

Office of the Commissioner
of Lobbying of Canada



Commissariat au lobbying
du Canada

ACCESS TO INFORMATION ACT

ANNUAL REPORT 2009-2010

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Preface

The *Access to Information Act* (Revised Statutes of Canada 1985, Chapter A-1) was proclaimed on July 1, 1983. Therefore, this is the 26th year of operation of this statute.

The *Access to Information Act* (AIA) gives Canadian citizens and permanent residents a broad right of access to information contained in government records, subject to certain specific and limited exceptions.

On February 6, 2006, the Office of the Registrar of Lobbyists (ORL) was transferred from the Department of Industry Canada to the Treasury Board Secretariat's portfolio as an independent department for purposes of the *Financial Administration Act*. In December of 2006, the *Federal Accountability Act* received Royal Assent and amended the *Lobbyists Registration Act* (LRA).

As well, the LRA, was renamed the *Lobbying Act*. It also created the Office of the Commissioner of Lobbying (OCL), which reports directly to Parliament. These amendments came into force, simultaneously with the Lobbyist Registration Regulations and the Designated Public Office Holder Regulations, on July 2, 2008. Therefore, this report covers the OCL's second fiscal year of operation as an Agent of Parliament, under the AIA.

Mandate of the Office of the Commissioner of Lobbying

The purpose of the *Lobbying Act* (LA) is to ensure transparency and accountability with respect to the lobbying of federal public office holders, in order to contribute to the Canadian public's confidence in the integrity of decision-making by the federal government. The Commissioner of Lobbying, appointed to a term of seven years, administers the LA by maintaining the Registry of Lobbyists, which contains registration information disclosed by lobbyists, as well as their monthly communications with designated public office holders. The Website also includes Interpretation Bulletins and Advisory Opinions issued by the Commissioner under the LA, as well as other pertinent information and useful Web links. The Registry of Lobbyists allows the public to perform searches of the information contained in the Registry, to disclose lobbying statistics and other information on lobbying, using certain parameters, such as a keyword search, the name of the lobbyist or firm, active or inactive, type of lobbyists, dates, subject matters of lobbying, etc.

As a result of its education mandate, the OCL develops and implements educational programs to foster public awareness of the requirements under the LA. As well, the OCL conducts administrative reviews and investigations to ensure compliance with the LA and the *Lobbyists' Code of Conduct* (the Code). The Commissioner reports annually to Parliament on the administration of the LA and the Code and is required to table reports on any investigations conducted in relation to the Code, once they are completed.

Section 72 of the AIA requires that the head of every government institution prepare an annual report on the administration of the AIA within the institution during each financial year for submission to Parliament. This annual report is intended to describe how the OCL fulfilled its

responsibilities under the AIA, from April 1, 2009, to March 31, 2010.

ABOUT THE ORGANIZATION

History of the Office of the Commissioner of Lobbying

On February 6, 2006, the Office of the Registrar of Lobbyists (ORL) was transferred from the Department of Industry Canada to the Treasury Board portfolio as an independent department for purposes of the *Financial Administration Act*. On December 12, 2006, the *Federal Accountability Act*, also known as Bill C-2, which amended the *Lobbyists Registration Act* (LRA) and other statutes, received Royal Assent, as S.C. 2006, c. 9. The modified LRA, renamed the *Lobbying Act* (LA), came into force simultaneously with the Lobbyist Registration Regulations and the Designated Public Office Holder Regulations, on July 2, 2008. The *Lobbying Act* created the position of Commissioner of Lobbying, who reports directly to Parliament.

The changes brought to the LA provided the Commissioner with enhanced powers of investigation and an education mandate. Other significant changes included a five-year prohibition on lobbying by former designated public office holders, as well as the obligation for lobbyists to report prescribed communications with designated public office holders on a monthly basis. Additionally, there is a prohibition on the payment of contingency fees to lobbyists and the receipt of these fees by lobbyists.

Responsibility for Information Rights / Delegation of Authority

The *Access to Information Act* provides the authority to exercise full powers to the Commissioner of Lobbying and to the OCL's Access to Information and Privacy (ATIP) Coordinator via Delegation Order, of which a copy is attached in Annex A. The OCL has two persons who comprise its ATIP Office, the ATIP Coordinator and the ATIP Advisor.

The Deputy Commissioner, as the ATIP Coordinator, is responsible for the development, coordination and implementation of effective policies, guidelines and procedures to manage the OCL's compliance with the AIA. The Coordinator makes decisions on the disposition of access requests, promotes awareness of the legislation to ensure organizational responsiveness to the obligations imposed on the government, monitors and advises on compliance with the AIA, regulations, procedures and policies, and acts as spokesperson for the OCL in dealings with the Treasury Board Secretariat, the Information Commissioner, and other government departments and agencies. The ATIP Coordinator is also responsible for conducting consultations with other governments within Canada and other federal organizations.

The OCL also has one ATIP Advisor, who is responsible for processing the requests received under the AIA and making recommendations to the ATIP Coordinator on the disposition of any requests received. The OCL will undertake appropriate notification and consultation procedures with third parties before disclosing any records.

