

## Culture of secrecy keeping Canadians in the dark

Published on Friday December 21, 2012

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In 1990, six years on the job, I walked through the doors of York City Hall on Dufferin St., ducked behind the counter and after a short chat with a clerk got to work. Telephone records of city councillors, expense reports, city correspondence were mine for the viewing. I took notes, copied what I wanted to copy. Along with reporters from other Toronto dailies I was investigating allegations of municipal corruption.

After New Year's 1991, still on the hunt, I returned to York, at the time one of six municipalities that made up Metropolitan Toronto. I was greeted by a not-so-friendly clerk and a form.

"Fill this out," he said.

"Why?" I asked, heart sinking.

"You now have to apply under the Freedom of Information and Protection of Privacy Act to see government records," the clerk said.

"Public records?" I asked.

"Government records," the clerk sniffed, leaving me with a form and a pen. The pen didn't work, as I recall. Neither did, or does, the freedom-of-information system in this country.

The records unearthed before the new law led to front page stories in the Star and elsewhere that fuelled a major police investigation. Ultimately, three councillors and a developer were convicted of a widespread pattern of bribery, favours and influence peddling. I doubt justice would have been served if the law governing municipal and provincial access was passed one year earlier.

This is not a story about freedom-of-information laws, which exist at all levels of government in Canada and are just one way, often a last resort, of obtaining access. Rather, it is a story about the spirit — or lack of spirit — of public information in this country. You, me, we the taxpayers own the information. We pay for it to be collected, but more often than not we are denied access unless we engage in a fight that can easily last a year or more and cost thousands of dollars.

Have you ever read *The Charm School*, Nelson DeMille's fabulous 1988 thriller about a Cold War school that used captured American soldiers to train Russians to act like Americans?

In my darkest [investigative](#) reporter moments I imagine ex-journalists or wannabe journalists are training government officials how to stop the public and reporters from getting information. The response is formulaic — federally, provincially and municipally.

It starts, quite simply, with a request that sounds pleasant and promising.

Government official: "Could you please put your request in writing. Oh, and if you don't mind, could you please tell us your angle, and your deadline."

Here are some of the agencies in Canada that have recently used this tactic on the Star: [ORNGE](#); Health Canada; Toronto Police; the Defence Department; the [mayor's office](#); various court houses; the Ontario College of Teachers; the Toronto District School Board; the Ontario College of Physicians and Surgeons; the provincial coroner's office; Ontario's Health Ministry; the University Health Network and many, many more.

In each case, the agency begins with a delay — days, weeks, even months. With ORNGE, truthful answers did not come for three years.

Next, the fee estimate. Access laws allow an agency to charge for the release of public records. The fees are to pay for the preparation of the records, removal of personal information and photocopying. They have become a barrier to access, a weapon in the war on freedom of information.

Last summer I asked for data showing construction and maintenance work orders for public schools in Toronto. The Toronto District School Board, in



Things are getting worse, not better, in the quest to bring you the truth, writes Kevin Donovan.

RICK MADONIK/TORONTO STAR

its wisdom, responded by sending a letter asking us for \$3.6 million to process the request, even though it was a relatively simple electronic request. Opening that letter ranks as one of my best moments of 2012. Imagine, you are trying to investigate serious problems at the publicly funded school board and this is the response you receive?

Freedom-of-information rules require that both parties mediate or negotiate terms during the life of a request. The Star negotiated the TDSB's fee estimate on the front page. The fee was dropped and we obtained the work orders at no charge, resulting in a powerful story that revealed problems at the school board were more serious and widespread than originally thought.

I am frequently amazed how often government officials delay and deny information that deals with health and safety. I once asked for reports detailing serious abuse of people with intellectual disabilities living in provincially funded group homes. Sources in the community said it was a real problem and they asked the Star to look into it. I was clear in my request: the reports, I told the ministry, would reveal the extent of abuse of the most vulnerable residents of Ontario.

Receiving a request like that, would you not think someone at Queen's Park should sound the alarm? Investigate?

