

**Getting the Most Out of Known Unknowns:
How the Access to Information Act Impacts Journalistic Practice**

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ABSTRACT

Getting the Most Out of Known Unknowns: How the Access to Information Act Impacts Journalistic Practice

Margaret Thompson

The Access to information Act (ATIA) is an essential yet inadequate piece of legislation that, in theory, helps to facilitate democratic engagement. Making use of this legislation is an essential way for journalists to hold power to account, to provide the public with newsworthy information, to illuminate government officials' decision-making processes, to verify information gained from other sources and to provide context for their readers.

Unfortunately, the challenges of navigating the ATIA pose significant setbacks for journalists. The most notable examples of these challenges include excessive delays, redactions, fees, and an inefficient complaints process. The inability to gain access to meaningful government information in a timely and cost-efficient manner deeply affects the quality of journalism that can be produced.

These practical challenges are combined with a financially strained news industry where fewer full-time journalists must accomplish more than their predecessors, with fewer available resources. There are multiple negative effects because of these issues: The ATIA is not being used to its fullest extent, the quality of journalism being produced is hampered by incomplete information, and the ability of citizens to make informed choices in the political sphere is obstructed.

This research addresses the lived experiences of journalists who navigate the ATIA as part of their journalistic practice. By drawing on original interviews, this thesis presents a thematic analysis of the most pressing issues that journalists face, as well as the most successful strategies that can be employed by journalists and the general public alike to gain access to government information.

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INTRODUCTION

The Access to Information Act (ATIA) is Canada's freedom of information law. It is a piece of legislation that grants citizens the right to access government information within set parameters and with few exceptions. If a requester is not satisfied by the government's response, they have the right to complain to the Information Commissioner and may potentially bring their grievance to court (Government of Canada, 2018).

The ATIA came into force in 1983 – Canada was one of the first countries to enact such legislation. Despite a consistent stream of complaints to the contrary (Gringas, 2012; Kazmierski, 2016). Alasdair Roberts (2006b) claims Canada successfully did so with serious consideration of what it would mean for democracy, when other countries enacting such laws were not as prudent. For example, Canada prioritized a pragmatic approach to practicing the legislation -- creating special ATI offices, training professionals to deal with requests, and developing formal procedures, among other methods. In some ways, the legislation was considered to be superior to the United States (p 117). The Canadian ATIA was seen then as a major accomplishment on the global stage, and a country's adoption of Freedom of Information laws continues to be perceived as an indicator of a healthy democracy (Roberts, 2006b).

Canadian society has changed significantly since the early 1980's. Technology has exploded in North America and around the world in a way that would be difficult for the average person to imagine even 30 years ago. The way that government works has also evolved — it has grown bigger and more complex, and there has been an increase of government partnerships with

the private sector. Due to the combination of these factors, the areas that fall beyond the scope of the ATIA have multiplied (Information Commissioner of Canada, 2015).

Any Canadian citizen or permanent resident is legally permitted to make use of the ATIA for whatever purpose. This includes businesses seeking information on their competition, politicians looking to gain on their opponents, citizens motivated by private concerns, as well as journalists seeking a scoop or context and clarity for a newsworthy story. The process of using the ATIA is seemingly simple: make a written request for information to a federal government agency and pay an initial \$5 fee. Fees may increase if responding to the request requires more than five hours of research and preparation time (Government of Canada, 2018). The government is required by law to respond within 30 calendar days, although there is sometimes a legitimate cause for a time extension. There are legal limits to what information is available to the public. Notable exemptions to accessing government information include personal information and information regarding national security, among others. If a requester is not satisfied with the federal government's response, they may file a complaint with the Information Commissioner and may potentially seek judicial review from the Federal Court of Canada (Government of Canada, 2018).

However, the existence of these laws belies their functional inadequacies. The most recent figures show that the Government of Canada received 123,421 new requests under the ATIA in 2018-2019. 8,602 requests or 7% of the total number were identified as made by the media. (Government of Canada, 2019b). The main groups that use this law are private citizens, businesses and 'accountability requesters' such as journalists, activists and political strategists (Vallance-Jones, 2017). Yet, fewer journalists regularly file access to information requests today,

due to the system's notorious shortcomings (Vallance-Jones, 2017). In both Canada and other countries, problems with ATI responses are reported as lengthy delays, heavily redacted information, government officials meddling in request responses that are outside their jurisdiction and high fees (Vallance-Jones, 2017; Roberts, 2006b; Appelgren & Salverría, 2018). Due to outdated laws and regulations, the continuing evolution of technology and spread of digital data, and increased governmental partnerships with the private sector, the areas beyond the reach of ATI laws have multiplied (Information Commissioner of Canada, 2015). This has resulted in the ATIA widely being described as stagnant and out of touch. (D. Beeby, personal communication, August 27, 2019; Gingras, 2012; Kazmierski, 2016).

Public records available about who is doing what requesting and for what purpose are sparse, these categories are assigned internally and accessible to government officials (Roberts, 2006b, p 116). Although businesses make up the main group of requesters using the ATIA, Roberts (2006b) states that requests that “seek information about policy development and research”—as requests made by journalists often do—“are more likely to receive broad public attention, and are almost always believed by officials to pose political risks for the Government” (Roberts, 2006b, p 116). Ann Rees corroborates this with her work that investigated how government officials flagged, delayed, and redacted potentially sensitive ATI requests (Rees, 2003; Larsen & Walby, 2012 pp 35-67).

Despite the fact that Bill C-58, a long-awaited revision of the ATIA reached royal assent on June 21, 2019, many problems persist. The act continues to be criticized, most commonly for habitual delays and the overuse of redactions and a backlogged complaints process. As Larsen

and Walby (2012) note: “For many requesters, particularly journalists ... delayed information becomes ‘yesterday’s news’” (p 289).

These challenges amass to pose a significant problem with how Canadian citizens can engage in democracy. In democratic countries, journalists play the essential role of the “watchdog” who holds business and government elites to account (Carroll, 2016; Hanitzsch, 2011). As Kovach and Rosenstiel (2014) write: “The purpose of the watchdog role also extends beyond simply making the management and execution of power transparent, to making known and understood the effects of that power” (p 174). If authority figures go unchecked, relevant information about how the country is being governed is not made available to the public. This affects the embodiment of other fundamental freedoms such as the ability to vote for elected officials that are purportedly acting in the public’s interest. So, the speed and quality of documents received as a result of an ATI request is of unique importance to journalists and to the public interests.

This research attempts to understand the lived experiences and tacit knowledge of journalists who navigate the Access to Information system to further their reporting. It also aims to situate Canadian journalists within the broad set of influences that impact the intersection of the Access to Information Act and journalistic practice. Lastly, this research presents strategies and best practices to aide journalists in navigating the ATIA to their advantage.

To address these issues, I conducted one-on-one interviews with 17 Canadian journalists regarding their professional experience using the Access to Information legislation to further their reporting. These interviews lasted approximately 45 minutes and were semi-structured to allow the participants to freely offer their thoughts and reflections. Interviewing was an essential

method of data collection for this study because it was primarily concerned with the tacit knowledge that journalists have acquired through their experiences. Talking to them was deemed the most effective way to understand their experiences. These interviews were transcribed, coded and thematically analyzed according to a grounded theory approach. The interview questions were structured to address the following research aims:

RQ1: How has the ATIA evolved, from 1983 to 2019?

RQ2: How does the ATIA function for journalists? How is it useful for their reporting?
What are the barriers?

RQ3: What strategies do journalists use to overcome barriers posed by the ATIA?

Chapter one presents the historical and conceptual importance of the Access to Information Act while prioritizing the considerations of journalistic practice. Although Canada's Freedom of Information law is not protected under the Charter of Rights and Freedoms, there are some thinkers that advocate for FOI laws to be legally protected as a human right, as the right to information is foundational in the expression of other rights. This chapter also addresses the importance of journalism and the role that government transparency and access to accurate information play in a democratic country. The objective of Chapter One is to lay out the conceptual foundation and significance of a properly functioning FOI law.

Chapter two shows how, in consideration of journalistic practice, the AITA has evolved in Canada since its implementation in 1983. This information was gathered from news coverage, academic literature, political campaign booklets, among other sources and was presented as a chronology. This chapter shows that there have been numerous repeated calls for the ATIA to be

reformed and modernized yet very little advancements have been made, to the disappointment of journalists and transparency advocacy groups across the country.

Following the chronology of repeated unmet calls for ATIA reform, chapter three presents the reasons why modernizing the ATIA is so difficult. These challenges include politicians presenting FOI laws as a virtue signal yet not making practical advancements towards reform, the expansion of government into the private sector, the challenges with administering the law, as well as the evolution of technology and influences stemming from broader cultural attitudes about transparency and accountability.

Chapter four presents the methodology and the thematic analysis of this present study. 17 Canadian journalists were interviewed for the purpose of uncovering their tacit knowledge of navigating the ATIA. This data was also used to situate journalists within the number of influences that impact their work and to present strategies and best practices for journalists (and others) to get the most out of their efforts while navigating the ATI system. The analysis revealed four main themes: (1) ATI and Journalists' Perceived Roles, (2) Journalists and ATI Based Challenges, (3) Concerns About the Future of Journalism and ATI, (4) Strategies that journalists have found to be effective in their practice.

Chapter five presents the main findings of this study. The main goal of this thesis is to understand the challenges that journalists face while navigating the ATIA and to present effective strategies that may prove useful to others approaching the field. My hope is that these results will help to further ATI-based reporting across Canada and will contribute to a larger conversation on the importance of journalism and civic responsibility. It is also my hope that these findings will contribute to advocacy efforts for improved FOI legislation.

CHAPTER 1

Historical and Conceptual Importance of the Access to Information Act

The Access to Information Act came into force in 1983. Before this time, the Canadian government was responsible for deciding what information could be made available without any recourse from the public. Larsen and Walby (2012) note:

The ATIA offered the only challenge other than the courts to the otherwise absolute powers of the executive branch to determine which records remain confidential. It did so by forcing the release of requested information based on the law, rather than depending on the goodwill or political agenda of government officials. (p 41)

Prior to the ATIA, the government had no legislated responsibility to its citizens to state what information existed, let alone to detail which documents were kept out of reach (Larsen & Walby, 2012, p 45; Kopyto, 1980). These rules originated from The Official Secrets Act – the legislation regarding national security, which was exported to Britain’s colonies and implemented in Canada in its first iteration in 1890 (Cohen, 2006). Larsen and Walby (2012) claim that The Official Secrets Act was used to repress political dissent and public embarrassment by making higher ranking government officials swear an oath to secrecy (p 43). Although the Security Information Act formally replaced Canada’s Official Secrets Act in 2001 (Government of Canada, 2003), the Access to Information Act codified the secrecy of documents away from public view in the form of ‘Cabinet Confidences’ (Larsen & Walby, 2012, p 45). Alasdair Roberts (2006b) reports that in 1980, Minister Francis Fox, an optimist about the

potential effects of the ATIA, said the act would “bring about a very major change of thinking within government”:

Simply put, the bill reverses the present situation whereby access to information is a matter of government discretion. Under this legislation, access to information becomes a matter of public right, with the burden of proof on the Government to establish that information need not be released. (p 118)

On the global stage, Canada was one of the first countries to implement such a law, which fundamentally changed the way the Canadian public engages with government information. Dean Beeby, a long time Canadian journalist and expert in the ATIA, states that the Access to Information Act was intended to “give citizens the right [to ask for information] and not be dependent on government decisions about what to release... it was revolutionary. We the people had the ability to pull documents and not just accept what documents were pushed out to us by any government” (D. Beeby, personal communication August 27, 2019).

Canada has been considered a democracy since confederation in 1867 (Parliament of Canada, n.d.) however, the ATIA enhances the opportunity for a more significant engagement with the democratic process by allowing the public to demand information from the government. Anne-Marie Gingras (2012) writes “information is considered vital to democracy” (p 223) and reminds the reader of the 1997 *Dagg v. Canada* case (Minister of Finance), where Justice LaForest wrote:

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. Canada* (Minister of Finance) [1997] 2 SCR 403, as cited in Gingras 2012)

Freedom of Information laws support democracy in two main ways: (1) they are a foundational element in the embodiment of other fundamental human and democratic rights and

(2) they aide journalists in their ‘watchdog’ role of holding power to account (Carroll, 2016). In Canada, journalism’s contribution to democracy extends beyond employing the ATIA to help fulfill the ‘watchdog’ role – there are other meaningful roles it fulfills as part of its democratic function which, overall, have the effect of nurturing a more democratically concerned citizenry.

Section two of the Canadian Charter of Rights and Freedoms protects ‘fundamental rights’ such as the freedom to thought, belief and expression. This section also applies to the press: “Since the media are an important means for communicating thoughts and ideas, the Charter protects the right of the press and other media to speak out” (Government of Canada, 2019d). The right to vote in Canada is considered a ‘democratic right,’ and it is protected under section three of the Charter. Despite being instrumental in the expression of these fundamental rights, the right to access government information is not protected under Canada’s Charter of Rights and Freedoms. The argument that freedom of information (FOI) should be considered a fundamental right was briefly discussed in the media prior to the implementation of the ATIA. In an article published in *The Globe and Mail* on August 12, 1980, Harry Kopyto quotes the Canadian Bar Association as saying that, “Access to information is a prerequisite to other fundamental rights and freedoms and, without such access, our other rights lose much of their meaning” (Kopyto, 1980). Yet, as Larsen and Walby (2012) note, “ATI was not enshrined as a Charter right of citizens that would be forever guaranteed, however. Instead, and perhaps as a result, the law has been resisted and undermined by successive governments since it was introduced” (p 38).

According to Birkinshaw (2006), FOI laws are primarily “instrumental in realizing other human rights” and secondarily, “intrinsically important in establishing what governments do on our behalf and in our name” (p 179). He claims that Freedom of Information laws should be protected as a human right alongside freedom of speech and access to justice, among others, because of this unique twofold value (p 179). He maintains that FOI laws guarantee transparency and access to government information, which are widely seen “as remedies for the deficiencies and operations of government when government claims to be democratic but falls short of its rhetoric” (p 183). If a citizenry cannot ascertain what a government does and does not do on its behalf, the democratic process will likely weaken. Birkinshaw explains that FOI laws are intrinsically good because they foster trust between the citizenry and the government. They are also instrumentally good because they are foundational in the proper expression of other fundamental rights guaranteed in a democracy (2006, p 203). As he aptly states, “what is the value of freedom of speech if people are badly informed; if they lack the information base to make sensible, intelligent or accurate judgments on which to express ideas or to make statements of fact” (Birkinshaw, 2006, pp 203-204).

Cheryl Ann Bishop’s (2012) strongest argument for advancing the position that FOI ought to be considered a human right coincides with Birkinshaw’s argument outlined above. She presents the ‘Freedom of Expression’ argument, which rests on two main tenets. First, access to government information is essential for a citizenry to ensure proper self-governance: the public requires accurate and readily available information in order to participate in democracy. Second, access to government information is required for good governance: the public requires information to hold the government to account (p 195). Together, these rationales “provide a

strong association between democratic governance and access to information” (p 206). This argument is also significant because it explicitly protects the media’s right to information because of its ability to make information accessible to the public (p 196). Anne Marie Gingras (2012) supports the ideals of self-governance and good governance asserted by Bishop. She reminds the reader that voting for elected officials is also considered a fundamental democratic right which requires access to government information. She writes “democracy relies on citizens’ capacity to express themselves, to choose and to vote, but this capacity would be useless without substantial information” (Gingras, 2012, p 223). Without an accurate information base, the democratic right to vote becomes a meaningless charade.

The ‘Freedom of Expression’ argument in favor of advancing FOI as a human right is recognized by some governments around the world and is widely supported by NGOs (Bishop 2012, p 194). Bishop (2012) states that NGOs can be very influential in the creation of soft law¹ and are often responsible for monitoring state performances, particularly with human rights (p 17). The Commonwealth Human Rights Initiative, for example, is an NGO that advocates for FOI laws to be accepted as a fundamental human right and has most recently been successful in advocating for the implementation of an FOI law in Ghana 2019 (Commonwealth Human Rights Initiative, Africa Office, 2019). Worth noting, however, is that this argument also implicitly encompasses three other distinct rationales in favor of advancing FOI as a human right, which Bishop (2012) presents individually. These arguments are listed as: (1) the ‘Information and Privacy Conceptualization’– the right to privacy and the right of citizens to know what personal information the government has collected on them and to correct it if necessary, (2) the ‘Right to

¹ Soft laws are not usually legally binding and are most often found in the context of international law. For example, many declarations and resolutions made by the United Nations are classified as soft law.

a Healthy Environment Conceptualization’ – the idea that a healthy environment is intrinsically connected to human rights. Knowledge of environmental concerns is required as a foundation for other basic human rights to be expressed, and (3) the ‘Right to Truth Conceptualization’ – this is most strongly situated within the framework of human rights abuses. Governments are obligated to make factual information available for families, next of kin and society at large about any information it has of such events. Bishop acknowledges that these three lesser arguments are implicitly encompassed within the ‘Freedom of Expression’ argument and may be best presented under that umbrella, because “it is the most broadly recognized by the human rights community, it is the most clearly articulated, and it encompasses many of the strengths of the other conceptualizations” (p 204).

One of the main ways that politicians and bureaucrats are held accountable to the citizenry is through the profession of journalism in general, and investigative journalism in particular. The press as an institution was intended to act as a “watchdog” on those in power (Carroll, 2016). As Erin Carroll (2016) states, the founding fathers of America carved out an essential role for the press in America’s democratic landscape. She writes, “since its inception, our democracy has relied on the press to act as a fourth estate—to be both a facilitator of the marketplace of ideas and a watchdog” (2016, p 200). In the western world, journalists are united in their profession through a commitment to public service, objectivity, and autonomous, ethical and immediate reporting (Deuze, 2005). According to Thomas Hanitzsch (2011), the ‘detached watchdog’ is “the most ‘prototypical’ milieu of the western journalist” (p 485). This is to say, the ‘watchdog’ role that journalism plays — to hold government and business elites to account — is one of the most important roles and is a central component to journalism in the western world.

Kovach and Rosenstiel (2014) note that “the purpose of the watchdog role also extends beyond simply making the management and execution of power transparent, to making known and understood the effects of that power” (p 174). Without the ability to access meaningful government information in a timely manner, journalists are seriously impeded from performing their professional duties. If authority figures go unchecked, relevant information about how the country is being governed is not made available to the public. So, the speed and quality of documents received as a result of an ATI request is of unique importance to journalists and to the public interest. Kovach and Rosenstiel (2014) point to lessons learned throughout history: the importance of journalism is “watching over the powerful few in society to guard, on behalf of the many, against tyranny” (p 174).

Michael Schudson (2008) suggests that journalism is most strongly connected to democracy when it advocates for “liberal and constitutional values” (p 24). He admits that this is a strenuous and ambitious task to accomplish, yet he proposes that “greater sophistication about representative democracy should lead journalists to cover more carefully some institutions and relationships that today they take for granted or ignore” (p 24). Schudson (2008) acknowledges that journalism is already serving democracy by performing the ‘watchdog’ role and making “full and fair information” (p 12) available to the public. In addition, he states that journalism also serves democracy in other meaningful ways. According to Schudson (2008), journalism can facilitate a sense of social empathy among the audience, which opens up the viewpoints of others, especially those of the marginalized, for the public to appreciate. It can create a public forum to discuss the varied perspectives of the public, and it can present the opportunity for mobilization, which is to say, it facilitates the ability of journalists to advocate for particular

perspectives (p 12). These three functions—social empathy, public forum creation and mobilization—can be grouped together to show how journalism facilitates a two-fold connection which has been proven to further democratic engagement – a connection called ‘care.’

Caring – about public life and the consequences of decisions made by public officials – results in two intertwining outcomes which are required for a strong democracy: (1) Caring nurtures social cohesion and community and (2) it is a motivator to participate in civic responsibilities.

The mere existence of local news has been proven to fortify communities by increasing feelings of fellowship and connection among members—a connection that Friedland (2001) says is a necessary condition for democracy. He states, “communities in which there are rich, cross-cutting networks of associations and public discussions are more likely to formulate real problems, find solutions, apply and test solutions, learn from them, and correct them if they are flawed: in short, to rule themselves, or work democratically” (p 360). Masahiro Yamamoto (2011) was able to quantify the positive influence that accessible local news has on a community. He concluded that “community newspapers foster a sense of social cohesion by promoting community values, interests and solidarity” (p 29). Simply having access to local news increases feelings of care among individuals in regard to their community, which in turn, improves a necessary condition for a strong democracy.

Access to journalism also helps to motivate the public to participate in civic and democratic responsibilities. A 2011 study by Matthew Gentzkow, Jesse M. Shapiro, and Michael Sinkinson (2011) shows that access to newspapers increases political participation. Another

study by Lee Shaker (2014) indicates that the inverse is also true – the decline of civic engagement can be attributed to the closure of local papers. The presence of local news bolsters the motivation to engage in civic life. The news helps to illuminate how and why events affect individuals in their life, community and country the way they do, and points to how to prepare, react and engage accordingly. Access to news increases a sense of care which motivates the public to engage in civic responsibilities.

These aspects of journalism help to nurture a greater public culture of accountability and transparency. According to Ester Applegren and Ramón Salverría (2018), “law is not enough to secure public transparency. Besides legislation, a society must share a culture of accountability, observed both by the citizens and their public servants” (p 994). As Ken Rubin states, “we cannot have a right to know without citizenry who value their rights to freedom of expression and have a critical desire to inform and be informed” (“The myth of access to information”, 2011). Without the contributions of journalists to the public sphere, meaningful information about public life would likely be lost, alongside the care for community and motivation to engage in civic duties, which would result in the slow disintegration of democracy.

It is important to note that access to government information alone is not adequate to inform or motivate the public. Journalism is essential for translating raw data into meaningful, coherent and consumable information. As one example, Jamie Brownlee and Kevin Walby (2015) refer to WikiLeaks, whose mass dumps of unmitigated government documents into the public sphere garnered a lot of attention, starting in 2006 (pp 8-9). Yet, due to the sheer amount of information, much of the content contained in the leaks did not reach the public in a meaningful way, despite the fact a group of five international newspapers took responsibility to

make some of the information meaningful (Zittrain & Sauter, 2010). The importance of transparency and access to government information does not rest on the release of documents and information alone. Anne-Marie Gingras writes “in a context of information abundance and over-specialized public relations management, citizens rarely make personal and original judgments on public policies but rely on intermediaries to help them form opinions. Mediation – conceived of as an intermediary structure that supplies framed conceptions of anything political – is thus fundamental in any democratic system” (Gingras, 2012, p 228). Without journalists to sift through, interpret and make information understandable for the public, to show what is meaningful and what is worth caring about, information by itself has little impact.

Transparency, Access to Information and Democracy

The ATIA grants citizens the right to access government information, which is to say, through the release of information, the ATIA offers citizens a certain amount of government transparency. However, the overlapping concepts of transparency and information combined with the duty of journalists to gather, filter and interpret this information is complex and requires closer inspection.

