

*Chronicling the Use of Transparency and Accountability as Political Buzzwords, and as Drivers Ensuring the Standard of Access to Public Records in Canada is Best Practice*

**Interim Report 14.  
Asking the Question:  
Is Freedom of Information Legislation  
a Citizens' Conduit to Public Records, or  
an Institutional Barrier to Public Records?**

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## **A. Context and Statement of Purpose**

This interim report revisits a topic that was considered in the initial pilot study report, namely, whether freedom of information (FOI) legislation (FOIL), access to Information (ATI) legislation (ATIL), open government (OG) legislation (OGL), or associated legislation involving different labels, represent a conduit to public records, or an institutional barrier to public records.

<http://wellar.ca/informationresearch/CHRONICLING%20ACCESS%20TO%20PUBLIC%20RECORDS%20STATEMENTS.pdf>

When designing the pilot study project it was anticipated that findings could be derived, and lessons could be learned during the research process, that should be reported “on the fly” rather than held until a final report. Interim report 1 provides the details about that pilot study parameter.

[http://wellar.ca/informationresearch/CHRONICLING\\_INTERIM%20REPORT%201.pdf](http://wellar.ca/informationresearch/CHRONICLING_INTERIM%20REPORT%201.pdf).

The anticipated findings and lessons learned about the conduit-barrier issue have materialized, and they are significant to the point of necessitating a change in the research design.

That is, rather than proceed directly to survey three using the same material that is in surveys one and two, it appears important to “air out” the conduit versus barrier question as the next step in the pilot study process.

In the interests of time and resources, the reasons behind exploring the conduit-barrier question in an interim report are outlined here, and are examined in detail in future publications.

## **B. A Brief Comment about the Origins of the Conduit-Barrier Question as an Access to Public Records Research Issue**

A number of questions arose during the design of the surveys, and even more questions occurred when reviewing the responses to the surveys by City of Ottawa, Ontario Conservative, and federal Liberal politicians.

One of those questions, the conduit-barrier question, took root as a result of an impression which assumed ever-deepening significance with each survey report and discussion.

That is, on the surface there seemed to be a resigned attitude among citizens and even journalists about FOIL, ATIL, OGL, etc., along the lines that “What we have is all that we can get” and “You can’t fight city hall”.

However, the longer the survey process went on, the more it seemed that citizens' problems with so-called freedom of information legislation were due to something other than bureaucratic bungling, technical complexities, bad management, etc., on the parts of governments.

Among the possibilities that came to mind were those prompted by learning just how many politicians there are who do not agree that citizens are entitled to free, easy, timely, and direct online access public records.

Their behaviour struck me as aberrant in a free and democratic society, and that it boiled down to deliberately trying to keep citizens in the dark about politicians' decisions, and the outcomes of those decisions.

With the results of two surveys overwhelmingly supporting that perception, it became clear that it is necessary to ask and seek answers to what may seem to some readers a rude and even unthinkable question:

### **Are FOI procedures dysfunctional by design?**

Unfortunately, politicians as a group have done nothing to advance the pilot study research, and are even less likely to willingly participate in this kind of inquiry.

Fortunately, however, citizens have been very helpful, and their comments and questions were instrumental in deciding how to begin a discussion about the conduit-barrier question as an access to public records research issue.

Three topics are especially pertinent to framing this discussion:

1. Understanding the limits of 'freedom';
2. Understanding how the term 'information' is used as a control device;
3. Understanding that information is power, but also understanding that if you snooze you lose.

There are large bodies of literature on each of these topics, and the following comments highlight just several matters pertinent to the question at issue,

#### **1. Understanding the Limits of 'Freedom'**

Many people are of a mind that since the word 'freedom' is in the phrase freedom of information legislation, it logically follows that the purpose of the legislation is to serve as a citizens' conduit to public records.

In truth, however, what the phrase actually means for all practical purposes is that *citizens have the freedom to attempt to gain access to public records.*

And that's it, that's all, there is no assurance much less any guarantee that access to information applications will be honoured.

