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Advancing Access to Information Principles through Performance Management Mechanisms: The Case of Canada

Paul G. Thomas



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WORKING PAPER

Advancing Access to Information Principles through Performance Management Mechanisms: The Case of Canada

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Acronyms and Abbreviations

AIPC	access to information and privacy coordinator
ATIA	Access to Information Act
ATIP	access to information and privacy
ETHI	Standing Committee on Access to Information, Privacy and Ethics
FedAA	Federal Accountability Act
IPSPD	Information, Privacy and Security Policy Division
MAF	Management Accountability Framework
OIC	Office of the Information Commissioner of Canada
TBS	Treasury Board Secretariat

Executive Summary

On the basis of a detailed case study of the government of Canada, this report examines how management accountability processes operating within public services may contribute to the promotion and enforcement of access laws.

Canada's Access to Information Act (ATIA) came into force in 1983. In 2003, the central management department in the public service, the Treasury Board Secretariat, adopted the Management Accountability Framework (MAF) to provide a consolidated basis for an annual appraisal of the management of departments and agencies and of the senior public servants who manage them. In 2005, some limited dimensions of the access performance of departments and agencies were added to the MAF.

The report examines the intersection of the ATIA and the MAF to determine whether adding an access component to the internal management accountability processes has improved commitment to and compliance with Canada's access law. Moving beyond legislation, government application of the law, and court interpretations, the case study uses elite interviews, official documents, online sources, and the available secondary literature to identify the multiple institutions and actors, their divergent interests and perspectives, and the formal and informal proc-

esses that shape how the ATIA and MAF processes work in practice.

Assessing the impact of the inclusion of an access component in the MAF is difficult because of the presence of developments (both inside and outside of government) that may affect how Canada's access system operates. Also, the newness of the MAF process, the almost complete absence of independent evaluations of the process, and the sensitive nature of the process all meant that the not-for-attribution interviews with current and former public servants were crucial to the completion of the study.

The study notes that access matters were given limited recognition in the design of the MAF and have received limited attention in the actual processes of appraising the performance of departments/agencies and senior public servants who lead and manage them. On a positive note, the study uncovered evidence of situations in which the MAF process brought attention to deficiencies in the access performance of departments/agencies and prompted improvements. However, the main conclusion reached by the study is that including access in Canada's MAF could not completely counter internal and external developments and pressures pushing toward stricter control over information flows. Leadership support

by cabinet ministers and senior public servants for access principles as central to the practice of good government and as a fundamental value in the public service culture was identified as more important to the achievement of open government than was adding access performance to a managerial accountability framework.

Integrating access principles and performance into managerial accountability

frameworks is one additional potential tool to be used to promote and support access laws. Whether and how the concept is applied should depend on the history and traditions of individual countries, the characteristics of their political systems, and the professionalism and capacity of their public services.

Introduction

In their book *Transparency in Global Change: The Vanguard of the Open Society*, Burkart Holzner and Leslie Holzner (2006) argue that there has been a worldwide culture shift toward transparency, the more open flow of information, proactive disclosure, and an insistence on strengthened accountability for all institutions—especially governments. Access to information legislation, where it exists, is seen to have played a role in supporting the shift to transparency and disclosure. Such legislation recognizes the public’s right to know and the government’s duty to disclose; and it provides mechanisms to enforce these principles. The process of transforming governmental systems, including public bureaucracies, toward greater openness and accountability has proved to be difficult and slow because of both political and bureaucratic resistance and the use of defensive strategies to minimize what are seen by governments as the negative consequences of access laws.

How access laws operate in different countries is affected by many factors beyond the laws themselves and the enforcement mechanisms provided therein. Factors having direct and indirect impact on access systems in particular countries include (1) the constitutional and institutional arrangements; (2)

the political system characteristics, particularly the dynamics of party competition; (3) the extent of the political executive’s control over the legislature and its committees; (4) the professionalism and autonomy of the public service; (5) the type of information held by a government; (6) the technology used to generate, store, and distribute information; (7) the strength of outside advocacy groups demanding access to information; and (8) the independence and aggressiveness of the media in pushing for openness. In short, numerous components of both the environment outside of a government and its internal operating environments can exert significant influence over how open or closed a particular governmental system will be. Comparing the relative efficacy of access laws in different countries is very difficult because such comparisons must take account of the broader context in which such laws operate.

With a few exceptions, studies of access systems in different countries have focused on the passage of legislation, its provisions, and its implementation, including challenges to its interpretation and application in particular cases (Neuman 2009). However, the access to information process involves a complex system of interdependent components

and processes, some of which are less tangible and more submerged than the architecture and the official interpretation of the legislation. Leadership commitment and organizational cultures within government that support access are crucial and more hidden factors that may greatly affect the effectiveness of an access system. This means that the study of access processes must draw on a number of different disciplinary perspectives and must apply different theoretical frameworks to diagnose problems and prescribe remedies.

This study focuses on an approach to the implementation and enforcement of access principles based on their integration into the management accountability frameworks and related processes within governments. The theorizing and research for the study are necessarily exploratory and limited, based on the time and resources available. Uncovering how managerial accountability requirements operate in practice—including the incentives they create for certain types of behavior—is difficult because of the hidden, subjective, informal, and variable nature of such processes inside the wide range of organizations that make up the modern public sector. Also, as suggested above, the effectiveness of access regimes is affected by factors both outside and inside of governments. This means that internal mechanisms intended to promote and enforce the principle of the public's right to know may be reinforced or undermined by external developments and processes. Separating the contribution of managerial processes to the success of access systems from other factors operating in the wider environment is difficult and can only be described impressionistically.

This report explores these issues on the basis of a case study of the operation of the Access to Information Act (ATIA) within

the government of Canada and its public service. The ATIA was adopted by the parliament of Canada in 1982 and came into force on July 1, 1983. Over the 25-plus years of the law's operation, there have been recurring criticisms that it has not worked effectively to uphold the principle of open government. Amendments to the act have been passed on a number of occasions over the years, most recently in 2006 when changes were made through an omnibus piece of legislation called the Federal Accountability Act (FedAA).

Although the history of the ATIA and the current structures and procedures that support it will be examined here, the main focus of the analysis will be on how the access process has been affected by the government of Canada's introduction of the Management Accountability Framework (MAF) into the public service. A full analysis of the MAF comes later in this study; for now, it can be described simply as an integrated framework for setting forth expectations and appraising the performance of senior public servants and their organizations. Commentators often link the MAF to passage of the FedAA, but it predated that legislation. After consultation inside and outside of government, the framework was introduced in the summer of 2003 by the Treasury Board Secretariat (TBS), a central agency that serves the Treasury Board committee of cabinet (as described later in this study). The MAF is intended to generate information to support expenditure and management decision making and to hold deputy heads (permanent public servants) accountable for the performance of the departments and agencies they manage on a daily basis. When introduced in 2003, the MAF sought to bring together in an explicit, coherent, and integrated manner more than 60 management reform initiatives created by the TBS for deputy heads to follow. From the

outset, the MAF was an accountability and improvement process designed by the public service; there was almost no involvement by cabinet ministers.

As is described below, the MAF process has evolved over the past seven years, with the number of institutions covered initially rising to more than 50 and then being reduced to the recent level of 25–30 annually. This is a small percentage of the hundreds of institutions that make up Canada's public sector at the national level. The broad areas of management and the more specific activities of department/agencies covered by the MAF have increased over the seven rounds of data collection and assessment that have taken place since 2003. Beginning with the fourth round (2006–07), all MAF documents submitted by institutions and the assessment reports prepared by the TBS have been posted on government Web sites.

Since the 2004–05 round of MAF data collection, the departments/agencies selected by the TBS to be part of the MAF coverage in a particular year have been required to report on their access to information arrangements and results—but as this study makes clear, they have had to report in a relatively narrow way. The 25–30 departments and agencies reviewed annually in recent years represent approximately 20 percent of the 255 institutions that are now covered by the ATIA as a result of the 2006 passage of the FedAA.

The main focus of the study, therefore, is on how the new requirements for performance reporting and assessment under the MAF might affect the behavior of managers in terms of support for and compliance with ATIA principles. Also of concern is how the MAF intersects with other formal and informal, internal and external processes to strengthen or to undermine Canada's complicated access system. Although Canada is used as a

case study, the aim is to draw some tentative lessons about the role that internal managerial rules might play in supporting access laws. As suggested above, lessons must be drawn cautiously because public services in different countries operate within different constitutional and political systems—each with its own history and traditions, contemporary issues, and changing political and administrative cultures. Simply installing so-called state-of-the-art access to information legislation, institutions, and processes that appear to work well in one country may not work well in other countries where the historical, cultural, political, and institutional context is quite different.

The analysis will proceed as follows:

- Chapter 2 describes the research methods and types of sources used to conduct the study.
- Chapter 3 introduces the general theoretical orientation of the study, including clarification of the key concepts that will guide investigation of the intersection of the legal and managerial elements of access regimes. That chapter will provide some tentative thoughts on how managerial approaches and compliance systems within public services operate in conjunction with leadership and cultural components to give expression to institutional values, such as those represented by access to information systems.
- Chapter 4 provides a brief history of Canada's ATIA, which came into force on July 1, 1983. On several occasions over the past 25 years, the operation of the act has undergone intensive review by bodies outside and inside of government. More than 20 amendments to the ATIA have resulted from such reviews, but critics insist that the act and its operation are still

deficient in providing protection for the public's right to know (Tromp 2008). They point to the adoption of defensive strategies by ministers and the public service to restrict the flow of information and thereby to avoid the potential danger of negative publicity (Roberts 2002a; Graham and Roberts 2004). The fear is that ministers' desire for error-free government will put pressure on public servants to withhold information to which the public is entitled under the ATIA.

- Chapter 5 provides an overview of the interests, values, perspectives, and incentives that affect the behaviors of institutions and individuals within the access to information process. It is recognized that these summary interpretations of the motivations and behaviors are generalizations that do not fully represent the range of challenges to and responses by the various organizations and actors who must deal with access matters under varied circumstances and with potentially quite different consequences.
- Chapter 6 describes the origins, rationale, elements, and evolution of the MAF process, including the roles of the main actors involved with that relatively recent innovation within the public service. The MAF is intended to hold senior public servants accountable in a more comprehensive and integrated manner for their performance in leading and managing their organizations and in improving their organizational capabilities over time.
- Chapter 7 discusses how the integration of reporting requirements for access mat-

ters might affect the dynamics of the ATIA process in a positive or negative fashion. Given the relative newness of the MAF and the ATIA component of the process, how the two processes intersect to shape managerial behavior will necessarily be explored in a somewhat tentative and speculative manner. The chapter also examines how internal and external accountability processes related to access might be understood to reinforce or detract from one another.

- Chapter 8 draws together the findings of the study regarding the potential contribution of managerial reforms to the process of ATIA reform.

To enable readers to assess the thoroughness and balance of the analysis that follows, the main findings are reported here: The conclusion reached is that including an access component in the MAF since 2005–06 has made a marginal difference in terms of obliging deputy heads and their organizations to pay more attention to the reporting requirements of the ATIA and related administrative policies. Such a framework within the public service, however, cannot completely offset external developments and pressures inside of government that represent obstacles to and constraints on the promotion and enforcement of the ATIA. The support of cabinet ministers and senior public servants is more important than management process in making access principles central to the practice of good government and to the promotion of a public service culture that favors openness over secrecy.

Research Methods

To investigate the issues described in chapter 1, the study draws on a range of sources: a review of the secondary literature, the analysis of government documents, Internet searches of government Web sites, and a select number of interviews with key informants. Because of the exploratory nature of the study, a qualitative, elite interviewing approach has been used as a first attempt to uncover how the access legislation, related administrative rules and guidelines, and informal norms of behavior shape commitment to and compliance with the ATIA (Dexter 1970; *PS: Political Science and Politics* 2002).

Interviews were conducted with 18 individuals distributed across two central agencies of government (the Privy Council Office and the TBS), five departments, and the Office of the Information Commissioner of Canada (OIC); and with 2 retired senior public servants who worked on access and MAF matters. With respect to access, inter-

views were held both with senior managers and with access to information and privacy coordinators who are in charge of the intake and disposition of access requests. To encourage full and candid responses on a subject that is sensitive at times, the interviews were conducted on a not-for-attribution basis. To protect the identity of respondents when quotations are used in this report, the position of the respondent will be identified in generic terms—for example, “an access coordinator in a large department.”

In addition to those sources, the study draws on the author’s background as a former member of the external advisory committee to the federal task force that reviewed the ATIA in 2001–02. It draws also on his academic scholarship on such topics as accountability; communications at the center of government; officers of parliament; trust, leadership, and change in the public service; and whistle-blower protection.

Theoretical Orientation and Key Concepts

The following discussion of the study's general theoretical orientation will clarify the key concepts that guided this investigation of how the legal and managerial elements of access regimes intersect. Also included in this chapter are some thoughts on the operation of managerial approaches and compliance systems within public services when combined with leadership and cultural components to express institutional values.

3.1 Institutionalism

This study uses a neo-institutional approach to interpret Canada's experience with its access to information system. Arising out of the disciplines of history, law, political science, and sociology, there are several variants of the neo-institutional approach; and there is considerable controversy among proponents of different approaches. What has been called *historical institutionalism* is adopted here. At the risk of great oversimplification, this approach involves a number of key features (Steinmo, Thelen, and Longstreith 1992; Lecours 2005).

The first feature involves seeing institutions as more than stand-alone organizations with narrow mandates and clear bottom-line calculations of success. Instead, institutions are seen as broader systems of interacting or-

ganizations, such as the political system or the bureaucratic system. Public sector institutions are created on the basis of laws, have formal organizational structures, involve the delegation of authority and resources subject to certain parameters to guide decision making, and provide for the flow of accountability back to the top of the organization.

Second, institutions are seen to involve an informal, less visible life consisting of conventions or well-accepted practices, unwritten rules, procedures, routines, values, and norms of behavior that are deeply embedded in the organizational structures and collective processes of the political and administrative systems. History, the evolutionary path of institutions, the philosophies of their leaders, and the defining moments when values and norms are tested all shape the collective consciousness of the institution to some degree that is not easily measured. Submerged understandings and taken-for-granted assumptions create a filter through which developments are interpreted, and they help define what is deemed appropriate behavior.

Third, without denying that power and self-interested calculations are involved, the historical-cultural approach to understanding institutional life sees shared purposes, beliefs, values, and behavioral norms acting as both enablers of and constraints on the behavior

of individuals. As historical, collective constructions, with memories and traditions developed over time, institutions cannot easily be transformed through specific actions of any one individual.

3.2 Organizational Culture

Conceptually related to historical institutionalism, but narrower in focus, is the popular and elusive notion of organizational culture (O'Donnell and Boyle 2008). It has been likened to the personality or identity of an organization. More precisely, the term is used to refer to the relatively hidden meanings, values, beliefs, and norms of behavior that often are summed up in the phrase “how we do things around here.” Edgar H. Schein (2004), the leading scholar on the topic, emphasizes that there are visible and invisible levels of organizational culture. Symbols and ceremonies would be examples of visible features, whereas unspoken fundamental assumptions and beliefs would be invisible cultural dimensions.