Transparency is a term that emerged in the 18th century and was used as a synonym for ‘publicity’ (Spahiu, 2016, p 20). Since then, as Michener and Bersch (2009) state, it has evolved in conceptual complexity and practical use to the point where there is a complete “absence of ‘any collective empirical understanding’ of transparency” (as cited in Holman, in press, p 2). Rather, there is an easy conflation of terms, such as ‘transparency,’ ‘openness’ and ‘information’

– the idea of transparency is considered to be something of a ‘conceptual muddle’ (Spahiu, 2016, p 32). Birkinshaw (2006) claims “access to information is a component of transparency” and explains in practical terms that “it means keeping observable records of official decisions and activities (for subsequent access)” (p 189). He also states:

Transparency includes the provision of reasoned explanations for decisions, the giving of adequate reasons when power affecting the public weal or individuals is exercised in a negative or positive fashion. It also means making processes of governance and lawmaking as accessible and as comprehensible as possible – to simplify them so that they are more easily understood by the public. Complexity, disorder, and secrecy are all features that transparency seeks to combat. (Birkinshaw, 2006 pp 189-190)

For the purpose of evaluating access to government information, Sean Holman (in press) defines transparency as “a condition that lets an observer sense (i.e. see or hear) what would otherwise not to be sensed and to do so themselves rather than via an intermediary” (p 2). This definition allows Holman to bridge “classical democratic, traditional economic and psychological theories” (p 3) in an effort to explain that information serves as the currency of democracy (p 4) and has two primary values: “the first being cognitive; and the second being emotional” (Holman, in press, p 3).

The cognitive value of information grants the public the ability to choose more wisely about everything, from government leadership to the marketplace (Holman, in press, p 3). The importance of the cognitive value of information “was not just seen as a means to make decisions and make better decisions. It was ultimately seen as a means for individuals to exert personal, economic or political control, especially over powers that threatened to control them” (Holman, in press, p 4). Holman adds that the certainty felt as a result of experiencing the cognitive value

of information is inevitably emotional, however this is only a derivative feeling (p 5). Most importantly, for information to adequately fulfill its cognitive value, it must be true.

The second value that information has in a democracy is emotional. Feelings described as distress or curiosity occur when a situation arises that illuminates a gap in knowledge or understanding. As a result, information is sought out to alleviate these feelings (Holman, in press p 4). There is one essential caveat about information filling this emotional gap: the information does not have to be true. Holman clarifies this by saying, “from an emotional standpoint, information does not have to be defined as something that is truthful, which would be the case when we discuss its cognitive value. After all, as Mock (1999) states, if information was not in “accordance with fact or reality” (Truth, n.d.) we would not be able to make better decisions with it. Instead, from an emotional standpoint, information can simply be something that provides certainty” (as cited in Holman, in press, p 5).

So, in an ideal democratic context, meaningful and accurate information that is sought out by the public will be granted by the government and will fulfill the primary cognitive value of its citizens: empowering them to make better decisions on a range of concerns and offering the potential to check the governing powers that influence their lives. In a less-than-ideal democratic context, the public will seek out information to resolve the emotional discomfort associated with ‘a gap in understanding’. However, instead of being provided with information that is true, the government turns over information that only provides an explanation, fulfilling the emotional value that information plays in a democracy. However, because in this scenario the information

is not true, the public will not likely accurately understand their surroundings which will negatively affect their ability to make good decisions in their lives.

The second scenario is deeply problematic because without the requirement of providing accurate, meaningful and timely information to the public, the government can engage in what Harry G. Frankfurt calls ‘bullshit.’ In his 2006 book *On Truth*, he writes, “bullshitters, although they represent themselves as being engaged simply in conveying information, are not engaged in that enterprise at all. Instead...[they]are attempting by what they say to manipulate the opinions and the attitudes of those to whom they speak” (Frankfurt, 2006, pp 3-4). Frankfurt states that the reason ‘bullshit’ is dangerous and deplorable is because information is shared with the deliberate purpose of persuading and manipulating. In his book entitled *On Bullshit*, he goes on to say:

The realms of advertising and of public relations, and the nowadays closely related realm of politics, are replete with instances of bullshit so unmitigated that they can serve among the most indisputable and classic paradigms of the concept. And in these realms, there are exquisitely sophisticated craftsmen who — with the help of advanced and demanding techniques of market research, of public opinion polling, of psychological testing, and so forth — dedicate themselves tirelessly to getting every word and image they produce exactly right. (Frankfurt, 2005, p 22)

Without a legal requirement, such as an FOI law, to provide accurate and meaningful information to the public at their request, the government is positioned to disseminate information meant to manipulate and persuade, if it so serves its purpose. If over time, the connection of information and truth is not respected, information as the currency of democracy becomes threatened (Holman, in press, p 25). A political climate that presents and accepts information that is not true, but that offers certainty, will begin to cultivate “the seduction of authoritarianism, as well as the spurning of democracy” (Holman, in press, p 25).

Gingras (2012) also considers the dual role that information plays in a democracy. According to her, there is an “enduring tension” (p 222) between the democratic purpose of information which increases transparency and facilitates democratic engagement and information’s strategic value, which is often associated with propaganda and political manipulation. These roles exist alongside each other, at once motivating political officials to advocate for increased transparency, while simultaneously building and benefiting from government structures, which increases secrecy. Gingras reports that although the ‘darker’ side of information is not often discussed in academic circles, it was addressed in the House of Commons prior to the implementation of the ATIA in 1983 (p 224) and continues to be wielded regularly by elected officials in the Canadian government.

In the documentary film *What is Democracy*, director Astra Taylor (2018) interviews several experts about the varying iterations and manifestations of democracy throughout the course of history. In one interview, philosopher Eleni Perdikouri states a recurring problem: “How do you make a democracy out of an undemocratic people? That is our problem today.” According to Holman, it is not only a problem that a government may be inclined to disseminate information that is not accurate; it is also a problem that the public is satisfied by such misinformation. There are numerous examples to point to over the course of Canadian history where the role of information has contributed to a faltering democracy, such as the tainted blood scandal² in the 1980’s or the Somalia Inquiry³ in the 1990’s (Roberts, 2006b, pp 128-129).

² In the 1980’s, approximately 2,000 Canadians were infected with HIV and approximately 30,000 Canadians were infected with hepatitis C as a result of tainted blood products. (“A Look Back at Canada’s Tainted Blood Scandal” 2013). After receiving an access to information request, government officials destroyed tape recordings and transcripts regarding how to manage the public health crisis (Robert, 2006b, p 128).

³ In 1993, two Canadian soldiers brutally murdered Somali teen, Shidane Arone, while in the country on a peace keeping mission. In 1996, key government documents regarding the incident had been altered and deleted after a

Larsen and Walby (2012) remind the reader that “the PMO has become a partisan public relations operation more inclined towards managing the message as a means of promoting its own political interests than towards providing meaningful information that promotes the public’s interests in scrutinizing government and holding it to account” (p 63).

There is a need for increased government transparency and improved Freedom of Information Laws for journalists to do their democratic duty: to hold power to account, to inform the public and to assist in facilitating democracy. Yet, it is important to note that government transparency must be appropriate and balanced to ensure no harm is done by releasing too much information. Michael Schudson (2015) lists some important considerations in support of curbing the release of government information. They are stated as: (1) human survival — national security concerns legitimately require non-disclosure; (2) supporting political democracy – a secret ballot box allows people to vote without pressure, secrecy allows whistle blowers to reveal documents without reprisal, secrecy can be beneficial to government deliberations; (3) protecting vulnerable people – activists have a right to privacy, especially where they might be targeted for their work; (4) maintaining civility in social interaction – complete transparency between people is not desired or called for. Personal privacy is a value that helps to facilitate social relationships; and (5) enabling human dignity – personal privacy is important to human flourishing and it protects the information shared in intimate relationships (Schudson, 2015, pp 274 – 276). In spite of these legitimate considerations where secrecy is required to prioritize the safety, privacy and well-being of others, journalists and government transparency advocates most often find that the

journalist, Michael McAuliffe, filed an access to information request. Information about Arone’s death resulted in outrage across Canada and a major inquiry (Fisher, 1996).

government is not usually balancing these priorities. Rather, they are shifting the scales towards secrecy to suit their own purposes (Larsen & Walby, 2012 p 39).

So, under the circumstances where political officials regularly and simultaneously employ information as a means of democratic engagement while engaging in practices that optimize secrecy, what are the ways a healthfully functioning democracy can endure? Canada's FOI law, the Access to Information Act, is tangentially protected under the right to Freedom of Expression in the Charter of Rights and Freedoms -- Although many consider the right to access information fundamental in exercising other democratic rights and some argue for FOI laws to be considered a human right, it is not formally protected as such in Canada. Despite this, journalists from across the political spectrum are invested in wringing out factual information from those in power. It is journalists that are tasked with filtering truth from political spin and interpreting meaning from data for the public to understand, care about and act on. By performing their 'watchdog' role in spite of the efforts of politicians to undermine the profession and the public for political gain, journalists are consistently striving to present accurate and timely information to create a public forum, embrace social empathy and mobilize citizens to make informed choices. In short, journalists both participate in and facilitate democratic goals by holding power to account, and nurturing community and social connection to help create a broader culture that cares about democracy. So, what is the response to philosopher Eleni Perdikouri's complex question, "How do you make a democracy out of an undemocratic people?" One undeniable part of the solution is journalism.

CHAPTER 2

The Evolution of the ATIA in Canada

This chapter presents the historical evolution of the ATIA which privileges the perspective of Canadian journalists. This information was gathered from various sources, including academic literature, news coverage and political campaign booklets, among other sources and was assembled by myself. The chronology of the ATIA for a journalist's perspective is important to understand because it provides a historical context for the depths of challenges and frustrations that journalists feel while navigating the act in 2020. Please refer to appendix 1 to view this information, and more, in a concise 'time-line' format.

A number of critics and commentators claim that Canadian governmental transparency has been slowly eroding since ATI legislation was first enacted 36 years ago (Kazmierski, 2016). Susan Legault, Information Commissioner from 2009-2018, stated in a public address: "In 2013 the federal *Access to Information Act* will be 30 years old. Since 1977 there have been about 30 attempts – all fruitless – to reform or modernize it" (Parliament of Canada, 2012). As Larsen and Walby (2012) note, "the bureaucracy has had nearly thirty years to get this right, and the fact that it has struggled so much is a measure of the difficulty of the task at hand" (p 310). The fact that the ATIA has not been meaningfully reformed or modernized belies the efforts made by journalists, transparency activist groups and political officials. These groups have been instrumental in galvanizing reform efforts, yet their requests have not been heeded.

Canadian access to information legislation was proposed around the same time that the United States' FOIA came into effect. The Access to Information Act was presented in its first form as a Private Member's Bill in 1965 (Rosner, 2008, p 196; Larsen & Walby, 2012 p 5). Despite reports in the press that such a bill would be good for democracy ("It is the public's business", 1965), it did not progress for close to two decades. Significant events on the Canadian political landscape, mainly the changing of lead political parties, prolonged progress -- a common obstacle for implementing such legislation (Worthy, 2017, p 1). The 1970 October Crisis⁴ also lead to significant delays, it wasn't until 1983 that Pierre Trudeau's Liberal government brought the Access to Information Act into force (Larsen & Walby, 2012, p 8).

Yet, even before the act fully came into effect, there were rumblings in the press that the ATIA would not be robust enough. Cabinet confidences, the window into the inner workings of high-ranking government officials, were rumored to be excluded from public view (Rowat, 1981) and they continue to be today (Information Commissioner of Canada, 2019b). Mike Larsen and Kevin Walby (2012) note that this provision prevents public scrutiny from those in the highest Canadian political office. They quote John McCamus, who situates these laws among "the most secretive executive privilege rules to be found in the western world" (Larsen & Walby, 2012, p 41).

⁴ On October 5, 1970, the radical Quebec separatist group Front de Libération du Québec (FLQ) kidnapped two politicians and demanded the federal government release 23 inmates who the FLQ claimed were political prisoners. This prompted then Prime Minister, Pierre Elliot Trudeau, to invoke the War Measures Act, which lasted approximately one month. The crisis ended with the death of one of the kidnapped politicians, Pierre Laporte and the arrest of FLQ members ("The October Crisis", 2001).

It wasn't long before the press began reporting on the limitations of the act after it came into force. In one instance, *The Globe and Mail* reported that fees were so high that they prohibited access to the information they were supposed to grant ("Ottawa's access fee too costly, MP says", 1983). In another instance, an article from the same paper lamented the exclusion of cabinet confidences from public view ("Access to Cabinet files a discarded Tory goal", 1984). Anne-Marie Gingras (2012) states that full and robust implementation of the ATIA was hindered because of administrative concerns and the prioritization of government secrecy (p 221).

However, the few years following the law's enactment have come to be considered by some journalists as the golden age of accessing government information (D. Beeby, personal communication, August 27, 2019). Despite cause for complaints, some journalists were successfully exploring how the ATIA could be used to support their journalistic practice. While being interviewed for this study, Dean Beeby remembered: "Even though we would not have said so at the time, there were many more successes than failures" (D. Beeby, personal communication, August 27, 2019). Beeby attributes this to government officials cautiously erring on the side of transparency. "Bureaucrats were handed the act and told to make it work...I think there was a type of skittishness on the part of bureaucrats that they better not be seen as thwarting this act, they better be seen as fulfilling the demands of the law" (D. Beeby, personal communication, August 27, 2019).

According to policy makers, freedom of information laws are notoriously difficult to enact in their most robust form because of the potential to expose and embarrass political rivals

(Savoie, 2003, p 51). On a national level, the implementation of the Access to Information Act was perceived as “Trudeau’s gift to Mulroney. That is, Trudeau would not have to live with the consequences of the legislation produced by his government, but his successor, Brian Mulroney, would” (Savoie, 2003, p 49). In spite of this consideration, no amendments were made to specifically weaken the act. Rather, the inaction to meaningfully amend and modernize the act by Mulroney and all other subsequent federal leaders since, has resulted in a poorly functioning piece of legislation that has become an increasingly ineffective tool for holding power to account.

In 1987, under Mulroney’s Conservative government, Solicitor General James Kelleher tabled a unanimous report in Parliament called *Open and Shut: Enhancing the Right to Know and the Right to Privacy*. It presented over 100 recommendations required to improve the act. Some of these same recommendations have been repeatedly called for and are still relevant more than 30 years later. For example, the report recommended that cabinet confidences be subject to an ‘injury test,’ which would require information requested from cabinet offices to be evaluated and released if deemed to be in the public interest. Other recommendations included the removal of fees and increased power for the Information Commissioner. None of these recommendations were implemented at the time (Parliament of Canada, 2012) and many of these requests are still being asked for today (Information Commissioner of Canada, 2019a).

It wasn’t until the aftermath of the Somalia Affair that the ATIA was modified. In 1996, CBC journalist Michael McAuliffe filed an access to information request to the Department of National Defense regarding the brutal murder of a Somali teen while in the custody of the

Canadian Forces. In an attempt to suppress evidence and manage public outcry, General Jean Boyle responded to the request with falsified documents (Commission of Inquiry into the Deployment of Canadian Forces to Somalia, 1997; Fisher, 1996; Rosner 2008, pp 191-195). Thanks to McAuliffe's dogged reporting, the full extent of the events in Somalia, as well as the ensuing political cover up by Canadian officials, were brought to light. As a result, Bill C-208, an amendment that states it is illegal to change or falsify documents, was passed. According to McAuliffe however, "success came at a price – it provided bureaucrats with lessons in more creative ways to deny disclosure in the future." Creative ways, such as ignoring response deadlines, redacting embarrassing information, and excluding records and institutions from the purview of the act, among other strategies. Because of this, he later concluded that using the Access to Information Act to gain access to public documents was a waste of time (Rosner, 2008, p 195).

After the 9/11 terrorist attacks in 2001, the United States constricted the flow of information available to the public, and Canada followed suit (Larsen & Walby, 2012, p 34). In the name of protecting national security, the Anti-Terrorism Act was passed roughly a month after the attack. As Dean Beeby recalls, journalists accepted the change in legislation without very much hesitation: "[J]ournalists weren't fighting that very hard. It was a scary time for everyone and somehow security seemed to trump other concerns in the immediate aftermath of 9/11" (D. Beeby, personal communication, August 27, 2019). As time has passed however, critics claim this amendment has been used to create an overwhelming suppression of information disclosure and government transparency. Ann Rees claims that security laws "have been appropriated by the government in order to challenge disclosure laws and expand the scope

of secrecy laws” (as cited in Larsen & Walby, 2012, p 61). When issues of national security are dominant, issues regarding freedom of information are often left behind. William de Lint and Reem Bahdi remind the reader “although national security agencies carefully guard the authority to broker access to information, they have also repeatedly violated basic human rights, including the prohibition on torture” (as cited in Larsen & Walby, 2012, p 115). Despite the fact that nearly everyone agrees that national security is an issue to be taken extremely seriously, the result of a less transparent government is a government that is more challenging to hold to account (Larsen & Walby, 2012, p 63).

During Jean Chrétien’s Liberal leadership from 1993-2003, journalist Ann Rees discovered a political surveillance system of access to information requests had been implemented throughout the entire government. Requests for ‘sensitive’ information and requests from journalists, political opposition and other requesters deemed contentious were flagged and sent for approval directly in the Prime Minister’s Office through the Coordination of Access to Information Requests System (CAIRS), an electronic database. This internal system was used for the purpose of managing public relations and resulted in longer delays and increased redactions that would not otherwise be endured by requests and requesters otherwise not flagged – against the spirit of the law. Stephen Harper, then the political opposition, opposed this practice until he was elected Prime Minister in 2006, and continued, for a time, to use it for his political advantage (Rees, 2003; Larsen & Walby, 2012, pp 57-58; Roberts, 2006a, p 91).

In 2000, still under Chrétien’s leadership, a task force was launched into the state of Access to Information in Canada. A total of 139 recommendations for reform were made, which

were grouped into three main categories: (1) Culture of Access, (2) Modernizing the Legislation and Improving Practices, and (3) Skills and Systems (Government of Canada, 2002). Information Commissioner John Reid issued a formal response, yet the government did not act on any of the recommendations that were proposed (Larsen & Walby, 2012, p 60). Chrétien earned himself the moniker ‘the friendly dictator’ in part, as a result of using the ATIA to resist the release of information (D. Beeby, personal communication, August 27, 2019).

In 2003, Liberal leadership was transferred from Jean Chrétien to Paul Martin. Just prior to Martin transitioning into power, an attempt at reform was made by Liberal party member, John Bryden in the form of Bill C-462 (Parliament of Canada, 2003). The following year, New Democratic Party member, Pat Martin presented Bill C-201 (Parliament of Canada, 2004). The reforms suggested in each bill were similar and presented many of the recommendations that had been made in the past. Like those previous attempts at reform, these bills also did not go through.

On December 12, 2003 Paul Martin required that select government officials proactively disclose travel and hospitality expenses. Although this was not directly related to the Access to Information Act, the proactive disclosure of certain government information was pursued as a method of heightening government transparency and has continued to expand. At times, this government initiative can be seen as being conflated with the fundamental principle and objectives of the ATIA (Geist, 2017), as the most recent reform Bill C-58 requires an ‘open by default’ position to be taken by government agencies (Government of Canada, 2019e).

In February 2005, the Canadian Newspaper Association published a report called *In Pursuit of Meaningful Access to Information Reform: Proposals to Strengthen Canadian Democracy*. Some core reforms stated within the 20 recommendations included broadening and strengthening the ATIA, making public money subject to public scrutiny and prioritizing public interest over government secrecy. This report was motivated by mounting frustration that journalists across the country were experiencing, by what was often times perceived, and occasionally proved, to be the obfuscation of information by government officials (Canadian Newspaper Association, 2005).

In the election campaign of 2006, Stephen Harper, leader of the Conservative party, made promises to overhaul the Access to Information Act by implementing Commissioner John Reid's previously abandoned recommendations (Larsen & Walby, 2012, p 108). However, after the election, Harper replaced Reid as Commissioner and only implemented one reform — to include Crown Corporations in the Accountability Act (Rathgeber, 2014, p 164). Although expanding the scope of the act has been a major request for decades and is generally seen as a positive step forward, Maryantonett Flumian and Karl Salgo reported in *iPolitics* that 10 years after Crown corporations were included within the scope of the act, there were unintended consequences:

Far from fostering genuinely efficient stewardship of public resources, [the culture generated by the accountability act] over-manages minor risks in government, ignores far larger ones, and stifles appropriate risk-taking and innovation. (Flumian & Salgo, 2016)

It is well documented that the ATIA in particular, and government transparency in general, experienced several setbacks as a result of policy decisions under Stephen Harper's leadership from 2006-2015 (Gingras, 2012, p 225; Larsen & Walby, 2012, p 3). Larsen and Walby (2012) note that ministers in Canada are responsible for departmental operations,

including all communications with the media. Stephen Harper reinforced this by limiting all media communications to the minister themselves, and not their assistants. Although this did not directly affect the scope of the ATIA, its intended outcome was to reduce outgoing communication from government offices which resulted in decreased opportunities for transparent governance.

In April 2008, CAIRS, the infamous ATIP database, was cancelled without warning or public consultation. Although Chrétien used this system to flag and monitor journalists' requests, among others, it was in some cases seen to be a helpful tool to researchers, journalists, and politicians, as it made information previously released through an access request available to the general public (Fenlon, 2008). The *CBC* and *The Globe and Mail* reported that Harper claimed the system was too expensive and too slow. In response, Stéphane Dion, leader of the Liberal opposition, accused the Prime Minister of leading "the most secretive government in the history of our country" (Fenlon, 2008; "Tories kill access...", 2008).

Later in 2008, journalist and author, Stanley Tromp presented a report, titled *Fallen Behind: Canada's Access to Information Act in the World Context*, which was sponsored by a group of Canadian newspapers and other contributors. It compared the federal ATIA with Canadian provincial systems and other countries and concluded that Canada's freedom of information law had shriveled from its former international high standing and needed to improve

⁵ This report was sponsored by The B.C. Freedom of Information and Privacy Association (FIPA), The Canadian Newspaper Association (CNA), The Canadian Association of Journalists (CAJ), The Canadian Community Newspapers Association (CCNA), David F. Sutherland Law Corp., Vancouver, and Gerald Fahey, Barrister and Solicitor, Vancouver

to step in line with other Commonwealth nations (Tromp, 2008). After continued government inaction, in October 2010 Canada was ranked last among the Commonwealth countries due to its poorly functioning FOI law (Hazell & Worthy, 2010).

In 2009, former Information Commissioner Robert Marleau presented 12 urgent recommendations to modernize the act. Most of the recommendations in the 2009 report were nothing new. They addressed delays and timeliness, order-making powers for the Information Commissioner, public education of the act and the removal of Cabinet Confidences as a type of record not subject to the ATIA. “[The] Standing Committee of Access agreed with all of Marleau’s recommendations. Despite that, however, the entire report had been shelved” (Rathgeber, 2014, pp 164-165).