## **2. Understanding How 'Information' Is Used as a Control Device**

The word 'information' serves many purposes in this arena, but few of these purposes expedite citizens gaining access to public records for reasons such as the following:

1. The vast majority of citizens' interests in public records actually involve text, numeric, and graphic or image data. Not information, data. Nevertheless, these requests can be classified as needing to go through the freedom of information or other related process. Or, barrier if you will.
2. Citizens with expertise and experience in research may be far more capable than bureaucrats when it comes to assembling data necessary to produce information, and assembling information to produce knowledge, using analysis and synthesis techniques. As a result, these citizens do not want bureaucrats wasting everyone's time and taxpayers' money trying to conduct research for which they are not properly trained. However, wasting applicants' time, money, and energy is a core feature of the barrier effect.
3. When the request for information requires the use of "high-end" techniques of analysis and synthesis to produce the requested information, it is common practice for FOI regulators and other public record gate-keepers to deny the application, rather than admit that the agency lacks the skilled personnel to conduct the necessary analysis and/or synthesis research to produce the requested information, much less a requested body of knowledge.
4. The term information can be interpreted by politicians and bureaucrats to mean whatever they want it to mean, with emphasis on not releasing any public record – e.g., factoids, raw and processed numeric data, raw and processed image data, raw and processed text data, information productions of all kinds, and knowledge productions of all kinds – that could be used to examine the records of things which politicians and governments are doing or not doing.

And these four comments have an ironic twist to them. That is, the public tends to think of or take the phrase 'freedom of information' literally, in the sense that it connotes a conduit to public records.

However, the results of survey one and survey two prompt the inference that many politicians have a very different perception. That is, while 'freedom of information' is the

phrase in use, and receives all kinds of lip service from politicians, the vast majority of politicians are very uncomfortable with that notion.

Rather, in their minds, the political world is a much better place for politicians when citizens are operating in a world characterized by 'freedom from information'. And, it really is a better place if 'freedom from information' on the parts of citizens can be achieved without being directly connected to any politicians, such as by means of an institutional barrier to public records.

(NOTE: As per the notifications given in preceding interim reports, substantive corrections in digital format which can be included in Chronicling project publications are invited from politicians who take issue with an inference.)

### **3. Understanding that Information Is Power, But, Also Understanding, If You Snooze You Lose**

On a daily basis Canadians by the millions allow themselves to be distracted to the nth degree by political announcements, pronouncements, and all manner of stories originating in the U.S. which are rife with dis-information, mis-information, intellectual fluff, and just sheer bumph regarding policy statements, government agency activities, program changes, legal judgements, constitutional amendments, congressional hearings, and so on.

And, I suspect, on a daily basis millions of Canadians wonder whatever is going on in that country, our good and steadfast neighbour for many years. By way of a wonderment example, there is a considerable amount of FOI-related legislation at all levels of government in the U.S., but citizens in that country do not have access to something like the famous or infamous Mueller Report, which was totally paid for by U.S. taxpayers.

To briefly expand, "Mueller Report" in Google yields 300,000,000 results, yes, 300 million results, but U.S. citizens do not have access to the actual report which, logically, is a piece of the U.S. federal government public record.

But they are not alone in their despair and/or puzzlement, because for reasons of sympathy, empathy, or whatever, no end of Canadians express deep concern that U.S. citizens are denied access to the Mueller Report.

Well, that is there and this is here, and it appears to be a 'no-brainer' that Canadians would better serve themselves by turning more of their attention and engagement to information affairs in Canada. Key arguments in that regard are outlined as follows.

1. For the next several months Canadians will be inundated by statements made during the impending federal election, and there is an information

aspect to every single statement. Questions arise about how well citizens are informed as to the truth of the statements made, and what kind of access citizens will have to federal public records in order to monitor, evaluate, and question the actions of whichever party is elected.

2. Widespread criticism of Doug Ford's Conservative government in Ontario led in whole or in part to a massive cabinet shuffle. Questions arise about how well citizens will be able to access Ontario's public records in order to ascertain what the members of the shuffled cabinet and the agencies which they are assigned to direct are doing to address citizens' concerns and criticisms.

