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## Recent Developments on Access Laws

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In recent years an increasing number of developed democracies have adopted a law establishing the public's right of access to official documents, based on the famous provisions in Sweden's old Freedom of the Press Act. Since there is already considerable published discussion about the older laws on access to official documents in the Nordic countries, I propose to deal mainly with recent developments in the United States, Canada and France. I will also give a brief survey of developments and proposals in other countries, and will conclude with a discussion of the two key features necessary for a strong access law.

### The United States

The American federal law on freedom of information, or access to government documents, was passed in 1966. It is interesting that the Americans use the term "freedom of information". I think this is unfortunate because this term is much broader and not nearly so precise or meaningful as "access to government documents." Fortunately, the newest Canadian federal bill and the new French law use the term "access" rather than "freedom of information". The American Freedom of Information (FOI) Act was not very effective between 1966 and 1974. But because of the public's conviction that there was too much governmental secrecy under President Nixon, Congress decided to strengthen the law very greatly in 1974, so the effective implementation of the Act dates from that year.

The main principles of the American law are basically the same as those in the Scandinavian access laws. It provides a general statement in favour of the principle of openness, and then establishes the public's right of access to government documents, to be enforced by appeal to the courts. It also contains a list of exempted types of documents that the administration may keep secret. Nine main areas of exemption are listed in the American Act compared with seven in the Swed-

ish Freedom of the Press Act, but the main exempted areas are the same: state security, international affairs, defence, law enforcement, protection of personal privacy and fiscal and commercial secrets.

It is important to mention that in the same year, 1974, a Privacy Act was passed as a companion piece of legislation to the FOI Act. It provided access by persons to their own personal files held by the government and an opportunity to file a correcting statement. The two acts overlap, and a person requesting his own file can make the request under either or both pieces of legislation. There are advantages in making use of the Information Act, because the Privacy Act does not cover the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA), and the FOI Act requires a reply to a request within ten working days. A great many of the requests that came in after 1974 were requests for personal files, because many people knew that the FBI and the CIA were holding thousands of files on American citizens, and suspected that these agencies might be holding a file on them. The FOI Act provided access to many of these files.

As you probably know, the Reagan administration is much more conservative than the previous Carter one. Many people in the Reagan administration have been saying that the Freedom of Information Act is too liberal and has forced officials to reveal secrets that should not be made public. I will therefore review the main criticisms made by those in the Reagan administration who believe that the law is too generous on the side of openness.

The first criticism is that the exemption for law enforcement is not broad enough. This exemption created a great deal of work for the FBI and the CIA at the time the law went into effect. In the first year after the law became operative the FBI had to bring in 400 of its regular employees from the field to process the thousands of requests to

see personal files. But of course that was a temporary backlog problem: many people had been waiting to make a request under the new provisions of 1974. Another complaint of the FBI and the CIA is that the freedom and privacy acts make it difficult to enforce the law because criminals are able to piece together information obtained under different requests and thus get information that they should not have. In one or two celebrated cases the names of informers for the police have been revealed publicly and there is great fear on the part of the FBI and the CIA that informers' names may be released. So the FBI and the CIA have taken the position that they wish to be exempted completely from the FOI Act. Although they have been lobbying very hard for this, it is not likely that Congress will accept the proposal. It is much more likely that the working of the exemption will be tightened up to reduce the danger of releasing information that would identify informers or give clues to criminals. Canada benefitted from some of these problems in the United States and drafted its legislation more carefully, so there will not be the same danger of the release of information on informers or to criminals.

The second main criticism of the American law is that business firms have managed to get information on their competitors through requesting the government for information that it is holding on the competitors. As a result, trade secrets were being released to competitors. Then the business firms whose secrets were being released began applying to the courts for an injunction against the release of the information by the government. These are called "reverse FOI cases", and there have been many such cases before the courts.