Different organizations are recognized to have distinctive cultures. This means that in a large and diverse public sector, there may be some systemwide values; but there are also important cultural differences among the departments and agencies that the sector comprises. It is also recognized that large, specialized, more differentiated public organizations may contain within themselves distinctive subcultures—for example, in accounting or human resource management.

Organizational cultures are variously exposed to outside influences, with public sector organizations being greatly influenced by their relative openness in comparison with private firms, the greater scrutiny of their activities,

and the impact of the political process. These conditions in the public service mean that cultures may be less stable as leaders and issues change regularly.

Organizational cultures often are described as weak or strong, thin or thick. In the management literature, it generally is accepted that a strong shared culture can be valuable in terms of performance—but with the proviso that such a culture must be appropriate in terms of the organization's tasks and environments (Kotter and Heskett 1992). Also, corporate cultures must be flexible in their openness to modification in response to changing circumstances; otherwise, there is the risk of “groupthink” and a blindness to outside developments that will affect the performance of the organization.

In this and other ways, culture can be seen as facilitating or inhibiting institutional transformation. An organization with an internal, rule-bound culture, for example, may be resistant to reforms designed to foster innovation. There are competing views in the literature about the degree to which it is possible to manage culture in a planned and deliberate manner (O'Donnell and Boyle 2008). Some writers argue that cultures can be directed and controlled through a number of mechanisms—such as new structures, the selection of personnel, the issues that are accepted on the decision-making agenda, the way in which issues are defined and dealt with, the patterns of communication, and the rewards and recognition that operate within organizations. Other commentators take the view that organizational culture is an elusive phenomenon that is more organic in nature than it is planned. Transforming the cultures of public organizations in a planned, deliberate manner generally is considered an uncertain and slow process because of the many complications introduced by the distinctive

context—most notably, the political process that leads to outside pressures having a more immediate impact on the cultures of public organizations.

As is discussed below, leadership at the top of public organizations is shared between politicians and public servants, so cultural change does not always have unified direction. Staffing and compensation in the public service are contained in systemwide policies and rules, and they may be the subjects of public controversy. The public sector consists of an agglomeration of diverse departments and nondepartmental bodies—and that makes developing a strong shared culture very difficult. Access and whistle-blower protection laws reflect a pro-disclosure environment in which internal problems may be revealed, magnified, and distorted by the adversarial parliamentary process and related media coverage. In these and many other ways, the distinctive context of the public sector makes the promotion of cultural change more complicated and uncertain than in individual private firms that provide the basis for much of the literature on organizational culture.

3.3 Public Service Motivation

Serving the public good or the public interest has long been seen as the essence of the public service role. Recently, James Perry and his colleagues (Perry 2000; Perry, Mesch and Paarlberg 2006) have argued that the institutional context and culture of the public service create a distinctive underlying motivation for public servants. “Public service motivation” provides a theory of motivation that links administrative behavior to the pursuit of the public interest. People with a high sense of public interest are more attracted to careers in government than in the private

sector. Intrinsic motivation in the form of less-tangible rewards is more important than extrinsic rewards that count for more in private firms. This raises questions about whether material rewards such as performance pay and promotions will be as strongly motivating in public sector organizations as they often are assumed to be in private, for-profit firms.

Public servants with strong public service motivation exhibit such qualities as high levels of organizational loyalty and commitment, believe their jobs are important, are more likely to work hard, are more likely to believe in the public’s right to know, and are more willing to disclose wrongdoing. Moynihan and Pandey (2007) have taken Perry’s empirical research farther and have concluded that the institutional context and management systems put in place can be used to foster public service motivation. Their research also suggests the importance of communicating to public servants the centrality of their role in upholding the public interest. These findings have obvious relevance to this study, which examines the impact of management structures and processes on the performance of Canada’s access system.

3.4 Leadership

Those commentators who believe that cultural change can be controlled and directed place a great deal of faith in the creativity and influence of leaders. Visionary, eloquent, and skillful leaders can shape cultures, especially when an organization is being founded. It must also be recognized, however, that cultures shape the philosophies and behaviors of leaders.

Leadership has been described as “one of the most observed and least understood phenomena on earth” (Burns 1978, p. 2). There

is nothing close to agreement on a definition of leadership or its essence. However, the meaning and practice of leadership appear to be highly contingent on the context in which it is occurring (Rainey 2003, ch. 11). For purposes of this study, leadership is understood as a process rather than a set of personal attributes exhibited by all leaders in all situations. Fairholm (1994) defines leadership as “a process of building a trust environment within which leader and follower feel free to participate toward the accomplishment of mutually valued goals using agreed-upon processes” (p. 3).

Leadership in government is shared between politicians and public servants (Thomas 2008b). Each group brings to the governing process a different set of preoccupations, ideas, and skills. There is a need for balance between elected political leadership to ensure responsive decision making and democratic accountability to citizens, and public service leadership to ensure the appropriate use of expertise in formulating policy and professionalism in program administration.

To be reelected, politicians must be concerned about the public perceptions of and support for the actions of government. For them, gaining favorable publicity and avoiding blame for mistakes or abuses are seen as occupational requirements. In contrast, public servants are meant to maintain relative anonymity and neutrality in the performance of their professional duties. Although mindful of the need to worry about how things look to the outside world, they are not as preoccupied with negative publicity as are politicians. For constructive and effective working relationships to develop between politicians and public servants, there must be trust based on their mutual understanding of and respect for their respective roles.

3.5 Trust

Trust is currently a very fashionable concept, and much has been written about it by scholars in a variety of disciplines and in government reports (Thomas 2008b). Again at the risk of oversimplifying, a series of brief statements about trust will be made here. Trust involves positive assumptions and expectations about the motivations, intentions, capabilities, and actions of institutions and individuals in situations entailing risk and vulnerability. There are different sources and types of trust. It takes time for trust to develop, but it can be lost quickly. Within organizations, trust reduces the need for rules and procedures and improves communication about sensitive matters.

As is discussed below, weak or strong climates of trust between citizens and their governments, and among different actors within government, affect how access systems will operate in practice. Over the past several decades in many democratic political systems, public trust and confidence in government institutions—particularly in the elected political leaders of those institutions—have declined. The same is true to a lesser extent for the appointed public servants who lead and manage public organizations on a daily basis. The two concepts of trust and confidence often are combined in opinion surveys trying to measure changing public attitudes toward governments. Although related, the two concepts probably should be kept distinct; *confidence* refers more to the capacities and competencies of institutions and individuals, whereas *trust* relates more to their motives and intentions (Thomas 2008b).

External public trust in governments has received far more attention than the positive trust relationships that need to exist on several levels inside of government if the policy-

making and managerial processes are to work effectively. The most important of such trust relationships is that between elected ministers and senior public servants who must collaborate to identify and manage issues almost on a daily basis. Other levels of trust involve the center of government—in the Canadian case, the prime minister and cabinet and the central agencies that support them—and the various departments and agencies to which authority and resources are delegated. Within departments and agencies, a strong climate of trust is needed between senior management and employees on all levels. A strong shared culture of trust, loyalty, commitment, and pride within an organization can be disrupted and weakened by short-lived events, such as political or administrative scandals.

3.6 Accountability

The aims of access laws are to increase citizen knowledge and involvement with government; to enable better-informed decision making; to increase transparency; to strengthen accountability; and, ultimately, to improve levels of trust and confidence in holders of public office. With leadership come responsibility and accountability. *Responsibility* can have many meanings, but here the term is used to describe the internalized, subjective sense of obligation to do the right thing (Harmon 1995). *Accountability* also is a broad and elusive concept, surrounded by ambiguity and controversy. In this study, *accountability* will be used in a narrower, more precise manner to refer to a formal relationship of authority that is supported by a number of processes:

- the delegation or negotiation of responsibilities, ideally based on expectations and standards;

- the provision of authority, resources, and a reasonably supportive environment to allow for the fulfillment of responsibilities;
- the obligation to answer for the performance of responsibilities, ideally based on valid information;
- the duty of the authorizing party to monitor performance and to take corrective action when problems arise; and
- the bestowal of rewards or penalties based on performance (Thomas 2008a).

Accountability should not be confused with transparency. The provision of information is an important means to achieve accountability, but does not itself constitute full accountability (which also must involve the potential for consequences to flow from actions or inaction).

3.7 Performance Management

Under the influence of the “reinventing government” and new public management movements over the past two decades, many governments sought to promote a shift away from accountability based on compliance with rules and prescribed procedures and toward accountability based on performance reporting on the results achieved, with a commitment to make use of such evidence to improve the policies, programs, and services delivered to citizens. To promote use of performance evidence, efforts were made to link performance reports to such central management processes as strategic planning, budgeting, policy and program evaluation, and appraisal of employees (especially senior managers). In the longer term, the aim was to create within public organizations a culture of performance that supported reliance on

evidence for purposes not only of control and accountability, but also of learning and improvement. It was recognized that achieving such a culture required creating incentives (and removing disincentives) to reporting in a timely, relevant, comprehensive, and balanced manner and to using evidence to guide decision making (Halachmi and Bouckaert 1996; McDavid and Hawthorn 2006; Radin 2006).

During the 1980s and 1990s, many governments around the world got on the performance management bandwagon. By the turn of the 21st century, however, jurisdictions once thought to be leaders in the field (such as New Zealand, the United Kingdom, and many U.S. states) began to scale back their activities, based on a recognition that the investment of money and staff in performance management was having limited impact on decision making and the quality of programs. Lack of use seemed to be the Achilles' heel of the performance movement. The obstacles to greater use of performance evidence fell into four broad categories: analytical, financial, institutional, and political.¹ The analytical challenges relate to the difficulty of demonstrating a causal link between program activity and outputs and actual outcomes within the organization and/or within the wider environment. In terms of financial considerations, generating information on how well programs are operating is not a cost-free activity; and governments were hard-pressed to find the money and staff to pay for sustained performance reporting and analysis. In terms of institutional factors, not all public organizations had the infrastructure and technical capacity, the staff knowledge and skills, and a supportive cul-

ture to embark on performance management reforms. Finally, because the measurement and interpretation of measures respecting program goals are inherently subjective and controversial, "politics" is involved. The politics of performance management takes place on a number of levels within government; and it relates to questions such as these: How will the vague and often multiple goals of programs be defined and measured? Over what period of time will measurement and reporting take place? Who will decide the validity and significance of the findings? And, based on the data available, who will decide what actions will be taken to achieve greater success? As will be evident in the later discussion of Canada's access system, there have been analytical, financial, institutional, and—most important—political issues related to its performance, with a range of divergent interests and perspectives on how well it is working and what constitutes success.

Despite much talk about a performance approach to accountability that concerns learning and improvement, the focus in practice is mainly on preventing abuses and mistakes and on providing assurances to the public that governments are operating efficiently, effectively, and ethically. Frequently, there is a negative, blaming quality to accountability debates. Accordingly, governments want error-free performance with no surprises, and this often means that compliance with access to information laws is regarded as risky.

Accountability and trust exist in a relationship of tension. Over the past several decades, the multiplication of accountability mechanisms in many governmental systems reflected and reinforced an external climate of low public trust in government, and weak confidence among political leaders in the capacity and willingness of the public service

¹ Only a brief explanation of these categories is possible in the space available here. For elaboration, see Thomas (2008d).

to design and deliver efficient and effective policies and programs. New regulations concerning the behavior of politicians and public servants, supported by oversight bodies that report publicly on wrongdoing or mistakes, reflect this lack of confidence. When the new oversight bodies release reports, they often become amplified and sensationalized in the parliamentary and media processes. In this way, accountability processes may lead—at least in the short term—to the erosion of trust. On the other hand, clarifying the rules, monitoring performance, and disclosing problems may mean fewer temptations and opportunities to misuse authority and public money. Such processes also may create incentives to improve performance; and, over the long run, this could increase both external and internal trust.

3.8 Implementation of Access Legislation

The passage and strengthening of access laws has been part of the wider accountability movement taking place in many jurisdictions. Such laws tend to be passed with great fanfare and rhetorical flourish on the part of politicians. However, these laws do not implement themselves. Implementation theory has been used in the public policy and public management fields to explain the gap that often yawns between the goals and design of programs and what happens in practice (Hill and Hupe 2002; O'Toole 2004). There are numerous theories, models, and controversies surrounding implementation as a distinctive, under-researched stage in the policy process. The available explanations for implementation breakdowns focus on a wide range of factors—such as lack of policy clarity, the multiplicity of interests and actors involved,

problems of communication and coordination, the need for decentralization and autonomy for specialized personnel, inadequate resources and tools, and the problem of creating the right incentives to encourage action in support of policy goals.

In general, it is now widely recognized that implementation is not a straightforward step in the policy process by which the public service simply carries out the intentions of the legislature and the political executive. Many studies suggest that implementation involves “politics” in the sense that different interests and perspectives contend with one another over how general policy enshrined in legislation will be interpreted and applied (Thomas 2006). This means that power relationships among different institutions and actors are significant in shaping policy in practice and the outcomes that are achieved. As part of the politics of the implementation process, both active and passive resistance (both inside and outside of government) may block, limit, or delay the achievement of policy goals.

In applying these theoretical notions to the performance of Canada's access system, it is useful to adopt the iceberg analogy in which 20 percent of the system is visible above water and the other 80 percent is hidden beneath the surface. The visible portion consists of the legislation, public reports on how the legislation is operating, parliamentary and media discussions, and court cases. Just above and below the surface are the administrative structures, procedures, information management systems, and internal reporting and accountability requirements needed to implement an access law. Probably the most important parts of the iceberg are fully submerged in the overlapping political and administrative cultures of government. In Canada, the ATIA now applies to more than 255 organizations. With that number of

organizations and the varied tasks they perform, there will never be one uniform access culture in the federal government. Instead, access cultures will vary somewhat, according to the nature and sensitivity of a particular organization's tasks; its history and values; the philosophies and leadership styles of ministers and deputy heads; the informal rules of the game that guide behavior; the pattern of incentives and disincentives that these rules create; and the knowledge, skills, and tools possessed by employees to manage the often complex and sensitive access process.

Creating organizational cultures that favor the release of information is difficult, takes time, and may be undermined by short-term events such as serious negative publicity. It is desirable that political and public service leaders always send the right signals on openness, but this is particularly important in those defining moments when the principles and values of the access system are being tested by controversy. Ideally, leaders and the system in general will provide incentives, rewards, recognition, and penalties to promote and support a culture of openness. While recognizing the different roles to be played, the system should be built on mutual understanding, respect, and trust among the different organizations and individuals involved. The system should be more collaborative than adversarial in character. Fairness, consistency, and predictability among all the parties involved can contribute to the integrity of the access system by upholding both the letter and the spirit of the access law.

3.9 Compliance and Enforcement

No jurisdiction has legislated an access to information system that is fast, efficient, effec-

tive, and totally satisfactory to all stakeholders. The success of such systems is greatly dependent on the commitment, attitudes, and behaviors of all the individuals involved; and such elements cannot simply be legislated into existence.

Commitment to and compliance with access principles are not the same as regulated enforcement of such principles (Parker and Nielsen 2009). Commitment and compliance, of course, are related in practice. Binding orders from courts, administrative rules, and even strong recommendations from information commissioners can help promote and reinforce a cultural norm of openness within public bodies and can foster an internalized sense of responsibility on the part of public officeholders. External interpretation and enforcement can move the access agenda forward to some extent, but the internal adoption of openness as an important value in the overlapping and intersecting political and administrative cultures of government probably is more important to achieving the aims of access laws.

