

information



Treasury Board of Canada
Secrétariat

Secrétariat du Conseil du Trésor
du Canada

ACCESS TO INFORMATION AND PRIVACY

IMPLEMENTATION REPORT NO. 38

DATE: March 3, 1993

TO: Access to Information and
Privacy Co-ordinators

SUBJECT: Amendments to the ATIP
policies and guidelines with
respect to persons with
disabilities

As you were told in Implementation Report No. 35, dated September 29, 1992, the amendments to the Access to Information Act and the Privacy Act concerning the disabled went into force on October 1, 1992.

As a result, the Access to Information Regulations were amended to include a fee schedule for the media used to provide information in alternative formats (copy attached).

The relevant policies and guidelines were developed in relation to these amendments and have been revised as a result of consultation within the ATIP community and with representatives of the disabled

ACCÈS À L'INFORMATION ET PROTECTION DES RENSEIGNEMENTS PERSONNELS

RAPPORT DE MISE EN OEUVRE N^o 38

DATE : le 3 mars 1993

AUX : Coordonnateurs de l'accès à
l'information et de la protection
des renseignements personnels

OBJET : Modifications aux politiques et
lignes directrices AIPRP
relativement aux personnes
handicapées

Comme on vous a informé dans le rapport de mise en œuvre N^o 35 en date du 29 septembre 1992, les modifications touchant la *Loi sur l'accès à l'information* et la *Loi sur la protection des renseignements personnels* relativement aux personnes handicapées sont entrées en vigueur le 1^{er} octobre 1992.

Par conséquent, le Règlement sur l'accès à l'information a été modifié pour y inclure le barème des droits exigibles lorsque les renseignements sont fournis sur un support de substitution (texte ci-joint).

Les politiques et les lignes directrices concernant ces amendements ont été élaborées et révisées en consultation avec la communauté AIPRP et des représentants de groupes de personnes handicapées.



Canada

community.

If you would like to comment on the revised policies and guidelines, please put it in writing and either mail it to Information Management Practices Division, Treasury Board Secretariat, 10th Floor, East Tower, L'Esplanade Laurier, 140 O'Connor St., Ottawa, Ontario K1A 0R5, or fax it to 957-8020 by March 24, 1993.

These revised policies and guidelines may be considered as guidance in the application of the amendments until the final policies and guidelines are approved.

Enclosures (3)

Vous pouvez faire parvenir vos commentaires écrits par la poste à la Division des pratiques de gestion de l'information, Secrétariat du Conseil du Trésor, 10. étages, tour est, L'Esplanade Laurier, 140, rue O'Connor, Ottawa, Ontario, K1A 0R5, ou par télécopieur au 957-8020 avant le 24 mars 1993.

La version révisée des politiques et des lignes directrices servira de guide pour la mise en œuvre des amendements jusqu'à ce que la version définitive soit approuvée.

P. J. (3)

Gestionnaire
Politiques sur les communications et l'accès à l'information
et protection des renseignements personnels

Joanna Drewry
Manager
Communications and Access to Information and Privacy Policies

Attachments
Distribution list: T087, T089

Amendment to section 7 of the Access to Information Regulations

1. Subsection 7(1)1 of the *Access to Information Regulations* is amended by striking out the word “and at the end of paragraph a) thereof, by adding the word and” at the end of paragraph b) thereof and by adding thereto the following paragraph:

- c) where the record or part thereof is produced in an alternative format, a fee, not to exceed the amount that would be charged for the record under paragraph b),
 - i) of \$.05 per page of braille, on paper with dimensions of not more than 21.5 cm by 35.5 cm, ii) of \$.05 per page of large print, on paper with dimensions of not more than 21.5 cm by 35.5 cm, iii) of \$2.50 per audiocassette, or iv) of \$2 per microcomputer diskette.

Modification à l'article 7 du Règlement sur l'accès à l'information

1. Le paragraphe 7(1)1 du *Règlement sur l'accès à l'information* est modifié par suppression du mot «et» à la fin de l'alinéa a) et par adjonction de ce qui suit:

- c) s'il y a lieu, un droit pour le support de substitution sur lequel une partie ou la totalité du document est reproduite, ce droit ne dépassant pas celui exigible aux termes de l'alinéa b) pour le même document, établi comme suit:
 - i) version en braille sur papier d'au plus 21,5 sur 35,5 cm, 0,05 \$ la page, ii) version en gros caractères sur papier d'au plus 21,5 sur 35,5 cm, 0,05 \$ la page, iii) version sur audiocassette, 2,50 \$ l'audiocassette, iv) version sur disquette de micro-ordinateur, 2 \$ la disquette.

