

Bill 49 will wreck Freedom of Information in Manitoba

Freedom of information (FOI) law allows citizens to request records from government agencies. FOI is important for understanding the machinations of all elements of government. It plays a role in ensuring other laws are working well, and it helps ensure that abuses of power are not occurring. Any decrease in access to government records and information is a threat to transparency, democracy, and justice.

Written by the governing Progressive Conservatives, Bill 49 is proposing several regressive changes to freedom of information in Manitoba. These changes will make it more difficult for journalists, academics, researchers, lawyers, unions, opposition politicians and all citizens to use FOI in this province.

Some of the proposed changes give more power to the government to simply deny access to records. Proposed Section 13(1)(a) will enable government agencies to toss out any request they deem “trivial”. This is subjective and overbroad. Proposed Section 13(1)(c) will allow government agencies to refuse any request they deem “not in good faith”. Again, this is subjective and overbroad. Another change will allow the government to block requests that are “systematic” in nature. These changes will undermine use of FOI for research, notably by academics and lawyers.

The proposed amendments will extend the time period for initial response from 30 to 45 days. The time period for extensions will also be extended. This is nothing less than an attack on citizens who use FOI to help contribute to public debate and inquiry, notably journalists and opposition politicians. I would add that 10-25 days for response is common internationally. We are getting further away from FOI best practices and benchmarks with Bill 49.

Proposed sections 29.1 and 29.2 introduce new language preventing access to information as it regards labour relations and workplace investigations. These new sections are clearly written to undermine use of FOI by unions. As the government knows, unions use FOI to learn about the conditions of their members’ employment.

There is a pattern here. Premier Pallister has shown nothing but disdain for journalists, academics, researchers, unions, and opposition politicians in the last decade. Now this disdain is being baked right into the amended FOI law.

There are a number of other changes proposed that sound like transparency but really are not. For instance, there is language on introducing proactive disclosure, but the record types mentioned are limited. Proactive disclosure and open government are supposed to be citizen-driven. Proactive disclosure is not supposed to comprise a trickle of records. This narrow attempt to create proactive disclosure in Manitoba is too limited.

At the same time, much needed progressive updates to FOI are nowhere to be seen with this current government. For example, in most other provinces, FOI is being digitized in a way that makes it easier for citizens to submit requests. Manitoba is already the most

difficult place to make a request in the country, and the government is not introducing measures to encourage FOI use such as digitization.

In most other provinces, the Information and Privacy Commissioner (IPC) has stronger order-making and investigative powers when government agencies abuse FOI law. In addition, IPC orders are binding in other jurisdictions, meaning government agencies must listen and adjust their information management practices. This is not the case in Manitoba. The Ombudsman Act must be updated, otherwise Manitoba will fall further behind all other Canadian jurisdictions.

Moreover, unless the Manitoba Ombudsman gains real enforcement power, public bodies will simply apply the new overbroad sections of Bill 49 in a way that further undermines access to information. The Manitoba Ombudsman has repeatedly asked for more resources for FOI in this province, for example in their June 2020 report and again in a recent letter to Minister Goertzen. These calls have gone unheeded.

Bill 49 lacks balance. There are no benefits for users of FOI, only benefits for the government. Transparency, democracy, and justice rely on citizens' access to information. However, Bill 49 champions secrecy and obfuscation. Bill 49 will wreck freedom of information in Manitoba. It is not possible to rewrite such a set of regressive amendments to FOI legislation. This bill should be scrapped.

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