Instead, I received a fee estimate of close to \$3,000 to compile the records and was told it would take six months. More months were added to that extension and when I ultimately received the records, in a big brown envelope handed to me by a visibly nervous freedom-of-information officer in return for the Star's cheque, they were sad and shocking. Many Ontario people with intellectual or developmental disabilities had been beaten, sexually abused, or stolen from by the community workers paid to look after them.

Only when that story and others were published on the front page did the provincial government take action.

What followed internally at Queen's Park were predictable questions: Who knew? When did they know? The answer was simple: government officials who prepared the information — blacking out many parts deemed personal (I later learned some sections were deemed too embarrassing to release) — they knew. Up the chain of command, top officials knew, because they approved the release.

Why this happens time and again relates to a dark part of human nature. If your job is to look out for taxpayers' money or vulnerable people, and there is information that would reveal you had failed, would you want it released? Of course not. To stop the release of sensitive or embarrassing information, governments have a growing arsenal: time delays, whopping fees and outright denials. When the denial weapon is used, the public's only choice is to appeal the ruling. That process can take up to two years and while the requestor is successful more often than not (in the Star's experience, at least) it raises this concept: information delayed is information denied.

The mid-level government officials who make many of these decisions sometimes do it to protect the minister. Once, I had been told that the provincial health ministry had built a hangar at the Toronto Island Airport for a certain type of airplane. The plane had a high, distinctive tail. My sources told me the plane would not fit in the hangar. I asked the government and was refused access to information on the hangar and the contract to build it. I was told that, yes, the airplane fits.

Frances Lankin, who was the health minister of the day, stood at Queen's Park and said the Star story was wrong. But Lankin, as she later told me, decided to dig deeper and questioned her bureaucrats. "Finally, they told me the truth. Yes, the plane would fit, but the nose would have to be raised quite high for the plane to fit in." Not something the government should be doing with an expensive air ambulance (this was the predecessor of ORNGE.)

Lankin wanted the truth, which she said was more important than dealing with an embarrassing revelation.

Even when we are successful in obtaining a certain class of information (as in the abuse case) we must start from scratch the next time a request is made. Years later we went through a similar frustrating process to get reports related to nursing homes. Precedents may be the backbone of our common law but they do not apply to information requests. A reporter may obtain a public document from a court in Toronto one day; the next day, a clerk will deny an identical request.

Given all of this, and the importance of the free flow of information in a democracy, there is only one solution.

All levels of government need to develop schedules of information that must be released in a timely fashion. The United States has this system and it works, though not always, better than the Canadian system.

To get there would require a political will that no government has shown. Politicians agree with the concept in opposition. When they get to the other side of the house or council, it all changes. I recall sitting with colleague Moira Welsh at a lunch with Liberal Dalton McGuinty while he was in opposition. The issue was records relating to abused children and local children's aid societies. Both talked a good game about the importance of information being made public. Unfortunately, McGuinty's Liberals have done what previous governments did: kept information secret for as long as they possibly could.

To end where we started, the municipal corruption cases in Toronto caused the province in the early 1990s to create Project 80, a municipal corruption squad of police. After it had run for a year or so I asked the solicitor general's ministry (in a phone call) how much the squad was costing the

taxpayer.

“Could you put the request in writing?” I was asked by a ministry official. “What is your deadline?”

To obtain the information, it took two years, including the original freedom-of-information request, an appeal to the provincial information commissioner (which we won and the government appealed), and an appeal to two levels of Ontario court (which we won).

In his submissions, Toronto Star lawyer Paul Schabas argued that “the public has a right to know what government is doing.”

The government, in its response, told the court the police are “apoplectic” that this information will get out.

The information, when released, detailed \$3.4 million of expenditures, including officers’ salaries, forensic accounting, photocopying (a lot of photocopying!), vehicle rentals and car washes.

When the court ruled in the Star’s favour, the judges on the panel noted that, when the Star originally made its reasonable request, the government’s response was to tell the Star to “buzz off.”

Unfortunately, nothing has changed in the more than 20 years that has passed.

[Mobile users: Culture of secrecy: 15 stories](#)

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