

2010 Protocol Agreement on Access by the Office of the Auditor  
General to Cabinet Documents

BETWEEN:

The Office of the Auditor General of Canada (OAG)

-and-

The Privy Council Office (PCO)

-and-

Treasury Board Secretariat (TBS)

WHEREAS:

Staff of the Office of the Auditor General, in order to fulfill the Auditor General's audit responsibilities, has a right of access under federal legislation to information, documents, and individuals in departments and entities which are subject to audit by the Auditor General of Canada.

The Clerk of the Privy Council is the custodian of the Cabinet confidences of all Prime Ministers.

The Auditor General's access to certain Cabinet confidences is set out in Orders-in-Council which were approved in 1985 and 2006.

In May 2010, guidance was issued to Deputy Heads on providing the Office of the Auditor General access to information in certain Cabinet Confidences.

The parties wish to establish a process whereby any dispute about OAG access to information may be resolved expeditiously in a spirit of professional cooperation.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:


1. The Auditor General has access to certain Cabinet Confidences information as set out in Orders in Council, P.C. 1985-3783 of 27 December 1985, and P.C. 2006-1289 of November 6, 2006, copies of which are attached to this Agreement.
2. Auditors may encounter a situation where an entity restricts OAG access to any document or information on the basis that it is a Cabinet Confidence to which the OAG does not have a right of access. Where the auditors and the departmental or entity officials have been unable to resolve the access matter in dispute, they will use the measures set out in this Protocol to resolve the access matter. They may wish to consult their respective Legal Services or other officials for guidance.
3. As noted in the attached Guidance document, departmental or entity officials should be able to provide Cabinet Confidence information to the OAG within 20 working days of the OAG original request or inform the OAG of a denial of access. If the access dispute has not been resolved to the satisfaction of the OAG the Assistant Auditor General responsible for the audit will so inform the responsible Deputy Head within five working days of the denial. The Deputy Head and the Assistant Auditor General may agree to an extension of these periods.
4. The Deputy Head, with a view to resolution of the matter may consult, if necessary, with departmental or entity officials and the Assistant Auditor General responsible for the audit. The responsible Deputy Head will rely on the attached Guidance in coming to a decision.
5. The Deputy Head will inform the Assistant Auditor General of his or her decision within 10 working days of being informed of the dispute by the Assistant Auditor General. Any extensions of this deadline must be agreed upon by the Assistant Auditor General to ensure that delays in receiving the requested information will not compromise the Auditor General's ability to perform his or her statutory responsibilities.
6. If the Auditor General is of the view that his or her officials are being improperly denied access to Cabinet Confidences in the department by the Deputy Head, the Auditor General will refer the matter to the Clerk of the Privy Council, who will consider any representations from the OAG and departmental or entity officials that he or she considers necessary in order to resolve the matter. When the Clerk of the Privy Council concludes that the

information is appropriately characterized as a Cabinet Confidence which should not be disclosed to the OAG, he or she will provide reasons for the decision in writing to the Auditor General.

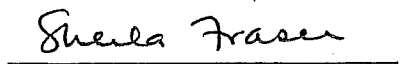
7. The parties will participate in periodic meetings annually or more frequently on the request of one or more parties, to review the extent to which this Protocol Agreement is achieving its intended result of resolution of issues of access to information by the OAG and to ensure, in a spirit of professional cooperation, that access to information by the OAG is provided as expeditiously as possible.

This Agreement made this 13<sup>th</sup> day of May, 2010.

For:

  
Wayne G. Wouters  
Privy Council Office

  
Michelle d'Auray  
Treasury Board Secretariat

  
Sheila Fraser  
Office of the Auditor General

**Guidance to Deputy Heads, departmental and entity legal counsel and OAG audit liaisons on providing the Auditor General access to information in certain confidences of the Queen's Privy Council (Cabinet Confidences)**

- 1 The purpose of providing access to information and documents is to enable the Auditor General of Canada to fulfil his or her statutory responsibilities. This includes assessing, in performance and financial audits, the public accounts and special examinations, whether there has been due regard to economy, efficiency and environmental effects of government spending, and whether compliance with financial, management and other authorities has been addressed. The Auditor General and her staff (OAG) assess whether officials have in effect performed their "due diligence"; they do not, however, assess government policies and Cabinet decisions.
- 2 The Auditor General Act (s. 13) provides the OAG with broad access to information and documents the Auditor General considers necessary to carry out audits and examinations, and to personnel for the purpose of interviews and explanations. The mere fact that documents would not be released under the *Access to Information Act* does not constitute a limitation to the right of the OAG auditors to have access to them. OAG access to Cabinet Confidences is addressed through this Guidance. Unless strictly excluded by this Guidance or by the Orders in Council referred to in paragraph 4, departments and entities will provide to the OAG the information requested.
- 3 Deputy Heads are responsible for ensuring that OAG auditors have timely access to information and personnel to carry out their audits and examinations. Officials should be able to provide Cabinet Confidence information to the OAG within 20 working days of the request, or notify the OAG of any difficulties in doing so. All departmental and entity officials are required to follow this Guidance in providing Cabinet Confidences and other information and documents to the OAG. Deputy Heads are responsible for providing guidance to their officials with respect to their roles and responsibilities during the audit process, including guidance in providing Cabinet Confidence information to the OAG.
- 4 The OAG's access to records presented to Council<sup>1</sup>, including Memoranda to Cabinet and Decks, Records of Cabinet Decisions, and Treasury Board Submissions, Treasury Board Aides-mémoire and Decisions, is set out in Orders in Council approved in December 1985 and in November 2006 (attached for reference). Cabinet Confidences created prior to February 2006 are governed by the December 1985 Order in Council. The Privy Council Office provides access to records presented to Council and final decisions of Council; the Treasury Board Secretariat provides access to Submissions and Aides-mémoire to the Treasury Board and decisions of the Treasury Board.
- 5 The OAG is entitled to explanations, analyses of problems or policy options contained in a record presented to Council (including annexes and appendices to such records where they deal with such explanations, analyses of problems and policy options) and its final decisions, but not information revealing views, opinions, advice or recommendations to Council. Where the decision on the policy options refers to approval of an annex or other record, sufficient information as to the contents of the annex or record will be provided to the OAG to inform the Auditor General of the substance of the decision.

