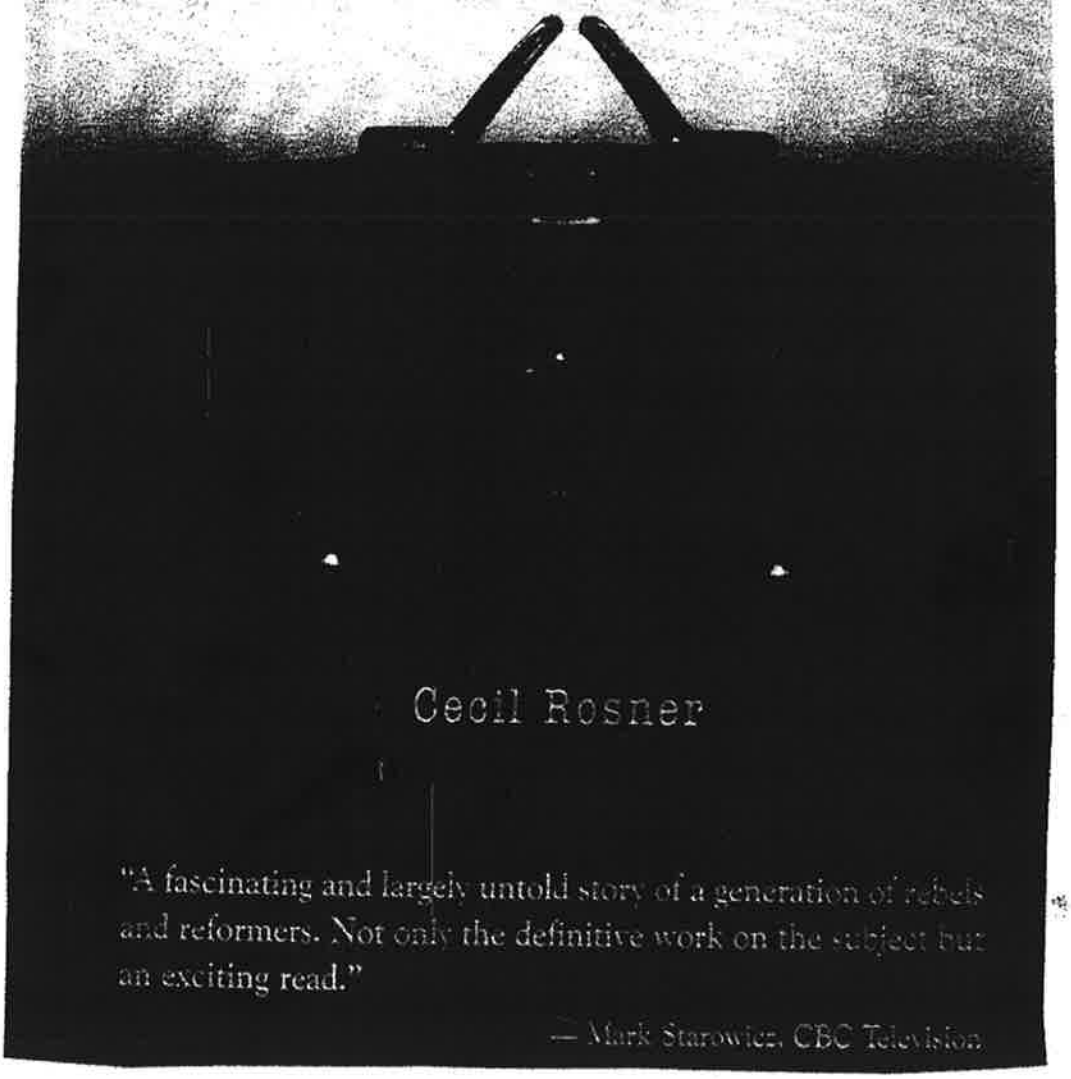
BEHIND THE HEADLINES

A History of Investigative Journalism in Canada



Cecil Rosner

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— Mark Starowicz, CBC Television

Chapter 15

Access to Information

> This is a lonely existence. The only pats on the back I get are when somebody says, 'You're a bastard, you're a son-of-a-bitch.' That's when I feel what I'm doing is understood.
>
> Ken Rubin[1]

Ken Rubin describes himself as a public interest researcher, citizens' advocate, author, civil libertarian, and organic farmer. He is also one of the country's foremost experts on how to pry information loose from different levels of government. From his Ottawa home, he devises strategies to extract documents from suspicious and reluctant government functionaries. When he succeeds at finding something important, which he routinely does, he turns it over to a public interest group, sells it to a media organization, or helps out someone who has been battling government bureaucracy. Since the federal government introduced its access to information legislation, Rubin has made more than 20,000 formal requests for documents. They have produced hundreds of vital stories that might otherwise never have come to light. It has all resulted in an important contribution to Canadian muckraking from a man who doesn't even consider himself a journalist.

