

Access Denied: The *Access to Information Act* and Its Effect on Public Records Creators*

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RÉSUMÉ Cet article examine comment les organisations bureaucratiques fédérales canadiennes ont réagi lors de l'apparition et de la mise en oeuvre de la Loi sur l'Accès à l'information en 1983. Prenant pour base des modèles théoriques d'organisation, spécifiquement ceux développés par Richard Laughlin, il démontre que les agences et les organismes gouvernementaux ont répondu à la proclamation de la Loi selon un modèle connu et qui colle aux théories contemporaines des organisations quant à la manière dont les institutions sont affectées par le changement. L'article suggère que les organismes fédéraux ont tenté et réussi à minimiser les perturbations entraînées par les pressions d'une plus grande ouverture en retardant le traitement des demandes, en faisant exclure des institutions de l'application de la loi, en modifiant forme et contenu des documents et, dans certains cas, en démontrant un manque de respect malicieux envers les principes mêmes de la loi. L'article conclut sur une discussion de l'impact important de forces externes sur la création ainsi que sur le contenu des documents publics et comment ces perturbations subies par l'univers de la gestion des documents se traduisent dans des comportements susceptibles d'affecter dramatiquement l'héritage documentaire du Canada.

ABSTRACT This article examines how Canadian federal bureaucratic organizations have reacted to the introduction and implementation of the *Access to Information Act* of 1983. It uses organizational theory models, specifically those developed by Richard Laughlin, to demonstrate that government departments and agencies have responded to the promulgation of the act in a recognizable pattern that fits contemporary organizational theory's understanding of how change affects institutions. The article suggests that federal departments have successfully attempted to mitigate the disturbance posed by increased pressures for openness by delaying the processing of requests, transferring agencies out from under the control of the legislation, undertaking changes to documentary form and content, and, in some instances, through the malicious disregard for the tenets of the legislation itself. The article concludes by discussing the significant impact of external forces on the creation and content of public documents and how such disturbances to the record-keeping environment translate into actions which have the potential to dramatically affect Canada's documentary heritage.

Introduction

"There is a great difference between not releasing information and telling the truth. We're telling the truth, we are just not releasing some information."¹

Any study of the inherent qualities and characteristics of public records is inextricably linked to the legal context which governs their creation, use, and eventual disposition. Traditionally, Canadian archivists have focused their attention on the implications of the series of archives acts which have, over time, permitted the establishment of various archives in different jurisdictions across the country. These studies have usefully shown us that archival legislation provides the essential policy framework in which archives exist and, ultimately, that such enabling legislation has "...a profound effect on an archives' ability to carry out its functions..."² Increasingly, however, the study of public records in Canada must necessarily move forward and look at how the promulgation of other information legislation has had a similarly substantial impact on records creators, information management practices, archival institutions, and, ultimately, the very records that are produced by public agencies.³ The most obvious candidates for such study are the various forms of access to information legislation that have been passed in Canada. This article will make an initial foray in this direction by looking specifically at the effect of such legislation on records creators in the federal context.⁴

Access to information under the control of the Canadian federal government generally concerns two fundamentally different aspects of citizen-state interaction. The first is the "ability of the public in a democracy to hold the government fully accountable for its actions and to assess the validity of actions taken."⁵ The second concerns the "rights of individual citizens in relation to information about them held in public organisations."⁶ The rights of Canadian citizens in this regard are protected through two interrelated pieces of legislation, the *Access to Information Act* and the *Privacy Act*. This article is focused entirely on the former, as it is primarily concerned with the fundamental democratic relationship between the government and the governed and how this relationship may be strained by public officials who systematically abuse the requirements of the *Access to Information Act*.

It can be argued that the democratic relationship between the state and its citizens is enhanced through the enactment of access to information legislation in several primary ways. Not only should information gathered at public expense be made available to the public but, further, the disclosure of such information "facilitates informed public participation in policy formulation, promotes fairness in government decision-making and permits the airing and reconciliation of divergent views."⁷ With such considerations in mind, access to information laws are rooted in the basic principle that information in the possession of the government ought to be made available to citizens whenever possible.⁸ Despite the general acceptance of this principle, however, it is now increasingly evident that this ideal directly conflicts with the prevailing political and civil service culture of Canada's political representatives and senior public servants. These public officials appear not only to be reluctant

to embrace the tenets of the legislation but also may work directly to avoid, or otherwise mitigate, the release of information to the public.

This perspective is evidenced by a series of reports, studies, speeches, and articles by academics, the media, and user groups, as well as the very people whose job it is to monitor the implementation of the act, the Office of the Information Commissioner. Each of these sources point to a number of ways in which the spirit, if not the letter, of the law is contravened in an almost open fashion. These include, but are not limited to, delays in processing requests, the transfer of agencies out from under the control of the legislation, changes to documentary form and content, neglect, official adversarialism, and the malicious disregard for the tenets of the legislation itself.

The question of how we can explain this phenomenon is the focus of the task at hand. What follows is not an attempt to offer specific solutions or provide recommendations for improvement but, rather, the article will seek to illustrate how Canadian federal bureaucratic organizations are responding to a specific disturbance, that of the *Access to Information Act* of 1983, in a recognizable pattern that fits what contemporary organizational theory has to say about how change affects institutions.

The influence of organizational theory on archival scholarship and, indeed, the profession's day-to-day work is now almost undeniable and the use of organizational theory is central to what follows. In their insightful article, "The Power of the Principle of Provenance," Bearman and Lytle state that "[a] practical understanding **must** be gained of organizations as living cultures or organisms which create and use information...."⁹ Subsequent contributors to this journal have heeded this call and we have seen various forms of social and organizational theory used to support new archival theories and insights, particularly as they relate to the core issues of arrangement and description, and appraisal.¹⁰ Other theories can, and have proven to, inform archival theory primarily because, "[t]o varying degrees, these theories capture the complexity of organizations in terms of the network of relations between structures, functions, work processes, records creators, records users, and the records themselves."¹¹

Recognition of the need to examine the relationship between archives and the larger world in this way and how such examination may inform our current view of the key concepts of archival theory and practice have great implications for the profession as a whole in the sense that it allows "...far more hypotheses, information, and perspectives to enter archival thinking and [thus] challenge accepted views."¹² As Tom Nesmith has recently pointed out,

[t]o explore the wide terrain of human perception, communication, and behaviour in relation to archives would also require us to consult the leading works of theory in these areas. After all, it is only possible to think about broad areas of human experience using the guiding theory which the scholars in these fields offer us.¹³

Nesmith goes on to say that such a change would necessarily reorient some archival theorizing "...from a focus on what the classical archival texts say an archives, a record, or a public record is in 'nature', to a study of how human perception, communication, and behaviour shape the archives, records, and public records..."¹⁴

That is what this study sets out to do. While at first glance it may seem that this article merely describes the nature of federal government secrecy in Canada – that of both the state itself and the bureaucracy charged with its administration – in reality it will delve beneath this description and elucidate how it is exactly that the federal bureaucracy has reacted to the perceived threat posed by external pressures for openness. Some of the implications of this analysis for archives and archivists will be explored in the conclusion of the article.

The Foundation for a Culture of Secrecy

The argument may be made that the foundation for administrative secrecy in Canada derives from the federal government's origins as a Westminster-style parliament. Inherited from Britain, this system of government included an approach to secrecy which evolved from the idea of absolute monarchy, where the King was in control of government information and exercised discretion over its use and release.¹⁵ The political evolution to the parliamentary system of government transferred certain privileges of the monarch directly to parliament and these rights included, among other things (such as the concepts of parliamentary sovereignty and parliamentary privilege), the provision that the government and the officials who worked for it should be able to control information in the manner they thought most appropriate.

The outcome of these developments was a political system in which a certain level of government secrecy became entrenched. This feature of the British tradition of government is complemented by the notion of ministerial responsibility. Ministers collectively are responsible to Parliament, which means that the government of the day must possess the tactical advantage of controlling the timing of the release of information within the parliamentary environment.¹⁶ In other words, Canada inherited a political system which "provides clear motive for controlling all government information, since all information about the government is seen as having relevance to its political survival and also provides the government, through the cabinet system, with the authority to implement the level of control which it desires."¹⁷

Such an understanding, however, violates the longstanding belief that if government is permitted to work in an environment of secrecy the opportunity exists to abuse the power entrusted to it.¹⁸ This is particularly relevant to democratic states where "the requirements for democracy in practice include a two-way process of genuine communications between the government and the governed."¹⁹ Such a statement implies a relationship based on trust, and it is

this trust that is strained when governments practise forms of discretionary secrecy – that is, simply, where the “decision to withhold administrative information or to refuse access to documents is at the discretion of the executive government...all administrative information is considered to be secret unless the government decides to release it, and [, further,] the government has control over the timing and form of its release.”²⁰

A core tenet of democracy, however, requires that citizens should be knowledgeable about the operations of their government, because they “have the right to be informed of the circumstances in which decisions are being taken in their name.”²¹ Congruent with this understanding is the simple belief that the ability to scrutinize the actions of the governmental process is essential to the concept of good government.²² In essence, administrative secrecy denies citizens the right to information and therefore privileges the interests of government, including the unelected and thus less accountable bureaucracy, over that of the polity. In such a situation, therefore, it is arguable whether or not democracy and responsible government can, in fact, be said to truly exist.²³

In most countries, an impartial civil service is considered an integral part of a system of good government. Despite this understanding, the ability of the bureaucracy to control information for its own purposes has long been identified as a weakness of both the public and their elected politicians in dealing with civil service officials. In fact, Max Weber’s ideal type conception of the evolution of bureaucratic power recognized that bureaucracy’s monopoly on knowledge is a primary source of bureaucratic power both in the operation of government and in its ongoing relations with the polity.

Weber believed that as “bureaucratic officials gain in influence, policy making becomes transformed from a public into a more private and closed activity since ‘bureaucratic administration is according to its nature always administration which excludes the public’.”²⁴ He further believed that the civil servants themselves create the culture of secrecy within the administration of government as the “concept of the official secret is manufactured by bureaucracy, and is defended with such fanaticism by it.”²⁵ Therefore, the need for other interested parties or individuals to get access to this type of official information, “independently of the officials’ good will,” is a necessary prerequisite for the effective supervision of the bureaucracy.²⁶ The ability to monitor bureaucracy effectively is important when one considers that authority in government is arguably exercised through the routines of administration. If true, it is reasonable to infer that the bureaucracy may potentially be the most powerful political actor in the state and, in many ways, the institution with the greatest impact on the everyday lives of citizens.²⁷ As such, the “power position of a fully developed bureaucracy is always very strong and under normal conditions an overwhelming one.”²⁸

How, then, is one most able to effectively monitor the actions of a large and dispersed, yet powerful, bureaucracy? In a democracy, the greatest measure of

control over the bureaucracy is to be found in law since the typical bureaucratic office operates within an established sphere of authority as defined in, and delegated through, legislation. This authority is subject only to the impersonal orders and rules (e.g., established departmental regulations) which allow the exercise of that authority within the limits of that office's jurisdiction.

When the public interacts with such a bureaucratic entity, however, the bureaucracy often appears as an imposed or alien authority in that it has knowledge and control of particular rules and policies of which the public has no share. David Beetham, recognizing this fact, comments that "...to the extent that any subordinate group has to be controlled or managed through administrative means, in the absence of genuine social agreement, bureaucracy will develop a protective cloak of secrecy in order to carry out its function, whether in the interests of 'efficiency' or 'order'."²⁹ As such, the public views bureaucratic authority as being an unwarranted limitation on their own autonomy. In this direct sense, we are perhaps not as concerned with the culture of secrecy alluded to above but, rather, the asymmetry of information between the public and the bureaucratic officials.

The two concepts, however, remain intertwined as "[i]ndividuals in a society will [only] accept the decisions of any agent of the state as long as they are assured that these decisions have been made according to correct procedures."³⁰ As such, "access to administrative documents undeniably facilitates the control of governmental action and helps to protect the citizen against arbitrariness."³¹ It is obvious that this assurance requires that the appropriate areas of government be open to scrutiny in the first place.

