Using Freedom of Information Legislation

A Mock Public Hearing
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Introduction

This integrated resource is for British Columbia secondary school teachers who want to teach students about freedom of information legislation in Canada and BC.

Teaching students about freedom of information legislation is very important to democratic societies. It is also very much needed. In 1965, only a tiny fraction (0.4%) of the world’s population had the right to access information held by their governments. The implication was that the overwhelming majority of the people on the planet had no right to access information held by their government. But significant changes have occurred since then. By 2010 almost three quarters (73.4%) of the world’s seven billion people have become endowed with a right to access information held by their governments.

This dramatic change has occurred because countries all around the world have passed freedom of information legislation, which give people the right to access information held by their government or other public institutions.

Freedom of information legislation is important to having a functional democracy. According to the Supreme Court of Canada

“The overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry” (Dagg v. Ministry of Finance).

This unit is designed to provide students with a general introduction to the history and structures of freedom of information laws in Canada and British Columbia. It does so in way that is fun, that allows creativity through role-play, and allows students to debate proposals about how FOI laws can enhance civic life.

Teaching Outcomes

By engaging in a role-play of a public hearing by a municipal government, students will have the opportunity research and propose public policy. Students will also have the opportunity to witness firsthand how developing public policies can be a site of competing community interests.

During their preparation for their role-play, students will also have the opportunity to learn about freedom of information legislation and to think deeply about the relationships between municipal governments and the provincial and federal governments.

Curriculum Connections

Within British Columbia, this IRP addresses prescribed learning outcomes in the Social Studies 11 and Civics Studies 11 curricula:
Social Studies 11 – Prescribed Learning Outcomes

- Canadian politics and government
- How Canadians can effect change at the federal and provincial levels
- Skills and Processes of Social Studies

Civic Studies 11 – Prescribed Learning Outcomes

- Informed citizenship
- Civic deliberation
- Civic action
- Skills and Processes of Civic Studies

Teaching Strategies

The principal method used in this assignment is a participatory method to law-related education (Cassidy & Ferguson, 2008). This method emphasizes student engagement with real or realistic law-related problems. In this unit, students are given the challenge of deciding how a municipal government will use freedom of information legislation to benefit their city.

The unit includes multiple teaching and learning strategies, such as:
- Independent-inquiry
- Internet-based research
- Role-playing
- Oral presentations
- Debriefing through whole group discussion

Unit at a Glance

The unit is designed for three classroom sessions that can be spaced out over two or three weeks.

- **Part 1. Introduction to Freedom of Information Legislation**
  The first lesson gives students an opportunity to learn about freedom of information through independent reading and group discussion.

- **Part 2. Independent and Group Research**
  Students are assigned roles for a mock public hearing and are to do collaborative research to prepare for their roles.

- **Part 3. Role Play and Whole Group Discussion**
  Students role-play a mock City Council public hearing where a City Council is hearing proposals from local community groups on how the city should use freedom of information legislation to benefit the city. The role-play is followed by a debriefing session.
• Extension Opportunity. Independent Writing Assignments (Optional)
To ensure all students have an opportunity for in-depth learning, some independent writing assignments are suggested below.

A Note for Teachers

As explained earlier, freedom of information laws are relatively new to almost everyone in the world, including Canadians. Most teachers probably have not been given the opportunity or support to think deeply about freedom of information legislation and so might feel uncertain about the topic. Given that the right to access information is still relatively new, these feelings are likely unavoidable and so teaching these lessons are best approached with professional confidence and a spirit of shared inquiry.
Part 1: Overview of Freedom of Information Legislation

Duration

One class.

Requirements

Students are to read the handout “An Introduction to Freedom of Information Legislation” prior to the first lesson. Teachers may wish to expedite reading the article by having students engage in a “pairs reading” activity. The article can be divided into sections and students working in partner groups read through each section taking turns as each student paraphrases the section and the partners then agree on the content of a written note on the section. If teachers decide to do a “pairs reading” activity they should allow an additional class period.

Overview

This lesson calls for small group and whole group discussion based on a series of questions related to the reading the handout “An Introduction to Freedom of Information Legislation.” The reading and discussion provides a general background of the purpose, history, and structure of freedom of information legislation that students will need for the role-play.

Procedure

This lesson can be completed in one class. It is divided into two parts of equal length: small group discussion and whole group discussion.

In the first part of the lesson, divide the classroom into six stations and the students into six groups. Each group is to go to a station and discuss the station’s questions for an appropriate length of time (e.g. 10 minutes). After the time is up, the groups move to the next station. Complete as many stations as possible while saving time for whole group discussion.

In the second part of the lesson, discuss the questions and answers with class as a whole. Allow students from different groups to share their answers. To encourage discussion, note similarities and differences in their answers and ask clarifying questions of the groups.

Station 1

Do you think people in democratic societies have a right to access information held by government institutions? Why or why not? Do you think governments ever have an obligation to withhold information from people? Why or why not?
Station 2
Discuss the history of freedom of information legislation. What were the circumstances of the passing of the first FOI law? What is the most surprising or interesting thing about the history of freedom of information legislation?

Station 3
Discuss each of the four key features of freedom of information legislation. What would happen to people’s ability to access information from governments if any one of those features were not present?

Station 4
Describe the principle “access to information is the general rule and secrecy an exception.” Explain the idea of “exemptions” and “redacting”. What would happen if there were no exemptions? What would happen if there were too many exemptions?

Station 5
The federal Information Commissioner, Suzanne Legault, and the BC Information Commissioner, Elizabeth Denham, each provide key educational messages about freedom of information legislation. Summarize each message and discuss them. Do you agree or disagree?

