of the legislation, policies, practices, and processes, the report outlines key areas of focus to achieve 3 main strategic outcomes:

- Improving service to Canadians as it relates to access to information;
- Increasing trust and transparency in institutions; and
- Advancing reconciliation with Indigenous peoples.

The areas covered in the report recognize that openness, transparency, and accountability are guiding principles of the Government of Canada.

As President of the Treasury Board, I am committed to upholding these principles and I invite you to read this report.

Originally signed by

The Honourable Mona Fortier, P.C., M.P.
President of the Treasury Board

Executive Summary

In 2020, the President of the Treasury Board of Canada Secretariat (TBS) undertook a comprehensive review of the federal access to information regime (ATI Review). This review included the *Access to Information Act* (ATIA), how information is proactively published, and the way access to information (ATI) is generally delivered. TBS consulted the public, the Information Commissioner of Canada and the Privacy Commissioner of Canada, Indigenous peoples and organizations, federal institutions subject to the ATIA, and the provinces and territories for input. The ATI Review team then worked with various sectors both in and outside of TBS to examine ways to improve the ATI regime.

The ATIA regime faces challenges and opportunities similar to other Government of Canada programs and services. Increasing digital innovation has raised expectations regarding timely service delivery. The Government of Canada is committed to addressing these challenges and taking advantage of these opportunities. Canada's 2022 Digital Ambition presents a bold vision and strategy to continue to use digital innovation and data and information management to improve service delivery and results for Canadians.

In terms of the ATIA, users want to exercise their right of access to receive high quality information without delays. Federal institutions want the capacity and tools to respond to user expectations. The ATI Review revealed that the ATIA is only as good as the operations and information management that support its administration. The overall administration of the law affects users exercising their right of access. In the case of Indigenous requesters, access denied can be justice denied in the context of addressing historical grievances or in efforts today to assert rights, claims or interests. Whether from ATI users or federal institutions, the greatest complaint about the ATI regime is poor compliance with the law. As such, consideration of ATI improvements starts with opportunities to improve implementation of parts 1 and 2 of the ATIA, as set out in this report.

These initiatives range from simplifying language and clarifying processes in the law, to developing more user-centric and equitable practices, and improving oversight. The Government of Canada's need to support the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples Act* (UN Declaration Act) will also guide all efforts. The UN Declaration Act, which received Royal Assent on June 21st, 2021, provides for the Government of Canada, in consultation and cooperation with Indigenous peoples, to take all measures necessary to ensure the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration). The Government of Canada must prepare and implement an action plan to meet the objectives of the UN Declaration and to outline progress in annual reports to Parliament. The 2021 mandate letters called upon Ministers to implement the UN Declaration Act and to work with Indigenous peoples to advance Indigenous rights. TBS has

made concerted efforts to engage Indigenous peoples and reflect Indigenous perspectives during the ATI Review and will continue to engage on solutions going forward.

The report focuses on initiatives that will contribute to realizing three goals:

- Improving service to Canadians
- Increasing trust and transparency in institutions
- Advancing reconciliation with Indigenous peoples

The report notes that improvements to the ATI regime need to be accompanied by broader changes to the ATI system around leadership and culture, technological innovations, training, and other initiatives. ATI service delivery is impacted by other, more significant challenges outside the Access to Information and Privacy (ATIP) office, both within the institution and across government.

The ATI Review has revealed that the stewardship of information and data is the single greatest pain point for the ATI regime. When information is not managed well, it is difficult to find, gather and review it in context, as the ATIA requires.

Importantly, improvements in information and data stewardship support the ability to automate core business functions. Technological improvements, however, need to be combined with a focus on service excellence in delivering on citizens' right to know and initiatives to build and strengthen the ATIP community.

Introduction

The ATIA came into force in 1983 and provides Canadian citizens, permanent residents, and individuals and corporations present in Canada a right to access records under the control of government institutions. There are approximately 265 government institutions currently subject to the ATIA. The President of the Treasury Board is the Minister responsible for supporting the overall administration of the Act across the federal government, and issuing directives and guidelines, while the Minister of Justice is responsible for certain provisions relating to the scope of its application.

The purpose of the ATIA is to enhance the accountability and transparency of federal institutions. In doing so, the ATIA is intended to promote an open and democratic society and to enable public debate on the conduct of those institutions. Policies and procedures that support government transparency and accountability complement the ATIA. The ATIA is considered to be quasi-constitutional in nature, enabling the exercise of key rights such as freedom of expression and democratic participation, which are rights reflected in *Canada's Charter of Rights and Freedoms*. Prior to 2019, the ATIA had not changed substantially since 2006. In 2016, the government committed to reviewing the ATIA in two phases. The first phase made targeted amendments to the ATIA, while phase two was intended to be a comprehensive review of the ATIA.

Phase one was completed in June 2019 with Bill C-58 coming into force. Some of the key changes brought about by Bill C-58 include:

- the creation of Part 2 of the ATIA, requiring the proactive publication of certain government information historically requested under the ATIA;
- the Information Commissioner being granted the power to order the disclosure of records at the conclusion of an investigation; and,
- a requirement to review the ATIA every five years, with the first review to begin within a year of Bill C-58's passage, and each concluding with the tabling of a report in Parliament.

In June 2020, the President of the Treasury Board launched a legislated review, thereby fulfilling both the new legislated review requirement, and the public commitment from 2016 to conduct a comprehensive review of the ATI regime. The Terms of Reference for the ATI Review comprised three major themes including reviewing the legislative framework; examining opportunities to improve proactive publication; and exploring ways to improve service and reduce delays.

As part of the review, TBS officials conducted public engagement activities between March and August 2021, including with public servants and government institutions subject to the ATIA. An online engagement platform was launched in March 2021, where the public was able to provide submissions, register for engagement events and participate in a user experience survey. In

addition, public engagement events organized around key themes were held over Summer 2021. Overall, TBS received 34 submissions from the public, 294 survey responses, and heard from 380 participants. Input was used to develop an interim What We Heard report that was published in December 2021.

At the beginning of the ATI Review process, a separate Indigenous engagement process was announced to create meaningful opportunities for Indigenous peoples to engage with the Government of Canada on ATI and share their experiences and perspectives to improve the ATI regime. Indigenous engagement activities began in Fall 2021. TBS officials continued outreach with various Indigenous groups throughout the review period and have reflected their input in an Indigenous-specific What We Heard report, and in this report. Engagement data has informed the analysis and opportunities for improvement found in this report. This data was supplemented by two independent studies: an evaluation conducted by TBS's Internal Audit and Evaluation Bureau on proactive publication, and a commissioned study by Ernst & Young LLP to examine the total costs of the ATI regime.

The report begins by providing an overview of the current digital context in which the ATIA regime operates. Then, the report turns its focus to key areas and potential initiatives that will contribute to realizing three goals:

- Improving service to Canadians
- Enhancing trust and transparency
- Advancing reconciliation with Indigenous peoples

The proposed areas of focus outlined in this report are organized around these goals. Where there are connections between issues, we have made every effort to identify those and to speak to issues raised, uncovered, or considered during the review, at least in broad terms.

Improving Service for Canadians

Canada's Digital Ambition recognizes that the Government of Canada must make concrete efforts to make it easier for Canadians to interact with the government. This includes making meaningful improvements for Canadians in terms of services as well as making it easier to exercise their rights in a digital age. Maintaining outdated systems and approaches is costly in terms of resources and in terms of trust and confidence in government administration. Effectively managing information and data assets will be instrumental to realizing the efficiencies and service improvement possibilities of new digital technologies.

ATI is doubly affected by information management. The ability to find and retrieve records from various information sources is at the core function of providing government records to users, whether proactively published or upon request. Improving information management also enables automation of core business functions, to drive service improvements and improve accountability and transparency.

The challenge, however, has been that the responsiveness of that service has been declining as public expectations for service excellence continue to rise. Public and Indigenous input highlight worsening challenges for ATI across the service spectrum. These include challenges related to official languages, accessibility, and culturally appropriate services for Indigenous requesters. There is increasing public pressure to bring the ATI regime more in line with contemporary expectations by making it more responsive, accessible, and relevant. Service delivery can shift away from a reactive posture using outdated tools and processes, toward a more proactive, user-centric approach.

This section explores the relationship between information management and the ATI regime, as well as the expectations of Canadians for inclusive service that meets diverse needs. It also considers capacity challenges and enhancements in the ATI community and across the regime, as well as institutional practices related to extensions and consultations.

Information Management and Access to Information

Effective information management is foundational, not only to ATI, but to all aspects of government services, program areas and business practices. Information management covers a spectrum of the set of activities related to information governance and planning, storage and organization, and the disposition of records. The practice of security classification and declassification of records is part of a lifecycle approach to information management and is discussed in its own section elsewhere in this report. Digital tools also increasingly rely on and generate significant volumes of data and metadata, which need to be considered at all stages of managing information. The following sections discuss each of these elements.

Data Governance and Planning

The world's data and information assets are increasingly governed by the FAIR principles: they should be findable, accessible, interoperable and reusable. These principles continue to underpin the renewal of the Government of Canada Data Strategy currently underway.

These are applied to business assets for the purposes of improving internal processes, corporate knowledge transfer, and systems integration. They are also increasingly applied to external-facing assets, such as open data and open-source coding by both government and private sector interests. Where digital systems can "speak" to one another, and they are deployed ethically and responsibly, there are universal benefits. There are clear reasons for institutions to adopt these principles: for themselves, for the benefit of the Government of Canada, and for the benefit of the public they serve. The Government of Canada needs to be able to produce authoritative information and data that is reliable, accurate and usable. To meet this information management challenge, the government needs to examine systemic solutions.

Effective governance, asset standards and stewardship can help business processes become more seamless and integrated. Data assets can be harnessed for public good, both economically and socially. While some work has occurred at the Government of Canada enterprise scale to improve information and data governance, much remains to be done. Through efficiencies gained using common business practices, the Government of Canada, and partners free up resources for critically important challenges. This includes areas such as climate change and emergency preparedness, for which authoritative data and information are key.

There is an opportunity to harmonize processes and systems within the ATI regime and to enhance oversight, governance, and security measures. Innovative technologies can reduce human error in the examination and assessment of records across the Government of Canada, generating more consistent and timely responses to system users. Such a regime could be more responsive to emerging trends and interests. This can reduce burdens on the ATI regime, while improving transparency and public accountability. Efficiencies could be similarly realized for dozens of common business lines across the Government of Canada, not only in ATI.

Storage and Organization

Government institutions often use multiple systems to store and manage information and data assets, many of which are outdated systems. This storage ecosystem presents challenges for searching and retrieving records and adds to the cost of managing information not only within ATIP teams but everywhere in government that information is created, kept and used.

The Policy on Service and Digital requires the Chief Information Officer of Canada and institutional Chief Information Officers to manage information and data as strategic assets in

support of government operations. The Policy on Government Security and Directive on Security Management provide direction for the security of this information and data. In addition, the Government of Canada Digital Standards also urges employees to improve services with necessary tools, training and technologies, and good data stewardship.

