



Treasury Board of Canada
Secrétariat

Secrétariat du Conseil du Trésor
du Canada

Canada

Access to Information and Declassification and Disclosure

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Issue

- Individuals and groups with an interest in Canada's history continue to face challenges and delays in accessing historical records (i.e., 20 years or older), including those that are classified.
- This situation is exacerbated by the fact that Canada is the only Five Eyes country without a systematic declassification regime.
- The *Access to Information Act* (ATIA) is by default the principal mechanism for triggering the review and release of historical records.

Context

- **February 2020** – Office of the Information Commissioner (OIC) published a [report](#) entitled *A Declassification strategy for national security and intelligence records* by Wesley Wark.
- **April 2022** – OIC tabled a [Special Report to Parliament](#) pursuant to a systemic investigation of Library and Archives Canada (LAC).
- **December 2022** – The former President of the Treasury Board (TB) tabled the [Access to Information Review Report to Parliament](#).
- **June 2023** – The Standing Committee on Access to Information, Privacy and Ethics tabled a report on [the State of Canada's Access to Information system](#).
- **October 2023** – The [Government Response](#) to the Standing Committee report ([the State of Canada's Access to Information system](#)).

Findings and conclusions

Impact on the Access to Information system

- Lack of a declassification framework is having a negative impact on the ATI regime.

Limited review for declassification or downgrading

- Current legislative and policy framework has no firm trigger for regular classification review and no clear timelines to transfer records to LAC.

Impact on Government Institutions

- The absence of a systematic approach affects government institutions and in particular, institutions that hold classified records.

Increased scrutiny

- Issue of declassification continues to gain profile – raised by the Information Commissioner, by parliamentary committee, and in the President of the TB's report to Parliament on the first review of the ATIA since Bill C-58 came into force.

Overview of legislative and policy authorities

Library and Archives Canada Act

- Provides the Librarian and Archivist of Canada with the authority to acquire, preserve and make known the documentary heritage of Canada. The Act makes LAC the permanent repository of publications of the Government of Canada.
- Records of historical value are transferred to LAC's archives under agreements reached with each individual institution.
- The transfer of historical records to LAC is not consistent across institutions.

Access to Information Act

- Provides a general right of access to information that is under the control of government institutions.
- Applies to a broad range of government institutions including departments, agencies and crown corporations (over 256 institutions).
- Provides that the President of the Treasury Board review the way government records are maintained and managed to ensure compliance with the ATIA.
- The ATIA and its related policy instruments apply to the heads of institutions (e.g., Ministers).

Overview of legislative and policy authorities (2/2)

Policy/Directive on Service and Digital

- Deputy heads responsible for ensuring that information and data are managed as a strategic asset.
- Departmental Chief Information Officers are responsible for establishing, implementing and maintaining retention periods and developing a documented disposition process for all information and data in their institution.
- It does not apply to all institutions covered by either the ATIA or the LAC Act.

Directive on Security Management

- Provides departments with mandatory procedures for information management security, including requirements to assign security categories.
- **Downgrading and upgrading:** Ensure that the time frame for protection of information is kept as short as possible and that the security category continues to reflect the potential impacts of a compromise.
- Departmental Chief Security Officers are responsible for establishing institutional downgrading and declassification processes. Consequently, the processes are not consistent across institutions.

Five Eyes' declassification regimes

United Kingdom

Twenty-year rule on public records – Transfer to public National Archives after 20 years for records classified at OFFICIAL and lower.

The review consists of 3 stages:

1. Selection review – historic interest files are identified
2. Sensitivity review – in line with the FOIA 2000
3. Cataloguing and preparation

Australia

- Recommends entities establish procedures for automatic declassification:
- originator sets a specific date or event
- when the open access period under the Archives Act 1983 commences.
- Most records enter the open access period after 20 years (Archives Act, 1983), with some exceptions.

United States

- 1. Automatic Declassification Program** – information of historical value is automatically declassified at 25 years of age - unless there is an exemption
- 2. Systematic Declassification Program** – applies to records exempted from automatic declassification
- 3. Mandatory Declassification Review Program** – permits individuals or agencies to request a review of specific classified information for declassification

New Zealand

- Mandatory transfer of public records to Archives New Zealand after 25 years
- Transfer can be deferred
- Agency to establish declassification policy and procedures – with approach for proactive declassification
- Criteria for declassification should refer to the specific legislation and operational context of the agency in question.

Common components of a declassification regime

1. Mandated classification review
2. Limited inter-departmental consultation
3. Themed reviews based on consultation / interest
4. Transfers to archives are mandated and automatic
5. Automatic declassification according to time threshold

Progress to date and next steps

- TBS published an [ATI Implementation Notice \(2023\)](#) that provides advice to institutions on leveraging access to information processes to promote the declassification or downgrading of the security category assigned to information resources.
- TBS published [Policy Guidance on the Disclosure of Historical Records under the Access to Information Act](#) to assist heads of institutions and their delegates in considering the passage of time when exercising discretion on the disclosure of historical records.

Next steps

- Continue to explore declassification and disclosure initiatives and approaches in collaboration with key partners, including LAC, Public Safety Canada, National Defence, Privy Council Office and Global Affairs Canada.