Leveraging Existing Federal Frameworks to Improve ATIP Performance

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<u>**MEMORANDUM FOR THE DEPUTY MINISTER**</u>

ACCESS DENIED:
<u>**Leveraging Existing Federal Frameworks to Improve ATIP Performance**</u>

SUMMARY
- **This briefing note discusses practical enhancements to the federal government's ATIP processes using existing processes.**
- **Federal ATIP performance has been lagging globally and nationally. There is a poor track record amongst departments.**
- **We recommend including ATIP as a MAF pillar, including ATIP performance in DPRs, incentivizing ATIP success through executive at risk pay and increasing ATIP training in departments.**

<u>**Issue/Background**</u>

The volume of Access to Information and Privacy (ATIP) requests administered by Canadian citizens has increased exponentially since the inception of the Access to Information Act in 1983. The Federal Public Service is failing to respond adequately to these requests, resulting in unacceptable wait times and incomplete information. The Act and the process is in dire need of reform, but until modernization of the Act is realized the Public Service should attempt a different approach in its efforts to ensure Canadians have open and transparent access to information.

Free and open access to information is a cornerstone of democracy. Prime Minister of Canada during the inception of the Act, Pierre Trudeau, said this about access to information in democracy: "… the democratic process requires the ready availability of true and complete information. In this way people can objectively evaluate the government's policies. To act otherwise is to act in despotic secrecy." (Trudeau, P.E., 1974-74). Even absent of dramatic effect, this statement holds true. The Canadian government's Open Government Partnership emphasizes the values of Canadian democracy, and specifically recognizes the ability of openness and transparency to increase accountability and trust and provide citizens with greater opportunity to participate in government (Government of Canada, 2016).

Furthermore, expert in Access to Information law Toby Mendel has acknowledged that the culture of current generations has transformed into an "information is ours" mentality; that Access to Information isn't just a right of citizens, but that citizens own that information (Mendel, 19, 2014). Clearly, the issues with the Access to Information Act cannot simply be swept under the rug and its relevance and importance to the fabric of Canadian democracy will only deepen.

<u>**Analysis/Considerations**</u>

Canada has recently received criticism for its antiquated Access to Information Act. Since its inception in 1983, the Act has not been updated or reformed, despite great advancements in modern technology and global open information practices. Whereas in 1983 Canada was hailed as a leader in global democracy because of the Act, it is now remonstrated, ranking 48th in the world for its right to information legislation (Centre for Law and Democracy, 2016).

Criticisms have come from within government as well, and reforms have been proposed since the mid 2000s. Despite the many failed opportunities for reform, the president of the Treasury Board, Scott Brison, announced that a review will take place in 2018 (Bronskill, 2016). In the meantime, the Treasury Board has instituted the Interim Directive on Administration of Access to Information, which:

- Removes all fees except the five-dollar processing fee;
- Extends the legislation to first Minister's offices, including the Prime Minister's Office;
- Increases the power of the Information Commissioner (the federal ombudsman for the Access to Information Act) to demand the release of information; and
- Addresses the need to make information available in user-friendly formats (2016).

Although this briefing note acknowledges the need for modernization of the Act, it acknowledges the need for reform to the process itself.

The Public Service has a poor track record in meeting Access to Information Request requirements. While 30-day response rates across the federal government have been increasing over time (55% of responses within 30-days in 2011-2012, 61% of the time in 2013-2014, and 65% in 2014-15) performance has still not returned to that seen in 2002-03 when 69% of requests were responded to within 30-days. (Information Commissioner of Canada, 2015). This, despite the exponential increase in ease of access increased digitization of records would suggest.

2014-15 Breakdown Of Federal ATIP Time Required

- 0 to 30 Days
- 31 to 60 Days
- 61 to 120 Days
- 121 to 180 Days
- 181 to 365 Days
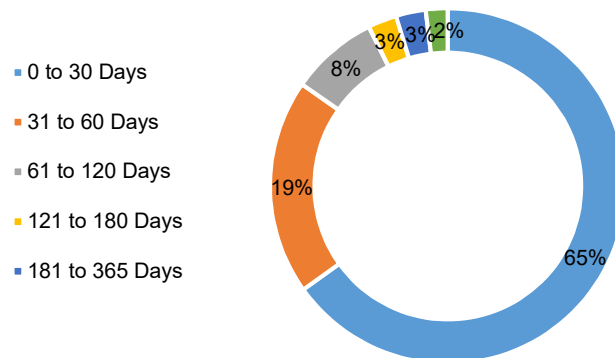
There are also wide performance inconsistencies amongst departments. For example, the Canadian Border Services Agency met the 30-day deadline 77% of the time, while the Royal Canadian Mounted Police met the deadline only 29% of the time, in the same year (Information Commissioner of Canada, 2015). The Information Commissioner of Canada, Suzanne Legault, refers to these phenomena as a "Culture of Delay" in the federal public service (Information Commissioner of Canada, 2015). The Treasury Board Secretariat, in 2010, acknowledged four reasons for the delays:

1. Human capacity – There is a lack of funding, staff and expertise.
2. Use of time extensions – There is an overuse of extensions on requests as a mechanism of coping with a heavy workload.
3. Structural capacity – There is inconsistent technical expertise and manual redaction of information.