Though the Government of Canada has established a framework for digital innovation, it has mostly focused on the institution level. Greater harmonization across the Government of Canada is required to achieve more transformative results. For instance, institutions maintain various information management systems, often implementing new ones without transferring information and data to new systems and decommissioning the old. In other instances, the transfer is done from one system to another but with a minimum of curation or cataloguing of assets. This results in information that does not fit any existing information and data architecture and lacks corporate context.

Effective information and data stewardship is challenging against this backdrop of multiple information storage systems, especially where each system must be searched individually. It can also weaken corporate memory and the degree of trust in data and information assets, for instance, where there are multiple versions of an information asset stored in several places. Lastly, it makes delivery of service more challenging. This is especially true for information-based services like ATI where retrieval of records involves searching various systems for relevant records without a clear sense as to where such records are stored.

Digital approaches can streamline searchability and retrieval, and they can help public servants perform their jobs more efficiently and be less reliant on the memory of long-tenured colleagues.

The ability to perform rapid searches for information across institutions also enables digital innovation. For example, it provides for the longer-term development of data and information inventories, which supports reusability – another of the Government of Canada's Digital Standards. Even a modest advancement in internal searchability can also enable enterprise searchability of records. This could dramatically improve collaborative opportunities between institutions and the ability to share information, while reducing work duplication. It could also increase the possibility of streamlining common business processes between institutions.

Retention Requirements

All government institutions are expected to set retention requirements for their records – that is, the period a record is to be kept. However, there is still significant variation in retention periods for similar records between government institutions and instances where no retention period is set at all. Government officials do not consistently assess and identify records that are transitory

or no longer have business value. This lack of regular disposition can in turn contribute to ATI processing volumes.

Library and Archives Canada (LAC) created Generic Valuation Tools to help institutions identify the kinds of records typical of common government business processes. The tools suggest retention periods based on legal or regulatory requirements and best practices, though such tools do not authorize disposal of information. The consent to dispose of records must be given by the Chief Librarian and Archivist of Canada, under section 12 of the *Library and Archives Canada Act* .

The responsibility for establishing, implementing and maintaining retention periods for all information and data rests with an institution's Chief Information Officer, in accordance with the Directive on Service and Digital. They must also document their disposition process and perform regular disposition activities, including seeking the consent of the Chief Librarian and Archivist to dispose of records. Though intended to support strategic asset management, including accountability, the directive emphasizes "information of business value" to the institution and its mandate as a primary focus. In practice, this can result in many minimum retention periods being set, but no maximums. However, the *Library and Archives Canada Act* can compel institutions to provide LAC with records of archival value for proper safekeeping. The Government of Canada, in the meantime, has continued to implement digital tools that create information and data. In so doing, it has run into challenges in how to classify that information for retention. Many of those commonly used tools, such as email and other digital messaging tools, default to a transitory status. It is up to individual employees to use the tools appropriately and properly store and safeguard that information for an appropriate amount of time, and then to dispose of it.

At the other end of the spectrum, the blanket application of retention periods to all records creates a proliferation of legitimately transitory records, such as draft versions of records. Each time edits are made to a record, the digital system saves a new version; old versions, however, are not removed systematically. It is not uncommon to see dozens of versions of a final document. All these versions are saved, with each successively older version having rapidly diminishing value over time since the need to return to older drafts is typically immediate. When drafts of documents are requested, these must all be retrieved, reviewed, and processed as separate records, since their content differs slightly.

There are many benefits to adopting clearer standards on retention and disposition. Firstly, there are digital storage considerations: removing stale-dated draft documents will dramatically reduce system storage needs. In fact, removing this transitory information will likely clarify government decisions for ATI users, rather than requiring them to filter out information that is not current or

of draft quality. Clarifying when and under what conditions information needs to be retained more universally will also support a duty to document for the Government of Canada. Secondly, improved standards will help clarify when records need to be transferred for safekeeping, notably for records of enduring value. Some of these records may also straddle categories, having each of ongoing business value and historical value, and clarifying when records must be transferred will help preserve these high-value records. Even if they are being preserved by LAC, records of enduring value can still be accessed by the originating institution.

Automating Metadata

Metadata is data that allows records to be sortable, manageable, and understandable, both by human users and, more importantly, by digital information systems. There are many types of metadata:

- descriptive (e.g., titles, dates, author, IP address);
- structural (e.g., section headings in a document);
- preservation (e.g., access permissions);
- provenance (e.g., versions);
- use (e.g., when and under what conditions a record is downloaded); and,
- administrative (e.g., the rules applied to the data in a file).

When done comprehensively and with standardization, metadata can enable increasingly complex and highly automated digital services and business practices, including ATI. Metadata enables automation of aspects of information management across the information lifecycle, from simple searchability to declassification and data linking. It can also be used to automate reporting functions, improving both consistency and real-time capacity to report on program performance, while enhancing capacity. Reducing the variability of the current decentralized approach that relies on employee choices in the creation of metadata can improve the Government of Canada's ability to sort, find and use its information and data holdings. As such, an enterprise approach to metadata tagging could have broad benefits for the ATI regime and for the government's overall digital ambitions.

The Government of Canada is revising its Standard on Metadata, which will provide guidance for its use. Currently, information technology offices both procure and implement different application functionality that affects the type of metadata being generated. Also, with digital transformation comes the need for new digital skills. Creating consistent, coherent metadata within and across the Government of Canada requires new knowledge, consistent training and an appreciation of the value of metadata.

Conclusion(s)

Effective information management is foundational to digital innovation, and the reverse is equally true. A more consistent strategic lifecycle management of the Government of Canada's information and data assets will require looking at how centralized frameworks and governance, improved storage and organization, retention requirements and metadata tagging tools could yield broad improvements across government in service delivery and program efficiencies.

Building ATI Community Capacity

ATIP professionals are a long-established community of practice in the Government of Canada. As noted throughout this report, the concerns of the community tend to focus on immediate and practical needs. For example, the community is concerned with having appropriate tools and resources to fulfill their legislative obligations. The community is supported by a formal ADM-level committee, and a quarterly meeting open to all community practitioners.

Unlike some other communities of practice such as human resources or information management communities, the ATI community's core competencies and roles are not as well-understood and defined across the community. The ATI Manual defines only one role, for instance: that of the ATIP coordinator, who is intended to act on behalf of the head of the institution and the deputy head responsible for ATIA compliance. The Manual also lists the main responsibilities expected of an ATIP office, such as processing requests, reporting, and collecting statistics related to the administration of the ATIA. It does not, however, provide guidance on best practices in assigning or organizing those responsibilities. Institutions therefore implement those responsibilities and, importantly, may expand upon them.

In fact, ATIP offices are increasingly doing work beyond supporting the administration of the ATIA and its directly related functions. This includes work such as supporting non-ATI related judicial processes, reviewing other information and data disclosures, and responding to Parliamentary disclosure processes. A professional framework for ATIP offices and their staff would help establish clear responsibilities. Furthermore, this professional framework would benefit the Government of Canada's training regime for the ATI community, allowing for greater centralization and consistency across the Government of Canada.

The Chief Information Officer of the Government of Canada has established an Access to Information and Privacy Communities Development Office (the development office). The development office has crafted an action plan to address these challenges. The plan includes work to build and strengthen the ATI community through career and leadership development and community generics such as refreshing existing and developing generic human resources products (e.g., job descriptions and competency profiles) for hiring managers and ATIP practitioners. There remains, however, ample room to continue advancing related initiatives,

especially in supporting recruitment and retention activities, and providing ATIP professionals with additional training and development programs. A stronger community presence can also improve service delivery by increasing the profile of the ATI community among other communities of practice. A better integration with relevant stakeholders across the Government of Canada and facilitating more open dialogue on mutual challenges can provide benefits to the ATI community.

Conclusion(s)

Clarifying roles, responsibilities and training for ATIP officials, with appropriate centralization of core services to the community, will make ATI services more consistent and efficient across the Government of Canada.

ATI Workforce Planning

Adequate human resources capacity is a precondition for Government of Canada institutions to be able to successfully deliver ATI services in an efficient and timely matter. The heads of government institutions are responsible for the administration of the ATIA within their respective institutions. Pursuant to section 95 of the ATIA, heads may decide whether and how to delegate their powers, duties, and functions. In larger institutions, this usually results in the creation of a dedicated ATIP office, though roles of ATIP officials and the coordinators who head the office can vary widely. Smaller institutions, which receive few and sometimes no requests in any given year, may only have one ATI official on staff and they are likely to be performing those functions alongside other responsibilities. Each institution head has autonomy over how resources are allocated to ATIP offices, which can result in significant variation in how roles are defined and maintained.

Institutions face the challenge of anticipating the number and complexity of requests they will receive to inform staffing decisions regarding ATI operations, which can vary year to year due to unexpected major events (e.g., natural disasters, terrorism, pandemics, etc.). The COVID-19 pandemic, for example, introduced new operational and administrative challenges as ATI officials adapted to teleworking arrangements. The nature of the pandemic led to a surge of ATI requests for certain institutions, such as Health Canada and the Public Health Agency of Canada, which were not equipped to handle the significant increase in volume.

In a 2008-2009 report by the Information Commissioner, 17 of 24 institutions surveyed reported shortages of ATIP staff as contributing to access request delays. In 2012, TBS released a report identifying staff shortages as a contributing factor to delays in processing information requests. More recently, the Information Commissioner's 2020-21 Annual Report asserted the "urgent government-wide need to adequately invest in human resources in the field of ATI, by creating pools, hiring sufficiently qualified staff and developing appropriate ongoing training for

employees." The Interim What We Heard Report for the ATI Review, released December 2021, echoed these sentiments noting that ATIP offices could be better resourced.

These reports and statistics indicate that the ATI community could benefit from a long-term plan and broader coordination of the ATI community's needs. Such a plan could assist in building a more sustainable and skilled ATI community, which is also more responsive to both institutions and the Government of Canada's needs overall rather than an institution-by-institution basis.

Conclusion(s)

An enterprise-wide ATI workforce strategy would improve composition, competency, recruitment and retention of ATIP professionals.

Accessibility and Official Languages

Accessibility and official language considerations factor into both request processing under Part 1 and proactive publications under Part 2 of the ATIA. In Part 1, subsection 4(2.1), the head of an institution is subject to several obligations collectively referred to as the "duty to assist." The duty asserts that the head must:

- make every reasonable effort to assist the person in connection with the request,
- respond to the request accurately and completely, and
- provide timely access to the record in the format requested.

Under Part 1, in addition to this general duty to assist, section 12 of the ATIA requires institutions to provide a requester with records in their preferred official language if requested and the record already exists in that language, or if it is in the public interest to translate the record. Also, where considering it reasonable to do so, institutions may provide an alternative format to requesters. For example, if the requester has a visual impairment in the case of accessibility. Unless requested otherwise, most institutions use ATI processing software to provide requesters with a package responsive to their request in a pdf format and in the language in which the records exist. Under Part 2 of the ATIA, institutions must meet the same publication requirements of all online content published by the Government of Canada, including meeting accessibility standards and being published in both official languages.

