Canada: Civil Society Parallel Assessment of Compliance with Sustainable Development Goal Indicator 16.10.2

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Centre for Law and Democracy
info@law-democracy.org
+1 902 431-3688
www.law-democracy.org

Introduction

This report provides a parallel civil society assessment of the extent to which Canada, at least at the federal level, has complied with Sustainable Development Goal Indicator 16.10.2, which is: "Adoption and implementation of constitutional, statutory and/or policy guarantees for public access to information". The Freedom of Information Advocates Network (FOIAnet) has developed a basic methodology to undertake this assessment.[1] The goal is to ensure that the assessment of compliance with this Indicator is accurate and fair, and benefits from civil society input. The FOIAnet methodology focuses only on the second part of the Indicator, namely implementation of guarantees. Information on the adoption of laws on this, known as right to information (RTI) laws, as well as the strength of those laws, is already available on the RTI Rating developed by the Centre for Law and Democracy and Access Info Europe.[2]

The core part of the methodology involves selecting five to ten public authorities and then assessing them across three areas of implementation, namely: (i) the extent to which they proactively disclose key information; (ii) the institutional measures they have put in place

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[1] The methodology is available in English, French and Spanish at:
http://foiadvocates.net/?page_id=11036.
[2] See www.RTI-Rating.org.

to implement RTI; and (iii) the manner in which they respond to access to information requests.

For purposes of this exercise, the following ten public authorities have been selected:
- Business Development Bank of Canada
- Canadian Security Intelligence Service (CSIS)
- Elections Canada
- Environment and Climate Change Canada
- Canadian Human Rights Commission
- Health Canada
- Indigenous and Northern Affairs Canada
- Parole Board of Canada
- Public Safety Canada
- Status of Women Canada

The selection of these particular public authorities was designed to ensure testing of a range of different types of authorities. One factor was the volume of requests they receive annually (with an emphasis on assessing both high volume and low volume authorities). Another was the type of body (for example, some are ministries, some regulatory/oversight bodies and some specialised service bodies).

The three evaluation criteria described above are referred to in this report as: Proactive Disclosure, Institutional Measures and Responding to Requests. *Proactive Disclosure* refers to the extent to which vital institutional information is made publicly available regardless of whether or not there has been a request for it. *Institutional Measures* refers to the formal measures public authorities have taken to implement the Access to Information Act. There are two elements to this, namely central measures and measures taken by individual authorities.

The third section – *Responding to Requests* – involves more action-oriented research. Specifically, it involves submitting one to three requests for information under the Access to Information Law to each authority. Authorities are then assessed for how quickly they respond to requests, whether responses otherwise comply with the Law, and the completeness of the information actually provided (requests were specifically designed so as not to fall within the scope of exceptions to the right of access).

Overall Analysis

Table 1 provides an overview of the overall performance of each of the ten public authorities that were evaluated as part of this exercise. It provides a short synopsis of how the authority performed on each of the three main evaluation criteria. While it does not allocate an overall score or grade to each authority, this is done for each of the three individual criteria (see below).

Table 1: Overall Analysis of Implementation

Organisation	Proactive Disclosure	Institutional Measures	Requests for Information

Business Development Bank of Canada (BDC)	Overall, the BDC scored highly with most of the categories having Full or almost Full disclosure. However, key organisational information is missing, but there is adequate disclosure, including of information relating to RTI and requests.	Satisfactory, but lacking consistent staff training.	Requests were easily submitted via an online form and the standard application fee of $5 was waived. Both questions were answered within the 30-day period.
Canadian Security Intelligence Service	CSIS engages in partial disclosure of information but full transparency is lacking with respect to information about requests and there is no information about procurement.	Satisfactory, but does not conduct formal training for staff.	Responses to requests were not made on time. Provided material was riddled with exemptions (perhaps warranted) and in one case a response was provided but the material did not correspond to the request.
Elections Canada	Elections Canada proactively disclosed RTI requests well, but lacked robust disclosure in other areas.	Good. Almost all of the implementation measures are in place.	Results were not provided in time.
Environment and Climate Change Canada	Environment and Climate Change Canada achieved almost full disclosure in all categories except for procurement and information on requests.	Very good. Has almost all of the necessary measures in place and has even produced a detailed plan for implementing the government's recent Directive on Open Data.	One of three requests was provided in time. However, extensions were requested for the other requests – one for 210-days and one for 120-days – neither of which we deemed to be reasonable.
Health Canada	Health Canada achieved almost full proactive disclosure, including releasing an annual report on requests. However, it is missing information on procurement.	Good. Has almost all the implementation measures in place.	Provided access to some of the requested information via an online link, and requested a 45-day extension within the statutory 30-day timeframe but did not then meet that timeframe.
Canadian Human Rights Commission	The Canadian Human Rights Commission is missing key information on requests, including how to make requests, the cost, and information on past requests. In addition, the majority of other types of information are only partially disclosed.	Satisfactory, but does not conduct formal training for staff.	All materials were received within the statutory 30-day timeframe and provided in full.
Indigenous and Northern Affairs Canada	Indigenous and Northern Affairs Canada partially to fully discloses information.	Good. Has almost all of the implementation measures in place.	Provided information within the statutory 30-day timeframe for two of the