3.10 "Carrots and Sticks"

Accountability systems established inside government for access purposes may be divided broadly into two categories. The first category of system provides direction, authority, resources, and generalized support to enable accomplishment of the aims of access laws. The second category uses performance targets, pressures, and sanctions that make the accountability system more compelling. Canada's access to information system comprises both motivational and regulatory features—that is, "carrots and sticks"—to promote compliance with and enforcement of the ATIA requirements. Ideally, commitment to and

compliance with both the letter and the spirit of access laws would be voluntary and strong; but experience tells us that this is not always the case.

Sanctions are penalties for noncompliance with rules or directions from officials in positions of authority. They may impose loss of benefits, status, or reputation on individuals or organizations; and may trigger attendant feelings of displeasure, shame, or fear (Posner and Rasmusen 1999). To be effective, sanctions must be properly targeted at the actors responsible for the expected behaviors, must cause sufficient discomfort to be motivating, and must be enforceable. Sanctions are likely to be ineffective when they are aimed at diffuse targets, are beset with visible

enforcement challenges, and require behaviors for which there is not sufficient capacity. Voluntary compliance is more likely to work when the expected behaviors are seen as effective and legitimate, when they correspond to the personal values of the actors, and when there is the capacity to meet expectations. Sanctions that lack legitimacy and practicality may induce defensiveness that prevents individuals and organizations from trying out new approaches (Argyris 1990). Despite failing to serve all or some of their aims, accountability systems related to access laws may be retained because of the symbolic purpose they serve in assuring the public that its right to know is being upheld.

Overview of the Canadian Access System

Canada was once seen as a leader among countries in terms of its legislation, commitment of resources to access processes, and development of administrative practices to promote openness. This is probably less true today. There are problems with the Canadian access regime, as will become clear from the following brief analysis of its history and current operations.

The ATIA regulates Canada's access system.² Whereas its legal aspects are the responsibility of the minister of justice, the TBS is responsible for administering the act. The Information, Privacy and Security Policy Division (IPSPD) of the TBS's Chief Information Officer Branch is in charge of developing governmentwide policy in this area. Though not explicitly mentioned in the act, access to information and privacy coordinators in each agency handle the day-to-day implementation of the law in practice. Their performance ultimately depends on a series of factors related to their institutional positions and the organizational and political cultures surrounding their functions. This chapter reviews the history and components of Canada's access to information system.

² In Canada, *regime* is the preferred term to describe the legal framework, structures, and processes of the ATIA. To avoid confusion for readers in other countries, however, the more universal term *system* will be used here.

4.1 The Legislation

Canada's ATIA³ can be described as quasi-constitutional because it overrides provisions in other federal statutes (except those listed in a schedule attached to the act). This feature elevates the ATIA above ordinary statutes, and it is meant to reflect the importance of openness as a fundamental principle in the political and administrative cultures of the government of Canada. When the legislation was being debated in parliament in 1980, the noble goals of the ATIA were declared to be informed dialogue between citizens and public officeholders, improved decision making, and strengthened accountability among governments and the public service. Whether the ATIA lives up to these noble purposes in practice is the subject of controversy.

The ATIA has been amended by parliament a number of times over the years. An important amendment, passed in the 1990s, made it a criminal offense to intentionally obstruct access by destroying, altering, hiding, or falsifying a record; or by directing anyone else to do so. It is significant that this amendment was based on a private member's bill—

³ The Access to Information Act (R.S., 1985, c. A-1) and related legislation is available through the Canadian Department of Justice's Web site, at <http://laws.justice.gc.ca/en/A-1/index.html>.

not a government bill—introduced in the aftermath of two national inquiries revealing that crucial documents had been destroyed. This provision was used for the first time in 2008–09, when a matter was referred to the attorney general for investigation.

The most recent changes to the ATIA were part of the Federal Accountability Act passed by parliament in December 2006. Those amendments extended the coverage of the ATIA to parent Crown corporations and their subsidiaries, officers of parliament (such as the information commissioner, the privacy commissioner, and the public sector integrity commissioner), and five public foundations created by the government of Canada. As a result, 255 institutions are now covered by the ATIA. Another significant change was the introduction of public servants' duty to assist requesters—a change intended to ensure more equal use of the access process. These changes, however, were seen by critics as falling far short of the 40 reforms promised by the Conservative Party of Canada before it took office.

4.2 The Rights of Citizens under the ATIA

The ATIA provides that every citizen and permanent resident of Canada has a right to any document “under the control” of a government institution, subject to a number of exclusions and exemptions. The act is supposed to ensure that all requests for information will be handled similarly, without regard to the identity and occupation of the requester or the purpose for which information is being sought. In addition, it is a violation of the Privacy Act (and the ATIA as amended in 2006) to disclose the identity of requesters in the processes of administering

the ATIA. As is discussed below, there is evidence indicating that both of these legal principles have been violated in practice.

Institutions covered by the ATIA are required to publish a description of the organization and its responsibilities, all classes of records under its control, all manuals that guide the behavior of its employees, and the contact information for the frontline public servant who is responsible for dealing with requests under the act (a person usually referred to as the access to information and privacy coordinator [AIPC]). The act delineates the processes for filing a request, including the timelines for notifying third parties whose information may be in the possession of government. The act establishes the position of the information commissioner of Canada, an independent officer of parliament, who mediates disputes over the denial of requests and reports regularly to parliament on the performance of the act.

There is a two-step appeal process available to requesters who are denied information. Initially, they may complain to the information commissioner. The commissioner then can investigate and make recommendations to the head of the institution, but cannot order the release of information. Requesters have a further right to seek review of a denial of access in the Federal Court of Canada. In addition, with the consent of the complainants, the commissioner may take cases to the court on their behalf.

4.3 Responsibility for the ATIA

Two ministers in the cabinet are responsible for the overall performance of the ATIA. The minister of justice is responsible for the legislation, including the introduction of amend-

ments. With the enactment of the FedAA in December 2006, the scope of the ATIA was widened so that it now covers 255 institutions, including officers of parliament (one of whom is the OIC) and all Crown corporations.

A cabinet minister (with the title of president of the Treasury Board) is responsible for overseeing the administration of the act. He or she chairs the Treasury Board, a cabinet committee that promotes sound management in general and deals with expenditure management issues in particular across all parts of government. The Treasury Board is supported by the TBS, which includes the IPSPD.

4.4 The Role of the TBS

To guide implementation of the legislation, the TBS has issued a policy statement, the most recent version of which took effect on April 1, 2008. The policy objectives described there are to facilitate compliance and effective operation of the ATIA and to ensure consistency in the application of the act across all government institutions listed in its appendix (TBS 2008b). The policy and its companion regulations were meant to produce sound management processes and decisions on requests, accurate and timely responses to requests, clear responsibility and accountability for decision making and administration, and consistent public reporting.

In terms of responsibility, the policy makes the head of an institution accountable for ensuring the effective, coordinated management of the ATIA within the institution—including compliance with the provisions of the policy and the reporting requirements related to its administration. The heads of institutions may delegate these responsibilities to other employees, but such delegation does not ex-

empt them from ultimate accountability. The act explicitly excludes delegation of these responsibilities to “exempt” (popularly called political staff) employees who work in ministers’ offices.

The heads of institutions and their delegates are responsible for the fair, reasonable, and impartial exercise of discretion; and the duty to assist applicants, receive complaints, provide accurate and timely responses, protect the identity of applicants, and promote awareness of the ATIA among employees of the institution. Heads of institutions or their delegates also are responsible for monitoring and reporting on the administration of the act. Statistics on the operation of the act must be gathered, an annual report must be prepared and tabled in parliament, and the institution’s chapter in the compendium called *Info Source* must be updated regularly.

The section of the policy titled “Consequences” deals with noncompliance. Failure to comply with directives and standards leads initially to the requirement for an explanation and the development of compliance strategies (which must be included in the institution’s annual report to parliament). For those institutions subject to the MAF, exemplary performance, satisfactory performance, and noncompliance with respect to the policy will be considered in the annual assessment process for heads of those institutions. (The intersection of the ATIA with the MAF is discussed in depth in chapter 5.)

In addition to the policy statement, the TBS has issued “Access to Information Guidelines” intended for use by public servants responsible for administering the act.⁴ The introduction to the guidelines states that they are not to “be viewed as a handbook for

⁴The guidelines are available at <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=13773§ion=text>.

finding ways to refuse access to records.” Instead, they are meant to represent “a balanced approach” to explain how the legislation permits both the release and the withholding of information. The guidelines go on to state that there is an onus on institutions to justify nondisclosure. On the grounds of informed public participation in policy making, inclusiveness, and fairness in decision making and support for accountable government, the guidelines state, “There is a compelling public interest in openness.” It is also noted that reliance on the ATIA was not meant to replace existing procedures for obtaining information, and that applicants should be informed when an access request is not required to obtain the information they are seeking.

4.5 The Information, Privacy and Security Policy Division

The IPSPD is responsible for developing governmentwide policies related to the ATIA. It advises all institutions on updates to the policy on access to information. It prescribes the form and content of the annual reports from individual institutions as well as their entries into *Info Source*, the annual index to the responsibilities of all institutions and their information holdings. Separate from and not to be confused with the IPSPD is the Access to Information and Privacy (ATIP) Office, part of the Ministerial Services and Strategic Communications and Ministerial Affairs Division. The ATIP Office is responsible for processing requests to the TBS (one of the 255 institutions covered by the act). The discussion to follow focuses on the IPSPD, not on the ATIP Office.

In 2007–08, the IPSPD prepared additional guidance for all institutions regarding

their duties (under subsection 4[2.1] of the ATIA) to assist requesters with their attempts to gain information from the government. As noted earlier, the duty to assist was added to the act as a result of the amendments made by the FedAA. It will take time for this relatively recent change to be integrated into the access cultures of departments and agencies. In 2007–08, the IPSPD had eight employees to oversee the administration of the act and to provide expert advice, guidance, and training to institutions.

The IPSPD is also responsible for providing education and training opportunities to government employees. Thirteen sessions exploring both general and specific topics related to the administration of the act were provided to approximately 150 participants in the ATIP community during 2007–08. The office works with the Canada School of Public Service to integrate access content into the curriculum for executive development within government.

In 2007–08, the IPSPD was preparing a survey of the difficulties in recruiting and retaining qualified personnel in the access field. Because serving as the access coordinator for an institution is often seen as an isolated, even unpopular role without a clear path for career progress, the survey also examined possible ways to maintain job satisfaction. One possibility that was tested in the survey was certification or accreditation for all ATIP practitioners. (These matters are discussed in greater detail later in this report.)

4.6 The Role of ATIP Coordinators

Since the passage of the ATIA, initial responsibility for managing the intake, processing, and response to access (and privacy) requests

has resided with access to information and privacy coordinators. Despite the fact that AIPCs play a central and indispensable role in translating the law into actual service, their role is not even mentioned in the ATIA. The closest that the act comes is a reference to the requirement that institutions publish a description of their information holdings—now found in *Info Source*—and identify the title and contact information for the public servant to whom access requests should be directed. A complete list of AIPCs is now published on the TBS Web site.

Several studies have recognized that the AIPCs have a stressful and demanding role that is not always highly valued within their home organizations. At times, they experience uncomfortable conflicts between their responsibilities under the ATIA and related TBS policy/regulations, their loyalty to their specific institutions, and their personal career prospects. They may be perceived as “nuisances” because they have to pester colleagues for records that could be damaging to the reputations of the minister, the institution, and the senior public servants above them in the administrative hierarchy. A rare glimpse into the pressures placed on access coordinators not to release politically embarrassing information was provided on the witness stand before the judicial inquiry into the so-called sponsorship scandal in 2005. Anita Lloyd, the access coordinator for Public Works and Government Services Canada, described how she was pressured to withhold information on the budget of the sponsorship program from a journalist who had filed an access request. To withhold the information, she told the judge, “would be to mislead” the applicant and would be neither legal nor ethical (Shochat 2010).

For some institutions, there is a continuous flow of access requests; a completed re-

quest brings another one, and requests tend not to get easier over time. The number of open-ended “fishing expeditions” for “incriminating” documents being conducted by opposition parliamentarians, the media, and advocacy groups in society seems to be increasing. In a related development, the size, complexity, and sensitivity of requests have increased over time. Heavy workloads lead to a lack of timely compliance with the deadlines required by the ATIA and to criticism by the information commissioner.

A summary of discussions held with access coordinators by the Access to Information Review Task Force in 2001 included the following summary statement: “On-the-job stress, induced by factors such as heavy workloads, inflexible staffing procedures, lack of office space, feeling undervalued in the organization, high staff turnover, and occasional verbal abuse from requesters dissatisfied with the level of service received, were all seen as detrimental to maintaining an effective and motivated group of professionals” (Government of Canada, Report of the Access to Information Review Task Force 2002, p. 124 [henceforth, this document will be referred to as the Delagrave Report, in honor of the chair of the task force]). Perceived as being out of the mainstream of institutional activities, access coordinators lacked a clear career path of advancement and promotion. As far back as 1987, a parliamentary committee had recommended that AIPCs be made part of the senior management team and therefore part of departmental executive committees—a recommendation that has been endorsed by successive information commissioners over the years. In response to the 2002 task force review of the ATIA, the commissioner at that time recommended that the position of access coordinator be recognized in the act, that a duty of impar-

tiality be imposed on coordinators, and that coordinators be required to report promptly to the deputy head of the institution any attempt to interfere with the operation of the access process (Information Commissioner of Canada 2002).

Since the Delagrave report, the position of AIPCs has become more professionalized and recognized as an indispensable role in implementing the act. With the extension of the ATIA to more institutions as a result of the passage of the FedAA, the ATIP community has become much larger. For departments and agencies experiencing large increases in the volume of access requests, it has been difficult to recruit experienced coordinators. For example, the Department of Foreign Affairs and International Trade has seen the number of requests increase by an average of 11.2 percent annually in the period between 1995–96 and 2007–08, with a 13 percent increase recorded in the final year of that period. Even with a complement of 42 full-time equivalent employees in its ATIP Office, the department has struggled to meet its legislative and TBS policy obligation to process requests in a timely manner. In its 2007/08 annual report to parliament on its administration of the ATIA, the department noted, “There is a limited pool of ATIP analysts across the ATIP community and there are substantial time and cost implications for the department to ‘grow its own’ ATIP analysts” (Government of Canada, Department of Foreign Affairs and International Trade 2008). Information management and information technology challenges compounded the department’s problem. A professional development program and a departmental working group on information management and information technology were among the department’s responses to meet these challenges. Across government, competition for

experienced and talented access professionals has led recently to higher classification and improved compensation. (Further discussion of the relationships of AIPCs with other actors in the access process is presented in later chapters of this report.)

4.7 The Roles of Parliament and the Information Commissioner

In addition to these internal mechanisms of accountability and support for the access function, parliament is meant to play a crucial role in upholding the principles of the ATIA and overseeing its implementation. Careful and continuous scrutiny of the access process by parliament and its committees could significantly help galvanize the norms of responsible and accountable behavior on the part of ministers and senior public servants who are charged with translating the act into practice. To perform its scrutiny function, parliament receives the annual report on the overall operation of the act from the TBS and the annual reports from the 255 institutions covered by the act.

