

Transparency for the 21st Century

23.3.2017

The Challenges

- The existing access framework
 - Lisa Austin
 - Is it clear enough to allow for a common interpretation?
 - Wesley Wark:
 - Is it enough for the current goals?
 - Pierre Blais:
 - Does it meet the expectations of citizens?

The existing transparency framework

- *Access to Information Act*
 - National security exceptions
 - Subject to investigation by OIC
 - Subject to court review
 - Also subject to review by
 - Office of the Commissioner for CSEC
 - Security Intelligence Review Committee
 - RCMP Civilian Review and Complaints Commission
- *Privacy Act*
 - National security exceptions
 - Subject to investigation by OPC
 - Subject to Court review
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 - Office of the Commissioner for CSEC
 - Security Intelligence Review Committee
 - RCMP Civilian Review and Complaints Commission

The public sector/private sector crosswalk

- *Personal Information Protection and Electronic Documents Act (PIPEDA)* and *Privacy Act (PA)*
- Duty of company to consult national security agencies before granting individual access to information which has been subject to a national security lawful access request
- National security agency duty to grant or deny access according to PA
- If denial of access, duty of company under PIPEDA to notify OPC in writing
- Under PA, power of OPC to investigate and to bring to court for review

The mandatory exceptions to transparency

- Access to national security information **must be refused** when:
 - Received in confidence from another government
 - Obtained through policing services in provinces or municipalities where the GoC has agreed not to disclose
 - Constituting personal information
 - Constituting third party information
 - Arising from certain investigations

The discretionary exceptions to transparency

- Access **may be refused** when risk to:
 - Federal-provincial relations
 - International affairs and defense
 - Law enforcement and investigations
 - Security methods
 - Safety of individuals
 - Economic interests of Canada or of certain Canadian institutions
- Or relating to:
 - Advice, testing or audits internal to government
 - Solicitor-client privilege

Taking stock of the existing framework

- “Translucent” rather than “transparent” through:
 - Full application of access legislation to national security agencies but,
 - With exceptions, circumscribed by law
- Accountable but through mediation with:
 - Review bodies
 - Judicial review

Is that enough for the 21st century?

Thank you

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