Notes for remarks by Francis Bilodeau, Assistant Secretary, Digital Policy and Services at the Federal, Provincial and Territorial Information and Privacy Commissioners Conference

September 12, 2018   
Regina, Saskatchewan

Introduction

It’s a pleasure to speak to you today.

History

But before we take a glimpse of what the future might look like, it’s worth having a look back to see where we have come from.

Up until the end of World War II, most governments around the world operated without any general law permitting access to information in their possession. And neither did they have any general law concerning the collection, use and disclosure of information that could affect the privacy of individuals.

But following World War II, government began to provide more programs and services to the public. To do that, the size of government grew and so did the amount of information it produced and collected. As a result, it came to be believed that access to such information was required to ensure democratic and accountable government.

On the privacy side, the information the government collected to administer programs gave rise to concerns. The view that emerged at the time was that information collected by government about individuals should be treated as confidential.

These developments culminated, in the early 1980s, in the introduction of comprehensive legislation addressing both issues. That bill, which contained both the present Access to Information Act and the Privacy Act, became law on July 1, 1983.

The right of access in the Access to Information Act was laid out according to three principles:

* ....that government information should be available to the public;
* ....that necessary exceptions to the right of access should be limited and specific; and
* ...that there should be appropriate oversight of the decisions on the disclosure of government information.

The Act was leading edge for its time and placed Canada at the forefront in this emerging area. And Canadians have made abundant use of the right of access. In fact, almost 850,000 (849,151) access to information requests have been processed between 1983 and 2017 — or 96 every working day for the last 34 years. In 2016-17 – the most recent data we have today – the Government received almost 92,000 requests under the Access to Information Act and over 70,000 under the Privacy Act.

Need to modernize

But let’s face it. The world has changed dramatically since 1983.

That was the year the cell phone first came to market, looked like a shoebox and cost around $4,000. Back then, people gathered around fax machines to marvel at that revolutionary technology. And information was stored in file folders in huge filing rooms.

Today, it’s smartphones and social media, Big Data and Cloud Computing. Canadians seek out information through digital channels and government now can interact with the public through the web and social media.

Thirty-five years ago, government records were predominantly paper based. Today, the vast majority of government records are digital and with this technology there has been an explosion in the number of records government produces.

Digital technology has dramatically changed the way government can collect, store and process information, including personal information. And it has made it far cheaper and easier for government to make great amounts of information available to anyone who has a computer or smart phone, without the need for someone to make an access to information request and receive an individual response.

Canadians’ expectations have also changed. While the concepts of openness and transparency have been around for years, technology is empowering citizens to demand more from their governments. They’re calling for greater participation in government decision-making. And they are seeking to make their governments more responsive and accountable.

Citizens want and deserve the assurance that comes when a government is transparent and acts with integrity. And they want government to be designed around user needs instead of government processes. We believe that increased citizen participation and oversight of the workings of governments will lead to better programs and services for citizens.

And if we’re persistent, we think that we might just deepen civic engagement, bolster trust and, ultimately, strengthen our democracy. Certainly, I think we can agree that Access to Information legislation is foundational for protecting our democratic institutions.

At the same time, Canadians also increasingly expect to be able to find information online, instead of having to request it. We’re responding. We’ve digitized millions of historical records and released tens of thousands of datasets and information resources for free online, and are working towards an open by default approach. As digital is increasingly the communications medium of the world, it is likely these expectations will only get stronger.

So clearly we live in a digital world. But when it comes to the ATIP process, you wouldn’t know it. When I took on this job, I asked to go see our own ATIP office in my department. And what I found was a process in need of modernization.

Here is how it works in the federal government. The ATIP office receives a request – in some cases this is online, other times it could be by mail. If it is received online, then the officer has to manually re-input all that data into a separate system for processing requests. The officer then e-mails the request to the officials who are responsible for the files on that subject. The officials identify the relevant records – most of which are digital. They then print out all the records so that they can manually highlight with a highlighter any text that cannot be released. These physical records are then sent to the ATIP office by internal mail. An ATIP officer scans all the records as pdf images – so we are making them digital again – and then goes through and electronically highlights all the sections that were previously physically highlighted. The officer then burns the files onto a CD, or prepares a paper copy, according to the requester’s preference, and sends them to the requestor, usually by snail mail.

Now contrast that with digital end-to-end solutions like Amazon’s one click purchasing that allows a user who has previously entered their personal information to buy something online with a single click. No need to manually input their billing and shipping information for each purchase. And what’s more, this technology is almost 20 years old.

