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Hello Jody,

Thanks so much for the thoughtful comments and I appreciate the questions and concerns noted below. I have asked the team to set up a meeting early in the new year to discuss the review and go over the questions that you asked which are very relevant to how we are approaching the 2025 review. With respect to your concerns which have been echoed by others...*(We need to be part of the ongoing, practical work of shaping the process so that we have confidence that the review will result in actual change.)*

As we have discussed with others who have shared some similar concerns – there are now several positive obligations that provide the frame for our work moving forward – as you can see there is clear linkages between the ATIA review, the UNDA and the UNDA Action Plan:

- Under the Access to Information Act – 93 (1) *The designated Minister shall undertake a review of this Act within one year after the day on which this section comes into force and every five years after the review is undertaken and shall cause a report to be laid before each House of Parliament.* (Note: The first review was launched in 2020 – so the next review of the ATIA must occur in 2025)
- Under the United Nations Declaration on the Rights of Indigenous Peoples Act – – section 5 - *The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.* (NOTE: The ATIA has been identified as legislation for possible reform – see Appendix C: Existing federal legislation and regulations identified for possible reform of the “What we learned to date report on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples Act”, March 2023 - UNDA WWLR ENG FINAL.pdf)
- Under the United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan

Shared priority 3 - *Where a statute requires periodic review, responsible departments will conduct that review in a manner that ensures consistency with the UN Declaration and meets applicable consultation and cooperation requirements in the UN Declaration Act. (All departments)*

- Shared priority 30 - *Continue to support Indigenous Data Sovereignty and Indigenous-led data strategies through legislative, regulatory and policy options to help ensure that First Nations, Inuit, and Métis have the sufficient, sustainable data capacity they need to control, manage, protect, and use their data to deliver effective services to their peoples, tell their own stories, participate in federal decision-making processes on matters that impact them, and realize their respective visions for self-determination. This should include nation-to-nation, Inuit-Crown, and government-to-government approaches to streamline timely sharing and access to federal data and information holdings with Indigenous partners, while respecting the privacy of individuals. This will support Indigenous jurisdiction over their data and enable Indigenous-led survey and other data collection strategies, such as for the purpose of processing claims; facilitating decision-making; and for genealogical research. (Indigenous Services Canada, Treasury Board of Canada Secretariat, Library and Archives Canada, and various departments)*

As such, given the above, the work that we are pursuing is being conducted taking into account the above obligations.

Thanks again for your input and looking forward to additional dialogue.

**Charles Taillefer**

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**\*Do not hesitate to reply in the official language of your choice.**

Directeur Exécutif, Division de la politique de l'accès à l'information et du gouvernement ouvert (DPAIGO),

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**\*N'hésitez pas à répondre dans la langue officielle de votre choix.**

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EXTERNAL EMAIL - USE CAUTION / COURRIEL EXTERNE - FAITES PREUVE DE PRUDENCE

Dear Charles,

I hope you are well.

Thanks for your email and for participating in the National Claims Research Workshop. Thanks also for providing the summary of work to date related to Canada's review of the *Access to Information Act*, including links to the Indigenous-specific "What We Heard Report" and the "ATIA Review Report to Parliament.

As requested, and recognizing that the next legislative review of the ATIA must be launched by June 20, 2025, I write to provide you with some feedback and possible next steps to advance transformative change in ATI processes, particularly with respect to access to records to related to land claims research.

The National Claims Research Directors acknowledge that the above reports identify key concerns and priorities for First Nations carrying out historical land-rights research and we are in general agreement with the priority areas that emerged from past engagements. However, as we approach yet another round of engagement, we continue to see no substantive changes arising out of our previous submissions and there are no mechanisms in place to ensure full First Nations participation in implementing necessary change.

To participate in reform efforts moving forward, we would appreciate answers to the following questions:

1. What do you envision for how you are going to conduct the review?
2. Will First Nations and their representative organizations have the opportunity to shape the engagement process itself, above and beyond commenting on the topics for discussion?
3. What are the parameters of the ATIA review?
4. What are the expected outcomes of the review? Is legislative change contemplated? If, as with previous reviews, no legislative changes result, what can we achieve together without legislative changes?

