

Issue Update

Specific Claims Access to Information

History

First Nations require access to records and materials held by the Government of Canada to substantiate specific claims. This requires First Nations to seek access through the Government of Canada's *Access to Information Act* and *Privacy Act*, collectively known as the information management regime. A provision of the *Privacy Act* specifically grants First Nations the right to access otherwise protected personal information for claim research and substantiation.

In 1999, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) introduced an internal department directive affirming First Nations Rights and for their researchers to access information held by the department for the purpose of validating claims. This directive established an informal access process, enabling First Nations to bypass the more rigid and obstructive formal access framework. In 2022, the National Claims Research Directors (NCRD) voiced concerns about CIRNAC unilaterally imposing new, arbitrary requirements for First Nations to disclose prejudicial information related to potential claims before granting requested records. These arbitrary requirements were imposed without consultation or justification and are inconsistent with the principle of access to justice.

AFN's recent advocacy

The Assembly of First Nations (AFN) participated in the Treasury Board of Canada's 2020 review of the information management regime. In a letter to the President of the Treasury Board, the Honourable Mona Fortier, the AFN reiterated the requirement that the Government of Canada meaningfully consult and include First Nations in further changes to the information management regime in a manner that is consistent with the *United Nations Declaration on the Rights of Indigenous Peoples*.

In 2023, the NCRD issued an open letter to the Minister of Crown-Indigenous Relations, Marc Miller, calling for the reversal of CIRNAC's unliteral and arbitrary changes to the established informal access to information process. Numerous First Nations and claims research units supported the open letter, as well as Regional Chief Paul Prosper and the Chiefs Committee on Lands, Territories and Resources (CCoLTR).

Next Steps

The AFN Lands Sector will continue to monitor this issue and identify opportunities to call upon the Government of Canada to meet its obligations under domestic and international law and respect the principle of Ownership, Control, Access, and Possession (OCAP®) in the fair and just resolution of specific claims. The AFN Lands Sector will also seek opportunities to support ongoing advocacy and leadership by the NCRD on these important issues.