The Introduction and Impact of Access to Information Legislation in Canada

In several countries the ability to access government records has been codified through the promulgation of access to information laws.³² In Canada, the *Access to Information Act* was passed in June of 1982 and proclaimed into force on 1 July 1983. The *Access to Information Act* is an act of general application and all institutions listed in Schedule 1 of the act are subject to its provisions. It thus prevails over all other statutes, unless there is a statutory provision to the contrary.

The purpose of the legislation is clearly set forth in section 2(1) of the act. This clause establishes that an enforceable right of access to records under the control of government institutions exists "in accordance with the principles that government information should be available to the public, that necessary exemptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government."³³

In order to explicitly establish what is meant by limited and specific, sec-

tions thirteen through twenty-four of the act set out a series of exceptions to the right of full access. These limitations are known as exemptions and are intended to protect information about a particular public or private interest.³⁴ These twelve exemptions, when added to the categories of excluded records outlined in sections sixty-eight and sixty-nine of the act, form the only statutory basis for refusing access to government records.³⁵

The underlying principle in applying most exemption criteria is the weighing or balancing of the right of access to government information against the injury that could ensue from disclosure.³⁶ The need to ensure that information is released appropriately requires government institutions to review all records requested under the act prior to determining which may be released, which may be refused, and which may only be released at the discretion of the head of the institution. Therefore, in order to meet the requirements of the legislation, all access requests must be processed by civil servants and the burden of proof is placed on the government to justify why access may be denied.

The *Access to Information Act* has undoubtedly been successful in forcing civil servants to disclose more information to the public. However, it is equally apparent that the act is only made *truly* effective by civil servants prepared to honour it both in spirit and in practice. Unfortunately, as will be developed further below, the evidence reveals that the act has so far failed to change the traditional closed bureaucratic culture in Canada. In fact, it has been commented that “[t]he existence of access rights appears to stimulate more federal government resentment than does any other right or entitlement”³⁷ with the result that “applicants under the act are often seen as adversaries rather than as someone entitled to a government service.”³⁸ With the loss of their traditional buffer of secrecy and insularity, many civil servants are instinctively uncomfortable with the idea of open government.³⁹

They are uncomfortable for many reasons. First, as previously noted, government departments and the civil servants who work in them “tend to have an ingrained conservatism over their role as custodian of information.”⁴⁰ Second, many public officials believe that they own the records they create and, because of these proprietary concerns, fail to understand “...why any person should have access to *their* files or copies of *their* papers.”⁴¹ For reasons such as these, a large number of civil servants consider the *Access to Information Act* an affront to their professional status. Why should the public be able to easily obtain access to departmental records in order to challenge the professional judgements and decisions made by the staff in the conduct of departmental affairs? Alternatively, it has been argued by some officials that “...since the ... [*Access to Information Act*] was not a primary programme of their agency, it could largely be ignored.”⁴²

The *Access to Information Act* thus has a unique capacity to disturb the existing bureaucratic culture and, by extension, its record-keeping practices. This situation has caused many senior public officials to react negatively

towards the perceived intrusion posed by the access law. This negative behaviour manifests itself in several direct ways, including, but not limited to, the illegal destruction of records, negligent record-keeping practices, inflated user fees, significant delays in processing access requests, as well as stretching the application and use of statutory exemptions.

Examples of this sort of adversarial behaviour have been thoroughly documented in the series of annual reports presented to Parliament by the Office of the Information Commissioner.⁴³ Benefiting from their unique position as mediator, investigator, and advocate for access rights, the three Information Commissioners – Inger Hansen (1983–90), John Grace (1990–98), and John Reid (1998 to the present) – have, with only the exception of the relatively introductory first report, consistently described examples of bureaucratic resistance to the act and criticized the reluctance of officials to accept the spirit of the act. In fact, Grace has described these reports as a “...dreary catalogue of timorous secrecy and delay ... dominated by descriptions of official wrong-doing and examples of evasions of responsibility and accountability.”⁴⁴

The author of eight of these reports, Grace, issued his final report as Information Commissioner in June of 1998. The occasion was an opportunity for him to offer what he termed a “postscript” to his fifteen years of service and, even more compelling, gave him the chance to speak with “...candor and even spontaneity...”⁴⁵ In the press release to mark the presentation of the report to Parliament, Grace stated: “regrettably I cannot claim to have vanquished government’s culture of secrecy.”⁴⁶ This telling comment foreshadowed the strong critique of the federal government’s implementation and administration of the *Access to Information Act* that characterizes his final report. Grace is direct when he notes on the first page of the report that:

...a culture of secrecy still flourishes in too many high places even after 15 years of life under the *Access to Information Act*. Too many public officials cling to the old proprietorial notion that they, and not the *Access to Information Act*, should determine what and when information should be dispensed to the unwashed public.⁴⁷

Although Grace notes that the legislation requires some amendments after fifteen years of life, he maintains that the law itself is fundamentally sound. The fact that it has not provided the degree of accountability through transparency originally envisioned “...must be placed at the feet of governments and public servants who have chosen to whine about the rigors of access rather than embrace its noble goals; chosen not to trust the public with the information which taxes have paid for.”⁴⁸ In making this observation, Grace goes on to assert that this development not only is an insult to Canadian taxpayers but also demonstrates the intellectually arrogant behaviour of those public officials who are complicit in such actions.

Organizational Responses to Change: The Laughlin Model

The information commissioners maintain that a culture of secrecy continues to flourish in the federal bureaucracy and that the ongoing nature of this problem provides “clear evidence of the durability of the old ways...[and] the capacity of the public service to thwart the clearly expressed will of Parliament.”⁴⁹ What needs to be determined, then, is how, or in what ways, the tradition of administrative secrecy in Canada has seemingly resisted the introduction of access to information legislation. One method of analysis is to use existing organizational theory models, especially those which focus on organizational change, to explain this development. One such series of models is advanced by Richard Laughlin; by utilizing this schema it may be possible to suggest how federal government departments in Canada have successfully attempted to mitigate the disturbance posed by increased pressures for openness.

A basic assumption of organizational theory is that organizations are, by their very nature, conservative and that the propensity for organizations to continue to operate “as they always have” is very strong. Richard H. Hall, drawing upon the work of Herbert Kaufman, describes several factors within organizations that contribute to the resistance of change. These factors “...include the ‘collective benefits of stability’ or familiarity with existing patterns, ‘calculated opposition to change’ by groups within the organization who may have altruistic or selfish motivations, and a simple ‘inability to change’.”⁵⁰ Accordingly, Laughlin, among others, argues that because organizations are “naturally change-resistant, with a strong tendency to inertia ... [they] will only change when forced or ‘kicked’, or disturbed into doing something.”⁵¹ As such, it should not be surprising that organizations will actively try to resist, or otherwise thwart, change – especially change that is introduced from outside the organization.⁵²

In their effort to respond to the disturbance, institutions react to the change in their environment, triggering alternative organizational transitions and transformations.⁵³ Organizational theory has classified the various types of transitions and transformations that may occur into two categories of responses: first order and second order.⁵⁴ First order responses “involve shifts in managerial arrangements and other organizational systems that leave core value systems unchanged.”⁵⁵ Kenwyn Smith, using an approach borrowed from the fields of biological sciences and cybernetics, has labelled such change as *morphostasis* because it “enable[s] things to look different while remaining basically as they have always been.”⁵⁶ Fenton Robb, following upon the work of Smith, offers further insight by suggesting that morphostatic changes “are those which arise from the working of the organization within the framework of its received wisdom and view of its existence, within the current definitions of its objectives and of the processes which are appropriate to achieving them.”⁵⁷ Thus, first order change “consists of those

minor improvements and adjustments that do not change the system's core ... [or] that occur as the system naturally grows and develops."⁵⁸ Second order responses, on the other hand, involve changes to the beliefs, values, and norms of the organization. Smith has described this form of change as *morphogenesis* and states that it is "of a form that penetrates so deeply into the genetic code that all future generations acquire and reflect those changes ... [so that] the change has occurred in the very essence, in the core, and nothing special needs to be done to keep the change changed."⁵⁹ In this sense, the organization is seen to have transformed itself in an almost revolutionary manner.

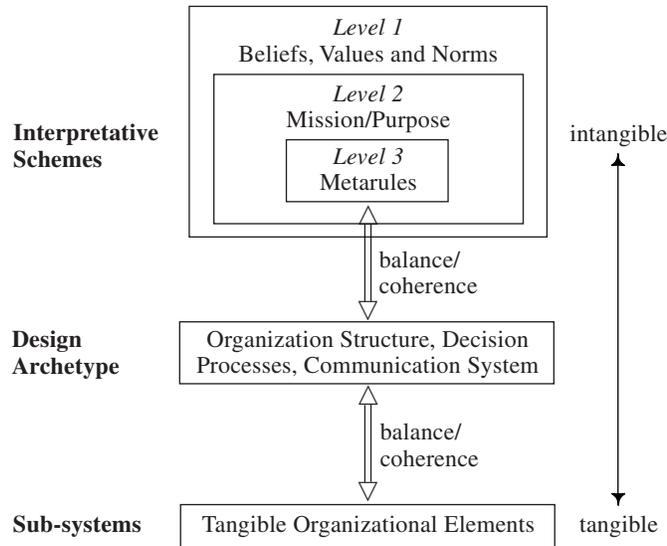
Richard Laughlin further develops the premise of first and second order change by stating that organizational change of each type must be analysed within the context of the immediate environment, as opposed to context-free descriptions, and, more specifically, it must incorporate an understanding of the dynamic nature of these changes. By this, Laughlin is focusing on the content, context, and process of change whereby the dynamic effect of change can only be understood through the "process, track or pathway a disturbance/kick/jolt takes through an organization."⁶⁰

Laughlin does this by dividing first and second order responses into more specific, grounded applications. Within the framework that he develops, Laughlin puts forward the idea that first order responses to environmental disturbances may be divided into "... 'rebuttal' responses (designed to resist the disturbance) and 'reorientation' responses (changing the organization in such a way as to avoid affecting its core values)."⁶¹ Second order responses may be similarly divided into what Laughlin terms "... 'colonization' responses (where part of the organization has been colonized by new core values) and 'evolution' responses (in which all stakeholders have absorbed the new core values)."⁶² In advancing Laughlin's models of change as a set of tools useful for analysis, it is important to note certain methodological and theoretical considerations upon which his arguments are based. The first is that "...the models are intentionally pitched at a highly general level allowing both variety and diversity in any empirical outworking."⁶³ This recognizes the fact that organizations are elaborate entities and simple, single explanations do not account for complex organizational phenomena any more than they are capable of explaining human behaviour. The models should thus be viewed as being both tentative and exploratory in nature.

Second, and perhaps most importantly, Laughlin views organizations as being an amalgam of "interpretive schemes," "design archetypes," and "sub-systems." Depicted below in **Figure One**, this conceptualization expresses the view that organizations consist of "certain tangible elements about which intersubjective agreement is possible (e.g., the phenomena that we call buildings, people, machines, finance and the behaviours and natures of these elements) and two less tangible dimensions which give direction, meaning,

significance, nature and interconnection to these more tangible elements and about which intersubjective agreement is very difficult.”⁶⁴

Figure One “A Model of Organizations”⁶⁵



The nature of first and second order responses are consistent and compatible with this conceptualization. First order responses, those which do not change the organization’s core values, would naturally involve shifts or changes only to those tangible elements associated with the subsystems and part of the design archetype. Alternatively, second order change would result in the transformation of the less tangible elements associated with the design archetype and the interpretative schemes. Consequently, first order responses will often be much easier to identify substantively, and the extent to which second order responses are invoked in a given organization may be subject to debate.