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<sup>1</sup> For the purposes of this Guidance, "Council" means the Queen's Privy Council for Canada, committees of the Queen's Privy Council for Canada, Cabinet and committees of Cabinet, which includes the Treasury Board.

- 6 The OAG is entitled to explanations, analyses of problems or policy options contained in or prepared by departmental, entity or Treasury Board Secretariat officials in relation to a Treasury Board Submission or Treasury Board Aide-mémoire, but not information revealing views, opinions, advice or recommendations presented to a Treasury Board Minister or to the Treasury Board, such as set out in a Précis. The following are examples of the types of information to be provided:
  - a) All information exchanged (through email or other documented means) that represent comments, questions and responses on draft and final Treasury Board submissions;
  - b) Any evidence regarding compliance with Treasury Board policies, guidelines and/or authorities delegated by Treasury Board; and
  - c) Departmental, entity or Treasury Board Secretariat analysis supporting a Treasury Board Submission or Treasury Board Aide-mémoire or draft Treasury Board Submission or draft Treasury Board Aide-mémoire.
- 7 For greater certainty, it is understood that the agenda and deliberations, communications and discussions between and among Ministers on matters relating to the making of government decisions and formulation of government policy, and draft legislation, constitute Cabinet Confidences that continue to be exempted from disclosure to the OAG.
- 8 Where officials are in doubt about providing information to the OAG, because it may constitute a Cabinet Confidence to which the OAG is not entitled, they should consult their Legal Services and/or the Privy Council Office for guidance in the characterization of the documents prior to releasing or refusing to release the information to the OAG.
- 9 OAG auditors and departmental or entity officials will work diligently to resolve any access to information matter in dispute. Disputes as to the characterization of information or documents or access by the OAG to particular documents will be addressed using the 2010 Protocol Agreement (attached for reference).



CANADA  
PRIVY COUNCIL - CONSEIL PRIVÉ

P. C. 2006-1289  
November 6, 2006

Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby directs that the Auditor General of Canada be granted access to the following information contained in a confidence of the Queen's Privy Council for Canada, as defined in subsection 39(2) of the *Canada Evidence Act*, that comes into existence on or after February 6, 2006, and that relates to public expenditures:

- (a) a submission to the Governor in Council,
- (b) a submission as presented to the Treasury Board and any explanations, analyses of problems or policy options contained in or prepared by officials in relation to the submission, but not information revealing views, opinions, advice or recommendations presented to a Treasury Board Minister or to the Treasury Board,
- (c) any explanations, analyses of problems or policy options contained in a record presented to Council, as defined in subsection 39(3) of the *Canada Evidence Act* ("Council"), for consideration by Council in making decisions but not information revealing a recommendation or proposal presented to Council by a Minister of the Crown,
- (d) a final decision of Council, and
- (e) a decision of the Treasury Board,

all of which information remains a confidence of the Queen's Council for Canada for the purposes of any Act of Parliament.

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CLERK OF THE PRIVY COUNCIL—LE GREFFIER DU CONSEIL PRIVÉ



CANADA

PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 1985-3783  
27 December, 1985

HER EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, upon the recommendation of the Prime Minister, hereby directs that the Auditor General of Canada be granted access to the following information contained in a confidence of Council (as defined under subsection 36.3(3) of the Canada Evidence Act) that comes into existence on or after January 1, 1986, and that relates to public expenditures,

- (a) a Submission to the Governor in Council;
- (b) a Submission to the Treasury Board;
- (c) any explanations, analyses of problems or policy options contained in a Memorandum or Discussion Paper presented to Council for consideration by Council in making decisions but not information revealing a recommendation or proposal presented to Council by a Minister of the Crown;
- (d) a final decision of Council; and
- (e) a decision of Treasury Board.

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A handwritten signature in cursive script, appearing to read 'P. Leclerc'.

CLERK OF THE PRIVY COUNCIL - LE CLERFFIER DU CONSEIL PR