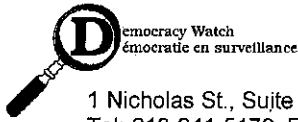




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Our File No. 2012-03-04

February 20, 2013

Ms. Suzanne Legault, Information Commissioner of Canada
Office of the Information and Privacy
Place de Ville, Tower B
112 Kent Street, 7th Floor
Ottawa, Ontario
K1A 1H3

Dear Commissioner Legault:

Re: Request, made pursuant to s. 30(1)(f) of the *Access to Information Act*, that you investigate the federal government's policies and actions to obstruct the right of the public and the media to speak to government scientists.

We request that you initiate an investigation under s. 30(1)(f) of the *Access to Information Act* into the systematic efforts by the Government of Canada to obstruct the right of the media – and through them, the Canadian public – to timely access to government scientists. We ask you to take this step because of the deeply troubling findings in the attached report, *Muzzling Civil Servants: A Threat to Democracy*.

There are few issues more fundamental to democracy than the ability of the public to access scientific information produced by government scientists – information that their tax dollars have paid for. We as a society cannot make informed choices about critical issues if we are not fully informed about the facts.

Yet the attached report shows that the federal government is preventing the media and the Canadian public from speaking to government scientists for news stories – especially when the scientists' research or point of view runs counter to current Government policies on matters such as environmental protection, oil sands development, and climate change.

In sharp contrast to past Canadian practice and current U.S. Government practice, the federal government has recently made concerted efforts to prevent the media – and through them, the general public – from speaking to government scientists, and this, in turn, impoverishes the public debate on issues of significant national concern.

These restrictions may also hamper the ability of the public to know and identify what government information and records actually exist related to issues of public importance. Without such knowledge, the public may not be able to request or obtain relevant records under the *Access to Information Act*.

As noted in the attached report:

- The Professional Institute of the Public Service of Canada, that represents government scientists, has stated:

Media and public access to federal scientists has become politicized, resulting in an inability to effectively communicate important scientific news to Canadians through mainstream media.

- A letter to the Prime Minister signed by the Professional Institute of the Public Service of Canada, World Federation of Science Journalists, and Canadian Science Writers Association stated:

Over the past four years, journalists and scientists alike have exposed the disturbing practices of the Canadian government in denying journalists timely access to government scientists...federal scientists are still not allowed to speak to reporters without the "consent" of media relations officers...Delays in obtaining interviews are often unacceptable and journalists are routinely denied interviews.

- The internationally respected science journal, *Nature*, echoed such experiences and concerns in an editorial.

- An Environment Canada analysis has found that Environment Canada scientists:

...are very frustrated with the new process. They feel the intent of the policy is to prevent them from speaking to media.

- The President of the Professional Institute of the Public Service of Canada has stated:

This government, by suppressing access to this information, is depriving the Canadian and international communities of significant discoveries.

- A prominent academic who was a leading scientific member of the Intergovernmental Panel on Climate Change that received the 2007 Nobel Peace Prize has stated:

There is no question that there is an orchestrated campaign at the federal level to make sure that their scientists can't communicate to the public about what they do.

- Another prominent academic has stated:

We have somehow deemed it OK or permissible for an Iron Curtain to be drawn across the communication of science in this country.

In the past, government scientists could generally share information about their work without such restrictions. This helped citizens become informed, and helped them discover what information – and possibly also what records – Government possessed. This practice educated citizens, enriched public debate, and encouraged sound government decision-making. However, the federal government has developed new policies that undermine the ability of media and the public to obtain information from government scientists. As the report documents:

- The federal government has implemented new policies that routinely require political approval before scientists can speak to the media about their scientific findings. Government scientists are routinely instructed to not speak publicly – or to respond with pre-scripted “approved lines” that have been vetted by public relations specialists.
- For example, under Fisheries and Oceans Canada (DFO) policy, Communications staff now comprehensively control interviews with scientists and “ensure that approved media lines are in place.” No journalist is to be granted an interview until the Minister’s own Director of Communications has been notified.
- Natural Resources Canada has adopted particularly strict rules restricting the ability of scientists to talk to the media about “climate change” and “oil sands.”
- Environment Canada’s policy specifically forbids scientists from speaking to the public on identified issues such as climate change or protection of polar bear and caribou until the Privy Council Office gives approval. Environment Canada has conceded that the Minister and his staff have a say as to whether or not the media will have access to a scientist.

The report goes on to document a number of specific incidents where scientists have been prevented from sharing their taxpayer-funded research with the media and the Canadian public.

Restricting media access cuts off the public’s access to government scientists’ information and viewpoints. The media plays an irreplaceable role in the democratic process – by disseminating information to the public. The role of the media has been formally recognized as critically important by the Supreme Court of Canada:

The role of investigative journalism has expanded over the years to help fill what has been described as a democratic deficit in the transparency and accountability of our public institutions.¹

Cutting off access to government's best information on an issue damages the quality of public debate.

The Commissioner's Jurisdiction to Investigate

Section 2 of the *Access to Information Act* (the "Act") states that the explicit statutory "Purpose" of the Act is to provide a right of access to government records:

...in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific...

[emphasis added]

Unfortunately, the effect of the policies and actions described above (and detailed in the attached report) is to undermine the s. 2 "principle" that government information should be available to the public.

The effect of the federal government's policies and actions may also prevent Canadians from even learning what scientific records the federal government possesses. If this occurs, these policies and actions violate Canadians' s.4 right under the *Act* to access government records.

Section 30(1)(f) authorizes you to investigate any matter "relating to ...obtaining access to records under this *Act*." Therefore, pursuant to s. 30(1)(f) of the *Act*, we ask that you initiate an investigation into the overall effects of the federal government's policies and actions that prevent timely access by the media to government scientists.

We ask you to make this investigation because Canadians cannot make smart choices about critical issues such as climate change, oil sands development and environmental protection if the public does not have full access to the Government's best scientific knowledge on those issues.

Finally, we submit that the issues involved here are of paramount importance to the continuing operation of democracy in Canada. As the Supreme Court of Canada has stated "the overarching purpose of access to information legislation is to facilitate democracy." The Court went on to quote the classic formulation of this issue:

Parliament and the public cannot hope to call the Government to account without an adequate knowledge of what is going on; nor can they hope to participate in the decision-making process

*and contribute their talents to the formation of policy and legislation if that process is hidden from view.*ⁱⁱ

If you find that, overall, the federal government's policies and actions have the effect of hampering or denying public access to government records, we hope that you will issue a strong public ruling, finding these policies and actions to be in violation of the *Act*.

In any case, we hope that you will issue a strong public statement that such policies and actions could result in the hampering or denial of public access to government records, and that as a result such policies and actions violate the spirit of the *Act*.

Please let us know if you need any more information by contacting Tyler Sommers, Coordinator of Democracy Watch, at 613-241-5179 or by email at info@democracywatch.ca.

We look forward to hearing back from you.

Sincerely,

Tyler Sommers, Coordinator of Democracy Watch

Calvin Sandborn
Legal Director, Environmental Law Centre

Clayton Greenwood, Law Student

Naomi Kovak, Articling Student

Attached: *Muzzling Civil Servants: A Threat to Democracy*

ⁱ *R. v. National Post* 2010 SCC 16, at para. 50.

ⁱⁱ *Dagg v. Canada* 148 D.L.R. (4th) 385, [1997] 2 S.C.R. 403, [1997] S.C.J. No. 63 (QL) (cited to QL) at para. 61.