

Submission to the Statutory Review Committee on Access to Information and Protection of Privacy Act

(Forwarded to the ATIPPA Review Committee by the Office of Public Engagement on April 25, 2014)

December 27, 2013 (8:38 AM)

An e-mail from Adam Pitcher to Minister Steve Kent

Subject: Please end excessive secrecy by Canadian politicians, staff, and government officials

Hello,

I am writing today to call on all governments to strengthen access-to-information laws and systems in the following key areas in order to stop excessive secrecy by politicians, staff, and government officials:

1. any type of record created by any entity that receives significant funding from or is connected to the government, or was created by the government and fulfills public interest functions, should be automatically covered by access to information laws and systems (as in the United Kingdom);
2. all exemptions under access to information law should be discretionary, and limited by a proof of harm test and a public interest override (as in B.C. and Alberta);
3. the access to information law and system should require every entity covered (as in the United Kingdom, U.S., Australia and New Zealand): to create detailed records for all decisions and actions and factual and policy research; to routinely disclose records that are required to be disclosed; to assign responsibility to individuals for the creation and maintenance of each record, and; to maintain each record so that it remains easily accessible;
4. the access to information law and system should allow anyone who does factual or policy research for the government to speak to the media and publicly about the topic, findings and conclusions of their research without being required to seek approval first from anyone (including their superior, the Privy Council, the Prime Minister, a Cabinet minister, or any ministerial staff person);
5. severe penalties should be created for not creating records, for not maintaining records properly, and for unjustifiable delays in responses to requests;
6. the Information Commissioner should be given explicit powers under access to information: to order the release of a record (as in the United Kingdom, Ontario, B.C. and Quebec); to penalize violators of the law with high fines, jail terms, loss of any severance payment, and partial clawback of any pension payments, and; to require systemic changes in government departments to improve compliance (as in the United Kingdom)
7. funding to the access to information system and enforcement should be increased to solve backlog problems instead of increasing administrative barriers such as limiting requests in any way, and fees for access should be lower overall and standardized for every entity covered by the access to information law and system; and
8. Parliament must be required to review the ATI Act every 5 years to ensure that problem areas are corrected.

The nation-wide Open Government Coalition supports these key changes.

As well, to ensure public disclosure of wrongdoing in politics and government, the whistleblower protection law and system in the federal government, and every provincial, territorial and municipal government, must work in the following ways:

1. all whistleblowers must be effectively protected from retaliation, including politicians, political staff, government suppliers and contractors and members of the public;
2. whistleblowers must be allowed, in all cases, to file their complaint directly with the integrity commissioner or similar commissioner;
3. everyone who witnesses or receives evidence of wrongdoing by anyone in politics or government must be required to report it to the integrity commissioner or similar commissioner (with the commissioner strictly and strongly required to keep their identity secret, and people allowed to submit evidence anonymously);
4. the identity of anyone in government or politics found guilty of wrongdoing must be made public in all cases;
5. the integrity commissioner or similar commissioner must be clearly designated as the trainer (including by issuing interpretation bulletins), investigator and enforcer of all Treasury Board manual or equivalent policies (other than the policies enforced by the Auditor General) and must be required to conduct training sessions, conduct regular random audits of compliance and to investigate whistleblower complaints about violations of these policies;
6. when the integrity commissioner or similar commissioner refers a whistleblower complaint about the violation of another law, regulation or policy for which a designated investigative and enforcement agency exists, the commissioner must be required to ensure that the agency investigates the complaint within 90 days, and if an investigation does not begin within this time frame the commissioner must be required to investigate the complaint;
7. the law must require employers to prove that no retaliation against a whistleblower has taken place (as opposed to requiring the whistleblower to prove that retaliation has occurred);
8. the Public Sector Integrity Commissioner must be given the power to order chief executives/heads of departments to take corrective action, and chief executives/heads must be required to report to the Commissioner on corrective actions taken;
9. the integrity commissioner or similar commissioner must be given the power to penalize any chief executive/head with a fine, suspension or firing if the chief executive does not comply with the commissioner's order, or if anyone retaliates against a whistleblower or does not maintain a system that complies with the law;
10. the minimum fine for taking a reprisal against a whistleblower must be increased to \$50,000, with a maximum range of fines from \$100,000 to \$200,000, and loss of any severance payment, and partial clawback of any pension payments;
11. whistleblowers must receive adequate funding for legal advice;
12. whistleblowers must receive compensation from the government general revenue fund adequate to seek another job (at least 6 months salary) if they want to (for example, if the whistleblowing process leaves them completely alienated from all their co-workers) and/or priority in switching jobs in the federal public service;
13. any person nominated and chosen to be the integrity commissioner or similar whistleblower protection commissioner must be required to have legal experience enforcing ethics rules or laws to ensure proper enforcement of whistleblower protection measures, and must not be eligible for a renewal of their fixed term in office (to ensure that the commissioner does not act as a lapdog to Cabinet to try to get re-appointed for a second term), and;
14. at least every 3 years, it must be required that an independent audit (by the Auditor General or other independent body) of the entire whistleblower protection system be conducted.

Similar changes are needed across Canada to provincial, territorial and municipal laws.

Please let me know what you will do to ensure that these changes are made as soon as possible. I will be deciding which political party to vote for in the next election based on the responses I receive from representatives in each party. I look forward to hearing from you.

Sincerely,
Adam Pitcher



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