Station 6
The Supreme Court of Canada has stated that “the overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry (Dagg v. Ministry of Finance)”

Based on the Supreme Court’s statement above, why is freedom of information legislation important? Describe five things that could happen when people do not know what their governments are doing? Describe five things that could happen when people know what their governments are doing?

Material
Handout: “An Introduction to Freedom of Information Legislation” (pages 23-31)
Part 2: Getting Ready for the Mock Public Hearing

Duration

This lesson can be done in one or more classes.

Overview

This lesson requires students to research and prepare a presentation at the mock public hearing held by a municipal government.

Procedure

At the start of this lesson introduce students to the idea of role-play then distribute the one page handout “How to use FOI Legislation: A Public Hearing at City Hall” to the students. Explain that students will be role-playing the public hearing. Divide the students into their roles and give them their role-cards.

Students should then be given the opportunity to research their roles and prepare their presentations.

Roles

Mayor and Councilors  5-7 Students

Community Groups

- Streamkeepers  3-4 Students
- Wilderness Committee  3-4 Students
- Burnaby Board of Trade  3-4 Students
- Canadian Taxpayers Federation  3-4 Students
- Progressive Housing Society  3-4 Students

Aspiring Political Leader  3 Students

Reporters  3 Students

TOTAL  26-33 Students
Materials

- Handout: “Putting Freedom of Information Legislation to Good Use: A Public Hearing at City Hall” (page 11)
- Role Cards (pages 12-19)
- Handout “Briefing Materials from the City Manager” (pages 20-21)
- Guidebook: “What information does the government have that I would want?” (32-40)
Part 3: Mock Public Hearing

Duration
One class

Overview
The purpose of this lesson is to give students the opportunity to develop their knowledge of their access rights by debating ideas about how freedom of information legislation should be used.

This lesson is divided into two parts. First, students engage in role-play of the mock public hearing. Then the teacher and students debrief the role-play through whole group discussion.

Procedure

Part 1. Role-play a Public Hearing

1. Arranged classroom and students to simulate a city council meeting (an example of a classroom layout is provided below)
2. Mayor calls the meeting to order (see handout “Script for the Public Hearing”)
3. Each community group gives their presentation
4. Mayor and City Councilors deliberate on the presentations and vote to decide which of the issues presented are going to be pursued through freedom of information. They are selecting two. At the end of their deliberation the mayor announces the decision and their reasons.
5. Journalists ask questions and comments of Mayor and City Councilors, community groups, and aspiring political leaders.

Classroom Layout

Mayor and Councillors

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Presenters

---

Observers

---
Part 2. Debriefing the Public Hearing through Whole Group Discussion

After the public hearing is over, it’s important to have a debriefing session with students.

Suggested discussion questions

• How did you feel when you were playing your part?
• Did your opinions change as you listened to others during the public hearing?
• During the public hearing how was the community advising City Council to use freedom of information legislation?
• Do you think using freedom of information legislation would benefit the City?

Present the following quote to the students:

“Government has become the most important single institutional repository of information about our society, its political, economic, social and environmental problems. In some areas, it is virtually the only significant source of information. Since such information is developed at public expense, it ought to be publicly available."

• Based on your research do you agree with this statement?
• What types of information did you discover that provincial and federal governments hold?
Extension Opportunities: Individual Writing Assignments

Students assigned to the community group roles will give oral presentations during the mock public hearing. These activities provide students with opportunities for in-depth learning. To ensure all roles have similar opportunities, some roles may need to be assigned an individual writing assignment after the mock public hearing. Suggested assignments are listed below:

**Mayors and Councilors**

Write a “Letter to the Editor” to a local newspaper. The Letter to the Editor should explain the decision City Council made. What were some of the concerns and interests of the community groups that were presented? What did you consider when deciding how you would vote?

**Reporters**

Write a news article for the front page of the local newspaper that informs the public about what happened at the public hearing. Why was the public hearing called? Who was present? What proposals were put forward? What did City Council eventually decide? If possible, get quotes from the Mayor, City Councilors, the community groups, and aspiring political candidates.

**Aspiring Political Leaders**

Write a “Letter to the Editor” to a local newspaper. The Letter to the Editor should give your opinion of the City Council’s decision at the public hearing. What were some of the concerns and interests of the Community Groups that were presented? Did you agree with City Council’s decision? If you were elected to City Council, how would have the city use freedom of information legislation to achieve municipal goals?
Putting FOI Legislation to Good Use: A Public Hearing at City Hall

A British Columbia newspaper documented an interesting example of an organization using freedom of information legislation. The article reported how the City of Burnaby used the Access to Information Act to acquire documents from Environment Canada about an investigation of a chemical spill in a local stream.

This example is interesting because it allows us to debate ideas about how we think our municipal government should use freedom of information legislation. People will have different ideas about what issues they think are important enough for their municipal governments to use freedom of information legislation. Some people may think the important issues have to do with the environment while others think they have to do with the economy, or human rights, or fair taxation.

So how can a municipal government use freedom of information legislation in a way that is meaningful? The only way this question can be answered is by debating our ideas and trying to come to some agreement.

For this lesson, you will be participating in a mock public hearing where you will debate your ideas about how you think the City of Burnaby should use freedom of information legislation.

In this role-play, the Burnaby City Council is holding a public hearing to gather ideas from the community about how the city will use freedom of information legislation to benefit the city. City Council will vote to decide which two issues it will have city staff advance using freedom of information legislation.

Journalists will be covering the public hearing and reporting what occurs back to the general public. Also in the audience will be aspiring political candidates who will carefully scrutinize the decision of City Council and may bring it up when they run City Council in the next election.