5. How will First Nations' contributions to the review be recognized and recommendations implemented?
6. With what other federal departments or public bodies will you also be engaging? In what ways? What is their role?

We don't think it is constructive at this point to conduct another user survey and produce another lengthy submission that will reiterate what we have said in previous engagements. Similarly, we would be unsatisfied if the end result of the 2025 engagement is another "What We Heard" report.

As we stated at the NCRW, we need practical solutions that can be effectively implemented and that have measurable outcomes that align with the *United Nations Declaration on the Rights of Indigenous Peoples* and Canada's commitments under the UNDA.

In terms of how TBS can support the NCRD's participation in the 2025 review of the ATIA, it would be very helpful to convene a meeting in the new year to discuss options.

Additionally, we would like to participate in any advisory committees or working groups tasked with making recommendations for the review. We need to be part of the ongoing, practical work of shaping the process so that we have confidence that the review will result in actual change.

The 2025 National Claims Research Directors meeting will be held in May 2025 in Ottawa. This may be a fantastic opportunity to outline the shape of engagement and what people can expect from the review process.

Thank you so much again for reaching out and I look forward to your response to what I've suggested here.

Best wishes

Jody

p.s. I have also searched our records and have not been able to locate the letter you reference from Dominic Rochon. Can you please re-send? Thank you!

Sent from my Galaxy

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Subject: Follow-up: Invitation to support ongoing dialogue on Access to Information in 2025

Dear Ms. Jody Woods,

This email is further to the letter sent to you by Dominic Rochon, the Chief Information Officer of Canada, in May 2024. As you may be aware, starting in 2020 the Government of Canada conducted a review of the *Access to Information Act* (ATIA), the first under a legislated five-year review cycle of the Act.

During the 2020 review of the ATIA, Indigenous partners were invited to provide feedback, and highlighted the unique access to information (ATI) challenges faced by Indigenous requesters in addition to issues shared with other ATI requesters. This feedback was summarized in the Indigenous-specific What We Heard Report, and informed the government's conclusions in the Access to Information Review Report to Parliament tabled in December 2022.

The next review of the ATIA must be launched by June 20, 2025. The upcoming review coincides with the ongoing implementation of the [United Nations Declaration on the Rights of Indigenous Peoples Act](#) (UNDA), which mandates that the Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada, including the ATIA, are consistent with the UN Declaration on the Rights of Indigenous Peoples (the UN Declaration). It also complements ongoing whole-of-government work to advance Indigenous data sovereignty and streamline timely sharing and access to federal data and information holdings with Indigenous partners.

Building on previous feedback, we have continued to examine potential approaches to address the unique challenges identified by Indigenous requesters in anticipation of the next review of the ATIA. We are now seeking your feedback on the appropriateness of the proposed areas of focus and whether the potential approaches set out below would help address the challenges faced by Indigenous requesters. This collaborative process will help lay the foundation for the 2025 review of the ATIA.

### **Indigenous access and culturally appropriate services**

Based on previous feedback, we recognize that Indigenous requesters rely on the ATI system for unique and critical purposes, such as obtaining:

- information related to residential schools;
- information related to missing and murdered Indigenous women and girls;
- genealogical records to establish status claims; and,
- records to advance land claims research.

In addition, Indigenous requesters face similar challenges as other ATI requesters related to the timeliness of responses, the quality of records, and the inconsistent application of exemptions in response to ATI requests. Indigenous partners have also raised that the ATIA's formal individual request-based system may not be the most appropriate or viable mechanism for timely access to records for Indigenous people or their communities.