Born in Winnipeg, Rubin studied history and political science at the University of Manitoba in the 1960s, but spent most of his spare time in community development and activism. In 1968, while studying for his second master's degree at Southern Illinois University, he worked in low-income neighbourhoods, ghettoes, and with would-be draft dodgers. By the early 1970s he moved to Ottawa and became involved in a variety of community and public interest groups. He was often the designated member to analyze data, do background research, and prepare materials for news releases. He began to realize that documents represent one of the most important tools of corroboration for researchers. While interviews and contacts with human sources are crucial, it is often more important to verify information by consulting internal government documents and official records. Journalists and researchers who are skilled at encouraging people to provide them information will often get important records in that way. But many other documents are buried away in filing cabinets and hard drives that are inaccessible to the public. At a time when John Sawatsky and other investigative journalists were refining their interviewing methodology and constructing

effective question lines, Rubin was analyzing the role of public information and how best to access it.[2]

In 1972, Rubin joined a group promoting the creation of a freedom of information act for Canada. The federal government was the biggest repository of information in Canada, but its records were largely inaccessible to the public. A handful of other countries had already adopted legislation allowing for access to public records. The oldest such law was in Sweden, where wide-scale access was guaranteed under the Freedom of the Press Act of 1766. The US adopted its freedom of information law in 1966, Denmark and Norway followed soon afterwards, and other European countries began studying the issue in the early 1970s.[3] In Canada, an NDP member of Parliament, Barry Mather, introduced a private member's bill in 1965 that would have created an access to information act. He reintroduced it each year until 1970, but it never succeeded in moving beyond second reading. Progressive Conservative MP Gerald Baldwin tried the same technique each year between 1969 and 1974, and also failed to convince government to act.[4] Rubin joined Baldwin and others in lobbying for the legislation. As part of the work, he surveyed all MPs and senators, asking for examples of when they themselves had tried and failed to get government information.[5] Though many elected members were sympathetic, the federal government continued to find reasons not to act on the recommendations.

Some provincial governments, meanwhile, were faster off the mark. In 1977, Nova Scotia became the first province, and the first jurisdiction in the Commonwealth, to enact a freedom of information act.[6] New Brunswick followed by passing a law in 1978 that came into effect in 1980. In the following two years, Newfoundland and Quebec also introduced legislation. But if journalists thought the mere passage of a law would trigger a flood of new documents and stories, they were quickly dissuaded of the notion. A reporter in Nova Scotia asked to see a report into the investigation of an explosion at the provincially owned Sydney Steel Co. in 1977. The labour minister said the Freedom of Information Act actually barred him from providing it, citing a section that prohibited release of 'information obtained or prepared during the conduct of an investigation concerning alleged violations of any enactment'.[7] In another case, a reporter was denied results of provincial air testing to determine the source of noxious fumes at a Sydney hospital. 'The main weakness of the legislation is that it manages to circumscribe and remove from the public eye all but the most routine information', said Wendy Jackson, who chaired the Centre for Investigative Journalism's freedom of information committee. 'Many civil servants are more cautious about providing information now than they were before the legislation was passed.'[8] The success rate was no better in the United States. Eight years of experience with freedom of information wasn't enough to convince many critics that the law was having much effect. In urging Canada to adopt a bill, Baldwin was quick to advocate something radically different. 'We must go a lot further than the United States. The United States has an act which is virtually useless and is very rarely used. It does not cover many subject matters and it is easy to escape its provisions.'[9]