For each group that gives a presentation to City Council:

1. Explain what issue you think the city should address using freedom of information legislation.
   a. Be descriptive. Describe the issue in as much detail as possible
   b. Be persuasive. Try to convince the City Council that it is an important issue
2. What departments in the federal or provincial government have information that is relevant to your issue?
3. How would freedom of information legislation help the city address the issue?

Reference

Moreau, Jennifer (Sept 30, 2011). Why was chemical spill investigation dropped? Burnaby NOW
www.burnabynow.com/technology/chemical+spill+investigation+dropped/5481228/story.html
Role Card: The Mayor and City Council

Burnaby City Council has organized a public hearing to hear proposals from community members about what issues the City should address using freedom of information legislation.

After each presentation, the Mayor and Councilors can ask questions of the group. Once all the presentations are done, City Council will debate and vote on two issues that they think are most important for the city to pursue through freedom of information legislation. The Councilors are allowed to disagree with each other.

Local reporters will be present and will inform the public about City Council’s decision. Whichever councilor makes the best impression may get positive coverage in the news.

The next election is approaching and everyone on council is hoping to get re-elected. Aspiring political candidates will be present and may disagree with the final decision in an effort to get support from voters.

Preparing for the Public Hearing

Each City Council member will have to do research to become informed for the public hearing. Research and prepare notes that answer the following questions:

- What are some of important initiatives of the City of Burnaby?
- What ministries or departments in the provincial and federal governments affect Burnaby residents?
- How has the City of Burnaby used freedom of information laws (see suggested readings)? How else might they use it?

During the Public Hearing

- The Mayor is responsible for chairing the meeting.

Suggested Readings

www.burnaby.ca This is the City of Burnaby’s official website. It contains numerous links that describe the “Strategic Directions” of the city that can be used to determine what are important initiatives of the city.


Moreau, Jennifer (Sept 30, 2011). Why was chemical spill investigation dropped? Burnaby NOW www.burnabynow.com/technology/chemical+spill+investigation+dropped/5481228/story.html

Handout “Briefing Materials from the City Manager”
Role Card: The Streamkeepers

In Burnaby there are sixteen Streamkeeper groups that monitor and care for the local streams, creeks, and lakes. Each group is a relatively small volunteer organization that donates thousands of hours each year to keep Burnaby’s streams healthy.

For the public hearing you will be a representative from a Streamkeeper’s group.

Presentation

1. Explain what issue you, as a member of the Streamkeepers, think the city should address use freedom of information.
   a. Be descriptive. Describe the issue in as much detail as possible
   b. Be persuasive. Try to convince the City Council that it is an important issue
2. What departments in the federal or provincial government have information that is relevant to your issue?
3. How would freedom of information legislation help the city address the issue?

Suggested Reading


Moreau, Jennifer (Sept 30, 2011). Why was chemical spill investigation dropped? Burnaby NOW www.burnabynow.com/technology/chemical+spill+investigation+dropped/5481228/story.html

See also www.byrnecreek.org/links.htm
Role Card: The Wilderness Committee

The Wilderness Committee is a non-profit environmental organization that tries to protect Canada’s wild spaces and species. The Wilderness Committee has its headquarters in Vancouver and chapters in Victoria, Qualicum, Winnipeg, and Toronto.

For the public hearing you be a representative from the Wilderness Committee.

Presentation

1. Explain what issue you, as a member of the Wilderness Committee, think the city should address use freedom of information.
   a. Be descriptive. Describe the issue in as much detail as possible
   b. Be persuasive. Try to convince the City Council that it is an important issue
2. What departments in the federal or provincial government have information that is relevant to your issue?
3. How would freedom of information legislation help the city address the issue?

Suggested Readings


See also www.wildernesscommittee.org
Role Card: The Burnaby Board of Trade

The Burnaby Board of Trade is an association that plays a central role in supporting the Burnaby business community. A goal of the Board of Trade is to aid commerce and the development of businesses and industry within Burnaby’s borders.

For the public hearing you be a representative from the Burnaby Board of Trade.

Presentation

1. Explain what issue you, as a member of the Burnaby Board of Trade, think the city should address use freedom of information.
   a. Be descriptive. Describe the issue in as much detail as possible
   b. Be persuasive. Try to convince the City Council that it is an important issue
2. What departments in the federal or provincial government have information that is relevant to your issue?
3. How would freedom of information legislation help the city address the issue?

Suggested Reading


Fuller-Evans, Janaya (Feb 8, 2012). “Premier Christy coming to Burnaby” Burnaby NOW www.burnabynow.com/Premier+Christy+Clark+coming+Burnaby/6121882/story.html


See also www.bbot.ca
Role Card: The Canadian Taxpayers Federation

The Canadian Taxpayers Federation (CTF) is a not-for-profit citizen’s group dedicated to lower taxes and accountable government. It has chapters all across Canada. The CTF is concerned that governments waste taxpayers money on unnecessary or ineffective projects.

For the public hearing you be a representative from the Canadian Taxpayer Federation.

Presentation

1. Explain what issue you, as a member of the Burnaby Board of Trade, think the city should address use freedom of information.
   a. Be descriptive. Describe the issue in as much detail as possible
   b. Be persuasive. Try to convince the City Council that it is an important issue
2. What departments in the federal or provincial government have information that is relevant to your issue?
3. How would freedom of information legislation help the city address the issue?

Suggested Reading

Bader, Maureen (July 10, 2010). Tax change is sleight of hand. Burnaby NOW
www.burnabynow.com/technology/change+sleight+hand/3260438/story.html


Nagel, Jeff (April 19, 2012). TransLink property tax rates ratcheted up again. Burnaby NewsLeader

Nagel, Jeff (June 5, 2012). TransLink video info screens lashed as wasteful. Burnaby NewsLeader

Seccia, Stefania (July 22, 2011). Faregate system too costly, mayor insists. Burnaby NOW

See also www.taxpayer.com
Role Card: The Progressive Housing Society

The Progressive Housing Society is a non-profit charity in Burnaby which delivers support services to adults living with mental illness and with issues relating to homelessness.

