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## Google Yes, Access No: Judge OKs Concealment Of Records

A federal judge has ruled Canadian government agencies may conceal public information even if it's already available on Google. The ruling came in a lawsuit against Natural Resources Canada for flouting the *Access To Information Act*.

"There are a lot of people in the access and privacy community wondering how independent our courts really are – and that's a terrible question to ask," said Sharon Polsky, president of the [Privacy & Access Council of Canada](#).

The department refused to divulge the names of business executives believed to have accessed copyright data owned by a Calgary company, [Geophysical Services Incorporated](#). The company deposited seismic maps with the department as a condition of licensing, then accused Natural Resources of handing out the information to competitors in violation of the *Copyright Act*.

Justice Elizabeth Heneghan ruled third-party names were protected under the *Privacy Act* even though they were subsequently found on the internet via LinkedIn and Google searches. “I acknowledge some of the redacted information is publicly available; the question is whether it should be disclosed,” Heneghan wrote.

The judge concluded it was up to government staff to agree to release the names “on a voluntary basis”. “The appellant is asking that the exercise of discretion be put in the hands of the Court,” Heneghan said. “I am not prepared to go that far.”

The judgment is the second this year by a federal judge that appeared to sanction concealment of records by government officials. In a separate ruling March 3 the Federal Court allowed the Department of National Defence to grant itself a three-year extension in complying with an *Access To Information Act* request, though the law states departments must acknowledge requests within 30 days and respond in a “timely” way within a reasonable period.

Both cases were argued by the Office of the Information Commissioner which accused agencies of thwarting the intent of the law. The case of the three-year extension involved a request for records on the sale of military surplus equipment to Uruguay.

“We see meandering decisions from the courts – judges are not always consistent – but there appears to be a pattern,” said Polsky. “In Canada there is really not a lot to be done in cases of non-compliance. You ask nicely, but there are very limited powers. Where is the political interest in giving teeth to these laws? Time after time organizations have dismissed a commissioner’s request.”

“If we leave this to case law, where individuals with the courage and the funding pursue these issues through litigation, it’s a long and costly process,” Polsky added. “What damage is done in the meantime? We need legislation that is thoughtful.”

### **“I Am Basically Disgusted”**

Paul Einarsson, chief operating officer of Geophysical Services Inc., said the ruling on censorship of documents appeared “completely unreasonable and contrary” to the *Access To Information Act*.

“I am basically disgusted,” Einarsson said. “The court is protecting the government; I think they are part of the problem. They are not supportive at all of the public’s right to know.”

Einarsson files his initial request with the Department of Natural Resources in 2010 seeking records of distribution of GSI-owned seismic data to third parties including private companies and foreign governments. The department replied with heavily-redacted documents that obscured the names of executives believed to have received data, claiming their identities were protected under privacy law.

The *Privacy Act* allows agencies to conceal individual information such as prison and medical records, “employment history” and other intimate details about private citizens. Justice Heneghan ruled privacy protection also included the names and phone numbers of Natural Resources Canada clients, though Einarsson said his company later tracked “quite a few” through internet searches.

“What Natural Resources Canada did was to pervert the intent of the law,” Einarsson said. “They used the *Privacy Act* to block my access to those who infringed my copyright, but when it came to applying basic rules to protect my copyright in the first place they ignored it.”

“It’s a get-away-free card,” he said. “Laws are made for people who are basically honest, and these people are not.”

The information commissioner sued in Einarsson’s case in a bid to uphold narrow limits on what federal agencies can legally withhold in the name of privacy protection. The commissioner declined to say if the Heneghan ruling will be appealed.

“I have contacted my attorneys to determine if we can intervene in this case and file our own appeal,” Einarsson said. “The *Access To Information Act* is being undermined.”

By Tom Korsi  