Under the LA, the OCL collects information from registrants and lobbyists and the disclosures filed by registrants are accessible on the OCL's Website at the following address:

<http://www.ocl-cal.gc.ca>

In the event of requests for information related to possible administrative reviews and investigations conducted under the *Lobbyists' Code of Conduct*, in accordance with the LA, the

OCL is required to conduct investigations in private and will therefore not confirm or deny that an investigation is taking place.

Reports on investigations that are completed are required to be tabled in both Houses of Parliament and are then posted on the OCL Website for the public to view.

ANNUAL REPORT 2009-2010

Introduction / Highlights

During the last fiscal year, the OCL received three requests under the *Access to Information Act* (AIA). Two of the requests submitted to the OCL under the AIA, originated from the media. The OCL disclosed all of the requested information in its first media request and it was completed within the 30 days allowed under the AIA. With respect to the second request, the OCL invoked subsection 19(1) concerning private or personal information of third parties. As a result, third party consultations were required in order to release the information, relating to section 3 of the *Privacy Act*. The third parties subsequently refused to allow disclosure of the information and the file was completed within the 60 days allowed under the AIA.

The third request, which originated from the public, concerned the disclosure of confidential or personal information under the AIA and the OCL once again invoked subsection 19(1) concerning this information. The OCL sent a letter to the applicant stipulating that the confidential or personal information cannot be disclosed without the consent of the third parties involved. However, the applicant subsequently communicated with the OCL by telephone and expressed disagreement with this approach. Several attempts were made by the OCL's ATIP Coordinator to reach the applicant by telephone, in order to further explain this approach. Our Office has not received a reply as of March 31, 2010.

There was one outstanding complaint filed with the Information Commissioner that originated from a request under the AIA in 2005. The complainant alleged that the exclusion invoked by the former ORL, related to subsection 68(a) of the AIA, concerning published material or material available for purchase by the public, was not properly applied. The ORL (now OCL) had refused to provide a copy of the registration database for a certain period of time specified in the request in an alternative format. There was an investigation by the Office of the Information Commissioner and after several meetings with the Information Commissioner's Office, the last on November 18, 2009, the OCL agreed to resolve the complaint by asking the Information Technology (IT) programmers to create an alternative format in the form of a compact disc of the data that was being sought by the complainant. In a letter dated February 4, 2010, received by the OCL from the Office of the Information Commissioner of Canada, this complaint was recorded as having been resolved.

The OCL incurred a total of \$13,121 in costs associated with the AIA and utilized approximately 0.05 person years towards its implementation in the last fiscal year.

Fees

The *Access to Information Act* (AIA) authorizes fees for certain activities related to the processing of formal requests under the AIA. In addition to a \$5 application fee, charges may also apply for search, preparation and reproduction of documents. The current fee structure is specified in the *Access to Information Regulations*. No fees are imposed for reviewing records, overhead or shipping costs. Moreover, in accordance with section 11 of the AIA, no fees are

charged for the first five hours required to search for a record or to prepare any part of it for disclosure.

The *Access to Information Act* permits the waiving of fees when deemed to be in the public interest. In accordance with Treasury Board guidelines, the OCL will consider waiving fees under \$25.

For fees over \$25, the organization will examine fee waiver requests on a case-by-case basis. In considering such requests, the organization will take into account costs in processing each access application and the degree of public benefit to be derived from the release of the accessible information.

Information Holdings

The OCL is responsible for providing a full accounting of information holdings to the Treasury Board Secretariat and ensuring that updates are provided on a timely basis for inclusion in the *Info Source* publications.

The *Info Source* publications contain a description of the classes of institutional records held by the OCL. The OCL does not have any exempt banks. For 2009-2010, information may be found in the following publication:

2009–2010 Info Source — Sources of Federal Government Information

Info Source can be obtained through public or academic libraries or it may be viewed online on the Treasury Board Secretariat's Website at: <http://www.infosource.gc.ca>

OCL Website

The OCL's Website at: <http://www.ocl-cal.gc.ca>, allows the user to access and search the Registry of Lobbyists, as well as to obtain reports, including the OCL's annual reports on Access to Information and Privacy and other information on lobbying. It also contains links to various organizations of interest.

Reading Room

A reading room is available at the OCL's office, situated on the 10th Floor at 255 Albert Street, Ottawa, Ontario, Canada K1A 0R5.

ACCESS TO INFORMATION

Statistical Report

The annual statistical report is attached in Annex B. During the last fiscal year, the OCL received three requests under the *Access to Information Act* (AIA). Two of the requests submitted to the OCL under the AIA originated from the media. The first request from the media was treated informally and the \$5 cheque was returned to the applicant, due to the fact that the information was readily available to the public. The standard \$5 application fee was also waived for the second media request. The third request originated from the public and the standard \$5 application fee was cashed.

