Overview– Access to Information and Privacy Acts and Procedures

Government of Canada
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OVERVIEW - ACCESS TO INFORMATION AND PRIVACY ACTS AND PROCEDURES

Issued by the Access to Information and Privacy Office
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A MESSAGE FROM THE DEPUTY MINISTER

The Access to Information and Privacy Acts were proclaimed into force on July 1, 1983, providing Canadians with broad new rights of access to information contained in federal government records. This legislation reflects a commitment to a more open and accountable government. An important milestone in the evolution of democratic government has, therefore, been reached.

The Access to Information Act extends to Canadian citizens or permanent residents a right of access to information in federal government records, except in limited and specific circumstances. The Privacy Act gives Canadians access to information held by the federal government about themselves, protects their privacy by preventing others from having access to this information, and gives them some control over its collection and use.

This new legislation requires substantial public accountability from the government. Through the use of Information and Privacy Commissioners and the Courts, government institutions will be held accountable for administering these laws with the highest degree of objectivity and fairness.

On an operational level, the new laws can be expected to place additional demands on the department as a whole. A commitment from all departmental personnel will be required if we are to meet the laudable objectives intended by this legislation. I am confident that we will respond to these objectives in a positive and thoughtful way.

Bill Teschke

THE ACCESS TO INFORMATION ACT

What does the Act do?

The Act gives Canadian citizens and permanent residents the right of access to information contained in government records subject to certain specified and limited exceptions.

How is this different from before?

The Access to Information Act injects three new principles into the relationship between the government and the public:

(a) the public now has a legal right of access to information in government records;

(b) the government may refuse to grant access but its authority to do so is limited to the circumstances described in the Act as exemptions or exclusions. The burden of proving that information is exempt rests with the institution.

(c) any decision by a government institution to refuse access to information can be reviewed by the Information Commissioner and, ultimately, by the Federal Court.

How can the public apply for information under the Act?

A request can be made by consulting the government Access Register and submitting a completed Access to Information Request form to the departmental Access to Information and Privacy Office.

Copies of the Register can be found in public libraries and government information offices in major population centres and in some 2 000 postal stations in rural areas.

What information does the public have access to under the Act?

The Act provides access to any record under the control of a government institution subject to certain exceptions. The Act broadly defines a record to include:

> correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, machine readable record, sound recording, computerized data, etc.

What information is not available under the Act?

The Act has no application to material published and available for purchase by the public or found in a museum, library and preserved solely for reference or exhibition purposes. Nor does the Act apply to material placed in the Public Archives, the National Library or the National Museums by or on behalf of persons or organizations other than government institutions.

In addition, the Act does not apply to confidences of the Queen's Privy Council. Covered is such material as memoranda to Cabinet, discussion papers, records of Cabinet decisions and draft legislation. However, such confidences which have been in existence for more than 20 years are subject to the Act. In the case of discussion papers, these become subject to the law if the decisions to which they relate have been made public or after the passage of four years where the decisions have not been made public.

The Act also lists a number of exemptions which are intended to provide protection for particular kinds of information, the release of which could cause identifiable harm or would be contrary to law. These exemptions protect information such as that on national security or trade secrets.

Does all information requested by the public have to be obtained through the Access to Information Act?

No. The Act is designed to complement, not replace, existing channels for access to government information. As a matter of policy, the department seeks to encourage the use of these existing channels whenever possible. If a requestor is not satisfied with the information obtained through these "informal" means, he or she can then seek the information formally by completing an Access to Information Request Form.

Are there fees involved?

Yes. There is an initial application fee of $5 which must accompany each request. Over and above the application fee, where more than five hours are required to search for the record or prepare any part of it for disclosure, an additional fee for every extra hour worked may be charged to the applicant. Fees may also be charged for reproducing a record (e.g. photocopies) and for computer processing time.

Is there a time limit by which government institutions must respond to a request made under the Act?

Yes! The Act provides that government institutions must respond within 30 calendar days following the receipt of a request for access. If the request is for a large number of records or is complicated, the government institution can extend the time limit but must formally notify the requestor and, in some cases the federal Information Commissioner.

EXEMPTIONS under the Access to Information Act

How do the exemptions under the Act work?

Although the basic purpose of the Act is to provide access to government records, certain records by their very nature require exemption. Exemptions under the Act are grouped in two categories: mandatory and discretionary.

