

CNA FREEDOM OF INFORMATION AUDIT

Freedom of information:

Fact or myth?

By Robert Cribb and Fred Vallance-Jones

Canadians seeking basic government information about class sizes, restaurant inspections or complaints against police are up against a culture of secrecy, a national audit of openness shows.

In the country's first practical test of transparency, 89 reporters from 45 newspapers across Canada visited city halls, police forces, school boards and federal government offices to test how bureaucrats obey laws enshrining the public's right to know.

"The public's right to government information that has impact on our lives is in failing health, and will get worse unless we start fixing it," said Anne Kothawala, President and CEO of the Canadian Newspaper Association, which launched the audit.

"This is documentary evidence of something that newspapers have long suspected to be a fact."

Reporters found a confusing patchwork of policies across the country, ranging from poor disclosure in provinces such as Prince Edward Island and New Brunswick to a surprising 93 per cent disclosure in Alberta.

Overall, officials handed over records to just one in every three requests made in person. The rest remained locked in government filing cabinets as reporters were told they had to file time-consuming — and often expensive — formal requests under provincial or federal access laws.

Jutta Mason knows only too well the frustrating labyrinth of information laws. Concerned about the lack of maintenance at a park in her west-end Toronto neighbourhood, she and others in her community began asking for an accounting of the city's parks budget more than two years ago.

Mason wanted to know how the department spends money, why some

playground equipment was being removed and why there never seemed to be any money to pave the pathways where baby strollers, bikes and wheelchairs get stuck in the mud.

At city hall, they were told they would have to file a Freedom of Information request. They've filed several requests since 2003.

Most formal information requests — more than three quarters — are filed by citizens and businesses, federal statistics show. Media requests account for about 10 per cent and other organizations, such as labour unions, file close to 15 per cent.

In January, the city of Toronto sent Mason a price tag of \$12,960 for access to records of city spending on playground repairs. Mason made a formal appeal to have the fee waived in the public interest. The city denied that appeal last month.

Mason's experience was typical of the findings from the Canadian Newspaper Association's national audit, made public today.

To test how bureaucrats administer freedom of information laws, the reporters, acting as private citizens, sought public records on such routine information as school bullying incidents to road repair schedules.

Government clerks handed over records in only 32 per cent of in-person visits.

Even when the reporters then filed formal access requests, only 62 per cent of the requests were eventually partially released.

As is the case with many citizens who attempt to navigate the complicated and often adversarial process of obtaining public records, reporters were confronted with an array of barriers, from fees that reached into the thousands of dollars to bureaucratic intransigence to outright denials.

"There's still a very strong culture of secrecy in these organizations," says federal Information Commissioner John Reid. "They all run on the basis of loyalty, and that means not rocking the boat."

The results show provinces that fared poorly in the audit — such as P.E.I., Nova Scotia and New Brunswick — are choosing the most expensive way of handling public disclosure of records, says Reid.

It is far cheaper to release records routinely than process formal requests under the information laws.



SHUT OUT: Jutta Mason was told she'd have to pay \$12,960 to get information about Toronto's Dufferin Grove Park.

Public information belongs to the public

By Ian MacLeod

The public's right to government information is a farce because of political interference and the culture of secrecy within bureaucracies, say leading access experts.

"We need to back up and look at this in another light. Freedom of information is really not working," says Darrell Evans, of the B.C. Freedom of Information and Privacy Association.

Public interest researcher Ken Rubin, one of Canada's top access practitioners, says governments are so adept at undermining access laws, only drastic action can narrow the gap between what citizens are entitled to and what governments disclose.

"To yank this whole system, you have to start anew or have a great crisis," he says.

The principle of freedom of information is straightforward: government information — public information — belongs to the public.

Unless governments have a good reason to conceal it, for example national security or personal privacy, people are entitled to get answers to reasonable questions.

Instead, hidden and highly sophisticated government countermeasures are subverting access laws altogether, or turning access requests into frustrating, time-consuming and expensive ordeals.