The third consideration is the need to view an organization’s interpretative schemes, design archetype, and subsystems as being interconnected and interdependent in the sense that the desired state involves some degree of dynamic balance or coherence between them. This fact is illustrated in the diagram by the hollow arrows situated between the sections. Organizations which have reached a desired state of balance and coherence are considered to be stable in the sense that “...‘inertia’ around this dominant perspective becomes the norm”⁶⁶ and will only be threatened by a disturbance in their external environment. Such a disturbance may “...lead to shifts in the balance of the dominant

lines of an organization, but the intention will always be to return to some other balanced state around which a new level of inertia can set in.”⁶⁷

Rebuttal

Laughlin’s first model is what he terms rebuttal. Derived from the work of Kenwyn Smith and his idea of a “repetition model,” Laughlin sees this form of response as relating to the “externalizing and/or deflecting of the noise or kick so as to protect and maintain the organization *exactly* as it was before the disturbance.”⁶⁸ In fact, as Laughlin points out, this is a fairly typical homeostatic type of control system whereby repetitive defensive mechanisms are used to divert any challenges to the existing organizational state. The strength of the rebuttal response derives from the fact that in the majority of organizations “[c]hange is not usually sought and the trauma involved in changing the interpretive schemes is something an organization will avoid, if at all possible....”⁶⁹ The resulting organizational response associated with this activity is depicted in **Figure Two**.

Figure Two “First Order Change: Rebuttal”⁷⁰

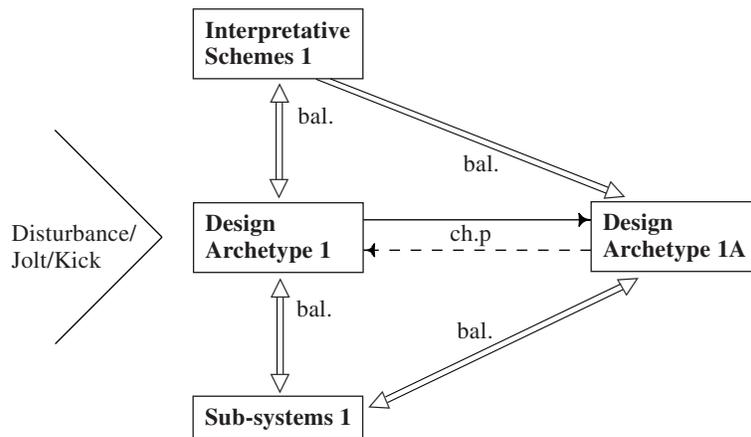


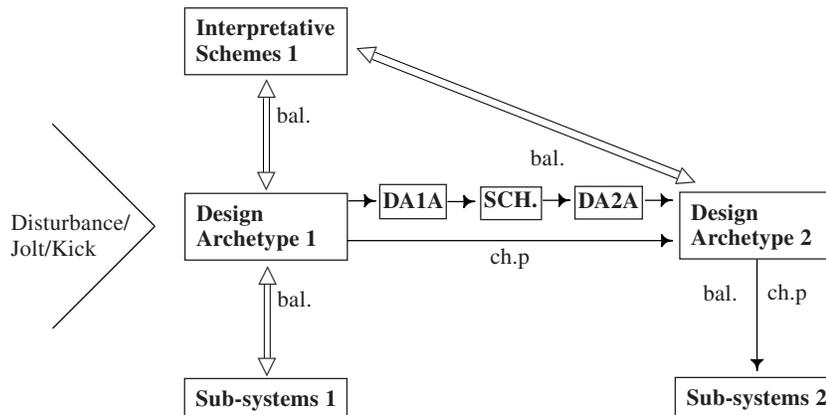
Figure Two illustrates that the organization, in trying to rebut or deflect the challenge to its normal state of equilibrium, will attempt to minimize the degree of change necessary to do so – in this case involving only change to the design archetype (as indicated by the change pathway → ch.p). In this manner, the original state of balance and coherence is retained. Once the disturbance has been rebutted, the organization may seek to revert back to its original form (the dotted arrow moving from design archetype 1A back to

design archetype 1) in a movement that Greenwood and Hinings refer to as an “oscillation” track.⁷¹

Reorientation

Laughlin also draws upon the work of Smith to underscore the basis for his “reorientation” model. Within this construct, the disturbance is dealt with by “adjusting the internal infrastructure of the organization, but in a way that maintains the fundamental nature of the organization vis-à-vis its current guiding interpretive schemes.”⁷² This model of response behaviour is presented in **Figure Three**.

Figure Three “First Order Change: Reorientation”⁷³



As can be seen from the diagram, reorientation change differs from the rebuttal type change in that both the design archetype and the subsystems of the organization are modified. “This is because the disturbance cannot be rebutted, but has to be accepted and internalized into the workings of the organization, but in such a way that the real heart of the organization (the interpretive schemes) is basically unaffected by the disturbance.”⁷⁴ It is this later characteristic that identifies reorientation as a first order form of change, because the central core of the organization is not drastically affected; the change is one of transition rather than transformation.

Prebttal

Hood and Rothstein introduce the phenomenon of prebttal into their analysis of “blame prevention re-engineering” in risk regulation regimes. Prebttal involves “attempts by organizations, public officeholders and their spin-

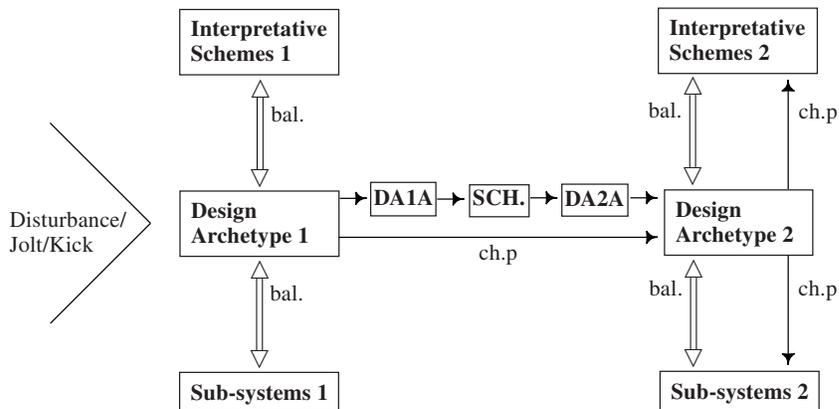
doctors to respond to anticipated criticisms or demands for information before they materialize.”⁷⁵ Although not part of Laughlin’s series of models, it closely complements his argument and is, therefore, a strong explanatory concept for how organizations may react to increasing pressures for openness.

Hood and Rothstein argue that prebuttal is distinguished from rebuttal because it is not clearly a first order response according to the criteria established above. This is because prebuttal “could equally come from an organization that had thoroughly absorbed new values of openness, to the point where its public information-base constitutes a way of nipping demands for release of data or decisions in the bud.”⁷⁶ As such, the idea of prebuttal can be associated with a degree of change that goes much further than the minimal adaptation associated with first order responses. It is placed here because it forms a natural bridge between first and second order responses.

Colonization

The third change pathway identified by Laughlin is “colonization.” As noted above, colonization involves second order change and is thus of a different order of magnitude from the rebuttal and reorientation models.⁷⁷ Colonization involves incremental transformation that ultimately creates “lasting and fundamental change in both the visible and invisible elements”⁷⁸ of the organization, and it differs from the evolution model discussed below in the key respect that it encompasses change that is ostensibly forced upon the organization. Laughlin visualizes colonization taking place in instances where the disturbance compels the organization to change the design archetype “which, in turn, through complex processes, colonizes the guiding interpretive schemes of the organization.”⁷⁹ The means by which this change is integrated or accepted into the organization is outlined in **Figure Four**.

Figure Four “Second Order Change: Colonization”⁸⁰

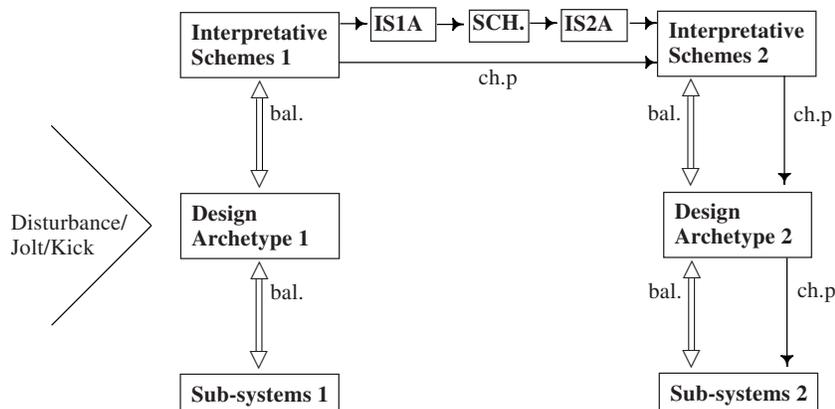


As the diagram illustrates, the transformation to a new order is made apparent through the creation of a new intrinsic form of balance or coherence within the organization.

Evolution

Laughlin's final model is that of "evolution." Like colonization, this model concerns second order change and, as such, "involves major shifts in the interpretive schemes, but it is assumed that it is chosen and accepted by all the organizational participants freely and without coercion."⁸¹ The pathway of change described in the evolution model is set out diagrammatically in **Figure Five**.

Figure Five "Second Order Change: Evolution"⁸²



The pathway set forth in **Figure Five** "assumes that the initial disturbance causes some reverberation in the interpretive schemes, which generates rational discussion about its design."⁸³ The organization, imbued with new-found interpretive schemes, proceeds to reshape the design archetype and the subsystems in accordance with its new underlying ethos. It is important to note that the model presented in **Figure Five** reflects the end point of the process and it is recognized that the changes may take many years to complete.

First Order Change

Ahem. Lavois, while "fat chance" may seem an amusing and succinct reply to a

request...most of us in the department's access and privacy office prefer "in light of this, an extension of up to 90 days is required beyond the 30 day statutory limit."⁸⁴

Even using the framework presented by Laughlin, it remains somewhat difficult to detail how different federal government departments and agencies have reacted to the environmental disturbance of access to information legislation. There are obvious "empirical difficulties in identifying value change, and conceptual difficulties about ...[the] evolutionary model of change"⁸⁵ implied throughout his analysis. Yet it is only through looking at specific organizational examples, in their real life dynamic, that we can begin to examine organizational development and transformation in order to develop a richer understanding of the phenomena of organizational change. As such, it is argued that the models put forward by Laughlin are useful tools for analysing how federal government organizations in Canada have responded to the disturbance of the *Access to Information Act* – particularly in the way that they incorporate both the distinction between first and second order responses as well as the differences that exist within each type of response.

Rebuttal

Although Laughlin states that his rebuttal model is difficult to observe and categorize through empirical research, the fact that "...organizations do have a tendency to conservatism and avoidance of fundamental (even chosen – i.e., 'evolution') change in interpretive schemes"⁸⁶ helps to suggest that rebuttal is a primary reaction to an environmental disturbance. Support for this understanding is found in the observations of the many informed commentators, users, and critics of the federal access to information legislation who have long noted that many government departments have undertaken strategies which are designed to rebutt the intrusion access requests represent to the closed world of bureaucracy. Overall trends in statistical data and observed behaviour also support this conclusion and indicate that this situation is getting worse rather than better as compliance with the legislation deteriorates significantly across government. Examples of how federal government departments are reacting negatively to the demand for more open government are manifold, and such instances of official adversarialism – that is, "the attempt by elected and non-elected officials to stretch [access to information]...laws in order to protect departmental or governmental interests"⁸⁷ – significantly undermine the spirit, if not the application, of the legislation.

As part of his research project on the state of access to information laws in Canada, Alasdair Roberts usefully distinguishes between two distinct forms

of non-compliance: malicious and administrative. Malicious non-compliance, an obviously more egregious form of adversarialism, involves “a combination of actions, always intentional and sometimes illegal, designed to undermine requests for access to records.”⁸⁸ Administrative non-compliance, on the other hand, seeks to undermine access rights through “...inadequate resourcing, deficient record-keeping, or other weaknesses in administration.”⁸⁹ Overall, activities associated with administrative non-compliance serve to test the limits of the legislation without engaging in the obvious illegalities that characterize practices associated with malicious non-compliance.⁹⁰

Grace supports Roberts’s observation of such behavior, stating that “it should not be a surprise that some of those who wield power also recoil from the accountability which transparency brings.”⁹¹ Grace goes further, however, by noting that both malicious and administrative non-compliance are not limited to a few “bad apples.”⁹² In a telling statement, he observes the following:

[a]fter 15 years of experience in the testing fields of enforcing the *Access to Information Act* and the *Privacy Act* it is clear to this commissioner that we have, yes, the ethically admirable in large number; we also have too many ‘ethically challenged’ persons willing to flout the letter and the spirit of these laws. Public servants who would be profoundly insulted to be considered anything but law-abiding and highly ethical, sometimes have had no hesitation in playing fast and loose with access (or privacy) rights: destroying an embarrassing memo to file, conducting only the most cursory of searches for records, inflating fees to deter a requester, delaying the response until the staleness of the information blunts any potential damage or embarrassment and by simply refusing to keep proper records.”⁹³

The adversarial actions that Grace alludes to form the core of the rebuttal response utilized by federal government departments and are worth examining in further detail.