The third main criticism is the high cost of implementing the scheme, especially the cost of personnel. Some agencies had to hire special personnel to handle the requests for access to documents. But the cost has been greatly exaggerated, mainly because of the publicity given to the burden of the requests for personal files that went to the FBI and the CIA. Most other agencies found that they could handle the requests by allocating some of their existing personnel who would not have been fully occupied anyway, and so the cost is not nearly as great as some of the opponents of the law would lead one to believe. Yet, the supposed high cost was used in Great Britain as an excuse for not implementing an access law. Actually, if one compares the cost with the amount of money that a

government spends on publicity — on advertising, and on printing pamphlets and reports of all kinds — it is a very small cost, amounting to nowhere near the sum that a government spends on its own publicity. As a percentage of the total budget of a department or ministry, it is much less than one per cent. So one can argue that the benefits of access legislation far outweigh the relatively small cost that is involved.

A fourth criticism made of the American law is its inclusion of foreigners. Its use is not restricted to citizens of the United States, so that anybody can make a request for government information. I can give two interesting examples of foreigners who made requests. One is a young Canadian law student who had worked for Ralph Nader in the United States. He took several cases in which Canadian federal departments had refused access to documents and in which he suspected that copies of these documents had been sent to counterpart departments in the United States. He then made requests under the Freedom of Information Act to these American Departments, and he got the Canadian information that he wanted. In other words, he had to apply to an American department to get Canadian information that need not have been kept secret. Of course, he used this as an illustration of how secret Canadian officials were and how ridiculous it was that they should refuse him this information. My second example is a Japanese reporter who was much interested in the trade relations between Japan and the United States, and especially the process of policy formation in the United States with respect to trade. He made requests under the Freedom of Information Act and got very recent inside information, including the actual memos that were passed back and forth between the Department of State and the Department of Commerce.

What the conservative critics are afraid of is that the Communist countries will get information that they should not have. So the critics say that foreigners should not be able to make requests under the Act. However, it is impossible to prevent them from doing so. If requests are limited to citizens, all a foreigner has to do is get a citizen to make a request for him. The Canadian access bill restricts requests to citizens or landed immigrants, and already it is being predicted that commercial firms will spring up in Canada to make money by charging foreigners to make requests for them under the Canadian access law. In this way the attempt to restrict requests to Canadians will be circum-

vented. (A proposed amendment to the bill will permit the government to make regulations that allow foreigners to make requests, presumably on a reciprocal basis with certain countries such as the U.S.)

A fifth criticism is that the FOI Act was made too strict in giving agencies only ten working days to reply to a request. Agencies that received the largest number of requests were simply overloaded and could not meet this requirement. The critics have been arguing that the period for reply should be lengthened to something like 30 working days. The Canadian draft law does provide for 30 working days because it is recognized that ten is probably unrealistic in some cases and that it is better to extend the maximum time than to have agencies breaking the law.

A final criticism is that the exemption for security and defence is not broad enough. In an attempt to extend it, the Reagan administration has drafted a new executive order, which was released on February 4, 1982. This order would make it easier to withhold security information under the classification system, by removing the wording "identifiable harm": at present an official must release a document unless it would do "identifiable harm" to the national security. The order would to remove this harm test and thus make it much easier for the administration to withhold a security document. But it is very unlikely that this draft executive order will be approved. There has been so much opposition to it that the administration will no doubt produce a less restrictive draft.

As one can see, these criticisms of the American legislation are really rather minor. Few critics have been attacking the main principles of the law. On the other hand, there are many voluntary groups in American society who are strong supporters of the law, and the Congress of the United States supports its main principles. Although it is very likely that the law will be amended in minor ways to meet some of these criticisms, there will not be any major change. The main principles will be preserved.

#### Canada

Partly because Canadians have become so aware of the greater openness in the United States, there has been much discussion of the secrecy problem in Canada. I was one of the persons who initiated this discussion with an article in the *Canadian Journal of Economics and Political Science* in

November 1965, recommending the Swedish principle of openness.