By the second half of the 1970s, Ottawa began paying lip service to the need for legislation, but the process of drafting a bill was laborious. It would not receive royal assent until 1982, with implementation for 1 July 1983. In the meantime, Rubin was acquiring the knowledge and tools that would make him an early and effective user. Throughout the 1970s, he worked at a variety of jobs with government and private groups. A short-term contract with the federal Metric Commission gave him an insider's look at how bureaucracy dealt with the flow of information. Another federal government job gave him the chance to write internal memos and speeches for ministers. It offered him an education into how government organized its information, and where to look for obscure data. In 1978, working with a national civil rights group, he applied for 59 different government files on himself. It was a test of newly enacted privacy legislation, and it also gave bureaucrats a taste of how careful they needed to be when complying with requests from Rubin. He called a press conference to tell the world what had been released, including what he described as inaccurate, outdated, and second-hand information. He also revealed that he had been given part of another man's medical record, complete with personal details of his health problems.[10]

Rubin didn't even wait for the act to be officially proclaimed before filing his first batch of requests. He asked departments to fulfill them in the spirit of the proposed legislation, and many did. Some early requests revealed information about the extent of the dangers of urea-formaldehyde foam insulation in government buildings. Rubin was also able to access meeting minutes of the Atomic Energy Control Board, opening a public window for the first time into how nuclear reactors were being regulated in Canada. He found reports on inadequate safety systems at some nuclear reactors and problems with radioactive waste disposal. Still, he considered the exemptions and overall operation of the machinery surrounding the act to be too restrictive. 'These are more secrecy acts than anything else . . . they're meant more to hide things than to release them', he said.[11] The act provided for a host of mandatory and discretionary exemptions, protecting against release of information surrounding national security, active law enforcement, advice to ministers, certain communications between Ottawa and the provinces, and many other categories.[12] There were also provisions allowing exemption of material when disclosure would have an adverse effect on a third party. By assessing costs for research time and copying, the act legitimized the practice of charging for government information, and also discouraged journalists from proceeding with requests that were too expensive. And by legislating a 30-day limit for providing an initial response, along with provisions for routine extensions, it also legitimized long delays in responding to requests for information. That prompted many journalists to abandon requests or avoid making them in the first place.

In a way, formal access to information acts provided a political legitimization for governments to deny requests for information altogether. In the absence of legislation, they would be subject to criticism inside Parliament or the legislature, and in the arena of public opinion, if they refused to release a requested report or document. But with a clear set of mandatory exemptions enshrined in law, they could deflect political criticism by pointing to the legislation as a reason for refusing access. Appeal processes

in the federal and provincial acts usually were lengthy and complex. Outside the provisions of freedom of information acts, though, journalists were free to lobby for release of documents or head to court much more quickly to secure access.

That is exactly what happened when Linden MacIntyre was investigating political kickbacks and influence peddling among distillers and wineries in Nova Scotia in 1979. He became aware that the RCMP was conducting a series of raids across the province, but the details were cloaked in secrecy. A senior Mountie repeatedly told MacIntyre he couldn't give him details, but at the same time hinted strongly that the journalist had the right to the information if he looked carefully. It eventually led MacIntyre to the clerk of the courts, where he asked to see the information used by RCMP to obtain their search warrants. The clerk refused. An angry MacIntyre walked out of the courthouse and dialed his legal counsel, and a young lawyer patiently listened to the journalist's story. Soon the lawyer, Gordon Proudfoot, was arguing the case in court and MacIntyre won the legal right to inspect the documents. But the clerk who had originally denied MacIntyre access wasn't ready to admit defeat. He scrutinized MacIntyre's winning judgment and spotted a typographical error, refusing to comply with its terms until the mistake was corrected.

Before that happened, the provincial justice department appealed the decision to the Supreme Court of Nova Scotia. An interim order prevented disclosure before the case could be settled.