As for a heads up in that regard, there is no reason to believe that the current cabinet will respond at a higher rate than the previous cabinet to the question, *Do You Agree that Citizens Are Entitled to Free, Easy, Timely, and Direct Online Access to the Public Records Held by Municipal Governments in Ontario?*

[http://wellar.ca/informationresearch/CHRONICLING\\_INTERIM%20REPORT%2012.pdf](http://wellar.ca/informationresearch/CHRONICLING_INTERIM%20REPORT%2012.pdf). However, survey three will provide evidence in that regard.

It is emphasized that while Ontario is the provincial focus in this project, similar questions arise about citizens' access to public records in other provinces.

3. Comments in broadcast and social media items, as well as on list serve and group network releases, continue the months of public criticism about the 'cone of secrecy' which is draped over Ottawa city hall. Or, to re-phrase, despite numerous references to Ottawa as 'Silicon Valley North', citizens as well as journalists face an uphill battle, including non-responses from mayor and councillors, when it comes to accessing the municipal records which are bought and paid for by citizens.

As per point 2 above, it is emphasized that while the municipal focus in this project is the City of Ottawa, the same questions arise about citizens' access to public records in other municipalities.

The common theme among the three calls for understanding is that citizens have much to gain if they have free, easy, timely, and direct online access to public records, and much to lose if that is not the case as a result of institutional barriers to public records.

In support of that theme, it was suggested in survey communications to municipal, provincial, and federal politicians that the right of citizens to free, easy, timely, and direct online access to public records be incorporated in Canada's Charter of Rights and

Freedoms. A future survey of politicians will focus on asking them if they support that proposition.

The material which follows is derived from the six surveys, two for each of the City of Ottawa, the Ontario Conservative government, and the federal Liberal government.

As demonstrated above, and further demonstrated below, there are a number of substantive reasons for asking the conduit-barrier question, and seeking answers to that question.

And, further in that vein, it is suggested that when it comes to information-related matters, Canadians are better served by turning more of their attention to the conduit-barrier situation in Canada if they want their governments to be in service to citizens, rather than the other way around.

### ***C. Survey Findings that Validate the Question, Is Freedom of Information and Related Legislation a Citizens' Conduit to Public Records, or an Institutional Barrier to Public Records?***

In the interests of space and resources, this report is limited to five findings that apply to the vast majority of contacted politicians. Other findings will be incorporated in future reports.

#### **1. Actual Experience in FOI Matters Among Politicians is Minimal, Hence Their Inclination to Default to Institutional Barriers**

The first finding of import is that while the concept of "freedom of information" may be endorsed in principle by politicians, very, very few of those contacted publicly manifest even a passing clue about what the principle means in practice.

Consequently, it is fair to infer that very, very few of the contacted politicians have a substantive basis in expertise or experience for suggesting how to design a citizen's conduit to public records, or how a conduit should work if designed by those with expertise and experience.

That being the case, it is reasonable to infer that when politicians tell citizens to file applications in order to use public records legislation such as FOIL or ATIL or OGL, most of them are doing so without knowing much if anything about how the access applications function, and without due regard for the capabilities, time, resources, etc., of citizens.

Or, to re-phrase, and as feedback from citizens confirms, FOI and other referrals serve as a way for politicians to rid themselves of pesky citizens without telling them to "get lost".

What we learn from the first finding, therefore, is that while politicians are seemingly unable or unwilling to specify what the conduit design should be to properly serve citizens, they are very comfortable with defaulting to the design of the current legislation which is often a dead-end for citizens, and is even cause for hard slogging by journalists.

And, I hasten to add, politicians are not alone. Three of four email attempts to inform Ottawa Police Service about communications to Councillor Rick Chiarelli with regard to speeding and truck traffic issues in his ward (Bay) were met by "Access Denied" messages, and did not transmit.

No explanation, just "Access Denied", which perhaps is the basis for another report in answer to the subject question.