Under the Canadian system of federal government the provinces have their own legislatures and administration, quite separate from the federal Parliament and the central administration. Three of the provinces have already implemented a law on access to provincial documents. However, there are small Atlantic provinces, Nova Scotia (which passed a law in 1977), New Brunswick (which passed a law in 1978 that did not become effective until January 1980), and Newfoundland (1980, effective 1982). These provinces have an ombudsman, and two of them have made use of the ombudsman as an appeal institution, so that appeals under the law go to the ombudsman and then later to the courts. In Nova Scotia, however, appeals must go to the legislature. There is so much dissatisfaction with this law that a new government in Nova Scotia has produced a stronger bill but so far has not proceeded with it.

The two central provinces, Ontario and Quebec, have had elaborate studies made by royal commissions, which have recently issued reports recommending an access and privacy law.<sup>1</sup> In early May 1982 the government of Quebec introduced a bill providing for both public access to records and private access to personal files. Unusual features are that a three-person commission will hear appeals and oversee the administration of the law and that the analysis on which cabinet decisions are based will be released after the decisions are made. The law will extend to all municipalities, school boards and health and welfare institutions in the province. The bill was approved before Quebec's National Assembly adjourned on June 21 but was not expected to go fully into effect until 1984. Access laws are also being considered by some other provincial governments, so the chances are that a majority of the provinces will have their own law within a very few years.

At the federal level, the previous Liberal government under Prime Minister Trudeau had issued a Green Paper on access in 1977.<sup>2</sup> It indicated the government's intention to introduce a weak access bill that would give ministers, not the courts, the final decision on the release of documents. But the bill had not been introduced by the time of the government's surprise defeat in the election of May 1979. The Conservative party, under Prime Minister Joe Clark, came into power, and one of its main promises had been a law on freedom of information. It proceeded very quickly with a bill

that contained the main principles of the American and Scandinavian laws. This bill was partway through a committee of the House of Commons when the Clark government was unexpectedly defeated by a vote in the House in December 1979. I had the interesting experience of appearing before this committee to present a brief on behalf of the Social Science Federation of Canada on the morning of the day the government was defeated. I was, of course, sorry to see it defeated, for I was hoping that the bill would be approved. A new election was held, and the Trudeau Liberal government came back into power, within a year of its previous defeat.

The Liberal government then (in July 1980) introduced a bill on access to government records which was a revision of the Conservative bill. The Liberals claimed it was an improvement over the Conservative bill, and in some minor respects it was, but in other ways it was worse. It was more conservative and restrictive.

I should also mention that in 1977 the Trudeau government had sponsored provisions to protect personal privacy as part of the Canadian Human Rights Act in 1977. This Act provides access to one's personal files held by the federal government, except for ones listed as secret, and on opportunity to file a statement of correction. One of the members of the Human Rights Commission is named as "Privacy Commissioner" to hear appeals or complaints about refusals of access to personal files and to make recommendations to the government. The Privacy Commissioner is really an ombudsman in a specialized area. The new Liberal bill of July 1980 combines a general right of access to government records with a revision of this law on the right of access to one's personal files. I think this is a good idea because the two rights need to be coordinated, as shown by the problems created in the U.S. by having separate but overlapping laws.

The Liberal bill is better than the American Act in some respects, but worse in others. One improvement over the American Act is that it provides for an "Information Commissioner" to receive complaints from people who have made a request that has been refused by the administration. This Information Commissioner will be independent of the government, will report to Parliament, and will be removable only by Parliament. There will also be an opportunity for later appeal to the Federal Court. It will be a two-step appeal system: first, a personal refused a document can

make an appeal to the Information Commissioner, who is like an ombudsman in that he/she can only make a recommendation to the government and the government can then refuse the recommendation; but the person can then still appeal to the Federal Court. Thus there will be two opportunities for appeal, and the final one is extremely important, for the Federal Court has the power to make a binding decision and can order a document to be released. Those of us who support a strong law regard this power to order release as of key importance, since it will help to prevent a government from hiding wrongdoing.

