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**JAN 19 2012**

The Honourable Tony Clement, P.C., M.P.  
President of the Treasury Board and  
Minister for the Federal Economic  
Development Initiative for Northern Ontario  
140 O'Connor Street  
Ottawa, Ontario K1A 0R5

Dear Minister:

This letter reflects the views and recommendations of the Information and Privacy Commissioners of Canada and is provided with the goal of assisting the government in developing its action plan for the international Open Government Partnership initiative (OGP).

Open government has the potential to empower citizens to participate in a collaborative dialogue with government, to promote innovation and to facilitate more efficient delivery of programs and services. It leads to enhanced accountability and ultimately generates trust in government.

In September 2010, we confirmed our support for open government when we issued a joint resolution. The resolution [http://www.oic-ci.gc.ca/eng/rp-pr-ori-ari\\_2010\\_1.aspx](http://www.oic-ci.gc.ca/eng/rp-pr-ori-ari_2010_1.aspx) promotes the fundamental principles of open government based on a senior level commitment by government, ongoing, broad-based consultations with the public, the provision of information in open, accessible and reusable formats and the need to sustain open government with a sound legislative and policy framework.

Since that time, we have been encouraged by several developments across Canada.<sup>1</sup> At the federal level, the government confirmed its commitment to open government in the most recent Speech from the Throne by stating it “will also ensure that citizens, the private sector and other partners have improved access to the workings of government through open data, open information and open dialogue.” In addition, the evolution of the Open Government Portal <http://www.open.gc.ca/index-eng.asp> and adjustments to the licensing agreements will enhance the public’s ability to find, download and use federal government information.

Minister Baird reiterated the commitment to open government in his letter to Secretary of State Clinton on September 19, 2011 conveying Canada’s intent to join the OGP initiative:

*Canada has much to share on open government. We were one of the first countries to enact access to information legislation almost three decades ago, and we significantly expanded coverage through the 2006 Federal Accountability Act. Canada has also led the way in pro-actively disclosing information about contracts, grants and contributions, as well as posting hospitality and travel expenses on the Web.*  
<http://www.opengovpartnership.org/countries/canada>

However, the OGP participation document <http://www.opengovpartnership.org/ogp-participation> emphasizes that a common expectation of the Partnership is that countries make concrete commitments as part of their action plans which “stretch” them beyond current practices. The document defines the parameters countries must meet in the development of their action plans. They are expected to share existing efforts related to their chosen grand challenges, including specific open government strategies and ongoing programs.

It is within this overall context that the Information and Privacy Commissioners make the following recommendations:

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<sup>1</sup> For example, the Government of British Columbia adopted the *Policy on Open Information and Open Data*

[http://www.cio.gov.bc.ca/local/cio/kis/pdfs/open\\_data.pdf](http://www.cio.gov.bc.ca/local/cio/kis/pdfs/open_data.pdf)

in July 2011. It established new portals, the DataBC website and the Open Information website as vehicles for open government. These portals contain comprehensive datasets that are accessible, incorporate citizen participation and are based on leading edge practices. These initiatives are in line with those of municipalities such as Vancouver, Edmonton, Toronto and Ottawa.

**Recommendation #1: That the Government of Canada adopt “increasing public integrity” as one of its “grand challenges”**

The OGP participation document recommends that country commitments be structured according to a set of five grand challenges. One of them is increasing public integrity which includes measures to address access to information.<sup>2</sup>

The Information and Privacy Commissioners recommend that Canada adopt increasing public integrity as one of its grand challenges. Access to information is a fundamental component of government accountability and is recognized internationally as an essential element in ensuring public integrity. In 1997, the Supreme Court of Canada recognized the public’s right to government-held information as a quasi-constitutional right. The Court observed that the “overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.”

<http://www.canlii.org/en/ca/scc/doc/1997/1997canlii358/1997canlii358.htm>

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**Recommendation #2: That the Government of Canada commit to increasing public integrity by modernizing the federal Access to Information Act**

The *Access to Information Act* is approaching its 30<sup>th</sup> anniversary. There have been several reviews of the legislation during this period, notably the Parliamentary review required within five years of its coming into force, the report of the Access to Information Review Task Force entitled *Access to Information: Making It Work for Canadians* in 2002 <http://www.atirtf-geai.gc.ca/report/report1-e.html> and the draft bill entitled the *Open Government Act* <http://www.oic-ci.gc.ca/eng/rp-pr-ori-ari.aspx> proposed by Information Commissioner Reid in 2005. In 2009 Commissioner Marleau, in *Strengthening the Access to Information Act to Meet Today’s Imperatives* [http://www.oic-ci.gc.ca/eng/pa-ap-atia\\_reform\\_2009-march\\_2009-strengthening\\_the\\_access\\_to\\_information\\_act\\_to\\_meet\\_todays\\_imperatives.aspx](http://www.oic-ci.gc.ca/eng/pa-ap-atia_reform_2009-march_2009-strengthening_the_access_to_information_act_to_meet_todays_imperatives.aspx), made twelve recommendations aimed at resolving some of the most pressing issues.