There is now also an opportunity to further enhance accessibility within the ATIA regime in a manner that supports the mandated commitment under the Accessible Canada Act for federal government institutions and Crown corporations to become barrier free by 2040.

One approach to both official language and accessibility checks is to leverage rapidly improving automated tools to enhance human capacity. While accessibility tools are still far from meeting

all requirements, newly available ATI processing software holds promise. The performance of AI-assisted contextual translation tools is tied to the writing quality of the source material. Such tools crawl authoritative source materials across the web, including the official translations on Government of Canada web pages and publications to locate common syntax and expressions. Many now include phrasing options at the click of a button. The sophistication of these tools is continuing to evolve and remains subject to scrutiny around the ability of any technological tool to meet translation quality associated with human expertise.

The steady stream of requests in the current system for the responsive records to previously completed ATI requests would be unnecessary if all records disclosed under the ATIA could be made immediately available for access by the public.

Conclusion(s)

Products and services delivered under the ATI regime need to be inclusive of all those exercising their right of access.

Extensions

The ATIA does not set specific time limits for extensions, relying instead on criteria for when an extension may be taken, while the length is determined based on reasonableness. As government institutions have wrestled with capacity challenges in ATI, they have trended toward taking increasingly lengthy extensions. Section 7 of the ATIA requires government institutions to respond to access requests within 30 calendar days of its receipt. Institutions may extend the legislated time limit if any of the following circumstances are met under subsection 9(1):

- request is for a large number of records or necessitates a search through many records and meeting the original timeline would unreasonably interfere with the institution's operations;
- consultations are necessary and cannot be completed within the 30-day time limit; or,
- if a request requires a notice be sent to third parties of the potential release of information.

An extension must be for a "reasonable period," given the specific circumstances. This is assessed on a case-by-case basis, with additional guidance offered to institutions in the Access to Information Manual. Institutions must inform the Information Commissioner of any extension that goes beyond 30 additional days, pursuant to subsection 9(2) of the ATIA.

A "reasonable period" is not defined in the ATIA. Institutions rely on policies and guidance developed by TBS to help make that determination, as well as relevant

jurisprudence.[1] The Directive on Access to Information Requests directs institutions to ensure that the length of an extension taken is as short as possible and can be justified. Institutions must also establish a process that would ensure justifications for extensions are documented and supported by evidence. During the ATI Review's engagement process, some government institutions specifically mentioned the need to have more guidance on extensions along with clearer requirements for applying them. A lack of clarity contributes to varied interpretations of what is "reasonable," which in turn produces inconsistent service across the Government of Canada. That then leads to significantly more complaints to the Information Commissioner, with complaints about extensions forming one of the largest categories of complaints received.

The ATI and Privacy Statistical Report for 2020-21 shows that in recent years there has been a government wide annual decline in responding to requests within the legislated timeframes. Only 51 percent of government institutions in 2020-21 (excluding Immigration, Refugees and Citizenship Canada) were able to complete at least 90 percent of their ATI requests within those timelines. While this problem can be attributed to multiple factors, a general lack of understanding of the extensions provision is a contributing factor. This is also a problem of non-responsive offices of primary interest and third parties. Recent reports of the Information Commissioner have shown that deliberations on disclosure of information within institutions delayed responses and that deadlines for internal responses were not clearly communicated to offices of primary interests.

The COVID-19 pandemic has shone a spotlight on these challenges, as ATIP employees were teleworking and still relying on records that were sometimes only accessible from the institution's main offices. ATIP offices were generally not included in the business continuity planning or critical services inventories of institutions, meaning ATIP staff were unable to access their office spaces.

While the COVID-19 pandemic is unprecedented in the history of the ATIA, temporary losses of access to ATIP offices are not. Extreme weather events, and threats of violence or terrorism have and will continue to temporarily close office buildings, and ATIP offices along with them. The ATIA does not have a provision that allows institutions to extend or pause the legislated timeframe in such extraordinary circumstances, even when the safety of employees is at risk.

Other jurisdictions have capped extensions, including similar international environments as well as Canadian provinces. For instance, in Quebec, ATI legislation permits an institution to extend a

1. Note: In Canada (Information Commissioner) v. Canada (Minister of National Defence), 2015 FCA 56, the Federal Court of Appeal addressed considerations related to extensions and noted, "a government institution confronted with a request involving a great number of documents and/or necessitating *broad consultation must make a serious effort to assess the required duration, and that the estimated calculation be sufficiently rigorous, logical and supportable to pass muster under reasonableness review.*" (emphasis added)

response by a maximum of 10 days, except where third party information is involved in a request. Similarly, British Columbia's (BC) ATI legislation sets the maximum to 30 days in specific circumstances and requires the BC Information and Privacy Commissioner's permission if an extension is to go longer. In the international context, both the United States of America and Australia have set maximum times for extensions. In the USA, it is 10 days, except in certain circumstances, and 30 days in Australia. In Australia, both the Information Commissioner and the requester must consent to the extension.

ATI operations support a legal right of access. Plans must be in place in case of disruption to operations and/or to remove any potential barriers to access. Setting stricter limits on extensions with appropriate consequences for missing deadlines, while allowing for obvious protections for staff and property, is becoming more the norm internationally.

Conclusion(s)

Exploring ways to reduce the use of lengthy extensions in concert with digital innovation and ATI capacity improvements, could increase institutional compliance with legislated deadlines in the ATIA.

Consultations

The ATIA allows institutions to consult one another on ATI requests, and to take extensions for a reasonable period to do so. Consultations between institutions are sometimes necessary to respond to a request for records. This is particularly when information held by one institution was created by another, meaning the subject matter expertise is located elsewhere in the Government of Canada. There is no hard cap, however, on the number of days allowed to complete those consultations. Section 4.1.31 of the Directive on Access to Information Requests states that institutions should undertake inter-institutional consultations only under two circumstances:

- when the processing institution requires more information for the proper exercise of discretion to withhold information; or
- when the processing institution intends to disclose potentially sensitive information.

Section 4.1.32 also states that consultation requests from other government institutions are to be processed with the same priority as access to information requests. The President of the Treasury Board issued an implementation notice on September 27, 2022, to reinforce these matters, while providing additional guidance.

Section 7 of the ATIA requires that institutions respond to ATI requests within 30 days. However, institutions may extend this time limit when consultations are necessary, provided the extension

is reasonable in the circumstances described under paragraph 9(1)(b) of the ATIA. The ATIA does not specify a time limit within which a consulted institution must respond. However, section 4.3.9.6 of the Policy on Access to Information states that any consultations are to be undertaken promptly and section 4.1.28 of the Directive on Access to Information Requests states that any extension taken must be as short as possible and must be reasonably justified.

Reasonableness is not defined in the ATIA. Additionally, there are no defined obligations for the recipient of a consultation request in the ATIA. There are also no consequences for failing to respond since the consulting institution is responsible for meeting the legislated timelines. This issue is compounded by the tendency to be deferential to the views of the consulted institution, which delays decision-making by the consulting institution if deadlines are not met. As a result, in practice, consultations are often not given the same priority as ATI requests and contribute to delays in responding to requests. These delays can be exacerbated should consultations involve multiple institutions.

The Information Commissioner's recent report to Parliament has identified inter-institutional consultations as a broad challenge faced by Canada's ATI regime. The Information Commissioner has also published other reports recommending more efficient consultation processes, which would reduce extensions taken by institutions when there is a need to consult on a request. A large proportion of all complaints registered annually by the Information Commissioner relate to time extensions. As the Interim What We Heard Report for the ATI Review highlighted, the Canadian public is aware of this access barrier and concerned with the use of lengthy extensions, even years in length.

Capping consultation extensions has become the norm in modern ATI (also known as Freedom of Information) regimes, using both hard and soft caps. Hard caps set a strict limit, while soft caps make the extension reviewable by an oversight body like the Information Commissioner prior to being taken. In Canada, for instance, section 10 of BC's *Freedom of Information and Protection of Privacy Act* sets a cap of 30 additional days for consultations with other institutions, which may be extended with permission from BC's Information and Privacy Commissioner.

As the Government of Canada looks to modernize its service delivery, including in ATI, the delays associated with consultations also need to be examined in the context of streamlined digital services and leveraging existing platforms, such as ATIP Online.

Conclusion(s)

Examining policy options that seek to reduce the time taken to consult while improving necessary inter-institutional consultation capacity, alongside digital innovation and ATI capacity improvements, could improve institutional compliance with legislated timelines in the ATIA.

Administering Complex Requests

Section 6 of the ATIA sets out the general criteria for submitting a valid request. Under the ATIA, a request must be made in writing to the institution that holds the record and that the request must provide sufficient detail to enable an experienced employee to identify the records with a reasonable effort. Requesters must also pay an application fee not exceeding $25 per request, though it is currently set at $5 by regulation. Only a request for access that is vexatious, made in bad faith, or is otherwise an abuse of the right of access can be declined, by the head of the government institution, with the Information Commissioner's written approval.

Most requesters are quite specific, often identifying a single subject area and record type, or a date range for records, which can make it easier to process a request. Not all requesters are as precise, while others may be extremely precise but are seeking all records on a particular subject, which can make it difficult to assess records for relevance and slow the processing time. Whether a request generates 10 or 10 million pages, institutions must respond to the request unless it is an abuse of the right of access, as described above. Moreover, certain requests may not produce a voluminous set of records in response, but they may require specialization – of both tools and training – to be processed efficiently (e.g., audio-video and photographic records).

Whether requests produce a significant volume of records, or they are of a type requiring specialized tools and training to process, these types of complex requests can pose significant challenges to institutions. ATI regimes use multiple strategies to manage the challenges such requests create. Most commonly, and used both provincially and internationally, processing fees may be applied to limit the scope or complexity of a request. Other regimes exclude draft records or certain types of data, or they apply more specific criteria to determine what is a valid request.

Requests generating multi-million pages of responsive records have become an annual occurrence (e.g., 2017-18, 2019-20 and 2020-21), which are a significant burden on institutions due to the resources required to process them in a timely fashion. The proliferation of digital records – drafts and multiple versions of a single document, for instance – can contribute to the complexity of requests. Technologies producing audio-visual media also have proliferated in recent years.

While there will always be a need for institutions to work with requesters to administer complex requests, the tools at their disposal can also play a role. Best practices can be baked into the government's ATIP Online portal, which will help requesters with their precision and institutions better interpret their requests. Optional fillable fields in the request form, for instance, could produce more consistent results. Automated decision-making, too, can support search, retrieval and review of records. Request processing fees were also discussed in ATI Review submissions

and during engagement activities. However, there was no consensus on an approach to use fees as a means of reducing request volumes or scope.

Conclusion(s)

Exploring ways to leverage technology to administer complex ATI requests will be a net benefit to all ATI requesters and institutions alike.

