



**Information Commissioner of Canada**

*Access to Information Act*

**Report Card  
on the Performance of**

**Justice Canada**

**March 2005**

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## OVERVIEW

As part of the proactive mandate of the Commissioner's Office, each year a department (or departments) is selected for review and a Report Card is completed. The review is conducted to determine the extent to which the department is meeting its responsibilities under the *Access to Information Act*.

Justice Canada administers the *Access to Information Act* through the Access to Information and Privacy (ATIP) Office. The Director of the Office has fully delegated authority from the head of the institution to make all decisions under the Act. There is further delegation of authority to both departmental Counsel and Senior Access to Information and Privacy Advisors in the ATIP Office for making certain administrative decisions under the Act.

A critical component of the administration of the *Access to Information Act* is the leadership role of the Access to Information (ATI) Coordinator and senior management in a department. Senior management exercises leadership by identifying access to information as a departmental priority and then acting upon this by providing the appropriate resources, technology and policies. Together with the Access to Information Coordinator, it is important for senior management to create a culture of openness and access to departmental information. The Access to Information Coordinator is the departmental champion of access to information.

The Report Card identified a serious and persistent deemed-refusal situation in the department. The ATIP Director and Assistant Deputy Minister, Corporate Services have developed a Business Plan. Senior management has recently allocated resources as a short-term measure this fiscal year to start to address the deemed-refusal situation. The Business Plan also deals with other operational aspects of the ATIP Office that are not carried out but are needed in order to fulfill the office's responsibilities. A final decision has not been made on the Business Plan request for resources for FY 2005/2006 and subsequent years. The development of a Business Plan represents an excellent first step in both acknowledging and seeking to resolve the deemed-refusal situation.

This Report Card makes a number of recommendations for ATI operations in Justice Canada. Of particular note, an essential component in the administrative framework to support the operation of the *Access to Information Act* is the development of an ATI Operational Plan for the ATIP Office. The Plan would establish priorities, tasks and resources, deliverables, milestones, timeframes and responsibilities to implement the Business Plan and those recommendations in this Report Card that are accepted by the department. Other recommendations focus on the need to have up-to-date comprehensive documentation in place to promote consistent decision-making by individuals with responsibilities in the operations supporting the *Access to Information Act*. These individuals require ATI training to support the fulfillment of their responsibilities.

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**Table 1: Grading System Used for this Report Card**

| <b>Overall Grade</b> | <b>Overall ATI Operations</b>   |
|----------------------|---|
| A = Ideal            | <ul style="list-style-type: none"><li>• All policies, procedures, operational plan, training plan, staffing in place</li><li>• Evidence of senior management support including an ATI Vision</li><li>• Streamlined approval process with authority delegated to ATIP Coordinator</li><li>• 5% or less deemed refusals</li></ul> |
| B = Substantial      | <ul style="list-style-type: none"><li>• Minor deficiencies to the ideal that can easily be rectified</li><li>• 10% or less deemed refusals</li></ul>  |
| C = Borderline       | <ul style="list-style-type: none"><li>• Deficiencies to be dealt with</li></ul>   |
| D = Below Standard   | <ul style="list-style-type: none"><li>• Major deficiencies to be dealt with</li></ul>   |
| F = Red Alert        | <ul style="list-style-type: none"><li>• So many major deficiencies that a significant departmental effort is required to deal with their resolution or many major persistent deficiencies that have not been dealt with over the years</li></ul>  |

On this grading scale, Justice Canada rates an “F”. Its overall performance is Red Alert.

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## BACKGROUND & GLOSSARY OF TERMS

As part of the proactive mandate of the Commissioner's Office, each year a department (or departments) is selected for review and a Report Card is completed. The review is conducted to determine the extent to which the department is meeting its responsibilities under the *Access to Information Act*. The responsibilities and requirements can be set out in the Act or its Regulations such as the timelines required to respond to an access request. Or the responsibilities may emanate from Treasury Board of Canada Secretariat or departmental policies, procedures or other documentation in place to support the access to information process.

Fundamental to the access to information regime are the principles set out in the "Purposes" section of the *Access to Information Act*. These principles are:

- Government information should be available to the public
- Necessary exemptions to the right of access should be limited and specific
- Decisions on the disclosure of government information should be reviewed independently of government.

Previous Report Cards issued since 1999 focused on the deemed refusal of access requests, the situations that may have led to the deemed refusals and recommendations for eventually eliminating the problem. In 2005, the scope of the Report Cards was broadened. The scope now seeks to capture an extensive array of data and statistical information to determine how an ATI Office and a department are supporting their responsibilities under the Act. Where the Commissioner's Office identifies activities during the Report Card review that would enhance the access to information process in a department, a recommendation is made in the Report Card.

Justice Canada administers the *Access to Information Act* through the Access to Information and Privacy (ATIP) Office. The Director of the Office has fully delegated authority from the head of the institution to make all decisions under the Act. There is further delegation of authority to both departmental Counsel and Senior Access to Information and Privacy Advisors in the ATIP Office for making certain administrative decisions under the Act.

As part of the preparation of this Report Card, the ATIP Director was interviewed on January 14, 2005. A meeting was held with the Assistant Deputy Minister for Corporate Services on February 1, 2005. In addition, 14 access request files completed during the first nine months of FY 2004/2005 were selected at random and reviewed on February 1, 2005, and February 2, 2005.

The ATIP Director submitted the Report Card Questionnaire included at the end of this Report Card to the Office of the Information Commissioner. The Questionnaire provides

statistical and other information on the administration of the *Access to Information Act* in the department.

**Table 2: Glossary of Terms**

| Term   | Definition   |
|--|--|
| <b>ATI Coordinator (or ATIP Director or Coordinator)</b> | Each institution is required, by Treasury Board policy, to designate an official known as the Access to Information Coordinator. The Access to Information Coordinator is responsible for receiving access requests. Coordinators may also be delegated authority, from the Heads of institutions, to levy fees, claim extensions, give notices and invoke exemptions. The scope of a Coordinator’s authority varies from institution to institution.  |
| <b>Complaint Findings</b>                                | <p>The following categories are used by the Office of the Information Commissioner to identify the outcome of a complaint made to the Office under the <i>Access to Information Act</i>:</p> <ul style="list-style-type: none"> <li data-bbox="586 1010 1365 1157">➤ Well-founded      Complaints well-founded but not resolved, where the Commissioner sought consent from the requester to pursue the matters in Federal Court.</li> <li data-bbox="586 1167 1365 1272">➤ Resolved            Well-founded complaints resolved by remedial action satisfactory to the Commissioner.</li> <li data-bbox="586 1283 1365 1356">➤ Not Substantiated    Complaints considered not to be well founded.</li> <li data-bbox="586 1367 1365 1482">➤ Discontinued        Complaints discontinued, on request from the complainant, prior to a final resolution of the case.</li> </ul> |
| <b>Deemed Refusal</b>                                    | <p>The <i>Access to Information Act</i> describes a deemed refusal as follows:</p> <p style="padding-left: 40px;">10. (3) Where the head of a government institution fails to give access to a record requested under this Act or a part thereof within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access.</p>  |

| Term   | Definition   |
|--|--|
| <b>Extension</b>                                       | <p>Extensions to the initial 30-day time period to respond to an access request can be made in the following circumstances as described in the <i>Access to Information Act</i>:</p> <p>9(1) The head of a government institution may extend the time limit set out in section 7 or subsection 8(1) in respect of a request under this Act for a reasonable period of time, having regard to the circumstances, if:</p> <ul style="list-style-type: none"> <li>(a) the request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution,</li> <li>(b) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or</li> <li>(c) notice of the request is given pursuant to subsection 27(1) by giving notice of the extension and, in the circumstances set out in paragraph (a) or (b), the length of the extension, to the person who made the request within thirty days after the request is received, which notice shall contain a statement that the person has a right to make a complaint to the Information Commissioner about the extension.</li> </ul> |
| <b>Notice of Extension to Information Commissioner</b> | <p>The <i>Access to Information Act</i> requires a notice to the Information Commissioner for extensions taken in excess of thirty days.</p>   |
| <b>OPI</b>   | <p>Office of primary interest or the location in a department responsible for the subject matter to which the access request relates.</p>  |

| Term                             | Definition  |
|----------------------------------|---|
| <b>Pending</b>                   | <p>Unfinished requests or complaints:</p> <ul style="list-style-type: none"> <li data-bbox="539 369 1370 590">➤ Pending Previous      Requests or complaints that were unfinished at the close of the previous fiscal year, and thus carried forward into the reporting period (the fiscal period indicated on the pie chart).</li> <li data-bbox="539 604 1370 785">➤ Pending at year-end      Requests or complaints that are unfinished at the end of the reporting period (the subject fiscal year), which will be carried into the next fiscal period.</li> </ul>  |
| <b>Third Party</b>               | <p>For purposes of the <i>Access to Information Act</i>, any person, group of persons or organization other than the person that made an access request or a government institution.</p>  |
| <b>Treasury Board Guidelines</b> | <p>The <i>Access to Information Act</i> is based on the premise that the Head of each government institution is responsible for ensuring that their institution complies with the Act, and for making any required decisions. There is also provision for a designated Minister to undertake the government-wide coordination of the administration of the Act. The President of the Treasury Board fulfils this role.</p> <p>One of the statutory responsibilities of the designated Minister is to prepare and distribute to government institutions directives and guidelines concerning the operation of the <i>Access to Information Act</i> and <i>Regulations</i>.</p> |