When the Nova Scotia higher court also ruled in favour of releasing the documents, the same clerk once again informed MacIntyre he would have to wait until the Supreme Court in Ottawa heard the case. None of this was helping him produce his item on *The MacIntyre File*, but the case had now assumed great importance in legal circles. Six provincial governments along with the federal justice department argued strenuously that information about search warrants should remain secret because investigations could otherwise be damaged. But Proudfoot and his legal team defended the principle of opening all documents to the widest scrutiny. They found a British statute from 1372, written in Norman French, saying all court documents were public. In January 1982 the Supreme Court of Canada ruled 5–4 that the information underlying search warrants should be open for inspection. Though warrants continue to be occasionally sealed, and court administrators still create problems regarding access, the ruling established an important principle and provided a tool for journalists to use. By the time of the final judgment, MacIntyre had moved to Toronto and was denied the final satisfaction of seeing how his nemesis in the Nova Scotia court office reacted to the Supreme Court's decision.[13]

Rubin, meanwhile, was busy making life miserable for access to information coordinators across Ottawa. In the first 10 years of the act's existence, there were about 70,000 requests—more than 3,000 from Rubin alone. Rubin rarely took no for an answer. He would negotiate firmly with the coordinators, bargaining for the greatest access and attempting at all times to minimize his costs. When he was met with a refusal he considered unreasonable, he filed a complaint to the Information Commissioner, and there were more than 400 in the first 10 years.[14] He didn't hesitate to go to court, taking

part in 30 federal court actions to challenge refusals to disclose information. Rubin felt that in more than half of his requests, he had been met with 'denials, delays, and creative avoidance'.[15] Discretionary exemptions in the act, which related to records dealing with advice to government, or accounts of consultations and deliberations, were so vague and sweeping that they could be applied to virtually anything a department truly wished to hide. Still, while maintaining a healthy skepticism about the act's efficacy, he always cautioned against becoming so cynical as to stop using it. Rubin built a cottage industry of mining the act for information. If a startling story based on access documents appeared in the media, more often than not the request had originated with Rubin. Among his favourite discoveries in his first decade were the following:

- Proof that pressure from lobby groups and industry was involved in changing nutritional recommendations in Canada's Food Guide.
- Documentation showing how the Canadian government, in an effort to protect the domestic asbestos industry, tried to dissuade the US Environmental Protection Agency from a ban on asbestos products.
- A ministerial briefing note showing the Pentagon had approached Ottawa to test an advanced version of the nuclear cruise missile in Canada, at a time the proposal was unknown in the country.
- Disclosure of a Transport Canada audit of Air Canada in 1988 revealing serious concerns, including careless maintenance.
- Documentation showing the federal health department ignored warnings about potential dangers of Meme breast implants, which were finally withdrawn from the market in 1992.[16]

His early successes led to more requests and more disclosures. Rubin obtained data showing serious contamination in national parks. He revealed how government had aided the sale and development of tobacco products. And he has had a hand in providing journalists with documentation for many of Ottawa's political scandals.

The political headaches caused by Rubin's activities were clear when one of his requests turned up a letter from the Privy Council Office to senior bureaucrats, asking them to consult with the Prime Minister's Office before releasing potentially embarrassing information under the access legislation. In 1986, the defence and external affairs departments had released information about the costs of Prime Minister Brian Mulroney's foreign trips, causing critics to question why he needed to pay for the travel of a maid and butler on a two-week Asian jaunt. In response, Paul Tellier, clerk of the Privy Council Office, wrote to senior officials with a clear instruction: 'Where the records being requested relate to the Prime Minister or to the operations of his Office . . . you should arrange for consultations with Dr J.A. Doucet, Senior Adviser to the Prime Minister.'[17] To Rubin, it was evidence of political interference in a process that was designed to be independent of the government in power. An even clearer case of political meddling came in Manitoba, which proclaimed its own freedom of information act in 1988. A request from the opposition Liberal caucus to the culture

department came back with a fax cover sheet inadvertently included. It was a message from the department's access coordinator to an aide for Progressive Conservative Premier Gary Filmon, setting out two options for disclosure and asking for advice on how to proceed. It was the most blatant indication yet that political considerations were paramount in deciding disclosure, not the spirit or letter of the legislation.[18]

Rubin's appeals to courts have established a number of important precedents for disclosure of information. During the 1980s, he worked with a *Kitchener-Waterloo Record* reporter to get meat inspection reports from Agriculture Canada. The battle went all the way to the Federal Court of Appeal in 1989, and they succeeded in winning fuller access to the information. Another victory came in Rubin's attempt to see board and executive committee minutes of the Canada Mortgage and Housing Corporation. After initial blanket refusals and a federal trial division's dismissal of his application to review the denial, Rubin took his case to the Federal Court of Appeal, which granted him the documents. An even more prolonged fight took place over Rubin's desire to see Transport Canada reports on a 1991 Nationair crash in Saudi Arabia that killed 262 people. After years of delays and refusals, Rubin finally argued his case in Federal Court and won, securing release of the reports that showed serious maintenance problems and deficiencies that were known to regulators before the crash.[19]

