Submission to Senate Committee on Legal and Constitutional Affairs
for its review of Bill C-58
(November 7, 2018)

Democracy Watch and Open Government Coalition call for many key open government changes to Bill C-58

Given past consultations, committee reports and private member bills all calling for the same key changes, federal parties can and should make the changes now

Democracy Watch, and the Open Government Coalition it coordinates, call on the Senate Committee on Legal and Constitutional Affairs to make many key changes to Bill C-58 to strengthen the federal Access to Information Act (“ATI Act”) and open government system (SEE the changes listed further below).

The Trudeau Liberals promised several changes not included in Bill C-58 in the Open Government section of their 2015 election platform, and in the specific Access to Information section of the platform. Bill C-58 also includes changes that were not promised in the Liberals’ platform, changes that are big steps backwards in access rights. The Liberals have also failed to keep their international Open Government Partnership commitments, weak as those commitments were. Bill C-58 also ignores many of the recommendations made in the unanimous June 2016 report of the House of Commons Access, Privacy and Ethics Committee.

Tens of thousands of voters have sent messages through Democracy Watch’s Open Government Campaign webpage calling on federal parties to make these key changes.
Democracy Watch also signed the open letter issued by a global coalition of organizations and individuals calling for similar changes.

The public was consulted on changes to the ATI Act and system in 2000, and again in 2009 when a House Committee issued a unanimous report calling for changes, and again in 2011 and in 2013 (twice) through the international Open Government Partnership (OGP) process. The Information Commissioner issued a report in late March 2015 recommending many key changes. And, then, as mentioned above, the Liberals have consulted on their weak international Open Government Partnership 2016-2018 plan. Every consultation has resulted in a broad, strong call from the public and citizen groups to make the key changes listed below.

In addition to the changes the Liberals promised in their 2015, election campaign, the Conservatives promised several key changes in their 2006 election platform and federal Conservative Treasury Board minister Tony Clement agreed in 2014 that the Access to Information Act needs to be changed (as did Rob Nicholson in 2009). Also, the NDP and Liberals both introduced private member bills aimed at changing the Act when the Conservatives were in power.

With regard to enforcement of the ATI Act, the Trudeau Liberals have falsely claimed that they have changed the Cabinet appointment process to make it merit-based and independent of Cabinet. In fact, as in past governments, Cabinet ministers still control the whole process so it is still political and partisan (as several of the Liberals appointments have made clear).

Tens of thousands of voters have sent a letter through Democracy Watch’s Stop Bad Government Appointments Campaign or signed a petition on Change.org calling for key changes to make Cabinet appointments actually merit-based.

As a result, as with the fiasco that resulted from the Liberals’ attempt to appoint Madeleine Meilleur as Official Languages Commissioner, there are very likely many well-qualified candidates who applied to be Information Commissioner who were not
even considered because the Trudeau Cabinet didn’t want them in the position of Information Commissioner.

The Trudeau Cabinet, like any federal Cabinet, was in a conflict of interest that should have prohibited it from choosing the new Information Commissioner, as the Commissioner regularly investigates the departments of Trudeau Cabinet ministers for patterns of non-compliance and direct violations of the *ATI Act*.

The key changes that Democracy Watch and the Open Government Coalition have been advocating for more than 15 years, and that the Senate Committee should make to the Bill, are as follows. All of the changes can be made within the framework of amendments to the *Access to Information Act* and related measures that are contained in Bill C-58 as approved by the House of Commons:

1. any type of record created by any entity that receives significant funding from or is connected to the government, or was created by the government and fulfills public interest functions, should be automatically covered by the access to information law and system (as in the United Kingdom);
2. all exemptions under the access to information law should be discretionary, and limited by a proof of harm test and a public interest override (as in B.C. and Alberta);
3. the access to information law and system should require every entity covered (as in the United Kingdom, U.S., Australia and New Zealand): to create detailed records for all decisions and actions and factual and policy research; to routinely disclose records that are required to be disclosed; to assign responsibility to individuals for the creation and maintenance of each record, and; to maintain each record so that it remains easily accessible;
4. the access to information law and system should allow anyone who does factual or policy research for the government to speak to the media and publicly about the topic, findings and conclusions of their research without being required to seek approval first from anyone (including their superior, the Privy Council, the Prime Minister, a Cabinet minister, or any ministerial staff person);
5. severe penalties should be created for not creating records, for not maintaining records properly, and for unjustifiable delays in responses to requests;
6. the Information Commissioner should be given explicit powers under access to information: to order the release of a record (as in the United Kingdom, Ontario, B.C. and Quebec); to penalize violators of the law with high fines, jail terms, loss of any severance payment, and partial clawback of any pension payments, and; to require systemic changes in government departments to improve compliance (as in the United Kingdom)
7. funding to the access to information system and enforcement should be increased to solve backlog problems instead of increasing administrative barriers such as
limiting requests in any way, and fees for access should be lower overall and standardized for every entity covered by the access to information law and system; and

8. establish a fully independent, non-partisan appointments commission (with members, appointed by non-governmental organizations like the Canadian Judicial Council, serving fixed terms of office) to conduct a merit-based search for nominees for Information Commissioner and all other officers of Parliament, and to present a short list to the Cabinet that the Cabinet has to choose from after at least consulting with all federal party leaders (even better, require that a majority of party leaders approve of the Cabinet’s choice).

These key open government changes have been called for by many groups, and past committees and reports, over the past 15 years. Given that the federal Access to Information Act and open government system have been reviewed several times in the past 15 years, and that there is a consensus on key changes that must be made, there is no justifiable reason for any further delay in making the changes.

If these key changes are finally made, the current federal ‘Guide to Keeping Secrets Act’ will finally become a real access to information act that is enforced properly and effectively.

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Democracy Watch’s [Open Government Campaign](#) and
[Stop Bad Government Appointments Campaign](#)