This is evident in the Canadian Newspaper Association audit: the law had to be invoked in more than a third of cases before the information was handed over.

Government secrecy is driven by two key groups. Bureaucrats often worry releasing information will complicate their lives. And it could compel them to defend publicly why they have, or have not, done something.

Likewise, politicians want to hide all but the most filtered and managed information.

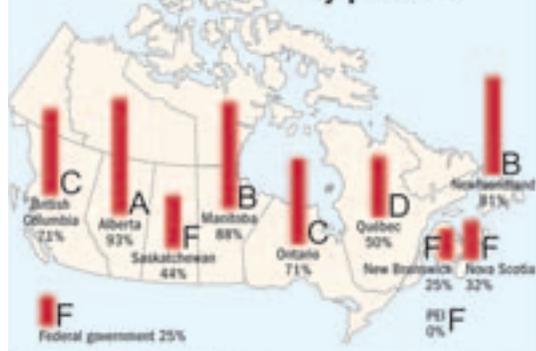
"If officials are asking, 'why do you

need to know?,' or acting as though that's what's motivating them, they've completely missed the point of the law," says Alasdair Roberts, a Canadian access expert at the Maxwell School of Citizenship and Public Affairs at Syracuse University. "The point is supposed to be, 'why shouldn't I give this information out?'"

In 2002, Nova Scotia raised the basic fee for making a request to \$25 from \$5. Requests fell by 27 per cent. The number of applications processed in the allotted 30-day time period also fell.

Federal Information Commissioner John Reid warns that government scrutiny and accountability are threatened by an epidemic of missing memos. For example, Sun Media reporter Greg Weston found government bureaucrats exchanging e-mails headed with "RAD" directives — read-and-delete — to thwart the public's right to know what is going on in high places.

Report card by province



SOURCE: CANADIAN NEWSPAPER ASSOCIATION

DESIGN: JAMES THE OTHER STUDIO

CNA FREEDOM OF INFORMATION AUDIT

It all depends on who's asking

By Neal Ozano – The Daily News

The Daily News found out how hard it is to get information from government bodies as a regular citizen. We went to five government shops with eight questions, listed in the accompanying box, with their answers.

This wasn't a "gotcha" exercise; we weren't looking to take down the system, or get people fired. We just wanted to see where regular citizens may have trouble getting information they are entitled to.

The rules were simple. I wasn't allowed to lie; if they asked me if I was a reporter, I had to tell them. But I tried to tell them as little as possible so they'd treat me as a regular citizen. They failed if I didn't get the information, or if I hadn't heard an answer in 30 days.

The agencies had a range of excuses why I couldn't have the information. Sometimes, the answer was simply "No."

Here in Halifax, half of the bodies I made requests to gave me at least a partial answer.

Only one agency offered a Freedom of Information-Protection of Privacy request that went to fruition. The rest either disclosed their information without the paperwork and fees, or didn't disclose anything.

HRM HUMAN RESOURCES

Good luck getting a breakdown of sick days from the Halifax Regional Municipality's Human Resources department, unless you're a journalist.

I asked how many people worked for the municipality, whether I could get a breakdown of sick days taken by day of the week, and by department.

Una Byrne, administrative assistant to HRM HR director Louis Coutinho, said "It's kind of hard for us to tell you about us if you won't tell us what this is for."

She said what I asked for might breach confidentiality rules, too. But 3,500 people work for the municipality, she said, and that fluctuates seasonally. She asked me to submit my other questions in writing. I did.

After seeing the letter, Byrne made it sound like my request was possible. She'd get back to me that day.



HAPPY DAY: Halifax Regional Municipality's human resources department cheerily said no to information requests.

HR head Coutinho called me that day. He wanted to know who I was working with. I said I'd rather not say. He told me he'd said that he'd see what he could do.

More than a month passed. On March 21, I called back. I asked Byrne when the information was coming, or when I'd hear from someone.

"I thought I heard (Coutinho) say 'No way,'" she said, cheery and chipper as always. "Unless you heard something else."