			three requests. The third question was not responded to, and no explanation was given as to why.
Parole Board of Canada	Overall the Parole Board of Canada had good proactive disclosure. It is missing some procurement information and requires the public to request access to its decision registry instead of proactively disclosing it.	Satisfactory. Some implementation measures are in place and a detailed plan for implementing the Directive on Open Data has been published. However, annual reports are not published online and PBC does not conduct formal training for its staff.	Provided information in full within the statutory 30-day timeframe.
Public Safety Canada	Generally Public Safety Canada had adequate proactive disclosure. It is missing some contact information, procurement details, ways for the public to participate, and detailed information on completed requests.	Very Good. Has almost all implementation measures in place and has issued an implementation plan for the government's Directive on Open Data.	Partial results provided with some information redacted. Hard to assess legitimacy of redactions. In one case, they claimed no responsive records were found, which we deemed to be highly improbable.
Status of Women Canada	Status of Women Canada showed a marked difference in the proactive disclosure of institutional, information versus information about RTI. Although the latter was generally available, the organisation scored "none to partial" on disclosure of other information.	Satisfactory. Has most of the implementation measures in place, but lacks formal training for staff.	Two of three requests were completed within the statutory timeframe and were provided in full. However, the third request involved an unacceptable 120-day extension and we were not informed of this extension prior to the expiry of the initial 30-day deadline.

Specific Analysis

(1) Proactive Disclosure

"Proactive disclosure" refers to the extent to which a public authority automatically and pre-emptively discloses information to the public. This circumvents the need for members of the public to make requests for this information, which emphasises and reinforces the idea that the public has a right to access information held by public authorities.

This section looks at both the extent to which the ten public authorities proactively disclose key institutional, organisational and operational information, as well as information about

the right to information. In line with the FOIAnet methodology, the report focused on disclosure of the following types of information:

- Information regarding the organisation itself
- Operational details
- Links to relevant legislation
- Information on service delivery
- Budget details
- Public Procurement and contracts
- Registers
- Information regarding access to information generally
- Guidance on how to make access to information requests
- Costs of publications
- Lists of previously fulfilled access to information requests

Table 2 provides a summary of the proactive disclosure performance of each public authority. Detailed results can be found in Appendix 1.

Table 2: Overall Results for Proactive Disclosure

Organisation	Availability of institutional, organisational, operational and contact information (None/Partial/Full)	Availability of information about the fight to information (None/Partial/Full)	Overall Assessment
Business Development Bank of Canada	<u>Partial to Full</u> close to Full except: -lacking full contact information for key organisational members (e.g. Board of Directors) -lacking full procurement information	<u>Full</u> -one of the authorities that releases an annual report with detailed information on requests	• some operational information is missing (for example, contact information, transparency in the disclosure process) • good transparency on RTI

Canadian Security Intelligence Service	<u>Partial</u> -partial for most categories -legislation and institutional information were fully disclosed -no information on the procurement process	<u>Partial to Full</u> -only high level summary information about requests	• missing procurement information • lacking full transparency on requests • otherwise information at least partially disclosed
Elections Canada	<u>Partial to Full</u> -legislation and institutional information were both fully disclosed	<u>Full</u> -one of the few authorities that releases an annual report with detailed information on requests	• good transparency on RTI • could disclose more institutional information
Environment and Climate Change Canada	(almost) <u>Full</u> -missing full procurement disclosure -stands out for releasing: (1) Administrative Burden Baseline Update (outlining burdens on businesses) (2) service standards (i.e. what Canadians can expect from businesses) for high volume regulatory authorisations (i.e. the more common environmental authorisations)	<u>Partial to Full</u> -missing detailed information on requests, including time to process and refusals -included extra information on a number of areas	• achieved almost Full proactive disclosure • missing detailed information on requests
Health Canada	(almost) <u>Full</u> -missing full disclosure on procurement	<u>Full</u> -including releasing an annual report on requests	• achieved almost full proactive disclosure