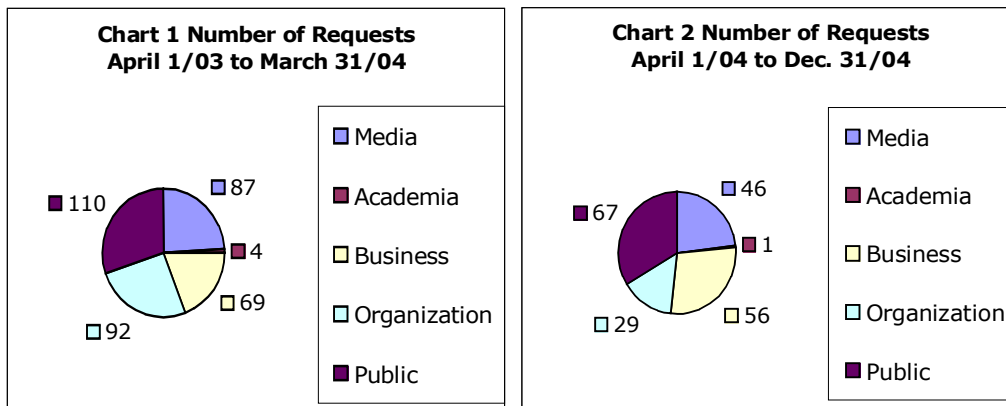
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## CHAPTER 1: THE ACCESS REQUEST PROCESS

The *Access to Information Act* provides a processing framework for access requests. Any member of the public who is a Canadian citizen or a permanent resident can make an access request. The Act provides a department with certain processing timelines and allows for extensions under certain circumstances to the initial 30-day time limit to respond to an access request. A request may be transferred and third parties may be consulted when an access request covers information affecting a third party. When records contain information that is exempt from disclosure or excluded from the Act, a department may deny that information to a requester.

### The Client

Requesters are categorized for statistical purposes. Government and departments use the statistics for various analysis purposes including the identification of trends. The number of requesters by category and recent fiscal year (FY) time periods for Justice Canada are illustrated in Charts 1 and 2.



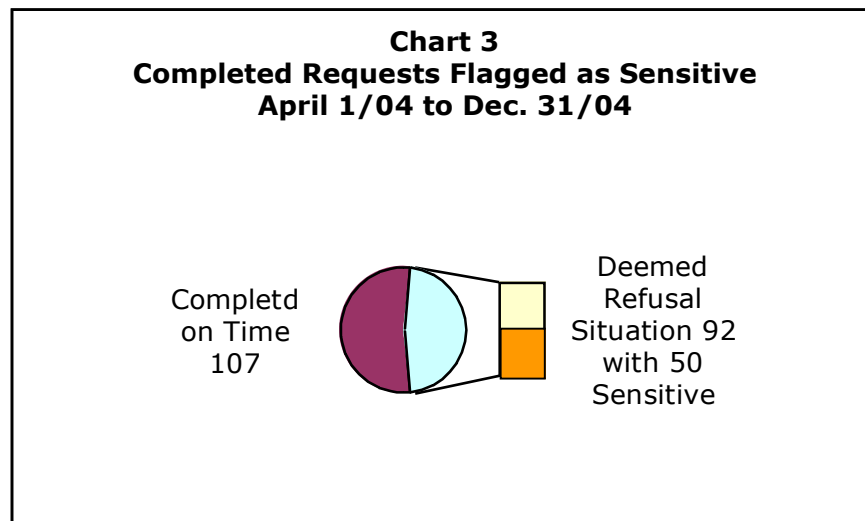
Justice Canada flags access requests that are considered “sensitive”. The Justice Canada ATIP Office does not have a definition of what is considered to be sensitive. The ATIP Director stated that it is self-evident from the topic(s) of an access request whether or not it is sensitive. The sensitive access request files are made available at the end of the access request process, but before the records are disclosed to the requester, to the Deputy Minister’s and Minister’s Office for review.

In FY 2003/2004, 202 of 362 or 56% of completed access requests were flagged as sensitive. In the first 9 months of FY 2004/2005, 90 of 199 or 45% of completed access requests were flagged as sensitive. There is no data currently available from *ATIPflow* to conduct an analysis on whether or not certain categories of requesters’ access requests were disproportionately flagged as sensitive.

The ATIP Director was not able to have information generated from *ATIPflow* on whether or not sensitive requests are processed disproportionately outside of the statutory

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timeframes of the *Access to Information Act*. The Director reported that, of the 199 completed access requests for the first 9 months of FY 2004/2005, 92 were or will be completed after the time limit required by the *Access to Information Act* (resulting in a deemed-refusal situation). Of the 92 access requests in a deemed-refusal situation, 50 or 54% were flagged as sensitive. Since the Act provides circumstances to extend the time required to process an access request, an inference may be made that access requests that are flagged as sensitive may be treated differently than other access requests. If that is the case, the requester with an access request flagged as sensitive is unfairly treated in the excess time taken to respond to their access request. The sensitive request delay numbers are shown in Chart 3.



**Recommendation 1.1:** The reason(s) for flagging an access request as sensitive be documented.

**Recommendation 1.2:** The completed access requests for FY 2004/2005 be reviewed to determine the reason(s) for delayed responses to access requests flagged as sensitive and measures be developed and implemented to eliminate the delays.

## Request Clarification

The number of access requests that required clarification in FY 2003/2004 was 49 or 14% of the access requests received. In the first nine months of FY 2004/2005, 37 or 18% of the access requests received required clarification. The ATIP Office always confirms in writing with the requester the clarification of the access request. The only criterion for an access request to require clarification is that the request is not clear or understood by an experienced ATIP Officer.

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## Pages Reviewed

The number of pages reviewed for access requests completed in FY 2003/2004 was 40,910 or an average of 113 pages per request. Of the total number of pages reviewed, 21,224 pages or 52% were disclosed in total or in part to the requester. In the first nine months of FY 2004/2005, 8,400 pages or an average of 42 pages per request were reviewed. Of the total number of pages reviewed, 5,391 or 63% were disclosed in total or in part to the requester.

Section 31 of the *Access to Information Act* requires that a complaint to the Office of the Information Commissioner must be made within one year of the date of the receipt of the access request. The ATIP Office will notify the requester of this requirement some of the time.

**Recommendation 1.3:** The *Assistant's Manual* of the ATIP Office be amended to include a requirement to notify a requester of the limitation of the right to complain when an access request is almost one year old.

The ATIP Office also reviews claims by other institutions to exempt records from disclosure using the solicitor-client privilege exemption in section 23 of the *Access to Information Act*. In FY 2003/2004, the ATIP Office received 598 consultations and reviewed 33,639 pages. In the first nine months of FY 2004/2005, 535 consultations were received and 32,188 pages reviewed.

## Fees Collected

In FY 2003/2004, the ATIP Office collected \$38,513.60 in fees for processing access requests. In the first nine months of FY 2004/2005, \$1,248.80 was collected.

Although the department does not have a fee waiver policy, 188 fee waivers amounting to \$15,973.40 were granted in FY 2003/2004 and a further 99 fee waivers amounting to \$3,530.20 were granted in the first nine months of FY 2004/2005.

**Recommendation 1.4:** The ATIP Office develop a fee waiver policy for access requests.

## Request Disposition

The ATIP Office reported a relatively high number of access requests that were either abandoned by the requester or the Office was unable to process. In FY 2003/2004, the disposition of 40% of the access requests processed was either “abandoned by the requester” or “unable to process”. In the first 9 months of FY 2004/2005, the percentage increased to 43%. The ATIP Director stated that the high number of requests in these

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categories reflects requesters misdirecting access requests to Justice Canada for varied topics including general justice matters dealt with by other jurisdictions and other levels of government. The ATIP Office will confirm with the requester that an access request will be treated as abandoned or unable to process. Because there are no documented criteria on when to categorize a request as either abandoned or unable to process, ATIP Officers may not be consistent in their categorization of the request.

**Recommendation 1.5:** The ATIP Office document the criteria for categorizing an access request as abandoned or unable to process.

When an access request is to be treated informally, the requester is consulted. There are currently no documented criteria to consider for treating an access request informally.

**Recommendation 1.6:** An ATI Officer's Manual for the ATIP Office incorporate criteria to consider for treating an access request informally.

### Time to Process Requests

The *Access to Information Act* allows 30 calendar days without an extension for departments to process an access request. Departments will usually have a request-processing model that allocates a portion of the 30 days to each departmental function that has a role in responding to access requests. An ATIP Office can then analyze the actual time taken by departmental functions against allocated time to determine where and/or what improvements might be required when actual time exceeds allocated time.

The Justice Canada ATIP Office has a request-processing model that is based on 23-25 calendar days. The ATIP Office was not able to use *ATIPflow* to produce comprehensive data on the average number of days to complete each departmental function's role in the access request process.