Even though Rubin found time to file thousands of requests, only a handful of journalists have ever taken up the task of asking for government data with any consistency. Statistics from 1999–2000 show media requests made up fewer than 15 per cent of all access filings.[20] Of those, many were filed by daily reporters looking for quick-hit stories on expense accounts and travel costs. 'Making freeloading politicians look foolish on the front page when they stay at expensive hotels and wear free athletic uniforms, like they did at the Salt Lake City Olympics, gets the point across', Rubin said.[21] But there needs to be more. 'Going after data, however, is not just about government waste and scandals. For me, it's about matters vital to Canadians' health, safety, and welfare.'[22]

When Michael McAuliffe of the CBC turned to the Access to Information Act in 1993, he was also pursuing an issue he considered vital to Canadian society. It stirred a deep sense of moral outrage in him, and a desire to unravel a cover-up that offended his sense of justice. It came at the beginning of April when he read a Canadian Press story quoting an article in the *Pembroke Observer* about what reporter Jim Day had seen while in Belet Huen, Somalia. Day was at the Canadian military base, reporting on Operation Deliverance, in which 900 Canadians and as many as 37,000 forces from around the world had been dispatched to Somalia to stem the effects of famine and civil war. The stated aim of the mission, which was originally under the auspices of the US and later taken over by the United Nations, was to restore order and bring assistance to the war-ravaged African country. Day was observing the Canadian contingent when he noticed an unconscious soldier being whisked from a holding cell on a stretcher. After days of stalling by National Defence, the department finally confirmed that a Somalian teenager had been detained and killed by Canadian soldiers in Belet Huen. One of the

assailants was Master Corporal Clayton Matchee, who then attempted suicide by trying to hang himself. As McAuliffe read the story, he was amazed that the teenager's death had occurred 16 March, but that no public confirmation came until more than two weeks later.

McAuliffe and other reporters jumped on the story, and the sad fate of 16-year-old Shidane Arone became major news in Canada. Arone had entered the Canadian compound and was detained by soldiers. What followed was a cruel and horrific story of unprovoked torture. The soldiers kicked and punched him, smashed him with an iron bar, applied lit cigarettes to his body, and pointed a gun at his head. The full extent of the barbarity wasn't revealed until photos of the tortured boy later surfaced. Although a number of soldiers were quickly charged with murder, there was considerable confusion and deliberate obfuscation at first. Defence officials in Canada, including the minister, Kim Campbell, claimed there had been a communication mix-up and a delay in relaying the information about the death back to Ottawa. The opposition wasn't buying that explanation, but there was no proof to the contrary. McAuliffe set about trying to determine when the news was transmitted, and who would have known. His first step was to understand how the mission in Belet Huen communicated with Ottawa. He learned that any major event would trigger the production of a document called a Significant Incident Report. Soon after the news broke, he filed an access to information request for the report into Arone's death. When he received the document in July, he knew he had an explosive story.[23]

On 13 July, McAuliffe reported that the Canadian commander in Belet Huen had sent a Telex to Ottawa with full details of the incident within four hours of Arone's death. From the note's distribution list, he could authoritatively report that 10 different people at national defence headquarters in Ottawa were aware of the information, including ministerial staff. That raised questions about exactly when the full details became known to Kim Campbell, who by now had succeeded Brian Mulroney as Progressive Conservative leader and prime minister. The report mentioned that Arone had cuts and bruises to his body, and that his cause of death was believed to be head injuries. It was the first major indication of a cover-up, and sparked further stories throughout the summer and into the fall about Canadian activities in Somalia. Dr Barry Armstrong, an army surgeon, began blowing the whistle on cases of abuse he had witnessed. There were stories about the shooting of other Somali intruders found in the Canadian compound. Videotapes of hazing activities involving members of the Canadian Airborne Regiment surfaced. McAuliffe kept on the story, continuing to break additional elements, and all the while filing more requests under the act for documentation. As other reporters came up against official stonewalling and moved onto other stories, he felt compelled to keep the pressure going. Somebody, he thought to himself, had to be the voice of the 16-year-old kid who died in a bunker in Somalia at the hands of Canadian soldiers.[24]