The great advantage of this two-step appeal system over the American one of direct appeal to the courts is that the great bulk of appeals or complaints will be settled very informally, cheaply and quickly by the Information Commissioner. And yet, if one wishes to spend the time and money to fight the case in court, there is still the opportunity to take it to court for a binding determination.

The second improvement over the American Act is that the bill requires the preparation of an index or register of government documents. I was interested to learn that one of the changes that came about with the amendment to the Swedish Secrecy Act in 1980 is that government documents must now be registered. The Canadian bill provides for a single source of information for all government documents. Under the privacy law of 1977 there is already a listing of computer data banks that hold personal files. That listing appears in what looks like a city telephone directory. It is a fat book that lists all personal data banks in the federal government, and it is distributed to every post office in the country so that any citizen can look at the listing of government data banks in order to discover which ones may be holding information on him. The new register will be an extension of this idea; it will include government records of all kinds, will be revised semi-annually, and will probably appear in the same form and also be distributed to all post offices.

The third improvement in the Canadian bill is that there are provisions designed to solve the problem of "reverse FOI cases." If a commercial firm requests information about another firm from the government, the government must notify the other firm, the third party; in other words, there is provision for "third-party notification." The competitive firm whose secrets are about to be released will then be able to appear and argue

why the requested information should not be released.

The fourth improvement is a more carefully worded, broader exemption on law enforcement, to try to meet the problems that are being complained about in the United States. So there will not be the same danger of releasing information on informers or to criminals. The Canadian police have been unwilling to recognize this and have been almost hysterical in their fear that all of their secrets are going to be revealed under the new law. They have been urging an even broader exemption for law enforcement. My own view is that they have become much too excited because of the police opposition in the United States. The Canadian bill is going to protect them much better.

That is the good news about the Canadian bill. Now for the bad news. The bad news is that there are more exemptions and they are broader than in the American law. There are fifteen exemptions in the Canadian bill compared with nine in the United States and seven in Sweden, and they are much more broadly worded. For instance, the bill includes an exemption for federal-provincial relations. The American law says nothing about federal-state relations. Of course, federal-state relations in Canada are much more delicate: they are more like international relations, and when the governments are negotiating with each other they wish to keep secrets from each other, much as countries do. Nevertheless, I don't think there is any real need for an exemption for federal-provincial relations or even negotiations. So much of our policy-making is now in the form of federal-provincial relations that to exempt them would be to hide much of our process of government from public view.

Worse than this, however, is that some of the exemptions are made compulsory. Most access laws allow an official to release a document falling under an exemption if the release would do no harm; in other words, it is only a permissive exemption, permitting him to withhold a document. The Canadian bill has many class exemptions with no harm test, and under certain of these states that all documents covered by the exemption *must* be withheld. An important exemption of this character is cabinet documents, that is, any documents destined to appear before a meeting of the executive council, which can only be released with the approval of the Prime Minister, or after twenty years. Because this exemption is compulsory, it will make such documents even more secret than

they were before. The exemption will exclude almost the whole of the policy-making level of the government, and it will be easy for ministers to withhold a document by saying it is a cabinet document. Thus it will not be difficult for a government to hide information that may be embarrassing to it. As the bill was originally worded, there would at least have been an opportunity for an ultimate appeal to the Federal Court, which would have had the final say on whether a withheld document was legitimately claimed to be a cabinet document.

By December 1981 the Canadian bill had gone halfway through a committee of the House of Commons, which had agreed on several minor amendments. Then, to everyone's surprise, the Minister of Communications, Francis Fox, delayed further consideration of the bill on the grounds that several provincial Attorneys-General had objected to the provisions on law enforcement and court appeal, and that the Attorney-General of Ontario wished to consult the other provinces about whether they wanted a uniform federal-provincial law on the subject. Since the Minister had been aware of these objections for many months, and since federal-provincial agreement on a uniform law was improbable and unnecessary, supporters of the law and much of the press suspected that the government had got cold feet and was using the reasons it gave for delaying the bill as an excuse for withdrawing it. In April 1982 it was revealed that most provinces did not want a uniform law. So the government had lost a main reason for the delay. Yet at the end of April the Prime Minister stated that very likely the access bill could not be passed before the session ended in June. However, after the opposition parties offered to limit the time taken to discuss it in the House, on May 20 the government announced that it would proceed with the bill, but that new amendments would prohibit court review of the exemption for cabinet documents, thus giving ministers and unchallengeable opportunity to hide embarrassing documents. The bill as thus amended was approved by parliament in June, and became effective in July 1983.