I replied that perhaps I hadn't. "I guess not, then. OK, Neal. Bye bye!" Click.

On May 16, I told Coutinho I was a reporter for *The Daily News*. His

attitude changed. I asked him why his assistant would have told me "No way." The letter I'd given Byrne said "a report of sick days taken in HRM (a total number) by department and day of week." Coutinho said he thought I wanted sick day records for specific employees.

He offered to send me the information. Less than a half-hour later, I had it.

RESULT: Failed to get the answer as a regular citizen. No FOIPOP Application offered.

WATER COMMISSION

The Halifax Regional Water Commission told me what I wanted to know in a little more than two hours.

On Feb. 8 at 12:30 p.m., I walked into the HRWC offices. By 2:30 p.m. I was walking out with a summary of failed water quality tests — exactly what I'd asked for. The only delay was that Reid Campbell, the acting manager of plant operations, was at lunch.

Campbell wanted to know who I was with, or why I wanted the information, but when I didn't tell him, he told me that none of the tests had failed.

And when I explained the

FOIPOP audit to him that same day, his story didn't really change.

"We're very open about water quality information, and we're hoping to work technology-wise so that you can get that all on the internet, as long as security interests are looked after."

RESULT: Got the answer easily. No FOIPOP Application required.

SCHOOL BOARD

On this one, I slipped up. I asked Halifax Regional School Board for information on enrolment in a certain school, and incidences of bullying (numbers, but not names) since the beginning of the 2004 school year.

A receptionist sent me to Wendy Myatt, who gave me the enrolment information, and pointed me to Rick Tully, who helps co-ordinate the anti-bullying program for the board.

I followed my dogma with Tully: don't tell anything more than your name if possible. Tully continued to waffle, demanding to know who I was with before he released any information. He asked if I was with the media.

"No," I accidentally said. What I meant to say was "I don't think I

need to tell you that."

He asked again, so I gave in, and told him I was working on a story for *The Daily News*. He was not impressed.

"Is this a practice not to disclose who you're working for?"

I tried to explain that it was just a slip-up, rather than an attempt to be deceptive. He mentioned lawyers, and asked who my editor was. He called HRSB communications manager Doug Hadley, who called my editor. Hadley said HRSB's relationship with *The Daily News* might be compromised in the future.

Despite being mad at me, Tully said the job was created last school year, so the board didn't have any information compiled yet. That counted as an answer.

Darce Fardy, review officer for the Provincial FOIPOP office, said Tully had no right to ask who I was working for before releasing the information.

"We would not expect a public body to treat applicants different because they were journalists, or opposition caucus members. We'd expect all applicants to be treated the same way," Fardy said.

RESULT: I got the answer after admitting I was a journalist.

Information released by question

	Released in an in-person visit	Released on written FOI request	Total percentage at least partially released*
Education classroom sizes	49%	34%	76%
City hall road repairs	49%	36%	74%
City hall sick days and number of employees	33%	42%	67%
Education bullying and violence	38%	32%	65%
Law enforcement complaints and suspensions	28%	42%	61%
Public health water testing	34%	28%	59%
Public health restaurant safety	23%	34%	49%
Law enforcement sick days	0%	47%	47%
Sick leave, temporary personnel (fed.)	0%	25%	25%
Total	32%	36%	62%

SOURCE: CANADIAN NEWSPAPER ASSOCIATION
Includes full and partial responses to visits and written requests.
*For some cases information was released at both stages.

CNA FREEDOM OF INFORMATION AUDIT

the questions . . .

HALIFAX REGIONAL POLICE

The police wanted me to know how to get information from them, but didn't tell me.

I started out blindly at police headquarters on Gottingen Street. I explained to community liaison officer Sgt. Richard Lane what I was looking for: complaints against the police in 2004, number of paid and unpaid suspensions in 2004 (and the reasons), how many sick days and how much overtime. But he wanted to know who I worked for.

"If you don't tell them what it's for, they won't want to tell you," he said. "It's not a matter of you telling me what you want, and me giving it to you."