Enhancing Trust and Transparency

The ATIA is recognized by the Supreme Court of Canada as quasi-constitutional in nature because it is a key enabler of other rights, such as freedom of expression and democratic participation. Disclosing information, whether through open government initiatives or through declassifying and eventually disclosing formerly sensitive information, also contribute to these objectives. Together, the right of access under the ATIA, proactive publication, lifecycle management of information and open government serve to enhance the accountability and transparency of government institutions. They are also intended to contribute to greater trust in democratic processes.

The ATI Review revealed that the ability of the ATIA to serve its intended purpose depends on effective and consistent application of the ATIA's provisions across the public service. Put another way, the overall administration of the law can either enable users exercising their right of access or get in their way. The same is true of trust and transparency: how the ATIA is administered has a direct impact on both. Across multiple channels of engagement input into this review, the greatest complaint about the ATI regime is poor compliance with the law. Conversely then, there are considerable opportunities to improve ATI in the Government of Canada by better implementing the current regime.

Key to these opportunities is strengthening the proactive publication of information under Part 2 of the ATIA. As part of this review process, TBS's Internal Audit and Evaluation Bureau (IAEB) assessed the efficiency and effectiveness of proactive publication across the GC. The Evaluation of Proactive Publication under Part 2 of the ATIA determined that over the first two years of implementation, institutions showed significant improvements in efficiency and program delivery, notably, during a global pandemic.

Several areas were identified for improvement. These include, among others, a need for institutions to be monitoring performance against their obligations and examining the use and usefulness of proactively published information. TBS has a role to play in these challenges through improved guidance, policies, and community support and to foster a culture of transparency and openness.

Alongside the ATIA, Canada's commitment to Open Government also serves to enhance transparency and accountability in government.

In 2022, Canada marked a decade of membership in the international Open Government Partnership and released its 5th National Action Plan on Open Government. In modern democracies and economies, open data serves as both information and socio-economic resource. The Action Plan outlines a series of initiatives to give people access to the information and tools

they need to better understand the impacts of climate change, to protect against misinformation and disinformation, to advance corporate transparency, to address their legal problems, and to encourage participation in fair, democratic processes. Canadians will be able to monitor progress on the commitments and activities through an online tracker available on open.canada.ca.

Canada is also a member of the Digital Nations, a group of the most digitally advanced governments in the world that collaborate and share best practices to improve their digital services. As a member of this forum, Canada has committed to the Digital Nations Charter which includes commitments on open government, digital inclusion and accessibility, among others.

This section examines these core elements of Canada's broader transparency and accountability practices, from declassification and open government to the foundations provided by the ATIA including proactive disclosure.

Declassification

Government officials assign a security rating to records based on the risks associated with the record being disclosed. These categories range from risks to an individual's privacy and personal dignity, to those related to Canada's national interests and security. Security categorization is based on the risks that exist at the time they were applied and dictate how government officials handle and store the information. As such, maintaining classified records over the long-term can lead to ongoing financial, technical and physical burdens. Declassification involves re-assessing the risks that existed when a record was first created, considering the passage of time and its effect on reducing or removing those risks. This process may or may not result in downgrading the security category, but often does.

TBS's Directive on Security Management requires institutions to define and document the requirements for protecting government information against threats throughout its lifecycle (Appendix B.2.2.1.3). This includes assigning the shortest possible period for the protection of information, taking into account risk, privacy, legal, or other policy considerations (Appendix E.2.2.2.2). The Directive does not provide for compulsory declassification. It notes that the security category applied to records may be downgraded "when the expected injury is reduced." This leaves the decision at the discretion of deputy heads regarding the application of the policy within their respective institutions.

Currently, departments and agencies do not regularly assess their records for declassification purposes. As a result, records are classified indefinitely at the security level they were assigned when they were created. In a few institutions, the only practical trigger for reviewing these records for public release is an ATI request. Having a large volume of historically classified information results in lengthy delays in processing ATI requests, and it may place a substantial

burden on the ATI regime. They must then turn to internal subject matter experts, and often enough, experts in other institutions to conduct the appropriate risk assessments prior to disclosure. Both steps slow ATI responses due to the considerable time spent on consultation, research, and review and the specialized subject matter expertise required in handling this type of information.

These challenges are acute among Canada's National Security and Intelligence institutions. This is due to the common usage of Secret, Top Secret and Special Intelligence security categories associated with the potential injury to the national interest if such records are disclosed without authorization. Canada is the only Five Eyes nation (including the USA, United Kingdom, New Zealand and Australia) that does not have a systematic, risk-managed approach to declassification that enables scheduled reviews, downgrading, or declassifying records. LAC is the repository for millions of pages of historical records that remain classified indefinitely without a means to proactively review and downgrade or declassify records that no longer contain sensitivities. The challenge is compounded by the age of the records. Moreover, the unavailability of subject matter experts with both historical records and subject matter expertise is a significant gap within ATI areas across government departments that limits the capacity to review and address classified records within the Government of Canada. To assist with the declassification process, some national programs use a forward marking approach, which is a process of tagging records with a scheduled or expected review time. This approach to forward marking can create a foundation for systematic review, while also lowering the risk of adding to record sets that will need to be reviewed in the future.

In recognition of these challenges, Public Safety Canada has concluded a collaborative pilot project with LAC, Privy Council Office, and the National Security and Intelligence community to declassify historical records of the Joint Intelligence Committee. The pilot was intended to evaluate a national security and intelligence-specific framework for declassification and downgrading. The pilot is a first step in determining how a largescale review of classified historical records might be undertaken, and the manner and extent to which declassification can be actioned in a meaningful way.

On April 26, 2022, the Information Commissioner released two reports, a systemic investigation regarding LAC's delayed responses to access requests and a special report to Parliament that highlighted this issue along with the need for a declassification program. The special report highlighted that more rigorous declassification could play a significant role in reducing LAC's ATI burden by allowing for more proactive disclosure of Canada's National Security and Intelligence history. The Information Commissioner also noted that LAC and the National Security and Intelligence institutions' consultation burden would be lessened. This is because LAC would not need to consult the National Security and Intelligence community as frequently

on what information could be disclosed if it were proactively declassified or downgraded. The special report builds on a theme that has been developing for several years at the Information Commissioner related to declassification.

Conclusion(s)

A systematized approach to declassification supports government transparency and accountability, enhances access to Canada's history, and improves the agility of the ATI regime and security of information systems.

Obligation to Document Decisions

Although there are many requirements to create and maintain specific record types in the Government of Canada, ATI stakeholders have long advocated for a comprehensive, reviewable, and enforceable "duty to document," without which the consistent and thorough recording of decisions cannot be assured. These types of decision-related records are often sought through access to information requests.

The Policy and Directive on Service and Digital sets out the requirements of proper recordkeeping, supported by the Guideline on Service and Digital and Directive on Security Management. These instruments provide advice, security considerations and best practices for their implementation for recording decisions and activities of business value. The Directive on Service and Digital, for instance, is subject to the TBS Framework for the Management of Compliance, but information is not collected on compliance. There are neither clear obligations for institutions to audit and report on their recordkeeping responsibilities, nor a mechanism in place to measure reporting efficacy. As a result, there are no consequences for non-compliance and no information on the issues or problems faced by institutions in fulfilling their obligations. The instruments also only apply to 78 of the approximately 265 institutions subject to the ATIA, representing a large policy coverage gap, even if those 78 institutions receive most ATI requests.

Most countries comparable to Canada have a legislated duty to document, as do some Canadian provinces. These are occasionally articulated in the country's ATI legislation; internationally, they are more often found in legislation dealing explicitly with official records or archives. Canada's *Library and Archives Canada Act* (LACA) is like other official records-type laws. It sets out requirements for LAC to preserve Canada's documentary heritage and to help government institutions manage their information. The ATIA confers a right of access to records, while also empowering the President of the Treasury Board to cause to be kept under review the way information under institutions' control is maintained in support of that right. Neither the ATIA nor LACA, however, has a legislated requirement to create records.

The ATIA has compliance mechanisms through both the Information Commissioner's investigative and reporting authorities, coupled with the possibility of federal court review. If a duty to document were considered for either the ATIA or the LACA, a significant amount of work would be required to identify the scope and application of a duty to document, consistent with other legislative obligations to create and maintain specific records (e.g., the register of vessels in the Canada Shipping Act) and with a view also to developing compliance authorities.

Conclusion(s)

There are opportunities to improve the documentation of government decisions, which is essential to ensuring government accountability and transparency, and is a core element of strategic information management.

Enhancing Open Government

Open Data

The Government of Canada's efforts to publish open data and information have mostly focused on awareness-raising, department support, training and, where practical, beginning the publication journey with the datasets that are easy to publish. The Government of Canada needs to mature in that regard, mainstreaming not only the practice of publishing data, but also engaging more deeply with data users outside the Government of Canada.

Enhancing training and guidance, for both public data users and data creators, is a foundational piece of that mainstreaming ambition. Public users need to better understand how data is collected and used by government institutions, as well developing better knowledge of federal data holdings. This would allow external users to link their data with government data, facilitate collaborative data sharing, hold government better accountable on decisions and further develop communities of data practitioners across civil society and within the Government of Canada. On the data creation side, institutions have been provided with an Open Government Guidebook since 2018 to help them put their open datasets on the Open Government Portal. The needs of the open data community continue to grow, such as how to entrench practices at the point of data creation. Ultimately, this type of enhanced guidance and training can also serve double duty in improving data literacy both in- and outside the government.

Beyond developing open data skills and knowledge, there is an opportunity for stronger government requirements for disclosing open data. More recent initiatives, including from the Organization for Economic Co-operation and Development and the Open Data Charter, favour "publishing with a purpose." This means targeting information and data of high value to the public and ensuring they receive timely, proactive access to this information and data. Though Part 2 of the ATIA does require the publication of certain information and data, its scope

is limited. The ATIA does not contain any general data publication requirements; those are found under section 4.3.2.8 of the Policy on Service and Digital. Guidelines supporting the policy are broad and could benefit from additional detail to scope or define data. Consideration could be given to helping institutions assess the public demand for data, to inform prioritizing what to disclose. This would align with public input received for Canada's 2018-2020 National Action Plan on Open Government, while developing categories of high-value datasets would align with international trends (e.g., the European Data Portal). There is also an opportunity to improve performance measurement in these areas.

The Open Government Portal plays a critical role in open data initiatives. The Open Government Portal was created to house all open information and data published by government institutions, including information published under Part 2 of the ATIA. As of May 2022, the Open Government Portal is comprised of more than 33,000 datasets and information resources and 1.8 million proactive publications. It includes 'suggest a dataset' functionality for users to request and upvote data and information they would like to see released, data validation to automatically review the quality and completeness of datasets prior to upload, and previews of applicable datasets. With increased capacity, the platform would have significant potential to expand how it enables access to open data and information.

User-centricity needs to figure prominently in the development of the platform as user needs around searching, retrieving, using, and understanding information and data become more sophisticated. Adopting more user-centric designs will require strengthening the Open Government Portal's infrastructure to ensure that all information and data housed on other government platforms are available in one place. The Open Government Portal would benefit from some additional, more user-requested design features: data visualization, thematic aggregation, customizable tagging for users, and developing dataset comparison features are all user interests. Overall, these features would enhance the Open Government Portal as an enterprise information and data platform, and help facilitate greater knowledge and skills development, data literacy, and awareness of Government of Canada data and information holdings.