One of the most common means government departments use to externalize or deflect the disturbance posed by access requests is to delay, or otherwise limit, the effectiveness of the “timely” release of information. As discussed above, the *Access to Information Act* clearly places the onus on government institutions to review records requested under the legislation in order to justify why particular records should not be disclosed. The law explicitly recognizes that this review of records takes time and allows the department thirty days to reply to an access request. The act, however, also allows departments to seek an extension of this time limit if the request is deemed to “unreasonably interfere with the operations” of the department or, alternatively, the request requires third party consultation.⁹⁴ In reality, exten-

sions are routinely sought as a matter of course and this action results in significant delays associated with the release of the information. This strategy is often seen by government departments as being effective because, as Grace has succinctly observed, "...sometimes timing is as important as the information itself."⁹⁵ The situation is such that the Information Commissioner has stated that delays by departments in responding to access requests are "...now at crisis proportions ... [and represent] a festering, silent scandal."⁹⁶ The use of this tactic is not lost on those closely associated with the monitoring of the legislation. A litany of objections, investigative reports, criticisms, and accusations related to this practice have been a feature of nearly all of the annual reports issued by the federal Information Commissioners.⁹⁷ Upon assuming office, the newest commissioner, John Reid, identified delay as his top priority. He noted:

[t]he big problem with the right to know in Canada is that federal departments don't obey its mandatory response deadlines. Many public servants have simply decided that, when it comes to the access law, illegal behaviour is the norm. After 15 years of getting comfortable with this law, the time for tolerance of the malefactors is over. I will be making every effort to use all the tools in my arsenal, including the public exposure, to get managers to administer this law properly or to get them out of the way in favour of others who can.⁹⁸

Reid lost little time in exposing chronic offenders. In April of 1999, he issued "report cards" on six major federal departments, Citizenship and Immigration (C&I), Foreign Affairs and International Trade (FAIT), Health Canada (HC), National Defence (ND), Privy Council Office (PCO), and Revenue Canada (RC). Each of these institutions was given failing grades for its inability to respond to access requests within the statutory deadline (as defined in subsection 10(3) of the act).⁹⁹ As seen in **Table One** below, their performance ranged from a poor 34.9% to an unbelievable 85.6% – data which clearly illustrates a government-wide crisis of delay in answering access requests.¹⁰⁰

Another significant rebuttal response is to stretch the use or meaning, or both, of the exemptions permitted under the act. Officials engaged in this form of activity utilize such tactics as treating discretionary exemptions (those identified as "may" in the legislation) as mandatory exemptions or apply unusually broad interpretations of the statutory language in order to justify the use of a specific exemption. There have also been instances where government departments have relied "... on statutory exemptions as an excuse for withholding records even when, in previous cases, they have been told by the information commissioner that the exemption should not be applied."¹⁰¹

Table One Percentage of 1998 Outstanding Access Requests Which Have Become Deemed Refusals Under Subsection 10(3) of the Access to Information Act

| Department | Number of Requests | Number of Deemed Refusals | Percentage |
|------------|--------------------|---------------------------|------------|
| C & I | 1764 | 864 | 48.9% |
| FAIT | 252 | 88 | 34.9% |
| HC | 645 | 330 | 51.2% |
| ND | 629 | 438 | 69.6% |
| PCO | 144 | 65 | 45.1% |
| RC | 320 | 274 | 85.6% |

One way to measure the extent of this activity, which is a clear indicator of the propensity to withhold information, is to examine the percentage of requests that resulted in the full disclosure of records. According to statistics compiled by Roberts, between the years 1993 and 1998 only 48.7% of all requests resulted in the full disclosure of information.¹⁰² It is obvious that such a record does not correspond with the belief that "... necessary exceptions to the right of access should be limited and specific. ..."¹⁰³

A third form of response, and one that has the greatest impact on archives (with the possible exception of the deliberate destruction of records discussed below) is to significantly change record-keeping practices through limiting both the creation and content of records. In his 1993–94 annual report, Grace observed that "... some officials have no hesitation in admitting, even advocating, that important matters simply be not written down or preserved."¹⁰⁴ This type of behaviour can take several different forms in practice. One is to not create a specific record in the first place. This can happen through the move towards an oral working environment or, alternatively, the use of such easily disposable paper forms as Post-it Notes to replace what was formerly communicated through a memo.¹⁰⁵ A second option is to undertake a pre-emptive form of censure in the creation of necessary records. An example of this type of activity would be minutes of meetings that are less than forthcoming about what was discussed.

Ian Wilson, speaking about his experiences in several public sector jurisdictions in Canada, has summed up these activities by noting that changes to internal government communications in a legislated access environment have resulted in

...key decisions and directions [being] conveyed orally, with no record of the transaction. Minutes of meetings sometimes become cryptic notes designed to obscure, as much as reveal [, while]...the risk of not creating or keeping a record is weighed against having to produce the record and being held accountable for what it contains. Some officials fear retaining too many records, rather than keeping too few.¹⁰⁶

John Reid has also noted that this form of response is an unfortunate, yet consistent, feature of any access to information regime and has publicly lamented the long-term effect that this form of response will have on the corporate memory of the Government of Canada as a result.¹⁰⁷ In acknowledging that access laws have directly contributed to fewer records being created, with less candour being expressed in those that are recorded, Reid has commented that we are now witnessing the demise of the civil service's "...professional tradition of carefully documenting actions, considerations, policy evolution and advice..." and that such activities render the right of access virtually meaningless.¹⁰⁸

A final example of official adversarialism would be the deliberate destruction or alteration of records. Although apparently rare, the last five years have seen several significant and high profile instances of such activity. These include the alteration and destruction of records related to the Canadian peace-keeping mission in Somalia, the shredding of Health Canada records related to the Canadian Blood Committee, the decision by a senior manager in Transport Canada to destroy embarrassing records related to an expensive office refurbishing project, and, in one of the most recent occurrences, the removal and destruction of health notices from the personal files of soldiers who served in Croatia.¹⁰⁹ These incidents of malicious non-compliance were directly precipitated by an access to information request and, upon investigation, each was found to constitute a deliberate attempt to frustrate the legislation.

Because most of the activities associated with the rebuttal response directly contravene the legislation, this type of activity may result in a complaint being lodged with the Office of the Information Commissioner. One method of assessing the belief that the performance of government departments and agencies is deteriorating is to look at the percentage of complaints that the Office of the Information Commissioner has upheld after completing its investigation. As seen in **Table Two**, there is strong statistical evidence of an increasing level of non-compliance among federal government departments.¹¹⁰

In fact, the true extent may be worse as these statistics only reflect the instances where a complaint was laid and, further, exclude "...a large number of complaints that were discontinued without findings being made."¹¹¹ In addition, the statistics include such departments as Veterans Affairs Canada and the National Archives of Canada which receive a significant number of requests, yet few, if any, justified complaints.

Table Two “Substantiated [Access to Information Act] Complaints”

| | 1991–92 | 1992–93 | 1993–94 | 1994–95 | 1995–96 | 1996–97 | 1997–98 |
|-------------------|---------|---------|---------|---------|---------|---------|---------|
| Total complaints | 303 | 388 | 448 | 601 | 980 | 963 | 969 |
| Total requests | 10,376 | 9,729 | 10,422 | 12,861 | 13,124 | 12,476 | 12,206 |
| % of all requests | 2.9% | 4.0% | 4.3% | 4.7% | 7.5% | 7.7% | 7.9% |

In response to the ongoing nature of many of these complaints, government departments have pointed to inadequate resources as one of the primary culprits for many of the problems listed above – especially that of delay. When government departments reduce office budgets in the name of restraint, monies available for records management and the department’s access office are often cut more severely than other programme areas. Because effective records and information management programmes are critical to government accountability both in terms of documenting decisions made and ensuring that the corporate memory is reliable, protected, and eventually preserved, it is also a significant enabling mechanism for access to information legislation. It should be noted, however, that budgets are set according to departmental priorities and obligations; the fact that resources needed to meet the provisions of the *Access to Information Act* are often reduced to critical levels by the department is, in itself, a strong indicator of the department’s own lack of support for the legislation.

Reorientation

Basic activities associated with the reorientation response began, to varying degrees, soon after the promulgation of the act as all Schedule 1 departments and agencies were forced to implement several changes to meet the minimum requirements of the legislation. For example, under the provisions of the act, each federal government department or agency is required to designate an appropriate officer to whom requests for access to records should be directed.¹¹² In most institutions this person is referred to as the Access to Information and Privacy Coordinator and it is their office which is responsible for creating access related policies and procedures, the establishment of an official reading room for the public, as well as handling such access requests as may be made to the department. Most large departments also established coordinator positions and official reading rooms in their various regional offices across the country. Finally, the act compels government departments and agencies to prepare entries for *InfoSource: Sources of Federal Government Information*, the government publication designed to facilitate public access to records by providing information about the organization and

responsibilities of government agencies and a description of the records that they create in undertaking these operational responsibilities.¹¹³

Although these limited forms of reorientation activity are required under the legislation, and all government departments and agencies have complied with the statutory requirements, the research undertaken by Roberts clearly identifies reorientation behaviour by government at the macro-level as having a far greater impact on the access rights of the public. In his paper, he notes three primary means by which government organizations seek to “reorient” themselves: contracting out, delegation to industry-run organizations, and the transfer of functions to newly created single-purpose organizations. As the federal government experiments with alternative means of delivering public services, each of these developments serves to reduce access rights in different, yet individually important, ways. For example, the delegation of service delivery and regulatory functions to newly created organizations that are owned and operated by the commercial sector which utilizes the service is a common example of a reorientation response by government. Such activity reduces, if not removes, the disturbance presented by the *Access to Information Act*; these new agencies are often exempted from the ambit of the act completely because the new enacting legislation does not allow for their inclusion in Schedule 1 of the act.¹¹⁴

Roberts identifies several significant examples of this type of activity in his study. One prominent case was the transfer of the air traffic control function from Transport Canada to a new entity, Nav Canada, “a corporation that is owned and operated by aircraft operators and which finances its operations through fees for services that are charged to operators.”¹¹⁵ When responsibility for air traffic control rested with Transport Canada, the activities related to the management of this function were directly subject to the act as Transport Canada was a Schedule 1 institution. The new legislation, the *Civil Air Navigation Services Commercialization Act*, specifically states that Nav Canada is not subject to the *Access to Information Act*.¹¹⁶ Other examples offered by Roberts include the transfer of control over the St. Lawrence Seaway to an industry-operated agency and the refusal of the federal government to include a reorganized Canadian Wheat Board under the Schedule 1 provisions of the act.

Roberts goes on to argue that even when new agencies fall under the ambit of the access to information legislation there is still cause for concern about how these institutions will respond to the law. He believes that the very reforms which lead to such new bodies, that is, “official frustration with the laws and regulations that constrain action within conventional government departments,”¹¹⁷ will directly contribute to the new agency culture and thus limit, if not erode, access rights that are guaranteed through the exact type of “red tape” that these new agencies are seeking to avoid in the first place.

