Ottawa cites translation, accessibility costs as reason for keeping documents from public

Transparency advocates say Ottawa is using translation and accessibility costs as a convenient excuse not to publish completed access-to-information requests online

Tom Cardoso

Internal government documents show it would cost more than $1-billion each year to publish completed access-to-information requests online because of translation and accessibility requirements, but transparency advocates say this is a convenient excuse, allowing Ottawa to keep public information locked away.

In the fiscal year ending in March, 2016, it would have cost $939-million - or $143 per page - to make completed files accessible for visually impaired users and translate them into English or French before posting them online, according to Treasury Board of Canada Secretariat documents obtained through an access-to-information request. The documents say translation would be necessary to comply with the Official Languages Act, the law laying out the federal government's bilingualism requirements.

Since 2016, the number of access requests has grown significantly, however. At the same rate of $143 a page, it would cost $1.8-billion to make completed access packages available online in 2021, making the effort more expensive than the annual budget for the Department of the Environment. The entire federal access-to-information system cost $90-million in 2021.

The Treasury Board's estimates address a long-standing question from transparency advocates: Why aren't completed access requests - which public servants have already painstakingly located, redacted, vetted and sent to the person who requested them - made easily available to the public online?

Other jurisdictions already post completed requests online. The provincial governments for Newfoundland and Labrador, British Columbia, Nova Scotia and the Yukon all make their files available, as do many Quebec ministries. A handful of municipalities do as well, including Vancouver and Montreal.

"The barriers that are being identified feel a bit like the perfect being the enemy of the good," said Michael Geist, a lawyer, University of Ottawa professor and government transparency expert.

"In an ideal world, of course all the information would meet every single standard the moment it's published. But, practically speaking, that's exceptionally difficult and costly, and the effect today is that practically nothing is getting published. I don't think you can reasonably argue that we're better off in that kind of situation."

The federal government could find solutions to the translation and accessibility issues, Prof. Geist said. It could post translated, accessible files online after they have been requested by others two or three times - a suggestion previously made by federal Information Commissioner Caroline Maynard. Alternatively, it could make everything available online, and provide language and accessibility accommodations upon request.

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Prof. Geist said that these translation
and accessibility issues are being used as excuses to further a "culture of secrecy" within government, adding that creating barriers to the broad dissemination of public information is "at the heart of much of this."

"This is information that has already gone through a full review and vetting process," he said. "In other words, it is information the public is entitled to. There seems to me to be no good reason from a government-transparency and public access-to-information perspective to erect additional barriers to that access."

Access-to-information requests allow people to formally request the disclosure of otherwise-secret government records and are routinely used by businesses, researchers, journalists, lawyers and others. Federal requests carry a $5 fee; provinces have their own legislation, often called freedom-of-information laws.

Access requests are useful in many ways: Auto-insurance claims sometimes require a police report, which can be obtained through an access request; immigration applicants file requests to get status updates on their files; academics and journalists use requests for research and to hold the government accountable; and businesses use them to learn about government procurement and their competition.

Around 30 days after a federal access request is completed, a short summary of the request is made available in both English and French through an online portal. Others seeking to obtain the document package must fill out a form. Though the government does not charge for this service, these applications, known as "informal requests," are not guaranteed by the Access to Information Act.

This means the government does not have legislated deadlines by which to provide the files, and the Office of the Information Commissioner does not have the authority to adjudicate disputes arising from these requests.

Informal requests already account for a significant portion of information requests received by access-to-information offices. In the 2020-21 fiscal year, federal institutions received 145,962 access requests and 13,264 informal requests, according to data compiled by the Treasury Board. Roughly 7 per cent of those took longer than a year to be sent out.

These requests are currently processed manually by access offices, consuming time and government funds that could be spent fulfilling new access requests. Some informal requests are even re-vetted and approved by managers before being sent out, further delaying their release.

Office of the Commissioner of Official Languages spokesperson Alexandre Gingras said his office had not been consulted on the translation issue for completed access packages, but that "individuals have the right to receive services from federal institutions in the official language they choose."

Mr. Gingras pointed to the office's position on "open government" records, which states that information "must be equally accessible to the public in either official language."

In a written statement, Rola Salem, a spokesperson for the Treasury Board of Canada Secretariat, said that the government "supports maximizing the availability of previously released records," and that it "continues to work on ways to improve access to information and transparency, recognizing that in the federal context, all online publications (including the publication of previously released requests) are made available in both official languages and in accessible format to meet the needs of all Canadians."

Graham Fraser, who served as Commissioner of Official Languages from 2006 to 2016, told The Globe he believed it should be possible to "respect the spirit of the Official Languages Act and, at the same time, provide more transparency."

"As a former journalist, I was under the impression that once a document was released under access to information, it was then in the public domain," he said. "As the public inquiry into the Emergencies Act has shown, not every document, communication or e-mail needs to be translated before being made public."

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The idea that making completed access requests public would require translation surprised Stéphanie Chouinard, a Queen's University political studies professor who specializes in language rights.

"This is the first time that I hear of such an interpretation of the Official Languages Act with respect to [access to information]," she said. While it is a possible interpretation, "it would be very
broad and generous."

When the federal government discloses files through an access request, those documents are not usually translated. Instead, they are provided as is: An e-mail thread may have messages in English and French, and memos and presentations may appear in only one language depending on the person that created them.

Historical documents made available by Library and Archives Canada are "very much the same thing," she said. "What you see is what you get."

"There's a good idiom in French for this," Prof. Chouinard said: Avoir le dos large.

"If I were to translate it literally, I would say the Official Languages Act has a broad back - which means, essentially, that you're using something as a convenient excuse."

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