Where the Government of Canada began by publishing what was easiest, as all governments do, there is an opportunity to take a more engagement-forward approach focused on serving to Canadians information and data that is of most use and interest to them.

Conclusion(s)

Consideration should be given to developing and updating training and guidance on the value of open data that will improve the usefulness of open data, allow it to be delivered through a single digital platform, and unlock significant benefits to data users.

Improving Proactive Publications

The passage of Bill C-58 in 2019 introduced a requirement under Part 2 of the ATIA to proactively publish specific types of government information drawn from topics that have been consistently represented in ATI request pipelines. Some proactive publication requirements apply to all the institutions currently covered by Part 1 the ATIA. Part 2 legislates specific proactive publication requirements for the Prime Minister's and other Ministers' offices, senators, members of the House of Commons, and administrative institutions that support Parliament and the courts. The types of publication, each with defined publishing timelines. This includes among others:

- ministers' mandate letters;
- certain briefing materials and memoranda titles and tracking numbers;
- travel and hospitality expenses;
- grants and contributions over a specified amount; and
- contracts over a specified amount.

The objective of Part 2 of the ATIA is to proactively publish information that is of interest to the public without the need to request it under Part 1. A recent Evaluation of Proactive Publication conducted by TBS's Internal Audit and Evaluation Bureau recommends engaging users to gain insight into the relevance of proactive publications to users, which in turn aligns with section 4.3.2.9 of the Policy on Service and Digital , which requires user need to be a primary determinant in prioritizing proactive disclosures to be published on the Open Government Portal.

Throughout the engagement process, the public expressed interest in certain types of materials to expand the current requirements. One suggestion that was supported by some government institutions, public servants, and the public alike, was to expand Part 2 of the ATIA to include frequently requested records. The 2022 update to the Directive on Access to Information Requests, section 4.1.44, speaks to this suggestion: it requires institutions to regularly review requests received under Part 1 of the ATIA with a view to making frequently requested information available by other means. This approach mirrors some international trends, too. For instance, Australia's *Freedom of Information Act 1982* requires institutions to publish information to which the institution routinely gives access in response to requests. As one sees with open data advocates, other public interest areas include government research, regulatory data, surveys, and assessments (e.g., environmental impacts), and other public health and safety information. Generally, ATI Review participants were supportive of a far broader, open by default approach to government information disclosure.

Beyond the content of proactive publications, input received during the ATI Review noted two other areas for improvement: reporting and independent oversight of Part 2. At present, there is a lack of reporting on Part 2 of the ATIA, with a consequent lack of insight into whether government institutions and entities are meeting their obligations and what resources are required for institutions to administer their Part 2 responsibilities. Section 94 of the ATIA requires institutions to report on their administration of the ATIA, including Part 2 of the ATIA. However, while the President of the Treasury Board has the legal authority in paragraph 70(1)(d) to cause statistics to be compiled on compliance with Part 1 of the ATIA, the same authority does not exist for Part 2. TBS is developing a policy framework for Part 2 of the ATIA, following from a recommendation made by TBS's Internal Audit and Evaluation Bureau. The benefits of more comprehensive and structured reporting on Part 2 could help develop greater monitoring of the usefulness of Part 2, in addition to improving business processes.

The public also noted that there is no direct independent oversight of Part 2 of the ATIA by the Information Commissioner, a power sought by the Commissioner. Currently, oversight is available through the ability to make a request under Part 1 of the ATIA for the records containing the proactively published information and to complain about the response to such a request. This process adds additional steps and administrative costs to both requesters and institutions, who must submit and process the request, respectively.

Conclusion(s)

Examining ways to engage with users to identify high demand and high value information, as well as developing improved accountability mechanisms would allow the Government of Canada to improve the quality of proactively published information under Part 2 of the ATIA and further public trust and government transparency.

Right of access and exception to the right of access

The goal of the ATIA is to enhance accountability and transparency of government institutions by providing access to government records. Institutions must therefore follow the principle that information should be available to the public, with necessary exceptions to that right being limited and specific. It is notable, however, that this right of access is limited to Canadian citizens, permanent residents, and individuals and corporations present in Canada.

The following sections of this report discuss various aspects of the right of access, including the exceptions to the right of access, which are intended to protect certain information from disclosure. These sections also examine the information institutions publish to support requesters, who can make a request and, when exceptions are applied, any time limits on when those exceptions may apply.

Information about Government Institutions

The President of the Treasury Board must cause to be published information about government institutions, pursuant to section 5 of the ATIA. Section 5 of the ATIA ensures that some specific information on government institutions is made available to the public:

- information about the organization and its responsibilities;
- all classes of records under its control;
- all manuals used by employees in carrying out or administering its responsibilities; and
- the title and address of the appropriate officer of the institution to whom access requests should be sent (e.g., the ATIP coordinator).

This is intended to support the right of access by describing institutions' program areas and their record holdings. In order to aid the President of the Treasury Board in fulfilling this legislative requirement, TBS provides guidance to institutions on the information that is required to be published through the Policy on Access to Information and more specifically through the Info Source Decentralized Publishing Requirements. The purpose of this annual publication is to provide a general overview of the information holdings and types of records available within each institution to aid requesters in crafting targeted and informed ATI requests. Moreover, members of the public may complain to the Information Commissioner about any aspect of the publications.

TBS maintains the publication as a single entry-point and index. However, as a decentralized publication, each section of the information about government institutions exists as a standalone publication on individual websites, rather than being linked to other public-facing products such as the institution's service inventory or personal information holdings. As governments shift toward more digital communications approaches, requesters are more likely to use a search engine, departmental website, or social media to locate information in support of a request, since that information is more likely to be up to date. The current approach to information about government institutions as an annual publication is not well aligned or integrated with these increasingly real-time tools for publicly sharing information. Users and relevant institutional representatives, including communications and information management specialists, will have constructive views on what would be most effective, useful, and expedient while leveraging and linking authoritative sources of information rather than seeking to replicate it in a standalone publication.

Conclusion(s)

Re-examining the way in which the ATIA's section 5 obligations are delivered will improve both the user-centricity of ATI and ability of institutions to compile and disclose this information while reducing redundant information sources.

Universal Access

Section 4(1) of the ATIA defines who has a right of access to Government of Canada records. These are currently limited to Canadian citizens and permanent residents. The Governor in Council has extended access to all individuals and corporations present in Canada, by order issued pursuant to subsection 4(2) of the ATIA.

Despite the extension, many persons who have legitimate business with the Government of Canada cannot directly request records from federal government institutions. Canada is a significant destination for non-resident and non-Canadian travelers and migrants, about whom decisions are made every day. As a result of the COVID-19 pandemic, Immigration, Refugees and Citizenship Canada (IRCC) committed to improving in various areas, including its service standards and transparency for migrants, who frequently use ATI to access their files. Decisions made by the Government of Canada also have impacts globally in various sectors, both humanitarian and economic. Those parties must rely on local intermediaries to assist with their needs (e.g., immigration lawyers), adding both substantial cost to the individual requester, and reducing the intended accountability on the conduct of government institutions to those served by those institutions.

Canada has already decided that universal access is essential when it comes to personal information requested through the *Privacy Act*. The *Privacy Act* Extension Order, No. 3, has extended the right of access to personal information to include all individuals outside Canada. Adopting a universal right of access at the federal level would bring the Government of Canada in line with the rest of Canada as each provincial and territorial ATI legislation offers universal access. In addition, by global comparison, 76 countries have universal access built into their respective ATI laws. Among Canada's closest international partners, only New Zealand similarly restricts access.

Conclusion(s)

Examining the groundwork completed in the issuance of the *Privacy Act* Extension Order can inform a path forward to address legitimate access needs where they exist.

Public Interest and the ATIA

A public interest override provision exists in many jurisdictions. The intent is to encourage and permit institutions to disclose information considered by the head of an institution to be of public interest, even if that information would normally be exempted from disclosure. This pushes information disclosure beyond the interests of individual requesters, furthering the broader aims of open government and general accountability.

While Canada's ATIA has no general public interest override provision, the ATIA has two provisions that speak to the public interest:

Paragraph 19(2)(c) allows for the disclosure of personal information in accordance with s.8(2)(m)(I) of the *Privacy Act*, where a public interest in disclosure clearly outweighs any invasion of privacy; and,

Subsection 20(6) allows for the disclosure of third-party information, where a public interest in disclosure related only to public health, public safety, or the protection of the environment exists, or if the public interest in disclosure clearly outweighs any financial loss or gain to the third party, or any prejudice to its security, competitive position, or negotiations.

Each of these provisions apply to mandatory exemptions, of which there are several others that have no public interest provision. These include section 13 (information from other governments), and paragraph 16(1)(a), covering investigative bodies' records (e.g., Royal Canadian Mounted Police). Other exemptions to disclosure are discretionary, meaning the head of the institution may decide to disclose the information even if it might normally be exempted from disclosure. When exercising discretion, the institution head must consider all relevant factors for and against disclosure. Though this may include public interest as a factor, it is not an explicit requirement to weigh the public interest. If there were a complaint, the Information Commissioner may raise the public interest as a factor. For their part, the federal courts have avoided raising specific factors of discretion for the institution head's consideration, beyond generalities.

International jurisdictions vary in terms of legislating the public interest. Some, such as Ireland and the United Kingdom, use a model where public interest overrides apply to some, but not all exemptions. Other jurisdictions, including India and some Canadian provinces, like Alberta and BC, have a public interest override that applies to all exemptions. In addition, in Ontario (Public Safety and Security) v. Criminal Lawyers' Association, 2010 SCC 23, the Supreme Court of Canada ruled on a public interest override test embedded in discretionary exemptions in Ontario's freedom of information legislation. The Court concluded that the exercise of discretion must consider the public interest in open government, public debate, and the proper functioning of government institutions, even if in some instances it may have limited application. During the ATI Review's engagement process, a public interest override was identified as an area in which improvements should be made.

Conclusion(s)

The public interest is a critical determinant in deciding what information should be disclosed, alongside the diminishing risks related to the passage of time.

Examining the Exemptions Regime

Exemptions in the ATIA are one of two exceptions to the right of access; the other exception is called an exclusion and is discussed below. Exemptions are a mainstay of every ATI regime, both internationally and domestically, and they often cover similar topics, such as defending a nation against hostile activities, safeguarding the integrity of judicial processes, or protecting individuals' safety or privacy, among others. Exemptions are considered to be significant protections, both in the public and the national interest. In Canada, exemptions under the ATIA are always a combination of each of the following categories:

either class-based or injury-based, with the former requiring that the information be of a defined type, and the latter requiring that an injury or prejudice would occur if the information were to be disclosed; and,

either mandatory or discretionary, with the former requiring that the information be withheld from disclosure, and the latter requiring a weighing of factors for and against disclosure prior to the exemption being applied.