In spite of stepping into the Prime Minister’s office with government openness and transparency as a campaign promise, Stephen Harper’s Conservatives, continued to tighten their grip on the potential release of government information to the public (Larsen & Walby, 2012, p 3). The Harper government accomplished this through informal practices, mainly by using the secure instant messaging feature of Blackberry phones, the development of an oral culture, and the destruction of documents (Gingras, 2012, p 234). Also, under Harper’s leadership, a couple of MPs were found to have deliberately and illegally held back information from the public and to have destroyed documents, rather than have them be admissible to public request under the act. (Gingras, 2012, p 234). Although this appears to be a particular low point for government transparency in Canada, journalist Justin Ling claims that while this happened under Harper’s

watch and in a general culture of increased government secrecy, these were isolated incidents and not unique to the Harper government (J. Ling, personal communication, September 3, 2019).

Despite the persistent complaints and insistent recommendations that Cabinet Confidences should be brought within the scope of the ATIA, on May 13, 2011 the Supreme Court of Canada ruled that the Prime Minister's office alongside all Ministers' offices fall outside the scope of the ATIA. "The ruling was 10 years in the making and stemmed from an opposition party researcher's request under the ATIA to examine the daily agendas of then Liberal Prime Minister Jean Chrétien. Rather than turn over the agendas, which would have shown who met with the Prime Minister on a daily basis, Chrétien turned to the courts" (Larsen & Walby, 2012, p 41; Canadian Civil Liberties Association, 2011). Harper, who had the power to drop the case and permit confidences to be requested continued to fight for the status quo (Larsen & Walby, 2012, p 42).

The Access to Information Act and Proposals for Reform was published on June 6, 2012, by the Legal and Legislative Affairs Division of the Parliamentary Information and Research Service. It summarized past reform initiatives and detailed the initiative of the Harper government to improve government transparency by creating an open government initiative, as opposed to amending the act. The Information Commissioner at the time, Suzanne Legault, commented on the missed opportunity to reform the ATIA in conjunction with open government initiatives (Parliament of Canada, 2012).

The federal election of 2015 saw the Liberals campaign on promises of increased transparency. They announced plans to overhaul the Access to Information Act by making information more freely available, eliminating all fees with the exception of the initial \$5 payment, expanding and empowering the role of the Information Commissioner, including Ministers offices within the scope of the ATIA, and committing to a legislative review every five years (“Real Change, A new plan for a strong middle class”, 2015). However, since the Trudeau led Liberals came into power in 2015, and were re-elected as a minority government in 2019, there have been a litany of news reports and commentary pieces condemning the state of government transparency, in stark contrast to their election promises. Notable examples are the Canadian Journalists for Free Expression (CJFE) reporting twice in 2017 that the ATIA was failing Canadians and in desperate need of an upgrade. Also in 2017, News Media Canada performed an audit of the government’s performance administering the ATIA and, embarrassingly, found it worse off under the Liberals than in the latter years the Harper Conservatives’ leadership (“2017 Freedom of Information Audit”, 2018).

Trudeau’s plan for addressing the crisis in access to information legislation was in the form of Bill C-58. This bill, heralded by the Liberals as the first major reform of the ATIA since its inception, was ushered in with much government fanfare— yet with little legal or practical consequence. On June 21, 2019, Bill C-58 became law causing former Information Commissioner Suzanne Legault to formally criticize the act and list its failings. In her address, Legault urged the government to “... revise Bill C-58 to ensure we move forward rather than backwards to protect Canadians’ right to know” (Information Commissioner of Canada, 2019a).

Bill C-58 did not accomplish what it initially proposed. Cabinet confidences continue to be excluded, the Information Commissioner does not have order making powers to the extent that was promised, and fees have not completely been eliminated. Bill C-58 also imposed new burdens on the requester. Now, requesters must identify the information they are looking for with more detail, and requests are subject to being labeled as “vexatious” or “filed in bad faith” and subsequently refused. This is a deeply problematic consideration for journalists. Fred Vallance-Jones (2017) has stated that there is a similar program in effect under Ontario’s provincial FOI law: The Contentious Issues Management Program. This program often times singles out accountability requesters from other types of requesters and, as such, these requesters are subject to significant delays and redactions. Vallance-Jones (2017) notes: “Among requests filed to the high-volume institutions, 89 per cent of all media requests [in Ontario] were designated as contentious” (p 160). Given that the province of Ontario is running a similar screening process as what has been implemented on the federal level, it is justified to infer that similar problems are likely to occur. As Vallance-Jones (2017) notes:

“[E]ven though accountability requesters such as journalists, opposition politicians, and interest groups are doing the very work the Supreme Court has said is the purpose of freedom of information legislation, their requests seem to face the greatest obstacles, the longest delays, and the most painstaking scrutiny before release.” (p 159)

On October 20, 2019, a report by PressProgress, a non-profit ‘watchdog’ organization, claimed that Trudeau has failed in his objectives to make the federal government more transparent to Canadian citizens (“5 Times Justin Trudeau ...”, 2019). Citing articles and reports written by News Media Freedom of Information Audit 2017, J-Source and The Canadian Association of Journalists, the article highlights the Liberals’ poor performance and failures to implement meaningful reform.

In a 2019 interview for this study, journalist Justin Ling reflected on the long history of calls for reform and the failed political initiatives that have allowed the ATIA stagnate:

It's remarkable to me that there is probably no fewer than 3,000 pages of various reports going back to the 80's with concrete details and thoughtful ideas, on how to expand and improve and enforce the Act -- that have been written by every single party, by the Information Commissioner, by outside groups, that all have relatively similar recommendations. [These recommendations are] applying the Act to Ministers' offices, giving the Information Commissioner real order-making power, letting the courts step in, letting people file civil actions if they feel like their requests are being prostrated, limiting the scope of some of the redactions and extensions. These are some of the very clear and obvious things that need to be done. How the Liberal government pretends that they didn't know what needed to get done here and that they need to do a statutory review which will happen after the next election is remarkably frustrating. (J. Ling, personal communication, September 3, 2019)

This chronology shows that, despite regular and repeated calls for reform, government officials have largely neglected to modernize the ATIA in a satisfactory manner. Canada was once a world leader in information access, yet despite a global momentum towards increased government transparency, Canada's ranking has steadily fallen. As of 2018, Canada's FOI law was ranked 55th, a decrease of six spots since the year prior (Bronksill, 2018). Yet, in 2020, Canada ranked 16th out of 180 countries for overall Press Freedom. In the latter evaluation, the ATIA was only one factor of the evaluation and was specifically cited for posing challenges to Canadian journalists (Bogart, 2020). It is clearly not for lack of effort that the ATIA is singled out as needing reform. There are several factors which counteract the concerted and extended calls to improve the legislation. Understanding how and why these factors exist helps to illuminate the intersection of journalistic practice and the ATIA.

CHAPTER 3

Challenges and Influences

There is little contention that the ATIA has been difficult to modernize or reform, despite strong and consistent efforts from democracy and transparency advocacy groups, journalists and politicians. The reasons why Freedom of Information laws are such a challenge to ameliorate are varied. In Canada, localized considerations and broader momentums routinely overlap and interweave to produce an FOI law that has, by and large, stood still. These reasons include politicians presenting FOI laws as a virtue signal to the public with little follow through for improvement, the creeping expansion of government into the private sector, the challenges that government officials experience while administering and practicing the law, the evolution of technology and influences from a broader culture of transparency.

Compromise and Virtue Signalling in the Political Arena

The enactment of FOI legislation is difficult because of the detail-oriented procedural considerations that are required. Michael Schudson (2015) writes:

[T]ransparency wears the cloak of the natural and spontaneous, but its practical enactment requires rules and procedures. Rules require bureaucracy and enforcement. They could not advance without pricing, measurement, record keeping, data gathering, deadlines, transcripts, filing. And of course, transparency does not happen without the personnel to handle its various tasks. (p 262)

Advocating for modernization and reform means that these practical considerations have to be resolved and agreed upon by multiple actors. Often times, it is political opposition parties that favour the advancements of these laws, not the lead political party in power. According to Ben Worthy (2017), the ‘narrative identity’ of FOI laws present a near-irresistible symbol for

politicians to use to their advantage, especially those occupying the position of the political opposition (p 188). This ‘narrative identity’ is appealing to opposition politicians because it presents the opportunity to wield moral clout to their political advantage. Worthy breaks down the appeal of FOI laws, stating they are a symbol for radical change of power redistribution, a modern and expanding democracy and a signal of moral superiority (pp 187-188). However, when FOI laws need to be implemented, reformed or modernized, “symbolism alone is not enough. When FOI moves from campaign to formulation the process itself exerts a powerful pressure, as FOI laws becomes less about symbolic meaning and more about negotiation, maneuver and compromise” (Worthy, 2017, p 189). The strong symbolism of an FOI law often attracts political figures who present ideals and create initiatives that they cannot realistically attain. This is the familiar path of how an FOI law oftentimes has the tendency to begin as a robust premise yet is watered down to a much weaker conclusion.

The tension between the symbolic allure of an FOI law and the practical limitations and negotiations of implementing legislation usually result in advancements being made at a snail’s pace. These advancements are once again hampered by the inevitable consequence that an FOI law will, at some point, lead to embarrassed and disgraced government officials. As Ben Worthy (2017) notes, “opening up equates to a loss of control and a potential empowerment of enemies and critics. So once in office, actors seek to stall, delay and water down commitments: the classic trajectory of FOI reform is one of survival through dilution” (p 2). This has been the story of the evolution of ATIA in Canada. In recent years, both Conservative and Liberal opposition parties have proposed bolstered transparency initiatives and ATIA reform as part of their election platforms as a means to boost their popularity, only to assume lead power status and almost

completely neglect the transparency promises that helped to get them elected. Ben Worthy continues:

[W]hat happens instead is that FOI proposals are stalled, blocked and channelled away as different factions seek to submerge the radical ideals in detail and manoeuvres behind closed doors while others, inside and out, fight for it to stay in its original form. What then emerges on the statute book, after lengthy internal battles, is a compromise. (p 2)

In Canada, years of debate and negotiation about the specifics of the law has largely replaced the real action that has been called for.

Anne Marie Gingras (2012) notes the tendency of Canadian politicians to oscillate between using information as “an accountability tool and a useful mechanism for enhancing the quality of the civil service,” and something that “can mislead, deceive and harm” (p 224). She notes that Pierre Elliott Trudeau likely recognized the looming political fallout of the ATIA would damage his party’s reputation and slowed its implementation in the years prior to 1983 (p 225). Gingras also reminds the reader that Stephen Harper had advocated for increased government transparency as a member of the opposition yet, just three months after being elected Prime Minister reversed his position almost completely (p 225). Canada’s current Prime Minister, Justin Trudeau’s 2015 election campaign included a revision of the Access to Information Act to increase government transparency, yet, Bill C-58 was largely denounced by journalists and politicians alike as a failure and abdication of his duties (Information Commissioner of Canada, 2019a; “Our Country Deserves an Open and Accountable Government”, n.d.).

Expansion into the Private Sector

Politicians using the symbolic power of an FOI law as a virtue signal to boost public support takes place against the backdrop of a complex global momentum of pseudo government

expansion. Since the 1990s there has been a steady and explicit objective to downsize government in the name of efficiency, which was supported by neoliberal organizations like the International Monetary Fund and the World Bank (Roberts, 2006a, p 157). What this means in practice is offloading government duties to the private sector, which is supposed to produce market-based cost-effective solutions. Often times, however, in actuality these contracts rack up hidden costs, extending beyond the pocketbook to include mismanagement and poor-quality services, which burden communities (Chen, 2014). In recent years, it has been well documented that the privatization of government services is oftentimes bad for democracy (Goodman & Loveman, 1991; Tarnoff, 2017). According to Alasdair Roberts (2006a) “as work left government departments – to go to contractors, privatized utilities, and non-profit organizations – the principle of access to government documents began to break down” (p 152). This was exacerbated by the pressure firms put on the government to withhold contracts and other information from public view that might be “valuable to competitors and other prospective clients; but governments also had their own reasons to keep contracts secret – for example, to obscure evidence that might compromise their claims about the success of highly controversial privatization programs” (Roberts, 2006a, p 152). Reporters Committee for Freedom of The Press, an advocacy group for American journalists, states that “privatization puts government transparency at risk because hired contractors rely on their private status to deny the public access to their records” (“Government privatization and government transparency”, 2011). The tendency of private contractors to skirt government regulations while performing government duties is deeply troubling. In Canada, Alasdair Roberts (2006a) notes the trend towards privatization and cites the example of lobbying by Ontario’s restructured nuclear facilities to be exempt from disclosure laws (p 157). Karin Jordan reported for the Canadian Union of Public

Employees that “the Liberal government is ensuring key details about privatization projects will remain secret” (Jordan, 2017). She noted that, in 2017, the existing ATIA laws would allow for information on private sector contracts to remain out of scope and said this issue should be addressed in the then-upcoming Bill C-58 debates. Part of the suspected rationale of keeping this private sector information out of reach is likely to manage potential public outcry about outrageous inefficiency. For example, a study by the Ontario Auditor General revealed that of 74 public-private partnerships, taxpayers paid \$8 billion more than if they would have been publicly run (Jordan, 2017).

Internal Challenges

The dance of political parties advocating for improved FOI laws and then stalling advancements, once they are in power, sometimes to hide inefficient spending, is not the only hinderance to a properly functioning FOI law. Although the ATIA exists in part to mitigate the inherent conflict that government officials feel in determining what information can be made public, it is impossible for the law to eradicate these concerns entirely (Roberts, 2006b, p 117). In 2006, Alasdair Roberts (2006b) reported that the two main challenges that hinder a robust and healthfully functioning Access to Information system in Canada are adversarialism and scope.

The scope of the ATIA is increasingly problematic because, according to Roberts (2006b), “the “public sector” has become a more variegated composite of governmental, quasi-governmental and “private” actors, and there is good reason to think that this process of fragmentation will continue” (p 150). The exclusion of important government agencies has been a longstanding complaint, especially for journalists (“Access to Cabinet files ...”, 1984). Yet, as

the government grows in size and complexity, the lack of meaningful ATIA reform allows for more information to be withheld from public view (Roberts, 2006b, p 118).

According to Donald J. Savoie (2003), administering the ATIA creates a challenging dynamic for government officials to overcome. Roberts (2006b), reminds the reader “this attitude of adversarialism can be, and is, rationalized by federal officials. That is, there are reasons which are evoked to justify this attitude towards the law, some of which have merit...” (p 129). There is an overriding view among government workers that they need to discuss, and problem-solve complex issues in private, outside the scope of the ATIA. One official is reported as saying, as a result of the act: “We can no longer blue sky or have a playful mind. We no longer have the luxury of engaging in a frank and honest debate” (Savoie, 2003, pp 50-51). As Savoie tells the reader, some government officials are resentful of the ATIA because committing their views to paper opens up the opportunity for the public to request access to those documents. As a result, “They fear that this could well appear in the media and force officials to support or defend them in public” (Savoie, 2003, p 50). As a consequence of this fear, government officials are reported to have a longer reaction time to sensitive requests that come through their office. “[O]ne student of public administration reported that ‘requests that were identified as sensitive, or that came from the media or political parties, were found to have longer processing time, even after other considerations were accounted for’ (Savoie, 2003, p 51). In addition to a reluctance to commit preliminary views to paper for fear of public exposure and potential ridicule and added processing time when requests deemed sensitive do come in, government officials are also burdened with problem solving when information released from an ATIP causes a public stir. The ATIA “has generated a demand for good political ‘firefighters’ in Ottawa and has made policy people cautious” (Savoie, 2003, p 50).

Elizabeth Shepherd (2015) notes that an FOI law can have a chilling effect on record creation within government (p 717). Potentially as a result of the stress that government officials feel at fulfilling the obligation required by the ATIA, it has been reported several times that officials have illegally tampered with documents that were requested through access to information. In the mid 1980's, government officials were found to have destroyed documents in an attempt to cover up the contaminated blood scandal⁶ (Roberts, 2006a, p 87). The aftermath of the Somalia Inquiry revealed that government officials did not respect the ATIA by altering documents before responding to a journalist's ATI request (Somalia Report, Vol 5, p 130). Anne-Marie Gingras (2012) reports that in 2005, the Gomery Commission⁷ showed that government officials had documents destroyed and falsified. Although the destruction of documents happens only rarely in Canada, it is an obstruction of democracy and is deeply problematic. Alasdair Roberts (2006a), reminds the reader "even in the cleanest civil services, however, cases of document destruction are occasionally uncovered" (p 112).

Less obvious political interference with the ATIA is unfortunately more common. Ann Rees reported in *Brokering Access* (2012) that information she requested through an ATI request was delayed for four years. She also requested the ATIPFlow logs⁸, which revealed that her information was screened by politicians in the PMO's office who insisted on redactions and delays. Her request was labeled with a 'red flag' – a label reserved for 'troublesome requesters'

⁶ In the 1980's approximately 2,000 Canadians were infected with HIV and approximately 30,000 Canadians were infected with hepatitis C, as a result of tainted blood products ("A Look Back At Canada's Tainted Blood Scandal", 2013). After receiving an access to information request, government officials destroyed tape recordings and transcripts regarding how to manage the public health crisis (Robert, 2006b, p 128).

⁷ The Gomery Commission, named after presiding head justice John Gomery, was a 2005 inquiry into allegations of corruption within the Canadian government – specifically into the 'sponsorship scandal.' Phase 1 of the report criticized yet ultimately cleared Liberal Prime Ministers Jean Chrétien and Paul Martin. Phase 2 issued several recommendations ("The Gomery Commission", 2018).

⁸ The ATIPFlow log is an internal government document which tracks the activities of an ATIP request.

(Larsen & Walby, 2012, p 36). The process of internally labelling requests as problematic has been happening for many years (Larsen & Walby, 2012, pp 57-58) and most recently it has been codified as a provision of Bill C-58 as part of the ‘Vexatious Requester’ clause (Information Commissioner of Canada, 2020). Alasdair Roberts (2006a) also cites examples of government officials interfering in request responses, explaining that it is, in part, a result of parliamentary politics (pp 96-97). According to Brownlee and Walby (2015), “Government sources prefer to describe amber-lighting as a consultation process, rather than interference.... these measures have continued and even accelerated under new measures of information and communications control” (p 56). Roberts cites a quote from Joe Clark in 1978 regarding the Access to Information Act that partly explains how diligently obeying the laws as stated by the ATIA can, at times, be so challenging. “What we are talking about is power—political power” (Roberts, 2006b, p 130).

In addition to the hesitation harbored by individual government workers and the challenges associated with administering the act, agencies that respond to ATI requests are sometimes underfunded. Larsen and Walby (2012) note:

Undoubtedly, agencies need to provide more resources to the offices that process ATIP requests. Some of these shops are so badly resourced that officials take time extensions because they, not the rest of the department, become overwhelmed by requests. The act cannot function as it was intended to if officials aren’t given enough people and money to do the job. (p 307)

Even with the best of intentions, limited resources can make it difficult for government workers to meet the needs of the requester, especially within the time constraints mandated by the ATIA. Jim Rankin, a long-time data-journalist for the *Toronto Star* regularly sources information for stories from Access to Information requests. He advises that government officials answering an ATI request “are working for somebody, they are inside the institution,

there may be pressure on them, they may be overwhelmed, they may be under-resourced.” (J.Rankin, personal communication, September 4, 2019). Rankin also states that government workers are subject to the culture of transparency and accountability in their particular government institution, which is beyond their control. The government workers tasked with responding to ATI requests “are part of an institution — there are some institutions that you will deal with where they are treating it like a war, and they will use every trick in the book to deny you access (J. Rankin, personal communication, September 4, 2019). An interviewee who preferred to remain anonymous echoed these considerations saying, “They are public servants doing their job. They are supposed to be neutral. They just do their job and apply the law, which is broken” (Journalist A, personal communication, September 4, 2019).

Culture

A broad influence on the accountability of government is the public culture of accountability and transparency – which includes the workplace environment that individual government employees are subject to and contribute to every day. According to Ester Applegren and Ramón Salverría (2018), “law is not enough to secure public transparency. Besides legislation, a society must share a culture of accountability, observed both by the citizens and their public servants” (p 994). How well a law is written has little impact on how well the law works – the practice of a law is always influenced by the culture in which it transpires. A law promoting government transparency will have little effect if the public does not care whether the government is transparent or not.

According to Michael Schudson (2015), Freedom of Information laws are uniquely situated to affect the general culture of transparency, both within government and in the public at

large. He states that FOI laws are “surely among those relatively rare laws that some legal scholars call “super-statutes,” laws that not only address relatively narrow policy objectives but also “successfully penetrate public normative and institutional culture in a deep way” (p 187).

In as far as access to government information is connected to democracy and justice, Roberts (2006a) reminds the reader that “we cannot assume that the revelation of injustice will lead automatically to a remedy for injustice. Do we have a right to information? Certainly. But we also have a responsibility to act on it” (p 238).

Technology

Roberts (2006a) notes the myriad considerations of how technology influences the ability to access government information. The process of digitizing information opens the door to government transparency, and at the same time, slams it shut. “The process of digitization has revealed opportunities for substantial – and sometimes – alarming – increases in government transparency” (Roberts, 2006a, p 22), however, many parties find increased restrictions on the release of information essential. As Roberts (2006a) notes “oversight will now require technical sophistication and the resources to interpret a deepening pool of digitized data” (p 22). He goes on to say that in the early 2000s, the Canadian government led an initiative to move government information online so that Canadians could “‘access all government information ...on-line at the time and place of their choosing’ by 2004” (p 17). In 2020, this initiative is continued by the proactive disclosure provision of Bill C-58 (Government of Canada 2019a). Yet, government information made available to the public online has been hindered by the vast amount of digital information being produced – incomparable to the amount of information that was collected and stored prior to digitization. In an effort to mitigate these concerns, some journalists have

acclimated to data-driven reporting. Their role is to access and assess large amounts of data to make sense of it for the public. Computer assisted reporting has given way to data journalism, which requires increased resources (Larsen & Walby, 2012, p 354). “The need for a heavy investment of resources has been aggravated by the strong and continued opposition of government agencies, and private industry as well, to the release of structured data” (Roberts, 2006a, p 203). One of the real barriers to accessing government information is that data is only accessible to those who have the skill set to understand it, and the funds to pay for it. Canadian Government information is also sometimes sold to the private sector for revenue which obfuscates transparency – the information may be available, but at a cost that is extremely prohibitive (Roberts, 2006a, p 206). As well, there are numerous companies aggregating personal information from online activity that, in theory, was always available, but not practically accessible, which is alarming for privacy advocates (Roberts, 2006a, p 209). Another layer of complexity is how technology has changed how governance works – Roberts (2006a) states that the effects of this change have not yet been fully realized (p 23).

Proactive Disclosure

A natural extension of the ATIA in the digital age is the proactive disclosure of data and information by government institutions. Although the two terms can be intertwined and conflated, sometimes willingly so (Geist, 2017), the ATIA is a law that guarantees citizens a right to access information, whereas proactive disclosure is a government initiative to make data and information collected by the government easily available to the public. Although information released through proactive disclosure is required to meet the standards of the Access to Information and Privacy Acts, there is a fundamental conceptual difference of what these

processes of information disclosure guarantee and require of both the public and government institutions. As Deen Beeby states:

Proactive release of information has been around since confederation. Governments can decide what to release and what not to release. That is nothing new.” He follows by clarifying that the ATIA granted citizens “the ability to pull documents and not just accept what documents were pushed out to us by any government, (D. Beeby personal communication, August 27, 2019).