#### France

Few people outside France know that France has had an access law since July 1978. Although it was introduced and adopted rather quickly, much to the surprise of many people even in France, considerable discussion had preceded this law. In

fact, a study commission reported on the subject as early as 1973 and recommended a much greater broadening of access to government information, if not a law establishing the principle of access. Also, the French ombudsman, the *médiateur*, who was appointed in 1973, recommended a law on access to government document in his very first report, because he found that French administration was far too secret. In 1977 the government created a special commission whose objective was to favour the release of government documents. But this commission was created by decree and there was as yet no right of access. It should be noted that the law of 1978 was introduced by the opposition as an amendment to a general civil service law that was being considered by the French parliament at that time. Because the government was already committed to greater openness, it felt compelled to accept this amendment. Hence, the principle of public access was suddenly adopted as part of a revised civil service law in July 1978.

The main problem was that since the government had not sponsored the law itself, it had made very little preparation for such a law: it had not planned a publicity campaign or training programmes for officials or made any of the other preparations that would have been desirable for the introduction of an access law. And yet the law is a surprisingly strong one. It covers regional and local as well as central authorities, and it contains the same basic principles as the Swedish and American laws. The main difference is that it created a special commission, the Commission on Access to Government Documents, whose main job is to receive appeals against the refusal to release documents and to make recommendations to the authorities concerned, so it is somewhat like an ombudsman or the Information Commissioner proposed for Canada. However, it is a commission of ten members instead of a single officer, and each member has an alternate. Some of its members are named by the chairmen of the Senate and the National Assembly, and some are nominated to represent the universities, local governments and the courts. The head of the national archives and of the government's central information and publishing agency are *ex officio* members. Clearly, it is not an organization dominated by the government.

I should mention that in January 1978 the government had also created a similar commission to protect personal information in computer data

banks, and to ensure personal access to such information and the right to file a statement of correction. This commission is also authorized to license the creation of computer data banks, and is an independent, strong authority with the power to make regulations as well as recommendations. These two commissions are a new type of legal entity in France, especially in their independence from the government. They are somewhat like the independent regulatory commissions in the U.S. and Canada.

I went to France recently to study the access law, for I knew that very little was known about it in the English-speaking world. I had the opportunity to attend a session of the access commission and to meet M. Ordonneau, the president of the commission and a member of the Council of State. When I told him that I wished to write an article in English about the French law because not much was known about it in the English-speaking world, he jokingly replied: "Well, not much is known about it in France, either!" Yet, the commission had already been working for over two years and had already issued its first annual report. What I discovered was that, though the commission had received only a relatively small number of appeals because the law was so little known, it had been quietly working on these appeals, had been giving rather liberal interpretations to the law, and had succeeded in getting the authorities to accept a large proportion of its recommendations.

Some statistics from its first annual report will illustrate these points and give you an idea what the commission has been doing.<sup>3</sup> In its first year it had received 295 appeals against refusals of access to documents, and it had made 208 proposals or recommendations to government authorities. Of these, 84 per cent were in favour of the release of the documents requested. More interesting is that the administration adopted the recommendations in only 72 per cent of these cases, so that the commission was not completely successful in securing the adoption of its recommendations. In fact, in 12 per cent of the cases it received no reply from the administration; in other words, it was just ignored. For instance, the city government of Paris failed to reply to a commission recommendation that it release requested documents. On the other hand, getting the authorities to adopt more than two-thirds of its recommendations is not an unimpressive record.

