



---

# Overview

---

## **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 government is committed to revitalizing the Access to Information Act as one of several measures to enhance the openness and transparency of government. Bill C-58 represents the most significant changes to the act since it came into force in 1983. It is the first Phase of the government's review of the Access to Information Act. Phase II will be a full review of the act, to begin within 1 year of royal assent of Bill C-58. Key elements of Bill C-58 include:

### **The Information Commissioner would have a much stronger role**

The bill would provide the Information Commissioner with order-making powers, transforming the Commissioner's role from an ombudsperson to a powerful authority with the legislated ability to order government to release records. If the government or other parties felt compelled to make a case that such an order would result in harm (for example, to national security), they would be required to apply to Federal Court to consider the issue.

### **The Prime Minister's Office, ministers' offices, senators, members of Parliament and administrative institutions that support Parliament and the courts, would be legally required to publish a broad range of information**

Bill C-58 would legislate proactive publication for the Prime Minister's Office and ministers' offices, senators, members of Parliament and institutions that support Parliament and the courts, government departments and agencies, and Crown corporations. This would entrench in law, for current and future governments, an obligation to proactively provide Canadians with a broad range of information, including information about the use of public funds, on a predictable schedule, and without the need to make a request.

While some of the information that would be proactively published under Bill C-58 is presently proactively released in accordance with policy requirements, Bill C-58 would legally entrench these requirements. It would also add important new requirements to proactively publish: mandate letters; briefing packages for new ministers; briefing note titles; Question Period notes; and, briefing materials prepared for Parliamentary Committee appearances.

In addition, Bill C-58 would provide that, in the future, the names and titles of exempt staff would be public information.

### **The Access to Information Act would be regularly reviewed**

The bill proposes to require the President of the Treasury Board, as the designated minister, to initiate a review of the act within 1 year of the day on which the bill receives royal assent, and every 5 years afterwards. The first full review of the act will enable the government to build on this first phase of changes.

### **With the prior approval of the Information Commissioner, government institutions would be allowed to decline to act on “bad faith” requests, so that services may be delivered more efficiently**

The number of access to information requests is growing annually, and institutions are struggling to respond in a timely manner. Currently, there are no limits on the number of requests that an individual can submit or on the breadth of a request. In a small number of cases, requesters, for a variety of reasons, use the right to request government information to achieve goals that may not be consistent with the purpose of the act.

Bill C-58 proposes to authorize government institutions to seek the Information Commissioner's approval to decline to act on an access to information request that is made in bad faith, when the information is already available, or when responding would unreasonably interfere with government operations. Institutions would be required to fulfill their duty to assist the requester before taking the step of seeking the Information Commissioner's approval to decline to act on a request.

The bill also proposes to authorize the Information Commissioner to refuse to investigate a complaint if it is frivolous, vexatious, or is made in bad faith.

### **The administration of the Access to Information Act would be improved**

The government would continue to fulfill its commitment to eliminate fees other than the \$5 application fee. In May 2016, the government issued the Interim Directive on the Administration of the Access to Information Act. The directive waived all access to information fees apart from the \$5 application fee.

While the government will continue its policy of no fees apart from the \$5 application fee, the bill proposes to retain but modernize the wording of the current fee provisions of the Access to Information Act, which allow the government to set an application fee of up to \$25, and to set other types of fees by regulation. This would provide flexibility in the act to continue to monitor trends in requests and make adjustments as appropriate if a future review of the act determines this is required. Also, as before, the act would allow the head of an institution to waive fees.

Bill C-58 also proposes amendments to facilitate the sharing of access to information and personal information request processing services between institutions within the same Ministerial portfolio. This would allow small institutions within a portfolio to take advantage of a larger department's expertise and efficiency in processing requests, which would ease capacity strains for small institutions.

## **Other changes**

The bill would clarify that the Information Commissioner and the Privacy Commissioner may examine records over which the exemption for solicitor-client privilege has been claimed without waiving the privilege, further to a Supreme Court decision on this matter in 2016.

It also proposes to validate changes to Schedule I of the act and provide the Governor in Council with authority to delete government institutions that no longer exist from the Schedule.

Related amendments to the Privacy Act, the Canada Evidence Act, and the Personal Information Protection and Electronic Documents Act are also proposed.

## **Coming into force**

The amendments would come into force upon royal assent, except for the order-making power for the Information Commissioner, and the proactive publication requirements for senators, members of Parliament and administrative institutions that support Parliament and the courts, which would come into force 1 year after the date of royal assent to ensure adequate time for these institutions to implement the changes effectively.