For the public hearing you will be a representative from the Progressive Housing Society.

Presentation

1. Explain what issue you, as a member of the Progressive Housing Society, think the city should address use freedom of information.
   a. Be descriptive. Describe the issue in as much detail as possible
   b. Be persuasive. Try to convince the City Council that it is an important issue
2. What departments in the federal or provincial government have information that is relevant to your issue?
3. How would freedom of information legislation help the city address the issue?

Suggested Reading


See also: www.progressivehousing.net
Role Card: Aspiring Political Leaders

You are an aspiring political leader who plans to run in the next municipal election. You are attending the public hearing to listen to the community groups and the decision by the City Council.

Preparing for the Public Hearing

You will need to prepare your opinion on what two issues you think the City of Burnaby should address using freedom of information legislation.

1. What are some of important initiatives of the City of Burnaby?
2. What ministries or departments in the provincial and federal governments affect Burnaby residents?
3. How has the City of Burnaby used freedom of information laws (see suggested readings)? How might they use it in the future?

During the Public Hearing

Take notes about what the community groups presented and what decision the City Council made.

After the Public Hearing

You may be asked by a reporter to provide a comment about the City Council’s decision. Do you agree or disagree? What would you do if you were elected?

Suggested Reading

www.burnaby.ca This is the City of Burnaby’s official website. It contains numerous links that describe the “Strategic Directions” of the city that can be used to determine what are important initiatives of the city.

How the City of Burnaby has used Freedom of Information Legislation

Moreau, Jennifer (Sept 30, 2011). Why was chemical spill investigation dropped? Burnaby NOW www.burnabynow.com/technology/chemical+spill+investigation+dropped/5481228/story.html

Role Card: Reporters

Several reporters from a local newspaper, radio station, and a television station are attending the public hearing. Their job is to inform the public about what happens at the hearing.

You will take notes about what occurs. What community groups are presenting? What are their proposals? What happens at the hearing?

Preparing for the Public Hearing

You will need to prepare your opinion on what two issues you think the City of Burnaby should address using freedom of information legislation.

1. What are some of important initiatives of the City of Burnaby?
2. What ministries or departments in the provincial and federal governments affect Burnaby residents?
3. How has the City of Burnaby used freedom of information laws (see suggested readings)? How might they use it in the future?

During the Public Hearing

- Take notes of who presents at the public hearing. What issues are important to them?
- Take notes of what the Mayor and City Councilors say. What was their final decision?

After the Public Hearing

- Ask the Mayor and City Councilors to comment on their decision.
- Ask the community groups for their reaction to City Council’s decision.
- Ask the aspiring political leaders for their reaction. Would they have voted differently?

Suggested Reading

Seccia, Stefania (July 22, 2011). Faregate system too costly, major insists. Burnaby NOW

Moreau, Jennifer (Sept 30, 2011). Why was chemical spill investigation dropped? Burnaby NOW
www.burnabynow.com/technology/chemical+spill+investigation+dropped/5481228/story.html
Handout: Briefing Materials from the City Manager

Before the public hearing, City Council asked the City Clerk to prepare a report that outlined issues related to the city using freedom of information legislation.

To: City Council  
From: City Clerk  
Subject: Municipal Governments using Freedom of Information legislation

Briefing Report

1. Introduction  
City Council requested city staff prepare a report with details relevant to the city adopting a policy on using freedom of information legislation.

2. How the City of Burnaby has used freedom of information legislation

The City of Burnaby has used from freedom of information legislation before. For example, staff used the Access to Information Act to access the following documents from Environment Canada:

“All information pertaining to a toxic spill into John Matthews Creek and Byrne Creek, Burnaby, BC, and resulting in a fish kill; documentation in reports, memos, emails, field notes; information on charges and charges pending; information on the accused; data collected and provided and analysis; documentation regarding any problems with data; any other information that may be relevant to the incident under inquiry.”

3. How have other local governments used freedom of information legislation?

Staff has consulted with the other local governments to see how they have used FOI legislation.

The Port Moody’s City Council voted to use provincial and federal FOI legislation to determine whether the BC government had committed to a multi-million dollar transportation project that would extend into Port Moody (see attached documents).

The City Council for Coquitlam unanimously approved a motion to obtaining a copy of an audio recording from a meeting of the Metro Vancouver Board, which represents twenty-four municipal governments in the metropolitan Vancouver area.

4.0 Costs

Using the Access to Information Act requires sending a letter to the federal department that has the documents along with a $5.00 application fee. The department has 30 calendar days to respond. We can specify if we want the documents in electronic format or on paper.

To use BC’s Freedom of Information and Protection of Privacy Act city staff can send an email, fax, or letter to provincial body. No application fee is required. The provincial government has 30 business days to respond.
Sincerely,

City Manager
Attached: Example from the City of Port Moody

File: 8640-03

Ministry of Transportation
Information, Privacy and Records Branch
PO BOX 9850 STN PROV GOVT
Victoria, BC V8W 3E6

Attention Director, Information, Privacy and Records Branch

Dear Sir or Madam:

I am requesting the following records under the Freedom of Information and Protection of Privacy Act:

- any records indicating evidence of a request by the provincial government to the federal government for federal funding for the Evergreen Line and any response from the federal government to the provincial government regarding same; and

- any records indicating evidence of communication between the provincial government and CP Rail regarding the Evergreen Line alignment along CP Rail's right of way, in particular, any record indicating evidence that CP Rail has agreed to the alignment along its right of way.