Proactive disclosure is presented as a tool to strengthen government transparency.

However, as Larsen and Walby (2012) note, “The volume of information produced by the government is in no way an indication of transparency; rather, the information must provide meaningful insight in order for authentic political transparency to exist” (p 49). Proactive disclosure was initiated in Canada in 2003, when Prime Minister Paul Martin required select government officials to publicize their travel expenses (Library and Archives of Canada, 2019). In an effort to heighten transparency, eventually all government agencies were required to report travel and hospitality expenses, contracts over \$10,000 and when positions are re-classified (Library and Archives of Canada, 2019). Proactive disclosure has since been supported by Stephen Harper and Justin Trudeau’s governments (Geist, 2017), and was recently brought into law as a stipulation of Bill C-58. Despite numerous positive associations, such as claims of generating an increase in accountability, citizen engagement, innovation and economic opportunity (Geist, 2014), the momentum towards proactive disclosure is perceived by some to be a replacement of the Access to Information Act, which, as Deen Beeby explains, is deeply problematic:

They are undermining the rights of citizens to pull documents and they are covering it up with this bogus claim that somehow, they are being open and transparent and therefore we don’t need citizens meddling in the process... Of course, they are not going to produce anything that will give them trouble in the House of Commons, that will embarrass them in the press, that is going to annoy NGOs and lobby groups. (D. Beeby personal communication, August 27, 2019)

Michael Geist (2017) echoes these concerns, saying “An open government plan that only addresses the information that government wants to make available, rather than all of the information to which the public is entitled, is not an open plan.”

Adherence to open government and proactive disclosure policy, in whatever legal form it takes, is oftentimes a difficult task. Larsen and Walby (2012) note: “‘Open data’ websites established by Ottawa and several municipalities are also slowly expanding the amount of electronic information easily available to Canadians. Collectively, these are a good beginning and provide an excellent example to what truly open government might look like” (Larsen & Walby, 2012, p 309). However, alongside many other western governments’ leanings towards ‘open government policy’ or ‘proactive disclosure,’ the Canadian government has been reluctant to enforce these types of policies due to “imposed mandatory consultations with the [Privy Council Office] for almost all access-to-information requests, even those without any political fallout” (Gingras, 2012, p 243). As Michael Geist reported in the *Toronto Star* on November 28, 2014, “all government data is not equal. There is a significant difference between posting mapping data and making available internal information on policy decisions that should be released under access to information rules.”

Conclusion

The mosaic of influences that impact the expression of the Access to Information Act include the evolution of technology, the logical advance of proactive disclosure, the difficulties government officials have with adhering to the legislation, broader cultural conceptions of transparency and accountability, and the creeping expansion of government into the private

sector. The challenges posed by these variables fall outside the realm of the practical considerations that journalists encounter on the day to day, yet they impact the ability of journalists to access government information for their reporting. These factors hold certain sway over the effectiveness of the ATIA and help to situate Canadian journalists fighting for improved government transparency in a larger context.

CHAPTER 4

Methodology

Journalists do necessary work in contributing to and fostering democracy, primarily by performing their watchdog role. The Access to Information Act is a tool which they employ to this end. Since the ATIA was implemented in 1983, journalists have voiced their opinions about the ability to use the act successfully and the influence it has on the quality of their reporting. Anecdotally, it is well known that many journalists find engaging with the system a challenging task, however, there have been no known research efforts made to systematically collect and analyze their experiences.

The purpose of this research was three-fold. First, it was to begin to understand the lived experiences and tacit knowledge of journalists who navigate the Access to Information system as part of their reporting. Amanda Hinnant and María E. Len-Ríos reference Barbie Zelizer (2004) in their 2009 paper, saying “tacit knowledge provides cues to how journalists conceive of journalism” and “metaphorically address potentially problematic” parts of journalism practice that are true to experience, but not necessarily formalized” (2009, p 85). Anecdotal evidence and literature indicate that journalists engage with the ATIA with an implicit understanding and acceptance of challenges inherent to the system, yet no known studies exist on the topic. Bringing these issues to light in a systematic and critical way allows for deeper insight and a cogent analysis of how some of the democratically-motivated work that journalists do is influenced by government information laws.

Secondly, this thesis aims to situate Canadian journalists within the myriad of influences that impact the intersection of journalistic practice and the Access to Information Act. Although

the express purpose of the interviews was to evaluate the journalists' direct experience navigating the Act, the interviewees inevitably offered their thoughts and reflections on issues surrounding the ATIA. Including this information in the study, even if limited, allows for an enriched conversation about contemporary Canadian journalistic practice.

Thirdly, given that the Access to Information Act is an imperfect yet essential piece of legislation, this research aims to present effective suggestions and strategies for how a journalist might navigate the system to their best advantage. Although several publications exist that address the best practices for navigating the act, this study presents a journalist-centered approach that addresses the most pressing and current issues that journalists confront while reporting oftentimes complex news stories. It was also my objective to express the importance of a properly functioning freedom of information law as a key component of facilitating democratic engagement through journalism. This research was guided by the following three research questions:

RQ1: How has the ATIA evolved, from 1983 to 2019?

RQ2: How does the ATIA function for journalists? How is it useful for their reporting?
What are the barriers?

RQ3: What strategies do journalists use to overcome barriers posed by the ATIA?

To answer these questions, I conducted one-on-one interviews with 17 Canadian journalists over the phone. The interviews lasted approximately 45 minutes each and were semi-structured, which gave the participants the opportunity to express themselves freely on topics adjacent to the interview questions. I prioritized a semi-structured design with open-ended interview questions over a fully-structured script, as some research suggests an unstructured

approach may lead to the data-densest interviews (Corbin & Morse, 2003, as cited in Corbin & Strauss, 2008, p 27).

It was essential to conduct interviews in this study because I was concerned with the tacit knowledge journalists have accumulated while engaging with the ATIA for the purpose of creating accurate and well-informed reporting. Without speaking to the journalists, themselves, it would be impossible to have a clear idea of their considerations, strategies and struggles.

I constructed the interview guide, which consisted of two main parts. The first was to draw out each interviewee's profile. These questions pertained to their overall experience working as a journalist, such as employment history, ATIA training and newsroom support. Questions in the second part of the interview guide were structured to gain an understanding of the experiences of the journalists while they navigate the ATI system for their stories. These questions ranged from positive and negative examples of navigating the ATIA and the subsequent consequences on reporting, to questions that prompted the journalists to reflect on their use of the AITA over the course of their careers in regard to changes in the news industry and the changing of lead political parties. The questions asked in the interviews were straightforward and pertained to work experiences only, so it was not necessary to look into hidden or latent meanings of the expressed opinions. Please see appendix 2 for the interview script.

The journalists were selected through a mix of targeted and snowball sampling. I initiated recruitment by directly targeting some Canadian journalists who were well-known for their ATI

based reporting and then took suggestions from them on who else might be appropriate to speak with. The participants all worked for major Canadian news organizations on a full-time (14) or freelance (3) basis, and their professional experience as journalists ranged between one-and-a-half to 37 years, averaging approximately 17 years of experience. Each journalist regularly filed access to information requests for the purpose of their reporting. A table can be found at the end of this section with relevant interviewee profile information. The study was approved by Concordia University Ethics Board and the interviewees participated with informed consent. The interviews took place between August 27 and September 12, 2019.

Among the 17 journalists, 11 agreed to share their names, professional details and opinions publicly. The remaining six journalists preferred to remain anonymous, citing concerns regarding the desire to express their opinions honestly and without potential reprisal from their employers.

The interviews were recorded and transcribed by myself, with the help of two research assistants. I then carried out a thematic analysis of the interview transcripts that followed an approach inspired by grounded theory, in which the data was broken apart and coded according to distinct concepts (Corbin & Strauss, 2008; Creswell, 2007). The data was organized according to themes that emerged out of a thematic coding method adapted from Corbin and Strauss' approach (1998), which involved constant comparison throughout coding processes. This began with "open coding" to break the data down into conceptual components emerging from the data itself. This was followed by further analysis of the relationships between these concepts, which

were then grouped together according to these relationships, and then eventually formalized into major themes.

The initial aim was to interview approximately 13-15 journalists, but 17 journalists were interviewed because of enthusiasm to participate in the study. It was considered a sufficient number, because a clear saturation point of themes was reached during the analysis of the data.

This research is limited in a couple of meaningful ways. The interviewees were overwhelmingly from large cities and worked for major news organizations. Although this generally coincides with the Canadian population living in urban areas over rural areas, with easy access to mainstream news sources, not all regions in Canada were represented. Ottawa and Toronto were heavily represented in the study; however, this is justifiable because the journalists who use the ATIA regularly are often reporting on political matters and are based in the nation's capital and main economic center.

The intersection of journalistic practice and government information laws is an understudied field of research which prioritizes legal and policy perspectives. The findings from this study presents a historical and conceptual context that values journalists/ism's collective knowledge of navigating government information and presents strategies and solutions to help mitigate anticipated challenges. Such current information offers important insights and a much-needed addition to previous academic work on the subject of ATIA.

TABLE 1: Interviewee Profile Presentation A

Name	Gender	Based in...	Journalism Area	Approx. years of working experience	Date of Interview
Beeby, Dean	m	Ottawa	Investigative + ATIP researcher	37	August 27, 2019
Curry, Bill	m	Ottawa	Parliament + Finance	20	September 3, 2019
Edwards, Peter	m	Toronto	Organized Crime + Beat Reporter	33	August 30, 2019
Ireton, Julie	f	Ottawa	Investigative + Journalism Educator	25	September 6, 2019
Ling, Justin	m	Toronto	Investigative + Facilitates ATIP workshops	10	September 3, 2019
Mojtehdzadeh, Sara	f	Toronto	Investigative + Labor	5	August 28, 2019
Pagliari, Jenn	f	Toronto	Politics	10	August 28, 2019
Pugliese, David	m	Ottawa	DND + Military	37	September 5, 2019
Rankin, Jim	m	Toronto	Data, Investigative + Facilitates ATIP Workshops	25	September 4, 2019
Rohner, Thomas	m	Iqaluit	Investigative + Long form	5	August 29, 2019
Welch, Mary Agnes	f	Winnipeg	General Assignment + Data	20	September 6, 2019
Journalist A	f	Ottawa (French language)	Parliament + ATIP researcher	1.5	September 4, 2019
Journalist B	m	Ottawa	Parliament, Money + Finance	12	August 30, 2019
Journalist C	m	Ottawa	National Affairs, Security, Justice, Transparency and Privacy Issues + Journalism Educator	30	September 12, 2019
Journalist D	m	Toronto	Data	5	September 9, 2019
Journalist E	m	Vancouver	General Assignment	10	August 28, 2019
Journalist F	m	Ottawa	General Assignment	8	August 30, 2019

Interviewee Profile Presentation B:

17 Interviewees:

Public (11), Anonymous (6)

Currently working as journalists: (16)

Former Journalists: (1)

Gender: Men (12), Women (5)

Years working: 1.5 - 37

Based in: Ottawa (8), Toronto (6), Iqaluit (1), Vancouver (1), Winnipeg (1)

Languages: English (16) French (1)

Journalism area (more than one per interviewee): Political/Parliament (8), Investigative/Long-form/Enterprise (6), Data Journalism (3), General Assignment (3), ATIP Researcher (2), Military/Defence (2), Money/Finance (2), Crime (1), Labor (1)

Current Organizations (more than one per interviewee): Toronto Star (5), CBC (4), Globe and Mail (3), Freelance (3), Canadian Press (2), Vice (2), Nunatsiaq News (1), Quebecor (1), The Ottawa Citizen (1), Winnipeg Free Press (1)

Findings

The aim of this study was to uncover the tacit knowledge that journalists use while navigating the ATIA to further their reporting. As noted earlier, although there is significant anecdotal evidence that journalists encounter many challenges while navigating the ATI system, there is no known study that has systematically collected and analyzed this information.

In total, 17 Canadian journalists were interviewed about their experiences navigating the Access to Information Act. These interviews were conducted according to a semi-structured format in order to allow space for the participants to express themselves freely, while at the same time responding to questions with additional information, they deemed relevant. The interviews were recorded, transcribed and analyzed. This section presents the themes that emerged from the analysis.

Following a thematic analysis inspired by grounded theory methodology, four main themes emerged from the interviews: (1) ATI and Journalists' Perceived Roles, (2) Journalists and ATI Based Challenges, (3) Concerns About the Future of Journalism and ATI, (4) Strategies and Best Practices.

Part one: ATI and Journalists' Perceived Roles, addresses what motivations journalists have to file a request, the way they perceive their role as journalists and the positive outcomes of using the Access to Information system. Part one establishes that using the ATIA is an essential part of a journalist's job, as the information can be found no other way. It also establishes that the motivations at play extend beyond the desire to access information to do good reporting –

some of the journalists connected their motivations for filing an ATIP to activism and its necessary role within a strong democracy. Part one concludes with positive examples that journalists shared during their interviews to prove that despite the challenges that journalists face, navigating the ATIA leads to complex news stories that get to the heart of how journalism is inextricably connected to the democratic process.

Part two: Journalists and ATI Based Challenges, discusses the specific challenges that journalists face when interacting with the ATI system. These challenges range from localized practical frustrations while attempting to access government information, such as delays and fees, and the perceived overuse of exemptions which can lead to excessive redactions. Part two also situates these challenges amidst broader trends within the government – feelings of adversarialism against the administration of the act, as well as the internal momentum of governments to tend towards secrecy. Additionally, part two includes the subjective reflections of journalists who have navigated the act for longer periods of time and their sense of how their practice has transformed because of changes in the government and changes in the newsroom, over the course of their careers. Part two establishes that the challenges journalists face are real and sometimes daunting. These challenges exist on multiple layers that exist beyond the scope of journalistic practice yet can profoundly affect the ability of journalists to do their job.

Part three: Concerns About the Future of Journalism and ATI, discusses recent reform legislation, Bill C-58, and the initiative to proactively disclose government information. Although Bill C-58 was only recently passed into law at the time of the interviews, some journalists were well-informed about the intended consequences and challenges the bill would

pose for their practice. Many journalists were wary of the consequences of increased proactive disclosure and the potential for that initiative to eclipse Access to Information legislation. Part three acknowledges that this recent reform will likely aggravate the already burdensome process of accessing government information.

Part four: Strategies and Best Practices, reports on the shared strategies interviewees shared for navigating the ATI system. This section provides guidance for others approaching the ATIA, as provides evidence that the Act, in its current form, is inferior by virtue of needing any strategy at all. This is followed by the interviewees' varied reflections regarding the future of government transparency in Canada.

Main theme 1: ATI and Journalists' Perceived Roles

Sub-theme 1.1: Motivations for Using ATI Requests

Understanding what motivates a journalist to file an Access to Information request is significant because it indicates how the ability to access government information is important to their journalistic practice. It is not simply a tool that journalists sometimes use; it is an essential resource that is required for journalists to do their jobs and to produce high quality original reporting (“Why Access to Information is Crucial”, 2015). A significant finding that emerged through the interviews conducted for this research is that most journalists considered the information gained from an access to information request as unattainable in any other way. However, while accessing government information may be essential to good journalism, a majority of interviewees noted the challenges inherent in navigating the ATI system often makes requests a last resort in their reporting practices.

During the interview, participants were asked to discuss the reasons why they file an access to information request. Some journalists stated more than one motivation; however, the responses could be clearly grouped into three distinct rationales. Two journalists described their motivation as fulfilling their job description, seven stated that they were protecting and verifying sources, and 14 journalists stated filing an access to information request was a last resort.

Dean Beeby, a long-time journalist and expert in using the ATIA for journalistic purposes, described his role at the *CBC* before his retirement in 2019 as “the access to information guy.” He didn’t have to make a decision on whether to use the act or not; it was his job. Beeby was responsible for researching, filing, managing and following up on approximately

2,000-3,000 requests each year. “I was expected to use that channel, that route, to get a bunch of stories that weren't on the agenda, weren't on the calendar, weren't being reported on by other institutions” (D. Beeby, personal communication, August 27, 2019). Although, Beeby admits the success ratio was quite low, the effort was worthwhile. “The successes are just miniscule compared with the disappointment...I want those 30 requests that really do get me a good story. But I am going to have to wade through 2,970 waste-of-time requests” (D. Beeby, personal communication, August 27, 2019). Another interview participant, who requested to remain anonymous, described the workflow of being an ATIP researcher on behalf of a major news corporation: “If I found something, I would pass the information to my colleagues. I would help them understand what I understood from it” (Journalist A, personal communication, September 4, 2019). Filing approximately 500 requests per year, this journalist's main concern was navigating the ATIA so that other reporters could use this information to further their reporting and help to produce complex, accurate and original journalism. The formal motivation to file ATIPs for both of these journalists was that it was explicitly the job they were hired to do. However, some interviewees noted that not all news organizations have a dedicated ATIP researcher, with most journalists expected to take on that task individually.

David Pugliese, a long-time Military and Defense reporter with *The Ottawa Citizen* is accustomed to doing the leg work of an ATI request himself. Given his 37-year long career, he said: “I have got a lot of contacts in the Canadian Forces and National Defence — a lot of people talk to me... It is always nice to get actual documents that confirm what you have heard” (D. Pugliese, personal communication, September 5, 2019). Sources sometimes lead a reporter in the direction of filing an ATIP, however, reporters also use information gathered from an ATIP to protect a source from retaliation. Sara Mojtehdzadeh, a labour reporter for the *Toronto Star*

recalled a specific instance where she “had filed the ATIP so that it wouldn’t be obvious through which source I received the information” (S. Mojtehdzadeh, personal communication, August 28, 2019). One participant, who wished to remain anonymous, noted the importance of filing ATIPs to verify information gained from sources: “you can get ATIPs and see that sources even lie to you. ...they are definitely trying to steer you in the wrong direction” (Journalist B, personal communication, August 30, 2019). In these cases, access to accurate and timely government information provides an important support for journalists to improve the quality of their reporting in the field.

All journalists noted that the ATIA is essential in that the information they needed could not be found any other way. As one anonymous participant stated, “you file an ATIP to get at what the government doesn’t give you on the surface” (Journalist B, personal communication, August 30, 2019). Given the low success rate of access to information requests in their experiences, however, most journalists often qualified their motivation for filing as ‘a last resort.’ For example, Jim Rankin, a data journalist for the *Toronto Star*, summed up his point of view, saying:

The golden rule for me, and for others who do this kind of stuff, is that it is your last resort. You want to do as much as possible before you go the formal route, because once you go the formal route the systems are not perfect — some people have described them as broken. If you can get it through other means, you will get it quicker. (J. Rankin, personal communication, 4 Sept 2019)

Having the right to request documents from the government gives a journalist the freedom to work on stories of their choosing, to pursue issues that are of public interest on their own terms. To this point, one anonymous participant noted:

When you're dealing with government agencies you get a lot of canned answers and responses that don't actually answer the questions you're asking...I get a lot of delays from government agencies, who take days to answer questions. The thing about an ATI-driven story is that I no longer have to play with that sort of PR system. I have the story. Their choice now is whether they comment on it and whether or not they comment by my deadline...I don't have to wait for them to respond if they're a PR person, I already have the story. Their choice now is whether or not they want to say anything. (Journalist F, personal communication, August 30, 2019)

Journalists reported that they filed ATIPs for numerous reasons. They file them because it is part of their job description, they file them to protect and verify sources and they file them to expand the stories that reach the public. Most significantly, they file ATIPs because there is no other way to access government information. Without this legislation, the information would likely remain inaccessible. The roles and responsibilities that journalists perceive themselves to be fulfilling while filing requests shows a deeper layer of their experience.

Sub-theme 1.2: Perceived Roles

The role that journalists perceive themselves to be fulfilling is meaningful because it points to a deeper layer of motivation that goes beyond filing Access to Information requests and extends to their roles as journalists in general. This theme indicates that the importance of properly functioning government information laws does not stop at a basic practical level; it also contributes to journalists reaching towards and participating in the democratic process.

This theme emerged through the interviews when participants spoke about whether they include details of their access to information requests in the published story for the audience to understand. Examples of these details include anything from simply stating that some of the information presented in the story was gathered from a request, to writing about any problems that the journalist may have encountered on the way to gaining access, such as delays and redactions. Twelve journalists responded by saying that they include these types of information

in their stories, all of the time. The remaining journalists noted they include this type of information in the published news pieces on a case by case basis. These journalists made a judgement call about whether the information was relevant or provided newsworthy details that would be of interest to the audience.

Additional feedback that the participants offered shows that the roles that journalists perceive themselves to be filling by informing the public about their engagement with the ATIA can be roughly presented in two main groups. The first group sees their roles as fulfilling the requirements for being a “good” journalist. For example, this information would help live up to the values of journalism, such as accuracy and fairness in service of the public interest. The second main group conceived their role as being inherently activist, which indicates that the everyday practice of good journalism is a meaningful democratic action and is connected to developing and maintaining a strong democracy.

Fulfilling the role of being a good journalist is something akin to adhering to a job description. The *CBC*, for example, requires its employees to create content that is in line with “principles of accuracy, fairness and balance,” to be responsible, reflect diversity and act in the public interest (“Our Mission and Principles”, n.d.), values that most major Canadian news organizations also follow. For this group of journalists, the specific rationales for making mention of access to information requests in a published story include providing background and context for readers, being transparent about information sources, to show that the information was difficult to obtain, which implies the value of good journalism. An anonymous participant, Journalist F, stated that it is important to consider the reader as the first priority and only mention information that would be meaningful to them. “You run a balance between how much the reader

cares about how much work you did, versus how much do they care about the information” (Journalist F, personal communication, August 30, 2019). For another anonymous interviewee, Journalist A, speaking too much about the details of the job in the story, such as the challenges of filing an ATI request, was viewed as ‘inside baseball.’ This participant expressed that the public isn’t interested to know the ‘behind the scenes’ of how a journalist does their job. According to this journalist, the public is most often concerned about the information itself, and not how it has been obtained, and that should be taken into consideration when the story is published.

Those in the second group, who viewed their role as an intersection of journalist-activist, viewed good journalism as connected to a strong democracy. Participants who fell into this group listed a number of specific motivations for mentioning ATIP information in their stories, including: (1) journalism is inherently activism, (2) it is important to show the public the inner happenings of how government decisions are made, (3) good journalism holds the government to account, and (4) it shows that journalists are playing a role in democracy.

