

Statement of the Information and Privacy Commissioners of Canada on the Duty to Document

CONTEXT

Every year, information commissioners across Canada investigate complaints about requests for records that should exist but do not. When public entities fail to document key decisions and activities, Canadians' right of access, and the accountability inherent in such access, is denied.

The trend towards no records responses to access requests appears to result from new communications technologies that complicate the retention and management of records and an emerging oral culture of decision-making where the activities of public entities go undocumented.

The failure to create and retain records has renewed long-standing concerns about the lack of a legislated duty to document in Canada. Such a duty would require the creation of records relating to the key actions and decisions of public entities.

Other jurisdictions have imposed legal requirements to create records. These requirements include standards to ensure that records are full and accurate, and managed in a way that makes them accessible and reliable for future use.

WHEREAS

Access rights depend upon the creation of records that document the affairs of government.

The lack of a legislated duty to document continues to produce an accountability gap in Canada's access to information and records management legislation. By not creating and retaining records, public entities can effectively avoid disclosure of documents and public scrutiny.

Defining the duty to document key actions and decisions of public entities in legislation would ensure that citizens have a meaningful and effective right of access. Such reforms would also support government workers in their efforts to be effective and accountable. Adequate documentation facilitates evidence-based decision making, satisfies legal obligations and preserves a comprehensive historical record.

A meaningful and enforceable duty to document depends on independent oversight. Any failure to perform essential duties should be prohibited and subject to sanction.

THEREFORE

Canada's Information and Privacy Commissioners call on our respective governments to:

Create a legislated duty requiring all public entities to document matters related to their deliberations, actions and decisions. This duty must be accompanied by effective oversight and enforcement provisions to ensure that Canadians' right of access to public records remains meaningful and effective.

Canada's Information and Privacy Commissioners commit to:

Engage our respective governments on the implementation and oversight of a duty to document.

Promote effective records creation and management among public entities through education or enforcement, as appropriate.