Should you have any questions regarding this request, please contact me by telephone at 604-469-4520 or by e-mail at kelly.kenney@cityofportmoody.com.

Yours truly,

Kelly Kenney
City Clerk
Handout: Script for the Public Hearing

At the start of the public hearing

Mayor and council members enter the council chamber and sit at their desks. The Mayor then says:

“I am calling this public hearing to order <hit gavel>.”

“Welcome everybody. The local newspaper has recently reported how the City of Burnaby has used freedom of information legislation. Numerous people voiced concerned about whether we are using it a way that best serves the city. This public hearing is to receive opinions from the community about how the City of Burnaby should use freedom of information legislation. Thank you to everyone for attending and participating.”

“The format of the hearing is as follows: I will call each group to come forward to make their presentation. After each presentation, council will have the opportunity to ask questions of the group.”

“Once all presentations have been made, council will debate and vote on how the city will use freedom of information legislation.”

Other formalities

When a Councilor addresses the mayor, they use the honorific “Your Worship”.

When addressing a Councilor, the Mayor says “Councilor (last name).”
For all students...

Handout: An Introduction to Freedom of Information Legislation

Across from the Parliament Buildings in Ottawa is an old, Gothic structure. This rather gloomy and imposing building was constructed in the 1880s and houses the Office of the Prime Minister and the Office of the Privy Council. The most senior department in the Government of Canada, the Office of the Privy Council assists the Prime Minister and his Cabinet of Ministers. It is also one of the most secretive government departments in Canada.

An urban legend is that secrecy is such a concern at the Privy Council Office that no loose papers can be left on staff’s desks for fear they will be taken. Rumour has it that this rule is so strictly enforced that when announcements about a Christmas party were put on staff’s desks, they were promptly confiscated.

Whether or not the staff Christmas party was well attended is a mystery. But what is known is that the documents that normally circulate through the Privy Council Office are usually very important to the governance of Canada. For example, in the fall of 2011 staff from the Privy Council Office printed a set of briefing notes for the Minister of Democratic Reform. The briefing notes gave an overview of a proposed piece of legislation that would add thirty seats to the House of Commons, a proposal that would change Canadian democracy.

Imagine four months later, a high school teacher in British Columbia placing the same briefing notes on the desk of twenty-eight students in a Grade 11 class studying Canadian democracy. Their assignment: evaluate the notes, formulate an opinion on the proposed legislation, and prepare for a vigorous debate about the future of democracy in Canada.

Is a scenario like this realistic? How is it possible that a high school students could get copies of briefing notes that only months earlier had been prepared by the most secretive department in the government of Canada? This scenario is indeed possible and it can be realized by using freedom of information legislation.

Most of us have probably heard of “freedom of information legislation” at some point. Perhaps a journalist mentioned it in a news story that uncovered contentious documents and stirred up a political scandal. But it might be surprising to learn that journalists are relatively infrequent users of freedom of information legislation. So what exactly is it? This reading provides an introduction to freedom of information legislation—what it is, where it came from, how it works, and why we are lucky to have it.
What is Freedom of Information Legislation?

Freedom of information legislation refers to laws that give people an assurance they can access information held by government or public institutions. At the heart of freedom of information legislation is democracy. According to the Supreme Court of Canada:

*The overarching purpose of access to information legislation is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and that politicians and bureaucrats remain accountable to the citizenry (Dagg v. Ministry of Finance).*

In democratic societies citizens are responsible for governing themselves. Growing up in a democratic society, therefore, requires developing knowledge about our government institutions and how they affect our lives. Growing up in a democracy also requires individuals to learn how to frame issues that are important to them by considering the ideas other people have for how we should govern ourselves. We might find ourselves in agreement. But if not, then we can put forward a different proposal—“I think we should…”

Imagine what would happen to a democratic society if its citizens had to spend lots of time, energy, or money trying to access information held by their governments? People would become exhausted and frustrated or they might give up and become cynical. In either case, it would greatly depress the enthusiasm of people in society. By giving people a legal right to access information held by their governments, freedom of information legislation helps citizens keep their energy and enthusiasm up as they participate in their own governance.

When people use freedom of information legislation it also deters government officials from doing bad things. Knowing that anyone could access documents that could get them into trouble can give politicians or government employees second thoughts about engaging in misconduct.

It may seem obvious that citizens in a democratic society should have a right to information held by their governments. And it might also be tempting to assume that citizens in modern democracies have always had this important right. But for most countries in the world, including Canada, this right is actually very new.

History of Freedom of Information Legislation

In the middle ages, monarchies ruled with absolute authority over the people of Europe. People of course resisted this form authority in various ways, including all-out revolts. Over time, some groups of people formed parliaments where they gathered to advise the king on what the rules should be that affect them. In the 1500s in Sweden, the parliament had grown during the reign of King Gustav I. The parliament was comprised of four chambers, one for the nobility, the clergy, the wealthy merchants, and land-owning peasants.
During this period, printing presses were still a new technology. Although they were large wooden structures that filled entire rooms, people began to build printing presses in cities throughout Europe, including Sweden. The printed word, whether in the form of books or pamphlets, began to challenge the established authority. Fearful they might undermine him, the king of Sweden, as in other parts of Europe, censored the publishers by making it illegal to print materials on certain topics, such as criticisms of the monarchy.

By the 1700s, printing presses were busy in thousands of European cities, including Sweden. The Swedish monarchy’s power had continued to erode during the previous two hundred years and vigorous debates questioning censorship now filled the chambers of the Swedish Parliament. One of parliamentarians was Anders Chydenius, a member of the clergy and the “Cap Party.” Chydenius’ opinion was that people should have more freedom and that the government should respect people’s rights.