Substantive reorientation of the type just described has also increased the likelihood that government departments are able to cite a concern for commercial confidentiality in refusing access to certain records. In his 1993–94 annual report, the Information Commissioner expressed his reservations regarding the provisions of section 20(1)(b) of the act. This section protects the “financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party.”¹¹⁸ Such an exemption can clearly be used to withhold significant amounts of contractual information, especially in such instances where the entity is one of the increasing number of public-private partnerships, or, alternatively, it can cause access to be delayed until the permission of the third party is granted. In calling for its abolition, the Information Commissioner noted that it presented the possibility for government officials and private firms to conspire amongst themselves to keep information confidential.

Overall, however, it is difficult to sustain the argument that the majority of this type of reorientation activity by government is driven solely by a desire to limit the impact of access to information legislation. Although it is commonly believed that new agencies often lobby to be excluded from the provisions of the act, the subsequent reduction in access rights is probably considered to be only a fortunate side benefit (from their point of view), because it is relatively clear that, on the whole, the supposed benefits of the new public management paradigm are the more compelling factor.

Prebuttal

Examples of departmental behaviour associated with the concept of prebuttal have become increasingly common within the federal government. In his 1997–98 annual report, Grace stated that, in many instances where “...information is withheld or delayed, it is because it serves not always disinterested purposes to control the context and the timing of what is given. The current pejorative term is ‘spinning’.”¹¹⁹

Reid followed up on this comment a short time later, noting that, “even after 15 years under this law, too many DMs [Deputy Ministers] and senior officials see it as their job to contain or delay release of information until the circumstances for release are more propitious for the institution or the government as a whole or until the government’s public response has been carefully crafted and scripted.”¹²⁰

One prominent example is the Department of National Defence. One commentator has described the situation within the department as follows:

...the litany of bad news exposed by frequent access requesters over the years has made political staff so ‘gun-shy’ that three times a week senior military officers and staff

from the Minister's office now sit for hours at a time going over each file in detail, in an effort to determine what elements of the request might become the next target of opportunity for media.¹²¹

The situation at National Defence became so problematic that the Information Commissioner launched an investigation into the practice.¹²²

The latest, and perhaps most public, example of such activity was a circular issued by Treasury Board during the jobs grant scandal at the Human Resources Development Department early in 2000. This memo focused on audits that were requested under the *Access to Information Act* and required all federal agencies to "...turn over copies of original audit reports to be released, a copy of each audit and a copy of all audits even if they have not been requested" so that they could be vetted by Treasury Board and the Privy Council.¹²³ Reid, testifying before a parliamentary committee, noted that such an order brought the release of such documents to a standstill and commented that "[w]hat has happened is that Treasury Board and the Privy Council want to know what audits have been requested, whether they contain bad news and what the official media line will be."¹²⁴

Finally, one relatively new means of "prebutting" the disturbance posed by access requests includes the use of departmental Web sites to release "safe" documents. Here departments such as the Canadian Security and Intelligence Service and National Defence disseminate electronic copies of documents that have been previously reviewed in an attempt to satisfy the needs of the public prior to an access request being made. The hope is that the release of already available documents may deter individuals from inquiring further.

Second Order Change – Colonization and Evolution

As the initial introduction to the Laughlin series of models showed, "organizational responses to environmental disturbances can move from "first order" responses in which core values remain unchanged, to "second order" responses in which some or all members of an organization adopt different values."¹²⁵ Given the obvious resistance by public officials to increased levels of public access that was evidenced by the first order responses outlined above, however, it is clear that the value systems which govern the activities of senior public officials have not fundamentally changed. The current political and administrative culture of the federal government may still be best characterized as closed. The act has been in effect for over fifteen years, yet response times are increasingly slow, the number of substantiated complaints are on the rise, and the most significant of malicious acts – the destruction of records to avoid disclosure – are seemingly happening with some degree of frequency. Although it may be easy to argue that many federal government departments and agencies are a long way from realizing any form of second order change,

it may be more useful to discuss some of the possible reasons why this is so. What, then, has delayed the onset of colonization and evolution activity across most government departments?

As seen in **Figure Four**, Laughlin visualizes colonization occurring in instances where forced change to the design archetype initiates internal colonization of the organization's guiding interpretive schemes. Given this observation, one should expect those officials who are most closely associated with this change, that is, those who are most in contact with the legislation and whose duties include the implementation of the act within individual departments, to be at the forefront of the colonization movement. In the Canadian civil service these officials would be the access to information coordinators that have been established in each Schedule 1 department and agency. In fact, the Standing Committee on Justice and Legal Affairs itself stated that access coordinators "must become the primary agents for promoting effective implementation of the act within each institution."¹²⁶ Ideally, then, it would be these individuals who would be responsible for introducing an ethos of openness among their colleagues and, in cases of last resort, act as an advocate on behalf of the general public's right to know. Unfortunately, this has not been the case in most government departments.

A primary reason is that coordinators are rarely external agents, specifically trained and hired by organizations to implement access to information policies and procedures. Rather, they are typically existing staff who have been assigned access responsibilities in lieu of, and sometimes in addition to, their regular functions. Further, most access coordinators are not placed in senior level positions that would allow them to make final decisions with regard to the release of information or, alternatively, lend necessary credibility to their role as advocates for increased openness.

But even in cases where the individual is solely responsible for the act, relatively well placed in the department, and able to make final decisions on what is to be released or withheld, the situation is not easy. Access coordinators interviewed by the Office of the Information Commissioner and Treasury Board have consistently indicated that they "must live within ... [their] department milieu ... [and] that obedience to the access law is not rewarded, whereas ... loyalty and obedience to ... [their] institution and its head *are* very much expected and rewarded."¹²⁷ The fact that access coordinators often find themselves working in hostile environments, to use the words of John Reid, is not to be underestimated as there have been several reports of instances where access coordinators have been intimidated by senior departmental officials. Such activity clearly serves to mitigate the ability of access coordinators to act as a colonizing influence. It also sends a similar, if not unmistakable, message to all staff in the department.

In the absence of access coordinators acting as change agents, leadership from high-ranking individuals and influential departments is obviously neces-

sary for any significant cultural change to occur. In his study of second order change, Amir Levy speaks of the need for “transformational leadership” as part of the “permitting conditions” necessary for a transformation to second order change to take place. These leaders must be capable of “providing new vision, aligning members with this vision, and mobilizing energy and commitment to the realization of this vision.”¹²⁸ Within the understanding of second order responses developed by Laughlin, activities of this sort suggest the need to move away from the colonization approach and towards an evolution type of response.

The evolution response assumes not only that “...the initial disturbance causes some reverberation in the interpretive schemes, which generates rational discussion about its design...but [that] the change is deliberately *chosen* or accepted by *all* the participants and it is a change which is controlled by these actors.”¹²⁹ Change of this magnitude requires not only the consent of the senior political and civil service officials but their active leadership as well. Reid acknowledges this when he states that “...the prime agents for a change of culture to open government has [sic] to be the PM, Ministers, Deputy Ministers and especially, the leadership of Justice, Treasury Board and PCO [Privy Council Office].”¹³⁰ Each of these agents has so far failed to provide the necessary leadership that would allow second order change to take place – even in the limited sense of colonization, much less taking the government as a whole towards a more open culture in an evolutionary sense.

Such failure has not gone unnoticed as reports by the federal information commissioners over the past fifteen years have consistently pointed to this concern. In his 1993–94 annual report, Grace indicated that there continued to be “...a lack of clarity and focus in ministerial leadership which has slowed progress on information policy issues and, in its worst guise, served to signal to an already reluctant and nervous bureaucracy ... that openness was not the order of the day.”¹³¹ Three years later, Grace was even more direct when he stated that “what would improve this law above all else is a stronger institutional will, expressed at highest levels of government, to make the *Access to Information Act* measure up to the great ideals held for it by its creators.”¹³²

In order for evolution type development to take place, departments such as Justice Canada and Treasury Board need to play a strong coordinating role. In the early years of the act, the Treasury Board Secretariat (TBS) did, in fact, play a significant leadership role in providing the central coordination function for departments seeking to implement access to information legislation. TBS was responsible for, among other things, putting together the *InfoSource* publication and the development and circulation of procedure manuals related to the implementation of the act. But, as Reid noted in his remarks to access coordinators in 1998, “...the steam went out of TBS in the early 1990’s” as the access system fell into disrepair, causing him to wonder if “...access was

working too well [in its limited fashion] and the bureaucracy just closed ranks against it?"¹³³

The Department of Justice has also failed to play a leading role in a coordinated effort towards more open government. As Reid has commented, no other department has such an influential effect on the implementation and administration of the act across government. This is because Justice Canada undertakes such activities as advising senior officials with regard to individual access cases, provides advice related to issues of access policy and procedures, conducts litigation associated with access matters, and, infrequently, may be called to develop proposals for amendments to the act.¹³⁴ In reality, this active role places Justice Canada in a conflict of interest in that it is both an important centre for policy advice and the primary legal representative for departments in cases where appeals under the act are brought before the federal court. As Reid notes, "[b]ecause of that inherent conflict of roles, ... [Justice Canada] has not been able to play its intended leadership role in changing the traditional closed culture of government into the open culture described in the purpose of the access law."¹³⁵

What Went Wrong

This article has argued that organizational theory offers some insight into the dynamic interaction between Canadian federal government departments and the disturbance posed by the *Access to Information Act*. Applying the taxonomy of first and second order change used by Laughlin, it has been shown that federal government departments and agencies have primarily engaged in activities associated with first order responses, especially those identified with the rebuttal response, and have not yet realized second order change in any meaningful way. The evidence presented clearly indicates that "there is far too little support for freedom of information [in government] and far too much belief that something traditionally kept from the public should be kept from the public forever."¹³⁶ In order to develop a richer understanding of this reality, we need to return to the structure provided by organizational theory and determine why it is that the federal government has not yet been able to effectively overcome its protective proclivities as custodians of public information.

In their book, *The Tracks and Dynamics of Strategic Change*, C.R. Hinings and Royston Greenwood offer four criteria that they believe are necessary to explain whether inertia, as the default response, or transformation will result from a disturbance in an organization's environment.¹³⁷ The first element they identify is the need to consider the magnitude of the disturbance and the extent to which it destabilizes the organization. Perhaps not surprisingly, they conclude that the greater the disturbance the more likely it is that fundamental change will occur.

The evidence presented above demonstrates that the *Access to Information*

Act has the unique capacity to disturb the bureaucratic environment. Yet, the fact that fundamental transformation towards more open government has not yet occurred in the Canadian federal context forces the question of whether the kick or disturbance posed by access to information legislation has been strong enough.

Two possible reasons for this contradiction are evident. One is that the lack of both political pressure and strong public opinion has lessened the *sustained* impact of the disturbance. The politicians of the governing party often benefit from the control of information, and the public seems to be resigned to this practice, accepting it as “what else would you expect of politicians?” Senior officials are acutely aware of this reality and, despite the constant criticism of the government’s performance by the media and the Office of the Information Commissioner, the performance of federal departments continues to deteriorate across government as a result. The second reason is that the element of sanction associated with non-compliance has, until just recently, been limited and the act has therefore not been strong enough to shape individual or group behaviour in a way that would effect a move towards the acceptance of open government as the norm. This is particularly evident in such high profile instances as the destruction of records by National Defence and Health Canada, where officials did not hesitate to react in what may be considered an extreme fashion. In reaction to incidents such as these, Parliament passed Bill C-208, an *Act to Amend the Access to Information Act*, in early 1999.¹³⁸ This legislation amends the act by making it an offence to obstruct the right of access by destroying, falsifying, or concealing a record or to counsel such activity by others. Individuals found guilty of such actions are liable to a prison term of up to two years or a fine not exceeding \$10,000. The ultimate effect of this change on the bureaucracy remains to be seen, but it should be noted that the amendment does not provide penalties for the most common activities associated with the rebuttal response, continuing obfuscation of the act through delay for example, and, perhaps most significantly for archivists, it does not require officials to create documents in the first place.¹³⁹

The second point Hinings and Greenwood make is that the level of individual commitment to the organization’s underlying ethos – its beliefs, values, and mission – is an important indicator of its capacity to change. This argument is supported by Nils Brunsson who believes that the level of commitment to the organization’s ideology provides a strong rationale for why particular pathways of change are followed and not others.¹⁴⁰ Brunsson posits that organizations are imbued with either strong (“consistent, complex, and conclusive”) or weak (“inconsistent, simple, and inclusive [sic]”) ideologies and finds that those organizations with strong ideologies are more “...open to adaptive changes, but are resistant to fundamental ideological shifts.”¹⁴¹ Conversely, organizations with weak ideologies may be regarded as being susceptible to manipulation and, thus, fundamental change.