The information commissioner of Canada, an independent officer of parliament, reports annually on the operation of the act, including complaints about refusals of access, interpretations of exemptions, delays, issues related to fees, court cases, and other matters (Thomas 2003). From time to time, past information commissioners have issued special reports dealing, for example, with the need to modernize the ATIA in light of changed circumstances since its 1980 adoption. (Further discussion of the role of the information commissioner in terms of the interaction of

his or her office with parliament, ministers, and the public service is presented later in this report.)

Until 2004, there was no parliamentary forum to which such reports might automatically be referred for review. As a result, parliamentary neglect of the reports was the prevailing pattern. Since 2004, however, there has been a Standing Committee on Access, Privacy and Ethics (commonly referred to as the ETHI committee) in the elected House of Commons. The ETHI committee has periodically taken up the study of access legislation, the reports from the information commissioner, and the spending estimates of that office. Access matters are also occasionally the subject of discussion in the appointed upper house, the Senate, particularly in the Standing Committee on Legal and Constitutional Affairs. In positive terms, such parliamentary investigations and debates can put political pressure on ministers and senior public servants to respect the requirements of the ATIA to avoid public criticism. On the downside, however, when the parliamentary discussions become highly negative and accusatory, they may trigger a defensive, controlling approach to the release of information by the political executive and the public service. (The dynamics of interaction between the external and internal components of the access process are discussed more fully below.)

4.8 The Office of the Information Commissioner

As an officer of parliament (also referred to as a parliamentary agency), the information commissioner is appointed by the cabinet on the recommendation of the prime minister; and he or she is confirmed in the office by a

joint resolution of the House of Commons and the Senate for a seven-year renewable term. There is also a privacy commissioner of Canada, who oversees the operation of two pieces of privacy legislation passed by parliament. There has been discussion of combining the access and privacy functions in a single parliamentary agency, as exists in a number of Canadian provinces; but this option now appears to have been abandoned because there is more than enough to do in both fields on the national level to keep two commissioners fully occupied. The existence of two offices covering the closely related fields of access and privacy means there is a need for coordination; however, at times, the commissioners have taken different public positions on sensitive public policy and public management issues.

The OIC investigates complaints from citizens who believe that they have been denied their rights under the ATIA. Citizens who have been denied information have the right to complain to the OIC within 60 days of the denial. Unlike his or her counterparts in some provinces, the information commissioner does not have the authority to issue binding directives regarding the release of information. The limitation on the powers of the OIC has been controversial, leading to a debate over the respective merits of an ombudsman model versus a quasi-judicial model (La Forest 2005). The ombudsman model is based on investigation and moral suasion, whereas the quasi-judicial model provides authority for investigations and issuance of legally binding orders. The debate and the evidence are too extensive to be explored fully in the space available here, but they clearly have relevance to the type of access culture and the climate of interpersonal relationships that exist within government and among the several groups of actors involved.

As an ombudsman-type office, the OIC relies on investigation, mediation, publicity, and persuasion to promote the cause of greater transparency. To perform its duties, the OIC may compel the production of documents (with the notable exception of so-called cabinet confidences), summon witnesses and compel them to testify under oath, and refer evidence of serious violations under section 67 or section 67.1 of the ATIA to the attorney general for possible prosecution. On completion of an investigation, the commissioner will issue a report to the head of the institution involved and to the complainant. As noted, any recommendation regarding the release or nonrelease of a document is not legally binding. In the spring of 2009, Robert Marleau, then information commissioner of Canada, advocated for order-making power with respect to administrative complaints under the ATIA, but not for general order-making power. All of the commissioners to date have regarded the ombudsman nature of their role to be positive because it enables the OIC to adopt an advocacy role on behalf of the ATIA and, at times, the complainant. It has been argued that such a role would be inappropriate if the commissioner had judge-like powers to order the release of a document against the advice of responsible ministers and senior public servants. It also has been suggested that employees of the institution are more likely to cooperate with the information commissioner in identifying a compromise that can meet the citizen's needs because the institution may still go to court to protect its position.

As mentioned, the commissioner may also make the case for the release of certain types of information through his or her annual and special reports to parliament, in appearances before parliamentary committees, and in public speeches and interviews that

usually garner media attention. The further opportunity for the commissioner and complainant to appeal to the courts may be another incentive for compliance with recommendations to release documents.

4.9 An Evaluation of Canada's Access System

Although the government of Canada was seen initially to be in the vanguard of jurisdictions in terms of its access legislation and its commitment to fulfilling its purposes, there have been problems and criticisms (Tromp 2008). Some of the criticisms have related to the policy contained in the legislation. An example of this would be the exclusions and exemptions from the general principle of the public's right to know. The leading example of limits in the act is the exclusion of cabinet confidences. Anything in the flow of advice to the cabinet is generally outside the scope of the act; not even the information commissioner may inspect such documents as part of the appeal process. There also have been ongoing debates over the need to make existing exemptions more precise and to add a "public interest" override clause that would allow the release of information within exempt categories if the benefits to the public interest outweighed the potential harm resulting from release.

Beyond the debates over the scope and content of the ATIA, most of the criticisms have been related to how it has been interpreted and applied by governments and the public service and enforced by the OIC. As Roberts (2002a,b) has noted, there can be strong incentives for ministers and public servants to withhold information. Some reasons for secrecy are dishonorable, such as the desire to avoid disclo-

sure of wrongdoing or gross mismanagement. More often, Roberts suggests, the reasons for withholding information are plausible but incomplete and not balanced by considerations in favor of release.

4.10 A History of Defensive Adversarialism?

According to the critics, the evolution of the ATIA in terms of its practical operations shows deterioration after the initial support for its principles. Roberts (2002a,b; Graham and Roberts 2004) has discerned in the application of the act a pattern that he labels “adversarialism.” The term refers to strategies and techniques developed by government officials and nongovernment actors “to exploit or blunt the opportunities created by the Act” (Graham and Roberts 2004, p. 117). The trend began in the 1990s and appears to be continuing. Examples of developments that have undermined the operation of the act include the following:

- use of private or quasi-governmental organizations to produce governmental services without extending the ATIA to their operations;
- inclusion of nondisclosure provisions in new statutes, effectively trumping the operation of the ATIA;
- as a part of governmentwide budgetary restraint, cuts to the expenditures of ATIA units that have led to backlogs of requests;
- frequent resort to the courts by governments challenging the authority and rulings of the information commissioner;
- centralizing of communications policies and practices within government (particularly around the Prime Minister’s Of-

fice) that has exacerbated the tensions between the OIC and governments;

- use of an “amber light” process involving advanced consultations among access coordinators, senior officials in departments and agencies, and, at times, personnel in central agencies (such as the Prime Minister’s Office and the Privy Council Office) to determine the “political safety” of releasing sensitive information;
- pressures from ministers and/or their political staff for access coordinators to provide information about applicants, either their identity or occupation—a violation of the Privacy Act;
- decisions to leave potentially embarrassing information unrecorded, to destroy records, or to manipulate them in other ways that contravene information and records management policies inside of government; and
- as documented in letters and emails (obtained under the ATIA), the erosion of trust and the deterioration of working relationships between the senior levels of the public service and the OIC so that they become very adversarial and legalistic.

Roberts’ findings are disturbing. He has been exceedingly resourceful and imaginative in uncovering the hidden dimensions of Canada’s access system. However, his examples tend to involve the politically sensitive cases, not the more routine requests for information that constitute the majority of ATIP cases. It is difficult to state with certainty whether the small number of high-profile cases involving actual or potential scandals is more representative of a pervasive culture of secrecy than the majority of cases in which the principles of open government are upheld.

As for the manipulation of records, the Delagrave report in 2001 (Government of

Canada, Access to Information Review Task Force 2002) found no “chilling effect” on records creation and recordkeeping. Based on a review of files and interviews in seven departments, the researchers found that, in nearly all cases, records were created and maintained in accordance with applicable legislation as well as departmental policies and standards. Moreover, in locations where there were persistent recordkeeping problems, they usually were caused by organizational factors (such as incompatible information technology systems and poor records management) rather than by deliberate efforts to prevent disclosure. It should be noted, however, that the study was conducted by staff of Library and Archives Canada, and was done for an internal bureaucratic study team; critics argue this diminishes the credibility of the study.

It is systemic problems—such as refusals of access requests based on the most restrictive interpretations of the exemptions, long delays in finalizing requests, and the fees charged for processing—that attract most of the criticism of Canada’s access process. This is true despite the fact that more than 70 percent of initial requests are granted in whole or in part (TBS 2008a). When access issues are taken up by the information commissioner and by the parliamentary committee, it can lead to resistance from ministers and the public service. Confronted with governments and bureaucracies practicing defensive adversarialism during the 1990s, the information commissioner claimed that it was necessary to rely more heavily on his investigative powers, to take the government to court more frequently to clarify his authority, and to escalate the rhetoric in his speeches and reports to gain parliamentary and media attention that would put pressure on governments to comply with the letter and the spirit of the ATIA.

According to Roberts (2002a,b; 2006a,b), the downward spiral of mistrust and legalism that came to characterize dealings between the OIC and the public service reflected more than a backlash against the control efforts of governments. He argues that the enforcement strategy embedded in the ATIA was deficient in two major ways. The first deficiency was that the information commissioner can make only recommendations on disclosure and must rely on persuasion and publicity to obtain the release of information. This ombudsman model of the information commissioner’s role is contrasted with the statutory power given to commissioners in five provinces (Alberta, British Columbia, Ontario, Prince Edward Island, and Quebec) to order the release of information. In those jurisdictions, Roberts notes, the commissioners must be judicious and careful in their comments on the conduct of institutions to avoid charges of bias in the adjudication of disputes under the law. Giving “order power” to commissioners, he argues, does not necessarily mean that the process of resolving complaints must become legalistic and adversarial. Instead, he posits, “the informal processes for dispute resolution may be more effective precisely because the (provincial) Commissioner holds the power to adjudicate disputes. Institutions may take the commissioner’s office more seriously and be more likely to comply with the procedural requirements issued by the commissioner” (Roberts 2002b, p. 667).

Although Roberts sees the lack of an order power as a serious weakness of the ATIA and as a contributing factor to the frayed relationships with the bureaucracy, successive federal information commissioners have declined the suggestion from parliamentarians and advocacy groups that they be given such general authority. In defense of the ombudsman approach, those commissioners argue that it allows for informal mediation and has

proved successful in practice on individual cases. The TBS is responsible for compiling statistics on the operation of the ATIA; and, in recent years, it has reported that approximately 70 percent of access requests are granted in whole or in part (TBS 2008a). However, in 2008–09, the information commissioner recommended that the office have order power with respect to administrative matters, such as reasonable delays in responding to requests and processing fees.

The second, more fundamental deficiency of the Canadian access system, according to Roberts, relates to its complaint-based nature in which enforcement of the act depends on the joint efforts of citizens and the commissioner. When the ATIA was adopted in the 1980s, the forecast was for 70,000 requests annually when it had become known to Canadians (TBS 2008a). Depending on wider developments within the political system, the volume of requests can fluctuate quite dramatically. For example, earlier studies reported that the number of requests had leveled off in the 20,000 range and had never exceeded 30,000 in any year (Roberts 2006b, pp. 161–62; Drapeau 2009). According to information supplied by the OIC, the rate of increase year over year has been in the 6 percent range; and during 2008–09, there were 34,041 access requests received by all institutions. In general, there are a number of reasons—lack of knowledge, the cost, delays, pessimism about the outcome—why citizens have not made greater use of the act and have not appealed more frequently to the commissioner when they are denied access. Roberts argues that an individual case-by-case approach cannot promote a culture of proactive disclosure. To supplement and reinforce the complaints process, he recommends a new performance-based approach to measuring and publicizing the compliance of departments and agencies with the requirements of the ATIA

(Roberts 2002b). A similar recommendation was made in the Delagrave report (Government of Canada, Access to Information Review Task Force 2002).

As noted earlier in the present report, the information commissioner has been publishing annual report cards on the performance of institutions covered by the act since 1999. Institutions complained, however, about the unfairness of the “letter grade” report cards because they covered only one dimension of performance: the percentage of requests that were not completed within the statutory 30-day limit. This is not the place to debate the merits of that and other performance indicators of how well the ATIA is operating in practice. It is enough to say that, for 2007–08, the information commissioner adopted an expanded assessment framework intended to provide a broader picture of institutional performance. Report cards now contain a qualitative and quantitative description of contextual factors—such as workload changes, organizational capacity, process improvements, and leadership support—that might have affected the ability of a particular institution to fulfill its obligations under the act (Information Commissioner of Canada 2009). As is discussed later in this study, the new contextual, multidimensional, and mixed quantitative/qualitative assessment approach by the OIC might be aligned with the internal assessments conducted by the TBS under the MAF. Since fiscal 2005–06, the MAF has included access to information performance for now 65 (initially 50) of the 255 institutions covered by the ATIA.

4.11 Recent Developments

In April 2006, the Conservative Party of Canada government of Prime Minister Stephen

Harper introduced the omnibus FedAA, which included a number of reforms to the ATIA. As passed by parliament in December 2006, the FedAA extended the coverage of the ATIA to 70 new entities and introduced some new exemptions to protect sensitive information in the possession of those new entities. During the 2006 election campaign, the Conservative Party had promised more fundamental changes to the act (Tromp 2008, chs. 3, 4). But, once in office, it released a discussion paper to elicit the views of Canadians and parliamentarians on issues that it described as not having been the subject of sufficient consultation and debate outside and inside government. The discussion paper (Government of Canada 2006) provided the focal point for consultations with some of the stakeholders in the access community.

One such consultation took place at the request of the information commissioner and was organized by the Public Policy Forum, an independent, not-for-profit organization dedicated to the improvement of government performance. In June 2008, it held a one-day workshop, titled “Modernizing the Federal Access to Information Regime.” The workshop brought together 40 experts from government, the private sector, civil society, and the academy. Canada’s information commissioner made opening remarks to the gathering. Whereas the government’s discussion paper focused narrowly on possible legislative changes to the ATIA, the workshop discussions ranged far more widely to include political, administrative, and cultural factors that affected the operation of the act (Public Policy Forum 2008).

At the risk of oversimplifying, it can be said that three overarching themes emerged from the workshop. First, Canada’s access system was characterized by slow response

times to initial requests and long delays in complaint resolution. These problems were the product of numerous factors; but, most important, they reflect a public service culture that resists transparency and treats access in narrowly legalistic terms rather than accepting openness as a fundamental principle. The ATIA units and operations within departments and agencies were seen to be isolated, under-resourced, and lacking in professional identity.

Second, participants agreed in general terms that an ideal ATIA system should reflect the principle that most information is routinely made public. There should be a service culture in which requests and complaints are processed efficiently and with courtesy. Ideally, access coordinators would see requests as an opportunity to serve citizens and to support democracy rather than as a threat that could get them in trouble with their administrative superiors and even the minister at the head of the department. In a perfect world, access coordinators would have a sense of belonging to an identifiable professional group, and there would be a viable career path for them to pursue in the access field.

