

The Public's Right to Know.
By Stanley Tromp
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Good morning and Seasons greetings to all. I am honored and delighted to speak to you today about a most interesting subject that you may or may not already be familiar with. Can I have a show of hands - how many of you know about freedom of information law already?

Stephen last week spoke eloquently of the hardship of having to pack the history of the universe into 20 minutes. This subject is vast, but not quite so capacious as that. I can only try to provide the main outlines of it. For those who want to read more, I have posted my essays and news stories at my FOI website, which you can find just by googling my name. Let me just note that I am speaking personally and not behalf of any organization.

To begin, what do we mean by freedom of information law, or FOI for short? This is legislation that gives the general public the legal right to view and obtain government records on any topic – except for some exceptions to protect interests such as personal privacy, national security and solicitor-client privilege. About 93 nations in the world have FOI laws in place today. Canada's FOI law is called the *Access to Information Act*, and I use the two terms interchangeably; it was passed in 1982, and the B.C. provincial FOI law was passed ten years later. As well, over 40 nations explicitly grant the public some right to obtain government information in their Constitutions or Bill of Rights. Canada sadly does not, although the Supreme Court of Canada has said the right is “quasi-constitutional.”

The Supreme Court of India stated in 1982: “Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing.” In a 1985 Advisory Opinion, the Inter-American Court of Human Rights went further: “a society that is not well-informed is not a society that is truly free.”

For this church I have considered presenting this topic for several years, but was stymied by a basic obstacle. How could this be the topic of a church service? What might administrative law reform have to do with Unitarian religion, or indeed with spirituality of any kind? I will venture to say that it might in at least two ways, and perhaps more.

Firstly, one of the "7 Principles and Purposes" of the Canadian Unitarian Council that it covenants to affirm and promote is “a free and responsible search for truth and meaning.” Unitarian Universalists do not share a creed; rather, they are unified by their shared search for spiritual growth and

by the understanding that an individual's theology is a result of that search and not obedience to an authoritarian doctrine.

In a similar way, the process of obtaining internal government records through FOI requests is an effort to discover reality as it is – not as we think it is, or it might be, or least of all what the state publicly claims it is. Both the Unitarian and FOI realms run parallel and may sometimes overlap, as they are informed by the spirit of critical inquiry, questioning authority and insisting on accountability, and you can rarely have accountability without transparency.

As well, if the right to information cannot be called religious in the conventional sense, it has often been said that it is essential to the wellbeing of a democracy, and that surely has a spiritual dimension. This is very difficult to quantify. Yet some FOI advocates abroad have a faith and fervor that could almost be termed devotional.

It is to these advocates around the world that I dedicated a book I wrote on the subject four years ago (*Fallen Behind: Canada's Access to Information Act in the World Context*). Some are prepared to make the ultimate sacrifice for the transparency cause, all to secure a democratic right that Canadians take for granted and rarely use; it may stir one to hear reports of their struggles. For example, one state in India adopted a *Right to Information Act* in 2003 after being prodded by the hunger strike of an activist, Anna Hazare; then he resumed his hunger strike the next year to push for better enforcement of the act. In India, some FOI activists have received death threats for filing requests and several, such as Satish Shetty, have been killed for doing so.

Their struggles make the obstacles faced by FOI advocates in Canada appear insignificant by contrast. Whenever our FOI system seems onerous, I think about Moscow lawyer Ivan Pavlov, one of the leaders of the Russian FOI movement, who was beaten nearly to death by progovernment thugs ten years ago. Yet partly as a result of his work Russia passed a law in 2006.

Secondly, contemporary Unitarian Universalism espouses a pluralist approach to religious belief, whereby members may describe themselves as atheist, agnostic, deist, monotheist, pantheist, polytheist, pagan, or assume no label at all. The UU movement officially welcomes congregants regardless of their political views, and the UCV website sums it all up as: “Diverse Beliefs, Shared Values.”

In a similar way, freedom of information law entails a search for truth that transcends political parties and ideologies. So when I raise the FOI topic here and someone asks, “What, are you Unitarians meddling in politics again?” I would say no, because this is simply not a political issue. Every Canadian

party while in opposition pledges strong and often sincere support for the FOI concept, as naturally would just as naturally for the concept of free elections, and all of them usually forget that pledge while in power. As former Information Commissioner John Reid said in 1999: "It amuses me to see the profound change in attitude about access to information which occurs when highly placed insiders suddenly find themselves on the outside. And vice versa!"

How well these religious and secular searches for truth are achieved in practice is a whole other story, but to fall short of the ideal - as we usually shall - is no reason to stop reaching for it.