One of Chydenius accomplishment was writing the Freedom of the Press Act of 1766 which abolished almost all political censorship of printers in Sweden. Chydenius’ inspiration for the Freedom of the Press Act came from the sixth century Tang Dynasty of China where Emperor Taizong allowed criticism of his decisions. The Tang Dynasty was considered a period of human flourishing in Chinese history.

But a unique feature of the Freedom of the Press Act was that it also gave people a right to access certain kinds of information held by the Swedish government. In this regard, the Swedish Freedom of the Press Act of 1766 was also the first freedom of information legislation.

Sweden’s contribution to the idea that people in democratic societies have a right to information held by their governments is very important. For almost two hundred years, Sweden was pretty much the only country in the world where accessing government documents was a right. In fact, as late as 1965 only 0.4% of the people in the world had this right. But a major turning point occurred in 1966. The United States Congress passed the Freedom of Information Act, which granted everyone the right to access documents held by the US federal government. In the years that followed, other countries began to pass similar laws too. In the 1970s, Denmark, Norway, France, and the Netherlands passed FOI laws. In the 1980s Australia, New Zealand, Colombia, Greece, and Austria followed suit. And in 1982, the Parliament of Canada passed the Access to Information Act, which came into force in 1983.

After the 1980s, the rate of countries passing freedom of information laws increased exponentially. Throughout the 1990s fourteen countries passed FOI laws, as did fifty-two countries in the 2000s. Even with its numerous contributions to modern democracy, citizens of the United Kingdom did not have an active FOI law until January 1, 2005. As of the end of 2010, almost seventy-five percent (73.4%) of the planet’s seven billion people have this right.
Freedom of information laws have not only been passed at the national level, they have also been adopted at sub-national levels too. Within Canada, each provincial and territorial legislative assembly have passed their own freedom of information legislation. British Columbia, for example, passed the Freedom of Information and Protection of Privacy Act in 1992 (it became active in 1993), which allows people to access information held by over 2900 government and public organizations throughout the province.

In some way, the rapid spread of freedom of information legislation in recent decades can be thought of like the spread of the printing press in Europe in the sixteenth and seventeenth centuries as they both provide a way for people to becoming more informed. But there are some important differences too. While the printing press can be used to publish any written material, whether scientific, literary, or religious, freedom of information legislation, on the other hand, opens the inner vaults of materials held by government to the public.

What this historical overview also shows is that our legal right to access government information is still new to pretty much everyone in the world. So how does freedom of information legislation actually work?

**Freedom of Information Legislation: A Closer Look**

To explain how freedom of information legislation works, this section takes a closer look at Canada’s Access to Information Act. The pattern described applies to many other FOI laws too, although there are some differences.

Parliamentarians in the House of Commons passed the Access to Information Act on June 28, 1982 and to allow time for government departments to get ready, it became active one year later on July 1, 1983. Currently, the Access to Information Act applies to approximately 270 departments in the federal government of Canada, such as the Department of Finance, the Canadian Council for the Arts, Environment Canada, and the Privy Council Office.

Canada’s Access to Information Act does not apply to organizations outside of the executive branch of the government, such as the Federal Courts, the House of Commons, or the Senate. The United
Kingdom’s FOI law, in contrast, applies to all of the branches of government. The ATI Act also does not apply to private companies, non-profit organizations, or religious institutions.

The Access to Information Act can be thought of as attempting to limit a longstanding tradition in government called *arcana imperii* or *mystères du cabinet*. These old Latin and the French phrases mean roughly the same thing—government secrecy. Throughout Canada’s history, secrecy was a normal way for government to conduct its business. For example, in the 19th century, “clerks in the Crown Lands Department were forbidden to communicate verbally or in writing with any outsider unless they first obtained approval of their superior officers” (Hodgetts, 1955, p.48). If a farming family wanted to know what their government was planning to do to a local stream, they had no assurance that the government would tell them.

If the history of government has been one where secrecy was the rule and accessing information the exception, the Access to Information Act can be thought of as attempting to invert that arrangement. It attempts to create a framework where access to government information is the rule and government secrecy is the exception. The Access to Information Act has four features to achieve this outcome:

1. Provides people with a right to access any records held by the government of Canada,
2. Defines a procedure the government must follow when providing people with access to information,
3. Limits the right of access in (1) in specific circumstances where access would harm a public interest, and
4. Establishes a procedure for resolving conflicts between people who use (2) and the government who withhold information.

1. A Right to Access Any Records

The first feature of the Access to Information (ATI) Act is that it provides everyone who lives in Canada with a right to access any records held by the government of Canada (section 4 of the ATI Act). This is an incredible right. It unlocks all the doors, throws open all the government filing cabinets, and gives everyone the passwords to all the computers in the government of Canada!

But if we have a right to access records held by the federal government, what exactly is a “record”? The meaning is very broad. It includes various types of written documents, such as the ones below:

<table>
<thead>
<tr>
<th>Environment Canada</th>
</tr>
</thead>
<tbody>
<tr>
<td>Documents produced by the Committee on the Status of Endangered Wildlife in Canada for the Minister of the Environment (July 1, 2010 - July 1, 2011)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Canadian Space Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>List of interview requests and information requests from the media to the Canadian Space Agency from July 2006 to February 2012. Include follow up documents regarding the approval or denial of these requests</td>
</tr>
</tbody>
</table>
Privy Council Office

Records relating to messages between the Premier of BC and/or any member of her staff and the Prime Minister of Canada and/or any member of his staff/office and the Privy Council Office in reference to the Harmonized Sales Tax

But the definition of “records” is much broader than written reports. It encompasses calendars, emails, maps, employee notebooks, videos, audio recordings, entire computer databases, and even post-it notes. It includes screenshots of employee’s computer screens, even pictures on the walls of government offices, and inventories that list the model of the washing machine used at the Prime Minister’s residence (a Maytag).

