

August 30, 2011

Nathan Cullen M.P.
Chair
Standing Committee on Access to Information, Privacy and Ethics
House of Commons
Ottawa KIA 0A6

Dear Mr. Cullen,

RE: Section 67.1 of the Access to Information Act

We are writing to you regarding what appears to be the creation of a class of people in Ministers' offices who are above the law, and who apparently are able to interfere with the Access rights of Canadians with impunity.

Section 67.1 of the Access to Information Act provides penalties of up to two years in jail and a \$10,000 fine for those who undertake certain defined acts with the intention of interfering with someone's access rights. There have never been charges laid under this section of the Act.

Earlier this year, the federal Information Commissioner investigated the actions of Sebastien Togneri, an aide to former Public Works minister Christian Paradis, and found that he had interfered with a request for access to a record when he directed ATIP staff by e mail to "unrelease" the disclosure package.

"His interference resulted in the non-disclosure of the entire record for a period of time...thereby denying the requester's right of access to information under the Act," the Commissioner stated in her report. The Commissioner referred the matter to the then-Minister of Public Works, who referred it to the RCMP for investigation.

The RCMP has announced that it is dropping the investigation with a one line statement - "It was determined that a criminal investigation into this matter was unwarranted."

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This statement provides no indication of why the RCMP abandoned what would seem to be a straightforward investigation, given the Information Commissioner's very different conclusions in a very thorough prior investigation.

This leaves Canadians with the question of whether or not s.67.1 is now a dead letter. If it is "unwarranted" to conduct an investigation into a case where a ministerial aide with no legal authority sends an e mail to officials ordering them to not release requested records, then what circumstances would warrant an investigation?

If there is a problem with the law, then it is vital that the Committee recommend amendments to avoid the creation of a loophole for this white collar crime. We hope you will ask the RCMP, the Commissioner and Mr. Togneri to appear as soon as possible to clarify what happened in this case and what can be done to avoid creating impunity for the class of people most likely to interfere with the access rights of Canadians.

We hope the committee will act urgently to investigate what happened in this case, and whether legislative change is needed.

Please feel free to contact us if you feel we can be of assistance.

Sincerely,

John Hinds
Newspapers Canada

Scott Hennig
Canadian Taxpayers Federation

Vincent Gogolek
B.C. Freedom of Information
and Privacy Association

cc. Scott Andrews
Vice Chair, Standing Committee on Access to Information, Privacy and Ethics
Patricia Davidson
Vice Chair, Standing Committee on Access to Information, Privacy and Ethics