Canadian Human Rights Commission	Partial -the majority of the information is only partially disclosed -missing procurement information	None to Partial -how to make a request and the cost is disclosed -Missing information on past requests	• missing key information on requests for information
Indigenous and Northern Affairs Canada	Partial to Full -almost full disclosure -authority spread over many different acts	Partial to Full -missing time taken to respond to requests -shows requests since 2010	• scored well on both institutional information and RTI information
Parole Board of Canada	Partial to Full -missing some procurement information	(Almost) Full -have to request access to the registry of requests instead of it being available online -RTI information is there, but the format is harder to read	• generally good proactive disclosure in both key categories
Public Safety Canada	Partial to Full -missing full contact information, procurement details, ways to participate	(Almost) Full -only released summary information on completed requests	• generally good proactive disclosure in both key categories
Status of Women Canada	None to Partial -missing key institutional, operational and legislative information	Partial to Full -completes annual report to Parliament which contains RTI information	• RTI information was generally available • missing proactive disclosure of key institutional, operational, and legislative

			informat ion

(2) Institutional Measures

This section looks at institutional measures to implement the Access to Information Act put in place both centrally and by the selected public authorities.

2(a) Overall Framework for Implementation

This part of the methodology assessed whether there is a central nodal agency with responsibility for implementation, as well as an oversight body (information commission). In Canada, two government agencies are mandated with central implementation of access to information namely the Department of Justice and the Treasury Board Secretariat (TBS). The Information Commissioner of Canada is responsible for oversight of the Act and, in particular, for investigating complaints regarding requests. The mandate and framework of the nodal agencies are outlined in Table 3 while the mandate of the Information Commissioner is outlined in Table 4.

In general, while the Department of Justice is formally responsible for the administration of the Act, the lion's share of oversight and implementation is undertaken by TBS, which is responsible for the effective and efficient use of government resources generally. The TBS undertakes annual reviews of RTI implementation in Canada, proactively discloses central information, and formulates specific policies for effective implementation of the Act.

Where a complaint is made under the Act, the Information Commissioner has the power to undertake an investigation and make recommendations, but is not given authority to make binding orders (although this is currently being reviewed and requesters may lodge appeals with the Federal Court).

Table 3: Nodal Agencies

Department of Justice	Treasury Board Secretariat
Key Department: Access to Information and Privacy Office **Mandate**: The Access to Information and Privacy Office deals directly with the public in all matters related to access to information requests and is involved in policy matters with respect to implementing the Act itself. **Responsibilities Include**: • Recommending amendments to the *Access to Information Act* and *Access to Information Regulations* (see: http://laws-	**Main Office**: Treasury Board Secretariat of Canada **Mandate**: TBS is tasked with providing advice and support to ministers in their role of ensuring value-for-money as well as providing oversight of the financial management functions in ministries and public authorities. The Secretariat makes recommendations and provides advice on policies, directives, regulations and programme expenditure proposals with respect to the management of the government's resources (see: https://www.canada.ca/en/treasury-board-secretariat/corporate/mandate.html) **Access to Information Mandate:** responsible for

lois.justice.gc.ca/eng/regulations/SOR-83-507/index.html)
• Designating, by order-in-council, the head of a public authority for the purposes of the Act (see s 3(b) of the Act)
• Authorising or approving requests for information by non-citizens or non-permanent residents (see s 4(2) of the Act)
• Adding bodies that will be subject to the Act (see s. 77(2) of the Act)
	issuing direction and guidance to public authorities with respect to the administration of the Act and interpretation of the government's Policy on Access to Information.
	