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<sup>2</sup> The other grand challenges are improving public services, more effectively managing public resources, creating safer communities and increasing corporate accountability. The grand challenge of increasing public integrity also includes the concepts of corruption and public ethics, campaign finance reform, and media and civil society freedom.

Amendments enacted by the *Federal Accountability Act* in 2006 <http://laws.justice.gc.ca/eng/acts/F-5.5/index.html> have not fundamentally changed the *Access to Information Act*. However, the manner in which government conducts business has changed dramatically.

The OGP offers an excellent opportunity for the Government of Canada to amend the *Access to Information Act* and align it with current government processes and progressive national and international norms. The Information and Privacy Commissioners recommend that the government conduct a comprehensive review of the legislation with the goal of modernizing it and re-establishing Canada's leadership position.

**Recommendation #3: That the Government of Canada commit to increasing public integrity by reversing the declining trends in compliance with federal access to information legislation**

During the past decade, official statistics<sup>3</sup> and investigations of complaints confirm there has been a steady decline in compliance with access to information legislation. Timeliness and the amount of information disclosed are two important measures which demonstrate this trend. Only slightly more than one half of all access requests made to federal institutions are completed within the thirty day time limit prescribed by the Act. Contrary to the Act's presumption of disclosure, less than one fifth of all requests result in all information being released. Disclosure continues to become even more limited with respect to information related to international affairs and defence. Currently, 22% of all exemptions invoked on a government-wide basis cite this exemption compared to 5% in 2001.

Multiple reports from Information and Privacy Commissioners and civil society have highlighted some of the systemic root causes for this decline. In particular, the Information Commissioner's Special Report to Parliament in 2010 entitled *Out of Time* [http://www.oic-ci.gc.ca/eng/rp-pr\\_spe-rep\\_rap-spe\\_rep-car\\_fic-ren\\_2008-2009.aspx](http://www.oic-ci.gc.ca/eng/rp-pr_spe-rep_rap-spe_rep-car_fic-ren_2008-2009.aspx) described the contributing factors. They include insufficient senior management commitment within institutions, the misuse of time extensions, lengthy inter-institutional consultations, especially those involving records pertaining to national and international security and defence, and inadequate resources and training devoted to access functions. In addition, the report emphasized that the exponential increase in the volume of electronic records and the lack of sound records management practices and systems has led to inefficient and costly operations and resulted in substantial delays and complaints to the Information Commissioner. Annual *National Freedom of Information Audits* <http://www.newspaperscanada.ca/public-affairs/FOI2011> conducted by Newspapers Canada routinely confirm these causes and effects.

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<sup>3</sup> Treasury Board Secretariat. *Info Source Bulletin – Statistical Reporting*, Annual Publication <http://www.infosource.gc.ca/bulletin/bulletin-eng.asp>

Given these challenges, the Information and Privacy Commissioners make the following recommendations for concrete actions in year one of the action plan.

**Recommendation #3.1: That the Government of Canada support access to information and privacy professionals by providing sufficient resources and training**

Non-compliance with access legislation is often the result of a lack of adequate funding and knowledgeable, experienced analysts. To ensure that statutory obligations under the Act are fulfilled, the government must devote sufficient financial and human resources to the administration of access functions. In addition, it should enhance its human resources plans and training programs for access and privacy professionals, such that their professional competencies are recognized and respected.

**Recommendation #3.2: That the Government of Canada commit to the rapid implementation of its records management policies**

The proliferation of electronic records has resulted in an increasing volume of pages to be reviewed pursuant to access requests. Combined with inadequate records management practices and systems, these factors create an impediment to complying with statutory time limits for responses. To remedy the situation, the government should rapidly implement its records management policies and build access mechanisms into the design and implementation stages of all new programs and services. Valuable guidance and a model can be found in *Access by Design: The Seven Fundamental Principles* by the Information and Privacy Commissioner of Ontario.

<http://www.ontla.on.ca/library/repository/mon/24005/301553.pdf>

Excellent records management practices act as an essential and enabling foundation in support of the timely identification, retrieval, review and disclosure of records.

**Recommendation #3.3: That the Government of Canada implement a declassification process for government records**

Responding to requests for access to information about international affairs, national security and defence requires the balancing of the public's right to information necessary to hold the government to account with the need to protect records that could injure international relations and national security. This balancing exercise is complex. Canada would benefit from examining the best practices of other countries.

