

Spinning access to information in an age of misinformation

By Ken Rubin, J-Source, Jan 28/22 on-line

Public interest researcher Ken Rubin on what returned access requests show about the state of government duplicity and transparency in Canada

The access to information process is difficult enough, with all the delays, exemptions, exclusions cited and incomplete searches done. But at times it is used, along with government media spinners, to try to distort the records released under access and dupe those trying to find out what government is up to.

From my access to information experience, the problem of manipulating access to information responses for propagandizing and deception makes it more challenging for those seeking credible government disclosures and wanting to report, make public their findings and see changes implemented.

Let me offer a few examples:

1. An attempt at covering up how a government report ended up coming down softly on Canada's big banks' high-pressure sales tactics is a classic case of trying to dupe the public.

A public outcry about big banks' aggressive high pressure sales tactics resulting in unwanted extra loans and credit extensions meant the Financial Consumer Agency of Canada reluctantly doing a 2018 study of the many complaints received. But the study's weak solutions of better "education" instead of restrictive protective regulations, obtained from FCAC after delays in 2019, was aided by the big banks applying pressure though their responses were exempt under access.

What was not exempt was the study's methodology that saw banks given advance notice of visits and time to coach selected interviewees. And the draft report, recommending restrictions, was, records showed, given to senior finance officials. Out came words like "systemic" and "widespread" anti-consumer tactics. FCAC officials, who are supposed to be the regulator of undesirable bank practices affecting consumers, continued to deny any cosy relationship with the banks.

Further, FCAC access staff claiming resources were limited, refused to process and release more records under my request for their voluminous interviews with bank employees. Why? Because they basically did not want more coming out about that cozy relationship.

Fortunately, CBC's Go Public, which had been following consumer complaints about such unwanted bank sales pressures, did an April 2019 report on my findings. The banks' aggressive sales practices, nonetheless, remain in place and needed regulation remains to be implemented.

2. More recently, in 2021, the Canadian Border Services Agency tried to spin an obtained access release to deflect evidence that its relief application program for security-based applications was not working for most applicants. Those applicants had to wait years, while getting no decisions on their applications, and remain in limbo. Of two hundred and nine applications, records showed, only eight had received ministerial decisions, with six being rejected.

Such security-categorized applicants, including those having had loose association with outlawed groups in their countries with family connections here, had tried to become admissible to Canada. The relief application mechanism was their very last appeal hope, however slim and dysfunctional that end appeal is.

But CBSA media relations personnel, added in other relief application categories for separate human rights violations and organized crime, thus jacking up the relief applications count decided to 97.

When a Toronto Star story by Nicholas Keung came out last November, CBSA media spinners insisted on getting a convoluted correction that inflated the appearance of the minister's track record. CBSA runs the relief application program and the minister, who decides, if ever, on relief applications being granted or denied does so largely based on CBSA advice.

Such security-based relief applications come as a last resort primarily from individuals who are accused of terrorist activities and viewed as threats to national security so those applications take time to review and ministers are likely in no rush to issue decisions in such cases. But when access replies are distorted regarding an internal relief system with very little public information, a very opaque unaccountable system remains in place unchallenged.

3. 2019 Public Services and Procurement Canada records obtained under an access request revealed that back in 2014-15, Irving Shipbuilding Inc., was selected as the prime contractor for the biggest-ever-procurement project (the Parliamentary Budget Officer estimates the cost at \$77.3 billion and going higher with delays that are happening) to run the combatant warship naval project for twenty-five plus years. ISI was also the shipyard where the ships would be designed and built, that separately meant paying out millions of dollars of public funds to ISI. As prime contractor, ISI had a big say in selecting the Type 26 BAE/Lockheed Martin winning contract, knowing full well that those untested ships and their design meant adding more time and costs for the project to be built out of its shipyard.

The government's selection of ISI as their agent, documents showed, was based on it not earning "profit on top of profit" and following the national defense procurement process, the latter being criticized by experts as slow-moving and leading to picking favourites.

What the access request sought was how many millions ISI is being paid as the prime contractor and under what verification terms, given the stated claim ISI would not profit on top of profit. The access reply claimed that the amount was secret commercial information, so the public stays in the dark. In response to my follow-up questions, the government PR people added that there was adequate vigilance and that should be sufficient without detailing any real auditing of ISI or payments made or projected. But a February 2021 auditor general report said the Canadian government's risk tools for the ship building program that includes the CSC program were inadequate.