There are potential approaches that could be explored to provide more culturally appropriate services for Indigenous requesters. For instance, we are aware that some Indigenous partners prefer using informal processes instead of submitting individual requests under the ATIA. Record-sharing agreements are one example of an informal process already leveraged by certain federal institutions for the purpose of providing records to Indigenous organizations. The wider use of record-sharing agreements across the Government of Canada (GC) could provide a viable alternative to the formal individual request-based system. Record-sharing agreements also provide Indigenous requesters or their representatives the opportunity to negotiate terms and conditions with GC institutions for the sharing of certain records needed to support critical purposes.

In certain cases, Indigenous partners have also questioned the appropriateness of the current oversight mechanism for the ATIA; that is, the individual complaints-based process administered by the Information Commissioner of Canada. Currently, record-sharing agreements are made outside of the ATIA framework and are therefore not subject to oversight by the Information Commissioner. In addition to responding to Indigenous partners' preference for informal access processes, wider use of record-sharing agreements may also address the concerns Indigenous partners identified with the current oversight mechanism for formal requests.

Feedback received to date also points to the importance of better acknowledging the importance of providing Indigenous peoples with timely access to federally controlled records, in recognition of the critical purposes for which they are used. This could be further reinforced by considering embedding fee waivers for Indigenous requesters or

their representatives in law or policy. This approach would build on the non-mandatory guidance published by the Treasury Board of Canada Secretariat in May 2023 through the [Access to Information Implementation Notice on Advancing Indigenous Reconciliation: Waiver of \\$5 Application Fee](#), which has been adopted by a number of federal institutions.

Some Indigenous partners also noted considerations related to Article 19 of the UN Declaration with respect to government decision-making and administrative measures that may affect Indigenous peoples. In light of these considerations, it may be appropriate to review current ATIA provisions to ensure that records related to decisions that impact Indigenous rights are not inappropriately protected from disclosure.

### **The definition of aboriginal government and the protection of Indigenous information and data**

Indigenous partners have indicated that the ATIA's current definition of "aboriginal government" found in section 13 (information obtained in confidence) is outdated and excludes most Indigenous governments and organizations. They have also indicated that this limited definition impacts their ability to appropriately safeguard information of a social, cultural, spiritual, environmental, or traditional nature. In response, the 2022 [Access to Information Review Report to Parliament](#) reflected the GC's commitment to implementing UNDA, updating and aligning language used in laws of Canada related to Indigenous peoples and communities, including the definition of "aboriginal government" in the ATIA.

One potential approach that Indigenous partners have consistently raised in their feedback is to broaden the definition of aboriginal government in the ATIA as it relates to information obtained in confidence. Some partners have suggested that this could be done by replacing the current definition with "Indigenous governing bodies" as defined in Canada's [Fisheries Act](#), [Impact Assessment Act](#) and [An Act respecting First Nations, Inuit and Métis children, youth and families](#).

A potential complementary approach to address this issue is to explore additional protections under the ATIA for Indigenous knowledge, which refers to the set of complex knowledge systems based on the worldviews of Indigenous peoples. Protections against the disclosure of Indigenous knowledge provided in confidence can already be found in other Canadian legislation, including the [Fisheries Act](#), [Impact Assessment Act](#), [Canadian Navigable Waters Act](#), and the [Canadian Energy Regulator Act](#), and are referenced in Schedule II of the ATIA.

## Next steps

We welcome your initial feedback on the areas of focus and policy approaches set out above, including:

- whether you believe the areas of focus and proposed approaches described above should continue to be explored in the context of the 2025 review of the ATIA; and,
- whether there are other areas of focus or alternative approaches that you would suggest be considered in the context of the ATIA.

We also invite you to share considerations on how your participation in the 2025 review of the ATIA might best be supported by Friday, November 29, 2024.

Should you have any questions or would like more information about the review process, please contact my team at [reviewingatia.revisionlai@tbs-sct.gc.ca](mailto:reviewingatia.revisionlai@tbs-sct.gc.ca). We prioritize this work and will ensure that we respond promptly.

We appreciate your ongoing commitment to this important work and look forward to continuing our partnership in strengthening the ATI system. Thank you for your time and consideration. We look forward to your feedback.

Yours sincerely,

Charles Taillefer

Executive Director

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