This understanding directly complements the analysis that was presented above. This article proceeded from the premise that federal government departments and agencies are inherently conservative and change resistant in that they have displayed a high level of commitment to the traditional environment of secrecy. The fact that federal government bodies have been willing to accommodate only adaptive changes, that is, first order (morphostatic) change, but have proven themselves resistant to the fundamental ideological shifts necessary for second order (morphogenetic) change to take place directly supports this argument. The belief that the interpretive schemes which guide federal institutions must be considered strong in the Brunsson sense is further supported by the consistent rebuttal response that was evidenced above, as the rebuttal response is driven by a desire to keep the organization exactly as it was before.

The third contributing factor is that the potential for change concerns not only the general level of commitment but also, more specifically, which individuals in particular are "...committed either to the underlying ethos or an alternative and their respective position in the organization."¹⁴² This factor is critical because, in order for second order change to take place, the "dominant coalition" within the organization must be ready and willing to endure the necessary anxiety that comes with the anticipated uncertainty of change.¹⁴³ As the discussion on the lack of colonization or evolutionary responses showed, however, there has been no credible public commitment to openness from either the political or the administrative leadership. This provides relatively strong evidence that the leaders remain committed to the existing ethos and the way in which it protects their respective positions within the government. Without genuine leadership and commitment to the principles of the act by senior public officials, rank and file civil servants "...have [also] shown apathy and have nothing to gain through zealous compliance; there may even be rewards for noncompliance."¹⁴⁴

The final observation made by Hinings and Greenwood is that the potential for organizational change is dependent upon the "competences and capabilities" of the organization itself. This idea complements the belief that organizations are naturally change resistant and that the strong force of inertia sharply circumscribes the capacity of organizations to change.¹⁴⁵ Given the dynamic interaction of the previous three elements, and the way in which each has helped to perpetuate the practice of administrative secrecy, it should not be surprising that federal government departments and agencies have not proven ready or able to embrace the idea of open government – even after more than fifteen years of operating under the legislation.

Conclusion

So far we have looked at how Canadian federal government organizations have

reacted to the implementation of access to information legislation and the effect that this form of organizational activity has had on both their administration of the legislation and their record-keeping practices. In *Archivaria* 36, David Bearman argued that analyses of records creators are essential in order to provide the information about the content, structure, and context of records creation necessary to ensure the preservation of archives as reliable evidence of transactions.¹⁴⁶ What this article has shown, however, is that the possible effect of disturbances to the record-keeping environment may in fact translate into actions which discourage the creation of records or, alternatively, negatively affect the content, structure, and context of records creation and thus *limit* the ability of archives to provide reliable evidence of actions and transactions. One direct implication of this understanding is that the archival records which we have often referred to as the “unselfconscious by-products of human activity” are, in fact, threatened by access to information legislation because the introduction of that disturbance to the bureaucratic environment has, in some instances, injected an increasing degree of self-awareness into the process of records creation. The impact of this change is not to be underestimated by archivists. We have traditionally based many of our principles and theoretical constructs on the notion that there is a “...fundamental difference between consciously-authored materials (books, articles, documentary or fictional films), and archival materials which are records **of** but not **about** activity.”¹⁴⁷ Bearman, for example, has noted that

[c]onsciously-authored materials have a subject-matter imposed on them by their authors, and they are rarely appropriate as research material for other topics. Archival records, on the other hand, shed their light more indirectly, answering not only such factual questions as what took place and who was involved, but also more subjective ones such as why participants acted as they did or how the actions were recorded.¹⁴⁸

The impact of access to information legislation on records creators, particularly as set out in the rebuttal section above, fundamentally threatens this notion by altering the context of creation and moving the discourse of the bureaucracy towards the realm of the consciously authored.

Recognition that external forces can have an impact upon both the creation and content of public documents is not a particularly new insight however. Richard Brown in particular has commented about the need for archivists to devote attention to the “...syntactic examination and reading of records as narrative texts; to the meaning and understanding implicit in the formation, production, structure, and rhetoric of records” within their bureaucratic context.¹⁴⁹ He states that this can only be accomplished by examining the “...structures, functions, processes, continuities, forces and events that articulate archival material...”¹⁵⁰ in order to “...identify the records environment in

which social meaning is composed and produced...”¹⁵¹ Access to information legislation has the capacity to disturb the records environment of which Brown speaks; such legislation constitutes one of the “forces and events” that will continue to have an impact on the creation and documentary form of public records, perhaps for some time to come.

The implication that the direct accountability and reliability of public documents can no longer be assumed in all instances is a disturbing one, because the creation and ongoing retention of such records (those that are incomplete or obfuscate the issue to which they relate) actively sabotages the documentary heritage of our society by threatening the evidential value of records that is essential to the foundation of a strong corporate memory. In order to combat the compound effect of this reality, archivists must continue to champion the development of the legal, functional, and documentary standards necessary for reliable record-keeping systems.¹⁵² The fact that we continue to be fundamentally behind in this regard has become an increasing topic of public concern for both Ian Wilson and John Reid. They warn of an “information management crisis” in the federal government that, “...left unchecked, compromises the pivotal democratic principles of accountability and openness.”¹⁵³ Reid has gone so far as to lobby for information creation standards, in the guise of an information management act, which would “...codify the responsibilities of government to create and maintain its records professionally”¹⁵⁴ by requiring public officials to “...document the functions, policies, decisions, procedures and transactions in which they are involved.”¹⁵⁵ It is obvious that the debate is just beginning in earnest, nevertheless, it is essential that archivists continue to contribute their knowledge and expertise given their professional responsibility for preserving the documentary past.

Official secrecy, government obfuscation, and public accountability are all complex and emotively charged subjects. The arguments are often multi-sided and it is difficult to reach agreement on many of the underlying assumptions, much less make conclusions. Yet, while it is evident that the “...principles of a Westminster model of government are certainly not irreconcilable with a statutory right of access to information...”¹⁵⁶ and there are, without a doubt, thousands of pages of government documents released every month, it is clear that Canada, an established liberal democracy, remains subject to powerful traditions of government secrecy through which non-sensitive information continues to be only grudgingly provided, if not often denied, to the public. What this article has also attempted to show is that this resistance has the potential to dramatically affect Canada’s documentary heritage as well.

Notes

* I would like to thank Professor Christopher Hood of the London School of Economics for introducing me to the writings of Richard Laughlin and sharing with me some of his own

work in this field of study. I would also like to thank Richard Brown, Jana Buhlmann, Marnie Burnham, and Johanna Smith for their constructive comments during the drafting of this paper. The opinions expressed are those of the author and do not necessarily reflect the views of the National Archives of Canada or the Commonwealth Secretariat.

- 1 General Maurice Baril, Canadian Chief of Defence Staff, responding to a reporter's inquiries concerning the decision to withhold records related to Canadian military operations in Kosovo – records of a type that were routinely released by American and British military officials. *CBC Newsworld*, "Canadian military 'censoring' Kosovo involvement," World Wide Web (7 May 1999).
- 2 Victoria Lemieux, "Archival Solitudes: The Impact on Appraisal and Acquisition of Legislative Concepts of Records and Archives," *Archivaria* 35 (Spring 1993), p. 153.
- 3 The impact of legislation on records creators is an obvious point of interest for archivists everywhere and work is currently underway in various jurisdictions in this regard. One example is the analysis of all forms of legislation which have an impact upon records and record-keeping activities in Commonwealth countries that is the focus of a study by the Association of Commonwealth Archivists and Records Managers. See Michael Roper, "Study of Legislation Affecting Records and Archives in Commonwealth Countries," *ACARM Newsletter* 24 (March 2000), p. 7.
- 4 The descriptive phrase "access to information" will be used throughout this article instead of its, perhaps, more common partner "freedom of information." This is for two reasons. The first is that, because this study is focused on the Canadian federal access to information law, it is more consistent to use the phrase that is embodied in the legislation itself. Second, as will be developed further below, it is the author's opinion that the phrase "access" to information is more correct in that "freedom" of information rarely exists in the Canadian federal context. For an interesting analysis and discussion of the difference between the two phrases see Robert Martin and Estelle Feldman, *Access to Information in Developing Countries* (London, 1998), pp. 1–4.
- 5 Richard Chapman, "Introduction," in R. Chapman and M. Hunt, eds., *Open Government* (London, 1987), p. 11.
- 6 *Ibid.*
- 7 John Pearson, "Access to Confidential Business Information in Government Files," in Y. Morissette, et. al., eds., *Open Justice* (Montreal, 1995), p. 267.
- 8 Secretary of State, *Legislation on Public Access to Government* (Ottawa, 1977), p. 3.
- 9 David Bearman and Richard Lytle, "The Power of the Principle of Provenance," *Archivaria* 21 (Winter 1985–86), p. 14. Emphasis added. Given the current use and acceptance of organizational and social theory in archival scholarship, it is interesting to note that, at the time, Bearman and Lytle concluded by wondering how many archivists even viewed these comments as being relevant to their work and professional understandings.
- 10 For useful analyses of the impact of organizational and social theory on archival literature and practice, see Brian Brothman, "Orders of Value: Probing the Theoretical Terms of Archival Practice," *Archivaria* 32 (Summer 1991), note 30; Richard Brown, "Records Acquisition Strategy and Its Theoretical Foundation: The Case for a Concept of Archival Hermeneutics," *Archivaria* 33 (Winter 1991–92), pp. 42–45; and Victoria Lemieux, "Applying Mintzberg's Theories on Organizational Configurations to Archival Appraisal," *Archivaria* 46 (Winter 1998), pp. 33–35 and notes 4–13.
- 11 Lemieux, "Applying Mintzberg's Theories," p. 35.
- 12 Tom Nesmith, "Still Fuzzy, But More Accurate: Some Thoughts on the Ghosts of Archival Theory," *Archivaria* 47 (Spring 1999), p. 142.
- 13 *Ibid.*
- 14 *Ibid.*
- 15 For a brief analysis of the origins of the British tradition of official secrecy see A.P. Tant, "The