**Table 3: The Justice Canada Request-Processing Model**

| Processing Model - Stages      | Days Allocated |
|--------------------------------|----------------|
| ATI intake                     | 1-3            |
| OPI search                     | 5              |
| Records review and preparation | 7              |
| Legal                          | N/A            |

| Processing Model - Stages   | Days Allocated |
|-----------------------------|----------------|
| Communications              | N/A            |
| Approval or otherwise - OPI | 5              |
| Approval or otherwise - DMO | 4              |
| Approval or otherwise - MO  |                |
| ATI release                 | 1              |

**Recommendation 1.7:** The ATIP Office produce a weekly report that provides information on access requests that are required to be completed at each stage in the request-processing model in order to proactively manage the deemed-refusal situation.

The request-processing model allows up to 9 of 23-25 days for reviews. The reviews are at three levels for files flagged sensitive – OPI, Deputy Minister’s Office and Minister’s Office. The *Assistant’s Manual* states that changes may be made to the release package<sup>1</sup> as part of the review of the release package conducted by the Deputy Minister’s and Minister’s Offices. Because the ATIP Director has delegated authority to make decisions on the release of records, a “review” can become a de facto “approval”.

A department may have various internal communication needs to fulfill in order for information to be released under the *Access to Information Act*. The communication requirements or issue management process should be conducted in parallel to the access request process, not part of the process. Numerous review stages in the process only serve to delay the release of information to the requester.

**Recommendation 1.8:** The ATIP Office review the access request process to eliminate numerous review stages in the process.

<sup>1</sup> A release package is the material that will be provided to the requester.

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## Extensions Profile

Section 9(1) of the *Access to Information Act* provides circumstances when the initial thirty-day response time to an access request may be extended. These circumstances are:

- The request is for a large number of records or necessitates a search through a large number of records and meeting the original time limit would unreasonably interfere with the operations of the government institution.
- Consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit.
- Notice of the request is given pursuant to subsection 27(1) [to a third party who may have an interest in the disclosure of a record or part of a record].

The Justice Canada ATIP Office always sends the notice of the extension to the requester within the initial 30-day response time and where required always sends a copy of the notice to the Office of the Information Commissioner. When it is unlikely that an extended date will be met, the requester will be contacted almost always. The requester will not routinely be told of an expected response date or that the requester has a right to complain to the Information Commissioner. Justice Canada had only 9 extensions for volume of records for completed access requests in FY 2003/2004 and 10 for the first nine months of FY 2004/2005.

Justice Canada did have a significant number of consultations with another institution and on section 69 of the *Access to Information Act*. Section 69 of the Act deals with records excluded from coverage of the Act that are confidences of the Queen's Privy Council of Canada. Departments consult with the Privy Council Office to determine whether or not the exclusion applies to records.

In FY 2003/2004, Justice Canada extended the original 30-day time limit for consultation with another institution, domestic or foreign government or individual 65 times and for consultation with the Privy Council Office 38 times. In the first nine months of FY 2004/2005, extensions were taken 38 times to consult with another institution, domestic or foreign government or individual and 22 times to consult with the Privy Council Office.

A review of 14 randomly selected access request files completed between April 1, 2004, and December 31, 2004, indicated that consultations with other departments take considerably longer than planned resulting in deemed-refusal situations. Many of the consultations were multi-departmental. In addition, the ATIP Office is consulted by other departments and will review records.

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**Recommendation 1.9:** Where Justice Canada consults with or is consulted by a department routinely, the departments enter into a Memorandum of Understanding to cover their responsibilities in the consultation process including the provision of rationales for claiming exemptions.

**Recommendation 1.10:** The ATIP Office conduct an analysis of the completed access requests for FY 2003/2004 and FY 2004/2005 to determine the reasons for missed extension dates and develop a plan to resolve the situation.

**Recommendation 1.11:** If an extended date will not be met, the ATI office should routinely contact the requester to indicate it will be late, to provide an expected response date and of the right to complain to the Information Commissioner. This will not impact the deemed-refusal status once the extension date is missed. However, it will alleviate some of the requester's frustration and perhaps avert a complaint.

When a third party has to be consulted, the ATIP Office will follow the third-party procedure set out in section 28 of the *Access to Information Act*. A copy of the notice of the consultation is always sent to the Office of the Information Commissioner. In FY 2003/2004, for completed access requests, 15 third parties were consulted. During the first nine months of FY 2004/2005, for completed access requests, 4 third parties were consulted.

### **Transfer Profile**

In FY 2003/2004, 17 access requests were transferred to other institutions. In the first nine months of FY 2004/2005, 5 requests were transferred to other institutions. All transfers occurred as required within 15 days of the receipt of the access request.

### **Claims for Exemptions**

The ATIP Office stated that the Office almost always documents the rationale for claiming an exemption in the access request file. The rationale for claiming the exemption is prepared by the ATIP Office – sometimes in concert with the OPI. Although there is no documented requirement to place the rationale for exercising a discretionary exemption on file, the practice is informally followed by the ATIP Office.

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A random group of 14 completed access request files closed between April 1 and December 31, 2004, were reviewed. The review indicated generally that:

- The rationale for claiming exemptions was not documented where the rationale was not obvious from the information.
- There was no documentation to indicate whether or not the department exercised discretion in deciding whether to claim a discretionary exemption.
- In cases where there was a mandatory exemption, there was no documentation to determine if the department took into account an exception that could lead to the disclosure of the information.

**Recommendation 1.12:** The ATIP Office institute requirements for documenting the rationale for claiming all exemptions unless the rationale is obvious, for the exercise of discretion and for the consideration of exceptions to mandatory exemptions.



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## CHAPTER 2: DEEMED REFUSALS

Since Canadians have a right to timely access to information (i.e. 30 days or within extended times under specified conditions), a delayed response is equivalent to a denied response. Parliament articulated this “timeliness” requirement in subsection 10(3) of the *Access to Information Act*, which states:

Where the Head of a government institution fails to give access to a record requested under this Act or a part thereof within the time limits set out in this Act, the head of the institution shall, for the purposes of this Act, be deemed to have refused to give access.

As a result, the Information Commissioner has adopted the following standard as being the best measure of a department’s compliance with response deadlines: percentage of requests received which end as deemed refusals.

**Table 4: Deemed refusals**

| % of Deemed Refusals  | Comment                   | Grade |
|-----------------------|---------------------------|-------|
| 0-5 per cent          | Ideal compliance          | A     |
| 5-10 per cent         | Substantial compliance    | B     |
| 10-15 per cent        | Borderline compliance     | C     |
| 15-20 per cent        | Below standard compliance | D     |
| More than 20 per cent | Red alert                 | F     |

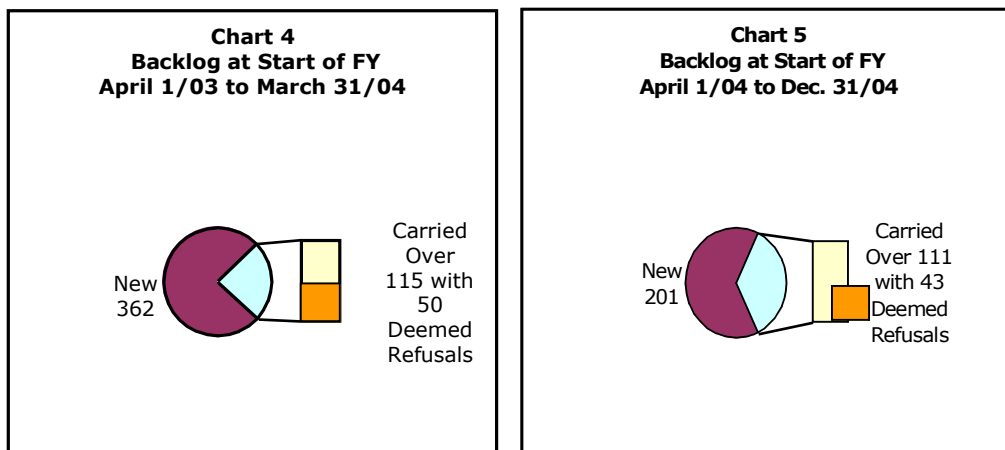
In FY 2003/2004, the department received 362 new access requests. Of the completed requests received in FY 2003/2004, 92 were completed in a deemed-refusal situation while a further 43 were carried over to the next FY in a deemed-refusal situation. The deemed-refusal ratio including access requests carried over at the start of FY 2003/2004 was 477:185 or 39% resulting in an “F” on the grading scale.

For the first nine months of FY 2004/2005, the department received 201 new access requests. By December 31, 2004, for access requests received in the first nine months, 34 access requests were completed in a deemed-refusal situation with a further 63 access requests uncompleted but in a deemed-refusal situation. The deemed-refusal ratio including access requests carried over at the start of FY 2004/2005 was 312:135 or 43% resulting in an “F” on the grading scale.