An exemption could therefore be a class-based exemption that is mandatory (e.g., personal information) or it can be discretionary (e.g., advice to a minister). Likewise, an injury-based exemption can be either mandatory (e.g., prejudice to a third party's competitive position) or discretionary (e.g., injury to the conduct of an investigation).

The complexity of the ATIA's exemption regime can take years to learn and apply properly for ATIP professionals. Public stakeholders have long criticized the breadth of Canada's exemption regime, arguing most often that there are many class-based provisions that do not require institutions to demonstrate any harm in disclosure. Since the ATIA was created in 1983, the ATIA has added more categories and sub-categories of exemptions.

There are various ways to approach exemptions, both domestically and internationally. Some regimes employ a similar approach to Canada's, but they have defined when those exemptions do not apply. This can be done in the legislation, like in Ontario's *Freedom of Information and Privacy Protection Act*, which lists circumstances where exemptions cannot be applied. Alternatively, this can be done in policy and guidance, or via an Implementation Notice pursuant to s. 70(1)(c) of the ATIA, in which specific instances of non-application could be expressed. These approaches do not necessarily resolve the issue of complexity or breadth. They may even add to those issues, by requiring multiple parallel readings and considerations.

More recently revised or crafted ATI laws have distilled exemptions down to simple, injury-based categories. This approach describes all forms of valid exemptions in broad terms while

tying them explicitly to the likelihood of harm the disclosure could cause. Canada's regime has many instances where harm must be considered, but many more where it does not. Exempting information based on classes or record types assumes harm in every instance. Stakeholders have argued that adopting sufficiently general, harms-based exemptions would encourage more disclosure of information when there is no harm in doing so.

TBS is in the process of developing a plain language guide, which is intended to enhance understanding of the ATIA, including exemptions. Greater knowledge and understanding of why exemptions exist will better equip those exercising their right of ATI, while promoting more consistent application of exemptions across government.

Conclusion(s)

Examining options to clarify legitimate sensitivities and risks around the disclosure of government information could improve understanding of all transparency and accountability initiatives, including for both ATI users and practitioners, the public, and Government of Canada writ large.

Exclusions

The second type of exception to the right of access is called an exclusion. Unlike exempted information, if information is subject to an exclusion, it is not subject to disclosure under the ATIA. As excluded records are not subject to the ATIA, they are equally not subject to the same type of oversight as for exempted information.

Participants in the engagement process indicated they did not understand the purpose of exclusions and wanted to see them either removed or converted to exemptions. Moreover, stakeholders have observed that the exclusions are sometimes applied differently or not at all. Public stakeholders and the Information Commissioner have singled out the exclusion of Cabinet confidences, which they believe to be overly broad. For instance, many stakeholders, including government institutions, noted that the wording in paragraph 69(1)(g) can be read to encompass any information put before a Minister as being "related" to a Cabinet confidence, since a Minister may discuss it with colleagues.

The Information Commissioner has also suggested that all exclusions should be reviewable to ensure due diligence and accountability within the process. The Federal Court has ruled that the Information Commissioner may review whether the Canadian Broadcasting Corporation's exclusion has been correctly applied. That exclusion covers all the Canadian Broadcasting Corporation's information related to its journalistic, creative or programming activities, except information pertaining to general administration. The same review process not been extended to all exclusions, however, provoking stakeholder complaints of inconsistent application. For

instance, if a requester complains about the application of Cabinet confidences to the Information Commissioner, the review process by the institution is for the ATIP coordinator to consult with their departmental legal services and to confirm to the Information Commissioner that the exclusion was correctly applied.

Internationally, most Cabinet, or functionally similar bodies are both subject to their domestic ATI legislation, and independently reviewable. In some rare instances, like the United Kingdom, the independent review of Parliamentary privilege, which in the United Kingdom encapsulates Cabinet discussions, can be subject to ministerial veto. In the United Kingdom, that veto has come under scrutiny since 2010. In Canada, Cabinet confidences are entrenched across federal legislation, meaning any review of its application necessarily goes well beyond the ATIA.

Conclusion(s)

There is an opportunity to collaborate with relevant institutions (e.g., Privy Council Office and the Department of Justice) to explore options that enhance transparency and accountability with respect to excluded information, while maintaining necessary protections and safeguards for Cabinet confidences and ensuring coherence with the broader legal framework governing their protection in Canada.

Sunset Clauses for Exemptions and Exclusions

A "sunset clause" is a provision in legislation that acts as an expiry date for when a legal matter ceases to apply. In the ATIA, a few exemptions and exclusions are nullified due to the passage of time. These include:

- Paragraph 16(1)(a) sets 20 years for information obtained or prepared by specified investigative bodies (e.g., Royal Mounted Canadian Police) during lawful investigations relating to breaches of law or to threats to the security of Canada.
- Subsection 21(1) sets 20 years for information that (a) relates to advice or recommendations, (b) contains an account of consultations or deliberations, (c) contains positions or plans developed for negotiations, or (d) has plans relating to the management of personnel or the administration of an institution that have not yet been implemented.
- Subsection 22.1(1) sets 15 years for drafts or working papers of internal audits.
- Paragraph 69(3)(a) sets 20 years for Confidences of the King's Privy Council.
- Subparagraph 69(3)(b)(ii) sets four years from the date a decision was made, where the decisions have not been made public, on discussion papers related to background explanations for Cabinet decisions.

The passage of time is assumed to reduce the sensitivity of protected information, particularly in instances where decisions have been made or where events have concluded. Lengthy sunset clauses may add to operational burdens in ATIP offices since exceptions to the right of access must be considered for at least the duration of the sunset clause.

Throughout the ATI Review engagement process there was broad agreement that sunset clauses of 20 years for exemptions and exclusions is too long. In some instances, the sunset clauses are longer than the retention period for the information itself.

Internationally, there is significant variation in how much time needs to go by before information can safely be disclosed by default, and variation in the treatment of different categories of information. For example, in a North American context, Mexico sets five years as a benchmark for some types of records, while the USA has up to 25 years for its national security records. In the latter case, the 25-year sunset clause on national security records is also linked directly to the USA's declassification program.

Conclusion(s)

Alongside the public interest, the passage of time is a critical determinant in what information may be publicly disclosed and when. A relationship can be established between the application of exemptions and the responsibility to declassify or disclose records that are no longer sensitive.

Advancing Indigenous Reconciliation

As noted in the recently published Indigenous What We Heard Report, during the Bill C-58 process, the Government of Canada committed to engaging with Indigenous peoples through the National Indigenous Organizations; First Nations, Inuit and Métis organizations; and other interested organizations and groups to obtain their perspectives with respect to the ATI regime and to consider related improvements to the regime. Since that time, on June 21st, 2021, the United Nations Declaration on the Rights of Indigenous Peoples Act (UN Declaration Act) received Royal Assent and is now the law in Canada. Under the UN Declaration Act, the Government of Canada must, in consultation and cooperation with Indigenous peoples:

- Take all measures necessary to ensure the laws of Canada are consistent with the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration);
- Prepare and implement an action plan to achieve the objectives of the UN Declaration; and
- Report progress on an annual basis to Parliament.

As noted in the inaugural annual report regarding the implementation of the UN Declaration Act: "Implementation of the UN Declaration also requires transformative change in the Government of Canada's relationship with Indigenous peoples. As part of this transformative change, the federal government is continuing to accelerate progress on reconciliation and upholding Indigenous peoples' right to self-determination. This is truly a whole of government effort." All 2021 mandate letters called upon Ministers to support the UN Declaration Act and to work with Indigenous peoples to advance Indigenous rights. Rooted in the UN Declaration, the Department of Justice has published Principles respecting the Government of Canada's Relationship with Indigenous peoples which guide the work required to fulfill the Government of Canada's commitment to renewed nation-to-nation, government-to-government, and Inuit-Crown relationships. TBS has made continuous efforts to engage Indigenous peoples and consider their perspectives. That effort will continue in exploring avenues for improvements to the ATI regime.

During this review, TBS received input from various Indigenous organizations and peoples to learn about their usage of the ATI system, as well as unique issues and concerns they face. TBS also reviewed outstanding input received in engagement around Bill C-58. Additional input was received through the *Privacy Act* Modernization engagement activities led by the Department of Justice, in which TBS officials participated. More detail on who was engaged and what input was provided can be found in the Indigenous What We Heard report.

Indigenous peoples use the ATI regime to gather information from the Government of Canada to advance priorities such as:

- claims related to historical grievances;

- Aboriginal title,[2] rights and treaty rights litigation;
- to establish status under the *Indian Act* through genealogical records;
- to foster community health and well-being;
- to inform decision-making on matters related to governance; and,
- to inform Indigenous economic development.

As noted in TBS's engagement, Indigenous users face many of the same systemic issues as other users when trying to obtain records, including delays in receiving requested information, difficulty communicating with ATIP offices, and observe inconsistent application of exemptions. While these issues are also reported by non-Indigenous people and organizations, Indigenous organizations note these issues result in a differential impact for their communities relying on ATI requests for critical, time-sensitive, and delicate purposes that can range from accessing infrastructure funding to assessing and monitoring natural resource development that may affect their rights, interests or claims.

More fundamentally, engagement with Indigenous peoples has deepened our understanding that the matter of information access for Indigenous peoples is one of self-determination. Indigenous peoples have long asserted that barriers to access information are effectively barriers to justice, whether in seeking redress for historical grievances, access to social services, in pursuit of economic opportunity or any other right or priority. While nearly all other governmental bodies and organizations in Canada can exercise a degree of authority over their records, the colonial history in Canada means the Government of Canada and its institutions – departments, agencies, the courts and Parliament – remain the principal arbiters of information disclosed to, and about Indigenous peoples. As a result, Indigenous peoples may have limited or no direct access to information and data obtained from their communities, which limits their use of that same information and data to assert their rights, claims and interests. As a result, Indigenous peoples have advocated for Indigenous data sovereignty, seeking repatriation of information that was collected from, and which relates to them to be able to determine how it may be accessed, stored, and used.

This section explores ways to support Indigenous authority over Indigenous information and data and improve the ATI regime to respond to the needs of First Nations, Inuit and Métis users. It is notable, too, that these opportunities exist alongside other Government of Canada priorities in these areas, such as both Indigenous Services Canada's and Crown-Indigenous Relations and

2. "Aboriginal title" is a unique legal concept, affirmed and its content defined by a landmark 1997 Supreme Court of Canada ruling. It gives the holder the right to use, control, and manage the land and the right to the economic benefits of the land and its resources. While the term "Aboriginal" appears in various places in Canadian jurisprudence and legal concepts, this report generally adopts the preferred term of "Indigenous" wherever possible.

Northern Affairs Canada's departmental plan of 2022-23, in addition to the funding provided in Budget 2021 to support Indigenous-led data strategies and governance as well as Statistics Canada's work in support of these efforts.

