



Commissaire
à l'information
du Canada

Information
Commissioner
of Canada

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FEB 28 2018

Mr. Calvin Sandborn
Legal Director, Environmental Law Centre
University of Victoria
P.O. Box 1700 STN CSC
Victoria BC V8W 2Y2

Subject: **Our files:** 3212-01586, 3212-01587, 3212-01588,
3212-01589, 3212-01590, 3212-01591, and
3212-01592
Institution files: n/a

Dear Mr. Sandborn:

I am writing to report to you the results of our investigation of your complaint, made under the *Access to Information Act* (the Act), against the Canadian Food Inspection Agency (CFIA), the Department of National Defence (DND), Environment and Climate Change Canada (ECCC), the Fisheries and Oceans Canada (DFO), Natural Resources Canada (NRCan), and the National Research Council of Canada (NRC).

Background

On February 20, 2013, you complained that that government policies and policy instruments, including departmental policies, protocols, guidelines and directives, that are related to communications and media relations restrict or prohibit government scientists from speaking with or sharing research with the media and the Canadian public, and are impeding the right of access to information under the *Access to Information Act* (the Act).

On March 27, 2013, the Information Commissioner commenced a systemic investigation pursuant to paragraph 30(1)(f) of the Act.

Respect

Excellence

Intégrité Integrity

Leadership

Although the Treasury Board Secretariat (TBS) was not named in the complaints, it was incorporated into the investigation from the outset given its role in overseeing both the Communications Policy of the Government of Canada and the administration of the federal access to information regime.

Investigation

Complaint against DND

Regarding DND specifically, your complaint stated that members of the Canadian Forces (CF) and officers and employees of DND had been informed or instructed that, pursuant to a Canadian Forces General (CANFORGEN) Order (entitled "Classification, Designation, Safeguarding, Access to and Release of Information"), all documents under DND's control should be examined for sensitivity not only to the national interest, but also to DND's organization, administration, finances, other internal functions, relationships to other organizations, or other government business operations. Your complaint also alleged that this directive was given "with an eye to keeping [documents] hidden."

Given that this office has previously conducted a separate self-initiated investigation in respect of an almost identical complaint and determined that it was not well-founded, DND was not included in the above noted systemic investigation.

The previous investigation had determined that the CANFORGEN in question did not inform, instruct, or influence employees of DND not to disclose information under the Act. Rather, it discussed classification of records, which does not impact access to those records under the Act.

Systemic investigation

In conducting this systemic investigation, we evaluated your allegations regarding the *Communications Policy of the Government of Canada* (Communications Policy), as well as the departmental media relations policies operating in each of the subject institutions, in order to assess the possible impacts these policies may be having on public access to scientific information.

In particular, we assessed how these policies operated in practice and whether, in their application, they were impeding access to information rights under the ATIA. In evaluating possible impacts, we looked at whether the application of these policies was contributing to an increase in the number of access to information requests as a means of obtaining sought after information.

We also considered the following sources of information gathered in the context of this systemic investigation:

- case studies set out in the complaint and independently verified by the OIC;
- additional case studies obtained by the OIC regarding the operation of these policies in specific situations in the subject institutions;
- interviews conducted by the OIC with journalists, government scientists, communications officials, directors general of science branches, experts in the field, and individuals who formerly worked with the subject institutions;
- media processing files provided to the OIC;
- responses the subject institutions provided to a questionnaire administered by the OIC; and
- representations received from TBS and the subject institutions during the investigation, including recent initiatives taken by the current government, outside of the investigation period.

On the basis of these sources of information, I made the following findings:

1. As written, the language of the Communications Policy has not been significantly changed during the time period under investigation and is consistent with access to information values and principles.
2. As written, the language of the various departmental media relations policies reviewed as part of the OIC's investigation is also consistent with access to information values and principles.
3. In practice, the Communications Policy and the departmental media relations policies were not being applied by the subject institutions during the time period under investigation in keeping with the stated objective of responding to the information needs of the public.
4. As applied during the time period under investigation, the Communication Policy and the departmental media relations policies are impacting upon the federal access to information regime.
5. The fear observed by the OIC on the part of public servant investigation participants is consistent with the "chill" documented in the survey of over 4,000 federal government scientists conducted by the Professional Institute of the Public Service of Canada and reviewed by the OIC as part of this investigation.

6. The application of the Communications Policy and the departmental media relations policies during the time period under investigation is not consistent with the Government of Canada's formal commitments to foster and promote Open Government.

Recommendations

Since the current government has assumed office, it has initiated some measures that are intended to ensure that scientific information is disseminated to the public and that scientists in the federal public service are able to publicly discuss their research. In doing so, these initiatives can serve to promote greater transparency and openness by increasing the likelihood that members of the public can obtain timely access to complete, accurate and expert information on an informal basis (i.e., without having to resort to making a formal access request under the Act).

Nonetheless, on September 18, 2017, I made the following four recommendations to further enhance the government's response to the concerns raised by the subject matter of this systemic investigation to the President of the Treasury Board:

Recommendation 1

The government should ensure that the Chief Science Advisor is independent from the executive and confer on this position the mandate to ensure that government science is fully available to the public and that government scientists are able to speak freely about their work.

Recommendation 2

Government institutions should be required to collect data related to the release of scientific information to the public, including in response to requests by members of the media.

Recommendation 3

The Access to Information Act should be amended to require heads of government institutions to make proactive public interest disclosure in relation to information that could affect public safety, public health or environmental protection.

Recommendation 4

In order to protect and support the right of public servants to speak publicly about their subject-matter expertise without fear of reprisal, TBS should:

- *provide training to public servants on their rights and obligations in publicly communicating science-related information;*

- *identify best practices with respect to the disclosure of scientific information;*
- *identify and correct any weaknesses in the protections and supports provided to public servants in exercising these rights; and*
- *evaluate public servants' confidence in their ability to speak publicly about their subject-matter expertise.*

By letter dated October 3, 2017, the President of the Treasury Board acknowledged receipt of these recommendations and indicated that a detailed response to the individual recommendations could be forthcoming.

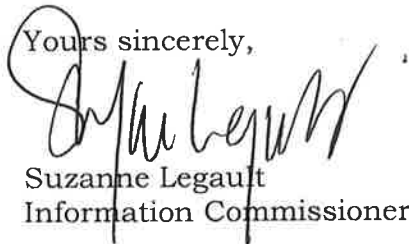
By letter dated, October 24, 2017, the President of the Treasury Board responded more fully to the recommendations. The letter outlined steps taken by this government toward making federal science more accessible to the public and in empowering federal scientists to speak freely about their work. However, the letter included no firm commitments to implement my recommendations.

The result of this investigation will be reported on in more detail in the coming annual report.

Conclusion

Based on the above, I am recording the complaint against DND as not well founded and the remaining complaints against the subject institutions and TBS as well founded.

Yours sincerely,



Suzanne Legault
Information Commissioner of Canada

Enclosed

c.c. Yaprak Baltacioğlu, Secretary of the Treasury Board of Canada
Paul Glover, President, Canadian Food Inspection Agency
Jody Thomas, Deputy Minister, National Defence
Stephen Lucas, Deputy Minister, Environment and Climate Change Canada
Catherine Blewett, Deputy Minister, Fisheries and Oceans Canada
Christyne Tremblay, Deputy Minister, Natural Resources Canada
Iain Stewart, President, National Research Council of Canada