By way of example, the United States has undertaken a major declassification initiative. In accordance with an Executive Order <http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information> issued in 2010, executive agencies must automatically declassify their documents after twenty-five years unless they fall under one of nine narrowly

defined exemptions. The Order also specifies that agencies establish and conduct a program for systematic declassification review. This review applies only to records that are of permanent historical value and less than twenty-five years old. Agencies must prioritize the review of records based upon the degree of researcher interest and the likelihood of declassification upon review. Subsequent to declassification, the documents from many agencies are accessioned at the National Archives and Records Administration.

In a recent decision

<http://www.canlii.org/en/ca/fct/doc/2011/2011fc983/2011fc983.html> the Federal Court observed that: "Perhaps, if Canada proceeded as other democracies do, with a declassification process of dated records, many of these issues would arise in a more limited context." The Court noted that such a process could reduce the complexity of requests for information, particularly in the context of national security matters. To achieve this objective, the Information and Privacy Commissioners recommend that Canada initiate a systematic review and implement a declassification process for its government records.

**Recommendation #3.4: That the Government of Canada implement a technology infrastructure based on national and international best practices**

Currently federal institutions employ various methods, ranging from manual to stand-alone systems, to process access to information requests. The capacity to deal efficiently with electronic records and conduct effective searches of requests and responses is limited and impedes the ability to publicly disseminate the information in a timely manner.

In its announcement of progress on key open government initiatives <http://www.tbs-sct.gc.ca/media/nr-cp/2011/1116-eng.asp>, the government committed to requiring all institutions subject to the *Access to Information Act* to post summaries of completed requests on their websites within thirty calendar days after the end of each month during which the responses were released. However, this approach does not provide the scope of coverage or search capabilities available in other countries. Furthermore, in a federated country where information flows between all levels of government, Canadians would benefit from the establishment of a portal which consolidates and provides access to the results of all access to information requests regardless of the jurisdiction to which they were originally directed.

The deployment of advanced technologies in other jurisdictions warrants examination. For example, Mexico's Transparency Portal <http://portal.transparencia.gob.mx> represents a one stop approach that incorporates requesting information, receiving responses and initiating complaints with the oversight body. The portal is also linked electronically to systems within the

federated states which permits public access to a central, searchable repository of all access requests and responses.

In the United States, the American multi-agency portal is scheduled to become operational in the fall of 2012. The portal has been designed to automate freedom of information processing and reporting and to store freedom of information requests and responses in a common repository. Most importantly, it will permit requesters to track the status of requests and responses and to locate, view and download them. The national Freedom of Information Ombudsman will be responsible for the portal. It is projected that it could save as much as \$200,000,000 over five years based on government-wide adoption.

The Information and Privacy Commissioners recommend that the government implement a technology infrastructure to support this function based on national and international best practices.

**Recommendation #4: That the Government of Canada commit to a multi-stakeholder consultation process that includes the public, civil society and Information and Privacy Commissioners**

The OGP participation document requires that countries “develop their action plans through a multi-stakeholder process, with the active engagement of citizens and civil society.” Given Canada’s relatively recent entry into the OGP, it is recognized that public consultations are only in the preliminary stage. To satisfy the factors inherent in this OGP expectation, Canada’s plan must be developed and implemented in a manner that promotes routine and timely engagement, both through conventional and online means, with a broad range of stakeholders. It is of particular importance that a permanent forum for face-to-face interaction with civil society be created.

Canada has a well established network of Information and Privacy Commissioners. They bring a unique perspective to open government based on extensive experience within their jurisdictions and a well established record of collaboration. Canadian Commissioners stand ready to be engaged routinely in the consultation process. One forum could be their annual meeting which would provide an opportunity for ongoing dialogue as the government moves forward on the OGP initiative. The 2012 meeting will be held in Halifax.

**Recommendation #5: That the Government of Canada’s action plan include concrete commitments, specific timeframes, clear accountability and performance measures to facilitate self-assessment and independent oversight**

The OGP participation document requires self-assessment and independent reporting on each country’s progress. Having concrete commitments, specific timeframes, clear accountability and performance measures will ensure transparency in the process and maximize trust among all participants.

Before closing, we wish to note that the Standing Committee on Access to Information, Privacy and Ethics of the 40<sup>th</sup> Parliament embarked on a study of open government in 2010-2011. It heard the testimony of expert witnesses but did not have an opportunity to complete a report. This report, if completed, could prove to be a valuable resource in the development of a national action plan.

In conclusion, the Open Government Partnership envisages that countries will share their experiences and lead the global transformation to open government. Canada at the federal, provincial and territorial levels has many insights to contribute to the initiative. It also stands to benefit from the progress of other countries which have made great strides in matters related to access to information and open government. The OGP provides an excellent opportunity for Canada to re-establish its position as a leader in the field. The Information and Privacy Commissioners across Canada look forward to actively participating and contributing to the government's efforts to achieve this goal.

Yours sincerely,



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Information Commissioner of Canada

On behalf of the Information and Privacy Commissioners of Canada

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