The following pages examine ways to advance Indigenous reconciliation, through transition to Indigenous control of Indigenous information and data, culturally appropriate ATI services, examining the potential for an oversight mechanism for Indigenous access, and addressing the narrow definition of "aboriginal government."

Indigenous Control of Information and Data

For many years, Indigenous groups and governing bodies have stated that the way information is managed going forward will play a key role towards Indigenous self-determination and recognition as nations. This view was advanced by the Assembly of First Nations, Native Women's Association of Canada, Congress of Aboriginal Peoples, the National Claims Research Directors and Union of British Columbia Indian Chiefs, and the Tsawwassen First Nation prior to the passage of Bill C-58, and it has been re-stated as a priority during this ATI Review. Organizations like the First Nations Information and Governance Centre, who were funded in 2018 to develop a framework for First Nations information and data sovereignty, have asserted that self-determination cannot be achieved without control over First Nations communities' own data. The Inuit Tapiriit Kanatami is similarly undertaking a broad information and data access, ownership and dissemination strategy.

Indigenous claims of many types rely on information that are regularly obtained through ATI requests, often within the constraints of legal or government process timelines. Alternative processes to acquire records have similar constraints according to researchers. First Nations claims researchers, for example, report that key dates in claims processes are missed because of delays, and time-limited research funding runs out, which can impose significant financial hardship on both researchers and the organizations they support. The National Claims Research Directors and Union of British Columbia Indian Chiefs state that this is out of step with the UN Declaration, which they interpret as ensuring access to redress of historical grievances. The National Claims Research Directors have advanced specific recommendations, noting that these "rely on Canada upholding the honour of the Crown and acting on its reconciliatory mandate by recognizing its conflict of interest in controlling information held by government institutions that First Nations require to proceed with historical claims against the Crown, and taking immediate steps to eliminate it." The First Nations Information and Governance Centre as well as other Indigenous organizations and governments like the Manitoba Métis Federation have echoed this view, noting that there is a conflict of interest for the Government of Canada in managing Indigenous efforts to access these records.

This conflict is asserted in several areas, both in terms of ownership, access to and control of information, as well as the competing responsibilities of federal institution heads. Firstly, Indigenous peoples assert that the records they need ought to belong to and be under the control of Indigenous peoples instead of the Crown. Secondly, the institution head responsible for processing access to information requests in support of Indigenous claims or requests is also responsible for supporting the Crown's position in response to these claims or requests.

Indigenous organizations participating in this review acknowledge that significant time and resources are required for the transfer of Indigenous data and information to Indigenous control. Engagement input included a variety of approaches, including interim solutions such as shifting the decision-making authority to Indigenous peoples for the records they require, while maintaining the present custodianship of the Government of Canada. They may also better advance distinctions-based approaches to information management between the First Nations, Inuit and Métis peoples.

Indigenous organizations also recognize that the ATI regime is a component of the Government of Canada's broader information management framework. There are opportunities to advance Indigenous information and data ownership, control and access beyond the ATIA.

Conclusion(s)

The Government of Canada is committed to respecting and supporting Indigenous self-determination in Canada, including facilitating and supporting Indigenous-led information and data strategies.

Culturally Appropriate Services

Fulfilling the purposes of the ATIA for Indigenous requesters requires an understanding that the Government of Canada recognizes First Nations, Inuit and Métis as the Indigenous peoples of Canada, consisting of distinct, rights-bearing communities with their own histories, including with the Crown. It also means understanding that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of the First Nations, Inuit and Métis are acknowledged, affirmed, and implemented. However, Indigenous individuals and organizations participating in this review have reported a lack of this understanding in their interactions with government officials. Indigenous requesters express considerable frustration at receiving incorrect responses or responses that apply to Indigenous people other than themselves because they were dealing with individuals who did not understand what information they were looking for or why.

During the ATI Review's engagement process, Indigenous users of the ATI regime identified issues with the process of submitting a request. Many records under the control of government

institutions relating to Indigenous matters have been improperly stored which results in records of poor quality that are sometimes unreadable, missing, or difficult to identify, leading to gaps in information. Information is not always available or provided as a digital record in machine-readable and searchable format, making it difficult or impossible to use for research or analysis. Indigenous users also report barriers to technology, which can make it harder to submit requests electronically, especially in remote areas lacking stable internet service. Additionally, requesters may have difficulty paying the application fee, which requires access to banking services at a minimum, and often credit cards.

For Indigenous requesters who are seeking information on estranged, missing, or deceased loved ones, dealing with the bureaucracy can be especially challenging. Informal processes have sometimes enabled Indigenous requesters to pursue access to information in a way that facilitates personal contact and enables collaborative problem-solving and discussion between requesters and ATIP professionals. At the same time, Indigenous requesters report that informal requests can also be an experience of non-cooperation and long delays, which pushes them to rely on formal ATI requests that are equally unresponsive to their needs.

To advance reconciliation efforts, there is a need for the co-development of practices between Indigenous peoples and the Government of Canada to ensure Indigenous peoples are receiving culturally appropriate services with no barriers to access. The Manitoba Métis Federation states, "it is important that personnel handling Access to Information requests are well trained in access standards, and experienced in distinguishing between Métis, First Nation, and Inuit organizations, groups and governments." Increased training and awareness across federal institutions can contribute to addressing this gap.

Conclusion(s)

The Government of Canada is committed to removing Indigenous peoples' barriers to access information from government institutions, in concert with furthering Indigenous-led information and data strategies.

Independent Oversight

This report presents three key themes in relation to accessing and asserting control over information relevant to, or about Indigenous peoples: the definition of "aboriginal government" in the ATIA, Indigenous control of data and information, and developing culturally appropriate services to support Indigenous access to information. The latter two themes include the view that an independent, Indigenous-specific oversight mechanism is essential to achieve greater equity for Indigenous requesters and greater control over information and data. The First Nations Information and Governance Centre, the National Claims Research Directors and the Union of British Columbia Indian Chiefs, among other Indigenous stakeholders, recommend a mechanism

that will help ensure the Government of Canada is not in a conflict of interest while resolving claims against themselves, as indicated in a preceding section of this report. It has been recommended that this mechanism go beyond the ATIA, and this issue has been similarly raised during engagement on the *Privacy Act* Modernization initiative led by the Department of Justice. For example, some organizations have long advocated for a wholly independent claims resolution process, which would be a significant element of a broad independent oversight mechanism. Oversight and accountability are critical components of the First Nations Information and Governance Centre's framework on First Nations information and data governance. Within that framework, an oversight mechanism would be responsible for reviewing decisions of institutions where First Nations requesters, or First Nations data and information control are at issue, as well as having the ability to make recommendations on how to improve access for First Nations users.

The Information Commissioner currently serves as the oversight mechanism for ATI practices of the Government of Canada. Through subsection 30(1) of the ATIA, the Information Commissioner has the obligation to investigate many issues across the ATI regime, including those commonly experienced by Indigenous requesters. These include when requesters are refused access to records, face administrative delays or time extensions, receive incomplete responses, or any other matter related to requesting or obtaining records.

Further engagement with First Nations, Inuit and Métis peoples will be needed, in collaboration with the Information Commissioner as an independent agent of Parliament, to propose a longer-term way to address questions of oversight and accountability.

Conclusion(s)

The Government of Canada is committed to supporting Indigenous self-determination in Canada, including examining the best mechanisms to achieve this outcome, such as independent review.

Definition of "aboriginal government" in the ATIA

Section 13 of the ATIA requires the head of a government institution to refuse to disclose information obtained in confidence from:

- a government of a foreign state;
- international organizations of states (e.g., the European Union);
- provincial and municipal governments and their institutions; and certain specifically named "aboriginal" governments.

Indigenous peoples have pointed out that "aboriginal government," in the English version of the law, is outdated and non-inclusive of First Nations, Inuit and Métis governments and governing

bodies. The definition only lists nine First Nations governments and councils, as well as band councils as defined in the *Indian Act*. Many have also requested that the word "aboriginal" in the English version of the ATIA be replaced by "Indigenous."

The limited definition means Indigenous peoples lack the ability to appropriately safeguard information of a social, political, cultural, spiritual, environmental, or traditional nature. Currently Indigenous governments and other governing bodies are sometimes required to share certain information with the Government of Canada to receive services for their peoples. Other governments usually control their data and can share it with the assurance of confidentiality, but ownership, control and authority are not currently extended to all Indigenous governments or governing bodies.

In the absence of such authority, however, many Indigenous governments must instead rely on other provisions for confidentiality, such as the third-party provisions under section 20 of the ATIA. Third party protections, however, are intended to protect commercial or other proprietary information; those provisions do not cover the full spectrum of information shared with or by Indigenous governments and other governing bodies.

Three provinces (Ontario, British Columbia, and Alberta) and two territories (the Northwest Territories and Nunavut) have more expansive definitions of their equivalents of "aboriginal government" in their ATI legislation. Federally, since 2017, Parliament has been updating this language in numerous statutes, moving away from "aboriginal government" and adopting "Indigenous governing body." This is found in, among several others, the *Fisheries Act*, the *Indigenous Languages Act* and *An Act respecting First Nations, Inuit and Métis children, youth and families*. The term "Indigenous governing body" is defined in these statutes as any council or other authorized entity that acts on behalf of an Indigenous community, group, or people that holds rights recognized and affirmed by section 35 of the *Constitution Act*, 1982. The *Fisheries Act* also notably includes a section on Indigenous Knowledge and requires the Government of Canada to receive written consent to disclose or make public any Indigenous knowledge shared in confidence. Canada's adoption of the UN Declaration Act will require that Canadian laws are consistent on these matters relating to Indigenous rights.

Conclusion(s)

The Government of Canada is committed to implementing the UN Declaration Act, updating and aligning language used in laws of Canada related to Indigenous peoples and communities, including the definition of "aboriginal government" in the ATIA.

Access to Information in a Digital Age

In this constantly evolving digital age, the ATI regime will continue to be challenged to be more responsive to those that rely on it. Technology will continue to play a central enabling role in this effort.

The Government of Canada has published its 2022 Digital Ambition, which provides a clear, long-term vision for the integrated management of service, information, data, information technology and cyber security. There are four strategic themes that form the Government of Canada's Digital Ambition: (1) excellence in technology and operations; (2) data-enabled digital services and programs; (3) action-ready digital strategy and policy; (4) structural evolution in funding, talent and culture. Each of these themes is reflected in this report, and the ATI regime is an ideal testing ground ripe for advancement in these areas.

Open Government efforts have long focused on the adoption of digital technologies to make as much information available to as many people as possible. The Open Government Portal is a one stop shop for external users to access open data and information, including proactively published information pursuant to Part 2 of the ATIA.

More recently, the ATIP Online platform was launched in 2018 as an enterprise platform for requesters to submit ATI or personal information requests through a single door. The platform is enhanced by artificial intelligence to help requesters find previously requested information, and to help better direct requests to the appropriate institution. It now serves more than 220 of the approximately 265 institutions covered by the ATIA but not yet the largest institutions with the most volume of ATI requests. The latest version of the platform now includes secure user accounts and dashboards, as well as electronic delivery of responses. This functionality lays the groundwork for secure messaging and consultations, and greater interoperability. There is an urgent opportunity for the Government of Canada to continue to build on the successes of the ATIP Online platform to date, while reducing costs of running multiple, similar systems.