Third, moving from the deficient existing state of the ATIA system to more closely approximate the ideal was seen to require a number of components: top-level commitment and support from ministers, senior public servants (deputy ministers), parliamentarians, and civil society; improved technology and a more reliable records management system across government; more education and training, including ongoing professionalization of the access coordinators; adequate resources and a performance management framework with appropriate evaluation criteria and incentives that support access as a fundamental value of the public service.

Although there was a consensus within the workshop on the general themes, there was less agreement on the details of how to achieve the desired improvements. Regarding the focus of the present report, the link between a rigorous performance management framework for access matters and the promotion of a culture of transparency was seen as crucial. A performance measurement, reporting, and management system that recognizes and even compensates public servants for respecting and enabling the principles of access to information might send a strong message that transparency was a fundamental value of democratic government. However, several participants suggested that public servants never face consequences or sanctions for *not* releasing information. “Unless there is an attitudinal change so that public servants don’t feel they are going to get into trouble every time they release information,” one workshop participant observed, “then it’s a hopeless situation” (p. 7). Participants agreed that political will and political leadership are key to improving the ATIA system.

4.12 One Access Culture, or Many?

The claim by successive information commissioners, by academic researchers, and by

Public Policy Forum workshop participants that there is a “culture of bureaucratic secrecy” that undermines the ATIA in practice may be too broad a judgment to make about an access system that covers 255 institutions. Some institutions occupy strategic locations in the policy process and handle highly sensitive information. For example, the Privy Council Office, which supports the prime minister and cabinet, is at the center of the governing process. It is one of the most popular targets of access requests; but the sensitivity of the files it handles means that caution, risk calculations, delays, and limits must be involved with the release of information. Lower-profile entities handling more innocuous information will be the target for fewer access requests, and there will be less risk attached to the release of information in their possession. In summary, rather than a single public service culture of access to information, there are conceivably several cultures across the wide expanse of the Canadian public sector. This qualification must be kept in mind as the study moves to an overview description of the divergent interests, perspectives, and incentives that swirl around the ATIA in practice.

5

Divergent Interests, Perspectives, and Incentives Relating to Access Issues

As noted in chapter 1, this study looks beyond the adoption of formal access laws and interpretations by the courts to examine the role that leadership, culture, incentives, and resources have played in the practical evolution of Canada's ATIA. With this focus it was necessary to go beyond the examination of documents and online sources to identify the more hidden, informal dimensions of the access process, including the incentives and motivations that guide the various institutions and actors involved. This chapter cautiously generalizes about the interactive dynamics of the process. Given the limits of the study and the space available, the following analysis of the motivations and incentives that drive the behavior of ATIA actors is necessarily impressionistic and incomplete; but it serves to reinforce the point that there are both divergent and shared interests and perspectives that shape how Canada's access system works in practice.

After more than 25 years of operation, the ATIA has become institutionalized within the governance structure. The word *institution* is used here to refer to a system of established procedures and patterns of interaction that regulate or, less precisely, shape the behaviors of organizations and individuals who constitute Canada's complex access process.

Institutional arrangements and procedures may be both constraining and enabling for participants. Constraints may be formal (laws, regulations, administrative policies, reporting requirements, and so forth) or informal (behavioral norms and values embedded in organizational cultures and pressures to conform). Sanctions and rewards work to affect the actions and decisions made by participants on a number of levels of the access system's governing structure.

The underlying motivations and intentions of the public officials—both elected politicians and career public servants—may be singular or mixed along the following lines: *appropriateness* (what ought to be done according to the law, the circumstances, and the interests of the organization), *instrumentality* (what will benefit me), and *orthodoxy* (how things are done around here). Various incentives and disincentives affect how participants in the access system respond in particular cases to requests for the release of information (Gill and Hughes 2005). Although institutional arrangements, processes, and shared meanings lend a degree of stability and predictability to interactions, leaders and their actions can transform values, attitudes, and behaviors. Cultural change, however, is typically a slow, incremental, and uncertain process.

The premise for the discussion to follow is that public officeholders—both elected politicians and appointed public servants—probably act in most instances on the basis of mixed motives rather than one-dimensional self-interested calculations attributed to them by public choice theorists. A second, related point is that the following descriptions of attitudes and behaviors of the actors within the access process constitute “tendency” statements rather than predictive models of how ministers, senior public servants, access coordinators, information commissioners, parliamentarians, the media, and requesters will behave in all instances.

5.1 Access Requesters

On the premise that access laws are primarily meant to support democratic engagement and accountability, the discussion of different roles will begin with access requesters. The user population for the ATIA is diverse, but can be grouped into these categories of requesters: frequent users (such as advocacy groups, businesses, and consultants), the media, parliamentarians, and the general public. Over time, the relative percentage of requests from each of these groups has changed somewhat. For example, opposition parliamentarians and their staff have emerged over time as major users of the act. However, businesses have remained major users throughout the act’s existence. Within the category of the general public, there are both first-time, poorly informed users and frequent, knowledgeable users, including consultants who may be hired to pursue access requests on behalf of other individuals and organizations. The size and sophistication of the applicant pool affect the access processes inside particular institutions and the professionalization of

the access cultures within them. Different groups of users bring different motivations, expectations, and capabilities to use the access system.

Citizen Requesters

Very few “ordinary” citizens make use of the ATIA. When they do, it is usually because of an issue personally related to them. Their requests often are general in nature, partly because they are not well informed about who does what in government and where documents might be located. The law and the TBS policy and guidelines require that access coordinators contact requesters to clarify what information they are seeking.

Within the general public, there is a small number of highly motivated, sometimes well-informed applicants who want to see every record that exists and to see it promptly. They often have little appreciation for the process involved in making larger, more open-ended requests; the impacts on the regular operations of the institution; and the fact that there can be a backlog of requests, including some sizable, complicated, and time-consuming requests. Educating applicants about their rights, the exemptions, delays, fees, and so on can be time consuming, but it is vital to the success of the act in the real world.

Experienced, Serial Users

Experienced, professional requesters—such as businesses and for-hire consultants—know what they are seeking, are persistent in their demands, and often want access to information that is highly sensitive. Their incentives are often material—gaining a competitive advantage over other businesses or wielding influence in the corridors of power inside government. Serial requesters tend to be focused in their use of the act. Their requests are often

complex and voluminous, requiring staff within an institution to invest significant work and time completing the processing of the requests. Fees can be charged and time extensions can be used in connection with the processing of such large requests. Nonetheless, the “commercial” nature of some major requests leads to at least ambivalence, if not outright resistance, within the public service, some members of which believe that government should not subsidize the intelligence-gathering function of companies, industry groups, and well-heeled consultants. Such applicants are, of course, exercising their legitimate rights under the ATIA, and the disclosures produced by their perseverance may serve the wider public interest.

Media Requesters

Among the experienced users of the ATIA are media requesters. Members of the media see it as part of their professional role to challenge government elites who try to control information and use “spin” to present it in the best possible light. A number of Canadian journalists rely heavily on the ATIA process to obtain material for printed and electronically distributed stories. In doing so over the years, they have published stories that forced governments to explain and defend actions and inaction that became controversial as a result. In this way, the media using the ATIA becomes a source of transparency and accountability within the political system.

However, the problems of delays involved with the release or nonrelease of information and the fees charged for the reproduction of documents have frustrated journalists working toward deadlines and having to file multiple stories for mainstream media, Web sites, and blogs. Although legally under the ATIA the occupation and identity of the requester is to remain confidential to ensure equal

treatment, there is some evidence of “sensitivity ratings” being applied to media requests and of an “amber light” process for handling them. Referral of media requests to deputy ministers, ministers’ offices, and even to central communications personnel in the Prime Minister’s Office can be the source of significant delays. It is legitimate for ministers and senior public servants to manage the communications process, but not if this “management” undermines the ATIA goals of openness, timeliness, and accountability.

Parliamentarians and Their Staff

A major role of parliament within the Canadian political system is to scrutinize both the performance of the prime minister and cabinet and the way money is spent and programs operate within the public service. The goal is to promote accountability to the public. Parliamentarians who are part of the governing party have less incentive to engage in the critical review of government actions for several reasons: because embarrassing revelations could lead to a loss of support from the electorate, because party loyalty and party discipline tend to be strong, and because they may not want to reduce their chances of being appointed to cabinet by the prime minister. This leaves performance of the scrutiny function to the efforts of opposition parliamentarians. Their efforts are partly motivated by a desire to provide Canadians with better government by exposing policy mistakes and mismanagement. However, when parliament increasingly resembles a permanent election campaign, the frequent goals of the opposition are to embarrass the government and to gain ground in the polls.

Opposition parties in parliament and their political staff have made growing use of the ATIA over time. Political staff in the offices of leaders of the three opposition parties, in the

research bureaus that support the party caucuses,⁵ and in the offices of individual parliamentarians have become knowledgeable in their use of the access process. With its delays, the ATIA process does not fit with the events-driven and immediate nature of the parliamentary process; but opposition parties have learned to put multiple requests into the pipeline and wait patiently for the stream of returns eventually to flow. The government naturally wishes to manage the process so as to avoid being blindsided by opposition parties using information against it.

Whether members of parliament and senators use the ATIA process in a constructive manner to enforce accountability and improve performance or with a negative intent simply to attack the government and gain political support reflects the evolving political culture of the institution of parliament and the issues on the agenda at a given point in time. The use of open-ended and frequent access requests from parliamentarians in recent years reveals the highly partisan atmosphere of parliament, the determination of opposition parties to score points against the governing party, and the defensive efforts by governments to manage the disclosure process. It is not so much that parliamentarians lack information; in fact, they are overloaded with the flow of information. However, because the information considered most relevant for their short-term political purposes is usually not available under ATIP, they often take out their frustration by blaming access coordinators, top-level public servants, and their political opponents in office for allegedly putting pressure on the public service to withhold material.

⁵The term *caucus* refers to the private meetings and activities of all parliamentarians in each of the parties.

5.2 Public Servants Responsible for Providing Access

Access to information and privacy coordinators face the complicated and delicate task of implementing the access system. They have to deal with requesters, handle requests on time, and manage the internal complexities of compiling the necessary information. Senior managers, as well as ministers and their political staff, have an interest in controlling and administering the flow of public information and its impact on public opinion and the political process. The actors included in the oversight and processing of information are subject to different sets of incentives and pressures that shape their behaviors. The coordination and disposition of these actors influence the effective performance of the access system.

The Initial Contact: Access Coordinators

The position of access coordinator has been described as demanding and stressful. Over time, the role has become more professionalized, better recognized and compensated, and better supported within departments and agencies. But tensions are inherent as coordinators may be caught between the demands of the law (to provide access) and the demands of their superiors (to maintain secrecy). As noted earlier, employees in the various institutions of the public service eventually develop an understanding that certain behaviors in relation to the access process are appropriate under the law, instrumental in terms of their own career prospects, and orthodox under the unwritten and informal rules of how things are done in their departments. These are the cultural components of

the access system that are difficult to document and to change in a planned way.

Direct pressures on coordinators from ministers, their political staff, and senior department officials probably are rare. The vast majority of requests are not referred to senior management or the minister's office for approval. However, in bureaucratic cultures that tend to be risk averse, there is a recognition of the risks and potential consequences of disclosing records that could cause harm to outside parties, embarrass the minister, damage the reputation of the institution and its management team, and (far from least important) have negative consequences for the career prospects of the coordinators themselves. As is discussed later in this report, there are tangible and intangible penalties for poor performance by access coordinators (such as poor report cards for delays), but there do not seem to be commensurate rewards for doing the job well and meeting the goals of the ATIA.

Previous surveys of access coordinators indicate that they strongly support the principles of the ATIA, but are frustrated by the way that it is used and by the complications and constraints associated with its operation. Opposition members of parliament, the media, advocacy groups, and some individuals file highly general, vague requests that seem to have the public service doing their research for them. General requests covering broad topics mean that coordinators have to seek intra- and interdepartmental cooperation.

For a number of reasons, the creators of files and the units that control them may be reluctant to release them. For example, program managers and service delivery personnel may view the search for and retrieval of records as interfering with their primary duties, especially when units are understaffed and overworked. In most departments, there

are communications specialists who are accustomed to crafting messages to avoid controversy and who are suspicious of disclosing "raw" data that are open to conflicting interpretations. In some instances, department lawyers become involved to ensure that disclosures do not expose the department to embarrassment and legal liabilities. Finally, there are exempt political staff and senior public servants close to the minister who want to control the process to avoid potential embarrassment for the minister and/or the department.

Coordinating the work of generating responses takes time, and the requirement for multiple levels of review can lead to missed deadlines for the release of information. Delays also may be caused by the volume of requests (especially at certain times of the year) and by problems with information technology and records management. Staffing limitations also contribute: the staff working with coordinators occupy entry-level positions, there is significant turnover in such positions, experienced staff is in short supply, it takes time and training for institutions to develop staff capability, and there are not the same readily identifiable career paths that exist for many other occupations in the public service. These staffing challenges lead to backlogs, delays, and mistakes.

In general terms, coordinators have delegated authority to make decisions on the disclosure of information; however, delegation arrangements vary across departments and agencies. In strict legal terms, the deputy minister has no authority to overrule any access-granting or -denying decision made by the public servants to whom authority has been explicitly granted. In practice, however, access coordinators recognize that it is appropriate and prudent to refer nonroutine, sensitive requests to the deputy head of the

institution and perhaps to the minister's office. It is the coordinators, though, who are on the front line and feel the initial brunt of requesters' frustration and criticism—and sometimes those of the OIC staff acting on behalf of requesters appealing request denials. As regulators sworn to uphold the ATIA, OIC staff have been known in an earlier period to be highly aggressive in their dealings with coordinators.

Senior Managers

Program officials who control files and the senior public service leadership within institutions seldom welcome ATIA requests. At best, such requests are regarded as a nuisance; at worst, as a threat of potential embarrassment for the officials, the department, and the minister. A summary of discussions between the Delagrave task force and access coordinators in 2001 noted

Some participants deplored a perceived lack of accountability for compliance with the Act in some program areas and a perceived lack of commitment to the spirit of the Act by some managers at all levels, including senior management (Government of Canada, Access to Information Review Task Force 2002, p. 125).

The introduction of the MAF in 2003, with the provision that deputy heads be accountable for the administration of the ATIA, was meant to be a counterweight to the pressures and incentives favoring secrecy. (Whether MAF incentives are strong enough to offset the informal pressures at the political level and in the bureaucracy for damage control and keeping ministers out of trouble will be discussed below.)

It must be recognized that senior public servants are accountable to many different in-

dividuals and institutions for many different dimensions of performance. Deputy heads are formally accountable to the prime minister and the cabinet who appoint them, to their individual ministers, and to such central agencies as the TBS and the Privy Council Office. Informally, they have a sense of responsibility to and are influenced by the numerous stakeholders of the institutions they lead, including their peers at the deputy level across government, their employees, outside organizations and groups, and the parliamentary committees before which they appear on a regular basis. Included in the stakeholder category to which they must be responsive is the OIC, which can compel the production of documents and the appearance of department staff, but cannot order the release of documents. The desire to avoid a negative report card and adverse publicity from the OIC must be balanced with considerations of maintaining ongoing positive and trusting relationships with formal and informal stakeholders.