Policy statement

It is the policy of the Government to carry out the spirit and requirements of the Access to Information Act in a manner which:

facilitates effective use of the Act by people with sensory disabilities.

Policy requirement

16. **Access by People with Sensory Disabilities.** Under paragraph 12(3) (a) of the Act, where the record or part thereof to be disclosed to an individual with a sensory disability already exists in more than one alternative format which is acceptable to that individual, access shall be given in the alternative format they prefer.

When determining whether the conversion of the requested record to an alternative format is necessary to enable the person to exercise his or her right of access under this Act, among other factors that may be considered, the institution must consider the person 's certification of their disability.

When determining whether the conversion of the requested record to an alternative format is reasonable, among other factors that may be considered, the institution must consider the following:

the volume of the record to be converted;

the likely utility of the converted format of the record to the requestor; and

the cost of conversion (including the relative costs of conversion to various alternative formats).

Guidelines

8.2 **Access by People with Sensory Disabilities:** Government policy requires that institutions assist individuals who are unable to exercise their rights under the Access to Information Act using the regular procedures. Government policy also requires that where the record or part thereof to be disclosed already exists in more than one alternative format acceptable to the individual, access be given in the format they prefer. Under paragraph 12 (3)(b) of the Act, where requestors, because of a sensory disability, express a need for access to the requested records in an alternative format and where the head of the institution is satisfied that conversion of the requested record to the alternative format is both necessary and reasonable, the institution will undertake the conversion.

When deciding whether or not to convert a requested record to an alternative format for a sensory disabled requestor, there are two factors which come into play, whether conversion is necessary and whether it s reasonable.

Necessary

The requestor may establish the necessity for conversion by certifying that they could not have access the record without conversion to an alternative format. This could be done with an affirmation that they are visually impaired, which may

form part of their request for access in an alternative format, for example. If the head of the institution has reason to believe that the requestor is not sensory disabled, they may request proof of the need for conversion to an alternative format. This proof could take the form of a letter from a service agency or medical practitioner. The institution may, of course, use other means to determine whether the conversion is necessary. The institution should be reasonable in this regard, bearing in mind at all times the issues of fairness, consistency, privacy and dignity.

Reasonable

Among other factors that may be considered in deciding whether conversion of a record to an alternative format is reasonable, a government institution must consider:

the volume of the requested record. While it may be unreasonable to convert all of a very voluminous record into braille, it may be reasonable to convert a portion of the record, or it may be reasonable to produce all of the record on diskette. Where the volume of records is the primary factor in the decision not to convert, the requestor should be informed and given an opportunity to narrow the scope of their request.

When focusing the scope of a request, the institution should attempt to identify in consultation with the requestor that portion of the record which is considered essential, such as material relating to:

- (i) a service, program or policy of the institution;
- (ii) a significant government priority; or
- (iii) dangers to health, safety or the environment.

While it would be reasonable to convert a lengthy record required by an individual to present their case before a court or tribunal, for example, it may not be reasonable to convert the entire record if the request is very broad. Specificity should, therefore, be encouraged.

The likely utility of the converted format of the record to the requestor. Some types of information do not lend themselves well to conversion (such as maps or graphs into braille). Where it is determined that the information would not convert well into the requested alternative format, the institution should consult the requestor concerning other means of conveying the information

Where an alternative format has been offered to the individual under 12(3)(a), but was not acceptable, the utility of the converted format of the record should be based on a comparison of the alternative format which was offered with the alternative format which is being requested. Special consideration should be given to situations where the ability of the requestor to exercise his or her rights under any Canadian law would be impaired in the absence of the record in the specific alternative format.

the cost of conversion (including the costs related to obtaining the conversion technology). While bearing in mind the policy of the

government regarding access by those with sensory disabilities, the institution should strive to keep the costs associated with conversion to a minimum, given that only those charges specified in the Regulations can be recovered from the requestor. The point at which unrecoverable costs become preclusive is specific to each case and is left to the discretion of the head of the institution. The use of less expensive alternative formats should be explored with the requestor before providing more costly formats.

Institutions may also consider the time required to provide the record in an alternative format. If conversion is likely to take a long time, it may be more reasonable to consult the requestor about finding another means of communicating the information. Probable delay due to conversion time should not be the basis for refusing conversion, but may be a reason for trying to find another more suitable method.

Taking into account the factors listed above, an effort should be made to negotiate with the requestor the means of supplying the requested record which is both most useful to the requestor, and reasonable and cost effective for the institution. Examples of alternative formats which institutions may consider when responding to a request for a converted record may include, among others, diskettes, cassettes, large print or braille. Institutions should also consider the requestor's access to technological aids, such as optical scanners, voice synthesizers, and personal computers, or other non-technological means of processing the record, such as personal readers, as factors which may impact on the selection of an appropriate alternative format.