Any records falling under the mandatory exemptions cannot be disclosed unless the law permits certain exceptions. The following are the mandatory exemptions:

- Information obtained in confidence from foreign, provincial, and municipal governments and international institutions (Section 13).
- Confidential information obtained by the RCMP in performing police services for a municipality or a province (Section 16(3)).
- Personal information (Section 19).
- Trade secrets of a third party. Financial, commercial, scientific or technical information supplied by a third party on a confidential basis; information, the disclosure of which could be expected to result in a financial loss or gain to, or could prejudice the competitive position of a third party; information, the disclosure of which is expected to affect contractual or other negotiations of a third party (Section 20).
- Information covered by confidentiality clauses in existing statutes, e.g. Income Tax Act (Section 24).

Records falling under discretionary exemptions may be withheld if, on the basis of the criteria described in the Act, it is determined that such records should not be disclosed.

The following are the discretionary exemptions:

- Information, the disclosure of which is expected to bring injury to the conduct of federal/provincial affairs (Section 14).
- Information, the disclosure of which is expected to bring injury to the conduct of international affairs, to the defence of Canada or the detection, suppression or prevention of subversive or hostile activities (Section 15).
- Information obtained for the purpose of lawful investigation, information on investigation techniques, information injurious to law enforcement or the security of penal institutions, information expected to facilitate the commission of an offence (Section 16).
- Information, the disclosure of which is expected to be a threat to the safety of individuals (Section 17).
- Trade secrets or financial, commercial, technical or scientifically valuable information belonging to the government (Section 18).
- Information, the disclosure of which is expected to prejudice the competitive position of a government institution (Section 18).
- Scientific or technical research information, the disclosure of which is expected to deprive a government employee of priority of publication (Section 18).
- Information, the disclosure of which is expected to bring injury to the financial interests of the government, its ability to manage the economy or result in an undue benefit to any person (Section 18).

- Documents prepared by officials containing advice and recommendations, an account of consultations or deliberations between officials and a Minister or his staff, negotiating plans and positions, unimplemented personnel management and administrative plans (Section 21).
- Information, the disclosure of which would prejudice the use or result of tests or audits (Section 22).
- Information protected by solicitor - client privilege, e.g. legal advice (Section 23).

The above list provides a simple description of information exempted from disclosure under the Access to Information Act. For the precise wording of the exemptions, please refer to the relevant sections of the Act shown in brackets.

Does a record with a security classification determine how a record is disposed of under the Act?

A security classification does not, by itself, provide justification for denying access to a record. It will, however, alert a reviewing officer that the record, or part of it, may be exempt from disclosure, and that the information must be closely examined in relation to the Act.

THIRD PARTY Information

When can third party information be disclosed?

As indicated above, certain third party information is subject to a mandatory exemption. However, the results of product or environmental testing must be disclosed, unless the testing was done as a service to a person, group or an organization other than a government institution for a fee.

In addition access must be given if the third party consents to disclosure, or if the disclosure would be in the public interest because it relates to public health, safety or environmental protection.

The provisions of section 20 of the Act endeavour to protect third party information while recognizing the public's interest in knowing some of the information.

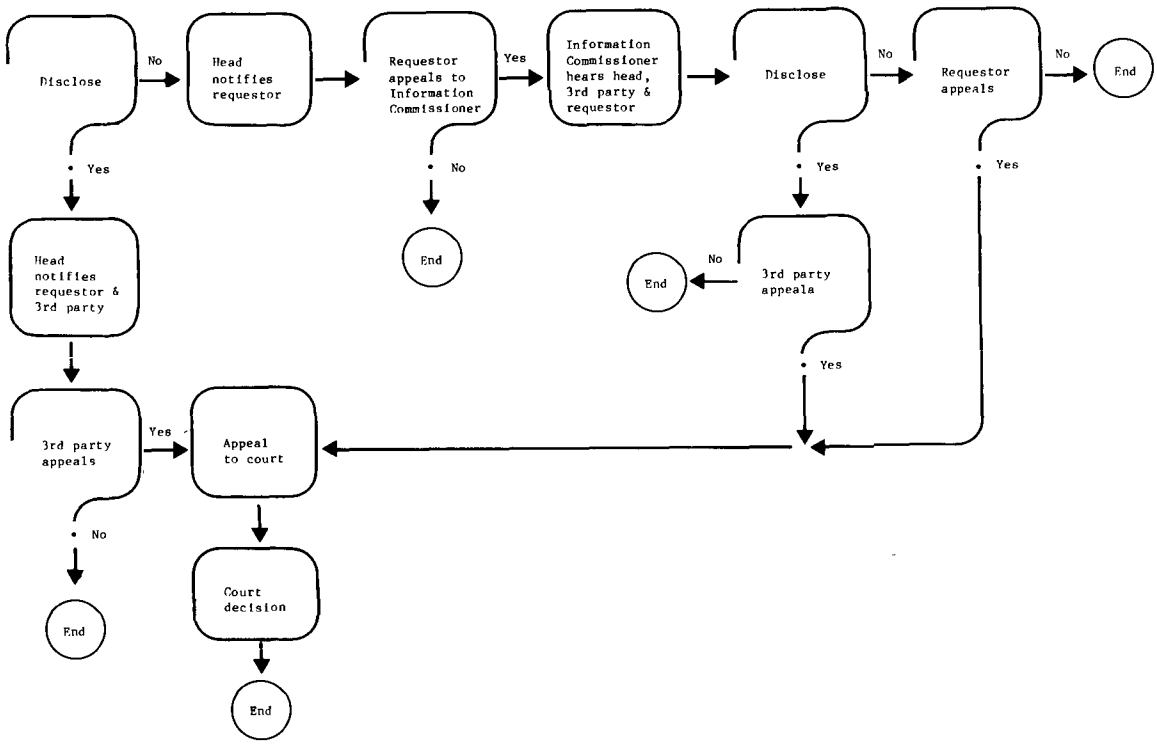
Are third parties notified of government intentions to disclose business information?