Ministers and Political Staff

Ministers and their political staff have the closest, most immediate working relationship with deputy heads and other senior public servants who are designated as responsible for the administration of the ATIA. The mere existence of the act challenges the increasing emphasis within government—no matter which party is in office—on the political management of the government agenda, including the avoidance of surprises and crises, tight centralized message control, the use of spin to interpret events in the most favorable light, getting out in front on negative stories to frame the issues before they hit parliament and the media, and the development of action plans to manage issues through the news cycle to limit the political damage to the government and the minister. Political dam-

age control by political staff in ministers' offices and by the Prime Minister's Office at the center of government is sometimes achieved at the expense of the anonymity and professional reputations of public servants who are not allowed by law and constitutional conventions to defend themselves publicly.

Ministers and senior department officials want to manage communications around sensitive issues, including access to information requests. Because they are challenged constantly by the opposition, the media, and advocacy groups within society, ministers need to anticipate criticism and be prepared to answer their critics. This involves more than simply defending their records and reputations; it also involves building public understanding of and support for what government has done or is promising to do.

The problem arises, however, when the political process of contentious issues management undermines the access process in direct and indirect ways. Directly, it can lead to delays because sensitive requests are referred up the line to the top of the institution to be checked for their political safety. This checking involves exempt, political staff working in the Prime Minister's Office or for individual ministers. Because managing their bosses' time is part of their role, they may act as filters for which matters are brought to ministers' attention. Most political staff see their primary duty as helping their ministers look good—including keeping them out of trouble. There is the risk that overzealous, usually relatively young and inexperienced political staff will intervene in the access process, claiming to be acting on behalf of the minister. Although there is a code of public service values and ethics that applies to career public servants, no such code of conduct exists for the partisan individuals who provide political support and

advice to the prime minister and other ministers. Therefore, there is the danger that ministers and their staff will put pressure on senior public servants to delay the release of information to accommodate the issues management approach that tries to prevent criticism in parliament, in the media, and from groups within society.

At the time of writing (June 2010), the issue of political interference in the access process is being reviewed by the House of Commons' ETHI committee. This review began after allegations that political staff had sought to retrieve and/or prevent the release of information that should be made public under the ATIA. The minority Harper government has blocked political staff from appearing before the committee, which has an opposition majority and is chaired by an opposition member of parliament. The committee has appealed to the Speaker of the House of Commons to determine whether the political staff's refusal to honor a summons and appear before the committee constitutes contempt of parliament, an offense that carries potentially serious penalties. At the same time, the OIC is investigating the role of exempt political staff in the access process.

5.3 The Information Commissioner as Champion?

The small constituency of active support for access principles in society, the limited knowledge of the principles and practices of the ATIA within parliament, the tight control by the prime minister and the cabinet over the legislative process and parliamentary scrutiny of the administration, and the ambivalent stance of the senior public service

toward the act all combine to make the information commissioner and his or her staff the most visible, consistent champions of the public's right to know. Compared with the breadth of its mandate and the number of institutions covered by the ATIA, the commissioner's office has limited financial and human resources. It does not have a formal educational mandate; but through its reports, appearances before parliamentary committees, and speeches by the commissioner and other staff, the OIC is able to generate parliamentary, media, and public attention on access issues. In the absence of an extensive network of outside advocacy groups promoting the cause of open government, there is the danger that the commissioner will become identified in the media and in the public's mind as a kind of "super hero" who can single-handedly advance the access cause against the ignorance, indifference, or resistance (passive or active) on the part of ministers and the public service.

The background, personality, leadership style, and credibility of the commissioner are important to how the office interprets its role and how effectively it works with the other institutions and individuals who constitute Canada's access system. Commissioners are appointed by the cabinet on the recommendation of the prime minister. Following the House of Commons' ETHI committee review and comment on the nominee, there is confirmation of appointment for a seven-year term by a joint resolution of both houses of parliament.

Over the past 25 years, four commissioners have been appointed.⁶ They have come to the office with varied backgrounds—a former penitentiary ombudsman, a former journalist, a former member of parliament

and cabinet minister, and a former clerk of the House of Commons. Past commissioners not having been appointed from within the office and lacking direct background in the access field may have meant that senior staff in the OIC have been more influential than otherwise would be the case in shaping the approach of the office to securing compliance with the ATIA.

The "model" commissioner has to balance the roles of educator and champion of the actors (particularly public servants) who are expected to make the access system work with the roles of monitor and inquisitor for those actors (especially ministers and their political staff) who might wish to bend or break the access rules. In broad terms, commissioners may choose between a relatively soft, diplomatic approach and a hard, confrontational approach. The stance of a particular commissioner will be shaped by the issues on the access agenda at the time, by the responses of governments to those issues, and by his or her own personality and leadership style. Three of the four commissioners to date have been described as following a firm, but nonconfrontational approach; one commissioner (the former member of parliament and cabinet minister) was seen to be more aggressive and legalistic in his approach. Even the commissioner who, over time, acquired a reputation for being combative spoke early in his term as follows: "I prefer to conduct my investigations by consent and cooperation. Our normal *modus operandi* is to meet with government officials, to receive records which are voluntarily produced. Officials are seldom put on oath and recorded during their evidence."⁷ As an ombudsman-type office, the success of the OIC depends in large

⁶ The fifth commissioner, Suzanne Legault, was appointed on June 30, 2010.

⁷ Remarks by Commissioner John Reid to the External Advisory Committee of the Access to Information Task Force, June 20, 2001.

measure on the thoroughness of the investigations, the mediation and persuasion skills of the staff and the commissioner, the reputation of the office for allegiance to the law rather than advocacy for the complainant, and its fairness in dealing with department staff.

Like other officers of parliament, the information commissioner is in the trust business in several senses of that phrase (Thomas 2008d). First, the OIC was created by parliament to contribute over time to greater public trust in government. Second, parliament must trust (up to a point) that the OIC will fulfill its mandate, and individual parliamentarians must avoid interfering in the resolution of individual complaints about the non-release of records. Third, individual Canadians must put their trust in the information commissioner as a neutral, impartial, and objective professional, committed to upholding the principles of the ATIA. Fourth, although some tension is inevitable, there must be some degree of trust between the OIC and the departments and agencies covered by the ATIA. Such trust takes time to develop and can be lost in a single event—a minister's office or a public manager trying to cover up a problem, or the OIC publishing an ill-informed and unfair report about the actions of an institution. The information commissioner cannot pull his or her punches to stay on friendly terms with a particular institution and its leaders. It is a matter of finding a balance between working with departments and agencies as an educator and consultant and using criticism and publicity to enforce accountability. A certain amount of mutual wariness necessarily characterizes the relationship. Ideally, tensions will be reduced through the development of a culture of shared understandings, mutual respect, and conditional trust.

5.4 Conclusions

The many and complicated relationships among the various institutions and individuals involved in the access world are dynamic and shifting in content and tone. Whereas controversial, high-profile cases garner parliamentary and media attention, the vast majority of access requests are processed in a routine manner that does not lead to complaints to the OIC. The ATIA process certainly could be improved. It qualifies as a gigantic understatement to say that much has changed in the broader external environment and the internal workings of government since the ATIA was brought into force more than 25 years ago. The act needs to be modernized to reflect changed realities.

At least as important as modernizing the legislation, however, is the need for stronger political and bureaucratic commitment to the principles of the act. Governments have tended to see the ATIA as just another administrative process, rather than as a statutory program that deserves adequate funding and staffing to be effectively implemented. This general attitude by governments carries over into central agencies such as the TBS, which often—but not always—expects institutions to absorb access costs into their ongoing operations. Because the administrative heads of those institutions (usually deputy ministers) face multiple pressures and conflicting incentives, they are not likely to put the needs of access units ahead of other departmental priorities. This makes such units vulnerable when budgets are tight.

As indicated by the analysis in this study, the nature and severity of the act's deficiencies and its implementation are naturally viewed differently by the various stakeholders in the access to information community, both inside and outside of government. The

diverse interests, incentives, and motivations of the numerous institutions and individuals involved lead to complex interactions, tensions, and ongoing negotiations that make it difficult to reach agreement on changes to legislation, administrative policies, and the level of financial and human resources required for the access system. This must be remembered when assessing the potential and the limits of reforms that might be undertaken within the structures and management processes of the public service alone.

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The next chapter examines the MAF, which was introduced in 2003–04 to provide a basis for annual appraisals of senior public managers in select institutions within the government of Canada. An understanding of the MAF and its operations is necessary background knowledge to determine whether the inclusion of access matters in the framework will promote greater voluntary compliance with the ATIA and perhaps counterbalance some of the pressures and incentives that push toward secrecy.

Origins, Elements, and Evolution of the MAF

6.1 Origins of the MAF

In the mid-1990s, a consensus emerged within the Canadian federal public service that—although always well intended and usually based on solid foundations—previous efforts at measuring performance, setting standards and benchmarks, and promoting improvement were not coherent, coordinated, or consistently effective. This consensus led to a meeting involving senior public servants from all levels of government and academics. The meeting resulted in an admission that much of the public service had very little idea of how satisfied Canadians were with the services they provided; the recognition that this satisfaction was the most important metric of how well the public service functions; and a resolution to create and implement an outside-in, reasonably standardized tool for measuring service delivery in the federal public service (Heintzman 2009).

In 1997, the TBS was identified as the management board for the government of Canada—a step toward creating a more unified approach to measuring service delivery, and performance more generally. In March 2000, the TBS released a report titled “Results for Canadians: A Management Framework for the Government of Canada.” The report was

organized around four commitments. The first commitment was to a citizen focus built on the understanding that the federal government exists to serve Canadians and that all its activities should be carried out and assessed in that light. The second commitment was to values, particularly the identification of the values that must be central to the public service. The third commitment was to results, an emphasis on harmony with contemporary public and private sector thinking about accountability in which outcomes are of greater importance than processes. The final commitment was to value for money and cost effectiveness (TBS 2000). “Results for Canadians” led to many initiatives within departments and agencies to identify areas for improvement and to measure performance and service delivery (TBS 2009).

While “Results for Canadians” was being developed and implemented, the Modern Comptrollership Initiative was looking for ways “to reform public sector management and to fundamentally transform federal administration and governance” (Dupuis 2006, p. 18). The initiative was built on the understanding that the expectations of Canadians and provincial governments about their relationships with the federal government and public service were changing as a result of evolution

in technology, federalism, and the political climate. More revolutionary was its assertion that, in the 21st century, comptrollership—long understood to have significance only with regard to an organization’s budgets, revenues, and expenditures—must embrace stewardship of resources, decision making, leadership, human resources and staffing, as well as the financial side of government.

In 2003, the TBS released the MAF. In practice, the framework synthesizes the commitments enumerated in “Results for Canadians” with the methodology developed by the Modern Comptrollership Initiative. The result was a tool intended to be used annually by the great majority of federal departments and agencies to measure performance, improvement, and management in general; to provide information to the TBS about departments and agencies and their leadership; and to stimulate discussion between the TBS and senior management. Although specific indicators and methodology have evolved through each iteration of the MAF, the major elements and goals within it have remained stable, especially in more recent years (TBS 2009).

6.2 Components of the MAF

The framework comprises 10 components organized as six specific management arenas framed by four measurable elements.⁸ In a graphic depiction of the framework, public service values and learning, innovation, and change management run parallel to each other above and below the central six arenas. Governance and strategic direction and results and

performance run parallel to one another left and right of the arenas. Within the frame are the six arenas: policy and programs, people, citizen-focused service, risk management, stewardship, and accountability (Kelly Sears 2009).

Public Service Values

Although the specific values and ethics espoused by departments and agencies will vary according to their own mandates and challenges, the MAF assesses how well the appropriate values and ethics are integrated into the leadership, day-to-day operations, and organizational culture of the body in question. Included in this expectation is an indicator of whether appropriate avenues exist for staff and others to report perceived breaches of values and ethics.

Learning, Innovation, and Change Management

Organizations must commit to continuous improvement and learning. Individual and organization learning should be not only encouraged but also incorporated in processes.

Governance and Strategic Direction

All departments and agencies must support their ministers and senior officials, while translating policy into practice. The MAF measures the degree to which this occurs in practice. Departments and agencies should have clearly measurable objectives, and their program architecture and strategic direction should be congruent with their mandates. This expectation also includes the extent to which the accountability of officials and structures is aligned with the larger strategic purpose of the department or agency.

Results and Performance

This expectation is centered on transparent and appropriate reporting of government functions;

⁸The TBS Web page has a section devoted to explaining and presenting the MAF, including detailed information about assessment rounds I–VII (<http://www.tbs-sct.gc.ca/maf-crg/index-eng.asp>).

collection, analysis, and release of results; and changing practices and processes based on the feedback provided by results. Both quality and neutrality of evaluation are assessed, as is the degree to which evaluation is consistently incorporated into plans for the future.

Policy and Programs

This indicator examines the in-house ability of each department or agency to conduct rigorous policy analysis and to develop and implement programs that best meet the needs that the organization exists to fulfill. The MAF requires departments and agencies to consult both with stakeholders outside of government and with relevant central agencies and other offices.

People

Staff retention and job satisfaction are crucial elements of this indicator; but it also includes continuous education and human resource development, recruiting, and ensuring that the public service workforce is representative of Canadians themselves. Each workplace should promote collaboration and both physical and psychological wellness.

Citizen-Focused Service

This indicator examines the degree to which appropriate services are made available to all Canadians, with an emphasis on the availability of services in both official languages. Services should be provided as part of a whole-of-government approach, wherever possible, to make a citizen's experience as seamless as possible. The needs of citizens should be central to the development and implementation of all new programs and to the administration of existing programs.

Risk Management

Departments and agencies are to carry out contingency planning, to identify and assess

relevant risks to their operations, and to adapt their processes and practices as indicated to minimize risk. The MAF examines the degree to which decisions are informed by risk management, and the extent to which risk management awareness is factored into day-to-day operations at every level.

Stewardship

Organizations must make efficient and appropriate use of the resources they are provided and ensure that they are spent in a manner consistent with the policies, priorities, and values of the Canadian government and people. Information management is an element of this dimension of accountability that requires effective use of information technology and compliance with laws concerning privacy and access to information. This element also includes project management and procurement.

Accountability

The MAF identifies accountability not only as appropriate use of and reporting on resources; but also as the creation of processes to ensure adequate reporting, assigning responsibilities according to capability, and establishing clear lines of responsibility. Deputies should delegate appropriately, officials should understand the authority that has been delegated to them, and the evaluation of all staff at all levels should be in harmony with the broader mandate of the organization.

Not each of the 10 elements is of equal relevance to all departments and agencies; furthermore, the specific measures used to assign values for performance in each element vary, both among organizations and over time. Carrying out the MAF evaluations

has changed since 2003, although it has been more stable in the more recent past.