Thomas Rohner, a freelance investigative journalist based in Iqaluit, Nunavut, shared his experience of wanting to have background information about an ATIP published in an article and encountering resistance from editing staff at the publication. “I have tried many times to insert those kinds of details and contexts into news stories ... that effort is generally met with broad opposition by editors, and the most common reason is that it is ‘inside baseball’” (T. Rohner, personal communication, August 29, 2019). To Rohner, such information is not extraneous, and his motivation goes beyond accommodating the reader’s interest. He stated:

I think that degree of resistance [of the government] to release information is a huge part of those stories, it is a huge part of the struggle to have a more open and fair society, so in

a way that is the story even if it is not the most exciting part of the story. I think it is important for people to know what journalists do to get the information because how they get the information is sometimes as valuable as the information itself. (T. Rohner, personal communication, August 29, 2019)

When considering the various points of view among his peers, such as prioritizing or predetermining the needs of the audience, which excludes ‘behind the scenes’ research, he reflected:

I see it as a bit of older school and newer school—a changing of the guard. But to me I don’t believe in the objectivity of journalism. I don’t believe in objectivity. I think that what journalism has always been biased towards is the people, it is in the public interest. That is a positive bias that journalism, I think, has had since its inception. That means a negative bias towards some other things, like corporate greed in this day and age or environmental destruction. (T. Rohner, personal communication, August 29, 2019)

The traditional values of journalism dictate that a journalist should have no bias – they should strive to be objective in their representation of the facts. However, in contemporary conversations, this has been called into question. Jenn Pagliaro, a political journalist for the *Toronto Star* said:

I think that people always say that journalists have to be unbiased and listen to both sides, and that isn’t untrue. I think when it comes to the public having access to public information, it is upon us as journalists, who are constantly waging these fights, to be upfront with the public about how difficult it is for us to tell these stories. (J. Pagliaro, personal communication, August 28, 2019)

She also stated, “I think sometimes people think that we’re complaining about our jobs, but it’s not really that—I get paid to do it. I’m sitting at work and I love my job and I like looking for this information. I get frustrated because it’s not just me who’s being cheated, it’s the public that’s being cheated from this information that they have every right to know” (J. Pagliaro, personal communication, August 28, 2019). The traditional idea that journalists should

somehow present unbiased information while remaining ‘invisible’ in the story itself is an idea that some journalists oppose.

Dean Beeby says it is essential that journalists move away from the traditional way of thinking – that objectivity is achievable, that they don’t have a stake in the game. He also encourages journalists to see the bigger picture. Their role is to hold the government to account and working together is often beneficial to that end.

There was this sense that we had to be neutral observers and not engage. I think that is a mistake.... We are, like it or not, actors — because it is our job to extract information from government and it is not a trivial matter that governments try to thwart us. It is important for readers, viewers and listeners to know that part of the story. (D. Beeby, personal communication, August 27, 2019)

For Rohner, Pagliaro and Beeby, there is no neutral position of ‘objectivity’ that journalists can claim to hold. Each journalist brings with them their own set of personal bias. Moreover, journalism is inherently biased – towards transparency and accountability. By holding the government to account for its actions, regarding transparency as well as innumerable other obligations, journalism proves it is an essential part of a strong democracy. For these journalists, embracing the role of an activist is part of the job. Sharing the details of an Access to Information request with the audience adds a deeper layer to the story being told. It explicitly communicates to the reader to what extent the government is following through on their democratic responsibilities, especially transparency itself.

The roles that journalists perceive themselves as playing do not practically affect how or why they use the access to information system, but these motivations do sometimes reflect in how they engage with their audience. This theme shows that if a journalist is motivated by a

sense of activism, they are more likely to advocate for their research process to be included as part of their reporting. Although all interviewees agree that transparency is important, the journalists motivated by activism are invested in sharing this information to communicate an additional deeper story line about government transparency in the service of democratic values.

Sub-theme 1.3: Positive Examples

Although the success rate is often low, navigating the Access to Information system does yield positive results. It is important to hear about journalists' positive examples navigating the ATIA because it shows that when the system does work, it can result in important pieces of original journalism. The interview participants were asked directly about their positive experiences navigating the act, but what constituted a positive experience was determined by their subjective judgements.

All positive experiences offered by interviewees followed a similar story line. The journalist filed an ATIP and received the requested information with limited redactions within an appropriate timeframe. From there, this information contributed to an original piece of journalism. In short, a positive example of using the ATIA is that it worked.

Julie Ireton, an investigative journalist for *CBC* won a Canadian Association of Journalists award for creating the story *No More Secrets*⁹, which revealed the history of child sex abuse in one Ottawa school. Dean Beeby helped Ireton in filing the requests. “We filed to the

⁹ <https://newsinteractives.cbc.ca/longform/ottawa-bell-high-school-teachers-sexual-assault>

municipality, the police force, maybe 10, 12 requests. We filed to the school board, again maybe 10, 12 requests. And we filed to some provincial agencies and bodies. And I think [Dean] filed in all, let's say 25-30 requests, and we got back, I think, one answer” (J. Ireton, personal communication, September 6, 2019). Despite the frustration in filing the requests, the information that they received was valuable in piecing together a long history of teachers and school officials not being held accountable for their actions. Even though these requests were made at the provincial and municipal level, they offer a strong example of how access to government information can advance important stories that hold power to account.

Ireton also shared another positive experience. By filing an ATIP, she was able to gather information on the notoriously problematic government pay management system called Phoenix.¹⁰ “It was amazing the information that I got, and I was able to do really good stories, because it was still relevant and still happening” (J. Ireton, personal communication, September 6, 2019). In this case, Ireton received a meaningful response within an appropriate time frame, which allowed her to shed some light on the mismanagement and technical difficulties of a pay system that was leaving government workers without adequate or accurate paycheques, over extended periods of time.

According to an anonymous participant, a positive experience navigating the ATIA doesn't begin and end with a successful request; it also extends to when “ATI coordinators suggest other things that have been released in the past that I haven't been aware of...[they] talk

¹⁰ The Phoenix pay system is a payroll software for federal government employees that was first introduced in 2009. It has been reported as being extremely problematic, as government employees across the country have endured significant mistakes with pay over many years. (“The Phoenix Pay Problem, Working Toward a Solution”, 2018).

to me about my request, and help me understand that what I'm asking for may be limiting in some ways that I didn't realise" (Journalist D, personal communication, September 9, 2019). For this journalist, filing an ATIP to gather information for a story is benefited by the guidance of an ATIP coordinator. Other participants reported that it is not standard practice for a coordinator to help guide the request, but it is always appreciated.

Jim Rankin shared a positive example of using the ATIA to produce a story on the costliest neighbourhoods for incarceration in Canada¹¹. The request was simple and straightforward. "Ideally, I wanted to have the postal codes or last known address of all the inmates in federal jails ...to look at the demographics of where they are coming from and also calculate the cost of their jail sentences" (J. Rankin, personal communication, 4 Sept 2019). Rankin had a good experience with Corrections Canada and he promptly received full information. He noted, "[the cost of the request] was minimal and they are really nice to work with" (J. Rankin, personal communication, 4 Sept 2019). This story had direct implications for policy makers in the city of Toronto in understanding how to better support neighbourhoods that had a higher percentage of incarcerated people. This story, in tandem with other studies, made a direct link to environmental factors contributing to the incarceration rate and showed how taxpayer dollars could be better spent on public programming in an effort to prevent incarceration.

¹¹ https://www.thestar.com/news/crime/crime/2009/07/18/a_realestate_guide_to_incarceration.html

Positive experiences navigating the Access to Information Act are not important merely because they help a journalist do a better job. They are essential in proving that when the system works well, authorities are held to account and all Canadians are better informed about the world around them, and therefore better positioned to make meaningful decisions about their lives and communities and better positioned to participate in a stronger democracy.

Theme 1 Summary

Main theme 1 and its three sub-themes show that the Access to Information system is essential in the Canadian journalist landscape. Motivations for filing an ATI request range from adhering to the explicit roles and responsibilities of a job description, to protecting sources and verifying their information. The strongest and unanimous rationale for filing an ATI request was that government information can be accessed no other way. The roles that journalists perceive themselves as fulfilling generally fall into two groups: those that use ATI requests to work towards traditional journalistic values, such as serving the public with accurate and fair news stories. The other group sees themselves as activists biased towards accountability, which positions them against traditional notions of ‘objectivity.’ The final sub-theme of positive examples shows that ATI-driven stories get to the core of democratically motivated journalism – they inform the public and hold power to account.

Main theme 2: Journalists and ATI Based Challenges

The successful news stories that interviewees shared should generally not be considered easy to create. There are significant challenges that journalists face while navigating the ATIA that most often result in request responses that are effectively useless. This section details the challenges that journalists face on a practical level, as well as the sources of these challenges. These were identified by interviewees as the quality and administration of the law as well as the momentum of government to tend toward secrecy. This collection of themes also discusses the reflections that journalists offered regarding how their use of the ATIA has changed over the course of their careers, both in regard to longer term changes in government as well as longer term changes in the newsroom. In both cases, journalists reported that filing ATI requests has become more difficult.

Sub-theme 2.1: Challenges

Given the numerous publications that have detailed the anecdotal information about the challenges journalists face while navigating the ATIA, it was anticipated that the interviewees would have encountered several obstacles. These difficulties included any complication or frustration that the reporters faced at any point in the process of using the Access to Information Act. Every journalist interviewed as part of this study shared several examples of challenges that they experienced. Chronicling and understanding these challenges shows specifically how and at which points journalism is compromised by an inferiorly functioning ATI system. Detailing the challenges also illuminates a potential path forward to finding solutions.

Upon filing an ATI request, journalists chorused the same complaints: excessive delays, redactions and exemptions. This set of challenges is especially important because these are the primary practical challenges that affect the quality of reporting. *Toronto Star* labour reporter Sara Mojtehdzadeh stated, “I can’t rely on [the ATIA], really, to accomplish anything except to show how obstructive the government can be” (S. Mojtehdzadeh, personal communication, August 28, 2019). Because of these challenges, depending on the circumstance, the challenges also extend into the complaints process, which is severely backlogged (J. Ling, personal communication, September 3, 2019). Other noted examples of challenges include the fact that standard timelines and habitual delays are a disadvantage for a fast-paced news cycle. In this case, it is not just that the system isn’t working as it should; it is that even when the system works well, it is not always advantageous to journalists working on tight schedules.

Some of the challenges noted are directly connected to the government workers who process requests. It was noted that on occasion, government employees tasked with managing requests are sometimes suspicious of people asking for data. The offices that they work in are often times under-resourced, which increases the chances of genuine human errors. Peter Edwards has filed hundreds of requests over the course of his career and to a large variety of government agencies. “I know that people getting the requests are pretty swamped, so I try to make life as easy as possible for them” (P. Edwards, personal communication, August 30, 2019). Some interviewees also noted that government agencies use various technologies to process requests. Combined with the wide range of technological proficiencies amongst government employees working in ATIP offices, regardless of the agency, problems sometimes emerge. Data journalist Jim Rankin recalled a situation in 2003, prior to ATIP fees being restructured in 2016,

where he filed a request that was quoted at \$1.6 million in fees associated with processing it. “The problem was they were using these antiquated estimates from when a computer took up a floor of a building and read little cards like the IBM” (J. Rankin, personal communication, September 4, 2019). Rankin complained to the Information Commissioner and his case was resolved in 2005. “A CD arrived in an envelope and it was mostly what I had asked for. It was electronic summaries of 2.9 million records, the letter specified that it took five hours to extract the data and they waived all processing and reproduction fees” (J. Rankin, personal communication, September 4, 2019). In this case, filing a complaint to the Commissioner proved successful, but it came at the cost of two years of time.

Sub-theme 2.2: Secrecy and Lack of Accountability

The specific challenges that journalists face represent the numerous practical ways that reporting is inhibited by an improperly functioning Access to Information Act. According to the journalists interviewed, these challenges originate from two main sources. As one anonymous interviewee noted, there “have been two criticisms of the federal regime. One is with the law, which hasn’t been changed much over the years. Then there’s the administration of the law. You can have the best law in the world, but if it’s not administered properly it’s not worth the paper it’s written on” (Journalist C, personal communication, September 12, 2019). The same interviewee goes on to explain that the main problem within the administration, as they see it, is that there are no penalties for skirting the law. “No one gets in trouble, no one gets fired, no one even gets embarrassed. No deputy minister loses their bonus. No minister gets called out on the carpet by their Prime Minister” (Journalist C, personal communication, September 12, 2019).

The specific challenges that journalists face can be attributed to inferior legislation and sub-par administration. However, these same challenges also point to a more abstract concern, as Jim Rankin and Thomas Rohner, among others, explicitly noted in their interviews that governments tend toward secrecy. The idea that governments tend toward secrecy was repeatedly stated by many participants as a general explanation for why the Access to Information Act has stagnated, and as an explanation for why some government agencies are less likely to adhere to the Act when compared to others.

This theme helps bring to light an outside, abstract force that poses significant challenges in the well-functioning legislation and administration of the Access to Information Act. Although this theme is difficult to ‘put your finger on’ in practical ways, it was mentioned directly by 13 interview participants, and indirectly mentioned by the remaining four interviewees, as a means of explaining the attitudes and cultures within the government that give rise to the day-to-day challenges that they faced while navigating the act.

David Pugliese, a long time military and Department of Defence reporter published a story that showed just how much the government tends towards secrecy, even when it is not warranted. The story, “Coffee maker a top-security item in war on terror,” (Pugliese, 2003) came about as a result of excessively applied redactions on a document obtained through a request that asked for information about military spending. When Pugliese filed a complaint, the Information Commissioner put some pressure on the military to release the information, resulting in an amendment to the original ATIP revealing government spending on basic goods like coffee makers and silverware purchased at Canadian Tire. Pugliese described the Government’s

leanings towards secrecy as “just such a knee jerk reaction” (D. Pugliese, personal communication, September 5, 2019). He continued:

To me, my goal is to show how government secrecy is out of control to the point where you consider silverware a country secret. I’m not going ‘this is activism, I’m going to try this out;’ it is more like you are misusing national security laws—and there are good reasons for national security laws—but you are misusing them, and that is what the story is about in this case.” (David Pugliese, personal communication, September 5, 2019)

Thomas Rohner said that, “I have found that more often than not, I am submitting requests for review because government officials and ATIP coordinators tend to be very heavy handed and conservative with their interpretation of the law, and therefore withhold far more information than they need to or should” (T. Rohner, personal communication, August 29, 2019).

He warned of how this cultural trend towards secrecy is part of a larger momentum:

I think there is an enormously powerful movement toward conservatism when it comes to information control. That governments often wage this war on information control and they generally win all sorts of times, untold times, because we don’t know, literally. And that is their tendency. (T. Rohner, personal communication, August 29, 2019)

An anonymous participant noted that when the cultural trend of government secrecy intersects with a newsroom that is strained for resources, journalists end up in a difficult position:

Governments will want to keep closing that gap on transparency and fewer journalists are working on these ATIPs and pushing that area and speaking out in favour of it. I think that is a concern as well. Journalists are busier than ever and more distracted and it is not as easy to be champions of Access to Information. (Journalist B, personal communication, August 30, 2019)

All interviewees, either directly or indirectly, connected the abstract notion that governments tend towards secrecy to an explanation for the practical resistance they face while attempting to access information. However, this tendency is only one of a few major factors that are influential on journalists using the ATIA. Journalists were also asked to reflect on how accessing government information has changed over the course of their careers – the changes

they have witnessed over time in the newsroom and in the government also provide an explanation for the challenges they face.

Sub-theme 2.3: Changes in the Newsroom Over Time

The administration and legislation of the ATIA is not the only influence on a journalist's ability to file access to information requests. A journalist's successes and failures are also influenced by the state of the news industry at large. Research participants were asked directly to share their observations about how the news industry had changed over the span of time they worked in journalism and to reflect on if and how those changes had affected how they file ATI requests.

Of the interviewees, one journalist stated that they did not have sufficient experience to comment, while three others stated that they had not observed any changes in the newsroom since they started working. The remaining 13 journalists noted a decline in financial resources, which has resulted in less staff working under more pressure. When this is combined with the challenges associated with navigating the ATIA, several problems emerge.

According to a participant who wished to remain anonymous, the confluence of reduced resources, increased pressure to produce and the challenges of navigating the ATI system has resulted in an increase in simple news stories that require less research. "I think that there's a greater need for journalists to do things that are a little bit more complicated and more complex" (Journalist F, personal communication, August 30, 2019). Complex stories cannot often be

summed up in a tweet, yet the pressure created by strained resources to constantly produce is prohibitive of a journalists' ability to follow up on stories that require more extensive research.

Julie Ireton reflected that newsrooms have grown smaller and the responsibilities of journalists have grown wider:

Twenty-five years ago, when I started, I was primarily a radio reporter, then I started doing radio and TV, and now I do radio, TV, and online – I do the job of three reporters now. So, when everyone is trying to do the job of three reporters, they don't have time because ... they have these tight deadlines, they don't have time to do Access to Information. So, I think [filing ATIs] are reserved for a certain few who have that luxury and the patience to do it. (J. Ireton, personal communication, September 6, 2019)

Bill Curry, a journalist with more than 20 years experience, echoed these concerns: "I think the biggest difference is that newsrooms are so small now." He went on to say, "we have a lot less time to devote to it because it is very time consuming" (B. Curry, personal communication, September 3, 2019).

There was some discrepancy between journalists' assumptions about their colleagues' engagement with filing ATI requests. Most said that there are fewer journalists on staff with expertise in filing requests, yet according to one participant who wished to remain anonymous, new journalists are aware of how to use the legislation and its link to producing high quality news stories. "It's written into job descriptions now... most beginner journalists do use the law and are familiar with the [Access to Information] law, I'm guessing" (Journalist C, personal communication, September 12, 2019).

Although may have become more difficult for journalists to file ATI requests given the ongoing financial strain on the news industry, the evolution of technology and access to the internet has made an aspect of filing much easier and more accessible. Prior to a mid-2000 government initiative to move the request system online, filing an Access to Information request had to be done through the mail (Roberts, 2006a, p 17). Dean Beeby said: “It makes the research process easier to accomplish and I think it is a positive thing for filing requests and researching the stories that have come out from requests” (D. Beeby, personal communication, August 27, 2019).

Sub-theme 2.4: Changes in the Government Over Time

The evolution of technology and the increased accessibility of the internet has not only positively affected the research work done in newsrooms (Krotoski, 2011), it has also positively affected how journalists engage with the government. Journalists were asked about their subjective perspective on whether changes in the government over the time they worked as journalists had any influence on their ability to effectively use the Access to Information system as a reliable source for their reporting. The combined positive comments from interviewees were attributed to the improvement of technology and the extent to which the internet is widely available. Because of the government initiative to move the ATI request interface online, journalists stated they have an easier time filing with some government agencies. A second positive change in government that was noted by some journalists was the shift to a flat \$5 fee, which covers the first five hours of research done by a coordinator (Government of Canada, 2016).

Interviewees overwhelmingly said that the political party in power at a given time has made little difference in the ability of the government to administer the ATIA effectively. Dean Beeby, who started working as a journalist just as the ATIA was coming into effect in the early 1980s, commented on how he and other journalists have used it over the course of more than three decades of reporting. He recalled that initially, the boundaries of the law hadn't been tested, and so bureaucrats were more inclined to lean towards transparency.

I look back on the 80s as the golden age of Access to Information. Even though we would not have said that at the time, there were many more success than failures...As time went on, the bureaucrats understood where the loopholes were, what they could get away with, there were a lot more court decisions about what they could get away with and I think they became more emboldened. I think we, as journalists lost more of those fights and I think it was a steady decline from there on. (D. Beeby, personal communication, August 27, 2019)

As the ATIA has been in effect for approximately 36 years, there was a trend noted among interviewees that acknowledged that it has stagnated and is therefore worse now under the current Liberal leadership than under previous governments. Justin Ling commented on the recent overall decline of government transparency. When comparing current Prime Minister Justin Trudeau to his predecessor Stephen Harper, Ling said government transparency was incidentally better under Harper: “[It] wasn’t a product of the fact the Harper government made [the ATIA] easier to use. That was a product of the fact that [the ATI system] has just slid further into disrepair in time” (J. Ling, personal communication, September 3, 2019). This is to say that in the experience of journalists, government policies haven’t actively made the ATIA worse. Rather, the Act has stayed the same and, as such, it has slid further out of touch with Canadian society in general, and journalists’ needs in particular.

Of the 13 interviewees who expressed they had enough professional experience to respond to the question, all said that government transparency had declined over the years they have been working as journalists. Some journalists offered anecdotal evidence that it is presently more difficult to gain access to government information than it had been in the past. They expressed a general feeling that there was an increased usage of exemptions and redactions. Bill Curry stated, “Over time it has become really sanitized. [The government] doesn’t really release much. There are a lot more redactions, so it has become less useful” (B. Curry, personal communication, September 3, 2019).

Another outcome that was negatively attributed to the changes in government over time was the use of outsourcing to non-governmental agencies to process backlogs. Although, journalist Justin Ling agrees that backlogs need to be swiftly addressed, he claims that the outsourcing that governments use to reduce these backlogs are bad for democracy.

[The government] has given the departments money to go and find outside staff to come in and clear out these backlogs. On paper this is a really good thing, but in practice it’s actually awful ... what you’re seeing is these consultants sending mass emails to requestors saying things like, ‘it’s been four years, do you want to abandon your request?’ ... rather than spend the money and deal with these requests appropriately, they’re just trying to clear the backlog...they’re worsening the problem with their solution. (Justin Ling, personal communication, September 3, 2019)

Another main problem that was negatively attributed to the evolution of Canadian government over time was the discourse surrounding proactive disclosure and the fear that it may eventually eclipse the ATIA. Although the proactive disclosure of government information performs a similar role as a well-functioning ATI system – by releasing government information to the public – they are fundamentally different concepts. Beeby stated that proactive disclosure

“sounds like a great idea, but... governments know that these [documents] are going to be public – of course they are going to frame them, word them carefully. It is not a genuine document it is more publicity and propaganda of the government” (D. Beeby, personal communication, August 27, 2019). The emergence of proactive disclosure was warily embraced by interviewees – it was generally acknowledged as a logical advancement of technology and an important initiative of the government, yet due to the likelihood of banal or sanitized information, it will not likely prove to be a quality source of information to contribute to investigative journalism.

Beeby also acknowledged that there are other government trends which make accessing government information difficult in tandem with the strain on the journalism industry. “I think we are in trouble, because governments are getting bigger and the number of journalists are getting smaller, so the playing field is getting tilted, every day, evermore in favour of government. That is a concern” (D. Beeby, personal communication, August 27, 2019).

Theme 2 Summary

In an effort to situate journalists within the layered influences of the intersection of journalistic practice and the ATIA, part two discusses the challenges, perceived causes of these challenges and changing factors in the government and newsrooms over time. This section also links these layers to the effects they have on the ability of journalists to produce high quality reporting. The challenges that journalists face while navigating the ATIA range from practical, localized challenges, such as the perceived overuse of exemptions which lead to excessive redactions, delays, fees and an inefficient complaints process. Noting these frustrations, *Toronto Star* labour reporter Sara Mojtehdzadeh said: “a Freedom of Information requests gives you

insight into how decisions are made that you wouldn't normally get. It improves the quality of your reporting and that is what we are losing by not having a system that works properly" (S. Mojtehdzadeh, personal communication, August 28, 2019).

Some of the journalists interviewed attributed these challenges to the inferior legislation and administration of the Act. More broadly, all journalists attributed these challenges to the notion that governments tend toward secrecy. This section also included the reflections of journalists who have navigated the act over the course of their careers. Increased access to technology and the internet has improved the ability of journalists to access information, yet, the crushing financial strain on the journalism industry at large has had a negative effect on the time and resources journalists have to file ATI requests. All interviewees with enough experience to comment offered the opinion that no particular government has had a better or worse track record with the ATIA than any other – all governments have allowed the Act to stagnate while in power. As journalistic practice and Canadian society has evolved over the years, the Act has stayed the same. Therefore, according to the interviewees, it is in a worse state now than at any other point in history.