4. Fee-structure – The out-dated fee structure causes delays and miscommunications between public servants and citizens (Government of Canada, 2010).

Given these issues, we propose a strategy for strengthening the performance of public servants within the current ATIP structure and Interim Directive.

Recommendations

While transparency is a government priority and many ATIP initiatives have recently been proposed, none have focused on leveraging existing federal frameworks to improve performance. We recommend imposing standardized mandatory measurement and reporting of ATIP results through existing departmental tools. To do this, we recommend implementing the principles of "deliverology" into ATIP. If departments are assigned measures and target goals, they will be better equipped to analyze and improve their ATIP results. The principles of "deliverology" would allow departments to measure and acknowledge their successes and failures in transparency and access to information. Additionally, tying ATIP results to the government initiative of results-based management will demonstrate that access to information is a priority and should be treated as such by all federal departments.

We recommend implementing this change through the use of four existing federal structures:
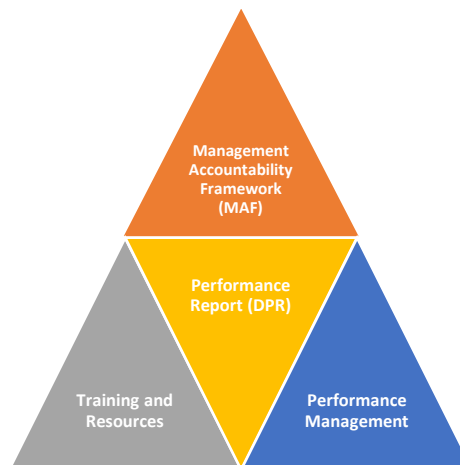
1. Our first recommendation is to include ATIP performance in the Treasury Board Secretariat Management Accountability Framework (MAF). We propose adding a specific ATIP pillar to the MAF that aims to collect evidence to support better performance. Under this pillar, departments will assess themselves against specific ATIP response targets. For example, the response target could be to respond to ATIP requests within 30-days 60% of the time while each subsequent assessment will see that performance bar raised. Thus, departments' ATIP results could be concretely measured and compared to both a target rate and other departments.

2. Next, we recommend that departments be required to include a section on ATIP performance in their annual Departmental Performance Report. This will ensure that ATIP performance is front and centre and not included in separate reports as is currently the case. As part of this proposal – departments that continually fail to meet federal targets as reported in their DPR, will be "fined" a monetary penalty equal to one Full-

Time-Equivalent (FTE). The fine would be automatically removed from a department's Annual Reference Levels. Once the department moves back into compliance, the "fine" would be reversed.

3. Incentivizing positive results by rewarding senior executives whose departments succeed to meet targets is our third recommendation. In order to encourage success, we recommend tying performance targets to Deputy Ministers' "at risk pay." Much like the government incentives for executives to find savings in their departments during the "DRAP" plan of 2011, ATIP would become a priority at all levels of the public service.

4. Finally, to discourage failure and improve results, departments that fail to meet target rates will be required to have their employees participate in mandatory ATIP re-training. This training would serve the dual purpose of improving future results and offering a penalty for failure.

Through these four delivery-focused changes, our recommendation would emphasize the prioritization of ATIP, measure and encourage the delivery of ATIP results, and work toward resolving underperformance and undertraining in federal departments.

Conclusion

The success of this strategy rests on its approach to moving forward in a simple, straightforward and low-risk manner. Departments will need time to adjust to the additional measurement criteria in MAF; a phased-in approach over one or two fiscal years would be appropriate. Next, there is a risk to evaluating Deputies on their departmental performance. Executives may push back if they feel they are not receiving commensurate support for funding from Treasury Board. The government should set aside training and salary funding in the 2017 budget in order to support implementation of these measures in departments.

Finally, we recognize that these recommendations will be implemented in conjunction with the major overhauls already planned for 2018. However, we believe that the enhancements we are proposing will work well with those that the Information Commissioner and others have already proposed. While we acknowledge that important work needs to be done on both the Act and the existing processes, there are concrete and practical steps that the government can take now to enact reform using existing tools.