He referred me to Deputy Chief Chris MacNeil's administrative assistant, Wendy Boyd. I still refused to say who I was working with.

"You'll have to speak to Deputy Chief MacNeil," she said. "He'll say yea or nay."

Here's where the stories split. HRP media relations officer Theresa Brien says MacNeil said he'd called me, and said I'd have to fill out a FOIPOP request. But I don't remember that.

Provincial FOIPOP Review officer Darce Fardy said regardless of whether or not he called back, my request would have had to go through FOIPOP.

Brien said that as a member of the media, I should have known to go through the media office. If I'd done that, they would have sent me to the Nova Scotia Police Commission for the Police Act complaints, and, "With respect to ... paid suspensions, sick days, and that sort of thing, those are personnel matters for us, and they're not discussed externally," she said.

Would a regular citizen have ever found this out?

RESULT: No answer.

HEALTH FOOD AND SAFETY

FOIPOP within the provincial government runs like a well-oiled clock. A slow clock, mind you, but at least it works. The province has training for FOIPOP administrators, networking with other admin-



BIG FAT NO: HRM Public Works said "the budget isn't finalized."

MIKE DEMBECK

istrators on a case-by-case basis, access to lawyers, and a genuine desire to help people get information.

I asked the Food Safety division of the Nova Scotia Department of Agriculture and Fisheries two questions: "Is it safe to eat at the Bluenose II restaurant on Hollis Street?" and "How many restaurants failed to comply with Health and Safety Standards in 2004 and could I have a list of them?"

A receptionist said she wasn't sure if I was allowed the information, but if I went to a website listed on a card she gave me, I could find the "forms."

I spent an hour looking for the forms online. Then I went back to the Agriculture and Fisheries office.

"I couldn't find the form," I said to the receptionist.

She got Ken Grandy, the regional manager of food safety. He brought out paper copies of FOIPOP forms. I filled them out, and paid \$25. The process began February 15.

On March 11, Agriculture and Fisheries FOIPOP administrator Susan Horne called me at home because I was asking for information that doesn't exist. She can't give me the list of restaurants that "failed

to comply" because the department identifies "deficiencies."

She said what I'm looking for is "Any facilities issued closure orders and facilities charged through the court system."

On March 21, the Bluenose II restaurant's inspection report came in the mail. There's a hole in the wall in a stairway, and some shelves need replacing. The department would tell me within 30 days if extra fees would be tacked on for the rest of my request.

April 19, I got the information. No restaurants were issued closure orders, or charged through the courts.

Food Safety is the only government agency I dealt with that offered a Freedom of Information request, and helped me through it.

HRM PUBLIC WORKS

What if you wanted to know if the strip of bombed-out asphalt on your street was on HRM's road repair priority list?

In early February, I asked David Hubley, senior design engineer for HRM, whether the stretch of Barrington between Duke and Sackville was on the list, and whether I could have a priority list for roadwork in HRM.

"I'd rather not give you anything because the budget isn't finalized," he told me in early February.

"The whole thing about this is managing expectations," John O'Brien, HRM's communications officer, said, referring to the decision to not release the priority list.

"David's a new manager, but he's probably concerned about what he can or can't say," said O'Brien.

But Fardy says that excuse isn't kosher.

"That's not an exemption under the act, so I guess you could have asked for an appeal for that."

RESULT: Told me no.

Many barriers to access

By Robert Cribb

In Kingston, Ont., a public health employee told a person requesting restaurant inspection records that they'd have to go to court first.

A citizen asking for information on municipal employee sick days in Edmonton was told such records are private. City officials in Summerside, P.E.I., decided information about police complaints and suspensions cannot be released to the public.

In Peterborough, Ont., a request for water test results inspired an official to declare: "I'm not interested in giving that up."

Time and time again, requests for public records in the country's first national audit of government openness were met with denials, excuses and, in some cases, outright hostility. Yet in each case the information was supposed to be readily available.

Reporters, who asked for the information as citizens, faced many barriers in their attempts to access records documenting everything from government spending to schoolyard bullying to police conduct.