The decision as to which format will ultimately be provided is a matter of negotiation between the requestor and the institution. To the extent that it is reasonable, taking into account the factors listed above, the requestor's preference should be accommodated.

For further information on alternative formats and methods of conversion, see the Alternative Format Guidelines of the Communications Policy.

Fee to be Charged

Under paragraph 7(1)(c) of the regulations the fee charged for the medium used for the alternative format will not exceed the fee which would have been charged under 7(1)(b) for the same record. There is no fee charged for the process of conversion of the record to the alternative format.

Privacy Policy

Under section 17(3) of the Act, where the personal information to be disclosed to an individual with a sensory disability already exists in more than one alternative format which is acceptable to that individual, access shall be given in the alternative format they prefer.

When determining the necessity of conversion to an alternative format under paragraph 17(3)(b), among other factors that may be considered, the institution must consider the requestor's certification of their disability.

When determining whether the conversion of requested information to an

alternative format is reasonable under paragraph 17(3)(b), among other factors that may be considered, government institutions shall consider the following:

the volume of the material to be converted

the likely utility of the converted format of the material to the individual

the cost of conversion (including the relative costs of conversion to other alternative formats).

Privacy guidelines

The policy on Privacy and Data Protection requires that where personal information to be disclosed to an individual with a sensory disability already exists in more than one alternative format acceptable to the individual, access be given in the alternative format they prefer.

When deciding whether or not to convert requested information to an alternative format for a sensory disabled requestor, there are two questions: Is the conversion necessary to enable the individual to exercise his or her right of access under the Act? and is the conversion reasonable?

Necessary

The requestor may establish the necessity for conversion by certifying that they could not effectively access the information without conversion to an alternative format. This could be done with an affirmation that they are visually impaired, which may form part of their request for access in an alternative format, for example. If the head of the institution has reason to believe that the requestor is not sensory disabled, they may request proof of the need for conversion to an alternative format. This proof could take the form of a letter from a service agency or medical practitioner. The institution may, of course, use other means to determine whether the conversion is necessary. The institution should be reasonable in this regard, bearing in mind at all times the issues of fairness, consistency, privacy and dignity.

When considering whether a conversion of the information is reasonable, the institution must consider:

the volume of the material

while it may not be reasonable to convert all of a very high volume of material into braille, it would be reasonable to convert a smaller amount, or it may be reasonable to produce all of the information on diskette so that the individual can exercise control over his or her personal information. Where the volume of material would be the primary factor in a decision not to convert, the requestor should be informed and given the option of narrowing the scope of the request.

when considering what constitutes a reasonable volume, the institution should attempt to identify, in consultation with the requestor, the information which is considered essential, such

as material relating to a case before a court or a tribunal. The more specific a request is, the more reasonable it would be to convert.

the likely utility of the converted format of the material to the individual

Some types of information do not lend themselves well to conversion or are easier to convert into one alternative format than another. Where it is determined that the information would not convert well into the requested alternative format (such as photographs into braille), the institution should consult the requestor concerning other means of conveying the information.

Where an alternative format has been offered to the individual under 17(3)(a), but was not acceptable, the assessment of the utility of the converted format should be based on a comparison of the alternative format which was offered with the alternative format which is being requested. Special consideration should be given to circumstances where the ability of the requestor to exercise his or her rights under any Canadian law would be impaired in the absence of the information in the particular alternative format requested.

cost of conversion

taking all of the previous factors into consideration, the deputy head may decide conversion to an alternative format is not reasonable if the cost of converting the information (including costs related to obtaining the conversion technology) is too high. The point at which costs become preclusive is specific to each case and is left to the discretion of the head of the institution. Keeping in mind the overall policy to assist individuals in exercising their rights under the Privacy Act the institution should strive to keep the costs associated with conversion to a minimum. The use of the least expensive alternative formats should be explored with the requestor before considering more costly formats.

Institutions may also consider the time required to provide the information in an alternative format. If conversion to the requested format is likely to take a long time, it may be more reasonable to consult the requestor about finding another means of communicating the information. Probable delay due to conversion time should not be the basis for refusing conversion, but may be a reason for trying to find another more suitable method.

In this context, an effort should be made to negotiate with the requestor the means of supplying the requested information in a format which is most useful to the individual, and reasonable and cost effective for the institution.

Since under the Privacy Act an individual is usually seeking access to their own personal information, the test of reasonableness will normally be weighted in favour of the individual.

For further information on alternative formats and methods of conversion, see the Alternative Format Guidelines of the Communications Policy.