	Responsibilities Include:
	• Recommending amendments to the Act and Regulations (see: http://laws-lois.justice.gc.ca/eng/regulations/SOR-83-507/index.html)
	• Overseeing the government-wide administration of the Act
	• Publishing: descriptions of federal institutions, the records they hold, manuals used by employees to facilitate implementation of the Act, and the title and address of the information officers for each institution (see s. 5 of the Act)
	• Keeping under review the manner in which records are maintained and managed
	• Collecting statistics on RTI
	• Prescribing the form of, and what is to be included in, reports on RTI to Parliament (see s. 70(1) of the Act)
	• Proposing regulations related to:
	   ▪ Information delivery formats
	   ▪ Procedures to be followed for requests
	   ▪ Conditions for transfer of requests
	   ▪ Fees
	   ▪ Criteria for adding bodies that will be subject to the Act
	• Preparing directives and guidelines that concern the operation of Act (see s. 70(1)(c) of the Act)

	Policy Instruments and Evaluative Tools: 1. *Policy on Access to Information* **–** provides direction and guidance to public authorities for effectively and consistently administering the Act (https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12453) 2. *Interim Directive on the Administration of the Access to Information Act* **–** provides direction to public authorities on efficiently and consistently processing access to information and privacy requests (https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=18310) 3. *Management Accountability Framework* (MAF) – a key tool of oversight used by TBS to assess management practices and performances in most departments and agencies of the government (see https://www.canada.ca/en/treasury-board-

		secretariat/services/management-accountability-framework/maf-methodologies/maf-2016-2017-information-management-information-technology-management-methodology.html?=undefined&wbdisable=true and https://www.canada.ca/en/treasury-board-secretariat/services/management-accountability-framework.html)

Table 4: Oversight Body

Name	Mandate	Details

Information Commissioner of Canada
 	
Incumbent: Suzanne Legault
	The Commissioner's primary role is to investigate complaints about federal public authorities' handling of access to information requests (see: http://www.oic-ci.gc.ca/eng/abu-ans_what-we-do_ce-que-nous-faisons.aspx).	• Selected by the Prime Minister after consultation with the leader of every recognised party in the Senate and House of Commons and approval by resolution of the House (see s. 54(1) of the Act)
		• Tenure of seven years but may be removed for cause (see s. 54(2) of the Act)
		• Carrying out investigations of complaints under the Act (see s. 32 of the Act)
		• In carrying out investigations, the Information Commissioner has the following powers:
		  - to summon witnesses and compel testimony
		  - to administer oaths
		  - to enter government premises and interviewing persons therein
		  - to examine or obtain government records (even those which are confidential) (see s. 36 of the Act).
		• Make recommendations to public authorities where complaints are substantiated (see s. 37 of the Act)
		• Provides an annual report to Parliament on the activities of the Office (see s. 38 of the Act)

2(b) Implementation by Individual Public Authorities

Table 5 provides an overview of whether individual public authorities have put in place measures in place to effectively implement the Act. Specifically, each authority was evaluated on the basis of whether it: (a) had an access to information coordinator (information officer) responsible for implementing the Act; (b) published annual reports on what it has done to implement the Act; (c) has policies or detailed plans in place for implementing the Act, including a requesting protocol; and (d) provides training to its staff. The full results of the assessment can be found in Appendix 2. Note that most public authorities in Canada simply follow the central TBS documents for (c) so that individual assessment here was not necessary.

Table 5: Overall Results for Institutional Measures by Individual Public Authorities

Organisation	Implementation by Individual Public Authorities (Full/Partial/ No)
Business Development Bank of Canada	**Full**. Has an access to information coordinator, publishes up-to-date annual reports on ATI implementation, and has provided training to employees in the past, but failed to do so in the past year.
Canadian Security Intelligence Service	**Partial**. Has an access to information coordinator, publishes up-to-date annual reports on ATI implementation, but does not conduct formal training for staff.
Elections Canada	**Full.** Has an access to information coordinator, publishes up-to-date annual reports on ATI implementation, and conducts formal training sessions for staff.
Environment and Climate Change Canada	**Full.** Has an access to information coordinator, publishes up-to-date annual reports on ATI implementation, conducts formal training for staff and has also produced a detailed action plan for implementing the government's Directive on Open Data.
Health Canada	**Full**. Has an access to information coordinator, publishes up-to-date annual reports on ATI implementation, and conducts formal and informal training for staff.
Canadian Human Rights Commission	**Partial.** Has an access to information coordinator, publishes up-to-date annual reports on ATI implementation, but does not conduct formal training for staff.
Indigenous and Northern Affairs Canada	**Full.** Has an access to information coordinator, publishes up-to-date annual reports on ATI implementation, and conducts formal training for staff.
Parole Board of Canada	**Partial**. Has an access to information coordinator and has a detailed policy on implementing Canada's Directive on Open Data. However, annual reports on ATI implementation are not made public and it does not conduct training for staff.
Public Safety Canada	**Full**. Has an access to information coordinator, publishes up-to-date annual reports on ATI implementation, and conducts formal training for staff. Has also released a detailed plan on implementing the government's Directive on Open Data.
Status of Women Canada	**Partial**. Has an access to information coordinator, publishes up-to-date annual reports on ATI implementation, but does not conduct formal training for staff (only informal).