The Act contains a provision which gives a third party the right to be informed whenever a government institution intends to disclose information which might be of the type described in section 20 of the legislation. This system ensures that the third party has a right to make formal representations to the institution and to ultimately appeal to the Federal Court of Canada to restrain the disclosure of information.

The process of consulting third parties is outlined in Figure 1.

FIGURE 1

CONSULTING THIRD PARTIES



Can the whole record be withheld if part of the information is exempted?

The Act imposes a "severability" rule. This means that a whole record cannot be exempted from access just because parts of it contain exempt information. The department is obliged to disclose as much information as can be reasonably severed from the exempt portion.

Role of the Information Commissioner and the Federal Court

What can the public do if they are not satisfied with the response to a request under the Act?

The Act provides two avenues of recourse for citizens not satisfied with the response to their request for information. First, they may complain to the Information Commissioner. Second, if they are not satisfied with the Commissioner's decision, they have the right to take the matter to the Federal Court of Canada.

What constitutes grounds for complaints to the Information Commissioner?

The requestor may complain for a variety of reasons. The most common include:

- when access to a record, in whole or in part, has been denied;
- the requestor considers the fee for access to be unreasonable;
- the requestor considers that the time limit for complying with a request for access has been unreasonably extended;
- access was not given in the official language of the applicant's choice;
- the requestor is dissatisfied with the description of the department's information holdings contained in the Access Register.

How can a requestor lodge a complaint and how is it dealt with?

The requestor must submit a complaint in writing to the Information Commissioner within a specified period of time. During the investigation of the complaint, the Commissioner must hear representations from all parties involved in the request for access, including any third parties. After examining the matter, the Commissioner reports the findings of the investigation and any appropriate recommendation to the goverment institution. The Commissioner can request that the institution give notification within a specified time of any action to be taken to implement the recommendation. The Commissioner also informs the complainant of the findings, as well as any third parties who may be involved. If the Commissioner is not satisfied with the institution's response to a complaint, this can be noted in the Commissioner's annual report to Parliament or in a special report the Commissioner is empowered to make to Parliament on urgent matters.

Appeals to the Federal Court

In what circumstances can a matter be brought to court?

If after receiving the recommendation of the Commissioner, the government institution still refuses to disclose the information requested, the complainant has the right to apply to the Federal Court for a review of the matter. The Information Commissioner may also apply to the Court or appear on behalf of a complainant in any Court proceedings.

As indicated previously, third parties are permitted to appear as a party to an application for review.

The Federal Court has the power to compel the disclosure of information.

THE PRIVACY ACT

What does the Privacy Act do?

The Privacy Act extends to individuals the right of access to information about themselves held by the government, protects their privacy by preventing others from having access to it, and gives individuals some control over its collection and use.

How is this different from before?

Part IV of the Canadian Human Rights Act provided limited protection of privacy and limited access to personal information. The Privacy Act expands on the Canadian Human Rights Act by providing individuals access to more information about themselves and by making specific the uses to which personal information can be put thereby enhancing the protection of an individual's privacy. It also gives individuals some control over the collection, retention and disposal of personal information, as well as expanding the powers of the Privacy Commissioner to carry out investigations.