The OCL disclosed all of the requested information within the 30 days allowed under the AIA for the first media request. Subsection 19(1) of the AIA was invoked for the second media request, because the information was considered confidential or personal. As a result, a 30 day extension for third party consultations was required in order to release the information. The third parties subsequently refused to allow disclosure of the information and the file was completed within the 60 days allowed under the AIA.

The request from the public, which is being carried forward into 2010-2011, concerned the disclosure of confidential or personal information. The OCL sent a letter stipulating that confidential or personal information cannot be disclosed without the consent of the third parties involved. The letter also indicated that a 30 day extension would be required for consent of the third parties. The applicant communicated with the OCL by telephone and expressed disagreement with this approach. The OCL subsequently attempted to communicate with the applicant on several occasions, to discuss the third party consultation process. The OCL had not yet received a reply on March 31, 2010.

The OCL incurred costs of \$13,121 associated with the AIA and utilized approximately 0.05 person years towards its implementation in the last fiscal year.

Education and Training Activities

In 2007-2008, the OCL adopted the Privasoft software system to track requests and process documents efficiently. The OCL's ATIP Advisor and the former ATIP Coordinator have been trained in its use. The annual costs associated with renting the software system have been included in Section X of the Statistical Report under: Administration: "Operations and Maintenance" (O and M).

The ATIP Advisor analyses and processes the ATIP requests, and provides advice to the ATIP Coordinator, who is ultimately responsible. The ATIP Advisor attended several ATIP training courses during the fiscal year, which were offered by the Treasury Board Secretariat, including information sessions related to the Info Source publication, as well as information related to section 21 of the AIA, concerning operations of government. Additionally, the ATIP Advisor attended in June 2009, the yearly 3-day Access & Privacy Conference in Edmonton, Alberta,

sponsored by the University of Alberta. Both the former ATIP Coordinator and the ATIP Advisor attended the ATIP Generation Conference in Ottawa in May of 2009, and the annual

Canadian Access and Privacy Association (CAPA) Conference in November of 2009, at Landsdowne Park in Ottawa, Ontario.

Complaints and Appeals

No new complaints or appeals were received by the OCL or from the Office of the Information Commissioner during 2009-2010. However, a complaint was resolved during the 2009-2010 fiscal year. It related to a request under the *Access to Information Act* (AIA), initially received in 2005, when the former ORL was still part of Industry Canada. The ORL was named as the government institution that was the subject of the investigation, essentially transferring the complaint from Industry Canada to the ORL. The complainant alleged that the exclusion invoked by the former ORL was not properly applied.

Specifically, the complainant alleged that the exclusion invoked by the former ORL, related to subsection 68(a) of the AIA, concerning published material or material available for purchase by the public, was not properly applied. The ORL (now OCL) had refused to provide a copy of the Registration database for a certain period of time specified in the request. The OCL considered this information to be readily available to the public, as published material. Following an investigation by the Office of the Information Commissioner, the OCL agreed to resolve the complaint by providing the data in an alternative format.

The information was provided on a compact disc to the complainant, which contained raw data from the Registry of Lobbyists, without any codes, passwords or proprietary software of the OCL, for reasons of security and data integrity. Subsequently, in a letter received by the OCL dated February 4, 2010, from the Office of the Information Commissioner of Canada, the complaint was recorded as having been resolved. The complaint was resolved at a cost of \$3,850 in programmer salary expenses, which was absorbed by the OCL.

In the future, should the OCL receive similar requests, it will take steps to recover the costs associated with providing alternative formats, such as compact discs, from the applicants, as allowed under the AIA and specified under the AIA Regulations. However, the OCL is currently undertaking initiatives with Information Technology (IT) specialists to help the public download data and reports from the Registry.

Appeals to the Federal Court

There were no appeals filed during the above period.

Consultations Completed for Other Institutions

There were two consultations completed for other institutions during the last fiscal year. One request was from Treasury Board Secretariat and the other was from Public Works and Government Services Canada, both asking for the release of certain information that pertained to the OCL. In both cases, the OCL concluded that the information in question could be released with no exemptions or exclusions warranted.

New/Revised Policies, Guidelines and Procedures Implemented

Due to the complaint referred to in the above Complaints and Appeals Section, which was resolved after several years, it was decided that the OCL would undertake procedures to make searches of the Registry of Lobbyists more user friendly and help eliminate the need to ask for data to be transferred to alternative formats, such as a compact disc. The OCL is accomplishing this by working with the IT programmers to enable the public to download data and reports using certain parameters and enable them to access the information they find useful, more readily.

Access to these reports will be more user-friendly and flexible, utilizing various formats such as customized charts, graphs, and tables. During the next fiscal year, the OCL intends to make these new features available to the public, once the programming work is completed.

Conclusion

The OCL is undertaking steps to make the Registry of Lobbyists increasingly accessible to the Canadian public by optimizing the use of technology to make more information available in various formats and reports. This will lead to greater transparency about lobbyists and will thereby help to instil confidence in the integrity of federal government decision-making.

ANNEX A

DELEGATION ORDER

ANNEX B

2009-2010 STATISTICAL REPORT ON THE *ACCESS TO INFORMATION ACT*