Governmental freedom of information in legal study and journalistic practice has been my life's main work for the past twenty years, and perhaps it will be for some decades to come. This endeavor has been at times both very satisfying and very frustrating.

How did all this begin for me? I recall it clearly. Twenty years ago I was a student at Langara College journalism school (just down the road on 49th Avenue), when I heard that the college had commissioned a report on the seismic condition of the building. But the building manager at the time refused to release it, despite the students' right and need to know if the roof could collapse on their heads during an earthquake. In a very imperious and disdainful manner, he told me, "The report is technically too complex for you to understand, and I don't have time to explain it to you. You can ask the president, and if she tells me to release it, then I will." We did so, and finally got it. The B.C. FOI law came into force a year later, which meant that such a refusal would have been impossible thereafter. But this event instilled in me a profound opposition to government secrecy from then on.

Later when I was with *The Ubysey* student newspaper, we waged and won a very costly five year legal battle to view UBC's exclusive marketing contract with Cola-Cola. For the past six years I have been embroiled in a legal dispute to overturn UBC's refusal to open up records 5 of its wholly owned and controlled private companies, as it incorrectly claims these are "independent" entities and so not covered by the FOI law. These include UBC Properties Investments Ltd., which manages 100 hectares of public land, and the equivalent of a new town being built there, mostly in secret.

Later I used the FOI law to produce more stories for newspapers, newsmagazines and websites. These include the minutes of cabinet meetings in Ottawa from the 1980s (because these records are withheld for 20 years), showing how ministers in the Mulroney cabinet struggled in wrenching debates to create new laws on capital punishment and abortion.

I also found an RCMP report warning that the recession may be pushing more truckdrivers into organized crime, as well as memos from the RCMP and the Vancouver Police Department blaming each other for failings in the Robert Pickton debacle. For another story, I discovered memos from bureaucrats in Victoria saying that the recent choice by the federal government to close down its oil-spill response offices in Vancouver and respond to B.C. oil spills from Quebec is “not realistic” and will make it much harder to contain an oil spill here. Using the more effective American FOI law, I found that Canada’s ambassador to the United States wrote to the head of the U.S. Environmental Protection Agency, asking it to ignore greenhouse gas emissions from Alberta oil extraction as it decides whether to support the Keystone XL pipeline from Canada to Texas.

On a somewhat lighter note, regarding the 2010 Vancouver Olympic Games, it was through FOI that I learned that thousands of game tickets had been reserved for politicians before the public had any chance to buy them, and that the Olympic Games Secretariat had stopped recording minutes of their meetings after being irritated by my FOI requests for them - a sign of the negative shift to so-called “oral government.” After a three year legal squabble, I obtained records showing that ICBC had paid \$650,000 for executives’ bonuses on top of their salaries. Last year, I noted how the Chinese consulate on Granville Street had privately written to the Mayor of Vancouver urging him to boycott a dance show that supported Falun Gong.

But this process is often onerous. Information is key source of power, prestige and profit, and whoever wished to yield those? For the past 15 years I have had to push for FOI record releases through 22 rulings by the B.C. information commissioner and five court cases. That is because, after I spent a year reading and comparing all the world’s FOI laws and practices, I clearly saw how Canada’s freedom of information system has fallen far behind those of the rest of the world, and the United Nations FOI standards. The annual transparency rankings put out by the Centre for Law and Democracy in Halifax show a consistent decline in Canada's FOI performance. We now sit in 55th place on a list of 93 countries - tied with Malta but behind Mongolia and Montenegro.

Unless our law is reformed to global standards, there are hundreds more such news stories that need to be told, but will never be. That is why I described Canadian FOI law and practice within the global context as "a world of lost opportunities." The current prime minister promised in 2006 to upgrade our law on eight key points, but fulfilled only a portion of one of these pledges. To be fair, this was slightly better than the previous administration, which did nothing at all.

It has become almost a cliché to note that transparency is essential for a health democracy. This proverb by now seems so obvious that no one would argue against it. But wait. Some people actually do. For example, the retiring B.C. information commissioner wrote in 1997 that, “Senior government officials have complained that they were no longer free to give candid advice to their political masters, because of the risks of disclosure of what they write in briefing notes. It was almost as if democracy was being undermined by too much democracy. . . .” (Try to figure that one out. I can’t.)

The commissioner alluded to the BBC TV fictional character Sir Humphrey Appleby, the supremely suave British bureaucrat, who famously warned, “Minister, you can have good government or open government – but you can’t have both.” The outlook of many officials is summed up by Sir Humphrey in the 1981 *Yes Minister* episode titled Open Government. He and his ally Arnold rebuke a naïve junior named Bernard who supports more transparency: “Bernard claims that the citizens of a democracy have the right to know. We explained that, in fact, they have the right to be ignorant. Knowledge only means complicity and guilt. Ignorance has a certain dignity.”