Now, PSPC is seeking to recruit outside "influencers" from industry and academia to help further spin and promote the besieged and multi-billion-dollar shipbuilding program on social media, reported the Ottawa Citizen's David Pugliese this January.

I wrote about the secrecy surrounding fees to be paid to ISI as prime contractor for Canada's multi billion dollar warships in an April 2021 Hill Times column.

These results illustrate a persistent lack of oversight surrounding the billions of dollars being spent on shipbuilding and the potential favouritism the program attracts.

4. The Nova Scotia College of Arts and Design belated 2021 replies to my 2020 FOI requests and their related news releases and attempts to influence media outlets, done with the help of hired PR people, made it seem that the June, 2020 firing of president Aoife Mac Namara was justified. In the key board of governor members' eyes, Mac Namara's leadership of the college and ensuing disputes over real estate stepped over the line. Mac Namara disagreed over the board's proposed real estate deal, which would have required NSCAD to sell its historic downtown properties in exchange for a new waterfront campus that the favoured developer would build and lease to the school.

One part of NSCAD's official explanation is that they tried to "help" Mac Namara by retaining Bonnie Patterson, a former university president turned management troubleshooter/consultant as an executive coach. They denied that hiring was an effort to tone down Mac Namara's efforts to breathe new life into the college or to take a development direction beyond a favoured developer who Mac Namara sought to make subject to a competitive public procurement process.

The FOI records received from NSCAD, however, show that Patterson was brought on board to help direct the president's program ideas and in the end, when that failed, to help recruit her successor as president before Mac Namara was fired. These discrepancies about the internal battle between Mac Namara and the board of governors were reported through FOI documents by Greg Mercer in the Globe and Mail last year.

5. Justin Trudeau ran in 2015 promising that PMO and ministers' records would become disclosable. But nearly six years later, Privy Council office records obtained showed that was never going to happen. PCO officials noted in early 2016 that very few PMO records would be accessible and would take years before being released. The records noted that, if more records were to be disclosable, the PM and ministers should commit little to writing. I wrote about PCO officials' resistance to releasing almost everything about such key decision-making records in an April 2021 National Post guest column.

In fact, the opposite occurred to Trudeau's 2015 promise. His office and ministers' offices were legally — and permanently — placed outside the Access to Information Act's reach with the passage of Bill C-58 in 2019.

In a recent 2021 public discussion and book, former PCO Clerk Michael Wernick indicates his advice to cabinet ministers was to not keep notes on conversations; exchanges that we will never know about. That makes it difficult for the public to believe these same ministers could be champions of more open government or ever want their records released. Some transparency advocate groups are still under the false assumption that their call to place the PM and ministers back under access legislation won't, if ever done, amount to much more data being released, unless executive and cabinet secrecy is drastically changed.

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It has been difficult enough getting the truth recorded and getting access to information responses without then having those responses spun. For many years, many departments have warned their superiors, communication units and ministers offices about users including journalists putting in potentially sensitive requests. That sometimes was called amber lighting or red alerts on access requests. Those requests can result in departments preparing anticipated briefings so ministers can be ready for unwelcome stories.

Attempts at access to information subversion are not always that easy to document. Access records themselves can be self-serving and suggestive of outcomes wanted. They can hide parts of sought-after records that are embarrassing and result in aggressively countering any unfavourable reporting of the tidbits access records reveal.

The problem of distortion, deletions, late and incomplete reporting can only get worse in an age of misinformation and social media spin. The above examples are the tip of the iceberg.

In this day and age of distorted "news" and information alterations and all kinds of information on the pandemic, we need better safeguards, protection, penalties, whistleblower protection and fuller disclosure.

It may be somewhat old-fashioned and an unsophisticated tactic to get records under access to information that you know can be — and are being — released with spin and are too often part of information control efforts by none-too-friendly governments and their companion allies.

But as an investigative researcher, or for others like journalists searching for behind-scene events and what is really happening, fighting and exposing deceptive information efforts remains necessary.

Ken Rubin is a consumer advocate, columnist, and long-time user and critic of freedom of information legislation and government information practices. He is re