With the ability to access such a vast range of materials our ideas about government can mature. Some information will challenge misconceptions we hold about our government. Some will help us better imagine the vastness of our government. And some will help us develop ideas about how our governments can improve. As our ideas about government mature so does our relationship with our government.

2. A Procedure for Providing Access

The second feature of the Access to Information Act is that it defines a procedure the government must follow to provide people with access to records (sections 6 to 11 of the ATI Act). This method is fairly simple. It starts when a person sends a letter that describes the records they want to access, along with a $5.00 application fee, to the department in the federal government that has those records. An example of such a letter is provided below.

Access to Information Coordinator
Environment Canada
10 Wellington Street, 27th Floor
Gatineau, Quebec
K1A 0H3

To the Access to Information Coordinator,

I am seeking documents through the Access to Information Act. Please send me a copy of the materials that document how Environment Canada promoted the most recent Earth Day to its own employees.

Attached is a $5.00 cheque payable to the Receiver General of Canada.

Sincerely,

In turn, the department has obligations to fulfil, such as providing the documents in thirty days, unless a valid extension can be taken.
3. Limiting the Right of Access

But does this mean that the Access to Information Act allows people to access even the most sensitive information? What about notes from a diplomatic mission in a country on the cusp of a revolution? Or what about the technical procedures the Canadian Mint uses to make $100 dollar bills?

Canadian Parliamentarians recognized that although allowing people to access information is generally in the public’s interest, in certain circumstances it can be harmful. Parliament determined that some information could be withheld in those circumstances. However, those circumstances must be defined in law and used in a very limited fashion. As a result, the third feature of the Access to Information Act is that it defines classes of information that the government are allowed to withhold. These classes of information are called exemptions. In total the Access to Information Act has eleven exemptions (sections 13-23). Some of the exemptions include:

Section 15. Information that if released could reasonably be expected to harm defence of Canada
Section 16. Information that if released could reasonably be expected to harm a criminal investigation
Section 17. Information that if released could reasonably be expected to harm the safety of individuals
Section 19. Information about a person (e.g., their home address, social insurance number)
Section 23. Legal advice given to the government

The process of withholding exempt information from a document is called “redacting.” The government is not allowed to wildly redact information. Since the Access to Information Act is guided by the principle that “access to information is the general rule and secrecy an exception”, the government must indicate the precise exemption in the FOI law that allows them to make each redaction. If the government cannot name the exemption, then there is no legal authority to withhold the information and so access must be given.

In the following image, Elections Canada redacted information citing section 19(1) (information about a person) from a report about an incident that occurred at a polling station during the 2011 federal election.

Looking at a document with lots of redactions, it might be tempting to ask somewhat cynically “What is the government hiding?” But redactions do not necessarily mean that the government has done anything wrong. The government is allowed to withhold information defined by the exemptions in the Access to Information Act. It is possible that if the information was accessed, then harm to something important, like a criminal investigation, would be caused.

4. Defines a conflict resolution procedure

If implemented perfectly, these three features would create a framework where access to information held by the government was normal (items 1 and 2) and government secrecy the exception (item 3). But nothing is implemented perfectly and sometimes people disagree with the government’s decision to withhold information.
The fourth component of the Access to Information Act is that it provides a conflict resolution mechanism. The Act establishes an Officer of Parliament who is responsible for investigating complaints that applicants raise against the government (section 54-66 of the ATI Act). If a person believes that the government did not properly follow the Access to Information Act, they can file a complaint with the Information Commissioner and ask that the government’s decision be reviewed. The current Information Commissioner of Canada is Suzanne Legault.

The Information Commissioner of Canada, Suzanne Legault

This brief overview touched on four key features of Canada's Access to Information Act. Provincial and territorial FOI laws follow a similar pattern, although each is different. For example, British Columbia’s freedom of information legislation, the Freedom of Information and Protection of Privacy Act, has twelve exemptions, it does not require an application fee, and it applies to municipal governments, public institutions, and the governing bodies of professions, such as the College of Veterinarians of British Columbia. The current Information Commissioner of British Columbia is Elizabeth Denham.

Concluding thoughts from Information Commissioners

What key educational messages would Canadian leaders in freedom of information legislation like you to know? The message Suzanne Legault, the Information Commissioner of Canada, wishes to share is:

“The right to information is a fundamental human right and we should cherish it and we should exercise it and we must not get blasé about it because when it truly counts, unless Canadians actually exercise their rights to information our governments will not be held accountable. And if our governments are not held accountable then I think that leads to a very slippery slope in our institutions. We have the framework there to allow us to do that and we have the right to use it and I think it is also our responsibility to use it” (Suzanne Legault, Nov 8, 2011)

Elizabeth Denham, the Information Commissioner of British Columbia, also has a key message:

“My key message to the public is that information is knowledge and when society makes use of access legislation we all benefit. And I think citizens learn more about how their public institutions are run and how they are allocating their resources. I think we’re very fortunate to have this legislation in this country and it is a key part of democracy” (Elizabeth Denham, Dec 7, 2011).
What these two messages emphasize is that it’s important to use our access rights. Freedom of information legislation has opened up the inner vaults of government. It changes our relationship with government by allowing us to know what our governments are doing. What matters most to you? What do you want to know?

References

Guidebook: What information does the government have that I might want?

One of the exciting parts of using freedom of information legislation is discovering all sorts of interesting materials held by governments. In some ways, it’s like digging for buried treasure. It can be surprising what will awaken our imagination or fuel a passion.

This guidebook describes a few strategies for “digging for gold” that is buried in government institutions.