- Campaign for Freedom of Information: A Participatory Challenge to Elitist British Government," *Public Administration* 68 (Winter 1990), pp. 477–91 and R. Chapman, "Introduction," p. 17.
- 16 R. Chapman, "Introduction," p. 17.
 - 17 K.G. Robertson, *Public Secrets* (London, 1982), p. 3. See also John Reid, "Remarks to Article 19 Freedom of Information Seminar," Oxford, U.K. (7 February 2000), <<http://fox.nstn.ca/~smulloy/00Feb7-FOI-Oxford.html>>, p. 5 on how this system protected senior civil servants as well or as much as government ministers.
 - 18 This fact was recognized by Jeremy Bentham who said that "secrecy, being an instrument of conspiracy, ought never to be a system of regular government." See J. Bentham, "On Publicity," *Works of Jeremy Bentham* (Edinburgh, 1843), pp. 310–17 as cited in Norman Marsh, "Access to Government-Held Information: An Introduction," in Norman Marsh, ed., *Public Access to Government-Held Information* (London, 1987), p. 2.
 - 19 Chapman, "Introduction," p. 12.
 - 20 Donald C. Rowat, "Comparative Survey," in Donald C. Rowat, ed., *Administrative Secrecy in Developed Countries* (London, 1979), p. 19.
 - 21 Marsh, "Access to Government-Held Information," p. 4. Marsh goes on to point out that "the quality of those decisions will be improved not only by the public's contribution to the decision-making process but perhaps even more by the knowledge of the decision-makers that they are acting in the public view."
 - 22 The function of representative assembly and the notion of an official opposition helps to underscore this belief.
 - 23 Ann Rogers, citing Tony Bunyan, has observed that administrative secrecy "has all the hallmarks of an authoritarian state in which power resides in the hands of officials with no democratic or legal mechanisms to call them to account." See Ann Rogers, *Secrecy and Power in the British State* (London, 1997), p. 110.
 - 24 Max Weber, *Wirtschaft und Gesellschaft*, fifth edition (Tubingen, 1972), p. 573 as cited in Edward Page, *Political Authority and Bureaucratic Power*, second edition (London, 1992), p. 9.
 - 25 Ibid.
 - 26 Max Weber, *Economy and Society*, vol. 2 (G. Roth and C. Wittich, eds.) (Berkeley, 1978), pp. 1417–18 as cited in Keith Dowding, *The Civil Service* (London, 1995), p. 16. Weber goes on to state that "the bureaucracy's supreme power instrument is the transformation of official information into classified material by means of the notorious concept of official secret. In the last analysis, this is merely a means of protecting the administration against supervision."
 - 27 Dowding, *The Civil Service*, p. 15. See also Heather Mitchell, *Access to Information and Policy Making: A Comparative Study* (Toronto, 1980), pp. 164–67.
 - 28 Weber, *Wirtschaft und Gesellschaft*, p. 572 as cited in Page, *Political Authority and Bureaucratic Power*, p. 9.
 - 29 David Beetham, *Bureaucracy*, second edition (Buckingham, 1996), p. 97. Much of this argument is related to issue of "secret law" within the field of administrative law. See, for example, Larry M. Fox, *Freedom of Information and the Administrative Process* (Toronto, 1979), Chapter VIII.
 - 30 Dowding, *The Civil Service*, p. 16.
 - 31 Donald C. Rowat, "Preface," in Donald C. Rowat, *Administrative Secrecy in Developed Countries* (London, 1979), p. x.
 - 32 According to a 1994 Canadian federal government report, only twelve of the world's (then) 187 independent nations provide their citizens with the legal right and means to access government information. See Information Commissioner of Canada, *The Access to Information Act: Ten Years On* (Ottawa, 1994), p. 1.
 - 33 *Access to Information Act*, s. 2 (1).

- 34 Briefly stated, the exemptions relate to “policy making, national security, federal-provincial affairs, law enforcement, personal information, and commercial information.” See Robert Hayward, “Federal Access and Privacy Legislation and the Public Archives of Canada,” *Archivaria* 18 (Summer 1984), p. 50.
- 35 Sections 68 and 69 concern confidences of the Queen’s Privy Council for Canada, material which has been published, and private manuscripts deposited with federal archives, libraries, and museums.
- 36 For a discussion on class exemptions versus the injury test see Hayward, “Federal Access and Privacy Legislation and the Public Archives of Canada,” p. 50.
- 37 Information Commissioner of Canada, *Annual Report 1987–1988* (Ottawa, 1988), p. 6.
- 38 *Ibid.*, p. 3.
- 39 John Grace, the third and longest serving information commissioner, supports this conclusion and states that “[t]he most telling tribute to the access law’s power and importance is the continuing discomfort some public servants claim to experience at having to live the law.” See Information Commissioner of Canada, *Annual Report 1995–1996* (Ottawa, 1996), p. 4. This theme has also been a feature of John Reid’s addresses to various audiences since his appointment. In one telling statement he says that “[n]owhere in the world, not even here in Canada, have bureaucracies been the champions of freedom of information.” See John Reid, “Remarks to Conference on Access to Information Reform,” speech of 1 May 2000 Ottawa, Ontario, <<http://fox.nstn.ca/~smulloy/00May01-ATIREform-Ottawa.html>>, p. 5.
- 40 Stewart Dresner, *Open Government: Lessons from America* (London, 1980), p. 81.
- 41 Peter Hernon and Charles McClure, *Federal Information Policies in the 1980’s: Conflicts and Issues* (Norwood, N.J., 1987), p. 63.
- 42 *Ibid.*, p. 63.
- 43 The information commissioner is an independent officer of Parliament who, under the provisions of the *Access to Information Act*, acts in an ombudsman capacity with regard to public access rights.
- 44 Information Commissioner of Canada, *Annual Report 1996–1997* (Ottawa, 1997), p. 3.
- 45 Information Commissioner of Canada, *Annual Report 1997–1998* (Ottawa, 1998), p. 1. Grace served an extended eight-year term as information commissioner. This posting followed an initial seven-year term as the first privacy commissioner.
- 46 Office of the Information Commissioner for Canada, *Press Release* (4 June 1998), p. 1.
- 47 Information Commissioner of Canada, *Annual Report 1997–1998*, p. 1.
- 48 *Ibid.*
- 49 Information Commissioner of Canada, *Annual Report 1998–1999* (Ottawa, 1999), p. 4.
- 50 Richard H. Hall, *Organizations: Structures, Processes and Outcomes*, Sixth Edition (Englewood Cliffs, N.J., 1996), pp. 190–91. That this is especially true for bureaucratic organizations has been well documented. For example, Donald Savoie has commented on the fact that “a large body of literature argues that career civil servants intuitively favor the status quo and...[it is understood that] civil servants will resist measures that threaten their interests or the well-being of their institutions.” See Donald Savoie, *Thatcher Reagan Mulroney: In Search of a New Bureaucracy* (Pittsburgh, 1994), p. ix.
- 51 Richard Laughlin, “Environmental Disturbances and Organizational Transitions and Transformations: Some Alternative Models,” *Organization Studies* 12 (1991), pp. 209–10.
- 52 Hall, *Organizations: Structures, Processes and Outcomes*, p. 20. The reality that institutions are susceptible to change arising from outside the organization itself is reflected in the conception or characterization of an organization as an open system. By open system, it is simply believed that the organization has interactions with, and its internal functions and processes may be affected by, its general environment. See Edward A. Gerloff, *Organizational Theory and Design: A Strategic Approach for Management* (New York, 1985), p. 23.
- 53 Laughlin, “Environmental Disturbances,” p. 209.

- 54 Despite being first introduced by Watzlawick, Weakland, and Fisch in 1974, the terms “first order” and “second order” responses have achieved common usage only recently and there exists a large number of alternative definitions that have been developed by a variety of writers in the field of organizational theory or other closely related disciplines. Many of these definitions are summarized into a useful conceptual framework by Amir Levy in his study of second order change. Among the more important alternatives advanced over the past forty years are Lindblom’s differentiation between “branch change” and “root change” and Argyris and Schon’s “single-loop learning” and “double-loop learning.” See Amir Levy, “Second-Order Planned Change: Definition and Conceptualization,” *Organizational Dynamics* 15 (1986), pp. 8–9.
- 55 Christopher Hood and Henry Rothstein, “Institutions and Risk Management: Problem-Solvers or Blame-Shifters?” unpublished paper (extended version of a plenary address to the SRA Conference in Paris, 11–14 October 1998), p. 3.
- 56 Kenwyn Smith, “Philosophical Problems in Thinking About Organizational Change,” in Paul Goodman et al., eds., *Change in Organizations* (San Francisco, 1982), p. 318.
- 57 Fenton Robb, “Morphostasis and Morphogenesis: Contexts of Participative Design Inquiry in the Design of Systems of Learning and Human Development,” unpublished discussion paper (University of Edinburgh), p. 4 as cited in Laughlin, “Environmental Disturbances,” p. 214.
- 58 Levy, “Second-Order Planned Change,” p. 10.
- 59 Smith, “Philosophical Problems in Thinking About Organizational Change,” p. 318.
- 60 Laughlin, “Environmental Disturbances,” p. 209.
- 61 Hood and Rothstein, “Institutions and Risk Management,” p. 3.
- 62 Ibid.
- 63 Laughlin, “Environmental Disturbances,” p. 210.
- 64 Ibid., p. 211.
- 65 Ibid. Laughlin’s article contains an apparent incongruity between the word “interpretative” used in diagrams and the word “interpretive” used in the text. I believe “interpretive” is the correct term, but I have scanned the diagrams from the original article and kept the term “interpretative,” much like quoting from an original source.
- 66 Ibid., p. 213.
- 67 Ibid.
- 68 Ibid., p. 216. See also Smith, “Philosophical Problems,” p. 363.
- 69 Laughlin, “Environmental Disturbances,” p. 223. Richard Hall has also argued that organizations actively resist change through attempts to “blunt” the impact of change. See Hall, *Organizations: Structures, Processes and Outcomes*, pp. 20–22.
- 70 Laughlin, “Environmental Disturbances,” p. 216.
- 71 Ibid., p. 217.
- 72 Ibid.
- 73 Ibid.
- 74 Ibid., pp. 217–18.
- 75 Hood and Rothstein, “Institutions and Risk Management,” p. 4.
- 76 Ibid.
- 77 Moving away from Smith’s work that was the basis for the first two models, Laughlin utilizes Jurgen Habermas’s studies of societal development as the rationale for his argument that organizations have the flexibility to change independently of their interpretive schemes. See Laughlin, “Environmental Disturbances,” pp. 218–19.
- 78 Ibid., p. 220.
- 79 Ibid., p. 218.
- 80 Ibid., p. 219.
- 81 Ibid., p. 220.
- 82 Ibid., p. 221.

- 83 Ibid.
- 84 Editorial Cartoon, *Frank Magazine* (24 June 1993).
- 85 Hood and Rothstein, "Institutions and Risk Management," p. 7.
- 86 Laughlin, "Environmental Disturbances," p. 223.
- 87 Alasdair Roberts, "Limited Access: Assessing the Health of Canada's Freedom of Information Laws," Queen's University, School of Policy Studies, <<http://qsilver.queensu.ca/~foi/>>, p. iii. Francis Rourke and Paul Schulman have commented that "bureaucratic organizations are commonly seen as...[being] devoutly attached to one and only one objective – the protection and enhancement of their own status and survival as part of the government process." See Francis Rourke and Paul Schulman, "Adhocracy in Policy Development," *Social Science Journal* 26, no. 2 (1989), p. 140.
- 88 Roberts, "Limited Access," p. 10.
- 89 Ibid., p. 12. Patrick Birkinshaw has labeled similar activity as "maladministration" and suggests that it involves such behaviour as "incompetence, delay, inattention, rudeness, turpitude, neglect, bias and so on." See Patrick Birkinshaw, *Government and Information: The Law Relating to Access, Disclosure and Regulation* (London, 1990), p. 298.
- 90 As Roberts notes, however, the intent to protect the interests of the department or agency from the intrusion of access to information requests is common to both forms of activity and it is this factor which ties the two together under the rubric of official adversarialism.
- 91 Information Commissioner of Canada, *Annual Report 1997–1998*, p. 1.
- 92 Grace writes that the situation is much more complicated than just a few bad apples and states that "the easy, traditional, few-bad-apples assumption is a recipe for complacency." See Ibid., p. 3.
- 93 Ibid.
- 94 *Access to Information Act*, s. 8, 9, 10.
- 95 Information Commissioner of Canada, *Annual Report 1997–1998*, p. 2. One common catchphrase associated with this problem is that "access delayed is access denied."
- 96 Information Commissioner of Canada, *Annual Report 1996–1997*, p. 5.
- 97 The exception being the relatively introductory first one.
- 98 John Reid, "Remarks to Justice Canada," speech presented to Justice Canada (6 November 1998), <http://fox.nstn.ca/~smulloy/sp11_06e.htm>, p. 3.
- 99 Office of the Information Commissioner, *Press Release* (Ottawa, 28 April 1999) and Brian K. Smith, CBC Newsworld Online, "Ottawa criticized for delays in releasing information," World Wide Web (29 April 1999).
- 100 Information Commissioner of Canada, *Annual Report 1998–1999*, p. 5. Subsection 10(3) of the *Access to Information Act* states that "[w]here the head of a government institution fails to give access to a record requested under this Act or a part thereof within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access."
- 101 Roberts, "Limited Access: Assessing the Health of Canada's Freedom of Information Laws," p. 12. A particularly interesting example of this sort of activity is the decision by the Privy Council Office to rename or reclassify many of its records, i.e., background papers relating to policy analysis and options, so as to prevent their release through the use of section 69(1)(b) – a mandatory exemption. Reid has challenged this interpretation and has asked the Federal Court to intervene and make these records available under section 69(3)(b) of the act. See Reid, "Remarks to Conference on Access to Information Reform," pp. 11–13.
- 102 Alasdair Roberts, "Monitoring Performance by Federal Agencies: A Tool for Enforcement of the Access to Information Act," Queen's University, School of Policy Studies, <<http://qsilver.queensu.ca/~foi/>>, p. 4.
- 103 *Access to Information Act*, s. 2(1).
- 104 Information Commissioner of Canada, *Annual Report 1993–1994* (Ottawa, 1994), p. 4.