One can conclude, then, that this commission has been reasonably successful. It has received a

rather small number of appeals, but it has been liberal in its interpretation of the law, and the authorities have accepted its recommendations in the great majority of cases. But the law and the commission still are scarcely known in France. The commission was given a very small budget, has had a tiny staff, and until recently was in offices that were part of the Prime Minister's secretariat.

Nevertheless, the very existence of a strong access law has already had an important impact on French administration. I can give you an interesting example of this. A newspaper editor for *Le Monde* told me he wanted to write a story about the immigrant boat people from Vietnam, so he telephoned the relevant official in the Ministry of Foreign Affairs, and said he wanted to see the Ministry's documents on the subject. The official said he couldn't let him see the documents because they were secret. So then the editor wrote a letter to the Minister of Foreign Affairs, saying that according to the new law on access he ought to be entitled to see these documents. The Minister then reversed the decision, and gave the editor access to the documents. Thus there was no need even for an appeal to the commission: the very existence of the new law persuaded the Minister to release information that formerly would have been kept secret.

My prediction is that gradually this law will become better known and more influential in France. Because the commission has been working so quietly, officials don't yet realize how revolutionary the law is. Probably this is just as well, because it has given the commission an opportunity over a rather long period of time to give a liberal interpretation to the law and to establish many important precedents, without building up much opposition from the administrative authorities. The new socialist government is likely to give the law and the commission strong enough moral and financial support to publicize their existence and to hire the staff necessary to handle an increased number of appeals. In sum, then, the French law on access may turn out to be as revolutionary for French administration as the FOI Act, as amended in 1974, has been for the American federal administration.

#### Elsewhere

The idea of a public access law is spreading rapidly to other developed democracies. The Netherlands adopted a law on the subject in the same year as

did France (1978), and laws are in the process of being adopted in Australia and New Zealand.

The Dutch law, the Openness of Administration Act, contains the same basic principles as the other access laws, except that it gives access to information rather than to documents or files. Unfortunately, this provides an opportunity for an official to give his own version of the information on file rather than access to the file itself. Also, the exemptions are very broadly worded and there is no provision for appeal to an ombudsman or an ombudsman-like authority as in the Nordic countries or France, or as proposed for Canada. However, a person who has been refused access can appeal to the Supreme Administrative Court, created in 1976, which has the power to make binding decisions. The broad working of the exemptions will give the Court much scope to interpret the law. Since the Court's president has a reputation for liberal views, the Court's decisions are likely to favour public access.

Australia's federal parliament has approved a government bill on freedom of information very recently. After three official reports had proposed a law on the subject,<sup>4</sup> Australia's federal government introduced a bill in 1978 based on the American Freedom of Information Act, but considerably weaker. Features that may be regarded as improvements on the American Act are the provisions for the federal ombudsman to investigate matters under the act and for appeals to go to the Administrative Appeals Tribunal, created in 1975. However, ministers and departmental heads have the power to decide conclusively that documents are exempt on the grounds of security, defence, international and federal-state relations or cabinet material. The bill was subjected to intense study and criticism by a citizens' access group and by a Senate committee, which issued an excellent long report with over a hundred recommendations, mainly designed to strengthen the bill.<sup>5</sup> But the government has refused to accept some of its most important proposals. The bill as amended was approved by the Senate in June 1981 and by the House of Representatives in February 1982, and went into effect in December 1982. Victoria, New South Wales and other states are also preparing bills, so it will not be long before several of the states have their own access laws.

New Zealand's access bill, called the Open Government Act, was introduced in July 1981. It was drafted by a study committee of mainly high-ranking civil servants, and is not as far-reaching as

the Australian bill, for it only proposes to move toward greater openness in stages.<sup>6</sup> The first stage will be personal access to one's own files, general access to rules and precedent decisions, and the creation of an Information Authority to propose regulations to broaden public access. Thus, the bill will not unequivocally establish the public's right of access as a general principle. Appeals will go to the ombudsman, and the power of the courts to review refusals of access will be extremely limited.