Twenty years earlier, McAuliffe's father, Gerald, had felt the very same urge as he documented cases of police brutality in his series for the *Globe and Mail*. McAuliffe acknowledges that growing up in the home of a relentless investigative reporter

inevitably had a profound effect on him. 'As a kid, watching my father work, I saw the moral imperative behind a lot of what he was doing. He was trying to shine some light on people who, for example, had been brutalized by Canadian police officers, and tried to expose their stories. It was difficult and occasionally dangerous work, but they were important stories for the public to know about. That resonated quite a bit. Having had that model growing up played a role when you had the death of Shidane Arone.'[25] He also observed his father's techniques in action. Sitting at the kitchen table and eating dinner, he would listen as his father conducted interviews or spoke with sources. It was an education in when to push, when to pull back, when to create some distance, and when to offer support. But in two decades, investigative techniques had changed. McAuliffe joked that his father once offered him the advice that 'whenever you're in an office, grab a fistful of paper from the garbage can next to the photocopier'.[26] It was a method he never tried. But he did engage in a more sophisticated attempt to secure documents that proved crucial to confirming details in his stories.

By the end of the summer of 1993, officials at the defence department were feeling besieged by McAuliffe's dogged reporting. They switched tactics, trying to win his sympathies by inviting him on a tour of the national defence headquarters building in Ottawa. 'Their attempt was to dazzle me a bit, take me into all the secret rooms, and make me feel I was getting a glimpse into something secret.'[27] Instead, they inadvertently revealed to McAuliffe how their systems worked and what kinds of documents they routinely generated. He asked them for a description of how a typical day unfolded, and their explanations gave him ideas for further requests. A daily morning operational briefing gave rise to a written record, and a daily executive meeting produced documents called 'DEM notes'. McAuliffe nonchalantly scribbled notes on a napkin, thanked his guests for the tour, and spent the next 36 hours writing several dozen new access requests. He delivered them all within two days, and then got a call from a public affairs spokesman who told him: 'Jesus Christ, you should see what's happening over here. It's like a bomb has gone off.'

The military was convinced McAuliffe had well-placed sources inside the department feeding him information and telling him which documents to request. Secret investigations were ordered, which McAuliffe assumed were accompanied by wiretaps, surveillance, and aggressive attempts to discover his contacts. Later it was revealed the military considered administering lie detector tests to find the leak, and they were worried the CBC was intercepting and taping cell phone conversations. In fact, he got the vast majority of his information through the front door, and largely because of his research into how the department worked. While he did have some inside sources, McAuliffe said the key to unraveling the full extent of the Somalia story was understanding the different mechanisms inside the department and the reports that were available. Later, when courts martial began, he spent a productive day in the Library of Parliament reading the army's Code of Service Discipline. It showed him how accountability was designed to work in the military, and where the chain of command ultimately led, allowing him to file even more requests.

McAuliffe learned of the existence of RTQs, or Responses to Queries, which the department routinely drew up in anticipation of questions from media or politicians. He asked for copies, a request that was to create turmoil inside the department. The turmoil turned to panic as departmental officials tampered with the documents, providing McAuliffe with altered records in an effort to mislead him about the full extent of the unfolding scandal. Later, they told him the RTQs no longer existed. What they failed to say was that the department had simply changed their name to MRLs, or Media Response Lines. It was an attempt to throw him off the trail. But the tempo of revelations continued. Officials resigned, the Canadian Airborne Regiment was disbanded, and the government convened a commission of inquiry to discover what had gone wrong with Canada's Somalia deployment.

When testimony at the inquiry revealed the alteration of records, McAuliffe suddenly became part of the story. He told commission staff he would refuse to disclose any of his sources if they called him to testify, a prospect that would undoubtedly have created a dilemma for commissioner Peter Desbarats, dean of the journalism department at the University of Western Ontario. The prospect of one journalist holding another in contempt never materialized, as the commission decided not to call him as a witness. But McAuliffe's name became a routine topic of conversation during testimony, forcing him to withdraw from covering the inquiry and into a position of observing it from the sidelines.