Access to Personal Information

Are individuals required to file a formal request for access to all personal information?

No. As in the past, government institutions can allow individuals to view most personal files without recourse to the Act. However, in the case of sensitive records, individuals may choose to use the provisions of the Act to obtain access.

Where access cannot be granted through informal channels, individuals are to be informed of their right to submit a formal application form under the Act. The department's responsibilities in responding to requests under the Privacy Act are similar to its responsibilities under the Access to Information Act.

Where is information kept?

The government has organized most of its records on individuals into 'personal information banks'. These are listed by department or institution in the Index of Personal Information which is available to the public in public libraries and government information offices in major population centres across the country and in some 2 000 postal stations in rural areas. The Index also lists classes of records which can contain personnel information although they are not personal information banks as such.

Can an individual see all of the information the government has about him or her?

The government has designated some personal information banks as exempt banks (mostly containing information relating to national security or law enforcement) and an individual may not be able to see any of the information in them. In addition, the Act allows information in other banks to be exempt from disclosure for a number of reasons such as protecting the safety of an individual or solicitor - client privilege.

What can individuals do if they do not agree with certain information in their file?

The Privacy Act provides individuals with the right to request that the information on their file be corrected. If the institution refuses to make the correction, the individual is entitled to have a notation attached to the information showing the requested correction. Any institution receiving such notifications are required to maintain them on the appropriate records.

Are there fees involved?

No. Unlike the Access to Information Act, no fees have been prescribed under the Privacy Act.

How does the Act protect privacy?

The Act protects privacy in two ways. First, it sets out the conditions for the collection, retention and disposal of personal information. Second, it provides a use and disclosure code for the protection of this information.

Protection of Privacy

What are the conditions under which government institutions must now collect personal information?

Government institutions must collect personal information only when it relates directly to a program or activity of the institution. The information must be collected from the individual personally, whenever possible, and he or she must be informed of the purpose for which it is being collected. Except under specific conditions, the government can only use information for the purpose for which it was collected unless it obtains the consent of the individual concerned to use it otherwise.

What are the rules regarding the retention and disposal of personal information?

Government institutions are required to schedule the retention and disposal of personal information - i.e. the information in each personal

information bank will be kept for a stipulated period of time. Information used to make a decision concerning individuals must be kept for a minimum of two years after the last time it was used to allow the individual to obtain access to it to check it for accuracy, relevance, completeness, timeliness, etc.

When can personal information be disclosed?

Personal information about an individual can only be disclosed to someone else with the consent of the individual or when one or more of the criteria set out in the Act are met. These criteria, which permit the disclosure of information, but do not require it, are as follows.

Personal information may be disclosed:

(a) for the purpose for which it was collected or for a use consistent with that purpose;

(b) to comply with another Act of Parliament;

(c) to comply with a legal document such as a warrant or subpoena;

(d) to the Attorney General of Canada for use in legal proceedings;

(e) to an investigative body (e.g. RCMP or Military Police) to enforce a law;

(f) to a province, foreign state or international body, for the purpose of administering or enforcing a law when an agreement or arrangement exists between the Government of Canada and the third party;

(g) to a member of Parliament to assist a constituent when the information relates to the constituent;

(h) to carry out an audit;

(i) to the Public Archives for archival purposes;

(j) for statistical or research purposes if the researcher provides a written undertaking that information provided will not be further disclosed;

(k) to assist native people in the preparation of claims;

(l) to collect a debt owed to the government or to make a payment owed by the Crown to an individual;

(m) to further the public interest; or

(n) to benefit the individual to whom the information relates.

Employees should be aware that there are departmental policies governing the disclosure of personal information to persons other than the individual. You are urged to consult the Access to Information and Privacy office in this regard.

What can the individual do if he or she is denied access to the personal information requested?

The individual can complain to the Privacy Commissioner who will investigate the complaint and make recommendations to the institution as to the validity of the denial of access. If the Privacy Commissioner recommends that the individual be given access and the institution still refuses, an appeal can be made to the Federal Court of Canada. The Court can compel disclosure under certain circumstances.

DEPARTMENTAL PROCEDURES

Role of the Access to Information and Privacy (ATIP) Office

Is anyone responsible for the overall departmental administration of formal requests received under the Access to Information and Privacy Acts?

Yes, in DRIE all formal requests under the new legislation must be directed to and co-ordinated by the Access to Information and Privacy (ATIP) Office. This Office reports directly to the Comptroller of the department.