Among the most common challenges were: outright denials of information that should be routinely available; high fees for accessing records that should be available for free or at nominal cost; a bureaucratic maze of unanswered calls and unhelpful officials; a lack of understanding in many government agencies about public disclosure responsibilities; officials demanding, contrary to law, to know the requester's identity and purpose for requesting the records before agreeing to release them.

According to information laws in Canada, the identity of the person making a request is not relevant to

the release of public records. But many government officials don't understand that, says John Reid, the country's federal Information Commissioner.

Municipal records of restaurant inspection records were among the most difficult to obtain.

In Ottawa, a request for the names of restaurants that had violated health and safety standards prompted officials there to calculate a detailed price for the information: \$1,367.50. In Charlottetown, the same question produced a fee estimate of \$850.

Saskatoon public health officials rebuffed the question, saying it was only available to those who could provide evidence that they were purchasing the restaurant.

And in Kingston a city official said the information would not be released without a judge's subpoena.

Tony Button, director of administrative services for the Kingston area health unit, said last week subpoenas are not required to access eatery inspection records.

"Whoever (said) you need a subpoena is completely wrong," he said. "You need to make a request under (freedom of information law) and the issue can be resolved pretty quickly."

In all, only 23 per cent of requests for restaurant information were released on the first visit to a municipal department. That figure rose to 49 per cent after reporters filed a formal freedom of information request.

By contrast, restaurant inspection information is freely posted for diners in Toronto on a city website and in eatery windows — a public disclosure system that launched in 2001 following a newspaper investigation into secrecy around food safety inspection records.

Tips on filing FOIPOP

When someone tells you you can't have the information you want, that's when it's time to bring out the big guns.

Bob Doherty, FOIPOP co-ordinator for the provincial Justice Department, gave us some pointers.

● Know who it is you want to talk to. "Until you get into actual administration, most frontline staff are not going to know how to get into the FOIPOP application process, and they shouldn't," says Doherty. "They should know that that option is there. But that's a customer service issue."

● Check www.gov.ns.ca/just/foi/departmentcontacts.pdf for provincial government contacts.

● Make sure you're not filling out an FOI form for something that isn't included in FOI. Within provincial government bodies, that material is covered under routine access policies.

Routine Access Policies are available for most provincial departments on their websites. FOIPOP administrators or communications/media representatives

can probably tell you which category your request falls under.

● Government bodies should tell you that there's a FOIPOP option.

"In terms of common courtesy, in terms of information, the FOI option should be pointed out by someone in authority, and the process to go through," says Doherty.

● Don't think you can shoot your application off, and leave it there.

"They should be following up with you, and you should be sure that they got it, and that they know what you're looking for," says Doherty.

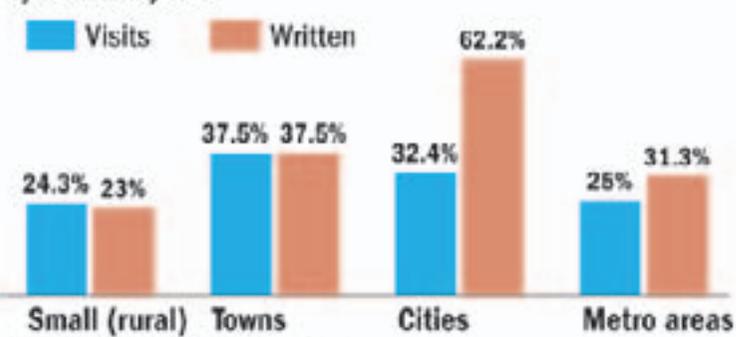
● Don't be put off by an administrator who tries to narrow down your search. Discuss your request with him or her.

"The natural reaction may be, 'That means they're trying to hide information,'" says Doherty, "but what the FOI administrator is trying to do is get a handle on what it is that you want."

● Make an appeal for information that gets withheld. Call provincial FOIPOP review officer Darce Fardy. — Neal Ozano

Requests released

By community size



SOURCE: CANADIAN NEWSPAPER ASSOCIATION