



# UNION OF BC INDIAN CHIEFS

OUR LAND IS OUR FUTURE

April 27, 2023

Standing Senate Committee on Indigenous Peoples  
The Senate of Canada  
Ottawa, Ontario  
Canada, K1A 0A4

**Re: Additional Information in Support of Request for Committee to Initiate a Study on the Informal Access to Information Process for First Nations**

Dear Members of the Standing Senate Committee on Indigenous Peoples,

I am writing to you to provide further information in support of our request made to you on April 5, 2023. We asked that your committee undertake a formal study of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and Indigenous Services Canada's (ISC) new requirements for First Nations researchers to provide details of their potential claims when applying for informal access to departmentally held records. First Nations need these records to validate their historical claims against the federal government.

In my letter to you on April 5, 2023, I informed you that the National Claims Research Directors (NCRD) released an open letter to Minister Miller and Justice Minister David Lametti on February 15<sup>th</sup> which urged them to withdraw the new requirements, since complying poses potential risks for First Nations. The letter also stressed that the unilateral imposition of the requirements violates Canada's obligations to uphold the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), its fiduciary obligations to First Nations, and the honour of the Crown. I also indicated that the NCRD received a response from CIRNAC Minister Marc Miller via email on Friday, March 31<sup>st</sup> and that several key issues of acute concern to First Nations remain.

The NCRD released a second open letter addressed to Minister Miller yesterday (April 26, 2023). I have included the full text of that letter below in the hopes that it will encourage you to prioritize conducting a full study of this issue as soon as you are able to do so. We have serious concerns that with the current review of the federal *Privacy Act*, amendments may be made which compromise First Nations' access to justice for their historical claims. Please let me know if you have any questions or require any additional information.

Sincerely,

Jody Woods  
Administrative Director and Research Director  
Union of BC Indian Chiefs

## **FULL TEXT OF OPEN LETTER TO MINISTER MILLER DATED APRIL 26, 2023:**

The Honourable Marc Miller  
Minister, Crown-Indigenous Relations and Northern Affairs Canada  
Sent via email only: [marc.miller@parl.gc.ca](mailto:marc.miller@parl.gc.ca)

April 26, 2023

### **Open Letter: Calling on Minister to Address Outstanding Issues Related to Informal Access to Information Procedures That Continue to Stall First Nations' Specific Claims**

Dear Minister Miller,

The National Claims Research Directors (NCRD) writes to thank you for your letter of March 31, 2023, in response to our February 15<sup>th</sup> open letter to you and Minister Lametti. While we are encouraged by the constructive tone of your reply, there remain areas of acute concern to First Nations that must be addressed immediately so that research on First Nations claims can proceed.

As you know, our February 15<sup>th</sup> letter brought to your attention new requirements being imposed by your department (CIRNAC) and Indigenous Services Canada (ISC) on specific claims researchers applying for informal access to departmentally held records for the purpose of validating First Nations' historical claims against the federal government. Since January 2023, under the guise of meeting Canada's obligations under the *Privacy Act*, researchers applying for informal access to departmental records have been asked to disclose an astonishing and legally unjustifiable level of detail to Canada about First Nations' claims in order to receive approval by the ATIP Director for both departments and proceed through the access process. Our letter emphasized that researchers are already authorized by Band Council Resolutions to access First Nations' records held by CIRNAC and ISC, and that section 8(2)(k) of the federal *Privacy Act* permits the disclosure of personal information for the purposes of validating the historical claims of First Nations. We also highlighted that as Canada is a defendant in First Nations' claims, disclosing the level of detail to the federal government as part of an access to information request may harm a First Nation's interests and the just and fair resolution of their claims. Our letter urged you and Minister Lametti to withdraw the new informal access requirements, stressing that the unilateral imposition of the requirements violates Canada's obligations to uphold the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), its fiduciary obligations to First Nations, and the honour of the Crown.

Many of the points you raise in your letter are positive, such as your explicit recognition that First Nations require full access to relevant records to validate their claims, the expressed commitment to address issues raised in the open letter through the Claims Research Unit-Canada Access to Information Working Group, and your reassurance that researchers can share records with the First Nations who provided them with the authorization to obtain them. However, there are several outstanding issues that continue to impede research on First Nations historical claims:

- Your statement that “the existing 8(2)(k) form process will remain in place until our teams have had further discussions” is ambiguous since CIRNAC/ISC have developed new forms and have been sending out the new 8(2)(k) requirements included in those forms to researchers since January. We ask that you *please clarify explicitly and immediately* whether “the existing 8(2)(k) form process” refers to the process in place prior to January 2023, or the one introduced in late January and currently in use by CIRNAC and ISC analysts. We note that when asked to clarify this point at an April 12<sup>th</sup> meeting of the BC Specific Claims Working Group, your response was vague. We are currently receiving email inquiries asking us to confirm interpretations of your comments, and these interpretations are varied and at odds with one another. Clarification of this matter is essential.
- There is no indication that any instructions have been provided by your office to departmental staff, such as ATI analysts, to process researchers’ ATIP authorizations and record requests currently stalled at ATIP headquarters without additional information being provided. Repeated email queries by researchers to departmental staff asking about the status of their informal requests, many of which are months old, are not being answered. As a result, research remains stalled, compromising First Nations’ access to justice, and jeopardizing funding to claims research units since annual funding applications are assessed against demonstrated research progress. An explicit clarification of what procedure is in place now must be communicated to all departmental staff and clear instructions given to release records without researchers having to provide additional information so that research on First Nations claims can resume.
- Your letter does not address significant concerns regarding communications between your office and other department officials who misinformed/misled your staff about this issue when our open letter was first released. The Director of ATIP (Tammy Martin) and the individual overseeing information management and the informal ATI process at ISC (Remy Payette) were not copied to your letter and we have no indication about how they are directing their staff to address informal access requests. We can only infer that the instructions are to not release file lists or records since researcher inquiries are being met with silence. Canada’s lack of consistency and truthfulness in this regard fails to uphold the honour of the Crown and undermines the reconciliatory objective of resolving specific claims.
- Your letter did not provide any explanation as to why the new requirements being imposed on researchers who submit 8(2)(k) forms for approval through the informal access process are necessary for Canada to comply with its obligations under the *Privacy Act* (which has not changed). We note that you were asked this question directly at the April 12<sup>th</sup> BC Specific Claims Working Group meeting and deferred to your staff. The attempt to clarify this issue by ATIP Director Tammy Martin, who suggested researchers are confusing the right of access to information with privacy rights, is patronizing and baffling since a) the National Claims Research Directors made a lengthy submission to the review of both federal acts in the fall, focussing on the relationship between the two pieces of legislation and their impact on the resolution of specific claims, and b) Ms. Martin provided no concrete examples of how researchers were confusing the two. Since

this is the rationale for Canada's recent actions, First Nations must be informed about how and why the former process is at odds with Canada meeting its legal obligations, particularly in light of Canada's inconsistent implementation of such procedures across federal institutions, such as Library and Archives Canada, where the 8(2)(k) process has not changed.

This is an extremely complex and serious issue with many implications for First Nations, including access to justice and governance. Understanding the root of these recent developments and resolving this issue is of critical importance to First Nations.

It is imperative that CIRNAC and ISC ATIP staff comply with the federal government's legal obligations under the UN Declaration and uphold the honour of the Crown. The new requirements associated with the informal access to information process are unlawful, compromise the resolution of First Nations claims, and further disadvantage them in a process that is inherently unfair. Research is currently stalled, and we require immediate clarification of the issues outlined above, prior to the reconvening of the joint working group established to address these crucial issues. We look forward to receiving your response to this letter by May 15, 2023, ahead of the Our Gathering meeting scheduled to take place that week in Vancouver.

Sincerely,

National Claims Research Directors

CC:

Senator Brian Francis, Standing Senate Committee on Indigenous Peoples, Chair  
Senator David Arnot, Standing Senate Committee on Indigenous Peoples, Deputy Chair  
Senator Michèle Audette, Standing Senate Committee on Indigenous Peoples, Member  
Senator Mary Coyle, Standing Senate Committee on Indigenous Peoples, Member  
Senator Margo Greenwood, Standing Senate Committee on Indigenous Peoples, Member  
Senator Nancy J. Hartling, Standing Senate Committee on Indigenous Peoples, Member  
Senator Patti LaBoucane-Benson, Standing Senate Committee on Indigenous Peoples, Member  
Senator Yonah Martin, Standing Senate Committee on Indigenous Peoples, Member  
Senator Dennis Glen Patterson, Standing Senate Committee on Indigenous Peoples, Member  
Senator Donald Neil Plett, Standing Senate Committee on Indigenous Peoples, Member  
Senator Karen Sorensen, Standing Senate Committee on Indigenous Peoples, Member  
Senator Scott Tannas, Standing Senate Committee on Indigenous Peoples, Member

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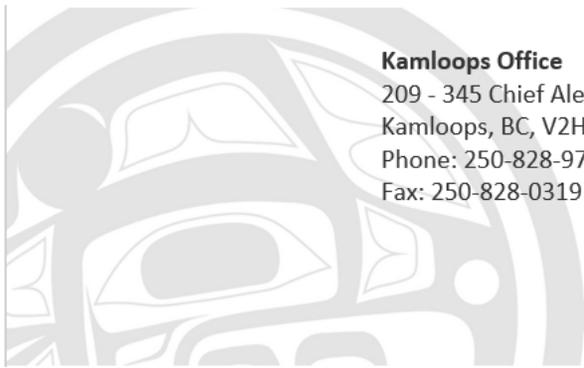
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