Main theme 3: Concerns About the Future of Journalism and ATI

Sub-theme 3.1: Bill C-58

Bill C-58 was presented by Justin Trudeau as the first major revision of the ATIA since its inception in 1983. It was presented as part of his election platform in 2016, yet it did not become law until the summer of 2019. At the time of interviews, 10 journalists had formed opinions about the legislation, while seven interviewees felt they did not know enough to comment.

The overwhelming response of journalists was that disappointingly, Bill C-58 did not usher in the changes to the ATIA as was proposed, or that have been called for repeatedly. Justin Ling curtly summarized the history of calls for revisions to the ATIA and remarked how frustrating the process has been:

It's remarkable to me that there is probably no fewer than 3,000 pages of various reports going back to the 80's with concrete details, thoughtful ideas, on how to expand and improve and enforce the Act that have been written by every single party, by the Information Commissioner, by outside groups, that all have relatively similar recommendations. [These recommendations are] applying the Act to Ministers offices, giving the Information Commissioner real order-making power, letting the courts step in, letting people file civil actions if they feel like their requests are being prostrated, limiting the scope of some of the redactions and extensions. These are some of the very clear and obvious things that need to be done. How the Liberal government pretends that they didn't know what needed to get done here and that they need to do a statutory review which will happen after the next election is remarkably frustrating. (J. Ling, personal communication, September 3, 2019)

The long-term impact of Bill C-58 on journalistic practice, according to the journalists interviewed, is perceived as negative. The general feeling that participants communicated was that it does not address widely known problems in a meaningful way and, on some occasions, makes things worse.

According to one anonymous participant, there is a provision in Bill C-58 that could be especially problematic to journalists, namely the ‘vexatious requests’ clause. This allows government agencies to refuse to respond to ATI requests they deem problematic (Government of Canada, 2019c).

I think the thing that worries me most about C-58 is really the vexatious filing denial [clause]... a lot of my requests look super weird, some of my requests are two pages long because I’m being extremely specific in what I’m asking for because I know exactly what they have. To a layman that request could look absolutely vexatious and ridiculous, like I’m some crank living in the middle of nowhere just writing letters to them all day. That worries me. The fact that what vexatious actually is hasn’t been defined is problematic. I can see some agencies that are strapped for resources using that argument [that something is vexatious] until they are told not to by the information commissioner or more likely by some sort of parliamentary committee. (Journalist D, personal communication, September 9, 2019)

As a remedy, another anonymous participant suggested the bill might be improved with “some built-in flexibility for requestors in terms of the language they use when making requests” (Journalist E, personal communication, August 28, 2019). Currently, the language used in the bill to determine what exactly is a vexatious request is very vague. One anonymous participant speculated that as a result of this clause, accessing information will become more difficult (Journalist C, personal communication, September 12, 2019).

Another disappointment that was repeated among some interviewees is that documents created within Ministers’ offices will continue to be excluded from the ATIA. This is meaningful information to journalists specializing in parliament and politics, because this is where many high-level and complex decisions are made within the government. The ability to access these documents would potentially provide great insight into how and why many important decisions are made. As part of proactive disclosure initiatives, the current Trudeau Liberal government has

promised to make this information available. But according to some interviewees, it will undoubtedly be sanitized. “The exemptions in the law are not narrowed under Bill C-58 and it does nothing to change the inaccessibility of cabinet confidences” (Journalist C, personal communication, September 12, 2019).

Bill C-58 is the first major reform of the ATIA, but to the eyes of journalists in this study it has been a major disappointment. The interviewees reported that the Trudeau’s Liberals did not keep their promises – the result of the Bill will be that the ATIA functions in much the same way as it did before and in some cases, it will get worse. One of the major stipulations of Bill C-58 that will affect journalist practice is the proactive disclosure of government information, yet this is also a contentious issue.

Sub-theme 3.2: Proactive Disclosure

The increased proactive disclosure of government information was a stipulation of Bill C-58. In theory, the proactive disclosure of government information strives towards democratic goals of government transparency. It also presents as a remedy for the problems with the struggling access to information system. With proactive disclosure, the government elects to ‘push’ select information out to the public, whereas the ATIA allows the public to ‘pull’ information of their choosing. On the surface, proactive disclose may appear to be an initiative that improves government transparency. However, many of the journalists interviewed view the move towards proactive disclosure to be undermining the right of the public to request documents of their choosing. As Dean Beeby said:

Bill C-58 institutes a proactive government decided release of information. The Act was supposed to supersede – it was supposed to give us the right to pull documents. Bill C-58 says no, we will release briefing notes, question period notes, mandate letters, all that stuff on our timetable of what we think you should see and there is no challenge to the institutions. You cannot complain about a proactive release to the Information Commissioner of Canada. It is regressive, it goes back to that old system where government decides how much to release, what to release, when to release. To me, it violates the spirit and the letter of the Access to Information Act as it stood before Trudeau came into office. (D. Beeby, personal communication, August 27, 2019)

Julie Ireton sum up the difference between the ideals of proactive disclosure and the practical implications of the initiative:

I don't think [proactive disclosure] necessarily translated into us having access to more of the information that we probably should have access to... Sometimes there's just not that understanding that the work that we do, as journalists, is in the public interest." (J. Ireton, personal communication, September 6, 2019)

If the information released through proactive disclosure is not clear and meaningful, the initiatives are of little use to investigative journalism.

An additional concern expressed by participants about the administration of proactive disclosure as part of Bill C-58 is that the privacy requirements of the ATIA, such as redactions, must be applied to all information before it is made available to the public, which will continue to burden many backlogged government agencies. One anonymous interviewee stated, "It seems like it is easy to put it on the website out there, but it is not, actually. They will have to apply the exemptions and then put it online. There are a lot of backlogs in a lot of departments just handling the information requests. [This measure] will increase backlogs" (Journalist A, personal communication, September 4, 2019).

Jim Rankin expressed an idea publicized by Ken Rubin, an ATIA expert and public - interest researcher, that the Access to Information Act is "really about codifying secrecy. It

wasn't about freeing up information. It set out the ways in which the government could deny you access to certain things. And [Rubin] is right: that is what these acts sort of are. They need overhauling to make the default position open, so you don't have to ask for it" (J. Rankin, personal communication, September 4, 2019). The trend that governments tend towards secrecy is amplified by a confluence of factors: inadequate reform, the decline of the news industry, and the erosion of ATIA. The result is that even when advancements are made to make the default position to government information open and transparent, journalists continue to face challenges to access meaningful and timely information.

Theme 3 Summary

Bill C- 58 was presented by the Liberal party as the long-awaited remedy to the ailing Access to Information system, yet according to the interviewees, the legislation will cause more harm to their journalistic practice than good. One of the most troubling aspects of the legislation up-date is the introduction of the 'vexatious requester' clause – interviewees projected that it will be a troublesome accession to an information system that already favours government secrecy. Proactive disclosure is also a concerning provision of bill C-58. While its explicit mandate is to make more government information available to the public, the interviewees reported that the type and quality of the released information is of little interest to journalists. Despite these problems, journalists persist in using the ATIA to further their reporting and will likely continue doing so for the foreseeable future.

Main theme 4: Strategies and Best Practices

Sub-theme 4.1: Strategies and Best Practices

Given that the ATIA is an imperfect piece of legislation that presents many challenges, what are the ways that journalists get the most out of the law? Interviewees were asked about the strategies they use to navigate the ATI system in an effort to aid their reporting. This information emerging from the interviews is instructive because it displays the similar strategies that journalists employ to help their chances of receiving meaningful information. It is also important because it proves that in practice, the legislation is inferior by virtue of requiring any additional strategies to obtain requested information at all. Please see appendix 3 for a concise ATI work-flow guideline.

The first strategy that was chorused unanimously by all participating journalists was to research the sought-after information extensively. Every journalist who participated in this study acknowledged the challenges of navigating the act, so finding the information elsewhere will likely provide an outcome more suited to the schedule and pressures of creating the news.

In the process of researching, many journalists found it helpful to work off of ‘piggybacking’ -- using information that was already released as a result of a previous ATI request. Scanning previously released information can also help generate ideas for filing a new request. Julie Ireton described the process: A government database publicly accessible online brings together all previously-filed ATI requests¹², thereby putting information attached to the

¹² <https://open.canada.ca/en/search/ati>

request “in the public realm... I don’t have to go through and file a new Access to Information request. I’ll just call the [ATIP] office and they’ll just send it to me” (J. Ireton, personal communication, September 6, 2019). Filing a ‘piggyback’ request, allows for a targeted request with very specific language. In this case, the chance of receiving information may be more in favour of the requester.

When crafting the request, there were two dominant strategies: either make the request for information very narrow or make it very broad. In the case that a journalist wants to find out the types of documents the government has in its possession, a broad request was deemed most appropriate. In this case, it is important to limit other aspects of the request, such as the time frame, in an effort to receive a timely response with minimal fees. Regardless of what approach is best, participants noted it is important to use clear and precise language. While some journalists advised using technical or legal language, others advised using informal, easy to understand language. In either case, participants stressed that clarity was key.

Many interviewees insisted that it is in the best interest of the requester to maintain an open and friendly dialogue with the coordinator responsible for fulfilling the request. Jim Rankin stated, “the more you can be open and keep an open dialogue with the coordinator, you can get access to what you want. If you go in like war and you treat it like that— you are dealing with human beings, so it is not going to be helpful. Go in with a bit of honey instead of going in with a stick” (J. Rankin, personal communication, September 4, 2019). Although there are many limitations with the ATIA, it is rarely the fault of the individual coordinator, and interviewees expressed they deserve to be treated with kindness and respect.

In the case that a complaint to the Information Commissioner is warranted, participants said patience is key. Justin Ling recommended that, as a journalist, you need to:

...stress how important your complaint is and that you're not some yahoo who doesn't understand the system to get them to prioritize [your ATI request]. Because the only way you're going to get your complaint heard at a reasonable time is when it's on a priority list, and even then, the Information Commissioner has their hands tied so far behind their back, you're lucky if that really changes the position of your request at all. (J. Ling personal communication, September 3, 2019)

Many journalists give up at this point, but occasionally, despite the delays, meaningful and important information is released, and important stories reach the public. Bill Curry remained optimistic: "Once in a blue moon you will get a request back where there are hardly any exemptions and it is amazing. You will realize what is possible and it is those kinds of things that keep you coming back to using the system, even though it can be frustrating" (B. Curry, personal communication, September 3, 2019).

Lastly, Dean Beeby stresses that it is important for journalists to approach ATI based reporting as a team. "We need to get rid of the idea that we are all in competition with each other and we have to keep our cards close to our chest...we need to share with each other, share our successes, share our tricks for getting stories through Access to Information...we need to alert each other to problems in departments and institutions where we are not getting what we need" (D. Beeby, personal communication, August 27, 2019). This mentality encourages journalists to continue to persevere against the challenges they face and to remember that the fight for improved government transparency is larger than any one specific story.

Sub-theme 4.2: What Does the Future Hold?

Journalists were asked about their outlook on the future of government transparency and journalistic practice. Each interviewee expressed mixed feelings about the direction that Canada is headed in. Seven journalists expressed a sense of hope for improved government transparency but remained skeptical about how and when that is likely to be accomplished. Meanwhile, the remaining 10 journalists expressed a pessimistic viewpoint of the future, given the trajectory of transparency based on the past.

One anonymous participant, Journalist A, expressed their concern about the ability to transform the ATIA in favour of increased transparency, as it is not a voter issue. In their opinion, the government needs to feel significant pressure from the public to make any real change, yet come election time, access to information reform is rarely a priority in the public's eye. In addition to this concern, there are fewer journalists working under more pressure with fewer resources than ever before. According to Peter Edwards, journalists are responsible for pushing for increased government transparency, yet the odds of journalists using the ATIA to make the government's actions and motives transparent to the public while influencing the public to care about the ATIA is an increasing challenge (P. Edwards, personal communication, August 30, 2019).

Many journalists echoed the sentiment that to predict the future, you need to look at the past. For participants with this opinion, the future state of government transparency looks rather bleak. One anonymous participant stated that "governments will want to keep closing that gap on transparency and fewer journalists are working on these ATIPs and pushing that area and

speaking out in favour of it...Journalists are busier and more distracted than ever, so it is not as easy to be champions of Access to Information” (Journalist B, personal communication, August 30, 2019). This combination of factors will likely allow the ATIA to continue to stagnate.

However, there were seven journalists that had a positive outlook on the state of government transparency and the intersection of journalistic practice. Dean Beeby stated that younger generations that have grown up with the internet have high expectations about receiving information quickly and will likely put pressure on the government to perform. In addition, one anonymous interviewee stated that “the push for transparency is a global phenomenon. We’ve seen well over a hundred countries have Access [to Information] laws now. But at the same time, in Canada, while we were an early leader [to Access laws], ... [they] haven’t really kept pace with expectation” (Journalist C, personal communication, September 12, 2019).

Theme 4 Summary

Given the challenges that journalists face while navigating the ATIA, interviewees shared the strategies they used to alleviate some of the burden of navigating a complicated system which often times, works against their favour. Since all journalists reported that they use the ATI system because the information of interest cannot be accessed any other way, the first strategy was to conduct an extensive amount of research. This accomplishes two things: it ensures that the information is not available through a less obstructed channel and it contributes to crafting a precisely worded request. Other strategies included using clear language, keeping track of communications to further future negotiations and maintaining a kind and professional rapport with the access coordinator. This theme also presented interviewees’ reflections on the future of government transparency. Some journalists expressed pessimism about the future based the past

government track record. Yet, others were optimistic, claiming that global momentums towards open government would result in positive impacts for Canadian journalists.

Conclusion

The collections of themes in this chapter were gathered for the purpose of taking account of journalists' tacit knowledge while navigating the federal Access to Information system to further their reporting. It was important to collect this information through interviews because it allowed the space for journalists to express the richness and diversity of their ideas, experiences and opinions in their own voices.

The first main theme expressed that the ATIA is an essential tool that helps to further high-quality reporting. Journalists engage with the ATIA for a variety of reasons, but all journalists stated that the information gained through this method could be gained no other way. This collection of themes also expanded the sense of purpose that motivates journalists to file ATIPs. Some said they are motivated to do a good job, while others said they perceived the role of journalists to be inherently activist. The positive encounters that the interviewees shared helped to illuminate that the system does sometimes work, and when it does, the information gained holds power to account in the service of public interest.

Despite positive examples, interviewees discussed the numerous challenges that journalists face. The second main theme shows that journalists face challenges by way of fees, redactions and delays. They attribute the cause of these delays to an adversarial approach on behalf of the government administering an inferior law. These challenges are compounded by a

more abstract trend that journalists noted: governments tend toward secrecy. In addition to these challenges, the interviewees offered their reflections on how it has become more difficult to file ATIPs because of financial strain in the industry. As well as how the changing of lead political parties have affected their ability to file ATIPs – it hasn't. The verdict according to interviewees, is that the Act has stagnated. One positive mention was that the accessibility of the internet and the ability to file ATIPs to some agencies online have improved the ability to access government information.

Bill C-58 is the most recent reform of ATIA and includes a provision for government agencies to proactively disclose information online. With regard to this main theme, many journalists shared their hesitations about the legal updates, claiming that things would likely stay the same and, in some cases, they might make things worse.

The fourth main theme brings together the strategies that journalists use to navigate the system to their advantage. This was followed by a discussion of the varied outlooks journalists shared about the future of government transparency in Canada.

Together, these themes take stock of Canadian journalists' experiences while navigating the ATIA and situates them within the broader momentums of the federal government as well as the journalism industry. Prioritizing journalists' experience of ATI engagement uncovers valuable information about their perceptions, practices, struggles and strategies which sheds light on the intersection of journalistic practice and the ATIA.

CHAPTER 5

Discussion

The purpose of this chapter is to bridge the tacit knowledge of Canadian journalists' lived experiences of navigating the Access to Information Act to the conceptual and historical development of Canada's FOI laws. Although anecdotal evidence of journalists' experience is easily within reach and largely shares the consensus that the process of navigating the system is rife with challenges, it is my understanding that this is the first study of its kind to systematically collect and analyze these experiences. This chapter uses information gathered in chapters one through four in an attempt to situate these understandings and experiences within a larger mosaic of influences that shape the intersection of journalistic practice and the ATIA.

As noted earlier, this thesis attempts to answer three driving questions:

RQ1: Prioritizing the perspective of journalists, how has the ATIA evolved, from 1983 to 2019?

RQ2: How does the ATIA function for journalists? How is it useful for their reporting? What are the barriers?

RQ3: What strategies do journalists use to overcome barriers posed by the ATIA?

Regarding RQ1, the literature (Gingras, 2012; Kazmierski, 2016; Larsen & Walby, 2012; Information Commissioner of Canada, 2015) and the results presented in this study overlap significantly -- the ATIA has stagnated, resulting in many challenges for journalists who are trying to access information that can be gained no other way. Bill C-58 was the latest amendment

to the ATIA, yet an evaluation of the history of the Act shows that there have only been a few amendments since it was implemented in 1983. While a revision of the ATIA had been called for many years, Bill C-58 did not fulfill the Liberal party's 2015 campaign promises, nor has it eased the burden on journalistic practice. Proactive disclosure was a significant part of Bill C-58, which has elicited a varied response.

Regarding RQ2, all journalists who participated in this study considered that successful ATI requests function as an essential tool to advance their reporting. Of the journalists interviewed, some perceived their use of the ATIA as a resource that helps them to fulfill their role as a journalist or job description. Others perceived their work as activism – their ability to use the ATIA helps to fulfill this motivation by holding power to account. In both cases, good journalism was connected to building and participating in a strong democracy. However, in the latter case, journalism's connection to democracy is more keenly felt and often times offers a deeper layer of information for the audience to appreciate.

Both the existing literature (Larsen & Walby, 2012; Rees, 2003; Vallance-Jones, 2017) and this study's results acknowledge the extensive barriers journalists face while navigating the ATIA – some of them are tangible, such as delays and redactions, and have formalized channels for recourse. Others are more abstract, such as the inclination of government to tend towards secrecy. A notable theme emerging from the journalist interviews that has negatively affected the ability of journalists to successfully navigate the ATIA was the observed changes in the news industry over time. Journalists who participated in this study acknowledged that financial strain in the industry negatively impacted their ability to file ATI requests. Another notable theme is

change in government transparency that journalists have witnessed over the course of their careers. The literature states that the ruling political party has an influence on how journalists are able to access government information (Gingras, 2012; Larsen & Walby, 2012; Rees, 2003) however, the results presented in this study indicate that particular government leadership has little direct impact on journalists' ability to file ATI requests. Instead, the current study presents a consensus among journalists interviewed that the ATIA has stagnated and is therefore worse now under current leadership than previous leaderships. Despite these challenges, journalists are still able to successfully navigate the legislation to help create high quality journalism.

As for RQ3, the current study and the existing literature converge to show common strategies that journalists employ (Bronskill & McKie, 2014; Cribb, Jobb, McKie & Vallance-Jones 2015). Journalists regularly craft their requests to be either a 'fishing expedition' – a search for what documents might exist– or a 'surgical' request – a narrow search for specific documents. The wording must always be clear and concise. A methodological approach to tracking communication with ATI coordinators can prove advantageous in negotiations, and a kind and considerate approach when engaging in communication is more than just a common courtesy. Some journalists interviewed in the study were mentors to those who were new to the system and were happy to lend a hand with other reporter's ATI requests. The current study reveals journalists hold a mixed outlook of the future of government transparency and journalistic practice.

In the following three sections, this thesis responds to the previously stated research questions and expands on the implications raised by the study's results. This section concludes

with a number of recommendations on ways forward for the intersection of journalistic practice and access to information, as well as future research.

Part 1: The ATIA Has Stagnated

The question of how the ATIA has evolved in consideration of journalistic practice in Canada is meaningful to address because there is little information available on the subject. Yet, this one specific tool that journalists rely on has a significant impact on the depth, complexity and quality of their reporting, most notably with journalism which holds power to account. Both the findings presented in this study tend to align with previous literature -- since its implementation in 1983, the ATIA has stagnated and continues to become worse over time. As such, the ATIA presents many unnecessary and frustrating challenges to a journalist's ability to contribute to and shape informed public discourse.

There have been numerous calls for revisions and amendments to the ATIA, yet very little has been done to keep the act relevant as Canadian society and politics has evolved. Prior to implementation, the ATIA was widely discussed in the press and in the House of Commons (Larsen & Walby, 2012, Kopyto, 1980). Although it was perceived to be an accomplishment for Canadian democracy at the time (Roberts 2006b), some critics complained that its implementation was not as robust as it should have been (Gingras, 2012). These complaints centered around the limited scope of the act, in particular, the exclusion of cabinet confidences and excessive fees, delays and redactions in addition to government officials occasionally meddling in responses that fall outside of their jurisdiction (Vallance-Jones, 2017). In spite of the recent ATIA reform through Bill C-58, these complaints are projected to continue being a

concern (Britneff, 2017, November 1; Vallance-Jones, 2017; Information Commissioner of Canada, 2019a).

One of the most significant contributions the current study makes to addressing the question about the evolution of the ATIA and its impacts on journalism comes from the theme regarding the changes in government that journalists have observed over the course of their careers. While not all of the journalists interviewed for this study felt they had accumulated enough professional experience to adequately reflect on the question, those that did collectively offered two positive comments regarding the evolution of the ATIA advancing their ability to report. In the mid 2000s, the government initiated a transition to make more information available online. (Roberts, 2006a, p 17). A number of journalists interviewed reported this as a convenient and time-saving advancement for journalists in their research workflow. The second positive comment was related to the fees that governments charge for ATI requests. On May 5, 2016 the government modified the fee structure to a \$5 flat fee, which covers the first five hours of research completed by the coordinator. If more research is needed, the requester is given a quote and can choose whether or not to proceed with the request (Government of Canada, 2020b). Journalists interviewed in this study reported this as beneficial, because it has simplified the request process and has maintained a reasonable and reliable fee structure.

Aside from these two positive developments, both this study's findings and previous research indicate that the ATIA has stagnated – it has become worse over time because of government inaction, to the detriment of journalistic practice.

The present study indicates the journalists interviewed feel that government transparency in general had reduced over the course of their careers. These journalists had the impression that there were more redactions and exemptions used by the government in the ATI process at this point in their careers than earlier on. The journalists in the study also noted years of inaction and failed attempts at reform have allowed the law to stagnate. In some cases, journalists pointed out particular low points in the administration of the law and connected them to different political parties' general attitudes about government transparency. However, collectively they were clear that the specific political party in power had little to do with the stagnation of the ATIA. In this shared opinion, the legislation has stagnated because of widespread government inaction, and is therefore worse now than at any other previous time, regardless of who was in power.