The ATIP Director’s view is that the deemed-refusal backlog is related in most cases to a lack of staffing in the ATIP Office for access request processing. Although contractors have been hired in the past, much of the effort has been focused on processing a series of single voluminous access requests. For example, one contractor was engaged to work on processing one access for a period of two years. The Director stated that, in her view,

OPIs are generally meeting the time requirements for retrieving records and for reviewing the access request release package. The review of the access request release packages for requests flagged as sensitive by the Deputy Minister’s Office and the Minister’s Office does not result in deemed-refusal situations. A random review of 14 completed files indicated that, in fact, the time requirements were met or exceeded by these two Offices. It was not possible to obtain data from *ATIPflow* that would illustrate how programs of the department were fulfilling their obligations for adhering to access request timelines. A random review of 14 files indicated that there may be a delay problem when consultations are required and the time to respond to the request is extended under section 9 of the *Access to Information Act*.

The following charts illustrate the backlog of access requests in a deemed-refusal situation at the start of each fiscal year.



At the start of 2003/2004, Justice Canada had 115 pending access requests with 50 or 43% in a deemed-refusal situation.

For FY 2004/2005, Justice Canada started the year with 111 pending requests with 43 or 39% in a deemed-refusal situation.

With 362 new requests received in FY 2003/2004 and 210 new access requests received in the first nine months of FY 2004/2005, a trend of a continuing backlog of access requests in a deemed-refusal situation at the start of the year represents a burden to the ATIP Office. This backlog constitutes a serious problem that must be dealt with to comply with the time requirements of the *Access to Information Act*.

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**Recommendation 2.1:** The ATIP Office produce a monthly report that provides the ATIP Office and Senior Management at Justice Canada with information on how well timelines are met when responding to access requests. The reports will provide senior management, OPIs and the ATIP Office with information needed to gauge overall departmental compliance with the Act's and department's time requirements for processing access requests.

**Recommendation 2.2:** The ATIP Director should exercise the delegation to answer requests within deadlines whether or not the review process has been completed.

**Recommendation 2.3:** Justice Canada should come into substantial compliance with the Act's deadlines no later than March 31, 2006.

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## CHAPTER 3: RESOURCE PROFILE

### Employee Profile

The processing of access requests is the responsibility of the ATIP Office under the direction of the ATIP Director. The ATIP Office is also responsible for processing requests under the *Privacy Act*. The ATIP Office offers training, participates in various working groups, reviews records from other departments claiming the exemption for solicitor/client privilege, provides policy advice, reviews information proposed for Internet posting and reviews harassment reports.

The staff of the ATIP Office allocated to ATI and all other activities is comprised of 17 employees — the Director, 2 Senior ATIP Advisors, 4 ATIP Advisors, 3 ATIP Analysts, 3 support staff and 1 ATIP Counsel for 0.6 of the time. In addition, there are contractors working in the ATIP Office on ATI. The ATIP Director is of the view that the number of staff is not sufficient to meet the ATI processing needs of the department and has submitted a number of Business Plans for Improvement. The most recent plan is discussed in the Leadership Section of this Report Card.

### Budget

The salary budget for FY 2003/2004 for the ATI component of the ATIP Office was \$490,000 for 8.25 person years. The ATI salary budget for 2002/2003 was \$489,349 for a utilization of 7.9 person years. The FY 2001/2002 budget was \$500,900 for 9 person years.

Contractors have made up a substantial part of the ATI operating budget<sup>2</sup>. The following amounts were spent on contractors: FY 2003/2004-\$226,528, FY 2002/2003-\$193,973, FY 2001/2002-\$146,525.

The ATI operating budget for FY 2003/2004 was \$389,000, for FY 2002/2003- \$211,727 and for FY 2001/2002-\$189,800.

The portion of the budget allocated for training in FY 2003/2004 was \$6,000. In each of the two previous fiscal years, \$5,000 was allocated to training.

**Recommendation 3.1:** The use of consultants to provide processing resources for long-term increases in the ATI workload should be discontinued as a staffing strategy.

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<sup>2</sup> The contractors were for the most part but not exclusively engaged in access request processing.

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## CHAPTER 4: LEADERSHIP FRAMEWORK

A critical component of the administration of the *Access to Information Act* is the leadership role of the ATI Coordinator and senior management in a department. Senior management exercises leadership by identifying access to information as a departmental priority and then acting upon this by providing the appropriate resources, technology and policies. Together with the ATI Coordinator, it is important for senior management to create a culture of openness and access to departmental information. The ATI Coordinator is the departmental champion of access to information. In this respect, the Coordinator and their staff provide the skilled policy and procedural leadership and training for the access process to work effectively in a department.

Justice Canada does not have in place a departmental access to information vision nor an operational plan for the ATIP Office. Each would serve as a basis for planning and operating the ATIP Office. Support of an access to information vision by senior management and communication of that vision to departmental employees would demonstrate a commitment to a culture of access to information.

One of the reasons for the backlog of access requests and the deemed-refusal situation was and is a chronic lack of resources needed to process access requests. The Director of the ATIP Office and the Assistant Deputy Minister of Corporate Services have developed and presented a potentially effective Business Case for additional resources to senior management. In 2004/2005, the ATIP Office was provided with additional funding to acquire ATIP *image* and to hire contractors to process some of the backlog of access requests. A decision has not been made on what, if any, additional resources will be provided to the ATIP Office in 2005/2006 and future years.

The Business Case is a good foundation to develop an ATI Operational Plan. An ATI Operational Plan should include priorities, tasks and resources, deliverables, milestones, timeframes and responsibilities. The Senior Management Committee of the department should monitor the Plan.

**Recommendation 4.1:** Senior management initiate the development of an access to information vision that can be communicated to departmental employees.

**Recommendation 4.2:** The ATIP Office develop an ATI Operational Plan to support the departmental access to information vision and Business Case.

There is a published *Assistant's Manual* designed for assistants who support the work of ATIP Advisors. There is no *Advisor's Manual* that could be used by new advisers for an introduction to the ATIP Office policies and procedures for processing access requests.

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An Advisor's Manual would also promote a consistent interpretation by all advisors of access request processing matters. The ATIP Office has issued a *User's Guide on the Application of the Access to Information Act*. The *Guide* defines the responsibilities of OPIs.

The *Guide* at page 17 in fact does cover all of the points above. It would appear that over time the process has deteriorated. The *Guide* was published in July 2002 and has not been updated.

**Recommendation 4.3:** The ATIP Office develop an Advisor's Manual on the policies and procedures for processing access requests.

**Recommendation 4.4:** Department OPIs providing advice on what might be exempt from disclosure under the *Access to Information Act* be made aware of their responsibilities for documenting the rationale for claiming an exemption and a demonstration of the proper exercise of administrative discretion.

**Recommendation 4.5:** The *User's Guide* be updated by the ATIP Office.

**Recommendation 4.6:** The ATIP Office develop criteria to consider for exercising discretion on whether or not to release information considered subject to a discretionary exemption.

The ATIP Office does not have a published ATI Training Plan. Training is an important foundation in creating a culture of access to information. As well, each manager and employee to varying degrees must be aware of their responsibilities for the management of information and access to it. A Training Plan will allow the ATIP Office to initially focus resources on priority areas where training will have the highest level of return.

**Recommendation 4.7:** The ATIP Office develop and implement an Access to Information Training Plan.

The ATIP Office is implementing *ATIPimage*, which scans pages retrieved in response to an access request. An ATIP Officer can then review and prepare information on the electronic record for disclosure or non-disclosure.

The ATIP Office uses *ATIPflow*, but that technology as developed is not used to its full advantage as a proactive management tool. Generally, the use of *ATIPflow* is limited to statistical reporting and file control.

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**Recommendation 4.8:** The ATIP Office review its use of *ATIPflow* to provide proactive management of ATIP administration.

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## CHAPTER 5: INFORMATION MANAGEMENT FRAMEWORK

The *Access to Information Act* relies on records being created or received, indexed and filed in a way that they are readily retrievable. This applies to both paper and electronic records.

Justice Canada is implementing the Treasury Board Secretariat *Policy on the Management of Government Information*. The department has completed a Capacity Assessment that provided a qualitative assessment of the department's ability to implement the *Policy*. The department has approved in principle a strategic framework for the renewal of the Information Management Program for the department.

The department is undertaking a major initiative to revise the entire classification structure for records of the department. The first phase of the project - the development of a national superstructure for information classification - is underway.