What are the specific responsibilities of the ATIP Office?

These responsibilities include:

- Developing policies, procedures and guidelines for the orderly implementation of the Acts;
- Promoting awareness of the legislation to ensure departmental responsiveness to the obligations imposed on the government;
- Processing formal requests and advising senior management on the disposition of cases;
- Monitoring departmental compliance with the Acts, regulations, procedures and policies;
- Acting as spokesperson for the department in dealings with the Treasury Board Secretariat, the Information and Privacy Commissioners and other government departments and agencies;
- Co-ordinating activities for maintaining current inventories of departmental information holdings;
- Co-ordinating the preparation of information for management and Parliamentary reports as well as other material that may be required by central agencies;

Role of Organizational Sectors

Apart from the ATIP Office, who are the other principal actors involved in dealing with formal access requests?

In DRIE, the activities related to the processing of formal access requests under ATIP are part of the regular operations of the departmental organizational sectors. Responsibilities for the advancement and tracking of requests are assigned to:

- Liaison Officers
- Program Officers and other staff
- Senior Managers

What are the main responsibilities of the Liaison Officers referred to above?

Major organizational sectors in DRIE have each appointed a Liaison Officer who normally reports to an Assistant Deputy Minister, Regional Executive Director, etc. Liaison officers assist their sectors by co-ordinating activities and by providing guidance on the operation of the Acts and departmental procedures.

What are the main responsibilities of Program Officers and other staff in processing requests?

Departmental branches and regional offices create the records that would be of interest to the public under the legislation. Therefore, they are in a good position to assess the impact of disclosure or non-disclosure on departmental operations. As a result, the major tasks assigned to branches/regional offices include the following:

- Locating and retrieving the appropriate records;

- Examining the records to ensure that the content matches the information requested and assessing the impact of disclosure and non-disclosure on departmental operations, client groups and others;

- Preparing recommendations to disclose or withhold information contained in departmental records;

- Calculating and assessing costs in processing requests;

- Severing exempt information from records and ensuring access to disclosable records.

What are the main responsibilities of the Senior Manager?

The Senior Manager of an organizational sector (e.g. ADM, Regional Executive Director) is responsible for submitting to the ATIP Office recommendations dealing with: the disclosure or non-disclosure of information; time extensions; and fee assessments.

Who has the ultimate authority to approve formal requests for access?

In DRIE, the Minister normally approves all formal requests for access under both the Access to Information Act and the Privacy Act.

Are requests given some priority in DRIE?