The creators of the MAF declared that it would not become an elaborate and expensive process. There are both direct and indirect costs involved, both in the TBS and at the department/agency level. The MAF unit inside the TBS has involved only about 10 employees. This small number is possible because the actual analyses of the MAF submissions from departments and agencies are prepared by policy and program specialists in other divisions of the TBS. This would mean, for example, that the ATIP Office in the TBS would review department/agency submissions on access matters. It was estimated by one official interviewed for this study that 300–400 TBS personnel may be involved with the MAF process in a given year. A significant number of staff and a sizable amount of their time are involved with the MAF in the 60–65 departments and agencies reviewed each year. (In recent years, the number of departments and agencies has been reduced.) The workload involved with the MAF was reduced by the introduction of a TBS/MAF Web portal that enables organizations to upload files electronically. Reduced coverage by the MAF, as described below, also has made the process more efficient in generating information and in the staff commitment required.

6.3 The Impacts of the MAF

The MAF is based on the premise that formal leadership authority and control over resources should be matched by meaningful accountability for performance and results. In recent years, the MAF assessments prepared by TBS analysts have been used to prepare submissions to the cabinet committee

on priorities and planning (which provides direction on government priorities and expenditure management) and to the Treasury Board (which is responsible for financial, personnel, and administrative management).

In addition, MAF submissions from departments and agencies, together with TBS analysis of those documents, provide one basis for deputy heads' annual performance appraisals. A report from the Privy Council Office (the department that supports the prime minister and cabinet) covers a deputy head's performance in broad policy and governance matters. A report from the secretary to the Treasury Board (the administrative head of the TBS) deals with all aspects of managerial performance, but particularly with financial and human resource management issues. The TBS report is based on the assessment of the performance of the deputy minister and his or her department under the MAF.

The key point about linking the MAF to these central processes is that potentially tangible and intangible consequences are attached to the quality of managerial performance in departments and agencies. There can be consequences both for individuals and for institutions. Strong or improved performance can lead to rewards, such as better budgetary outcomes for institutions, earned autonomy from central administrative controls, and enhanced reputations with the prime minister and cabinet and the central agencies who serve them. Individual deputy heads may achieve increased compensation, make career progress, and build strong reputations based on the MAF and the related appraisal process. Poor MAF ratings, on the other hand, may lead to penalties in the form of budget restriction, lessened autonomy, denial of performance pay, and diminished reputations.

The combination of sticks and carrots in the MAF process prompts deputy heads to

take it seriously. Despite its relative newness, the framework already has made a crucial difference in modifying leadership and management behavior at the senior levels in most of the institutions it covers. According to a former senior TBS official responsible for the MAF, it has become the single most important source of information for deputy heads and the TBS on the general state of management performance within institutions. In large part, this is because the MAF has clarified and consolidated a wide array of managerial components and initiatives into a comprehensive whole. The same official who praised the MAF as providing a consolidated and integrated framework for performance management added that access matters were not a major part of the framework in either theory or practice (a point that is discussed more fully in chapter 7 of this report).

The MAF was designed and is operated mainly by the senior public service, with little interest or involvement from elected ministers. In effect, the senior public service concluded that it had to improve managerial performance, took responsibility and initiative for doing so, and agreed to a system of internal accountability to make it happen. The secretary to the Treasury Board (the most senior public servant in charge of the MAF) consulted deputy heads on the design of the framework and met with all of them after the first round, thus reinforcing the sense of ownership of the process.

Over the six rounds of MAF assessment carried out through 2009, the TBS has worked to find the appropriate balance between a negative, penalizing approach and a constructive, learning approach in its dealings with departments and agencies. Through the first three rounds, there was some skepticism and suspicion among deputy heads that the MAF was like a report card in which a failing

grade would lead to negative consequences. Deputy heads were concerned that the MAF documents represented “dumb data” that did not speak for themselves or said different things to different people. They welcomed the introduction in Round III (2005–06) of the “context” section on the first page of their MAF submissions because it enabled them to describe the challenges they faced and to tell their “performance story” in terms of how their organizations had improved over time. In subsequent rounds, deputy heads have become more certain that it is safe to talk to TBS officials about management problems without paying a price for their candor. Some departments have found that the MAF may bring them help in the form of additional financial and human resources.

Another consideration in balancing rewards and risks inside the MAF process involved the categories used to describe departments’ managerial performance levels. In an interview for this study, a former senior TBS official reported that long debates took place over several years concerning the language that would be both encouraging and supportive and demanding and disciplined.

The initial four performance levels were as follows: major gap, below target, approaching target, and best in class. These labels were seen to be too judgmental and negative because all but one of the categories implied deficiencies in performance. In 2009, the four performance levels were attention required, opportunity for improvement, acceptable, and strong. According to the TBS, it gauges the maturity of the practice and the capacity of the individual organization in each area of management so that, in areas where new Treasury Board policies are being introduced (such as internal audit and evaluation), the focus is on progress toward full implementation.

Within the 10 management components, a number of quantitative and qualitative indicators and related measures (also referred to as lines of evidence) are used to assess performance. The number of indicators and measures increased over the first three MAF rounds, peaking at 41 indicators and 134 measures. In part, this increase reflected requests by various professional groups within the public service to have their activities covered by the framework as a way to upgrade their status. Management of the access to information process within departments and agencies was added in 2005–06, partly at the request of the information commissioner. The numbers of indicators and measures were subsequently reduced and now stand at 21 and 70, respectively. Management of the access to information process falls under the indicator for information management, and it involves just two measures, meaning that access considerations do not have a prominent place in the overall framework

As was mentioned before, the MAF assessments are one component of the annual appraisals of deputy heads. The appraisal process consists of a number of components and can only be described briefly in the space available here. On an annual basis, the head of the public service (who has the dual title of clerk of the privy council and secretary to the cabinet) convenes a committee of senior officials to provide advice on the performance of deputy heads—advice that may affect their performance pay and career progress. There are two main documents that support the committee’s review process: a report from the Privy Council Office (the department that supports the prime minister and the cabinet) covers the deputy head’s performance on broad policy and governance matters; and a report from the secretary to the Treasury Board deals with all as-

pects of managerial performance, but particularly with financial and human resource management issues. The TBS report is based on the performance assessment of the deputy minister and his or her department under the MAF.

It is not clear from the outside what relative weight is assigned to Privy Council Office and TBS submissions. Nor is it clear what actual consequence flows from strong or weak performance ratings on any dimension of the multifaceted roles of deputy ministers, including their most recent MAF scores. It is clear from the interviews conducted for this study that deputy ministers take their MAF ratings seriously and have been known to protest poor scores. MAF assessments are discussed by the executive teams of departments and agencies, and that discussion leads to some cascading effects downward through the various department and agency levels.

There could be both a reactive and an anticipatory response to the MAF requirements within departments and agencies. When the TBS applies ratings such as “attention required” or “opportunity for improvement” to particular areas of management within departments and agencies, it puts those units on notice that action will be expected. However, such requirements also mean that the TBS acquires ownership of the problems within departments, to some extent; and that they must follow up to ensure that corrective action is taken. Presumably, departments and agencies also try to avoid negative ratings by dealing with deficiencies before they are identified by the TBS.

The fact that department and agency submissions and TBS ratings are published online provides an additional incentive for deputy heads to address MAF deficiencies. The current auditor general of Canada, an

officer of parliament who reports annually on management issues, has stated publicly that she uses MAF assessments to identify problems and to promote managerial improvements within departments and agencies. The deputy heads of those organizations regularly appear before parliamentary committees (particularly, the Public Accounts Committee of the House of Commons) to answer for the performance of their organizations; and there is, at least, the potential for MAF reports to be used as a basis for questioning. In 2005 and 2006, the House of Commons' ETHI committee called senior officials from four departments to account for their performance under the ATIA, but it is difficult to gauge whether the parliamentary scrutiny led to improvements. In general, avoiding bad publicity and damage to individual and institutional reputations can be a strong motivation for senior public managers to take the MAF process seriously.

An abiding question about the MAF is whether it has become an elaborate, expensive, time-consuming, and ritualistic checklist process that delivers more symbolic than real accountability. The most in-depth study to date—a consultants' report commissioned by

the TBS in November 2008⁹—concluded that the MAF was successful and relevant. The consultants concluded that the MAF process was providing “a comprehensive view to both deputy heads and the TBS on the state of managerial performance.” The report suggested that the MAF was “becoming a catalyst for integrating best practices into departments and agencies.” Less positively, the consultants found that the reporting burden associated with the MAF could be reduced further, that the focus was too much on process rather than outcomes, that too many indicators were qualitative and subjective, and that the costs of the MAF were not being tracked so it was impossible to judge the cost effectiveness of the process. It also was noted that all large departments are assessed every year against all 21 indicators. Although this facilitates comparison, it ignores the unique aspects of particular organizations. Significantly for the purposes of this study, the evaluation report does not indicate whether all areas of management receive adequate attention within the MAF process. Nothing is said, for example, about how well or how poorly access to information matters are covered by the process.

⁹This report can be found at <http://www.tbs-sct.gc.ca/maf-crg>. Only the highlights of the 61-page report can be presented here.

Intersection of the MAF and the ATIA

At the beginning of this discussion of the intersection of the MAF and the ATIA processes, it is necessary to emphasize the important differences in terms of the origins, purposes, scope, and potential consequences of the two processes. The MAF was developed as an administrative process by senior officials within the public service for the purpose of improving management and as a form of internal accountability for deputy ministers. As the central budgetary and management authority, the TBS controls the MAF process and can order departments to undertake management reforms. Favorable or unfavorable MAF report cards also have potential consequences for deputy ministers' career progress and compensation. But access to information is only a small component of the overall MAF assessment conducted by the TBS.

In addition to the MAF assessment, there is an external assessment of institutions' ATIA performance conducted by the OIC. Since 1999, as part of their statutory duty to inform parliament and Canadians whether the ATIA is being implemented appropriately, information commissioners have conducted annual assessments of a select number of the 255 institutions covered by the act and have issued report cards to parliament. In April 2010, for

example, the commissioner reported on the performance of the 24 institutions that had received 88 percent of all access to information requests during 2008–09. The evaluative framework used by successive information commissioners has been refined over the years to incorporate more dimensions of performance, to take greater account of the contextual factors that affect performance, and to provide evidence to support solutions when there are deficiencies in performance. The commissioner's report cards are released at a press conference, are tabled in parliament, and usually become the subject of a hearing before the House of Commons' ETHI committee. The commissioner cannot order corrective actions to be taken within departments and agencies, so the report cards are used to create awareness and understanding of shortcomings. Through publicity and influence rather than actual authority, the report cards promote compliance with the letter and the spirit of the ATIA. As the following discussion will make clear, the two assessment processes produce public reports, but those reports are quite different in purpose, coverage, and potential consequences.

On the basis of the available documentation and, even more important, the confidential interviews conducted for this study, it

is clear that the access field has not been a major focus of the MAF process to date. Only about 20 percent of the 255 institutions covered by the ATIA also fell within the scope of the MAF in 2009. Only a select number of the 65 institutions that fall under the MAF actually are reviewed annually. However, the MAF reviews usually cover the larger departments and agencies, which are targets for a high percentage of the total number of access requests filed annually. In other words, the MAF review and report card process tends to cover many of the same institutions that are the subject of reviews and reports from the information commissioner. The focus of the two processes on the main parts of government means there is more potential for a positive impact on the access process than might appear at first glance.

There is a second limitation to how access to information intersects with the MAF—namely, ATIA reporting was not added to the MAF until the 2005–06 round. Based on the interviews, this appears to have been done at the urging of the then information commissioner. Senior managers in the TBS and departments/agencies did not see the access field as a management domain of equal rank with financial and human resource management.

Access to information management conceivably could fall under several of the 10 management areas established by the MAF. For example, it could be part of public service values or citizen-focused service. However, when access was added to the MAF, it was placed within the broad management area of stewardship (defined as “whether control of assets, money, people, services, etc. is clear, integrated and effective”) and under indicator 12, the effectiveness of information management. The measures used to assess the management of access are described as the “time-

liness and completeness of reporting in support of access and privacy requirements” that exist by statute or by administrative regulation. The data sources used to measure timeliness and completeness are described as the annual reports on ATIP from departments and agencies, their entries into the governmentwide compendium *Info Source*, the annual reports to parliament from the information and privacy commissioners, and other “ad hoc reporting.”

The first comment that needs to be made on the placement and content of the access component within the MAF is that it is limited in scope, focusing mainly on the adequacy of the structures and processes established to satisfy the requirements of the ATIA and the related policy and regulations adopted by the TBS. Making deputy heads the target of access to information assessments is consistent with the ATIA, which also makes those individuals responsible for ensuring implementation of the act. Not focusing on reporting, the MAF process regarding access does not touch on such performance dimensions as the interpretation of exemptions, delays in processing requests, the duty to assist, and the overall culture of openness in various departments. As presented by representatives in interviews for this study, the official position of the TBS is that MAF requirements regarding access matters are complementary to other reporting requirements, such as the annual reports that institutions present to parliament and the report cards on select institutions released annually by the information commissioner. It was also noted by TBS officials that MAF assessments take into account “in a general way” a wide range of external reports, including department performance reports and reports from the information commissioner. However, in terms of access issues, the main focus within the MAF is on compliance with

legal reporting requirements arising directly from the ATIA.

To strengthen accountability for compliance with the letter and the spirit of the act, the MAF could be modified to consider the actions of institutions in responding to the recommendations from the commissioner's annual report cards. This would indirectly and significantly expand the scope of MAF coverage of the administration of the ATIA. It would not, however, add greatly to the reporting burden on institutions. Expanding the range of access matters covered by the MAF in the proposed manner would entail some additional follow-up work for analysts in the TBS and some greater risk of more tangible penalties, beyond bad publicity, for deputy heads whose compensation and career progress could be adversely affected if their institutions had failed to respond appropriately to the commissioner's recommendations. As of April 2010, the TBS had not responded to the commissioner's recommendation to add the MAF coverage of access performance.

It is difficult to find objective and complete information on whether the inclusion of access in the MAF process is making a difference. In interviews for the study, TBS officials reported that MAF assessments related to the access process had proved valuable for engaging senior officials on the ATIP performance of those 30–40 departments and agencies that were part of the MAF annually. As part of this study, the MAF assessments for Round VI (2008–09), prepared by the TBS and published online, were reviewed. As noted above, access falls in the stewardship management area and under the broad indicator of information management. The actual ratings assigned by the TBS are for information management, although within the discussion section there is always mention of access performance. In 2008–09, 52 departments and

agencies were assessed. None of the organizations received a “strong” rating on information management. Thirty departments and agencies fell into the “opportunity for improvement” category under information management; and, in most of those cases, the weakness identified under access to information was a failure to fully complete the reporting requirements for the *Info Source* compendium and/or a failure to address all the mandatory reporting requirements in the annual ATIA reports to parliament. The second most common rating was “acceptable,” with 29 departments and agencies placed in that category. Only 1 small agency received the red-flag rating of “attention required.” It must be reiterated that these ratings were for the entire information management area; and, in most cases, qualitative information on access performance was not available.

There are examples, however, in which departments have responded to criticisms of their ATIP management and made improvements. In 2004–05, Public Works and Government Services Canada was the department at the center of a major scandal involving, among other matters, problems of information and accountability. Negative MAF ratings and other pressures pushed it to make improvements. In the 2008–09 MAF round, the deputy minister of the department submitted an online response to that year's assessment. In part, the management response read as follows:

As a result of the three-year ATIP Improvement Plan's aggressive strategies initiated in December 2007, PWGSC [Public Works and Government Services Canada] successfully achieved the overarching goal of 95% compliance in 2008–2009. . . . As of November 2009, PWGSC responded to over 98% of the ATIP requests on time, mainly

due to increased human capacity and active performance monitoring, including a zero tolerance approach to delays in processing requests. In addition, a MAF action plan was developed in June 2009 to specifically address the gaps identified in the MAF Round VI results relating to ATIP.

