

The Updated ATIA: What Ministers' Offices Need to Know

The **Access to Information Act** (ATIA) is now divided into two parts

PART 1 – REQUESTS

KEY CHANGES

Request Processing



Fees s. 11

Requesters will pay only the \$5 application fee; all other fees are eliminated.



Decline to Act s. 6.1

Institutions may seek the Information Commissioner's (IC) approval to decline to act on requests that are vexatious, made in bad faith or otherwise an abuse of the right of access. The deadline for responding to a request is suspended until the IC's decision.

If the IC approves the institution's request to decline to act on a request, the \$5 application fee will be refunded to the requester.



Personal Info s. 3(j.1) *Privacy Act*

Names and titles of ministerial staff will no longer be considered personal information for the purposes of administering the ATIA and the *Privacy Act*. This change applies to records created on or after the day of royal assent.



Sharing Resources s. 96, 97 ATIA, s. 73.1, 73.2 *Privacy Act*

Institutions can now partner with institutions in the same ministerial portfolio to share request processing services.

This will allow small institutions to take advantage of larger departments' capacity.

Complaints Process



Order Making Power s. 36-41

IC has the power, following the investigation of a complaint, to make binding orders in relation to access requests, including ordering the release of government records.

Orders will normally take effect after 30 business days. Institutions with serious concern about an order must seek review by the Federal Court within 30 business days.

Requesters, third parties, and the Privacy Commissioner may also seek review by the court.



Establishing a Body of Precedents s. 37

IC may publish her final reports and orders, to establish a body of precedents and make institutions aware of the IC's position on their obligations under the ATIA.



No Investigation s. 30(4),(5)

IC may refuse or cease to investigate a complaint the IC deems trivial, frivolous, vexatious, or made in bad faith, or if an investigation is unnecessary in the circumstances.



Solicitor-Client Privilege s. 23, 36(2), (2.1), (2.2) ATIA, s. 27, 34(2), (2.1), (2.2) *Privacy Act*

Clarifies that the IC and Privacy Commissioner may see information subject to solicitor-client and litigation privilege, and this sharing does not constitute a waiver of privilege.

Reports

- **Annual Reports** (s. 94 ATIA, s. 72 *Privacy Act*) Institutions' annual reports must be tabled in Parliament in the first 15 sitting days after September 1
- **"Info Source"** (s. 5) Requirements to publish information about information holdings remain in place

PART 2 – LEGISLATED PROACTIVE PUBLICATION REQUIREMENTS

New requirements for ministers and their staff

 **Mandate Letters** s. 73
New or revised mandate letters for ministers (published by the Office of the Prime Minister)

 **QP Notes** s. 74
Question Period notes, as prepared by a government institution, in use on the last sitting day in June and December

 **Briefing Packages** s. 74
Briefing packages prepared for **new** ministers
Briefing packages for **Parliamentary Committee appearances**

 **Memoranda titles and reference numbers** s. 74
Titles and reference numbers of memoranda received by ministers and deputy heads

Deadline

30 days after being issued

30 days after the last sitting day in Jun and Dec, or no later than July 31 or Jan 31 if the HoC is not sitting in Jun or Dec

120 days after appointment
120 days after appearance

30 days after the end of the month received

Changes to existing requirements

 **Travel** s. 75
Expenses related to travel – ministers, ministerial advisers, ministerial staff

 **Hospitality** s. 76
Expenses related to hospitality – ministers, ministerial advisers, ministerial staff

 **Contracts** s. 77
Contracts in relation to the activities of a minister’s office over \$10,000, amendments that increase the value of contracts to over \$10,000, and amendments over \$10,000

 **Ministers’ Offices Expenses** s. 78
Annual report of all expenses incurred by a minister's office

30 days after the end of the month of reimbursement

30 days after the end of the month of reimbursement

30 days after the quarter for Q1-Q3, 60 days after the quarter for Q4

120 days after fiscal year end
For expenses incurred in fiscal year **2018-19**, report in the Public Accounts of Canada according to the current process, pursuant to existing section 72.1 of the *Access to Information Act*.
For expenses incurred in fiscal year **2019-20**, publish by July 29, 2020 on open.canada.ca pursuant to new section 78 of the *Access to Information Act*.