Justice Canada has undertaken a number of activities to provide access to information using alternative methods. These activities are seen as providing proactive disclosure of information. The activities to date include the routine disclosure of travel and hospitality expenses and departmental contracts by posting the information periodically on the Justice Canada Internet site. The department is encouraged to investigate what other information might be proactively disclosed.

|  |
|--|
| <p><b>Recommendation 5.1:</b> Justice Canada as part of the renewal of the Information Management Program determine categories of information that may be disclosed proactively.</p> |
|--|

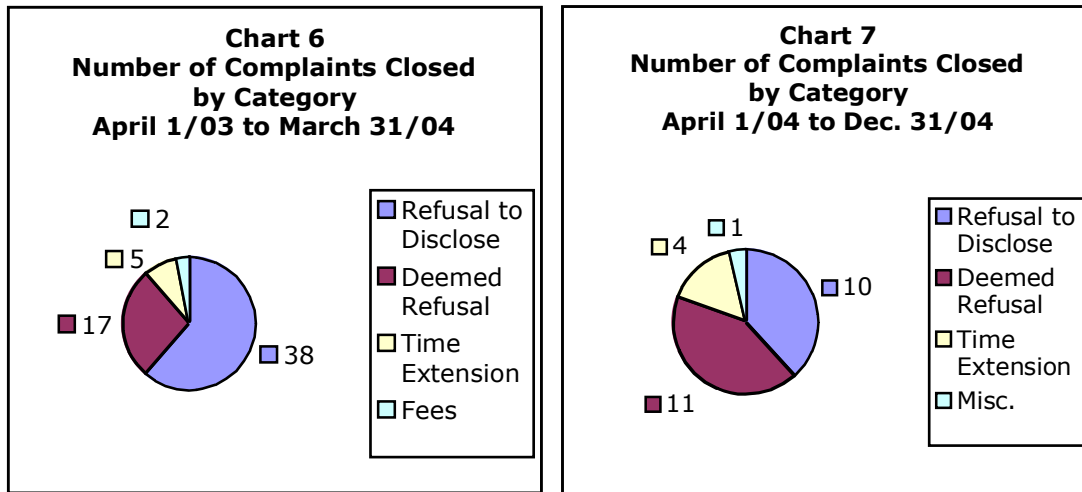


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## CHAPTER 6: COMPLAINT PROFILE

### Complaints—Deemed-Refusals

The Office of the Information Commissioner completed the investigation of 62 complaints made against Justice Canada under the *Access to Information Act* in FY 2003/2004. For the first nine months of FY 2004/2005, a further 26 complaint investigations were completed. Charts 6 and 7 illustrate the reasons that the complaints were made by a requester.



Of note is the fact that the deemed-refusal complaints against Justice Canada constituted 27% of the complaint workload for that department at the Office of the Information Commissioner in FY 2003/2004. For the first nine months of FY 2004/2005, the percentage increased to 42%.

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## CHAPTER 7: CONCLUSION

This Report Card makes a number of recommendations for ATI operations in Justice Canada. Of particular note, an essential component in the administrative framework to support the operation of the *Access to Information Act* is the development of an ATI Operational Plan for the ATIP Office. The Plan would establish priorities, tasks and resources, deliverables, milestones, timeframes and responsibilities to implement the Business Plan and those recommendations in this Report Card that are accepted by the department. Other recommendations focus on the need to have up-to-date comprehensive documentation in place to promote consistent decision-making by individuals with responsibilities in the operations supporting the *Access to Information Act*. These individuals require ATI training to support the fulfillment of their responsibilities.

**Table 1: The Grading System Used for this Report Card**

| Overall Grade      | Overall ATI Operations  |
|--------------------|---|
| A = Ideal          | <ul style="list-style-type: none"><li>• All policies, procedures, operational plan, training plan, staffing in place</li><li>• Evidence of senior management support including an ATI Vision</li><li>• Streamlined approval process with authority delegated to ATIP Coordinator</li><li>• 5% or less deemed refusals</li></ul> |
| B = Substantial    | <ul style="list-style-type: none"><li>• Minor deficiencies to the ideal that can easily be rectified</li><li>• 10% or less deemed refusals</li></ul>  |
| C = Borderline     | <ul style="list-style-type: none"><li>• Deficiencies to be dealt with</li></ul>   |
| D = Below Standard | <ul style="list-style-type: none"><li>• Major deficiencies to be dealt with</li></ul>   |
| F = Red Alert      | <ul style="list-style-type: none"><li>• So many major deficiencies that a significant departmental effort is required to deal with their resolution or many major persistent deficiencies that have not been dealt with over the years</li></ul>  |

On this grading scale, Justice Canada rates an “F”. Its overall performance is Red Alert.

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## LIST OF RECOMMENDATIONS

The following is a list of recommendation by chapter.

### Chapter 1: The Access Request Process

**Recommendation 1.1:** The reason(s) for flagging an access request as sensitive be documented.

**Recommendation 1.2:** The completed access requests for FY 2004/2005 be reviewed to determine the reason(s) for delayed responses to access requests flagged as sensitive and measures be developed and implemented to eliminate the delays.

**Recommendation 1.3:** The Assistant's Manual of the ATIP Office be amended to include a requirement to notify a requester of the limitation of the right to complain when an access request is almost one year old.

**Recommendation 1.4:** The ATIP Office develop a fee waiver policy for access requests.

**Recommendation 1.5:** The ATIP Office document the criteria for categorizing an access request as abandoned or unable to process.

**Recommendation 1.6:** An ATI Officer's Manual for the ATIP Office incorporate criteria to consider for treating an access request informally.

**Recommendation 1.7:** The ATIP Office produce a weekly report that provides information on access requests that are required to be completed at each stage in the request-processing model in order to proactively manage the deemed-refusal situation.

**Recommendation 1.8:** The ATIP Office review the access request process to eliminate numerous review stages in the process.

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**Recommendation 1.9:** Where Justice Canada consults with or is consulted by a department routinely, the departments enter into a Memorandum of Understanding to cover their responsibilities in the consultation process including the provision of rationales for claiming exemptions.

**Recommendation 1.10:** The ATIP Office conduct an analysis of the completed access requests for FY 2003/2004 and FY 2004/2005 to determine the reasons for missed extension dates and develop a plan to resolve the situation.

**Recommendation 1.11:** If an extended date will not be met, the ATI office should routinely contact the requester to indicate it will be late, to provide an expected response date and of the right to complain to the Information Commissioner. This will not impact the deemed-refusal status once the extension date is missed. However, it will alleviate some of the requester's frustration and perhaps avert a complaint.

**Recommendation 1.12:** The ATIP Office institute requirements for documenting the rationale for claiming all exemptions unless the rationale is obvious, for the exercise of discretion and for the consideration of exceptions to mandatory exemptions.

## Chapter 2: Deemed Refusals

**Recommendation 2.1:** The ATIP Office produce a monthly report that provides the ATIP Office and Senior Management at Justice Canada with information on how well timelines are met when responding to access requests. The reports will provide senior management, OPIs and the ATIP Office with information needed to gauge overall departmental compliance with the Act's and department's time requirements for processing access requests.

**Recommendation 2.2:** The ATIP Director should exercise the delegation to answer requests within deadlines whether or not the review process has been completed.

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**Recommendation 2.3:** Justice Canada should come into substantial compliance with the Act's deadlines no later than March 31, 2006.

### Chapter 3: Resource Profile

**Recommendation 3.1:** The use of consultants to provide processing resources for long-term increases in the ATI workload should be discontinued as a staffing strategy.

### Chapter 4: Leadership Framework

**Recommendation 4.1:** Senior management initiate the development of an access to information vision that can be communicated to departmental employees.

**Recommendation 4.2:** The ATIP Office develop an ATI Operational Plan to support the departmental access to information vision and Business Case.

**Recommendation 4.3:** The ATIP Office develop an *Advisor's Manual* on the policies and procedures for processing access requests.

**Recommendation 4.4:** Department OPIs providing advice on what might be exempt from disclosure under the *Access to Information Act* be made aware of their responsibilities for documenting the rationale for claiming an exemption and a demonstration of the proper exercise of administrative discretion.

**Recommendation 4.5:** The *User's Guide* be updated by the ATIP Office.

**Recommendation 4.6:** The ATIP Office develop criteria to consider for exercising discretion on whether or not to release information considered subject to a discretionary exemption.

**Recommendation 4.7:** The ATIP Office develop and implement an Access to Information Training Plan.

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**Recommendation 4.8:** The ATIP Office review its use of ATIP flow to provide proactive management of ATIP administration.

## **Chapter 5: Information Management Framework**

**Recommendation 5.1:** Justice Canada as part of the renewal of the Information Management Program determine categories of information that may be disclosed proactively.

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**Office of the Information Commissioner of Canada**

**REPORT CARD QUESTIONNAIRE**

**JUSTICE CANADA**

# 1. ACCESS REQUEST PROCESS

## 1.1 THE CLIENT (REQUESTER)

### 1.1.1 Client Profile

| Source       | Number of Requests        |                          |
|--------------|---------------------------|--------------------------|
|              | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
| Media        | 87                        | 46                       |
| Academia     | 4                         | 1                        |
| Business     | 69                        | 56                       |
| Organization | 92                        | 30                       |
| Public       | 110                       | 68                       |
| Other        | N/A                       | N/A                      |
| Total        | 362                       | 210                      |

### 1.1.2 Request Categorization

**Does the ATI Office categorize access requests in any manner (for example, sensitive, routine and so on)?**

Yes  No

If Yes, please list and define the categories and if possible indicate the number of access requests in each category.

| Category  | Definition of Category                            | Number of Requests        |                          |
|-----------|---|---------------------------|--------------------------|
|           |   | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
| Routine   | Records sent out directly from ATIP Office        | 160                       | 111                      |
| Sensitive | Records sent to DMO/MO for info before disclosure | 202                       | 90                       |
|           |   | -                         | -                        |
|           |   | -                         | -                        |
|           |   | -                         | -                        |
|           |   | -                         | -                        |



### 1.1.3 Request Clarification

|   |                           |                          |
|---|---------------------------|--------------------------|
| <b>1.1.3.1 Access requests where clarification was sought</b> | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
| Number of Requests  | 49                        | 37                       |

#### 1.1.3.2 Are there documented criteria for seeking clarification?

|     |  |    |   |
|-----|--|----|---|
| Yes |  | No | X |
|-----|--|----|---|

If Yes, please provide a copy with the completed questionnaire.