General Jean Boyle, chief of defence staff, offered a *mea culpa* at the inquiry for misleading McAuliffe. But he blamed his subordinates. 'You don't alter documents. . . . I've been at wit's end to understand why this happened in the first place.'[28] Boyle was on the stand for nine days, longer than any other witness, as proceedings were televised across the country. In its final report, the commission left no doubt about what it thought of his testimony. 'Boyle was described to us as a meticulous man, a micro manager, a man who was a stickler for details. It is unthinkable that a new Director General would have wished or been able to run altered documents by him without his knowledge, especially since these documents were to be the subject of release to the media.'[29] Boyle resigned. The commission said the altered documents amounted to deliberate deception, and it called the name change of RTQs to MRLs a vulgar scheme. 'The activities of DND at this time cannot be viewed as other than an attempt to frustrate the proper functioning of our access to information laws. For example, the estimate of the cost of searching for and analyzing documents subject to the first formal request established an inordinate number of hours and prohibitively high costs (413 hours and $4080). In point of fact, these documents were readily available.'[30]

In the middle of the inquiry, McAuliffe received a Michener award for his Somalia coverage. Desbarats would often look across the room and observe McAuliffe soaking in the testimony. In his diary, Desbarats reflected on the role of journalism in the entire affair. 'Commissioners and lawyers, I'm sure, have now lost sight of McAuliffe's role as we try to unravel the complexities of the story, but without McAuliffe there might well have been no inquiry at all. This great, awkward, expensive, and unwieldy mechanism that I'm now part of is very much a journalist's creation.'[31] McAuliffe was disappointed that Desbarats and the other commissioners felt the media should step aside and let the

inquiry do the rest of the work. The disappointment turned to frustration when the inquiry began spending more time examining alteration of documents than the Canadian military's activities in Somalia. Before the substantive issues could be revisited, the federal government announced in January 1997 that it was effectively invoking closure, requiring the commission to conclude hearings by the end of March and deliver a final report on 30 June, six months before the inquiry's requested extension. Desbarats called it unprecedented and outrageous, and considered resigning, but the government succeeded in putting an end to the daily revelations and embarrassments.

McAuliffe believed his early successes with access requests were critical in the development of the story, and were only possible due to the orientation of defence officials who are trained to go by the book and assess matters in black and white terms.[32] Their thinking was simple: If the requested information was covered by the act, and no exemptions applied, it had to be released. Once the awkward stories began flowing, however, exemptions began to be enforced more stringently. By the end, the stream of information had completely stopped. Researchers have pointed to the Somalia affair as a reason for a spike in access requests in later years. But McAuliffe said his success came with a price—it provided bureaucrats with lessons in more creative ways to deny disclosure in the future. His attitude towards the Access to Information Act soured. 'I concluded that it became a waste of time, I'd never be inclined to rely on it as a major investigative tool again.'[33]

McAuliffe's grim assessment was endorsed by many journalists across the country. Even the Information Commissioner, whose task is to review the operation of the act and hear appeals, saw more problems than victories. In his 2005–06 annual report, John Reid said that 'after almost 23 years of living with the *Access to Information Act*, the name of the game, all too often, is how to resist transparency and engage in damage control by ignoring response deadlines, blacking out the embarrassing bits, conducting business orally, excluding records and institutions from the coverage of the *Access to Information Act*, and keeping the system's watchdog overworked and under-funded'.[34] In 1998, the Information Commissioner began grading departments on their compliance track records. In 2005–06, not a single major department earned an A. High profile areas such as justice, foreign affairs, and the Privy Council Office were given F.

Only a handful of Canadian journalists have made sustained use of the Access to Information Act. Jim Bronskill and Dean Beeby of Canadian Press incorporated it in their daily routine, filing requests whenever they felt an underlying document or record might illuminate a potential news story. Occasionally, an access request gives rise to a groundbreaking story, as it did when David McKie and a team of CBC journalists accessed Health Canada's database of adverse drug reactions.[35] But politicians and bureaucrats have devised mechanisms to minimize the flow. Each department flags sensitive requests from the media or opposition members, referring to them with such designations as 'amberlight' or 'red files' or simply 'interesting'.[36] Research has shown that this process delays the release of information, and gives government time to draft responses before any disclosures are made.[37] While some aspects of the sponsorship scandal came to light through access requests, the civil servants in charge of the program tried

to ensure years earlier that it wouldn't be a major concern. Chuck Guité, who was eventually convicted for his role in the affair, told Parliament's public accounts committee in 2004: 'The reason we kept minimum information on the file was in case we have an access to information (request).'[38] In 2004–05, of the 25,207 requests filed under the act, a little more than 10 per cent came from the media. It seemed businesses were gleaning far better information from the legislation, as they accounted for 47 per cent of all inquiries.[39]