The first finding suggests that there are solid grounds for pursuing the question, *Is Freedom of Information and Related Legislation a Citizens' Conduit to Public Records, or an Institutional Barrier to Public Records?*

## **2. Without Exception, Politicians Who Do Not Agree to the Proposed Access Characteristics Have No Alternatives, Which is Very "Fishy"**

Following from the first finding, in this project politicians are provided a selection of conduit characteristics which research suggests are among those most desired by ordinary citizens. That is, politicians are asked if they agree that citizens should have *free, easy, timely, and direct online access to public records*.

While this approach may not be on a par with throwing a life jacket to a drowning person it is, I suggest, a form of lifesaver for any politicians who have little or no expertise or experience in the practice of expediting citizens' access to public records.

However, 17 out of 24 members of the City of Ottawa council said nothing about these or any other conduit characteristics, none of the contacted Ontario Conservative cabinet ministers including Premier Doug Ford said anything of substance about anything involving citizen access to public records, and the only respondent among the contacted federal Liberal politicians repeated the Government of Canada position on access to records.

What we learn from the second finding, therefore, is that the vast majority of contacted politicians have no expressed opinion, informed or otherwise, about the quality of access which citizens should have to public records. And, they have no comment on any of the proposed characteristics of *free, easy, timely, and direct online access*.



On the evidence, however, the institutional barrier aspect is working very well indeed, as many citizens and even journalists have learned, because:

- Access to public records applications are not free;
- Access to public records applications are not easy to prepare and submit;
- Responses to applications are not timely;
- Access to records is not direct;
- Online access is restricted; and,
- Direct online access to public records held by any government or government agency anywhere in Canada is institutionally limited to what governments and the agencies of those governments are willing to provide, and not what may be of interest to citizens.

And therein lies a major concern about the state of governance in Canada.

That is, it seems most likely that every politician contacted by the two surveys, and their counterparts throughout the country for that matter, knows full well that access to public records legislation has failed citizens in the politicians' respective jurisdictions, and across the country.

And this reality is the essence of the conundrum associated with politicians who proclaim themselves to be totally in favour of transparency and accountability.

In brief, and as discussed in interim reports 3, 5, 7, 9, 11, and 13, something is seriously out of kilter (to put the issue politely) when the vast majority of politicians enthusiastically embrace transparency and accountability on the one hand but, on the other hand, do not agree that citizens should have *free, easy, timely, and direct online access* to public records.

As for the reasons behind their thinking in that regard, a number of possibilities have been suggested. A popular mention is that the proposed approach removes the current institutional barriers, and enables citizens to readily check on the performance of their elected representatives, and on the performance of civil servants, all of whom are on the citizen payroll.

Finding two suggests that there are solid grounds for pursuing the question, *Is Freedom of Information and Related Legislation a Citizens' Conduit to Public Records, or an Institutional Barrier to Public Records?*

### **3. Politicians Who Claim to Support Transparency and Accountability While Denying Citizens Access to Public Records Take Disingenuousness to a High Level.**

The third finding builds on the second, namely, that for the vast majority of contacted politicians there is no apparent discomfort in being reported as engaging in a blatant contradiction: that is, claiming to support the principles of transparency and accountability, and in the same breath not agreeing that citizens are entitled to *free, easy, timely, and direct online access to public records*.

This blatant contradiction has led to many critical comments, as has the failure by most politicians to seem even remotely apologetic for “talking out of both sides of their mouths”. Citizens are concerned that this attitude seems to have become some kind of “new normal” among politicians who do not agree that citizens are entitled to free, easy, timely, and direct online access to public records.

What we learn from the third finding, therefore, is that it will take an epiphany of some magnitude to persuade politicians to provide instructive insights into the question, *Is freedom of information and related legislation a citizens' conduit to public records, or an institutional barrier to public records?*

### **4. There Are Some Conduit Believers in the Political Ranks**

A fourth finding is that while they are relatively few and far between, there are politicians among those contacted who agree that citizens are entitled to free, easy, timely, and direct online access to public records. Moreover, they have put their names on the dotted line.

For these individuals, FOI, ATI, OG, and related legislation is intended to be a conduit to public records, and the characteristics of *free, easy, timely, and direct online access* are accepted by them as descriptors defining the conduit.