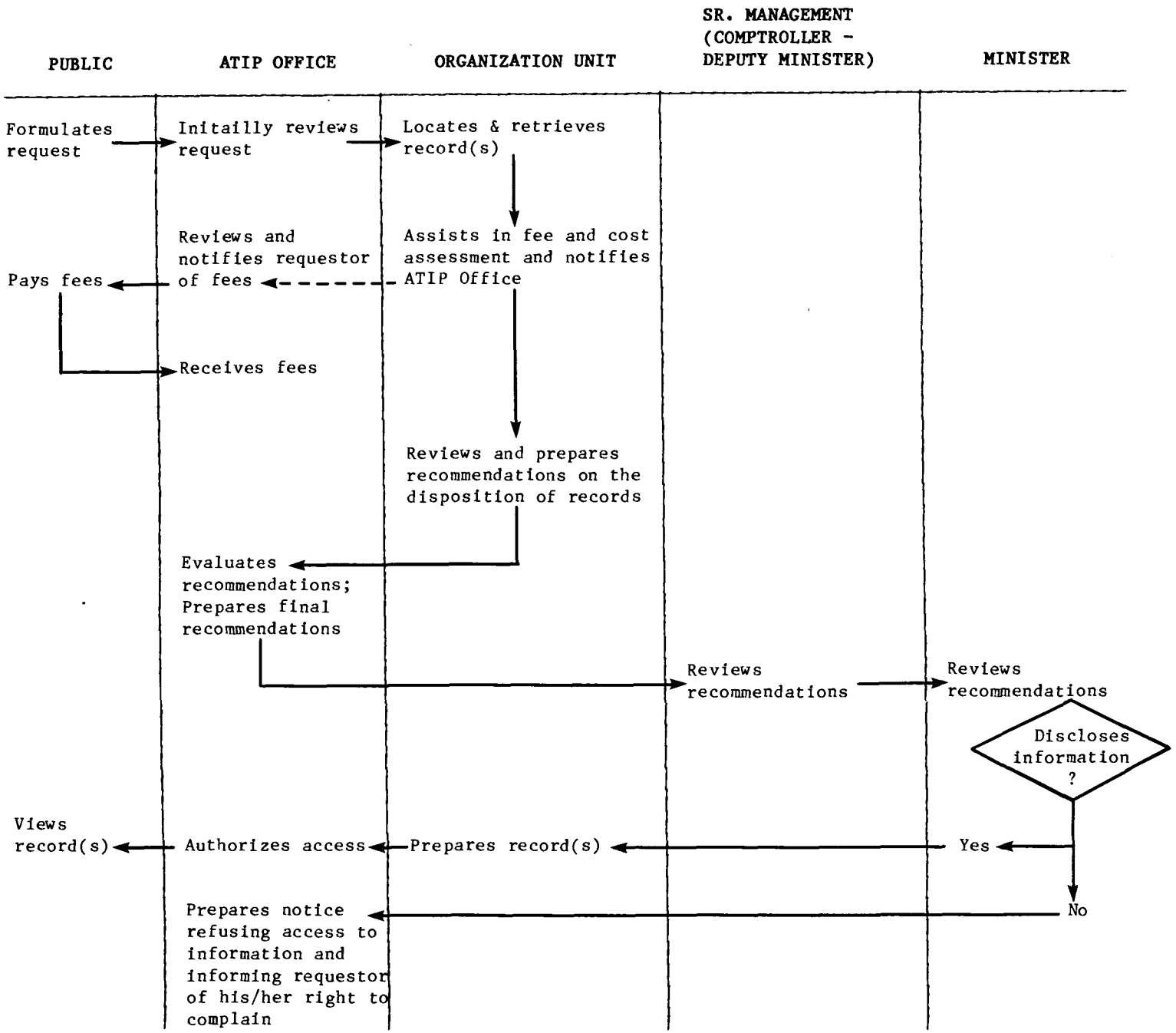
Legal deadlines apply to the treatment of formal requests. Where the Department fails to provide access within the time limits imposed by law, it is deemed to have refused access. Requests for access are, therefore, accorded a high departmental priority.

How are formal requests processed within the Department?

The following describes, in abbreviated form, what occurs in processing requests. All formal requests, regardless of where they may initially be received in DRIE, must be sent immediately to the departmental Access to Information and Privacy (ATIP) Office in Ottawa (by facsimile for requests received in Regional Offices, by hand in Ottawa). The ATIP Office must register and review each request for clarity and conformity with the law. It must also determine which organizational sector(s) will be assigned the responsibility for dealing with the request. The organizational sector concerned is responsible for searching, identifying, compiling and reviewing all relevant records and notifying the ATIP Office of all fees and costs associated with the request. If any fees are payable, the ATIP Office will notify the requestor. The organizational sector must also inform the ATIP Office if any third party or interdepartmental consultations are advisable. After the records have been reviewed by the sector, the ADM/RXD formulates recommendations on the disposition of the case and forwards these to the ATIP Office along with the records. The recommendations must include a rationale that indicates how the requirements related to any claimed exemptions are met. The relevant exemption of the Act must also be shown. The ATIP Office then drafts a memorandum to the Minister, containing the views of the parties concerned and advising on the most appropriate course of action. Once a decision has been rendered, the ATIP Office notifies the requestor and the organizational sector arranges to prepare the disclosable records (e.g. severing and reproducing records). This overview is illustrated in Figure 2.

FIGURE 2

PROCESSING REQUESTS FOR ACCESS TO INFORMATION



What if the request concerns records in which another government institution has a greater interest?

In certain circumstances, government regulations permit a request to be transferred to a second government institution. All transfers of requests must be handled through the ATIP Office.

Are there other reference sources available to assist staff in understanding the new legislation and related institutional requirements?

This brochure is only intended as a general overview of the legislation and related departmental procedures. Staff are, therefore, encouraged to consult the following sources:

The departmental Access to Information and Privacy Manual - July, 1983;

The Treasury Board Interim Policy Guide, 1983;

Guide to Access to Information and Privacy, August, 1982;

Access to Information Act, Statutes of Canada, 1980-81-82-83, Chapter 111;

Privacy Act, Statutes of Canada, 1980-81-82-83, Chapter 111.

Who can answer questions staff may have on the Acts and departmental policies and procedures?

It is expected that departmental personnel will encounter numerous grey areas requiring interpretation and guidance. To deal with these, please communicate with the departmental Access to Information and Privacy Office, Office of the Comptroller.