



July 28, 2006

Senator Donald H. Oliver
Chair, the Standing Senate Committee on Legal and Constitutional Affairs
The Senate
Ottawa, Ontario
Canada, K1A 0A4

Dear Senator Oliver:

I am writing you on behalf of the Association of Canadian Archivists (ACA) to express our concerns with the access to information provisions in Bill C-2, the *Federal Accountability Act*.

Established in 1975, the Association of Canadian Archivists is a national not-for-profit organization representing English-speaking archivists in Canada. With headquarters in Ottawa, the ACA's mandate is to provide the archival profession leadership and to facilitate an understanding and appreciation of Canada's archival heritage. Archivists have significant experience in balancing the competing public policy requirements regarding the disclosure of records. The ACA believes that it therefore has a valuable perspective on Bill C-2 and hopes that its comments will help improve an important piece of legislation.

The ACA congratulates this government for many positive measures in the *Federal Accountability Act*. These include strengthening rules, enforcement processes, and penalties concerning Cabinet appointments, political donations, truth-in-budgeting, government spending, and lobbying.

However, we are concerned that significant reforms to the *Access to Information Act* (ATIA) have been excluded from the *Federal Accountability Act* and deferred to committee for further study. We urge members of your committee to restore the deferred measures to the Act and to amend several sections that we consider regressive. Specifically, the ACA asks that the *Federal Accountability Act* be amended to include the following:

1. Implement the Information Commissioner's recommendations for reform of the ATIA.

The Conservative Party's platform in the last election endorsed the Information Commissioner's proposals for *Access to Information Act* reform. The ACA is concerned that the government has now decided to defer most of the Information Commissioner's ATIA recommendations to the Standing Committee on Access to Information Privacy and Ethics. As there is no timeline set for enacting these reforms, we fear that they will

languish in committee. We urge your committee to move decisively in implementing necessary reforms to strengthen access to information legislation.

2. Give the Information Commissioner the power to order the release of information.

The ability to make orders is essential to ensure consistent and fair compliance with the ATIA. Access and privacy commissioners in four Canadian provinces have this authority. We encourage you to give the federal Information Commissioner power to order the release of information.

3. Expand the coverage of the Act to all crown corporations, officers of parliament, federal foundations, and organizations that spend taxpayers' money or perform public functions.

We applaud the government's decision to expand ATIA coverage to several foundations, various agents and officers of parliament, and seven crown corporations. However, most federal Crown corporations, agencies, and foundation remain outside of the *Access to Information Act* provisions even though these institutions carry out public policy, spend tax dollars, and, in some cases, make decisions that may affect public health and safety. We encourage you to expand the coverage of ATIA to all crown corporations, officers of parliament, federal foundations, and organisations that spend taxpayers' money or perform public functions.

4. Subject the exclusion of cabinet confidences to review by the Information Commissioner.

Cabinet records are currently excluded from review under the *Access to Information Act*. As a result, no independent review is available if the government decides that a requested record must remain secret because it is a cabinet confidence. However, the cabinet confidences exception, like all exceptions from disclosure, can be misapplied or abused. Under most provincial access legislation, cabinet records are subject to review by the provincial information and privacy commissioner. We recommend that federal cabinet records also be subject to review by the federal Information Commissioner.

5. Oblige public officials to create the records necessary to document their actions and decisions.

The right of access has no meaning if there is no record of government decisions and actions. We encourage the government to amend the Act to ensure that accurate and reliable records be created.

6. Provide a general public interest override for all exemptions so that the public interest is put before the secrecy of the government.

Alberta, British Columbia, and Ontario access legislation provides a public interest override section to ensure that public interest is a key factor in determining disclosure. The federal Information Commissioner should also be given the power to apply this section and to override decisions denying access when disclosure would be in the public interest.

7. Ensure that all exemptions from disclosure of government information are justified only on the basis of the harm or injury that would result from disclosure, and not blanket exemptions.

The ACA strongly disagrees with Bill C-2's provision to permanently close all records relating to investigations of wrongdoing in government. We also disagree with the proposal to restrict draft internal audit reports and working papers for 15 years. This kind of blanket secrecy is a clear violation of the public's right to know. However, other types of highly sensitive information such as that pertaining to national security, national defence, security and intelligence, international relations, as well as detection and suppression of subversive or hostile activities are protected by a discretionary exemption that is subject to a "reasonable expectation of injury" test. We recommend that a harm or injury test be the only basis for exemption from disclosure for all information.

We hope that the Standing Senate Committee on Legal and Constitutional Affairs will consider the ACA's recommendations concerning the *Federal Accountability Act*. During the last election, the Conservative Party advocated significant reform to the *Access to Information Act* as a means of restoring Canadians' faith in the federal government. The ACA awaits the fulfillment of these promises of a new era of transparency and access to information.

I am happy to discuss the ACA's concerns further with you and the Committee; please contact me at via e-mail at scott.goodine@gov.ab.ca or via phone at (780) 427-8773.

Best Regards,



Scott Goodine
ACA President