Clearly, the intense scrutiny that the department faced as a result of the scandal produced great pressure to bring up its MAF ratings across the board. Even in the absence of such extraordinary events, the MAF can encourage improvement. In 2007–08, the Department of Foreign Affairs and International Trade received a rating of “needs improvement” on information management, partly because it did not provide its annual submissions to *Info Source* and its annual ATIP report to parliament was incomplete. The following year, its information management rating was upgraded to “acceptable,” with the TBS acknowledging that several improvements had been made—particularly in staffing the ATIP function and ensuring more complete reporting. These and other examples suggest that the TBS recognizes effort by raising MAF scores if departments and agencies appear to be committed to improvement and are making progress.

Given the limited coverage of access matters, the MAF ratings on information management cannot tell the whole story of the wider, indirect, and longer-term impacts on the access system. The interviews conducted for this study provide some additional, albeit selective and impressionistic, information on this point. Opinions varied concerning the effects of including access in the MAF. The differences in perspective were explained mainly by the position or role that the interviewee played in either the access or the MAF process. For example, one would ex-

pect that TBS officials responsible for the MAF would see it leading to improvements, whereas representatives of the OIC might see the current linking of the ATIA to the MAF as having little or no impact. To provide a sense of the varied perspectives that exist, a brief synopsis of interviewees in a number of different roles will be presented. No claim can be made regarding how complete or representative are the opinions summarized below.

The deputy heads of departments and agencies are the ultimate responsible and accountable parties under both the ATIA and the MAF. Two deputies of major departments were interviewed. Both believed that the MAF was making a difference in terms of improved management in general. They also agreed that access to information was probably an area of management that received less attention and was generally weaker than higher-priority areas such as finances, human resources, and risk management. One of the deputies observed candidly, “The scorecard that really matters on access to information is whether the prime minister, the Prime Minister’s Office, and the minister believe that you have failed to manage the information flow on sensitive issues.” Because they owe their appointments to the prime minister and will be judged by the Prime Minister’s Office and the Privy Council Office on their contributions to policy development and corporate governance, it is appropriate and not surprising that serving the prime minister, the government, and their own ministers is the deputy heads’ first priority. Both deputies confirmed that upholding the letter and the spirit of the ATIA can lead to tension between responsiveness to direction and control and good management.

The TBS is the central agency responsible for both the ATIA and the MAF. Interviews

were conducted with TBS officials in both fields. An ATIA specialist argued that including access in the larger information management category compelled departments to see access in conjunction with information and records management. “There are big plusses,” he observed, “that stem from the integration of ATIP and privacy into the overarching compliance requirements for the management of information.” Improving access, he argued, involved both organizational capacity and organizational culture. The MAF was driving improvements on both dimensions, and the improvement of *Info Source* documents from departments was evidence that this was occurring. The value in the MAF was not the score, he maintained, but the dialogue that took place between the TBS and department officials over deficiencies, remedial actions, and tracking progress.

Even though the ATIA and the MAF target deputy heads for accountability purposes, TBS officials reported observing a cascading-down effect within departments and agencies. They pointed to the existence of a committee on information management, chaired by the chief information officer for the government of Canada and comprising assistant deputy ministers from all departments. The same committee is also responsible for overseeing access and privacy matters across government. Within individual departments and agencies, deputies delegate the various management areas to assistant deputy ministers and to people below them. A former TBS official commented, “If a deputy head . . . has scored particularly low within one area of management with MAF, chances are that the following year he is going to ensure that his ADMs [assistant deputy ministers] have specific accountabilities for improvement activity.” He had observed this process happening in the access area in a couple of departments, although he acknowledged

that the improvements related only to reporting on compliance.

It would not be surprising to find that access coordinators see the MAF process somewhat differently from TBS officials or executives in their own departments. The coordinators are on the front lines in processing access requests; they must deal with the constraints of limited financial and human resources; and they must face direct and indirect pressures to keep their home organizations out of trouble by not releasing—especially, not prematurely—sensitive information that could lead to controversy.

The four access coordinators interviewed for this study were very aware of the MAF, which suggests that its impacts definitely have trickled down to their level. They had mixed views of what it meant for the access function in their organizations. All four agreed that the MAF was measuring compliance with the ATIA very narrowly. One coordinator offered the following opinion: “. . . a department could update its *Info Source* chapter, do its annual reports, meet all of the other reporting requirements on an annual basis; but it doesn’t mean that they are meeting ATIP deadlines and providing the required responses to Canadians in a timely fashion.”

Potentially, the inclusion of access in the MAF could increase the status and resources available to the activity within departments. All four coordinators felt squeezed between the growing volume of requests and the available resources. Finding additional resources within departments or from the TBS was considered highly unlikely, given the tight budgetary situation. Competition for talent was another challenge. One coordinator observed, “. . . we bring in people at a very junior level . . . we’ll coach them and give them experience and then they quickly have opportunities elsewhere.” The lack of

identified competencies and training and the limited professionalization of the access specialty were seen as other challenges that the MAF system does not address.

All the coordinators noted that the prevailing emphasis on agenda management and message control throughout government was affecting the ATIA process. One coordinator made the following observation: “When we share with senior departmental officials, including the minister’s office, what is going to be released to allow them the opportunity to prepare communications products, we know for a fact that they are under instruction to share that with the PMO [Prime Minister’s Office] and PCO [Privy Council Office] all the time.” In this climate, ATIP units are always forced to play a challenge role, telling senior public managers and ministers’ offices that there would be missed deadlines and bad report cards from the information commissioner. It seems that using an internal management instrument like the MAF to change the political and administrative cultures of government in favor of greater openness is, at best, a slow process and may not even be possible.

As external champions of the access process, successive information commissioners have shown interest in the evolution of the MAF and have recommended the inclusion

of access performance in the framework. In an interview for the study, a representative of the OIC argued that the MAF measurement for access was too narrowly focused on reporting requirements and not focused on actual performance. The present approach would not bring about change in terms of leadership support and a culture of openness in departments and agencies. Unless government moves to an alignment between the access component of the MAF and the evaluative framework for the parliamentary report cards issued by the OIC, little progress should be expected beyond stricter compliance with the legal requirements of the ATIA. The Canadian access system, this interviewee argued, was frozen in the past, with reliance on a complaints-based approach to access to information, when more progressive jurisdictions like Australia and the United States were discussing and implementing the much broader concepts of “open-source governance” and “open government,” involving virtually unlimited access to government data and a presumption in favor of proactive disclosure. Such concepts, of course, go well beyond the scope of this study; but the rhetoric reflects the rising public expectations about how much government information will be instantaneously available.

Conclusions

The aim of this study was to examine the potential benefits of integrating access to information principles into the performance appraisals of senior public servants, as part of a more general management accountability framework for departments and agencies of government. The examination of this alternative approach was based on a case study of the government of Canada. The case study involved an analysis of the intersection of the relatively mature ATIA process (which has operated since 1983) with the relatively new MAF (which has operated only since 2004). A premise for the study was that neither of the two processes could be understood in isolation from the wider political, constitutional, legal, institutional, financial, and cultural context, which itself has changed and will change further over time.

As noted earlier, the case study approach has significant potential benefits, especially when the intensive investigation of a phenomenon is used for the purpose of theory development or refinement. This study began to explore the potential interactions between mandatory reporting on the handling of access to information requests as part of a wide framework of managerial accountability. Given the sensitive and confidential nature of parts of the access process, and the

time and space available for this study, it was not possible to describe all the components of Canada's access system and how they interact with other parts of the governing process. However, the study does provide some sense of the complicated, multidimensional, interdependent, and variable nature of Canada's access system, including how it is supported or weakened by other political and administrative processes.

In this concluding chapter, the purpose is to draw together the main findings of the study and to offer some more speculative thoughts about the applicability and potential benefits of a managerial approach to strengthening access systems in other countries. Best-practice research and benchmarking have become popular approaches to the introduction of political and administrative reforms around the world. However, there are at least three risks associated with such approaches:

- The first risk is that a country deemed to be “the best” (however defined) at one point in time may not retain that status over the longer term. For example, the government of Canada was once seen as a leader in the access field, and undoubtedly it remains among the top jurisdictions in

terms of the administrative structures and procedures applied to the access process; but critics now claim that the ATIA is in need of modernization and that ministers and public servants have weakened the act in practice by adopting defensive strategies to limit its effectiveness in ensuring open government. In short, Canada may no longer be the benchmark country against which other countries should compare their access systems.

- The second risk is that the best-practice research approach presumes that we understand fully why some managerial approaches appear to work well and, therefore, we know how to transfer them from one jurisdiction to another. But our knowledge of the dynamics of successful reforms is often partial, and it is dangerous to assume that institutional arrangements and processes easily can be made to work in a similar fashion in other countries.
- The third risk is that access reformers will not consider the political and administrative feasibility of their proposals. Not all political cultures will support open government, not all political and administrative systems are “ready” in capacity and cultural terms to implement a strong access system, and not all countries can afford to imitate “the best” examples of access systems elsewhere.

Rather than a best-practice philosophy that seems to minimize the crucial importance of the wider context, countries should adopt a “smart-practice” approach that recognizes the realities, constraints, and opportunities for feasible improvements that will bring them closer to more citizen-centered, open, and accountable government.

With these qualifications in mind, it is possible to draw some potential lessons from

the Canadian case study. The first lesson is that *adopting both an “outside” and an “inside” perspective on how the access system functions is important*. Thinking in analytical terms about the combined impacts of external and internal factors helps create a more complete understanding of how and why a particular access system works in practice. Governments wish to protect their reputations and maintain their political support. In many countries today, governing resembles a continuous election campaign, as the party in power seeks to defend against challenges from opposition parties. In addition, a competitive, aggressive, 24/7 media environment has caused governments to adopt more sophisticated techniques of agenda management, information and message control, and public relations spin to present their record in the most positive manner possible. Risk avoidance and risk management have become major preoccupations in the political cultures of government; and these preoccupations spill over into administrative cultures that increasingly emphasize no surprises, no errors, and no controversies. Centralized communications policies and practices within governments increase the difficulties facing access officials.

Access to information laws are meant to encourage and, ultimately, to compel politicians and public servants to provide information to the public in circumstances where there can be strong incentives for them to resist the requirements of the laws and related administrative rules. The Canadian experience suggests this second lesson: *the political will to accept the requirements of access laws is crucial to the achievement of more open government*. Political support for the legal requirements and the spirit of access laws requires the conviction that such laws ultimately strengthen democracy. In the short term, political lead-

ers in office may face criticism and pay a political price for not respecting access laws. In addition, defensive strategies to counter access laws send a strong negative message to public servants. Ideally, political leaders should demonstrate in their words and their deeds tjeosupport for the principles of access laws as a positive step toward the creation of a culture of openness.

A third lesson is that *administrative leadership at the executive level of government also plays an important role in shaping the access culture within government*. High-profile and forceful leadership from central administrative bodies serving cabinet and overseeing the access process (such as the TBS in the Canadian case) is important to ensure that all institutions subject to access laws implement their responsibilities fully and properly. Central administrative leadership, including the provision of both tangible and intangible forms of support, can have meaningful influence on the behaviors and cultures related to the access process at the individual department and agency level.

Leadership at the top of individual institutions makes a difference is the fourth lesson we can take from this study. In the Canadian case, access coordinators working on the front lines reported that staff attitudes toward compliance shifted dramatically when the senior leadership made it clear that nothing less than full compliance with the access law would be tolerated. Support from senior leaders is particularly important in those defining moments when the access process faces political pressures, competing priorities, and resource limitations. How such challenges are handled sends a strong cultural message about the real commitment to access principles.

Fifth, we learn that *rapid turnover in the leadership ranks at the institutional level* (as has happened in Canada) *may mean a lack of*

knowledge about the institution's obligations under access laws and shared understandings and bonds of trust between top-level leaders and front-line access personnel may be weakened. A good performance record on access issues in the past is no guarantee of future good performance, although supportive leadership and a supportive culture help a great deal.

The Delagrave report (Government of Canada, Access to Information Review Task Force 2002) stressed the importance of changing the administrative culture of government:

Instilling pride in federal public servants for openness and making it a strong part of their identity might well be the single most important improvement to the performance of the access to information regime (p. 164).

Cultivating such professional pride in upholding access principles would involve leaders sending all the right signals:

- providing adequate authority and resources to the access function;
- respecting the need for autonomy and discretion among the professionals in charge of access decision making;
- ensuring the availability of appropriate training and development opportunities for access personnel;
- recognizing and rewarding their contributions to good government; and
- monitoring compliance and enforcing accountability for performance—but doing so in a valid, comprehensive, and balanced manner that does not involve scapegoating individual public servants when controversies or problems arise.

Getting the incentives right and avoiding disincentives to promote greater access is a

tricky part of the design of a management accountability framework. The interests and reputations of both institutions and individuals are involved. Meaningful accountability requires that consequences flow from poor performance, but the challenge is to find the appropriate balance between learning and supporting improvement and blaming and paying a price for lack of achievement. An accountability system that is imposed and mainly negative in its emphasis will be seen as threatening, unfair, and illegitimate by the institutions and individuals responsible for the actual implementation of access laws.

Related to the creation of the right incentives is the concern that some areas of management will receive limited attention and weight in any accountability framework. Many public servants interviewed for this study believed that access matters were given limited recognition in the design of the framework and in the related process of reviewing performance. The concern was that access matters were crowded out by a main focus on “harder” management fields, such as finances and human resource management. Within the MAF, as noted earlier, access is located under the information management indicator and is measured by only two lines of evidence. To supporters of the ATIA, this location and the limited measurement involved mean that access concerns inevitably will be given little weight. It would be possible to design a management accountability framework that covered such additional dimensions of the performance of the access system as delays and the use of time extensions in responding to requests, the percentage of cases that are appealed to the information commissioner,

the number or percentage of cases leading to disputes over the interpretation of exemptions, and so on. Also, it would be possible to formally assign different weights to the various areas and indicators of management performance. The architects of the MAF within the TBS discussed this possibility, although not with respect to the access component. They concluded that any such weighting formula would likely be rather artificial and controversial.

The design of a management accountability framework is not a once-and-forever initiative. It necessarily must evolve to reflect changing circumstances, shifts in government priorities, and the lessons learned from practical experience. In the case of the MAF, it was always presumed by the designers that the 10 management areas would remain stable, but that the indicators and measures would change over time. Finding the balance between continuity and change is important to avoid the extra work and confusion of continuous experimentation and to maintain motivation and commitment among the people who must work within the system.

In summary, some limited progress in the access field has been made through the MAF, but no management accountability framework can completely offset countervailing pressures pushing toward control over the release of information. Drawing lessons about how a MAF-type approach might work in other countries should be done with caution and humility. Attention needs to be paid to how the legal/regulatory/administrative supports, leadership, and cultural components of an access system can be made to complement and reinforce one another.

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