Another opportunity for innovation is in updating ATI request processing tools. New procurement vehicles exist for "Commercial Off-the-Shelf" ATI request processing software, intended to replace the varied and generally outdated software applications currently being used across the government.

Digital innovation can strengthen public trust and government transparency. Alongside Open Government commitments, bolstering the capacity of Canada's ATI regime can play an integral role in mitigating against the proliferation of misinformation, disinformation and malinformation that can harm public trust in institutions.

A next frontier for the adaptation and evolution of the ATI regime is in the realm of artificial intelligence and machine-learning. This technology uses intelligent computer programs (learning algorithms) to find complex patterns in data to make predictions or classifications. Machine learning is a subset of artificial intelligence which allows a machine to automatically learn from past data by identifying patterns. The Government of Canada is investing in the adoption of artificial intelligence both internally, and across Canada's economy and society. These efforts are dependent on high quality and standardized data to derive accurate insights from artificial intelligence and machine learning, while respecting guiding principles on responsible use.

Across the federal government, departments and agencies are utilizing automated systems, including AI, to make or support administrative decisions in various domains, including border services, employment insurance and immigration. Such systems are subject to the Directive on Automated Decision-Making, which seeks to ensure transparency, accountability, and procedural fairness in automated decision-making. Prior to their launch, automation projects are assessed using the Algorithmic Impact Assessment, to evaluate the risks of a system and determine applicable measures under the directive. Detailed Algorithmic Impact Assessment results for Government of Canada initiatives are made publicly available on the Open Government Portal. Lessons learned on existing automation projects will inform the approach to using artificial intelligence technologies within the ATI domain.

AI will both accelerate digital service transformation and force the re-examination of such fundamental tenets of the ATI regime as "what is a record" and who "owns" it.

Conclusion

Recognizing the critical role that the ATIA plays in government transparency and accountability, it was important for the first legislated review to make every effort to identify and analyze the barriers to the regime while building a strong foundation for future ATI Review processes. The review team consulted with the public, Canada's Information Commissioner and the Privacy Commissioner, Indigenous peoples and organizations, government institutions subject to the ATIA, and other Canadian jurisdictions to aid in this objective. Input from these stakeholders was essential in producing this report and will be critical to continuing to modernize the ATI regime.

As this report demonstrates, the need to have government information readily available and easily accessible while ensuring that any exceptions to the right of access remain limited and specific is fundamental to ensuring government transparency and accountability. This principle should continue to guide modernization efforts in a digital age.

Modernization will require sustained effort. The government must continue to maintain and improve upon the relationships it cultivated during this first review and ensure that there is a mechanism in place for ongoing engagement that is not time restricted. It will also be essential to monitor the implementation of actions following from this report to assess how they perform against their intended objectives. The *Privacy Act* and the ATIA share many similar features and the trajectory of the ongoing *Privacy Act* Modernization will continue to require coordination of work under the two regimes.

A prevailing theme of this report is the need for the Government of Canada to update its digital systems, improve information management, and become more user-centric in its digital service delivery. ATI is only as good as the systems that support it, and those systems must be adopted by a skilled and adequate workforce for the tasks. These matters align with many years of digital ambition for the Government of Canada, and they will continue to be priorities in years to come. Among the most pressing challenges to address, however, is advancing reconciliation with Indigenous peoples. What was once a responsibility of each Minister is now enshrined in law through the UN Declaration Act. This commitment was also reflected by the Governor General of Canada in the 2022 Speech from the Throne. Modernizing the ATI regime to reflect the principles and rights set out in the UN Declaration Act responds to this commitment.

Going forward, informed by the outcome of this review, the ATIA can shift away from being seen as the sole option for those seeking government information to an effective avenue for transparency and accountability among others that support the public's right to know.

Annex A – List of conclusions outlined in this Report

Improving Service for Canadians

Information Management and Access to Information	Effective information management is foundational to digital innovation, and the reverse is equally true. A more consistent strategic lifecycle management of the Government of Canada's information and data assets will require looking at how centralized frameworks and governance, improved storage and organization, retention requirements and metadata tagging tools could yield broad improvements across government in service delivery and program efficiencies.
Building ATI Community Capacity	Clarifying roles, responsibilities and training for ATIP officials, with appropriate centralization of core services to the community, will make ATI services more consistent and efficient across the Government of Canada.
ATI Workforce Planning	An enterprise-wide ATI workforce strategy would improve composition, competency, recruitment and retention of ATIP professionals.
Accessibility and Official Languages	Products and services delivered under the ATI regime need to be inclusive of all those exercising their right of access.
Extensions	Exploring ways to reduce the use of lengthy extensions in concert with digital innovation and ATI capacity improvements, could increase institutional compliance with legislated deadlines in the ATIA.
Consultations	Examining policy options that seek to reduce the time taken to consult while improving necessary inter-institutional consultation capacity, alongside digital innovation and ATI capacity improvements, could improve institutional compliance with legislated timelines in the ATIA.
Administering Complex Requests	Exploring ways to leverage technology to administer complex ATI requests will be a net benefit to all ATI requesters and institutions alike.

Enhancing Trust and Transparency

Declassification	A systematized approach to declassification supports government transparency and accountability, enhances access to Canada's history, and improves the agility of the ATI regime and security of information systems.
Obligation to Document Decisions	There are opportunities to improve the documentation of government decisions, which is essential to ensuring government accountability and transparency, and it is a core element of strategic information management.

Enhancing Open Government

Open Data	Developing and updating training and guidance on the value of open data will improve the usefulness of open data, allow it to be delivered through a single digital platform, and unlock significant benefits to data users.
Improving Proactive Publications	The Government of Canada is committed to examining ways to improve proactively published information under Part 2 of the ATIA, including engaging with users to identify high demand and high value information, as well as developing improved accountability mechanisms in support of public trust and government transparency.

Right of access and exception to the right of access

Information about Government Institutions	Re-examining the way in which the ATIA's section 5 obligations are delivered will improve both the user-centricity of ATI and ability of institutions to compile and disclose this information while reducing redundant information sources.
Universal Access	Examining the groundwork completed in the issuance of the Privacy Act Extension Order can inform a path forward to address legitimate access needs where they exist.
Public Interest and the ATIA	The public interest is a critical determinant in deciding what information should be disclosed, alongside the diminishing risks related to the passage of time.
Examining the Exemptions Regime	Examining options to clarify legitimate sensitivities and risks around the disclosure of government information could improve understanding of all transparency and accountability initiatives, including for both ATI users and practitioners, the public, and Government of Canada writ large.
Exclusions	Collaborating with relevant offices (e.g., Privy Council Office and the Department of Justice) to explore policy options that enhance transparency and accountability with respect to excluded information, while maintaining necessary protections and safeguards for Cabinet confidences and ensuring coherence with the broader legal framework governing their protection in Canada
Sunset Clauses for Exemptions and Exclusions	Alongside the public interest, the passage of time is a critical determinant in what information may be publicly disclosed and when. A relationship can be established between the application of exemptions and the responsibility to declassify or disclose records that are no longer sensitive.

Advancing Indigenous Reconciliation

Indigenous Control of Information and Data	The Government of Canada is committed to respecting and supporting Indigenous self-determination in Canada, including facilitating and supporting Indigenous-led information and data strategies.
Culturally Appropriate Services	The Government of Canada is committed to removing Indigenous peoples' barriers to access information from government institutions, in concert with furthering Indigenous-led information and data strategies.

Independent Oversight	The Government of Canada is committed to supporting Indigenous self-determination in Canada, including examining the best mechanisms to achieve this outcome, such as independent review.
Definition of "aboriginal government" in the ATIA	The Government of Canada is committed to implementing the UN Declaration Act, updating and aligning language used in laws of Canada related to Indigenous peoples and communities, including the definition of "aboriginal government" in the ATIA.

ATI in the Digital Age

This section examines several digital innovations, or opportunities for further innovation in a succinct format without drawing conclusions in the same way as previous sections:

- ATIP Online platform
- Request Processing Software Solution
- Misinformation, disinformation and malinformation
- Artificial intelligence and machine learning

Annex B – Acronyms and Glossary

Acronyms

ATI	Access to Information
ATIA	*Access to Information Act*
ATIP	Access to Information and Privacy
LAC	Library and Archives Canada
LACA	*Library and Archives Canada Act*
TBS	Treasury Board of Canada Secretariat

Glossary

Access to information request	A request for one or more records that is made under the *Access to Information Act*. Source.
Access to Information Act	Legislation that provides for a right of access to records under the control of a government institution according to principles that government information should be available to the public, necessary exceptions to the right of access should be limited and specific, and decisions on the disclosure of government information should be reviewed independently of government. It also sets out requirements for the proactive publication of information. Source.
ATIP	An acronym for “access to information and privacy.” Source.
Declassify	An administrative process to remove classification markings, security designations, and handling conditions when information is no longer considered to be sensitive. Source.
Digitalization	The use of digital technologies to change a business model and provide new revenue and value-producing opportunities; it is the process of moving to a digital business. Source.
Digitization	The process of converting analog records into digital format. The process broadly includes: selection, assessment, prioritization, project management and tracking, preparation of originals for digitization, metadata creation, collection and management, digitizing (the creation of digital objects from physical originals), quality management, submission of digital resources to delivery systems and into a repository environment, and assessment and evaluation of the digitization effort. Source.

Exclusion	A provision of the *Access to Information Act* or the *Privacy Act* that establishes that certain types of information are outside the application of the legislation. Source.
Exemption	A provision of the *Access to Information Act* or the *Privacy Act* that authorizes the head of a government institution to refuse to disclose records that contain certain types of information. Exemptions may be mandatory or discretionary. Source.
Office of primary interest	An office of primary interest is the federal government institution -- department, agency, board, office or commission -- to which the authority, responsibility and accountability to perform a particular function on behalf of the Government of Canada has been specifically assigned by legislation, regulation, policy or mandate. In the context of ATI, offices of primary interest refer to a sector, division or office within an institution that holds records responsive to a request or has subject matter expertise related to the request. Source.
Open data	Open data is machine readable data that can be freely used, re-used and redistributed by anyone – subject only, at most, to the requirement to attribute and share alike. Source.
Open Government	For the Government of Canada, Open Government means a governing culture that fosters greater openness and accountability, enhances citizen participation in policymaking and service design, and creates a more efficient and responsive government. Source.
Interoperability	Interoperability is a property of a product or system, whose interfaces are completely understood, to work with other products or systems, present or future, without any restricted access or implementation. Source.
Record	Any documentary material, regardless of medium, under the control of a government institution. Source.
Transitory Record	Records that are not of business value. They may include records that serve solely as convenience copies of records held in a government institution repository, but do not include any records that are required to control, support, or document the delivery of programs, to carry out operations, to make decisions, or to provide evidence to account for the activities of government at any time. Source.