Some literature, though, tells a slightly different story. Stephen Harper's government stands out in the history of the ATIA as an administration that facilitated a wave of transparency resistance across the Canadian landscape. As leader of the opposition government from 2004 to 2006 when he became elected prime Minister, Stephen Harper engaged in 'virtue signalling' about the importance of government transparency and promised reforms to the ATIA. In what is typical of opposition parties, once his government was elected to a majority government, Harper dropped nearly all promises and instead developed a reputation for limiting government transparency (Larsen & Walby, 2012, p 108, Rathgerber, 2014, p 164, J. Ling, personal communication September 3, 2019). The tactics that Harper's government employed to limit access to government information are well documented. These include almost completely dismissing promises to reform the ATIA (Larsen & Walby, 2012 p 108)) and other informal practices, such as the use of Blackberry phones and Secure Instant Messaging, the development

of an oral culture, and, occasionally, the destruction of documents (Gingras, 2012, p 234). Sarah Boesveld (2011) reported in the *National Post* that Stephen Harper's Conservative government was responsible for a noticeable downturn in transparency and mentioned that the Canadian Journalists for Free Expression (CJFE) gave the government the lowest rating possible in the administration of the access to information act for two years in a row (Boesveld, 2011). However, other more-recently published reports acknowledge that Justin Trudeau's government has continued to withhold information from the public at a worse rate than Harper's government (Linnitt, 2017), echoing what journalists in this study claimed.

Findings from the present study acknowledge Harper's reputation, but ultimately did not cast significant blame on any specific political party or administration. Rather, the journalists interviewed were clear that the ATIA had stagnated and that no one political party had a more significant influence over another. Dean Beeby stated in the interview that "Mr. Harper was not a friend to Access to information, but neither were his predecessors in that office. I think that there was a steady decline" (D. Beeby, personal communication, August 27, 2019). Justin Ling echoed this sentiment saying "the system was better under the Harper government... That wasn't a product of the fact the Harper government made it easier to use. That was a product of the fact that [the ATI system] has just slid further into disrepair in time" and later added "the Trudeau government should bare a lot of blame for how bad this has become" (J. Ling, personal communication, September 3, 2019).

The difference between the opinions interviewees offered and dominant trends in the literature can reasonably be attributed to the amount of time needed to pass by before studies and

academic articles on the state of access to information and government transparency can be thoroughly researched and published. It is possible that in a few years' time, as many articles and studies will be published revealing the shortcomings of Justin Trudeau's Liberal government which will intimate towards this study's findings – no political party has had a great track record with the ATIA. The effectiveness of the legislation has declined over time because the repairs required of the act have never been fulfilled.

Regardless of the causes of this stagnation, the impact on journalists is clear – using the ATIA as an essential resource to produce high quality and complex journalism has become more difficult over time. Anna Mehler Paperny relayed the difficulties that journalists face while making FOI requests in a 2015 CJFE article. She said, “even if you emerge from the months-long morass of ATI negotiations with your sanity, sense of purpose and ATI request intact, chances are you'll be handed an impenetrable sheaf of documents” (Paperny, 2015). One interview participant in the present study, Sara Mojtehdzadeh, also discussed these challenges:

I think [the ATIA] is essential, or it should be essential. Currently I can't rely on it, really, to accomplish anything except to show how obstructive the government can be and I think that is instructive in and of itself but having a responsive freedom of information system makes a huge difference in my ability to report properly and also accurately. A freedom of information request gives you insight into how decisions are made that you wouldn't normally get, so it does improve the quality of your reporting and that is what we are losing by not having a system that works properly. (S. Mojtehdzadeh, personal communication, August 28, 2019)

Regardless of political leadership, a stagnant ATIA frustrates the ability of journalists to offer the public high-quality reporting.

Even though it is widely agreed that the Act has stagnated, there have been some small advancements in policy which have slightly improved government transparency. Taking note of specific amendments illuminates how sparse they are. On March 25, 1999, Bill C-208 became law. The amendment forbids the alteration and falsification of documents, something government officials were found guilty of during the Somalia Inquiry. In the early 2000s, there was an initiative to move government information online (Roberts, 2006a, p 17). This initiative has continued in the most recent reform Bill C-58. Stephen Harper's Conservative administration brought in the Accountability Act on December 12, 2006. It broadened the scope to include Crown corporations, but this was only one of several recommendations made to improve the ATIA (Rathgeber, 2014, p 164, Treasury Board of Canada, 2006). In the wake of 9/11, the Anti-Terrorism Act was introduced which increased exemptions in the ATIA (Larsen & Walby, 2012, pp 61-62). Interviewee Dean Beeby reflected that most journalists respected the reduced transparency at the time (D. Beeby, personal communication, August 27, 2019), however it is currently perceived by some journalists as an overused and unnecessary method for limiting public access to government information (Larsen & Walby, 2012, pp 61-62). On May 5, 2016 a flat \$5 fee was introduced for all ATI requests at the federal level (Government of Canada, 2016; Government of Canada, 2020b). This was reported as an improvement for journalists attempting to access large amounts of information (J. Rankin, personal communication, September 4, 2019). The most recent amendment to the Access to Information Act was Bill C-58, which was implemented on June 21, 2019. Prime Minister Justin Trudeau claimed the legislative update would improve government transparency; however, the findings put forward in this study and the literature agree: this has not been a consequence of the bill.

These advancements and amendments are meagre in comparison to the breadth of policy changes that have been called for over the years and have little effect on the practical challenges that journalists face while navigating the act. Despite these necessary advancements in policy, the ATIA has continued to stagnate, resulting in an increased burden for journalists. Although some politicians have continued to claim that the ATIA is in good health (Open Parliament, 2017), there is a litany of criticisms that state the contrary (Ellerbeck, 2018; Information Commissioner of Canada 2015; “5 Times Justin Trudeau...”, 2019). The findings of this study align with many of the criticisms aimed at the ATIA, and indicate that, despite these few amendments that do advance the ability to access government information, the ATIA has clearly stagnated to the detriment of journalistic practice.

On June 21, 2019, Bill C-58 became law under Justin Trudeau’s Liberal government. What was purported to be the first major revision of the Access to Information Act, ushering in a new era of transparency and accountability, materialized as a sly political achievement. The journalists interviewed for this project generally agreed the amendments implemented with Bill C-58 will not advance reporting for journalists or democratic goals of transparency in general—in fact, many claimed it will make things worse.

After many years of inaction, Bill C-58 was initially proposed as a method to increase government transparency and improve the Access to Information Act by making information more freely available, eliminating all fees with the exception of the initial \$5 payment, expanding and empowering the role of the Information Commissioner, including ministers’ offices within the scope of the ATIA and committing to a legislative review every five years

(“Real Change...”, 2015). Each of these proposals would have positively affected journalists’ ability to access information. However, this was not what was accomplished. Instead, cabinet confidences were excluded, the Information Commissioner still does not have order making powers to the extent that was promised, and fees have not been entirely eliminated (Government of Canada, 2019a). Furthermore, as the journalists interviewed in this study generally agreed, the two most noteworthy provisions of Bill C-58 that will affect journalistic practice are the vexatious requests provision and the mandate for increased proactive disclosure. While the vexatious requests clause is projected to be a bane for journalistic practice, the increase of proactive disclosure has elicited various opinions.

The changes brought through Bill C-58 allow government officials to label ATI requests as ‘vexatious’ or ‘filed in bad faith,’ at which point they may be refused. Fred Vallance-Jones (2017) states there is a similar program running in the province of Ontario and has resulted in accountability requesters such as journalists being singled out and refused at a much higher rate than other requesters. Journalists interviewed in the study agreed that this is a deeply problematic stipulation. One interviewee, Journalist D, recounted that their requests are often times highly specific and may sound bizarre to an individual who is not well acquainted with the information. This individual could easily foresee an ATI officer enlisting the “vexatious” label as a way to save on time and resources.

Increased proactive disclosure was a provision of Bill C-58 yet has its roots in a 2003 mandate for select government officials to make travel and hospitality expenses known to the public as an initiative to increase transparency (Library Archives of Canada, 2019). The

momentum towards proactively disclosing many types of government information has grown over time. But, the literature and the study point to mixed results on how this will affect journalists. One general opinion that interviewees offered is that, given the advancement of technology, the proactive disclosure of government information is an important and logical step forward; yet, there is a sense that because government officials are aware that their documents will be automatically made public, they will likely be sanitized and of little use to journalists (J. Rankin, personal communication, September 4, 2019). Larsen and Walby (2012, p 49) note that for proactive disclosure to contribute to government transparency, it must provide meaningful insight. Otherwise, no understanding will be gained into the government decision making process, and it will not likely be useful to journalists in holding power to account.

Other journalists interviewed for this study claimed that proactive disclosure erodes the spirit of the ATIA and therefore will likely contribute to further challenges that journalists will face. The government pushing sanitized information to the public is what the government has always done and does not confer the main purpose of the Act. Interviewee Dean Beeby said:

Governments have always had the final say in what they could release and what they decided not to release...[the ATIA] was kind of revolutionary that we the people had the ability to pull documents and not just accept what documents were pushed out to us by any government” and continued, saying that the government is “undermining the rights of citizens to pull documents and they are covering it up with this bogus claim that somehow they are being open and transparent and therefore we don’t need citizens meddling in the process.” (D. Beeby, personal communication, August 27, 2019)

It has also been noted in some literature that these ideas are easily conflated. Michael Geist (2017) notes that Bill C-58 “seeks to conflate access to information with proactive disclosure, treating the information the government wants to make available as the equivalent to the information to which the public is entitled and may want to access” (Geist, 2017). The deliberate

attempt at using proactive disclosure to unhinge the original purpose of the legislation from the way the Act can be engaged with may prove to be very problematic for journalists.

The most recent amendments to the ATIA serve the purpose of further constricting the flow of authentic government documents, which corroborates that perspective of interviewees and the literature on the topic: the ATIA has stagnated and creates challenges for journalistic practice. It is worse at the current moment than any other point in history because of the combination of inaction, inadequate action, and most recently with the proactive disclosure provision of Bill C-58, the possibility of unfavorable action, which all have a negative impact on the ability of journalists to use the Act to further their reporting.

Part 2: ATI Requests Are Essential, But They Come at a Cost

Journalists are working within a mosaic of localized, practical challenges by navigating the ATIA, such as excessive delays and redactions, amidst more abstract global momentums that are moving in multiple directions at once, such as the evolution of technology and financial strain in the newsroom, and government inclinations toward secrecy. It was meaningful to assess the current state of journalists' engagement with the ATIA because it clearly indicates the power and usefulness of the legislation and how, in turn, it supports a more complex and fact-based public discourse. Highlighting the functions, use and barriers that journalists experiences while engaging with the ATIA takes stock of how journalistic practice, especially investigative journalism, is currently positioned in Canada. As reviewed in previous chapters, the ATIA functions as an essential tool for journalists, especially for those primarily engaged with holding power to account. Use of the ATIA also points to the motivation of journalists: some use the

ATIA to engage in their work as activists, while others use the legislation to do a ‘good job.’ The legislation poses many well-documented barriers for journalists, and the results of the present study indicate that the financial strain on the news industry in recent years has added layers of complications. Despite these challenges, journalists have been persistently using the ATIA as a resource for their reporting.

All journalists interviewed in this study mentioned that they would only file an ATIP as a last resort. Of those interviewed, two journalists had the responsibility to manage requests in an effort to help reporters on their teams gather information to help create more complex and unique stories for public consumption. Some journalists mentioned that the ATIA was an important tool for protecting and verifying sources, and the remaining journalists said that it was the only way to gain access to some government information for the purposes of their reporting. Whatever the motivation for filing an ATI request, the practical challenges were the same: the government’s perceived use of unjustified exemptions, which often lead to excessive redactions, delays, fees, and an inefficient and ineffective complaints process, which were perceived to have become worse over time. Despite these challenges, journalists persist in using the ATI system, and their stories successfully reach towards democratic goals.

The interviewees contextualized these practical considerations by articulating deeper motivations for filing an ATI request. Of the journalists interviewed, some were primarily motivated by their perceived role as providing the public with accurate, timely and newsworthy information. Filing an access to information request was, for these journalists, a way to do a good job in fulfilling those requirements. Others claimed that their role as journalists was

explicitly to hold power to account. As such, using the access to information system supported their work, which they conceived of as inherently activist.

Most of the journalists interviewed said they regularly share the details of filing an access to information request with their readers to be transparent about their sources, or at least have the intention of doing so, as including such information is not always approved by newsroom editors/producers. The findings of the study show that some journalists share this information as a practice of what they perceive as “good journalism” – to be transparent about sources and the research process. Others share this information to add a deeper layer of information to their story: it inevitably informs the public of how the government is responsible to its electorate by the ease with which the information is released. The information that is imparted by expressing the details of an access to information request deepens the context of the story, in effect, it tells a parallel story about the state of government transparency. As such, it reaches towards democratic goals of having an accurately informed public and is fundamental to holding the government to account.

I was unable to locate literature that specifically connected the perceived roles and motivations of journalists to how that motivation facilitates their engagement with accessing government information. However, these themes connect to a larger conversation contrasting the perceptions and motivations of journalists who are invested in pursuing democratic goals. ‘Objectivity’ is a traditional value held up in Western journalism and is especially valued by ‘detached watchdog’ journalists (Hanitzsch, 2011, p 485). For traditionally-minded journalists, ‘objectivity’ requires a balanced story that reports the facts and lets the reader decide for

themselves what to make of the situation. “They are least likely to advocate for social change, influence public opinion and set the political agenda” (Hanitzsch, 2011, p 485). However, according to activism-inclined journalists, this perspective is problematic. There is no such thing as a neutral position or conveying a story with objectivity. Each journalist carries their own set of personal bias and works within a news agency with its own general bias. This inherently affects what stories are told and how they are expressed. In addition, journalism itself is biased towards accountability.

The ‘activist’ journalists who use the ATIA as a source for their stories expressed they were doing so to hold power to account with the explicit bias of performing their activism role in service of a stronger democracy. It is important to distinguish between journalists in this study who see journalism itself as activism (with the bias of accountability and pro-democracy) and journalists who fuse the goals of activism and journalism to produce work that is intended to sway the audience. This latter type of journalism veers dangerously close to editorializing and may be accused of being ‘fake news’ (Adhikari, 2017). Journalists who reported trying ‘to do a good job’ were more inclined to share the necessary ATI related information with the readers to be transparent about their sources and to let the readers decide for themselves about what to make of the information. In this sense, this study revealed that the use of the ATIA functions as a possible way to discern how journalists conceive of their work in the bigger picture.

The barriers that journalists face while reporting are layered and well-documented. The existing literature and this study’s results point to problems with the legislation itself, as well as with the administration of the law (Roberts, 2006b). Journalists face practical barriers such as

excessive redactions, delays, and fees, which are deeply prohibitive of their reporting (Vallance-Jones, 2017; Roberts, 2006a). The present study shows that the increased financial strain in the journalism industry means that fewer journalists are doing more work with fewer resources. This affects the time and financial resources at a journalist's disposal to engage with ATI research. In addition, there are broader more abstract trends that fall outside an individual journalist's grasp, yet influence their ability to access information. Various factors within the government, such as resentment and apathy of adhering to the legislation (Roberts, 2006b), understaffed and underfunded ATIP offices (Larsen & Walby, 2012, p 307) and targeting journalists' requests for public relations management before release (Larsen & Walby, 2012, pp 57-58) make accessing timely and meaningful information more burdensome. There is also a dominant trend noted by some interview participants that the government tends towards secrecy. As Cribb et al. (2015) state, "A philosophical bent towards self-protection and secrecy dominates many government offices in Canada. And while freedom of information laws act as a counter to those human tendencies, their efficacy is highly limited and remains subject to the whims of bureaucrats" (p 239). Perhaps the most significant barrier is the extreme resistance to meaningful reform that journalists, alongside other groups, have advocated for over the years.

Despite these challenges, the legislation does sometimes work to help create high quality journalism. There are numerous examples throughout the course of recent Canadian history where journalists have used the Access to Information Act to report on invaluable stories that illuminate injustices, hold power to account and shift public discourse in favour of justice and accountability. These stories have caused the public to question, en masse, what decisions have been made on their behalf, in Canada and across the world. In addition to the positive examples

of ATI use offered by interviewees, like Julie Ireton's *No More Secrets* and Jim Rankin's *A real-estate guide to incarceration*, Journalists Daniel LeBlanc, Campbell Clark, Joel-Denis Bellavance and Jack Aubry used the access to information system to expose corruption and the misuse and misdirection of millions of dollars under Chretien's Liberal leadership (Vongdouangchanh, 2005), which sent shock waves across the country and cost the Liberals their majority leadership in the 2004 election ("Federal sponsorship scandal", 2006). In a series of stories referred to as 'The Torture Memos', Jim Bronskill used the ATIA to expose the Harper government as complicit in the torture of Canadian citizen Maher Arar, among others, in a Syrian jail in 2002 ("Why Access to Information is Crucial", 2015). This story resulted in a huge scandal for the government and resulted in an official apology to Arar and a \$10.5 million-dollar settlement ("My Canada: Maher Arar", 2005).

It might be argued that these stories exist as proof of a well-functioning Access to Information Act, and that no new reform is needed. This would be a flawed conclusion. In 1983, Canada was a leader in transparency. The ATIA was considered one of the most advanced pieces of legislation of its kind on a global level (Roberts, 2006b, p 117). Yet, in a 2018 global evaluation, Canada sunk to 55th place, dropping 6 places from the year prior (Bronskill, 2018). This indicates that after decades of stagnation, the ATIA has become a more challenging piece of legislation for journalists to navigate. It also indicates that Canada's FOI laws have a lot of room to improve.

This study indicates that, for journalists, the ATIA functions an essential tool to advance their reporting and hold power to account. It also helps to contextualize journalists' motivations:

some perceive their use of the ATIA as a resource that helps them to fulfill their role/job description and fulfill their role as ‘watchdog;’ for others, their work is inherently activism, biased towards accountability. In both cases, good journalism is connected to building and participating in a strong democracy. However, in the latter case, journalists do not ascribe to the traditional notions of ‘objectivity;’ rather, they see themselves as biased towards accountability and strive to offer the audience a deeper layer about government transparency in their stories.

Journalists face practical barriers to access such as delays and redactions and an inefficient complaints process. However, there are other barriers that negatively affect the ability of journalists to successfully navigate the ATIA that are more abstract, but still influential. The consequences of financial strain in the news industry show that over the course of their careers, journalists are doing more work than ever before while simultaneously having less resources to devote to ATI research. The study also indicates that the influence of particular lead political parties has little direct impact on the functioning of the Act, which is contrary to some literature. Rather, the study indicates that ATIA has stagnated and is therefore worse now under current leadership than previous leaderships. Despite these challenges, journalists are still able to successfully navigate the legislation to help create high quality journalism.

Part 3: Strategies Are Essential

The numerous positive examples of ATI-enriched stories that have reached the public and impacted local and national conversations would not have been possible without journalists employing various strategies to get the most out of the Act, while confronting numerous obstacles caused by it. It was important to take stock of the myriad strategies that journalists use

to create an up to date resource that encompasses the best ways for moving forward as a journalist invested in accessing government information. It was also a meaningful question to address because it allows for the amalgamation of resources from within the study and from outside resources. The findings show that information learned from the study and the literature are unanimous.

Jim Bronskill and David McKie lay out strategies for accessing government information through the ATI in their book *Your Right to Know* (2014). One of the first things they express is the ‘iceberg theory’: 10 percent of the iceberg can be seen; 90 percent is under water – the same is true with government information (p 13). Because of this, Bronskill and McKie, along with all journalists who participated in the study, advised to do as much research as possible before filing the request, including on the nature of the act itself.

Many journalists who participated in the study use piggy-backing as a strategy to succeed. This entails using information gleaned from already-completed requests for their own stories, or using that information to formulate a new request.

When filing a request, both the literature and results of the present study claim it is crucial to determine the scope of the request. Robert Cribb, Dean Jobb, David McKie and Fred Vallance Jones authored the book *Digging Deeper* (2015) as a resource for engaging in journalistic research in Canada. They say there are two kinds of requests. The first is ‘the fishing expedition,’ which is meant to uncover documents you may not know exist. The drawback about these requests is that they can uncover a lot of information at once, which may be difficult to sift

through (p 247). The second type of request is to take a narrower or ‘surgical’ approach – because this approach is asking for very specific information, the response is typically faster and less expensive (p 248). The interviewees in the present study generally agreed and recognized that, regardless of the approach, the language used in requests must be clear and concise. Some journalists stated it was important to use everyday language, while others recommended using technical or legal language.

Negotiating with the ATI coordinator is a frequent step that journalists make, especially data journalists. Jim Rankin, data journalist for the *Toronto Star*, participated in the study and also contributed to the book *Brokering Access* (2012), edited by Mike Larsen and Kevin Walby. He reminds the reader that open dialogue goes a long way (p 341), and stated in the interview, “the more you can be open and keep an open dialogue with the coordinator, you can get access to what you want. If you go in like it’s a war and you treat it like that— you are dealing with human beings -- it is not going to be helpful. Go in with a bit of honey instead of going in with a stick” (J. Rankin, personal communication, September 4, 2019). This consideration is especially important for data journalists because, as Rankin states, the coordinators are not always aware of the technological considerations of working with data, which can lead to misunderstandings and suspicions (J. Rankin, personal communication, September 4, 2019). In the book *Digging Deeper*, the authors remind the reader to negotiate the format in which the requester will receive the information, as this can be a significant consideration for searching and sorting information, especially for data journalists (Cribb et al., 2015, p 276). Dean Beeby, a seasoned reporter and an access to information expert who regularly mentors other journalists and facilitates ATIP workshops, stresses that it is important to monitor each ATI request file. He reminds the

requester to be patient: “Responses to journalists typically take 90 days or more. Keep a record of every telephone call, voicemail, email or letter from the officer handling your request” (Beeby, 2019). Having a record of this information will help to further negotiate in favour of your request. Given the likelihood of regular communication, an agreeable relationship with the ATIP coordinator will likely help a requester to understand the progression, outcome and content of the request.

If a requester deems a response inadequate because of delays, redactions, excessive fees, or has been suspected of interference, a complaint to the Information Commissioner may be necessary. Although many journalists in the study claim that the process is so inefficient that it is not worth contributing to an overburdened system. Others state that it is important to send a message to the Commissioner’s office, not just regarding the specific request, but to call attention to the fact that journalists are being denied important government information that is in the public interest.

Finally, Dean Beeby states that it is important for journalists to share their tips and tricks with each other and to announce their ATI successes on social media. This serves as a reminder that the fight for improved government transparency is bigger than any one specific story as well as encouraging a mentality of perseverance in the face of challenges.

Findings from this study point to a mixed outlook regarding the future of government transparency in Canada. Some journalists are cautiously optimistic, claiming that the upcoming generations have strong expectations about receiving information, yet others project a future

outlook based on past experience— in this case, it is less than optimistic. In either case, strategies, such as determining scope, using clear language, maintaining a friendly relationship with the access coordinator, and taking a methodological approach to tracking communications will continue to be an essential for journalists trying to get the most out of the Access to Information Act.

Conclusion

The Access to Information Act is a tool that journalists use to hold power to account. To this end, it helps to further the important and necessary work of contributing to and fostering democracy. Informally, it is well known that many journalists find engaging with the system a burdensome task, yet, there have been no known research efforts made to systematically collect and analyze their experiences. The purpose of this research was to understand journalists' lived experiences and the tacit knowledge developed through navigating the ATI system. In addition, this research situated Canadian journalists within the multiple and varied influences that impact the intersection of journalistic practice and the Access to Information Act. Finally, this study offered effective strategies and best practices for journalists to get the most out of their research endeavours. Looking ahead, there are areas around the intersection of journalistic practice and the ATIA which would benefit from further research and action. They include policy, the newsroom, education and other researcher efforts.