Other countries in which a public access law is being seriously discussed are the United Kingdom, Japan, Switzerland, West Germany and India. In the U.K., such a law has been promoted for many years by an all-party parliamentary committee and a citizens' association for freedom of information. More recently in Japan a citizens' movement for freedom of information and the Asahi newspaper chain have been campaigning for a national access law. The Asahi chain held a conference on freedom of information in May 1981, to which I presented a comparative paper, and it printed the proceedings as a book. Other books on the subject have also been published in Japanese. In March 1982 the town of Kanayama approved an access ordinance, and several other local governments and prefectures are now considering draft ordinances. In Switzerland a constitutional commission has recently proposed that the Swiss constitution should contain a provision on the right of public access. In West Germany a group has been formed in Berlin called the Institute of Documentation for Freedom of Information. And in India the Indian Journal of Public Administration recently devoted a special issue to secrecy and access, which was then published as a book.<sup>7</sup>

At the international level, a resolution was passed by the Parliamentary Assembly of the Council of Europe in February 1979 proposing that all 22 member countries should adopt public access laws. In 1979, too, an International Freedom of Information Institute was created, with its headquarters in London, to provide data on freedom of information and to promote the passage of strong public access laws.

### Conclusion

Thus it can be seen that the time-honoured Swedish principle of public access to official documents is now rapidly spreading to all advanced democratic countries. Indeed, it has become such a popular

idea that governments must now sponsor a public access law to satisfy public opinion. But they will be careful to draft a weak law and will delay its passage as long as possible because of their fear that embarrassing secrets may be revealed and because of the influence of senior officials, who don't want to lose the power they get from the discretion to refuse information. The current need, therefore, is for proponents of public access to fight for a strong law and for its adoption at an early date.

Recent experience reveals that the two key elements of a strong law are narrow exemptions and court review. The exemptions must not be broad class exemptions but must instead be narrow and include a harm test. In other words, they must require the release of a document where this would do no harm or where the public good to be served is greater than the harm that might be done. And the law must provide for an ultimate appeal to a court (or other independent authority) which has the power to make binding decisions on the release of documents. Otherwise, a government could too easily hide mistakes, wrongdoing or corruption by saying that the relevant documents belong to an exempt class and are therefore secret.

### Endnotes

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<sup>1</sup> The report for Ontario is: *Public Government for Private People*, vol. I (Toronto: Queen's Printer, 1980); and for Quebec: *Information et Liberté* (Québec: Gouvernement du Québec, 1981).

<sup>2</sup> *Legislation on Public Access to Government Documents* (Ottawa: Supply and Services Canada, 1977). Issued by Honourable John Roberts, Secretary of State.



- <sup>3</sup> Commission d'accès aux documents administratifs, *l'accès aux documents administratifs: premier rapport d'activité 1979-1980* (Paris: la Documentation française, 1981), pp. 7, 8 and 12.
- <sup>4</sup> Attorney-General's Department, Report of Interdepartmental Committee, *Proposed Freedom of Information Legislation and Policy Proposals for Freedom of Information Legislation* (Canberra: Australian Government Publishing Service, 1974 and 1976), and Royal Commission on Australian Government Administration, *Minority Report, Appendix 2.A.*, volume 2 (Canberra: AGPS, 1976).
- <sup>5</sup> Senate Standing Committee on Constitutional and Legal Affairs, *Report: Freedom of Information* (Canberra: AGPS, 1979).
- <sup>6</sup> Committee on Official Information, *Towards Open Government: Supplementary Report* (Wellington: Government Printer, 1981). Chairman of Committee: Sir Alan Danks.
- <sup>7</sup> Chaturvedi, T. N., *Secrecy in Government* (New Delhi: Indian Institute of Public Administration, 1980). A reprint of *Indian Journal of Public Administration* XXV, 4 (Oct.-Dec. 1979).