*The only "criteria" is that the request is not clear or understood by an experienced ATIP Officer.*

#### 1.1.3.3 If a request is clarified or modified, does the ATI Office confirm, in writing, its understanding of the revised request? (Please provide any guidelines followed in this regard with the completed questionnaire.)

|        |   |               |  |           |  |        |  |       |  |
|--------|---|---------------|--|-----------|--|--------|--|-------|--|
| Always | X | Almost always |  | Sometimes |  | Rarely |  | Never |  |
|--------|---|---------------|--|-----------|--|--------|--|-------|--|

### 1.1.4 Client Service

| 1.1.4.1 Disclosure to Client   | Number                    |                          |
|--|---------------------------|--------------------------|
|  | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
| Pages reviewed   | 40, 910                   | 8,477                    |
| Pages disclosed in total or in part  | 21, 224                   | 5,391                    |
| Pages for consultation under paragraphs 9(1)(a) and/or (b) and/or notification under (c) | N/A                       | N/A                      |

*Do not keep separate stats.*

#### 1.1.4.2 If a request is almost one year old, does the ATI Office notify the requester about section 31 and the one-year limitation on the right to complain from the time the request is made? (Please attach any written guidelines you follow in this regard.)

|        |  |               |  |           |   |        |  |       |  |
|--------|--|---------------|--|-----------|---|--------|--|-------|--|
| Always |  | Almost always |  | Sometimes | X | Rarely |  | Never |  |
|--------|--|---------------|--|-----------|---|--------|--|-------|--|

| 1.1.4.3 Fees Collected/Waived         | Number/Amount             |                          |
|---------------------------------------|---------------------------|--------------------------|
|                                       | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
| Amount of application fees collected  | \$ 1,700.00               | \$ 850.00                |
| Amount of photocopying fees collected | \$ 3,018.00               | \$ 78.80                 |
| Amount of search fees collected       | \$ 33,522.50              | \$ 320.00                |
| Amount of preparation fees collected  | \$ 273.10                 | \$                       |
| Amount of programming fees collected  | \$ 0                      | \$                       |
| Total                                 | \$ 38,513.60              | \$ 1248.80               |
| Number of fee waivers sought          |                           |                          |
| Number of fee waivers granted         | 188                       | 99                       |
| Amount of fees waived                 | \$ 15,973.40              | \$ 3530.20               |

**1.1.4.4 Does the department have a written fee waiver policy?**

|     |                          |    |                                     |
|-----|--------------------------|----|-------------------------------------|
| Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |
|-----|--------------------------|----|-------------------------------------|

If Yes, please provide a copy with the completed questionnaire.

**1.1.4.5 If the \$5 application fee is not included with an access request and if the request concerns a matter under the *Privacy Act*, is the requester consulted on which Act to process the request under?**

|        |                          |               |                                     |           |                          |        |                          |       |                          |
|--------|--------------------------|---------------|-------------------------------------|-----------|--------------------------|--------|--------------------------|-------|--------------------------|
| Always | <input type="checkbox"/> | Almost always | <input checked="" type="checkbox"/> | Sometimes | <input type="checkbox"/> | Rarely | <input type="checkbox"/> | Never | <input type="checkbox"/> |
|--------|--------------------------|---------------|-------------------------------------|-----------|--------------------------|--------|--------------------------|-------|--------------------------|

**1.1.5 Request Disposition**

| Disposition of Completed Requests For the Period | Number of Requests        |                          |
|--|---------------------------|--------------------------|
|  | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
| All disclosed                                    | 61                        | 24                       |
| Disclosed in part                                | 130                       | 62                       |
| Nothing disclosed (excluded)                     | 1                         | 1                        |
| Nothing disclosed (exempt)                       | 11                        | 2                        |
| Transferred                                      | 17                        | 5                        |
| Unable to process                                | 74                        | 44                       |
| Abandoned by applicant                           | 73                        | 30                       |

| Disposition of Completed Requests<br>For the Period | Number of Requests           |                             |
|---|------------------------------|-----------------------------|
|   | April 1/03 to<br>March 31/04 | April 1/04 to<br>Dec. 31/04 |
| Treated informally                                  | 0                            | 3                           |
| Total completed                                     | 367                          | 171                         |
| Carried forward                                     | 110                          | 141                         |

### 1.1.6 Informal Treatment of Requests

**1.1.6.1 If access requests are treated informally, is this done in consultation with the requester?**

|        |                                     |               |                          |           |                          |        |                          |       |                          |
|--------|-------------------------------------|---------------|--------------------------|-----------|--------------------------|--------|--------------------------|-------|--------------------------|
| Always | <input checked="" type="checkbox"/> | Almost always | <input type="checkbox"/> | Sometimes | <input type="checkbox"/> | Rarely | <input type="checkbox"/> | Never | <input type="checkbox"/> |
|--------|-------------------------------------|---------------|--------------------------|-----------|--------------------------|--------|--------------------------|-------|--------------------------|

**1.1.6.2 Are there documented criteria for treating an access request informally?**

|     |                          |    |                                     |
|-----|--------------------------|----|-------------------------------------|
| Yes | <input type="checkbox"/> | No | <input checked="" type="checkbox"/> |
|-----|--------------------------|----|-------------------------------------|

If Yes, please provide a copy with the completed questionnaire.

## 1.2 REQUEST PROCESSING

### 1.2.1 Time to Process Requests

| Processing Model - Stages      | April 1/03 to Mar. 31/04 |                           | April 1/04 to Dec. 31/04 |                           |
|--------------------------------|--------------------------|---------------------------|--------------------------|---------------------------|
|                                | Days<br>Allocated        | Average<br>Actual<br>Days | Days<br>Allocated        | Average<br>Actual<br>Days |
| ATI intake                     | 1-3                      |                           | 1-3                      |                           |
| OPI search                     | 5                        |                           | 5                        |                           |
| Records review and preparation | 7                        |                           | 7                        |                           |
| Legal                          | N/A                      |                           | N/A                      |                           |
| Communications                 | N/A                      |                           | N/A                      |                           |
| Approval or otherwise – OPI    | 5                        |                           | 5                        |                           |
| Approval or otherwise – DMO    | 4                        |                           | 4                        |                           |

| Processing Model - Stages  | April 1/03 to Mar. 31/04 |                     | April 1/04 to Dec. 31/04 |                     |
|----------------------------|--------------------------|---------------------|--------------------------|---------------------|
|                            | Days Allocated           | Average Actual Days | Days Allocated           | Average Actual Days |
| Approval or otherwise – MO |                          |                     |                          |                     |
| ATI release                | 1                        |                     | 1                        |                     |

## 1.2.2 Extensions Profile

### 1.2.2.1 When extensions are necessary under subsection 9(1), are notices sent to the requester within 30 days?

|        |   |               |  |           |  |        |  |       |  |
|--------|---|---------------|--|-----------|--|--------|--|-------|--|
| Always | X | Almost always |  | Sometimes |  | Rarely |  | Never |  |
|--------|---|---------------|--|-----------|--|--------|--|-------|--|

### 1.2.2.2 When notice is sent under paragraphs 9 (1)(a) and/or (b) extending the time limit for more than thirty days, how often is a copy of the notice sent to the Office of the Information Commissioner?

|        |   |               |  |           |  |        |  |       |  |
|--------|---|---------------|--|-----------|--|--------|--|-------|--|
| Always | X | Almost always |  | Sometimes |  | Rarely |  | Never |  |
|--------|---|---------------|--|-----------|--|--------|--|-------|--|

### 1.2.2.3 Following an extension, if it is unlikely that the extended date will be met, does the ATI Office contact the requester to indicate:

a) The response will be late

|        |  |               |   |           |  |        |  |       |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|
| Always |  | Almost always | X | Sometimes |  | Rarely |  | Never |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|

b) Of an expected date for the final response

|        |  |               |  |           |   |        |  |       |  |
|--------|--|---------------|--|-----------|---|--------|--|-------|--|
| Always |  | Almost always |  | Sometimes | X | Rarely |  | Never |  |
|--------|--|---------------|--|-----------|---|--------|--|-------|--|

c) Of the right to complain to the Information Commissioner

|        |  |               |   |           |  |        |  |       |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|
| Always |  | Almost always | X | Sometimes |  | Rarely |  | Never |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|

| 1.2.2.4 Extensions Under Paragraph 9(1)(a)                        | Number of Extensions      |                          |
|---|---------------------------|--------------------------|
|   | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
| For volume (search for large number of records) 30 days and under | N/A                       | N/A                      |

| 1.2.2.4 Extensions Under Paragraph 9(1)(a)                            | Number of Extensions      |                          |
|---|---------------------------|--------------------------|
|   | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
| For volume (search for large number of records) 31 days and over      | N/A                       | N/A                      |
| For volume (search through large number of records) 30 days and under | 3                         | 2                        |
| For volume (search through large number of records) 31 days and over  | 6                         | 8                        |