(3) Responding to Requests

This part of the methodology relied on the provisions of the Access to Information Act, along with the FOIAnet methodology, to assess performance. The main criteria are: that a request is responded to within 30-days (unless a reasonable extension was requested) and otherwise in accordance with the Act; and the result was "acceptable" in terms of the information which was provided. What is considered acceptable is explained in Appendix 4.

The key features of the Act regarding the processing of requests are as follows:
- Written notice of receipt provided within 30 days
- Access to the requested records or a justified refusal within 30 days
- If a transfer request is made, this should take place within 15 days and written notice should be provided
- An extension is available only where complying within the original time limit would unreasonably interfere with operations of the public authority because of the large number of records, consultations with other public authorities are necessary, or it is necessary to consult with a third-party who has interests in the information
- If access is refused, the person who made the request should be informed of the reasons and of the right to make a complaint to the Information Commissioner

Three different grades have been allocated to public authorities here, namely:

1) **Excellent** - for at least one of the criteria, the authority went beyond the minimal pass effort.

2) **Pass** - the authority successfully met the criteria.

3) **Fail** - the authority did not successfully meet the criteria.

Table 6 shows the overall results of the testing exercise for each public authority. Further details are provided in Appendix 3.

Table 6: Overall Results for Requests for Information

Organisation	Within 30 days – Yes; 30-60 days – Yes/No; over 60 days[3] – No	Information provided? (Yes/No)	Overall Grade – Excellent / Pass / Fail
Business Development Bank of Canada	Yes	Yes	Excellent – waived fee and called to

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[3] Once 60 days was reached, the public authority was given notice that this was part of a test of implementation of the Access to Information Law.

			confirm details of request
Canadian Human Rights Commission	Yes	Yes	Excellent
Canadian Security Intelligence Service (CSIS) #1	No	No	Fail
CSIS #2	No	No	Fail
CSIS #3	No	No	Fail
Elections Canada #1	Yes	Yes	Pass
Elections Canada #2	No	No	Fail
Elections Canada #3	No	No	Fail
Environment and Climate Change Canada (Environment Canada) #1	No	No	Fail
Environment Canada #2	No	No	Fail
Environment Canada #3	No	No	Fail
Health Canada	Yes / No	Yes / No	Fail
Indigenous and Northern Affairs Canada	Yes	No	Fail
Parole Board of Canada #1	Yes	Yes	Excellent
Parole Board of Canada #2	Yes	Yes	Excellent
Public Safety Canada #1	Yes	No	Fail
Public Safety Canada #2	Yes	No	Fail
Public Safety Canada #3	Yes	Yes	Pass
Status of Women Canada #1	Yes	Yes	Pass
Status of Women Canada #2	Yes	Yes	Pass
Status of Women Canada #3	No	No	Fail

Recommendations:

- Proactive disclosure of the core institutional, organisational, operational and RTI information that the methodology is looking for should be an area where Canada excels. While almost no ratings of 'None' were recorded, far too many public authorities only got 'Partial' ratings, instead of the desired 'Full'. Providing information on procurement is a particular weakness in Canada.
- More consistency is needed with respect to training for staff members, with not all public authorities providing training.
- The default method of delivery of information should match how the request was made (i.e. email the information if the request was made by email). The practice of sending electronic information in flash drives by regular mail rather than by email should be reviewed.
- The current practice (of many public authorities) of requiring the $5 application fee to be sent via cheque and through the mail is outdated. All public authorities should subscribe to the pilot one-stop website that allows requesters to submit access to information requests online and pay via credit card.

- Although many public authorities met the time limits and others asked for extensions that we deemed to be reasonable, there are still too many problems with delays, especially given the simple nature of the requests we were posing.