The doctrine of a people's right to know seems implicit in many of the theories underpinning journalism in general and investigative journalism in particular. If John Milton's self-righting principle is to work, for instance, how could truth ever enter the marketplace without a public right to information?[40] And how else would the media exercise its watchdog role without significant access to government documents? A government shrouded in secrecy might seem appropriate to monarchies and feudal regimes, but Enlightenment ideals dictated a freer exchange of ideas. Even so, the notion of enshrining these rights in legislation didn't begin surfacing until the second half of the twentieth century. Sweden was the notable exception to this process, producing an early and unique Freedom of the Press Act in 1766. But the next country to enact a similar law was the United States in 1966, and only then did many other countries begin taking action. In Canada, a persistent member of parliament introduced a private member's bill in 1965 'to better assure the public's rights to freedom of access to public documents and information about government administration'.[41] It took another 17 years until Canada's Access to Information Act finally received royal assent.

The best investigative journalists recognize the importance of written records and possess a 'documents state of mind' when it comes to their research.[42] Unlike human sources, official documents rarely lie or change their minds. They are often the smoking guns in a good investigative story. As arguably the largest repository of documents in any country, the government holds the key to many important investigations. But the complexity and bureaucratic nature of the Canadian Access to Information Act, together with a continued tendency on the part of government officials to deny access and frustrate the process, has led many journalists to underutilize the legislation as an everyday tool. There are some exceptions, and this chapter has attempted to document the kind of successes that resourceful reporters can achieve. Many of those reporters are also active in lobbying for continued improvements in access, but the process has been slow and frustrating. Still, the tool remains available for anyone to employ. Ken Rubin, for instance, has continued to file requests and use the information to advance what he calls his own form of Prairie populism.

> The act was never really intended to primarily open up government. Yet it has allowed glimpses of goings-on even though Ottawa has much data it would rather forget or at least not make public. Nobody ever said gathering access would be easy. But by making queries you can make a difference.[43]

Accessing Government Secrets

In 2005, Canadian Press reporter Jim Bronskill began investigating the controversial question of CIA aircraft activity in Canada. US media reports suggested the CIA secretly owned and controlled a number of aircraft companies, and that some were used for renditions—ferrying terrorism suspects to foreign countries where they were subject to torture. Bronskill, who routinely filed about 200 access to information requests a year, began using the legislation to see what he could discover about aircraft operations in Canada. He soon had his hands on a number of documents that led to a series of exclusive stories about CIA plane landings in Canada.

One government document, stamped secret, showed that 20 planes with alleged CIA ties made 74 flights to Canada over the previous four years. In another story, Bronskill reported that a mysterious Twin Otter plane linked to the CIA had spent four months in a small Ontario town near Sault Ste. Marie. He showed how the airplane had left Bar River, Ontario for an airstrip in North Carolina that is known to be an aviation hub for US intelligence. Then it flew to a Virginia airport not far from CIA headquarters. No one would provide any details about the plane's activities in Canada. But Bronskill continued writing stories, and filing further access requests.

Then came a disturbing, but not altogether surprising development. It was revealed that Bronskill's identity in requesting further information was apparently leaked to the prime minister's political staff, a violation of the Privacy Act. Another newspaper had requested government documents on a related issue, and came across an e-mail informing government insiders: 'Noted there will shortly be another Bronskill/CIA Planes article, as new ATIP (access to information) info is going out . . .' The identity of requesters under the act is supposed to remain confidential, but the e-mail was widely distributed to bureaucrats, including officials in the Privy Council and Prime Minister's Office. Bronskill expressed displeasure at the leak, but few journalists who use the act were surprised. Keeping close tabs on investigative journalists, and others whose requests might pry loose embarrassing information, is seen as routine by governments of all political stripes.