Annex A: Alternative Solutions Considered

1. Increasing ATIP training for federal employees

Most ATIP complaints are due to lengthy response times and the withholding of information. One option to resolve this is to make sure federal public servants have a full understanding of their ATIP responsibilities. To accomplish this, there could be a centralized, standardized, and mandatory training for new employees. This training could be re-administered every five years and include comprehension testing.

2. Increasing access to ATIP support for employees

Various support systems already exist to aid departments in their ATIP responses. The current poor results indicate that these resources may not be sufficient. More immediate assistance for high-volume ATIP request periods is necessary. For instance, there could be a bank of ATIP employees that are redistributed between departments to help during periods when the ATIP demands are high. There could also be a helpline for employees to call and request advice on a case-by-case basis about their ATIP responsibilities.

3. Creating a "culture of transparency" rather than a "culture of delay"

Changing the public service's approach and attitude concerning ATIP is an important challenge. If departments are allowed to refuse requests that are frivolous and vexatious, this will likely contribute to improving the ATIP culture. Reframe ATIP training to remove sense of "us-versus-them" and re-emphasize the public's right to information

4. Increasing public awareness of ATIP rights

Once the problem of internal awareness and response times is majorly resolved, other steps should be taken to improve transparency. In order to properly become open and transparent, the government should run a public awareness campaign to educate citizens on their ATIP rights. If the public and the public service are more fully aware of their rights and responsibilities, the federal government will have successfully improved its transparency, accountability, and global ranking for ATIP.

Annex B: ATIP Statistical Information

2014-15 Federal ATIP Statistics				
	# of Requests Received	# of ATIP Staff	Response Rate <30 days	OIC Complaints Received
IRCC	34,066	48	61%	246
CBSA	6,705	40	77%	78
CRA	3,006	67	52%	221
Health	1,569	68	52%	65
Environment	1,488	19	53%	26
Transport	937	28	55%	87

Source: TBS INFO Source Bulletin 38B – Statistical Reporting, 2014-15
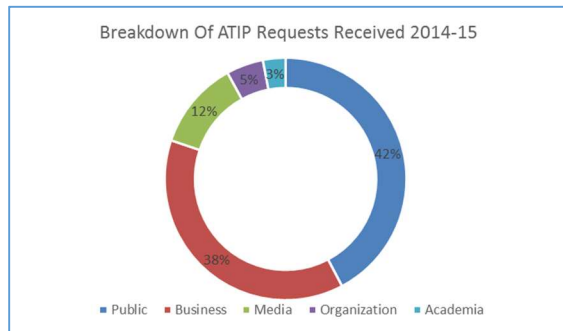http://www.tbs-sct.gc.ca/hgw-cgf/oversight-surveillance/atip-aiprp/sr-rs/2015/bulletin38bpr-eng.asp
ATIP Staff Source: GEDS

Top 5 Countries – World Information Access Laws		Top 5 Canadian Jurisdictions - Rank by Response within 30 days		
Mexico	1	NL	1	93%
Serbia	2	SK	2	93%
Slovenia	3	NT	3	87%
India	4	YT	4	87%
Albania	5	ON	5	80%
Canada	48	Canada	9	41%

Top 5 Countries – World Information Access Laws – Source: Centre for Law and Democracy 2016, Country Data
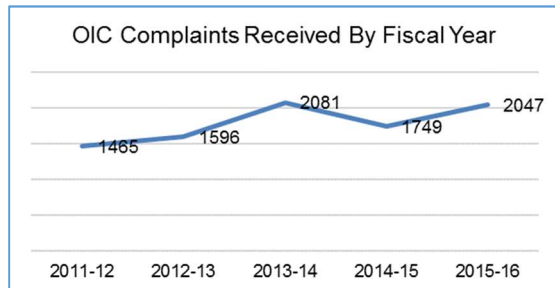Top 5 Canadian Jurisdictions – Rank by Response within 30-days – Source: National Freedom of Information Audit, 2015
http://newspaperscanada.ca/sites/default/files/FOI-2015-FINAL.pdf

Source: TBS INFO Source Bulletin 38B – Statistical Reporting, 2014-15
http://www.tbs-sct.gc.ca/hgw-cgf/oversight-surveillance/atip-aiprp/sr-rs/2015/bulletin38bpr-eng.asp

Source: Office of the Information Commissioner Annual Report 2015-16
http://www.oic-ci.gc.ca/telechargements-downloads/userfiles/files/eng/reports-publications/annual-reports/OIC_AR_ENG_INTERACTIVE.pdf

APPENDIX A: References

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