Strategy 1. Use a Directory of Records

Freedom of information legislation can be thought of as a magic wand that turns government organizations into something like public libraries. Just as we are allowed to access books in a public library, we are also allowed to access records in government organizations.

While public libraries have catalogues that people can search to find books, the government of Canada publishes a directory of some of the records held in government organizations. The directory is published at www.InfoSource.gc.ca. People can browse InfoSource to see if there are any interesting documents. (Note: InfoSource lists only some of the documents held by a government organization.)

The following steps will help you navigate InfoSource.gc.ca to find descriptions of records.

* * *

Suppose you saw an interview with Canadian Astronaut Julie Payette talking about her missions into outer space and would like to learn more about the Canada Space Agency and are curious about the documents they hold.

First, go to www.InfoSource.gc.ca to bring up the InfoSource home page.
Click on “Sources of Federal Government and Employee Information.” This brings up the following page:

Clicking on “List of Institutions” will bring up a long list of all departments and ministries in the Government of Canada, like the one below.

Click on the “Canadian Space Agency”
By clicking on the “Canadian Space Agency”, the following page will be brought up.

Click on “Table of Contents” then click on “Institutional Functions, Programs and Activities.”

Clicking on the link “Institutional Functions, Programs and Activities” will bring up a list of some of the documents that the Canada Space Agency has, such as the ones below.
The page will give you a list of some of the major categories of records held by the Canadian Space Agency. Not all the records held by the Agency are listed in the catalogue but it gives a broad overview.

Strategy 2. Finding examples of what people have ordered from the Federal Government

The following steps show you how to find examples of what documents people have ordered from the federal government.

* * *

In early 2012, radio stations, newspapers, and television news shows around Canada were filled with a flurry of stories about the costs of F-35, a military jet plane the Canadian government plans to purchase.

How might we find examples of what people have ordered about the jets through the Access to Information Act?

All departments in the Government of Canada post on their websites summaries of what people have been ordering through the Access to Information Act.

The first step is to go to the Department of National Defence’s website: [www.forces.gc.ca](http://www.forces.gc.ca)
Click “Completed Access to Information Requests” to bring a page that lists the summaries:

This page shows a list of summaries of what people have been ordering through the Access to Information Act. Search the page for “F-35” to find any that matches. Here is one:

<table>
<thead>
<tr>
<th>REQUEST #</th>
<th>SUMMARY</th>
<th>PAGES</th>
<th>DISPOSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-2012-00095</td>
<td>Emails sent by Brigadier-General (retired) Gordon (Joe) Sharpe regarding Canadian Forces College from February 22, 2006 to March 24, 2006</td>
<td>Does not exist</td>
<td>0</td>
</tr>
<tr>
<td>A-2012-00079</td>
<td>For 2011, any reports, briefing notes, assessments and Memos of Understanding regarding Canadian Forces in Afghanistan</td>
<td>Does not exist</td>
<td>0</td>
</tr>
<tr>
<td>A-2011-01015</td>
<td>All communication surrounding media reports during the week of Oct 3, 2011, relating to F-35s from the Minister’s office, Deputy Minister and ADM(PA)</td>
<td>Disclosed in part</td>
<td>64</td>
</tr>
<tr>
<td>A-2011-00990</td>
<td>Briefing Note on Disposal of Surplus</td>
<td>Disclosed in</td>
<td>3</td>
</tr>
</tbody>
</table>
This entry means that file number A-2011-01015 was about the communication (e.g., emails) about media reports related to the F-35. The documents were “disclosed in part”, which means that there were some redactions. A total of 64 pages were provided to the applicant.

You can order a copy of the 64 pages by writing the Department of National Defence’s Access to Information Office at atip@forces.gc.ca and ask to be sent the documents for file A-2011-01015.

**Strategy 3. Finding examples of what people have ordered from the BC Government**

This example shows a strategy for searching for examples of what people have ordered from the British Columbia government through freedom of information legislation. It’s based on the example of the Vancouver Riots.

***

In 2011, after the Cancucks lost the Stanley Cup, the streets of downtown Vancouver erupted into a riot that gained international attention. Suppose you were interested in the Vancouver Riots and would like to know if anyone had used BC’s Freedom of Information and Protection of Privacy Act to acquire information about it.

The British Columbia Government posts what people have ordered through BC’s Freedom of Information and Protection of Privacy Act on the Internet.

The first step is to go to www.openinfo.gov.bc.ca
Click on the “Search” link to bring up a search box. Enter the word “riots” and click Search.

This will bring up a page of results, like the one below.

These results indicate that the Ministry of Public Safety and the Solicitor General, the Ministry of Jobs, Tourism and Innovation, and the Office of the Premier provided people with documents about the Vancouver Riots.

By clicking on the file number in the first column, you can download the documents that were provided.
Strategy 4. Browsing examples of what people have ordered from the BC Government

Using freedom of information legislation can be a bit like being in a restaurant with no menus “What do I order?” A strategy, described below, is to look through lists of what other people have been ordering.

* * *

The first step is to go to www.openinfo.gov.bc.ca

Click on the link “Information Releases.” This brings up a list of documents people have ordered from various ministries in the BC government.

This list indicates that the Ministry of Labour, Citizens Services, and Open Government, the Ministry of Justice, and the Ministry of Health each provided people with documents. You can scroll through each page to see hundreds of examples.

By clicking on the file number in the first column, you can download the documents that were provided.
Strategy 5. Educated Guesses

Strategies 1 through 4 require searching government websites to get ideas of what documents are available. But it’s also useful to make educated guesses. For example, suppose you were interested in a fire that occurred in your city. It’s a safe bet to assume that a local fire department would have reports about the fire. Making educated guesses about what records government institution have is a perfectly good strategy to use.
References


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