Canadian FOI expert Alasdair Roberts concludes his landmark book *Blacked Out: Government Secrecy in the Information Age*, with these words: "Transparency itself is not enough. . . Do we have a right to information? Certainly. But we also have a responsibility to act on it." But who wants new responsibilities, to solve newly uncovered problems? Some of the senior bureaucrats (an even greater obstacle to FOI than politicians) are trying in their view, very benevolently, and with Orwellian doublespeak, to grant the public freedom *from* information.

In fact how much does the public need to know, care to know, dare to know? In earlier times, religious and political officials would glibly contend that “what the people don’t know won’t hurt them.” But in fact, it can, profoundly. They might also sometimes counter truth8 seekers with the retort, “Do you want the truth? You can’t handle the truth.” I generally work from the presumption that faith in the public’s ability to “handle” reality is preferable to the alternative course, to be decided by others. This, too, is the Unitarian outlook, in this presumably brave new world of the new millennium, and I would far prefer the Phillip Hewett model of intellectual courage.

At times, parents may decide to keep information away from their small children for their own good - such as about a family financial crisis or a potential war – sometimes rightly so, sometimes not. Yet it reminds me of the government reaction to my FOI request for the Victoria legislature's seismic report, one that revealed that, unless it spent \$250 million in upgrades, the buildings could collapse during an earthquake upon the 500 people who work there and cause civil unrest. They blocked access to the

report by misapplying four exemptions in the law, but upon my appeal gave it up 14 months later. The Speaker of the House later said he kept the report private because he didn't wish to upset the public. In this view, ignorance is bliss indeed, and yet you may realize the basic mistake of this outlook - that is, what adult citizen wants to be patronized like a child?

What can be amusing up on the screen in *Yes Minister* is often far less so in real life. Politicians resist the letter and spirit of FOI laws not so often with the goal of gaining or consolidating power, but from the fear of losing it - a concern that one can, if not share, at least understand. I also fully accept the need for legitimate secrecy to protect such matters as personal privacy, national security and law enforcement. Yet one problem that governments should attend to far more closely is that its needless or excessive secrecy also fuels public paranoia, falsehoods and conspiracy theories – and when that results, the government has only itself to blame.

Richard Calland wrote for the Carter Center: “With greater knowledge, people. . . can use access to information law to gain the information with which comes greater power. In this sense, the Right to Know is the Right to Live.” He meant that in the broad human rights sense. But it occurred to me that this motto of FOI as “the right to live” can apply in a very literal way too.

For example, Canadian's premier FOI applicant Ken Rubin has struggled for years in the courts to obtain records on meat inspections and airline safety. When the media applied through FOI for notes on conference calls during the 2008 meat listeriosis outbreak which killed 20 people, Ottawa illegally delayed the records' release for months. Through FOI requests, CBC radio reporters acquired a key database from Health Canada that chronicled cases of adverse drug reactions, for a news story showing that thousands of seniors were dying each year from the drugs prescribed to them by doctors. In 2005, as a result of their efforts, Health Canada made this database available to the public online.

Of all my FOI stories, the one I like most concerns an audit by the B.C. Finance Ministry, which described gross safety violations for many years - including fire hazards and potential carbon monoxide poisoning - at Vancouver Community College. After it was published, two former VCC teachers wrote to me, voicing thanks for the revelations. One added that in his day the windows at VCC had been sealed shut and, “Students, instructors and staff continually complained about the air quality on campus, but the administration pretty well dismissed our concerns. My department was on the second floor, right above the Diesel department. At times the diesel fumes were so bad, instructors had to let students take a break outside in the quadrangle just to get some fresh air. You had to go outside to get your senses back.”

In sum, I do not have all the answers about freedom of information law, nor does any single institution or individual, but I believe I have raised the right questions. I could talk on this subject for hours, but my time is up. Our *Access to Information Act* is 30 years old this year, and the information commissioner in Ottawa is asking the public to send in submissions on how to improve it. If one objects to the fact that the prime minister's eight pledges for FOI reform are unfulfilled, it is best to speak out clearly, lest the government interprets the silence - rightly or wrongly - as consent or indifference. Ultimately every public will have the FOI system it deserves, and the choice is ours. The deadline for submissions is this December 21. That is also the day that the Mayans predict the world will end - a fact that one presumes or prays is merely coincidental. Thank you, and good luck.

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<http://www3.telus.net/index100/foi>