Clearly the way we do Access to Information and Privacy needs to be modernized. In particular, we have to seize digital opportunities – something we have heard from stakeholders. We are pursuing that, through a series of initiatives that will first build a service where Canadians can submit access to information and personal information requests to any government institution subject to the Acts online. This service will then connect to request processing software; and then, we hope in the future, revamp the way we retrieve records.

Challenges

But I would be remiss if I didn’t recognize that there are challenges. As I mentioned, there has been an exponential growth in the amount of information government produces. We are only at the beginning stages of exploring how we can take advantage of artificial intelligence to help us meet the growing demand for that information.

AI will no doubt transform how we manage information, exponentially accelerating the possible flow of information, and free us from manual, tedious tasks. But as you know, AI also raises ethical issues and privacy concerns that we must carefully address before we “bring in the robots”.

I’m happy to relay that excellent work is being done in this area at the federal level to develop methodologies to evaluate the impact of AI and algorithms that could be used by governments.

That said, we know that AI needs to be fed massive amounts of information to work effectively. But while individuals are more and more open to sharing personal information about themselves on social media, they remain concerned about how their personal information is collected and used.

We saw that in the public outcry over the improper use of Facebook data by Cambridge Analytica. And even prior to that, lawmakers in the European Union were already taking action to strengthen privacy protection through the General Data Protection Regulation.

The Standing Committee on Access to Information, Privacy and Ethics recently reviewed our own legislation in that area – the Personal Information Protection and Electronic Documents Act which my colleague from ISED will be talking to you about later today.

The Committee heard from a number of witnesses including the Privacy Commissioner and has made a number of recommendations around issues of consent, privacy by design, algorithmic transparency and data portability, among others.

With this renewed attention on privacy, it is clear that we need to keep privacy concerns firmly in mind as we modernize access to information held by government.

The future

So where do we go from here?

Open Government

To start we are investing in open government. In 2017, the federal government launched an Open by Default portal on open.canada.ca. Under this pilot project, four departments – Treasury Board Secretariat, Environment and Climate Change Canada, Canadian Heritage and Natural Resources Canada – shared raw, unvetted working documents with the public.

The documents are a diverse selection of different types including flash reports, field notes, project plans, org charts and meeting minutes. We like to say we attempted to do “radical transparency” by testing out a new way to work out in the open.

This project, although just a pilot, taught us many things, and gives us a lot of hope for a more open future. It also raised quite a few challenges, and taught us that there is still a lot of work to be done to become open by default in reality.

First, given we were testing a model where there would be no supervision or “vetting”, it was very important that documents of a sensitive nature such as those containing personal information be excluded from this exercise.

Also, because working documents are often only prepared in one official language, the pilot is not something we could scale until we reconcile how to be Open by Default with our obligations and commitment to related Official Languages requirements. Another important value of the government is accessibility, and our current tools do not allow us to be accessible by default.

So TBS is currently working to enhance and promote web accessibility for people with disabilities by testing a solution at a smaller scale on this pilot. When we open government, we need to open it to all citizens. Call it “inclusive transparency”.

On the data side, we are making progress, with our searchable open.canada.ca site, where 80,000 datasets can be searched and accessed immediately, and which is now linked, on a pilot basis, to Alberta’s data holdings as well.

Beyond 150

I recently read the Canada Beyond 150 report on Open and Transparent Government. The team of 16 new public service employees who wrote the report suggested Canada might adopt the example of a public registry of government documents along the lines of the Norwegian system. In Norway, public records are stored in a searchable database. Users can search this database to locate documents and then submit a request to view them.

It’s one of many ideas. Given the steady increase in requests, we’re exploring technological supports for ATI, including the use of AI to help government scale with demand in a cost-effective manner, without sacrificing our commitments to Parliament or Canadians’ privacy.

This might include adopting practices and procedures that are “open by design”. For example, officials could write documents with access in mind, keeping personal and confidential information in specific sections of reports, to make it easier for software to determine what can be disclosed.

If the team who wrote the report is any indication, I believe many employees want to work in the open and that we are in the middle of a culture change that started back with the publication of the first proactive disclosure reports in 2004.

It’s worth remembering that proactive disclosure is reaching a new height as we are consolidating all departments’ information in one place to facilitate access and detailed searching. And we are going even further with our various Open by Default pilots.

As we move forward and consider some of the possibilities I have mentioned and others that will no doubt emerge from this conference, it is important to keep a number of things in mind. Thankfully, we have the benefit of the work of the Information Commissioner and Privacy Commissioner as well as the Standing Committee on Access to Information, Privacy and Ethics.

And what keeps coming up time and time again in their work – and in the work of provincial and territorial Information and Privacy Commissioners – is the idea of balance. Whether it be the balance between the public's right to know and the government's need to protect information or the balance between access and privacy rights.