The point taken from this finding is that in the minds of some politicians, it is reasonable for citizens to have free, easy, timely, and direct online access to public records.

Therefore, in the cases of politicians who do not share that view, the question arises as to what alternative conduit design do they support, and why?

That question was asked repeatedly during the surveys, without responses, which indicates just how little the contacted politicians support citizens' access to public records, and how comfortable they are with the institutional barriers that severely limit citizens' access to public records.

However, this project could mark the beginning of the end for politicians who have had a free ride in not having to transparently account for their beliefs. If so, in the near future they may be pressed into explaining where they stand on the question, *Is freedom of information and related legislation a citizens' conduit to public records, or an institutional barrier to public records?*

## 5. Non-Politicians Like Where This Conduit-Barrier Research is Going

The fifth and final finding to be noted reports on the positive feedback from citizens, as well as from academics, consultants, broadcast and social media journalists, and former and current civil servants.

Common sentiments among these different groups include:

- The public has been sold a bill of goods in the name of so-called “freedom of information”;
- Based on their experience with all levels of government, FOI-related legislation does more to enable politicians to evade transparency and accountability than it does to enable citizens to access public records;
- After many failed or overly difficult attempts to get access to files, it would be welcome relief with a dab of “getting even” for citizens to be in a room that has politicians come in, one at a time, and watching their faces as a panel of citizens and journalists grills her or him about the reasons for not agreeing that members of the public should have free, easy, timely, and direct online access to public records. That video would go viral.
- The pilot study theme, *Chronicling the Use of Transparency and Accountability as Political Buzzwords, and as Drivers Ensuring the Standard of Access to Public Records in Canada Is Best Practice*, is an instructive catalyst for a national conversation that is long overdue. However, there are good reasons and many opportunities to pump up public participation by using the pilot study design at the municipal level where citizens have more face-to-face interaction with their politicians.

These sentiments mean that citizens and other non-politicians are on board with asking the question, *Is freedom of information and related legislation a citizens' conduit to public records, or an institutional barrier to Is freedom of information and related legislation a citizens' conduit to public records, or an institutional barrier to public records?*

And, I hope, these sentiments also mean that they will actively participate in the process of moving politicians to where they should be on this matter, that is, taking overdue action to provide citizens free, easy, timely, and direct online access to public records.

I believe that each of the findings is significant in its own right as a comment on the access conduit versus the access barrier state of affairs, and that the five findings in combination make a compelling case that current freedom of information and related legislation is more an institutional barrier to public records than a citizens' conduit to public records.

In the next section I invite politicians to respond to the question, and to the findings.

#### **D. Question to Politicians: Do You Agree That the Five Findings in Combination Make a Compelling Case that Current Freedom of Information and Related Legislation Is More an Institutional Barrier to Public Records than a Citizens' Conduit to Public Records?**

The title for this section speaks for itself, and puts the onus where it should be. This is, politicians are called out to practice transparency and accountability by answering Yes or No to the question asked, and to support the answer with reasons and evidence.

#### **E. Conclusion**

The need to raise the question, *Is freedom of information and related legislation a citizens' conduit to public records, or an institutional barrier to public records?* in an interim report became increasingly imperative with each survey of City of Ottawa politicians, Ontario Conservative cabinet ministers, and federal Liberal cabinet ministers and MPs.

Interim report 14 presents evidence-based reasons for making this question a central feature of communications with politicians about access to public records in general, and freedom of information legislation in particular.

With this posting the question is now "out there" for all to see, and in due course it will be considered for use in a pilot study survey. However, in the interests of transparency and accountability, and perhaps even bringing a hint of respectability to politics at the municipal, provincial, and federal levels, one wonders whether politicians might do the right thing and make it unnecessary to conduct yet another survey into their regard or lack of regard for the citizens who they purport to serve.

In the meantime, readers are invited to expand the scope of interim report 14 by using the question, *Is freedom of information and related legislation a citizens' conduit to public records, or an institutional barrier to public records?*, in communications with politicians and interested parties, as well as in media stories, position papers, course assignments, research proposals, and so on.

Feedback on endeavours of that nature will be appreciated.