- Grace has returned to this point several times. In his 1996–97 annual report he noted existence of the “don’t-write-it-down school” and its dangers. The following year he stated that “[i]f bold boasts are to be believed, some have taken to adopting the motto attributed to an old New York Democratic boss: ‘Never write if you can speak; never speak if you can nod; never nod if you can wink.’” See Information Commissioner of Canada, *Annual Report 1997–1998*, p. 1.
- 105 The use of Post-it Notes stuck to documents, instead of making annotations or stuck to office doors in place of more formal communication, was related to me by an administrator with the Immigration and Refugee Board during my work with the National Archives of Canada.
- 106 Ian E. Wilson (in collaboration with Andrew Lipchak), “You Must Remember This,” paper presented to the Professional Development Forum, Technology in Government Week, Ottawa, Ontario, 27 October 1998, p. 3.
- 107 John Reid, “Remarks to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities,” Ottawa, Ontario, 28 March 2000, <<http://fox.nstn.ca/~smulloy/00Mar28-SC-HRD-Ottawa.html>>, pp. 1–4; Reid, “Remarks to Conference on Access to Information Reform,” p. 7 and Reid, “Remarks to Article 19 Freedom of Information Seminar,” pp. 5–7. This practice has not been limited to the federal government of Canada. For insight into the rise of similar practices in British Columbia following the introduction of its *Freedom of Information and Protection of Privacy Act* in 1993, see Russ Francis, “Freedom of Information Faces an Uncertain Future,” *The Vancouver Sun* (21 July 1999), p. A13. The creation of “safe” records by public officials was also found to be one outcome of the implementation of the *Freedom of Information Act* in Victoria, Australia as it was determined that “in certain areas of government, advice...[became] less extensive and more circumspect...[as less was] being committed to paper.” See Spencer Zipcak, “Freedom of Information in Principle and Practice: the Victorian Experience,” *Australian Journal of Public Administration* XLVII, no. 4 (December 1988), p. 313. Finally, Professor Isaiah Litvak, during his work for Ontario’s Commission on Freedom of Information and Individual Privacy, expressed the belief that record-keeping practices would be seriously altered if access to information legislation was extended to cover Crown corporations. See Isaiah Litvak, *Information Access and Crown Corporations* (Toronto, 1980), p. 73.
- 108 Reid, “Remarks to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities,” p. 3.
- 109 The incident involving the alteration and subsequent destruction of records related to Somalia by the Department of National Defence formed a central part of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia while the destruction of the tape recordings and transcripts of meetings of the Canadian Blood Committee were investigated as part of the Commission of Inquiry into Canada’s Blood Supply headed by Justice Krever. It is important to note that these incidents may have also violated the provisions of the *National Archives of Canada Act*.
- 110 Roberts, “Monitoring Performance by Federal Agencies: A Tool for Enforcement of the Access to Information Act,” p. 3. Roberts compiled this data from the information commissioner’s annual reports.
- 111 *Ibid.*, p. 2. For example, many individuals will not proceed with a complaint if the information has been rendered valueless because of delay.
- 112 *Access to Information Act*, s. 5(1)(d).
- 113 *Access to Information Act*, s. 5(1)(a-c). The publication also contains information related to the rights of users under the act and is widely distributed across the country in both printed and electronic formats.
- 114 In addition to the activities documented here, the removal of agencies from Schedule 1 of the *Access to Information Act* has direct, and possibly serious, consequences for the National

Archives of Canada as only those institutions listed in Schedule 1 are subject to the *National Archives of Canada Act*. As a consequence, the National Archives was forced to develop a downsizing policy in response to these developments.

- 115 Roberts, "Limited Access: Assessing the Health of Canada's Freedom of Information Laws," p. 25.
- 116 *Civil Air Navigation Services Commercialization Act*, Statutes of Canada 1996, c. 20.
- 117 Alasdair Roberts, "Closing the Window: Public Service Restructuring and the Weakening of Freedom of Information Law," paper presented to the 1998 International Public Management Network Conference, Atkinson Graduate School of Management, Willamette University, Salem, Oregon (30 June 1998), p. 22. Roberts's research into the effect that "reinventing government" has had on the efficacy of access to information legislation, of which this conference presentation formed a part, has now been published. See Alasdair Roberts, "Less Government, More Secrecy: Reinvention and the Weakening of Freedom of Information Law," *Public Administration Review* 60 (July/August 2000), pp. 308–20.
- 118 *Access to Information Act*, s. 20(1)(b).
- 119 Information Commissioner of Canada, *Annual Report 1997–1998*, p. 2.
- 120 John Reid, "Remarks to the ATIP Coordinators," speech presented to the Information Policy Directorate, 17 November 1998, <http://fox.nstn.ca/~smulloy/sp11_17e.htm>, p. 3. In fact, new computer tracking systems are being utilized by many departments to flag "hot" requests so that sensitive issues can be brought directly to management's attention.
- 121 Brett Boudreau, "Winning Battles but Losing the War: The ATIA in National Defence," (unpublished manuscript, 1997), p. 25 as cited in Roberts, "Limited Access: Assessing the Health of Canada's Freedom of Information Laws," pp. 50–51.
- 122 Information Commissioner of Canada, *Annual Report 1998–1999*, case 1 (05–99). This investigation found that if the meetings determined that a request possibly involved a news-worthy or politically sensitive issue, it would be flagged to be reviewed by the department's public affairs specialists in order to prepare communication materials for the minister or senior management.
- 123 Robert Fife, "Ottawa's Vetting of Information Queries May be Illegal: Commissioner," *The National Post* (29 March 2000), p. A7.
- 124 *Ibid.* The story goes on to note that officials from the Privy Council Office, like those at National Defence, held frequent meetings to review the access requests as they were received from government departments and agencies.
- 125 Hood and Rothstein, "Institutions and Risk Management: Problem-Solvers or Blame-Shifters?" p. 7.
- 126 Information Commissioner of Canada, *Annual Report 1989–1990* (Ottawa, 1990), p. 11.
- 127 Reid, "Remarks to the ATIP Coordinators," p. 3.
- 128 Amir Levy, "Second-Order Planned Change: Definition and Conceptualization," p. 12.
- 129 Laughlin, "Environmental Disturbances," pp. 221–22. Emphasis his.
- 130 Reid, "Remarks to the ATIP Coordinators," p. 3.
- 131 Information Commissioner of Canada, *Annual Report 1993–1994* (Ottawa, 1994), p. 3.
- 132 Information Commissioner of Canada, *Annual Report 1996–1997*, p. 3.
- 133 Reid, "Remarks to the ATIP Coordinators," p. 4. See also Reid, "Remarks to Justice Canada," p. 2.
- 134 Reid, "Remarks to Justice Canada," p. 1.
- 135 *Ibid.*, p. 2. By way of comparison, the United States' Department of Justice has informed United States federal agencies that it will not represent them in appeals "unless the release of information would have a substantial harmful effect on a legitimate government interest – even if withholding would otherwise be possible under the *Freedom of Information Act*." See Heather Mitchell, *Access to Information and Policy Making: A Comparative Perspective*, p. 125.

- 136 Information Commissioner of Canada, *Annual Report 1985–1986*, p. 2.
- 137 C.R. Hinings and Royston Greenwood, *The Tracks and Dynamics of Strategic Change* (Oxford, 1988).
- 138 Commonly referred to as the Beaumier amendment, after the MP Colleen Beaumier who introduced it as a private member's bill, these changes are set forth in section 67.1 of the act.
- 139 John Reid has already voiced concerns regarding the implementation of section 67.1 by the government and has stated that the process "has all the appearance of damage control...." See John Reid, "Remarks to Canadian Access and Privacy Association Conference," Ottawa, 20 October 1999, <<http://fox.nstn.ca/~smulloy/99-Oct20-CAPA-Ottawa.html>>, pp. 8–10.
- 140 Nils Brunsson, *The Irrational Organisation: Irrationality as a Basis for Organisational Action and Change* (London, 1985) as discussed in Laughlin, "Environmental Disturbances," p. 222.
- 141 Laughlin, "Environmental Disturbances," p. 222.
- 142 *Ibid.*, p. 223.
- 143 Amir Levy, "Second-Order Planned Change," p. 12.
- 144 Information Commissioner of Canada, *Annual Report 1987–1988*, p. 6.
- 145 Kaufman states that organizations develop "mental blinders" which preclude the capability for change. See Herbert Kaufman, *The Limits of Organizational Change* (Alabama, 1971), p. 8 as cited in Hall, *Organizations: Structures, Processes and Outcomes*, p. 190.
- 146 David Bearman, "Record-keeping Systems," *Archivaria* 36 (Summer 1993), p. 17. Bearman goes on to state that such an "analysis of record-keeping systems from a theoretical or practical perspective is peculiarly absent from archival literature..." yet see, for example, Bill Russell's excellent article, "The White Man's Paper Burden: Aspects of Records Keeping in the Department of Indian Affairs, 1860–1914," *Archivaria* 19 (Winter 1984–85), pp. 50–72.
- 147 David Bearman, "Documenting Documentation," *Archivaria* 34 (Summer 1992), p. 43.
- 148 *Ibid.*
- 149 Richard Brown, "Records Acquisition Strategy and Its Theoretical Foundation: The Case for a Concept of Archival Hermeneutics," *Archivaria* 33 (Winter 1991–92) p. 45.
- 150 *Ibid.*, p. 34.
- 151 *Ibid.*, p. 43. Brown refers to this as "the distilled image of socio-bureaucratic discourse...."
- 152 David Bearman, among others, has stated that in order to ensure the continuing reliability of information management systems and practices, particularly in an electronic environment, archivists must ally with those "auditors, administrative security personnel, freedom of information and privacy officers, lawyers, and senior managers..." charged with managing the corporate memory of their respective institutions. Bearman goes on to say that such an alliance of information professionals is both strategically necessary and intellectually desirable. Part of the strategic necessity relates to the fact that such relationships with other information management professionals would allow for an increased "colonizing" role, in the Laughlin sense, for archivists. See David Bearman, "Record-keeping Systems," pp. 16–17.
- 153 Kathryn May, "Poor Records Threaten our National Memory," *Ottawa Citizen* (11 April 2000), <<http://www.ottawacitizen.com/national/000409/3901355.html>>. See also Reid, "Remarks to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities," pp. 1–4.
- 154 Reid, "Remarks to Article 19 Freedom of Information Seminar," p. 7.
- 155 Reid, "Remarks to the Standing Committee on Human Resources Development and the Status of Persons with Disabilities," p. 4. In light of all these concerns, it is interesting to reflect on the fact that most archivists across the country have, over time, lobbied for, or subsequently welcomed, the introduction of access to information legislation to their respective jurisdictions. As Brien Brothman has rightly noted, archives and archivists "actively promote the documentary model in society [and]...they have often fostered the democratization of the documentary model and the intensive use of records." Access to information legislation was

thus considered to be a legitimizing tool by archivists in that it established the maintenance and use of public records as a priority, it was seen to be a source of better funding for such important activities as records management and, by helping to reinforce the rights of citizens to exploit their documentary heritage, it would subsequently raise the profile of the archival community as well. And this may be the great irony of access to information legislation, for while it has contributed to an increased "records consciousness" among both public officials and the public itself, it has, at the same time, the capacity to lead to a decreased quality of record being transferred into our public archival institutions. See Brothman, "Orders of Value: Probing the Theoretical Terms of Archival Practice," p. 86.

- 156 Tant, "The Campaign for Freedom of Information," pp. 488–89. This observation is clearly supported by the promulgation of access to information laws in Australia, Canada, and New Zealand, among others.