Policy

Bill C-58 was officially implemented on June 21, 2019. As such, it was scheduled to receive a review after the first year of implementation and subsequent reviews every five years thereafter (“Government completes major...”, 2019). Given the numerous, repeated and well-

researched calls for reform that have gone unheeded over the years, this thesis does not aim to present any novel policy recommendations to improve the ATIA. Instead, this study urges policy makers to implement the numerous well-researched calls for reform that were included in the original proposal for Bill C-58.

The Newsroom

This study found that a main problem for journalists in the newsroom is the pressure to do more work than their predecessors with fewer resources. Interviewees reported that this has resulted in filing fewer ATI requests when compared with their previous years of experience. Given that significant revenue increases in the news industry are not anticipated, this study proposes a couple of recommendations to make the best out of a less-than-ideal situation.

In an effort to make the process of requesting information more feasible in the newsroom, journalists should be coached or mentored in best practices for filing requests. This is already the case in some newsrooms and among some journalists, but not all interviewees in the present study reported receiving support for ATI research at work.

Individual journalists can make an effort to encourage a culture of ‘teamwork’ in the newsroom and between news agencies. Sharing tips, tricks and information with other journalists encourages a team-work mentality. This sometimes goes against a natural feeling of competitiveness in the field -- to be the first with a scoop. However, Dean Beeby encourages journalists to see government transparency as a larger issue that requires collaboration.

Journalists, alongside newsroom producers and editors, should be encouraged to include more details about their research process and potential difficulties in their stories for their readers to understand. Expressing these issues inherently communicates concerns surrounding government transparency to the audience and reminds the reader that a primary role of journalistic practice is to hold the government to account. It also indicates to the reader how well the government is holding up to promises of transparency. In addition, relaying these details to the audience reminds them that important journalism is often times hard work.

Education

Some interviewees mentioned in the study that their education regarding ATI in journalism school was limited and they thought that a stronger knowledge base of the Access to Information Act would have been beneficial when they first started out. To better prepare new journalists approaching the field, journalism programs ought to more thoroughly focus on presenting the ATI system as a rich yet sometimes frustrating resource for investigative journalists and teach best practices for navigating the system. In addition, because using the Access to Information system requires a comprehensive understanding of government structure and process, a stronger civics education would be beneficial to those pursuing investigative journalism in school. In an interview with Michelle Bodnar for Mount Royal University, Sean Holman stated that civic literacy in Canada is lacking. “The vast bulk of Canadians don't understand what journalists write about. And even if they do understand, they usually can't do anything about it...even if you have the literacy and can do something about it, because of a lack of access to information, journalists are not able to provide what is necessary to do what is needed” (Bodnar, 2016). A stronger civics education would accomplish two goals: (1) a broader and more in-depth knowledge base would create a richer foundation for the public to engage in

the democratic process, and (2) journalists would be better equipped to engage efficiently and successfully with the ATI system.

Researchers

The intersection of journalistic practice and the ATIA would benefit from further scholarly investigation into more localized areas of freedom of information legislation, such as provincial and municipal systems. These laws have their own particularities and are often a rich source of information for journalists who report on local news. In addition, some Canadian journalists would likely benefit from a knowledge base regarding international freedom of information laws, where some consequences of Canadian economic and political initiatives may be more acutely felt by populations in other regions of the world.

Specialized strategies geared towards specific government agencies may prove useful to journalists covering particular beats. In addition, researchers with specific pursuits (ie. historical, academic, etc.) would potentially benefit from specialized instruction regarding specific government agencies. For example, Sara Turnbull (2015), a criminology researcher, wrote “in the context of criminal justice institutions, access is notoriously difficult to obtain... Successful requests often involve carefully pitched projects that appease epistemic differences, present an acceptable project to the institution, and/or, as in my case, ensure that there’s a clear benefit of the proposed research to the institution.” Dominique Clément (2015) wrote that FOI laws are a valuable resource for historians, yet graduate students generally do not profit from adequate training in utilizing the legislation to their advantage (p 119). The information presented in this study, in particular, regarding strategies, would be an asset to any researcher outside the field of journalism and provides a platform for further, more specialized research endeavors.

A final area of study which would advance understanding and the development of best practices in this area is the experience of access to information coordinators and their process for evaluating requests in general and requests from journalists in particular. Insights from an internal government standpoint would likely offer journalists practical information in requesting and accessing government information. This area of research also holds the potential to offer improved policy recommendations.

There are many positive outcomes to ATI-based reporting; power is rightfully held to account, the public is informed with accurate, timely and meaningful information and are therefore able to make decisions that improve their lives, care and connection is nurtured within communities and the likelihood of the audience to engage in democratic processes improves. These multiple benefits indicate that the public is better off when journalists are able to access government information. Unfortunately, journalists face many challenges when navigating the ATI system for the purpose of bringing meaningful stories to the public. Some of these challenges are localized and practical such as excessive delays and exemptions, others are more global and, in some cases, more abstract, such as the evolution of technology, the increasing complexity of government and the trend that governments tend towards secrecy. It is my hope that this research contributes to advocacy efforts in favour of an improved freedom of information law in Canada and to public discourse on civic culture, responsibility, and governmental accountability.

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APPENDICES

Appendix 1: History of the ATIA, A Working Timeline.

Please note: The objective of this document is to present a compact and comprehensive timeline of the evolution of the ATIA, which privileges the perspectives and considerations of journalists and the journalism industry. This information was gathered from various sources, including academic literature, news coverage and political campaign booklets, among other sources and was assembled by myself. This document should not be considered conclusive.

Useful Documents:

[Access to Information Act](#)

[Manuel on how government agencies should interpret the ATIA](#)

[The Access to Information Act and Proposals for Reform](#)

Timeline:

July 29, 1964 – Globe and Mail article cites the FOI law in the USA is connected to reporters gathering news (“Bill Sets Up Reporter’s Right To Get News”, 1964).

1965 – A Private Member’s bill introduced the ATIA. Nothing happened ([Rosner, 2008 p 196](#); Larsen & Walby, 2012, p 5).

April 16, 1965 – Globe and Mail article mentions the potential for the ATIA and claims that an open government is good for democracy (“It is the public’s business”, 1965).

3 March 1980 - 29 /30 June 1984 — PM: Pierre Elliot Trudeau, Liberal Party

Aug 12, 1980 – Globe and Mail article acknowledges that FOI is required for other rights to be meaningfully expressed and lists other problems (Kopyto, 1980).

April 9, 1981 – Globe and Mail article discusses the proposed ATIA, the resulting codified secrecy of government information and the exclusion of Cabinet confidences (Rowat, 1981).

April 13, 1983 – Globe and Mail article states proposed request fees will be prohibitive to regular use (“Ottawa’s access fees too costly, MP says”,1983).

July 1, 1983 — The ATIA reaches royal assent ([Government of Canada, 2015](#)).

Dec 5, 1983 – Globe and Mail article discusses the ATIA coming into effect and some of its inadequacies including the exclusion of Cabinet Confidences (Sallot, 1983).

30 June 1984 - 16/17 September 1984 — PM: John Turner, Liberal Party

17 September 1984 - 24/25 June 1993 — PM: Brian Mulroney, Conservative Party

Nov 20, 1984 – Globe and Mail article discusses problems with exclusion of Cabinet Confidences (“Access to Cabinet files a discarded Tory goal”, 1984).

Dec 13, 1984 – Globe and Mail article that discusses problems with exclusion of Cabinet Confidences (Sallot, 1984).

1987 — Solicitor General tabled a unanimous report to Parliament “[Open and Shut: Enhancing the Right to Know and the Right to Privacy](#)” with more than 100 recommendations to improve the Act, some of which continue to be relevant today. ie. The document proposes that Cabinet Confidences be subject to an ‘injury test’ before being released to the public. This suggestion was not considered, cabinet confidences continue to be held outside the scope of the ATIA. (Parliament of Canada, 2005, 3.1).

1989 - 2008 — all ATIP requests were catalogued in [CAIRS](#) (Coordination to Access to Information Requests System) a government run data base that made information available to the public.

25 June 1993 - 3/4 November 1993 — PM: Kim Campbell, Conservative Party

4 November 1993 - 11/12 December 2003 — PM: Jean Chrétien, Liberal Party

1998 — A member of the military responded to an ATI request by CBC journalist Michael McAuliffe regarding the Somalia Affair (1993). The response contained

intentionally altered reports. ([Somalia Report, Vol 5, p 130](#); [Fisher, 1996](#); [Rosner, 2008, p 191](#)) As a result, [Bill C-208](#), an amendment that states it is illegal to change or falsify documents was implemented.

2000 — the Minister of Justice and President of the Treasury Board launched a task force into the ATIA and found the ATIA was in crisis. In 2002 they delivered their report which made 139 recommendations for reform ([Government of Canada, 2002](#); [Parliament of Canada, 2005, 3.3](#))

Oct 15, 2001 – The Anti-Terrorism Act was passed. Ann Rees clarified the ramifications of the bill on access to information. “The most important amendment in terms of limiting public access rights allowed a minister to issue a certificate vetoing the release of a record that would otherwise qualify for release under the ATIA. The ministerial override could not be challenged by the Information Commissioner, whose role as ombudsman was to mediate and rule on disagreements between government and requester. Nor was there any appeal to the courts.” (Ann Rees as cited in Larsen & Walby 2012, pp 61-62).

2002 – Information Commissioner John Reid issued a response to the report of the Access to Information review task force. ([Office of the Information Commissioner of Canada, 2002](#)). The government did not act on any recommendations. (Larsen & Walby, 2012, p 60).

October 2003 — John Bryden presented [Bill C-462](#) in an attempt to overhaul the ATIA but by May 2004 it did not go through.

1993-2003 -- Jean Chrétien implemented a surveillance system of ATI requests. Contentious requesters ie. Journalists, political opposition etc. were immediately ‘flagged red or amber’. These requests were subject to political interference by the PMO/PCO office which resulted in longer delays and increased redactions. This goes against the spirit of the law where all requesters are to be treated equally. Stephen Harper opposed this practice until he was elected Prime Minister when he continues to use it for his political advantage. (Larsen + Walby 2012 pp 57-58).

12 December 2003 - 5/6 February 2006 — PM: Paul Martin, Liberal Party

October 2004 — Pat Martin proposed [Bill C-201](#) (similar objectives to C-462) It did not go through.

12 December 2003 – Paul Martin requires select government officials to proactively disclose travel and hospitality expenses ([Library Archives of Canada, 2019](#)). The momentum towards proactive disclosure of all government information grows over time and is sometimes conflated with the goals and objectives so the ATIA ([Geist, 2017](#)).

May 2004 — John Dryden’s [Bill C-462](#) did not go through

2005 -- Information Commissioner John Reid suggested substantial changes to the ATIA to battle a culture of secrecy ([Parliament of Canada, 2005, 3.7](#)). Although there was some support in the government, there was not enough to bring about any change. Journalist Ken Rubin stated the proposed changes were not substantial enough ([Rubin, 2011](#)).

2005 — Justin Minister, Irwin Cotler introduced a discussion paper regarding the state of the ATIA ([Department of Justice Canada, 2005](#))

February 2005 — the Canadian Newspaper Association published a report where 20 amendments to improve the ATIA were suggested ([“In Pursuit of Meaningful Access to Reform”, 2005](#)). Core reforms include broadening and strengthening the ATIA, public money must be subject to public scrutiny, public interest must outweigh government secrecy, etc. This report was motivated by the experience of journalists that were frustrated by the obfuscation of government information flow.

6 February 2006 - 3/4 November 2015 — PM: Stephen Harper, Conservative Party

2006 — The Harper government made campaign promises to overhaul the Access to Information Act by implementing Commissioner Reid’s recommendations (Larsen & Walby, 2012 p 108), but after the election, Harper replaced Reid as Commissioner and only implemented one reform — to include Crown corporations in the Accountability Act ([Rathgerber 2014](#), p 164).

2006 — Alasdair Roberts published a report on the ATIA. Some of the problems listed in this report concerns the techniques used by the federal government to undermine the spirit of the act. Another problem is the internal designation of the type of requestor. Although journalists make up a small percentage of those who use the ATIA, their requests are often times perceived internally as problematic due to the potential connection to political scandal. This is also opposed to the spirit of the law — all requesters should be treated equally. ([Roberts, 2006b](#))

Octo 21 2007 – FIPA reports that Stephen Harper’s government failed to live up to promises to improve government transparency and the ATIA ([“Harper government confines...”, 2007](#)).

April 2008 — CAIRS was cancelled by Harper government because it was too expensive and too slow. The government did not consult Canadians, including journalists before closing the database. “In response, Liberal Leader Stéphane Dion accused the Prime Minister of leading "the most secretive government in the history of our country." ([Fenlon, 2008](#); [“Tories kill access...”, 2008](#)).

September 2008 —A close to 400 page report was presented regarding the federal ATIA. It was produced with the help of some Canadian newspapers, among other, and concluded that Canada needed to improve the ATIA to step in line with other Commonwealth nations. (Tromp, 2008).

2009 — Stanley Tromp reported that the Canadian ATIA system had fallen behind that of other countries. ([Tromp, 2009, p 1](#)). Yet, Justice Minister Rob Nicholson stated to the House of Commons that the ATIA was in fine form and not deserving of criticism ([Tromp, 2009, p 5](#)).

2009 — Commissioner Robert Marleau presented 12 urgent recommendations to modernize the Act ([Parliament of Canada, 2005, 3.11](#)) “such as timeliness, order-making powers for the Commissioner, compliance, public education and the coverage of the act, which would be expanded to include the institutions of Parliament, cabinet confidences, and even the courts. In a June 2009 report to Parliament, the Standing Committee of Access agreed with all of Marleau’s recommendations. Despite that, however, the entire report had been shelved” (Rathgeber, 2014, pp 164-165).

October 2010 — Canada was ranked last of the Commonwealth countries for having a properly functioning FOI law ([Hazell & Worthy, 2010](#)).

May 13, 2011 – The Supreme Court of Canada ruled that the Prime Minister’s office and all Ministers’ offices fall outside the scope of the Access to Information Act ([Supreme Court of Canada, 2011](#)). “The ruling was ten years in the making and stemmed from an opposition party researcher’s request under ATI to examine the daily agendas of then Liberal Prime Minister Jean Chrétien. Rather than turn over the agendas, which would

have shown who met with the prime minister on a daily basis, Chrétien turned to the courts” (Larsen & Walby, 2012, p 41).

June 6 2012 — The Access to Information Act and Proposals for Reform was published by the Legal and Legislative Affairs Division of the Parliamentary Information and Research Service. It summarized past reform initiatives and detailed the initiative of the Harper government to improve government transparency by creating an open government initiative as opposed to amending the Act ([Library of Parliament, 2012](#)). Nothing came of these recommendations.

December 5, 2013 — Suzanne Legault, the Information Commissioner, gave a speech on the 30th anniversary of the Act where she described the legislation as out of date and stated the two fundamental problems with the ATIA are that the government has not modernized to seriously deal with electronic information and the increase in size and complexity of the government itself. (Rathgerber 2014, p165) It was reported on another occasion that Legault claimed the government was obstructing the Act ([Beeby, 2013](#)).

April 30, 2014 -- *CJFE* reviewed the state of the ATIA and found many problems ([Carty, 2014](#)).

September, 2014 -- The ‘[Open Government Act](#)’ bill C-301, which did not receive enough support to go into effect under Paul Martin, moved forward slightly —it continues to await a Second Reading.

September 2014 — [Globe and Mail report](#) states an ATIA policy update was quietly introduced in 2013 that “required federal bureaucrats to consult departmental lawyers about what documents should be classified as secrets” which increased how much information was held back from public view and doubled complains to the Information The Information Commissioner, Suzanne Legault found that this was problematic.

November 28, 2014 – Michael Geist wrote a critique in *The Toronto Star* regarding the movement towards open government, proactive disclosure and the ATIA ([Geist, 2014](#)).

4 November 2015 - Present — PM: Justin Trudeau, Liberal Party

2015 – Trudeau’s Election Platform stated that the ATIA will be updated to make information more freely available, eliminate all fees (with the exception of the initial \$5) expand the role of the Information Commissioner, open the ATIA to Minister’s offices, commit to a legislative review every five years([“Real Change”, 2015, pp 24-25](#)).

April 3, 2017 – *CJFE* reported that the ATIA desperately needs to be updated citing that the changes must be both administrative and cultural. Specifically, to reduce exemptions and to open up Ministers office to the ATIA ([The government must..., 2017](#)).

June 19, 2017 – Bill C-58 was presented in the House of Commons. It includes a strong momentum towards proactive disclosure, which some critics claim is a conflation of terms ([Geist, 2017](#)).

June 19, 2017 – *The Globe and Mail* reported that Trudeau was not fulfilling his campaign promises on ATIA reform ([Stone, 2017, June 19](#)).

May 3, 2017 – *Canadian Journalists for Free Expression* rated several aspects of the Trudeau Government's proposal and gave progress on Access to Information a D- because of inaction (["CJFE's Free.....", 2017](#)).

September 22, 2017 – Minister Scott Brison addresses the House regarding Bill C-58 the ATIA and proactive disclosure ([Open Parliament, 2017](#)).

September 27, 2017 – *News Media Canada* audited the ATIA and found it worse off under the Liberals than in the latter years of Harper's leadership (["2017 Freedom....", 2017; Bronskill, 2017; Stone, 2017, September 27](#)).

Late 2017 – Canada's Multi-stakeholder Forum is launched to facilitate the Open Government Partnership's recommendations on proactive disclosure ([Government of Canada, 2018](#)).

Oct 26, 2017 – *The Canadian Association of Journalists* presented several criticisms of Bill C-58. Bill C-58 fails to include Ministers offices, allows for ‘vexatious’ requesters to be denied, does not grant the Information Commissioner effective order making powers and does not eliminate fees as initially promised ([“CAJ remarks...”](#), 2017).

November 1, 2017 – *Ipolitics* reported that the Information Commissioner Suzanne Legault found that Bill C-58 was being implemented by some government institutions to deny requests before it became law. Legault is also quoted as saying “If C-58 is not amended in a significant manner, then I would much prefer to keep the status quo” ([Britneff, 2017](#), November 1).

February 27, 2018 – *CPJ* wrote an open letter to Minister Brison requesting ATIA reform ([“CPI expresses concerns...”](#), 2018).

Jun 11, 2019 – *J Source* chronicled Trudeau’s promises and further critiqued Bill C-58. Section 6 (vexatious requesters) and Section 11(fees) are stated as main concerns. Other concerns stated are the use of code names to obfuscate the release of information and the ineffective role of Information Commissioner ([“Trudeau’s government continues...”](#), 2019).

June 21, 2019 – Bill C-58 becomes law ([Parliament of Canada, 2019](#)).

June 20, 2019 – *Ipolitics* reported that Peter Julien cited Legault’s criticism of Bill C-58 in protest of Bill C-58 formally becoming law ([Vigliotti, 2019](#)).

October 8, 2019 – Information Commissioner Susan Legault formally criticizes Bill C-58 ([Legault, 2019](#)).

October 20, 2019 – Press Progress reported that Trudeau has failed in his objectives to make the federal government more transparent to Canadian citizens ([“5 Times Justin Trudeau...”, 2019](#)).

Appendix 2: Interview Script

PART 1: Participant Contact Information

- Verify professional contact information
- Verify consent form (anonymous/can be published)

PART 2: Professional Experience

- What kind of journalism/reporting do you do/have you done?
- What news organization(s) do you work for/have worked for?
- How many years' experience do you have filing ATI requests for journalistic purposes?
- Is there any type support offered at the news organization(s) that you are employed at for filing ATI requests?

PART 3: ATI related Questions

- How often do you file access to information requests? (over the course of the year?)
- How do you determine an ATI request is the best way to go?
- Do you employ any strategies to affect the outcome of your ATI request?
- What do you do when you get a response that is not adequate?
- Are there other approaches that will yield the same or similar information?
- Can you describe a positive example of dealing with the ATIA?
- Can you describe a negative example of dealing with the ATIA?

- Do you include information about the ATI research process in your reporting for the audience to understand (including delays, redactions, fees, etc.)? How much information do you provide to the audience? How often do you include such information? What is your rationale?
- Can you describe any changes in government openness/transparency and ATI functionality over the course of your career?
- Can you describe any changes in the news industry that have influenced how you file ATI requests over the course of your career?
- In your opinion, how important is the ATIA to journalistic practice?
- In your opinion, how effective will Bill C-58 be in improving government transparency? What are your thoughts on the future of government transparency in Canada?
- Is there anything regarding the ATIA that you wish you were taught in journalism school? Is there anything about the ATIA that you think is important for newer journalists to be aware of?
- Do you have any other thoughts that you would like to share?

Appendix 3: ATI Request Workflow

General Approach:

- Be organized and methodical.
- Use spreadsheets to help keep track of multiple requests.
- Schedule dedicated filing time, ie. once a week or once a month.
- To be efficient, file ATI requests in batches.
- File ATI requests in advance.
- Be a good team player with other journalists: ask for help, offer help.
- Be friendly, kind and patient.
- Always be professional.

Main Steps:

1) Research

- Do as much research as possible before filing a request.
- Look into already released government information, this will help you ‘piggyback’ off of other requests.
- Ask colleagues and mentors for input.
- Request information informally before filing an ATI request.
- Ask yourself:
 - What information are you hoping to get out of this?
 - What sort of documents are you searching for?
 - Can you imagine what agency prepared those documents?

- Is there a team or a person inside that agency that would likely have contact with that information?
- Are there abbreviations for names or terms that might be commonly used?
- Are there informal terms that government employees might use?

2) Write the request

- Customize requests; either make a very narrow (targeted) request to look for specific documents or make a very broad (fishing expeditions) request to find out what documents exist.
- Use clear and precise language. Some journalists advise to use technical/legal language, others advise using informal, easy to understand language.
- Specify document types (PowerPoints? Emails? Etc.)
- Specify and limit time frames (for a targeted request, add +/- 3 months on each side of timeline. For a fishing expedition, limit the time frame to one year at a time).
- Ask the information coordinator for help in crafting request.
- Send the request to the appropriate government institution(s) with the required \$5 payment.

3) Troubleshoot

- 30 days have passed and you still haven't received a response: call the access coordinator to understand and attend to what the problem might be. Be sure to

keep a record of communication, as this will help with future negotiations if delays continue.

- There are too many redactions: there might be another government agency with similar information, try filing another request.
- There are additional fees: talk with the access coordinator and try reframing the request to keep research time to a minimum.
- File a complaint to the Information Commissioner however, knowing the complaints system is extremely backlogged, is it worth it to file a complaint? The answer is up to you.
- Publicize the lack of government transparency on social media (ie. #ATIPfail, #cdnfoi, etc.)
- Remember not to be discouraged, unfortunately journalists are more likely to receive responses with delays and redactions. Keep trying!

4) Successful Request?

- Fantastic! Write the story and share your successes on social media.

5) Write the story

- Whether the ATI request was successful or not, include those details as part of your reporting. It is important for the audience to know your sources, the state of government transparency, and about all of the work that is required to access government information.