**1.2.2.5 If consultations are necessary under paragraph 9(1)(b), are these sent out as soon as the need has been identified?**

|        |  |               |   |           |  |        |  |       |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|
| Always |  | Almost always | X | Sometimes |  | Rarely |  | Never |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|

| 1.2.2.6 Extensions Under Paragraph 9(1)(b)* | Number of Extensions      |                          |
|---|---------------------------|--------------------------|
|   | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
| For consultation with another institution   | 65                        | 38                       |
| For consultation with domestic government   | -                         | -                        |
| For consultation with foreign government    | -                         | -                        |
| For consultation with individual            | -                         | -                        |
| For consultation for section 69             | 38                        | 22                       |

*\* All 9(1)(b) combined*

**1.2.2.7 If a request concerns third-party records and consultations are necessary, are consultations taken under paragraph 9(1)(c)?**

|        |  |               |   |           |  |        |  |       |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|
| Always |  | Almost always | X | Sometimes |  | Rarely |  | Never |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|

**1.2.2.8 If a request concerns third-party records and consultations are necessary, are consultations taken under paragraph 9(1)(b)?**

|        |  |               |  |           |  |        |   |       |  |
|--------|--|---------------|--|-----------|--|--------|---|-------|--|
| Always |  | Almost always |  | Sometimes |  | Rarely | X | Never |  |
|--------|--|---------------|--|-----------|--|--------|---|-------|--|

**1.2.2.9 Are third-party notices sent as soon as the need for the notice is identified?**

|        |  |               |   |           |  |        |  |       |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|
| Always |  | Almost always | X | Sometimes |  | Rarely |  | Never |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|

**1.2.2.10 When notice is sent under paragraph 9(1)(c), how often is a copy of the notice sent to the Office of the Information Commissioner?**

|        |   |               |  |           |  |        |  |       |  |
|--------|---|---------------|--|-----------|--|--------|--|-------|--|
| Always | X | Almost always |  | Sometimes |  | Rarely |  | Never |  |
|--------|---|---------------|--|-----------|--|--------|--|-------|--|

**1.2.2.11 Is the third-party timing process (as set out in section 28) observed?**

|     |   |    |  |
|-----|---|----|--|
| Yes | x | No |  |
|-----|---|----|--|

If No, please provide comments.

|     |
|-----|
| N/A |
|-----|

**1.2.2.12 Does the ATI Office provide a partial release of the requested records for portions of the request that are not involved in the consultation process under paragraphs 9(1)(b) and/or 9(1)(c)?**

|        |  |               |   |           |  |        |  |       |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|
| Always |  | Almost always | X | Sometimes |  | Rarely |  | Never |  |
|--------|--|---------------|---|-----------|--|--------|--|-------|--|

| <b>1.2.2.13 Notification Under Paragraph 9(1)(c)</b>  | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
|---|---------------------------|--------------------------|
| Number of requests where third party consulted  | 15                        | 4                        |
| Average length of time to receive representations from third parties                          | -                         | -                        |
| Average length of time to make a decision after receipt of representations from third parties | -                         | -                        |
| Number of notices under section 27  | -                         | -                        |
| Number of notices for which section 27 time frame was not met                                 | -                         | -                        |
| Number of requests for which paragraph 28(1)(b) timeframe was not met                         | -                         | -                        |

### 1.2.3 Transfer Profile

| Transfers                  | Number of Transfers       |                          |
|----------------------------|---------------------------|--------------------------|
|                            | April 1/03 to March 31/04 | April 1/04 to Dec. 31/04 |
| Transferred within 15 Days | 17                        | 5                        |
| Transferred over 15 Days   | 0                         | 0                        |
| Total transferred          | 17                        | 5                        |
| Transfers refused          | 0                         | 0                        |

### 1.3 CLAIMS FOR EXEMPTIONS

Please provide any relevant documentation for the following questions.

| Questions   | Yes | No | Comments  |
|---|-----|----|---|
| <b>1.3.1 Is there a rationale on file when an exemption is invoked?</b>   | X   |    | Almost always – in order to clarify/justify position for Director in sign off |
| <b>1.3.2 Is the exemption rationale prepared by the OPIs?</b>   | X   |    | Sometimes – always in concert with ATIP Officials                             |
| <b>1.3.3 Is the exemption rationale prepared by ATI?</b>  | X   |    | Most times – through discussions with OPIs                                    |
| <b>1.3.4 Is there a documented exemption challenge function in ATI if the rationale is prepared by OPIs?</b>            |     | X  |   |
| <b>1.3.5 Is there a documented requirement to place the rationale for exercising a discretionary exemption on file?</b> |     | X  | Informal practice followed in ATIP Office                                     |

## 2. DEEMED REFUSALS

| <b>Statistics for Analysis<br/>of<br/>Deemed-Refusal Requests</b>      |   |                                      |                                     |
|--|---|--------------------------------------|-------------------------------------|
| <b>Part A: Requests carried over from the prior<br/>fiscal period.</b> |   | <b>April 1/03 to<br/>March 31/04</b> | <b>April 1/04 to<br/>Dec. 31/04</b> |
| <b>1.</b>  | Number of requests carried over:  | 115                                  | 111                                 |
| <b>2.</b>  | Requests carried over from the prior fiscal — in a deemed refusal situation on the first day of the new fiscal: | 50                                   | 43                                  |
| <b>Part B: New Requests — Exclude requests<br/>included in Part A.</b> |   | <b>April 1/03 to<br/>March 31/04</b> | <b>April 1/04 to<br/>Dec. 31/04</b> |
| <b>3.</b>  | <b>Number of requests received during the fiscal period:</b>  | 362                                  | 199                                 |
| <b>4.A</b>   | <b>How many were processed <i>within</i> the 30-day statutory time limit?</b>                                   | 160                                  | 73                                  |
| <b>4.B</b>   | <b>How many were processed beyond the 30-day statutory time limit <i>where no extension was claimed</i>?</b>    | 60                                   | 27                                  |
| <b>4.C</b>   | <b>How long after the statutory time limit did it take to respond <i>where no extension was claimed</i>?</b>    |                                      |                                     |
|  | 1-30 days:  | 40                                   | 15                                  |
|  | 31-60 days:   | 7                                    | 5                                   |
|  | 61-90 days:   | 4                                    | 2                                   |
|  | Over 91 days:   | 9                                    | 5                                   |
| <b>5.</b>  | <b>How many were extended pursuant to section 9?</b>  | 88                                   | 49                                  |
| <b>6.A</b>   | <b>How many were processed <i>within</i> the extended time limit?</b>   | 20                                   | 7                                   |
| <b>6.B</b>   | <b>How many exceeded the extended time limit?</b>   | 32                                   | 2                                   |
| <b>6.C</b>   | <b>How long after the expiry of the extended deadline did it take to respond?</b>                               |                                      |                                     |
|  | 1-30 days:  | 13                                   | 2                                   |
|  | 31-60 days:   | 7                                    | 0                                   |



| <b>Statistics for Analysis<br/>of<br/>Deemed-Refusal Requests</b> |  |    |           |
|---|--|----|-----------|
|   | 61-90 days:  | 1  | 0         |
|   | Over 91 days:  | 11 | 0         |
| <b>7.</b>   | <b>As of December 31, 2004, how many requests are in a deemed refusal situation?</b>   |    | <b>63</b> |
| <b>Part C: Contributing Factors</b>                               |  |    |           |
| <b>8.</b>   | <b>Use this area to describe any particular aspect about a request or type of request that may impact on the difficulty or time necessary to complete a request:</b>   |    |           |
|   | <i>Volume / search and accessibility of large litigation files which are being dealt with in court as the same time as an access request comes in especially owing to the central agency function the Department of Justice!</i> |    |           |

### 3. RESOURCE PROFILE

#### 3.1 Employee Profile

Please list all ATI Office employees.

| Full-time Position   | Classification | Number | Years of Experience |
|----------------------|----------------|--------|---------------------|
| Director             | EX-01          | 1      | 14                  |
| Senior ATIP          | PM-05          | 2      | 10 average          |
| ATIP Advisor         | PM-04          | 4      | 6 average           |
| ATIP Analyst         | PM-03 / 02     | 3      | 3 average           |
| ATIP Admin Assistant | AS-02          | 1      | 1                   |
| ATIP Admin Support   | CR-05          | 3      | 4 average           |
| Part-time Position   | Classification | Number | Years of Experience |
| ATIP Counsel (.6 PY) | LA-2A          | 1      | 1                   |

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### 3.2 Salary Dollar Budget for ATI Office

| Fiscal Year | Budget Allocated * | Budget Used    | FTEs Allocated | FTEs Used |
|-------------|--------------------|----------------|----------------|-----------|
| 2003/2004   | -                  | \$ 490, 000.00 | -              | 8.25      |
| 2002/2003   | -                  | \$ 489, 349.70 | -              | 7.9       |
| 2001/2002   | -                  | \$ 500, 900.00 | -              | 9.0       |

\* Budget allocated not define specifically for ATI only, allocation was ATIP total.

### 3.3 Operating Budget for ATI Office

| Fiscal Year | Budget Allocated | Budget Used    |
|-------------|------------------|----------------|
| 2003/2004   | -                | \$ 389, 000.00 |
| 2002/2003   | -                | \$ 211, 727.60 |
| 2001/2002   | -                | \$ 189, 800.00 |

### 3.4 Breakdown of ATI Office Operating Budget Used or Set Aside for ATI Training or Training Materials

| Fiscal Year | ATI Staff Training | Departmental ATI Training |
|-------------|--------------------|---------------------------|
| 2003/2004   | \$ 6, 000          | N/A                       |
| 2002/2003   | \$ 5, 000          | N/A                       |
| 2001/2002   | \$ 5, 000          | N/A                       |

\* ATI & Privacy not separated.