The other dominant theme is the issue of trust in government. As the Privacy Commissioner has indicated, risks of data breaches that are not properly mitigated and excessive collection and sharing of personal information may diminish trust in government. And a lower trust in online systems may undermine our efforts to improve service to Canadians by offering better digital services.

A third theme is the imperative of open government, particularly as more and more governments globally are proactively releasing content, and seeking to ensure that citizen participation in decisions can be informed by both curating content and giving greater access to government’s knowledge holdings.

The digitization project at Library and Archives is one way the Government of Canada plays the curator role and gives greater access to information holdings. Their assessment process helps identify material for digitization, taking a wide range of criteria – including public interest – into account.

One of the more interesting aspects of this work is that Library and Archives does more than collaborate with partners and stakeholders within government. They encourage everyone to get involved.

Their online crowdsourcing tool lets the public transcribe and tag materials so that others can find and use them more easily.

Does it work?

Well, they recently digitized a 534-page report, and members of the public transcribed the whole document within a month.

Open Government brings to the main stage the idea that access and transparency is more than an administrative responsibility. It is a critical component of good government and a key to strengthen trust in our institutions and our democracy. Canada is a recognized leader in open government, well placed for further progress particularly as we prepare to lead the global movement as incoming Chair of the Open Government Partnership.

I agree with stakeholders, including the previous Information Commissioner of Canada, that government needs to align access to information initiatives with its work on open government and I would add digital to that as well. Because I believe open government and digital government can work hand-in-hand to provide more benefits to more people.

When digital and open government are designed well, they have the power to make our societies more inclusive, to empower citizens to participate in government decision-making, and give them the tools they need to hold the government to account.

Open and digital government are powerful instruments to support trust in government, but without a legislated right to know, they can become toothless. So we continue to be driven by Canadians’ expectations for increased participation in a more open and transparent government that improves their lives.

So these are all factors we need to consider as we look to modernize access to information and privacy.

Clearly, change is accelerating. Take VCRs which were around for about 25 years before DVD players came on the scene. DVDs dominated for about a decade and are now almost obsolete as people have turned to streaming movies directly over the internet. It sometimes feel as if we are still stuck in the VCR days, doesn’t it?

The good news is that if Bill C-58 is passed, it would require a review of the Access to Information Act every five years, with the first review starting no later than one year after Royal Assent. These five-year reviews would provide an important opportunity for Canadians to have their say on access rights, and help the Government ensure that the system continues to meet their needs.

These reviews would assess what is working and how, and ensure the Act is never allowed to become so outdated again.

As all of you are well aware, the ongoing shift to digital government has implications on the privacy side as well. Protecting privacy while meeting the expectations of Canadians for better service is becoming an increasingly challenging task.

At the federal level, there is a strong commitment to offering Canadians more integrated, seamless digital services. This opens up issues on two fronts: first, it causes us to take a closer look at the rule set for the protection of personal information.

Our current technologies offer new ways that we can provide both protection and transparency about the use of personal information by government, and we want to explore that, and think about what that means for the rules framework at the federal level.

Second, to develop digital services in a privacy-sensitive way requires that we make Privacy by Design an integral part of their development. In the past we would typically focus privacy training on employees who were directly designing, administering and delivering a program.

Now, we need to find ways to bring IT developers as well as digital business owners into the loop on how personal information needs to be handled in the context of digital services.

This requires considerable technical expertise – we need a blend of privacy and IT expertise to develop relevant tools, guidance and training to fill this gap. This blend of privacy and IT expertise would further help to ensure that privacy is not an add-on, but that privacy is embedded and fully integrated in the development, administration, or delivery of a program.

Waiting until the end of the development cycle – when an initiative will typically begin to work on a Privacy Impact Assessment – is too late for privacy to be considered. Too often that means costly changes to a planned service, delays, or projects proceeding without full consideration of privacy.

Recent high-profile privacy breaches associated with enterprise level initiatives at the federal level have underscored the importance of changing the way we proceed.

We need to educate developers and business owners and provide them with training and advice so that privacy is a central consideration from the beginning of the design process.

Conclusion

I, for one, am excited about the future of access to information and privacy. As an optimist, I can’t help but think that new technologies will help us meet the challenges we face. I certainly want to make sure that the person who takes over my job gets a much different tour of how ATIP requests are processed.

And new technologies offer us the opportunity to tailor government to better serve Canadians. I am looking forward to seeing privacy embedded into new technologies and business practices to support fundamental privacy protection and to maintaining the public’s trust in government. To that end, I look forward to engaging with you as we build this future together.

Thank you.