### 3.5 Breakdown of ATI Office Operating Budget Used or Set Aside for ATI Consultants

| Fiscal Year | Budget Allocated | Budget Used    |
|-------------|------------------|----------------|
| 2003/2004   | -                | \$ 226,528.50  |
| 2002/2003   | -                | \$ 193, 973.80 |
| 2001/2002   | -                | \$ 146, 525.07 |

## 4. LEADERSHIP FRAMEWORK

Please provide any relevant material with your completed questionnaire to support a “Yes” answer in the table below.

| Question   | Yes | No | Comments              |
|--|-----|----|-----------------------|
| <b>4.1.1 Is there a documented ATI Vision?</b>   |     | X  |                       |
| <b>4.1.2 Is there a published ATIP Operational Plan with clearly defined objectives, deliverables, time frames and responsibilities?</b> |     | X  |                       |
| <b>4.1.3 Is there a published ATIP Policy and Procedures Manual for departmental staff?</b>  | X   |    | See attached annex    |
| <b>4.1.4 Is the ATIP Policy and Procedures Manual kept up-to-date through at least a bi-annual review process?</b>                       |     | X  |                       |
| <b>4.1.5 Are OPIs ATI responsibilities clearly defined through documentation provided to OPIs?</b>                                       | X   |    |                       |
| <b>4.1.6 Is there an internal ATI Office Manual on processing access requests?</b>   | X   |    | See attached document |
| <b>4.1.7 Are there documented criteria for taking extensions under paragraphs 9(1)(a) and 9(1)(b)?</b>                                   | X   |    | TB guidelines         |
| <b>4.1.8 Is there a Delegation Order?</b>  | X   |    | Attached              |
| <b>4.1.9 Are the ATI roles and responsibilities for those with delegated authority clearly defined?</b>                                  | X   |    |                       |
| <b>4.1.10 Does the approval process require the approval or concurrence of officials who are not holders of delegated authority?</b>     |     | X  |                       |
| <b>I4.1.11 Is there a published ATIP Training Plan?</b>  |     | X  |                       |

| Question   | Yes | No | Comments      |
|--|-----|----|---------------|
| <b>4.1.12 Has ATIPflow or similar application been implemented?</b>                      | X   |    |               |
| <b>4.1.13 Is ATIPflow used proactively to identify potential problems?</b>               |     | X  |               |
| <b>4.1.14 Is ATIPflow used to provide at least monthly reports to Senior Management?</b> | X   |    | Weekly report |
| <b>4.1.15 Has an audit of the ATI Program been conducted in the last three years?</b>    |     | X  |               |

#### 4.2 Dealing with ATI Problems

| Condition                | Action Taken  | Comment on Progress  |
|--------------------------|---|--|
| Backlog of overdue files | Prepared Business Case<br><br>Presented to DM Team<br>– Sept 2004 | Temporary funding allocated to ATIP – <ul style="list-style-type: none"> <li>• Consultants FY 04/05</li> <li>• Term positions 05/06</li> </ul> |

#### 4.3 Solutions to Unanticipated Service Demands between April 1, 2003 and December 31, 2004

| Service Demand   | Solution                           |
|------------------|------------------------------------|
| Backlog of files | 1- Business Case                   |
|                  | 2- Funding for contractors – temp. |

### 5. INFORMATION MANAGEMENT FRAMEWORK

#### 5.1 What activities were planned and what progress was made between April 1, 2003, and December 31, 2004, on providing access to information using alternative methods?

| Planned Activity                                  | Action Taken                                     | Comment on Progress |
|---|--|---------------------|
| 1- Proactive disclosure of travel and hospitality | TB implemented April 2004, DOJ posts on internet | N/A                 |

| Planned Activity                     | Action Taken                                    | Comment on Progress |
|--------------------------------------|---|---------------------|
| 2- Proactive disclosure of contracts | TB implemented July 2004, DOJ posts on internet | N/A                 |

## 5.2 What has been accomplished to implement the TBS *Policy on the Management of Government Information*?

*The department completed a Capacity Assessment in relation to the implementation of the Policy on the Management of Government Information. The report, using various IM audits and reports commissioned by the department over the past five years in addition to interviews with IM professionals and service providers, knowledge workers, senior and middle managers, provided a qualitative assessment of the department's ability to implement the policy requirements. The recommendations in the draft report led directly to the development of a strategic framework for the renewal of the IM program for the department. The framework has been approved in principle by the department's IM/IT governance committee. The framework identifies four main "pillars" for the IM program, including Policies, Standards and practices, Systems and technologies, and People (IM specialists), supported by staff at all levels who understand the importance of IM; assigned accountability; an effective governance framework and sufficient resources. Work is now underway on implementing key aspects of the framework, including the renewal of the department's classification structure for records, the development of Information Management Accountability Agreements for senior managers, and the creation of "plain language" guidelines, standards, and procedures, all pursuant to the recently approved departmental Information Management Policy.*

*As the policy framework (including guidelines, standards and procedures) is confirmed, we are planning for the development of a department-wide IM training plan for all staff, to occur in the next and subsequent fiscal years.*

*Other initiatives:*

*The department is currently classifying a position of Information Administrator for the application that manages all departmental records. This position, national in scope, will be responsible for establishing and monitoring standards for the organization of records, for the naming of files, and for maintaining a controlled vocabulary for the departmental records description.*

*The department supports a national Information Management Committee that encourages exchange among IM practitioners across the country. The objective of the committee is to ensure that matters of IM policy and procedure are identified and addressed in a collaborative but standardized fashion. The committee meets approximately every six weeks by teleconference and annually in person, and*

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*involves representatives of each regional office and headquarters.*

*With respect to records disposition, the department is in the process of scoping a project to address both the appropriate disposal of the backlog of textual records, as well as the revision of the current disposition authority, last reviewed by the (then) National Archives in 1995.*

**5.3 What approximate percentage of departmental record holdings is covered by a Departmental Retention and Disposition Plan(s) and Records Disposition Authorities?**

|   |           |
|---|-----------|
| Departmental Retention and Disposal Plan(s) | See Below |
| Records Disposal Authority                  |           |

*The current institution-specific records disposition authority covers approximately 80% of textual records created or received by the department. A similar percentage of textual records is covered by retention schedules. The department intends to address records in all media in the planned revision to the current disposition authority.*

**5.4 Does the department have a classification scheme or schemes for its information?**

|     |   |    |  |
|-----|---|----|--|
| Yes | X | No |  |
|-----|---|----|--|

If Yes, please provide documentation that explains the classification scheme(s)

*The department does have a classification scheme for its operational information that contains two distinct parts. The majority of the department's records are managed via a modified block numeric schema. Some programs, however, employ the "Corporate Information Management System," or CIMS schema. CIMS covers approximately five per cent of all information holdings (the rest being managed via the modified block numeric schema) and is in use exclusively at Headquarters. Information on the classification schemas is attached. Common administrative records are managed using a modified version of the classification structures associated with the General Records Disposal Schedules (GRDS).*

*Please note that the department is undertaking a major initiative to revise the entire classification structure for departmental records, which should result in a more simplified and standard structure. The first phase of the project (development of a national superstructure for information classification) will be complete by the fall of 2005. Implementation will follow.*

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## 5.5 How is the classification scheme(s) maintained for currency and comprehensiveness?

*The schemas are maintained using a records management applications (RIMS). Note that it is the responsibility for the Information Administrator for RIMS to maintain and update the database. All of the department's textual records are covered by the classification schemas described above. All regions and headquarters, and the majority of legal service units, use RIMS to manage their records holdings. With respect to electronic records, the department currently supports a small RDIMS pilot. These electronic records are managed using the departmental classification schemas.*

## 6. COMPLAINT PROFILE

Data supplied by the Office of the Information Commissioner on complaints made to their Office and the resolution of those complaints.

### 6.1 Complaints Resolved by Categories

| Category               | Number of Complaints Resolved |                          |
|------------------------|-------------------------------|--------------------------|
|                        | April 1/03 to March 31/04     | April 1/04 to Dec. 31/04 |
| Refusal to disclose    | 38                            | 10                       |
| Delay (deemed refusal) | 17                            | 11                       |
| Time extension         | 5                             | 4                        |
| Fees                   | 2                             | 0                        |
| Language               | 0                             | 0                        |
| Publication            | 0                             | 0                        |
| Miscellaneous          | 0                             | 1                        |
| Total Closed           | 62                            | 26                       |

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## 6.2 Complaint Findings

| Category          | Number of Complaint Findings |                          |
|-------------------|------------------------------|--------------------------|
|                   | April 1/03 to March 31/04    | April 1/04 to Dec. 31/04 |
| Resolved          | 43                           | 19                       |
| Not resolved      | 4                            | 1                        |
| Not substantiated | 13                           | 6                        |
| Discontinued      | 2                            | 0                        |
| Total Findings    | 62                           | 26                       |